

Planning Policy Wales

Technical Advice Note

# 5: NATURE CONSERVATION AND PLANNING



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

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# CONTENTS

	Page
<b>1. INTRODUCTION</b>	<b>1</b>
1.1 Introduction to the TAN	
1.2 Purpose and Structure of the TAN	
1.3 Cancellations	
1.4 Scope of nature conservation	
1.5 The importance of nature conservation	
1.6 The vital role of the Planning system in nature conservation	
<b>2. KEY PRINCIPLES OF POSITIVE PLANNING FOR NATURE CONSERVATION</b>	<b>4</b>
<b>3. NATURE CONSERVATION AND LOCAL DEVELOPMENT PLANS</b>	<b>6</b>
3.1 Introduction	
3.2 Relevant Statutory Requirements	
3.3 Advice in respect of the preparation and review of local development plans	
3.4 Supplementary Planning Guidance	
3.5 Sustainability Appraisal, Strategic Environmental Assessment and Habitats Regulations Appraisal	
3.6 Monitoring	
<b>4. NATURE CONSERVATION IN DEVELOPMENT CONTROL - PROCEDURES</b>	<b>12</b>
4.1 Introduction	
4.2 Pre-application discussions	
4.3 Preparing planning applications	
4.4 Requiring further information	
4.5 Environmental Impact Assessment	
4.6 The use of conditions on planning permissions	
4.7 The use of planning obligations	
<b>5. DEVELOPMENT AFFECTING DESIGNATED SITES AND HABITATS</b>	<b>20</b>
5.1 Introduction to designated sites	
5.2 Further considerations and policy in respect of international and nationally designated sites	
5.3 Development affecting internationally designated sites	
5.4 Development affecting nationally designated sites	
5.5 Local Sites	

**6. DEVELOPMENT AFFECTING PROTECTED AND PRIORITY HABITATS AND SPECIES 37**

- 6.1 Introduction
- 6.2 Protected species as a material planning consideration
- 6.3 Protection of European protected species
- 6.4 Protection of birds, badgers, other animals and plants
- 6.5 Habitats and species of principal importance for biodiversity in Wales

**ANNEXES**

1	Statutory framework for nature conservation relevant to planning	43
2	Statutory Nature conservation designations	47
3	Development proposals likely to affect an internationally designated nature conservation site	51
4	The review of outstanding planning permissions and deemed planning permissions likely to affect an internationally designated nature conservation site	65
5	Restrictions of permitted development that may affect an internationally designated nature conservation site	69
6	The appraisal of development plans in Wales under the provisions of the Habitats Regulations	75
7.	Key legislative provisions for the protection of species	101
8	Lists of species protected by law	105
9	List of species and habitats of principal importance for the conservation of biological diversity in Wales	118
10	Countryside Council for Wales	119
11	Other useful contacts	121
12	Link to: 'The Birds Directive', 'The Habitats Directive' and 'The Ramsar Convention'	123
13	Glossary	124



## 1. INTRODUCTION

### 1.1 Introduction to the TAN

1.1.1 *Planning Policy Wales* (PPW) (2002) sets out the land use planning policies of the Welsh Assembly Government (the Assembly Government). It is supplemented by a series of Technical Advice Notes (TANs). Procedural advice is given in National Assembly for Wales/Welsh Office circulars. PPW, Ministerial Interim Planning Policy Statements (MIPPS), the TANs and circulars together comprise national planning policy to which local planning authorities in Wales must have regard in the preparation of development plans. They may be material to decisions on individual planning applications and will be taken into account by the Assembly Government and Planning Inspectors in the determination of called-in planning applications and appeals. Detailed advice on the preparation of unitary development plans (UDPs) is contained in *Unitary Development Plans Wales, 2001*. Detailed advice on the preparation of Local Development Plans (LDPs) under the Planning and Compulsory Purchase Act 2004 is given in *Local Development Plans Wales, 2005*.

### 1.2 Purpose and Structure of the TAN

1.2.1 This Technical Advice Note provides advice about how the land use planning system should contribute to protecting and enhancing biodiversity and geological conservation. This guidance note should be read in conjunction with *Planning Policy Wales (2002)*, in particular with Chapter 5 *Conserving and Improving the Natural Heritage and Coast* which sets out the Assembly Government's objectives for the natural heritage and the land use planning policies which support these.

1.2.2 This TAN brings together advice on sources of legislation relevant to various nature conservation topics which may be encountered by local planning authorities. Chapter 2 sets out the key principles of planning for nature conservation. Chapter 3 provides advice about the preparation and review of development plans, including the relevant statutory requirements. Chapter 4 addresses nature conservation in development control procedures. Chapter 5 deals with the conservation of internationally and nationally designated sites and habitats and also covers local sites. Chapter 6 deals with the conservation of protected and priority species. The Annexes form part of this TAN and provide more detailed information and guidance on a range of issues.

1.2.3 Documents listed in the footnotes provide additional information which may be read in conjunction with this TAN.

### 1.3 Cancellations

1.3.1 TAN 5, *Nature Conservation and Planning (1996)* and Circular 23/2001, *Guidance for local planning authorities on European protected species and licensing procedures* are hereby cancelled.

### 1.4 Scope of nature conservation

1.4.1 Nature conservation as referred to in statute<sup>1</sup> means the conservation of flora, fauna, geological and physiographical (also called geomorphological) features. Nature conservation, as referred to throughout this TAN, includes the conservation of biodiversity and geodiversity including the natural systems and processes that continue to change the land form, rivers and coasts of Wales.

1.4.2 “Biodiversity” is the term applied to the variety of life on earth and is short for biological diversity. It describes the richness and variety of all living things, from the smallest microscopic organism to the largest tree. “Geodiversity” is the variety of geological environments, phenomena and active processes that make landscapes, rocks, minerals, fossils, soils and other superficial deposits that provide the framework for life on earth. Geodiversity is important because it underpins biodiversity with soils being the link between them.

1.4.3 “Conservation” in the context of this TAN, involves preservation, protection, wise use, sustainable management and restoration of the natural heritage. ‘Conserving biodiversity’ is also defined in statute as including, in relation to a living organism or type of habitat, the restoration or enhancement of a population or habitat<sup>2</sup>. The Assembly Government looks to the planning system to improve as well as protect the environment and to enhance as well as conserve the countryside and undeveloped coast, including statutorily designated areas (PPW paragraph 2.3.2). Consequently, this TAN also addresses ways in which the planning system can help to enhance as well as conserve natural features, natural processes, wildlife and the habitats on which it depends.

1.4.4 Section 40(1) of Natural Environment and Rural Communities Act 2006 (NERC) places a duty on every public authority, in exercising its functions, to “*have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity*”. This TAN sets out the manner in which planning authorities should comply with this duty.

### 1.5 The importance of nature conservation

1.5.1 Biodiversity is important in its own right and essential to maintain the life support systems that allow life, including human life, to exist on the planet. Wildlife and its habitats are of fundamental importance to our future well-being and prosperity because a rich and diverse environment supports a long-term sustainable economy and contributes to a healthier and happier society. Biodiversity is an important indicator of sustainable development. Biodiversity and geodiversity add to the quality of life and local distinctiveness. The geology of Wales, including its landforms, minerals and fossils, is diverse, visually impressive and of great scientific importance.

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<sup>1</sup> Section 39 Natural Environment and Rural Communities Act 2006.

<sup>2</sup> Section 40(3) Natural Environment and Rural Communities Act 2006.

1.5.2 The enjoyment of wildlife and geology provides opportunities for lifelong learning, recreation and tourism. Environments where a rich diversity of wildlife and natural features is appreciated, fostered and enhanced help to retain jobs, attract inward investment and diversify the economy. The conservation of our natural resources is a necessity, not merely a choice. The Assembly Government's objectives for the conservation and improvement of the natural heritage are set out in PPW at paragraph 5.1.2.

## 1.6 The vital role of the Planning system in nature conservation

1.6.1 Biodiversity conservation and enhancement is an integral part of planning for sustainable development. The planning system has an important part to play in nature conservation (PPW paragraph 5.2.7). The use and development of land can pose threats to the conservation of natural features and wildlife. Past changes have contributed to the loss of integrity of habitat networks through land-take, fragmentation, severance, disturbance, hydrological changes and other adverse impacts. But development can also present significant opportunities to enhance wildlife habitats and the enjoyment and understanding of the natural heritage. Whilst the planning system needs to be watchful of the cumulative effects of a series of small, perhaps occasional, apparently insignificant losses from the natural world, which can combine to seriously deplete the natural heritage, including essential hydrological and ecological systems; small scale opportunities for habitat creation and enhancement can be significant and can build into major contributions over time.<sup>3, 4</sup> This TAN demonstrates how local planning authorities, developers and key stakeholders in conservation can work together to deliver more sustainable development that does not result in losses from the natural heritage but instead takes every opportunity to enhance it.

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<sup>3</sup> Royal Town Planning Institute, 1999, *Planning for Biodiversity*, Foreword.

<sup>4</sup> *Planning to halt the loss of biodiversity: Biodiversity conservation standards for planning in the UK* (PAS 2010), British Standards Institution and Association of Local Government Ecologists, 2006.

## 2. KEY PRINCIPLES OF POSITIVE PLANNING FOR NATURE CONSERVATION

2.1 The town and country planning system in Wales should:

- work to achieve nature conservation objectives through a partnership between local planning authorities, CCW, the Environment Agency Wales, voluntary organisations, developers, landowners and other key stakeholders (PPW 5.1.5 and 5.2.5);
- integrate nature conservation into all planning decisions looking for development to deliver social, economic and environmental objectives together over time<sup>5</sup> (PPW 5.1.3 and 5.1.4);
- ensure that the UK's international and national obligations for site, species and habitat protection are fully met in all planning decisions (PPW 5.3.8-10);
- look for development to provide a net benefit for biodiversity conservation with no significant loss of habitats or populations of species, locally or nationally (PPW 5.1);
- help to ensure that development does not damage, or restrict access to, or the study of, geological sites and features or impede the evolution of natural processes and systems especially on rivers and the coast (PPW 1.4.14, 2.2.1, 2.3.2 and 5.6.3);
- forge and strengthen links between the town and country planning system and biodiversity action planning particularly through policies in local development plans and the preparation of supplementary planning guidance that adds value to Local Biodiversity Action Plans (LBAPs) by highlighting the ways in which the planning system can help to deliver the objectives of LBAPs in practical ways (PPW 5.4.2);
- plan to accommodate and reduce the effects of climate change by encouraging development that will reduce damaging emissions and energy consumption and that help habitats and species to respond to climate change (PPW 2.2.1 and 2.3.2)<sup>6</sup>.

2.2 Local development plan policies and proposals should be based upon up-to-date information, which should be kept under review, about the biodiversity and geological resources of the plan area (PPW paragraphs 3.1.4 and 3.1.5). In local development plan reviews, local planning authorities should assess the potential to conserve and enhance those resources (PPW paragraph 5.4.1).

<sup>5</sup> HM Government, 2005, *Securing the future: delivering UK sustainable development strategy* Command 6467.

<sup>6</sup> Guidance on planning and climate change is available in *The Planning Response to Climate Change - Advice on Better Practice*, ODPM, Welsh Assembly Government, Scottish Executive, 2004.



2.3 Development policies and, where appropriate, supplementary planning guidance, should promote opportunities for the incorporation of wildlife and geological features within the design of development and green infrastructure (PPW 2.9.4).

2.4 When considering policies and proposals in local development plans and when deciding planning applications that may affect nature conservation, local planning authorities should:

- pay particular attention to the principles of sustainable development, including respect for environmental limits, applying the precautionary principle, using scientific knowledge to aid decision making and taking account of the full range of costs and benefits in a long term perspective (PPW 2.2.1);
- contribute to the protection and improvement of the environment, so as to improve the quality of life and protect local and global ecosystems, seeking to avoid irreversible harmful effects on the natural environment (PPW 2.3.2);
- promote the conservation and enhancement of statutorily designated areas and undeveloped coast (PPW 2.3.2);
- ensure that appropriate weight is attached to designated sites of international, national and local importance (PPW 5.3.2);
- protect wildlife and natural features in the wider environment, with appropriate weight attached to priority habitats and species in Biodiversity Action Plans (PPW 5.2);
- ensure that all material considerations are taken into account and decisions are informed by adequate information about the potential effects of development on nature conservation (PPW paragraphs 5.5.1 and 5.5.2);
- ensure that the range and population of protected species is sustained (PPW 5.2.3, 5.5.11 and 5.5.12);
- adopt a step-wise approach to avoid harm to nature conservation, minimise unavoidable harm by mitigation measures, offset residual harm by compensation measures and look for new opportunities to enhance nature conservation; where there may be significant harmful effects local planning authorities will need to be satisfied that any reasonable alternative sites that would result in less or no harm have been fully considered (PPW 5.2.2, 5.2.7 and 5.5.2).

## 3. NATURE CONSERVATION AND LOCAL DEVELOPMENT PLANS

### 3.1 Introduction

3.1.1 Paragraphs 5.4.5 and 5.4.6 of PPW indicate the expectations of the Assembly Government in respect of the content of Unitary Development Plans. Consistent with that approach, when local planning authorities are preparing and reviewing local development plans they should adopt the key principles set out in Chapter 2 above and consider the advice set out in this Chapter. They should also ensure that the plan meets the statutory requirements as set out below.

### 3.2 Relevant Statutory Requirements

3.2.1 Section 61 of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to keep under review matters which may be expected to affect the development of their area or the planning of its development: these matters include the principal physical and environmental characteristics of the authority's area and any considerations which may be expected to affect those matters. Local planning authorities should take steps to ensure they have an adequate baseline of data to inform the preparation, appraisal and examination of the local development plan. This will include an understanding of the wildlife and natural features of their area, how they may be conserved and enhanced and how development may affect them, beneficially or adversely. Local Record Centres (LRCs) are an effective source of such information as their main function is to collate, manage and disseminate biodiversity information and they may also hold other types of environmental data<sup>7</sup> (see **Annex 11** for other useful sources of information).

3.2.2 Regulation 3(4) of the Habitats Regulations requires all competent authorities (including LPAs), in the exercise of their functions, to have regard to the requirements of the Habitats Directive, so far as they may be affected by the exercise of those functions. Local planning authorities should therefore familiarise themselves with the requirements of the Habitats Directive and factor them into their decision-making. For example, Article 10 of the Habitats Directive<sup>8</sup> requires Member States to endeavour, in their land-use planning and development policies, 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. Statutory sites and non-statutory sites, together with features which provide wildlife corridors, links or stepping stones from one habitat to another, all contribute to the network necessary to ensure the maintenance of the current range and diversity of our flora, fauna, geological and landform features and the survival of

<sup>7</sup> For more details about establishing and maintaining an evidence base and about the benefits of LRCs see Section 2 of *Planning for Biodiversity and Geological Conservation - A Good Practice Guide*, ODPM, Defra, English Nature, 2006.

<sup>8</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

important species. Sensitive landscaping and planting, the creation, maintenance and management of landscape features important to wildlife, and the skilled adaptation of derelict areas can provide extended habitats. In order to comply with their duty under regulation 3(4), local planning authorities should consider whether there is scope to make provision for such matters when exercising their functions.

3.2.3 Section 40 of the Natural Environment and Rural Communities Act 2006 requires all public authorities (including LPAs), in exercising their functions to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.

3.2.4 Section 11 of the Countryside Act 1968 requires all public bodies (including LPAs), in the exercise of their functions relating to land, to have regard to the desirability of conserving the natural beauty and amenity of the countryside. Section 49(4) of that Act provides that references in the Act to the conservation of natural beauty are to be construed as including reference to the conservation of its flora, fauna and geological and physiographical features.

3.2.5 Section 28G of the Wildlife and Countryside Act 1981 places a duty on public authorities (including LPAs), in exercising their functions so far as this is likely to affect the flora, fauna or geological or physiographical features by reason of which a SSSI is of special interest, to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of those features.

3.2.6 Local development plans should include policies in respect of the conservation of the natural beauty and amenity of the land; such policies should encourage the management of features of the landscape which are of major importance for wild flora and fauna. Suitable planning conditions and obligations may serve to promote such management.

3.2.7 Other relevant legislation is referred to in Annex 1.

### **3.3 Advice in respect of the preparation and review of local development plans**

3.3.1 In developing the overall strategy of a plan, local planning authorities should seek to:

- Develop an ambitious but achievable vision of the environment of the plan area, including healthy, functioning ecosystems, a wealth of native wildlife and natural features and the habitats and natural processes on which they will depend;
- Incorporate international and Welsh Assembly Government nature conservation objectives into local development plan objectives;

- Integrate the Community Strategy (and in National Parks, National Park Management Plans) and LBAP objectives related to the use and development of land;
- Ensure that the environmental information base is up to date and is linked to indicators for change in wildlife, habitats and geological features;
- Consider the use of evolving techniques such as environmental capacity studies to assess the amount of development that can be supported in an area without causing long-term environmental harm;
- Select monitoring indicators that are integrated with wider biodiversity monitoring in the area; and
- Ensure development plans have regard to other plans and strategies such as Shoreline, Estuary, Integrated Coastal Zone and River Basin Management Plans.

### 3.3.2 Where relevant, local development plans should include policies that:

- Set out general criteria against which all development proposals will be tested for their compatibility with nature conservation objectives and/or sustainable development principles;
- Draw attention to the legal procedures that would apply to developments likely to have a significant effect on an internationally designated site and refer to the sites shown on the proposals map;
- Safeguard nationally and locally designated sites whilst making clear the relative weight to be attached to the different designations;
- Protect ancient woodlands, veteran trees and other trees of nature conservation value;
- Encourage the conservation and management of features of the landscape of major importance for wild flora and fauna;
- Give local expression to the protection and, where possible, enhancement of species and their habitats, especially those with legal protection and those of principal importance for biodiversity conservation in Wales<sup>9</sup>;
- Apply the precautionary principle where appropriate;
- Create strong links to national and local Biodiversity Action Plans and include provision for helping to meet their targets by habitat creation and management;

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<sup>9</sup> Section 42 of the Natural Environment and Rural Communities Act 2006 requires the Welsh Ministers to publish a list of the living organisms and habitats which, in their opinion, are of principal importance for the purpose of conserving biodiversity in Wales. This list can be found at: <http://www.biodiversitywales.org.uk/english/default.aspx>.

- Provide for the conservation, enhancement, sustainable management and, where appropriate, the restoration of networks of natural habitats including wildlife corridors and other green space, and networks and chains of open space;
- Address the local implications of climate change, including potential effects of habitat change, the risks of coastal flooding and erosion and river basin flood management issues<sup>10</sup>;
- Anticipate, plan and manage the effects of natural processes, with minimum intervention;
- Provide for the conservation, enhancement, sustainable management and, where appropriate, the restoration of locally distinctive natural habitats<sup>11</sup>;
- Protect locally designated sites of demonstrably substantive nature conservation value;
- Make proposals for necessary new development in ways and at locations that are consistent with the nature conservation objectives and policies in the plan itself and with national planning policies.

### 3.4 Supplementary Planning Guidance

3.4.1 Supplementary Planning Guidance (SPG) helps to deliver better conservation for biodiversity and geology. There is considerable scope for supplementing local development plan policies with guidance that is focused on local issues, design and good practice in development and which link the local development plan to the Local Biodiversity Action Plan (LBAP). A number of local planning authorities have already used existing provisions for SPG to raise the profile of biodiversity issues in planning, provide more detailed guidance and to strengthen links between the LBAP and the local development plan to help to deliver LBAP targets and objectives<sup>12</sup>.

3.4.2 Local planning authorities may adopt SPG to provide more detailed, locally relevant guidance for:

- ways in which the planning system can deliver LBAP objectives and the targets of Habitat and Species Action Plans;
- the design<sup>13</sup>, layout, programming and construction of development that furthers the conservation and enhancement of biodiversity and geodiversity;

<sup>10</sup> Guidance on planning and climate change is available in *The Planning Response to Climate Change - Advice on Better Practice*, ODPM, Welsh Assembly Government, Scottish Executive, 2004. This includes a number of useful information sources, such as the UK Climate Impacts Programme (UKCIP).

<sup>11</sup> For examples of developing 'opportunity maps' to show where priority habitats could be restored or re-created see 2.18 - 2.19 of *Planning for Biodiversity and Geological Conservation - A Guide to Good Practice*, ODPM, Defra, English Nature, 2006.

<sup>12</sup> Some good practice examples of SPG are provided in 4.44 - 4.49 of *Planning for Biodiversity and Geological Conservation - A Guide to Good Practice*, ODPM, Defra, English Nature, 2006.

<sup>13</sup> The Guide to Good Practice also provides examples of how new development can offer opportunities to enhance nature conservation (at 5.32 - 5.45) Further guidance and case studies are provided in *Biodiversity by Design: a guide for sustainable communities*, TCPA, 2004.



- achieving more sustainable solutions to development problems and opportunities that respect natural processes and ecological systems;
- householders to address biodiversity issues in planning applications;
- developers to avoid adverse effects on nature conservation, minimise unavoidable effects by mitigation measures and compensate for residual effects on nature conservation, and providing new benefits for conservation, using examples of different types of development and different conservation scenarios and initiatives;
- the creation of new wildlife habitats and the enhancement of nature conservation interests;
- ensuring developments make appropriate provision for the management of land for nature conservation and the enjoyment of areas of wildlife and geological interest.

### 3.5 Sustainability Appraisal, Strategic Environmental Assessment and Habitats Regulations Appraisal

3.5.1 Advice on sustainability appraisal and the strategic environmental assessment of development plans is provided in:

- *Sustainability Appraisal of Unitary Development Plans in Wales - A Good Practice Guide*, Welsh Assembly Government, 2002;
- *Strategic Environmental Assessment of Unitary Development Plans - Interim Good Practice Guide*, Welsh Assembly Government, 2004 (amendment to SEA elements of *Sustainability Appraisal of UDPs in Wales*, 2002);
- *A Practical Guide to the Strategic Environmental Assessment Directive*, ODPM, 2005;
- *Local Development Plan Manual*, Welsh Assembly Government, 2006.

3.5.2 The Conservation (Natural Habitats, &c) Regulations 1994<sup>14</sup> ("the Habitats Regulations") have been amended<sup>15</sup> to give effect to a judgment of the European Court of Justice<sup>16</sup> that the requirements of Article 6(3) and (4) of the Habitats Directive apply in relation to land use plans: a new Part IVA has been added to the Regulations under the title "*Appropriate Assessments for Land Use Plans in England and Wales*". Before a local development plan may be adopted by a planning authority under section 67 of the Planning and Compulsory Purchase Act 2004, and before a unitary development plan may be adopted by a local planning authority under section 15(1) of the Town and Country

<sup>14</sup> S.I. 1994/2716.

<sup>15</sup> By the Conservation (Natural Habitats &c) (Amendment) (England and Wales) Regulations 2007 (SI 2007/1843).

<sup>16</sup> Case C - 6/04, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, 20th October 2005.

Planning Act 1990<sup>17</sup>, the planning authority must determine whether the plan is likely to have significant effects on a European site in Great Britain or on a European offshore marine site.

3.5.3 If the plan might have a significant effect on any European site, in or outside Wales, or on a European offshore marine site, the planning authority must undertake an 'appropriate assessment' of the plan to ascertain whether it would adversely affect the integrity of the site. If such an effect cannot be ruled out, the planning authority should amend the plan to avoid such effects occurring; it is only in the most exceptional circumstances that a local planning authority may adopt a plan which is likely to have such an effect.

**Annex 6** provides further guidance on the appraisal of plans under the Habitats Regulations. The requirements of the Regulations apply irrespective of when work on the plan was started. Supplementary Planning Guidance should also be subject to appraisal of its effects on these sites in the same way.

### 3.6 Monitoring

3.6.1 The monitoring of local development plans should include indicators and targets that enable the effectiveness of the plans and any SPG to be assessed. This will generally mean that the indicators will need to concentrate on the influence of the plan in planning decisions, and the decisions themselves, rather than general indicators of changes in biodiversity and geodiversity that could be the result of a wide range of effects and interactions, many of which may have no, or very little, relevance to development or planning issues. An analysis is required that will inform the review of the local development plan as to whether the plan's policies and proposals are working to achieve the plan's nature conservation objectives and whether any targets expressed in the plan or SPG are being met or missed.

3.6.2 There may well be convergence between the biodiversity objectives of the local development plan and those of the Sustainability Appraisal, in which case shared targets and indicators can be developed. In turn these should align well with those of the other plans which inform the local development plan, such as the community strategy.

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<sup>17</sup> Unitary development plans may only be adopted to the extent permitted by section 122(3) of the Planning and Compulsory Purchase Act 2004 and article 4 of the Planning and Compulsory Purchase Act 2004 (Commencement No. 3 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005.(S.I. 2005/ 1229 (W.87)).

## 4. NATURE CONSERVATION IN DEVELOPMENT CONTROL - PROCEDURES

### 4.1 Introduction

4.1.1 The development control process is a critical stage in delivering the protection and enhancement of nature conservation required by PPW. The following can help to achieve these objectives:

- adopting the five-point approach to decision-making - information, avoidance, mitigation, compensation and new benefits;
- ensuring that planning applications are submitted with adequate information, using early negotiation, checklists, requiring ecological surveys and appropriate consultation<sup>18</sup>;
- securing necessary measures to protect, enhance, mitigate and compensate through planning conditions and obligations;
- carrying out effective planning enforcement;
- identifying ways to build nature conservation into the design of new development.

### 4.2 Pre-application discussions

4.2.1 PPW recommends pre-application discussions (paragraph 5.5.1) and consultations (paragraph 5.5.4) between developers, local planning authorities and the statutory agencies. It is essential that all potentially important nature conservation issues (including effects on international, national and local sites, European and other protected species, organisms and habitats listed under section 42 of the Natural Environment and Rural Communities Act, UK BAP habitats and species, and coastal and inland waters and other wetlands) are identified and fully addressed at the earliest stages of preparing a planning application. A clear audit trail needs to be provided for any decisions which might impact on species and habitats on the NERC Act section 42 list. Information should be sought from appropriate experts and taken into account.<sup>19</sup> The Local Records Centre (LRC) can be engaged to provide services to assist with this process, including checking of proposed applications against table 4.1 below. Ignoring or inadequately addressing the potential of a development to affect important wildlife habitats or species could lead to delay in the processing of the application or refusal of permission. In some cases it could delay or even prevent implementation of a planning permission, for example, where a protected species is found on a development site after work has started.

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<sup>18</sup> For examples of checklists and advice for applicants on carrying out ecological and other surveys, see Section 5 of *Planning for Biodiversity and Geological Conservation - A Guide to Good Practice*, ODPM, Defra, English Nature, 2006.

<sup>19</sup> The procedure to be followed is outlined in the Wales Biodiversity Partnership guidance which can be found at: [http://www.biodiversitywales.org.uk/legislation\\_guidance-20.aspx](http://www.biodiversitywales.org.uk/legislation_guidance-20.aspx).

4.2.2 The need for early discussions to identify potentially important nature conservation issues is not confined to planning applications in rural Wales. It can apply also to applications for Listed Building consent, Tree Preservation Order consent, Conservation Area consent, and applications for approval under conditions imposed on permitted development<sup>20</sup>. It can also apply to proposed developments in urban areas, especially where important green space, wildlife habitats and protected species may be affected.

4.2.3 In addition to pre-application discussions with the local planning authority, developers should have regard to other consultees who should be contacted at an early stage. Table 4.1 below summarises advice as to which organisation should be contacted.

Table 4.1 Pre-application discussions

Nature Conservation interests potentially affected by a proposed development	Who should be contacted before the application is prepared?
An internationally designated site or proposed site (European and European offshore marine sites, proposed European and European offshore marine sites, and Ramsar sites) <sup>21</sup>	Countryside Council for Wales (CCW) and the Local Planning Authority (LPA)
A Site of Special Scientific Interest (SSSI)	CCW and the LPA
A European Protected Species	CCW and the LPA
Other Protected Species	CCW and the LPA
A National Nature Reserve	CCW and the LPA
A Local Nature Reserve	The LPA
A Site of Importance for Nature Conservation (SINC)	The Wildlife Trust, Local Records Centre (LRC) and the LPA
A Regionally Important Geological Site (RIGS)	The Local RIGS group, LRC and the LPA
A living organism or habitat listed as being of principal importance in Wales (section 42 NERC list) or BAP priority habitat or species.	The Wildlife Trust and/or LRC, the LPA, CCW and (for water-related habitats and species) Environment Agency Wales.
Where effects on nature conservation are uncertain	The LRC and/or LPA ecologist or a consultant ecologist
Coastal waters, lakes, rivers, streams or other wetlands	LPA and Environment Agency Wales

<sup>20</sup> Article 3 and Schedule 2, Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418).

<sup>21</sup> See section 5.1 below for the full description of internationally designated sites including European Offshore Marine Sites.

### 4.3 Preparing Planning Applications

4.3.1 PPW explains the importance of nature conservation in the consideration of planning proposals (paragraphs 5.5.1 - 5.5.4).

4.3.2 To facilitate the efficient and timely processing of planning applications developers should ensure that applications are carefully prepared with all relevant information included and all material considerations addressed in the layout, design and related access, drainage and infrastructure. Landscaping proposals should be included together with any measures designed to avoid, mitigate or compensate for potential adverse effects on nature conservation. Any proposals for enhancement of nature conservation interests should also be included. These matters should not normally be left for later submission under conditions imposed on any permission given, because they will be material to the determination of whether planning permission should be granted.

4.3.3 Where proposals for addressing nature conservation interests are uncertain or require monitoring to identify potential effects, the application should include proposals as to how these issues will be implemented. For example, the heads of terms of a proposed planning obligation should be submitted with the application.

4.3.4 The information submitted with the planning application should be proportional to the likelihood of effects on nature conservation interests and to their potential significance. Where a proposal is not EIA development (see below) applicants may find it useful to prepare and submit one or more of the following as appropriate:

- a) **Habitat Survey:** showing the types of habitat on the site, their distribution, interrelationships, significance and an analysis of potential changes caused by the proposed development;
- b) **Geological/Geomorphological/Hydrological/Hydrogeological Report:** addressing relevant issues on the site or features directly or indirectly affected by the proposed development including survey, analysis, avoidance, mitigation, compensation measures and any proposals for enhancement;
- c) **Soils Report:** demonstrating how and when the soils that may be affected by the development proposals will be moved, stored, used and conserved;
- d) **Protected Species Report:** including survey method, timing, results, any limitations in the survey, analysis of potential harm to the species and any avoidance or mitigation measures proposed<sup>22</sup>;
- e) **An Ecological Appraisal:** a more comprehensive appraisal of nature conservation issues including but not limited to survey, analysis, avoidance, mitigation, compensation measures and proposals for enhancement;

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<sup>22</sup> The Construction Industry Research and Information Association (CIRIA) has published *Working with Wildlife* (2004) which provides information and good practice advice for the development industry in dealing with protected species.



- f) **Nature Conservation Enhancement Proposals:** showing how the development will conserve natural heritage features on the site and provide net benefits for nature conservation interests;
- g) **A Monitoring Plan or Programme:** describing in sufficient detail the proposals for monitoring to check the effects of the proposed development on nature conservation (and other interests). Depending on the circumstances monitoring may be necessary to:
  - i) validate the predicted effects;
  - ii) identify departures from predicted effects and assess and report on their significance and any measures needed to remedy unforeseen effects, or to reduce mitigation or compensation measures that are shown to be unnecessary;
  - iii) act as an “early warning” signal that significant adverse effects may occur if further measures are not taken (e.g. to suspend water pumping or activities causing disturbance);
  - iv) measure effects against pre-determined thresholds above or below which measures to reduce the effects of development may be scaled down or should be increased, as appropriate.
- h) **A Nature Conservation Management Plan:** describing how the site will be managed to conserve and enhance nature conservation on and off-site including who will manage different parts or elements, how management will be funded, reviewed and adapted over time.

4.3.5 Some of this information may also be required at a later stage to support licence applications to the Assembly Government where European protected species are affected (see section 6.3 below).

#### 4.4 Requiring further information

4.4.1 The local planning authority can direct the applicant to supply any further information reasonably necessary to determine any planning application<sup>23</sup>. Where a local planning authority is considering whether a planning application is likely to have a significant effect on a European site<sup>24</sup> or European offshore marine site<sup>25</sup>, so as to make it necessary to carry out an appropriate assessment under the Habitats Regulations, the planning authority may require the applicant to provide such information as it reasonably needs to determine that question; and where a planning authority determines that an appropriate assessment is necessary, it may require the applicant to provide such

<sup>23</sup> Article 4, Town and Country Planning (Applications) Regulations 1988 (S.I. 1988/1812).

<sup>24</sup> Defined in regulation 10 of the Conservation (Natural Habitats, &c) Regulations 1994 (S.I. 1994/2716).

<sup>25</sup> Defined in regulation 15 of the Offshore Marine Nature Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/ 1842).

information as it reasonably needs for the purposes of that assessment<sup>26</sup>. The collection, analysis and reporting of this information may sometimes mean a delay in deciding the application, especially if there are seasonal constraints on surveys.

4.4.2 The potential delay should not be seen as a justification for granting permission without taking the information into account. Apart from the harm that could result, the decision may be open to legal challenge if all material considerations are not properly addressed in the decision. Where the information is necessary to adequately assess the potential harm to nature conservation, but it is not provided (because the applicant cannot or will not provide it), planning permission will need to be refused if significant adverse effects on the nature conservation interests are possible and the benefits of the development do not clearly outweigh the harm that could result (PPW paragraph 5.5.3).

### 4.5 Environmental Impact Assessment (EIA)

4.5.1 EIA is a process intended to identify and assess the likely significant environmental effects of a proposed development, in order to inform decision-making. It should identify at an early stage the nature conservation interests likely to be affected by an EIA development. It should ensure that the impacts of projects likely to have a significant effect on the environment are thoroughly investigated, understood and considered before deciding whether or not to grant consent. The process guides the design and implementation of those projects that are ultimately consented, and helps ensure that the capacity of Wales' environment to accommodate change is not exceeded. Detailed guidance on EIA is provided in Welsh Office Circular 11/99 *Environmental Impact Assessment*.<sup>27</sup>

4.5.2 EIA is undertaken by local planning authorities primarily through the provisions of the *Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999* (as amended). PPW (paragraphs 4.3.1 - 4.3.8 and 5.5.9) explains the application and importance of the EIA process. In all cases it is essential to:

- a) carefully screen all Schedule 2 developments for likely significant effects on nature conservation;
- b) ensure that all potentially significant nature conservation interests and effects on them are considered at the outset and particularly at the scoping stage;
- c) encourage potential applicants to apply for a scoping opinion from the local planning authority and engage as early as possible with CCW, the Environment Agency Wales, non-governmental organisations promoting environmental protection and other stakeholders likely to be affected by, or have an interest in, the proposed development, to establish what and how nature conservation interests are likely to be significantly affected;

<sup>26</sup> Regulation 48(2), The Conservation (Natural Habitats &c) Regulations 1994 (S.I. 1994/2716).

<sup>27</sup> See also European Commission, 1996, *Environmental Impact Assessment: Guidance on Screening* and European Commission, 1996, *Environmental Impact Assessment: Guidance on Scoping*.

- d) agree through the scoping process, or otherwise, the effects to be assessed, the information required, including the way in which baseline information will be gathered, the assessment methodology, the timing and coverage of surveys and the criteria for predicting and evaluating the significance of the effects;
- e) agree the scope for avoiding, mitigating or compensating for adverse effects on nature conservation, and ensure these are clearly stated in the environmental statement;
- f) ensure that development proposals in outline planning applications are sufficiently prescribed, and that environmental impact statements fully address all likely significant environmental effects, in order to avoid the procedures applying again at the approval of reserved matters stage<sup>28</sup>;
- g) ensure the EIA process is used to full advantage to identify opportunities for the enhancement of nature conservation interest, for example, through the design, location, scale or management of measures mitigating other environmental effects such as noise attenuation bunds, screen planting or provision of buffer zones.

#### 4.6 The use of conditions on planning permissions

4.6.1 Assembly Government policy on the use of planning conditions is set out in paragraphs 4.6.1 - 4.6.4 and 5.5.3 of PPW<sup>29</sup>. Conditions may contribute significantly to biodiversity conservation. The use of conditions can:

- avoid adverse impacts or remove the likelihood of adverse impacts occurring;
- reduce adverse impacts that may occur;
- compensate for losses or impacts that could not be avoided or mitigated;
- enhance aspects of the natural heritage and its enjoyment.

4.6.2 Amongst other ways, conditions can achieve these objectives by:

- Restricting or otherwise regulating the development permitted, for example by restricting specific operations to particular seasons;
- Requiring works to be carried out which are necessary for the development to proceed;
- Requiring schemes or further details to be submitted for approval, perhaps in consultation with CCW;
- Requiring the protection and planting of trees;

<sup>28</sup> See judgments of the ECJ in *R (Delina Wells) v Secretary of State* Case C-201/02, *Commission v UK* Case C-508/03 and *Barker* Case C-290/03 and the House of Lords in *R v Bromley LBC ex parte Baker* [2006] UKHL 52.

<sup>29</sup> See also Welsh Office Circular 35/95 *The Use of Conditions in Planning Permissions*.

- Requiring the restoration and after care of land following minerals extraction or waste disposal;
- Limiting the duration of all or part of the development;
- Requiring appropriate management and maintenance;
- Requiring proper treatment of invasive and exotic species on the application site.

4.6.3 All conditions should be necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable.

4.6.4 The use of conditions can deliver a number of positive benefits to biodiversity beyond those of simply avoiding adverse effects. It is possible for conditions to require certain types of positive actions, for example:

- The submission and agreement of a landscape scheme so that greater attention can be given to issues such as species composition;
- The maintenance of landscape planting for a five-year period, or longer, where the need for this can be justified;
- Habitat enhancement;
- The restoration and aftercare of a site where a positive approach to restoration and after-use required by conditions can produce significant biodiversity benefits in terms of habitat creation and enhancement.

## 4.7 The use of planning obligations

4.7.1 Planning obligations can also be an effective way of avoiding potential adverse effects on nature conservation enabling a permission to be granted<sup>30</sup>. If there is a choice between imposing conditions and entering into a planning obligation, the imposition of a condition is preferable (PPW paragraphs 4.7.1 - 4.7.5 and 5.5.3). In many circumstances, for nature conservation matters, obligations provide a more flexible, but equally reliable and enforceable, means of controlling development than conditions. They are particularly useful for delivering the measures in a proposed development to avoid, mitigate or compensate for potential harm to nature conservation and to ensure proposed natural heritage benefits are delivered in a timely and appropriate way, where these have been material considerations in the planning decision.

4.7.2 Obligations may be appropriate for providing:

- for the management of land and conservation of natural heritage features associated with development including any compensatory areas;

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<sup>30</sup> See also Welsh Office Circular 13/97 *Planning Obligations*.

- monitoring systems and the means of reporting, reviewing and adjusting, monitoring and mitigation and compensation measures (see paragraph 4.6.1 above);
- new habitats or enhancing existing habitats, on or off-site;
- information and interpretation, for example, about the geological interest of a site or feature;
- improved access for all to sites or features of nature conservation interest;
- new nature reserves or the funding of nature reserve management or provision;
- warden or ranger services to help manage recreational or other pressures on land on or off-site;
- measures to avoid harm to protected species in buildings or elsewhere;
- other appropriate financial contributions to nature conservation.

4.7.3 This is not an exhaustive list but illustrates the scope of use of planning obligations. Local planning authorities and developers are encouraged to use obligations in a positive and innovative way in accordance with the Assembly Government's policies set out in section 4.7 of PPW.



## 5. DEVELOPMENT AFFECTING DESIGNATED SITES AND HABITATS

### 5.1 Introduction to designated sites

5.1.1 Many sites which are important for nature conservation have been designated under the international conventions and national legislation outlined in this Chapter. Along with local sites, these comprise a hierarchy of designations which are set out below. Local planning authorities will require up-to-date spatial information on the location and extent of these sites.

#### *International sites*

Site Designation	International Directives/Obligations	Designating Authority
<b>Special Protection Areas (SPAs) including SPAs that are European Offshore Marine Sites</b>	Classified under Article 4 of the EC Directive on the Conservation of Wild Birds (79/409/EEC) (the Birds Directive) and Regulation 12 of the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007	Classified by the Welsh Ministers in the light of recommendations made by CCW through the Joint Nature Conservation Committee (JNCC); beyond the territorial sea adjacent to Wales, SPAs are classified by the UK Government on the advice of JNCC
<b>Special Areas of Conservation (SACs) including candidate Special Areas of Conservation (cSACs) and SACs and cSACs that are European Offshore Marine Sites</b>	Designated under Article 4 of the EC Directive on the Conservation of Natural Habitats and of Wild Fauna & Flora (92/43/EEC) (the Habitats Directive) via Regulations 7 and 8 of the Conservation (Natural Habitats &c) Regulations 1994 and Regulations 7 to 11 of the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007	Designated by the Welsh Ministers in the light of recommendations made by CCW through the JNCC; beyond the territorial sea adjacent to Wales, SACs are designated by the UK Government on the advice of JNCC
<b>Ramsar Sites</b>	Designated under article 2 of the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention, 1971)	Designated by the UK Government in the light of recommendations made by CCW through the JNCC

5.1.2 The UK is bound by the terms of the EC Birds and Habitats Directives<sup>31</sup> and the Ramsar Convention<sup>32</sup>. The Conservation (Natural Habitats &c.) Regulations 1994<sup>33</sup> (the Habitats Regulations) and the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007<sup>34</sup> refer to “European sites” and “European Offshore Marine Sites”.

“European sites” are defined in regulation 10 of the Habitats Regulations. They consist of the following sites:

- Special Protection Areas (SPAs) classified pursuant to the EC Wild Birds Directive;
- Special Areas of Conservation (SACs) designated under the EC Habitats Directive;
- Candidate Special Areas of Conservation (cSACs) proposed to the Commission by the Welsh Ministers or the Secretary of State under Article 4(1) of the Habitats Directive<sup>35</sup>;
- Sites of Community Importance (SCIs) adopted by the Commission under Article 4(2) of the EC Habitats Directive;
- Sites hosting priority natural habitat types or priority species in respect of which consultation has been initiated under Article 5(1) of the Habitats Directive<sup>36</sup>.

“European offshore marine sites” are defined in regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 and consist of sites located beyond the territorial sea adjacent to the UK, i.e. beyond 12 nautical miles: there are no such sites in Great Britain at present.

The Ramsar Convention provides for the designation of suitable wetlands for inclusion in a “List of Wetlands of International Importance” and for the formulation and implementation of planning in order to help to safeguard the wise use and conservation of those wetlands.

5.1.3 In order to make this TAN more readable, European Sites, European Offshore Marine Sites and, as a matter of Assembly Government policy<sup>37</sup>, pSPAs, pSACs and Ramsar sites, are included in the expression “internationally designated sites” in the whole of the rest of the TAN, including its Annexes. Where a particular section applies in relation to some internationally designated sites but not to others, this is stated in the relevant section.

<sup>31</sup> Council Directive of April 2, 1979 on the conservation of wild birds (79/409/EEC) and Council Directive of May 21, 1992 on the conservation of natural habitats and of wild fauna and flora (92/43/EEC).

<sup>32</sup> 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.

<sup>33</sup> S.I. 1994/2716.

<sup>34</sup> S.I. 2007/1842.

<sup>35</sup> Such sites remain European sites until such time that they are adopted by the Commission as sites of Community importance or agreement is reached or a decision is taken that they should not be adopted as such sites: regulation 10(1)(e).

<sup>36</sup> Such sites remain European sites until the consultation period has ended and a decision has been taken by the Council under Article 5(3) of the Habitats Directive: article 10(1)(c).

<sup>37</sup> Ministerial Letter on TAN 5 and related policy issues, dated 16 September 2009.

5.1.4 The protection and management of internationally designated sites is achieved by a combination of the provisions of the Habitats Regulations and the provisions of Part 2 of the Wildlife and Countryside Act 1981, as amended (see 5.1.5 below). In respect of land above mean low water mark, the majority of internationally designated 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. Local planning authorities are also notified of Ramsar sites under the provisions of section 37A of the Wildlife and Countryside Act 1981.

*Nationally designated sites*

Site Designation	Relevant National Legislation	Responsible/Relevant Authority
<b>National Nature Reserves (NNRs)</b>	Declared under section 19 of the National Parks and Access to the Countryside Act 1949 or section 35 of the Wildlife & Countryside Act 1981	Declared by CCW. NNRs may be declared on any land of national conservation importance which is being managed as a nature reserve (as defined in S.15 of the 1949 Act) to provide opportunities for research into matters relating to, or to preserve, plants and animals and the physical conditions in which they live, or geological or physiographical features of special interest.
<b>Sites of Special Scientific Interest (SSSIs)</b>	Notified under section 28 of the Wildlife & Countryside Act 1981	Notified by CCW. SSSIs may be notified where CCW are of the opinion that any area of land is of special interest by reason of its flora, fauna, geological or physiographic features. The purpose of the notification is to protect the special features of the site.

Site Designation	Relevant National Legislation	Responsible/Relevant Authority
<b>Marine Nature Reserves (MNRs)</b>	Designated under Section 36 of the Wildlife and Countryside Act 1981	Designated by the Welsh Ministers on an application made by CCW. MNRs are designated to conserve marine flora or fauna or geological or physiographical features of special interest, or to provide opportunities for the study of the marine flora and fauna and the physical conditions in which they live or the geographical or physiographical features.

5.1.5 Part 2 of the Wildlife and Countryside Act 1981<sup>38</sup> sets out significant provisions improving the notification, protection and management of Sites of Special Scientific Interest (SSSIs). CCW has a duty to notify any area of Wales that it considers to be of special scientific interest and to designate the site for protection and management by a notification procedure that includes the giving of notice to the local planning authority in whose land the area is situated.

5.1.6 Local planning authorities, along with other public bodies, have a duty to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the features by reason of which SSSIs are of special scientific interest<sup>39</sup>. Furthermore, local planning authorities must give notice to CCW before undertaking or permitting any operations likely to damage any of the interest features of a SSSI<sup>40</sup>, whether or not the operations would take place on land within the SSSI. Failure to comply with the notification requirements and other requirements of sections 28H and 28I of the Wildlife and Countryside Act 1981 is an offence (see further 5.5.10 below).

5.1.7 CCW has power under the National Parks and Access to the Countryside Act 1949 and under the Wildlife and Countryside Act 1981 to designate land as National Nature Reserves (NNR). NNRs represent the very best examples of our wildlife habitats and geological features and are land-managed for the purposes of providing special opportunities for study and research. All NNRs in Wales are also SSSIs and are therefore protected under Part 2 of the Wildlife and Countryside Act 1981.

<sup>38</sup> As amended by section 75 of, and Schedule 9 to, the Countryside and Rights of Way Act 2000 and sections 55, 56, 58 and 105 of, and Schedules 11 and 12 to, the Natural Environment and Rural Communities Act 2006.

<sup>39</sup> Section 28G of the Wildlife and Countryside Act 1981, inserted by the Countryside and Rights of Way Act 2000 and amended by the Natural Environment and Rural Communities Act 2006.

<sup>40</sup> Sections 28H and 28 I of the Wildlife and Countryside Act 1981, inserted by the Countryside and Rights of Way Act 2000 and amended by the Natural Environment and Rural Communities Act 2006.

## 5.2 Further considerations and policy in respect of international and nationally designated sites

### Planning Policy

5.2.1 PPW paragraph 5.3.9 indicates that the Assembly Government will ensure that international responsibilities and obligations for conservation are fully met and that, consistent with the objectives of the designation, statutorily designated sites are protected from damage and deterioration, with their important features conserved by appropriate management. European sites and European offshore marine sites (see paragraph 5.1.2 above) are protected under the Habitats Regulations as a matter of law.<sup>41</sup>

5.2.2 Prior to its submission to the European Commission as a cSAC, a proposed SAC (pSAC) is subject to wide consultation. Sites under consideration for classification as SPAs are known as potential SPAs (pSPAs); they are also subject to wide consultation. Protection for pSPAs and pSACs, through the planning system, should apply from the beginning of the consultation process carried out by CCW for the Assembly Government. As a matter of policy, pSPAs and listed Ramsar sites<sup>42</sup> should be treated as if they are European sites<sup>43</sup> for the purposes of land use planning, subject to paragraph 5.2.3 below with respect to pSPAs.

5.2.3 Planning decisions potentially affecting a pSPA should generally follow the procedures described in Annex 3 below. However, in order to comply with the judgments of the European Court of Justice<sup>44</sup>, in lieu of the integrity test in Regulation 48, planning authorities should ensure that pSPAs are not subject to pollution or deterioration, or any disturbance affecting the birds for which the pSPA has been proposed, insofar as these matters could be significant with regard to the objectives of classification under Article 4 of the Birds Directive. Additionally, in respect of pSPAs, the derogations contained in Regulation 49, allowing a project to be granted permission despite a negative assessment, if there are no alternative solutions and imperative reasons of overriding public interest, **do not apply** until the site is formally classified as a SPA.

5.2.4 Planning authorities should have regard to the need to safeguard the ecological characteristics of pSACs so that they are protected as necessary through the planning system until such time as the site has been submitted to the Commission or the Welsh Ministers have decided not to submit the site as a cSAC under Article 4(1) of the Habitats Directive. Planning decisions potentially affecting a pSAC should generally follow the procedures described in Annex 3 below.

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<sup>41</sup> Regulation 10 of the Conservation (Natural Habitats &c) Regulations 1994, as amended by the Conservation (Natural Habitats &c) (Amendment) Regulations 2007.

<sup>42</sup> Sites Listed under the Ramsar Convention on Wetlands of International Importance especially as a Waterfowl Habitat, made at Ramsar, 1971, as amended.

<sup>43</sup> PPW paragraph 5.3.10.

<sup>44</sup> *Commission v French Republic* Case C-374/98 (relating to the *Basses Corbieres* site).

5.2.5 In order to comply with the judgments of the European Court of Justice<sup>45</sup> sites which have been submitted to the Commission (i.e. cSACs) must be given full protection. In respect of cSACs, derogations contained in Regulation 49, allowing a project to be granted permission despite a negative assessment, if there are no alternative solutions and imperative reasons of overriding public interest, **do not apply** until the site is formally classified.

5.2.6 Local planning authorities must have regard to the relative weight to be attached to the international and nationally designated sites (PPW 5.3.2). On the advice of CCW, the Welsh Ministers will normally call in, for their own determination, planning applications that are likely to have a significant effect on European sites<sup>46</sup>, European offshore marine sites, Ramsar Sites or Sites of Special Scientific Interest (SSSI) (PPW 5.5.10).

#### *Unauthorised developments affecting internationally and nationally designated sites*

5.2.7 Having regard to the policy on protecting internationally and nationally designated sites and to the policy on enforcing planning control (PPW section 4.8), local planning authorities may need to quickly remedy any alleged breach of planning control that has, or is likely to have, a significant effect on an internationally designated site or SSSI. If a continuing breach of planning control is likely to result in significant harm to a site, the authority should consider the service of a stop notice as well as an enforcement notice, to prohibit environmentally harmful activity that would otherwise continue for the duration of an enforcement appeal. Where the significant effect on a designated site appears to result from an alleged breach of a planning condition, it may be more effective to issue an enforcement notice, reinforced by a stop notice, rather than serve a breach of condition notice. This is because a minimum period of 28 days must be allowed for compliance with a breach of condition notice, during which period irremediable harm to the natural habitat or to the population of species may occur. Alternatively, or additionally, the authority may consider submitting an immediate application to the Court for the grant of an interim planning enforcement injunction while they prepare to take other action to enforce against a breach of control which is having a significant effect on a designated site. Advice on enforcement is given in PPW (sections 4.8 to 4.10), Technical Advice Note 9, *Enforcement of Planning Control*, Welsh Office Circular 24/97 and National Assembly for Wales Circular 08/03, but should be read subject to the above paragraphs.

<sup>45</sup> *Commission v Bund Naturschutz in Bayern* Case C-244/05.

<sup>46</sup> In light of the ECJ judgment referred to in paragraph 5.2.3 above, consideration would also be given to calling in proposals that may affect a pSPA or a pSAC.



### 5.3 Development affecting internationally designated sites

#### *Development proposals likely to affect international sites*

5.3.1 Local planning authorities should follow the procedures described below and in **Annex 3** for development which might affect European sites or European offshore marine sites and, more generally, should have regard to the requirements of the Habitats Directive in the exercise of their planning functions<sup>47</sup>. As indicated in 5.2 above, these procedures should also be applied as appropriate to listed Ramsar sites, potential SPAs and proposed SACs even though these are not European sites as a matter of law. This will assist the UK Government in fully meeting other obligations under the Habitats and Birds Directives and Ramsar Convention and in complying with the judgments of the ECJ (see 5.2.2 to 5.2.4 above).

5.3.2 Regulation 48 places restrictions on the granting of planning permission for development which is likely to significantly affect a European site or European offshore marine site, and which is not directly connected with or necessary to the management of that site, by requiring that an appropriate assessment is first carried out in respect of the implications of the development for the site's conservation objectives<sup>48</sup>. 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 risk that the plan or project (either alone or in combination with other plans or projects) will have a significant effect on a European site or European offshore marine site. Such an approach is in line with the ruling of the European Court of Justice in Case C-127/02 (the Waddenzee Judgment) which states 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.*"

This means that:

- The local planning authority must then determine, in the light of the conclusions of the assessment, whether it can ascertain that the proposal will not adversely affect the integrity of any European site or European offshore marine site. Again, the authority should adopt a precautionary approach in making its determination<sup>49</sup>;
- If the local planning authority cannot ascertain that there will be no such adverse effects, it may only grant permission if the provisions of regulation 49 have been complied with.

<sup>47</sup> Regulation 3(4) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>48</sup> The requirements of regulation 48 are applied to the grant of planning permission by regulation 54 of the Habitats Regulations.

<sup>49</sup> In line with the Waddenzee judgment, which states that "*The competent national authorities, taking account of the appropriate assessment ... 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.*"

5.3.3 Regulation 49 requires an authority proposing to allow development that could adversely affect the integrity of a European site or European offshore marine site to consider, first of all, whether there are any alternative solutions. If there are alternative solutions that would have no (or a lesser) effect on the site's integrity, then permission cannot be granted. If there are no such alternatives, however, the authority should consider whether there are imperative reasons of overriding public interest for granting permission, in accordance with the provisions of regulation 49: the authority may only grant permission if it satisfied that such reasons exist. Where an authority proposes to grant permission in such circumstances, it must notify the Welsh Ministers in advance and refrain from granting planning permission for a period of 21 days unless the Welsh Ministers notify it otherwise. This notification procedure enables the Welsh Ministers to consider whether to call in the application for their own determination and also enables them to ascertain whether or not compensatory measures have been secured in accordance with regulation 53.

5.3.4 Note that this is an outline only: fuller details of the legal requirements are set out in **Annex 3** to this TAN. These requirements apply, as a matter of law, in relation to European sites and European offshore marine sites only<sup>50</sup>. However, local planning authorities should also adopt the same approach, as a matter of policy, in relation to pSPAs, Ramsar sites and pSACs and sites to which regulation 48(7) of the Habitats Regulations apply<sup>51</sup>. The approach is set out in **Annex 3** below, and applies regardless of whether the decision-taker is the Assembly Government, an Inspector or the local planning authority and is represented in the flow chart (Figure 1) in **Annex 3**.

*Review of outstanding planning permissions and deemed planning permissions likely to affect international sites*

5.3.5 When consultations take place in preparation for the classification or designation of an internationally designated site, local planning authorities are asked to consider all extant planning permissions that may affect the proposed area (i.e. those permissions which have not been implemented at all, and those which have not been fully implemented, including ongoing developments such as landfill and minerals extraction). They should consider for each whether the implementation of that permission would be likely to have a significant effect on the ecological value of the site. If so, they should say so in their response to the consultation.

<sup>50</sup> These requirements do not apply, as a matter of law, to sites which are European sites by virtue of regulation 10(1)(c) of the Habitats Regulations, or which are European offshore marine sites by virtue of regulation 15(c) of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007: see regulation 48(7) of the Habitats Regulations.

<sup>51</sup> When applying this approach in relation to pSPAs, however, planning authorities should, in substitution for the the integrity test in Regulation 48, ensure instead that pSPAs are not subject to pollution or deterioration, or any disturbance affecting the birds for which the pSPA has been proposed, insofar as these matters could be significant with regard to the objectives of classification under Article 4 of the Birds Directive. See paragraph 5.2.3.

5.3.6 When a site becomes a European site or European offshore marine site (see paragraph 5.1.2 above), Regulations 50, 51, 55 and 56 of the Habitats Regulations 1994 require the local planning authority to review extant planning permissions granted by them or their predecessor authorities<sup>52</sup> that are likely to have a significant effect on a site, either individually or in combination with any other plan or project, and to take any appropriate action, following that review, to affirm, modify or revoke such permissions. These permissions include all permissions that are valid but under which development has not yet been commenced and also all permissions under which development has been started but has not yet been completed<sup>53</sup>. This requirement applies, as a matter of law, in relation to European sites and European offshore marine sites. As a matter of policy the Assembly Government has chosen to extend the requirement for review to listed Ramsar sites in Wales.

5.3.7 Local planning authorities must review permissions as soon as is reasonably practicable, following the procedures set out in **Annex 4** below. They will normally have identified any relevant permission during the consultation exercise in preparation for a site's classification. Local planning authorities may have subsequently granted further planning permissions, some of which may be likely to have a significant effect on the site. However, bearing in mind that it is the Assembly Government's policy that the procedures of the Habitats Regulations should be applied in respect of proposed as well as classified European sites and European offshore marine sites (see paragraph 5.3.2), none of the subsequent planning permissions should have the potential to adversely affect the integrity of the site. Nevertheless, any new permissions, outstanding at formal classification/designation, will need to be checked to see whether it can be excluded, on the basis of objective information, that the permission will have a significant effect on the site, either alone or in combination with other plans and projects. However, the Assembly Government would not expect any permissions to require modification or revocation if local planning authorities have acted consistently with Assembly Government policy.

#### *Restrictions on permitted development potentially affecting international sites*

5.3.8 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 classes 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 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

<sup>52</sup> Regulation 55 also requires local planning authorities to consider whether any planning permissions deemed to be granted under section 90(1) of the Town and Country Planning Act 1990 should, in their opinion, be reviewed. Permissions deemed to be granted under the provisions of the Pipe-lines Act 1962, the Electricity Act 1989 and the Transport and Works Act 1992, or in respect of development authorised under those Acts, must be reviewed in conjunction with the review of the underlying authorisation, consent or order. Any other permissions deemed to be granted under section 90(1) of the Town and Country Planning Act 1990 should be referred to the Government Department that made the direction deeming permission to be granted.

<sup>53</sup> But for developments that have been started, the review can only assess the effects of the completion of the remaining part of the development, it should not address the effects of the completed part of the development.

other approval procedures, and to developments by statutory undertakers and local authorities in the performance of their statutory duties.

5.3.9 Regulations 60 to 63 of the Habitats Regulations impose controls on permissions granted by the GPDO to ensure that any permitted development is not in breach of the terms of Article 6 of the Habitats Directive<sup>54</sup>. These regulations prevent any development which is likely significantly to affect a European site or European offshore marine site, either alone or in combination with other plans or projects, and is not directly connected with or necessary to the management of the site, from benefiting from permitted development rights, unless the local planning authority has ascertained, after consulting CCW, that it would not adversely affect the integrity of the site<sup>55</sup>. 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. These regulations do not apply in relation to pSPAs, pSACs and Ramsar sites but in light of paragraphs 5.2.2 to 5.2.4 above, local planning authorities should consider the use of Article 4 Directions<sup>56</sup>, where necessary, to restrict permitted development rights that might have a significant effect on these sites<sup>57</sup> and which would not be adequately controlled by other regulatory procedures, such as the process for notifying CCW under section 281 of the Wildlife and Countryside Act 1981 (see further paragraph 5.4.6 below).

5.3.10 The procedures for seeking approval are described in **Annex 5** below. The flow chart in **Annex 5** explains the process developers should follow to find out whether the particular development they propose would benefit from a permitted development right. It identifies the role of the local planning authority and CCW.

#### *Special Development Orders, Simplified Planning Zones, Enterprise Zones and Local Development Orders and international sites*

5.3.11 Regulations 64, 65, and 66 and 66A<sup>58</sup> of the Habitats Regulations provide that any Special Development Orders, Simplified Planning Zone schemes and Enterprise Zone schemes that were in force prior to the commencement of those Regulations 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. These Regulations, together with regulation 64A, 65A and 66A<sup>59</sup>, also prevent new Special Development Orders, Simplified Planning Zone schemes, Enterprise Zone schemes and Local Development Orders from granting planning permission for development that is likely to have a significant effect on a European site or European offshore marine site.

<sup>54</sup> Regulation 60 The Habitats Regulations 1994 and Article 3(1) The Town and Country Planning (General Permitted Development) Order 1995 Statutory Instrument 1995/418.

<sup>55</sup> Regulation 60(1) and (2) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>56</sup> Article 4 Town and Country Planning (General Permitted Development) Order, 1995.

<sup>57</sup> In the case of pSPAs, local planning authorities should use their powers to ensure that pSPAs are not subject to pollution or deterioration, or any disturbance affecting the birds for which the pSPA has been proposed, insofar as these matters could be significant with regard to the objectives of classification under Article 4 of the Birds Directive. See paragraph 5.2.3.

<sup>58</sup> Regulations 65A and 66A were inserted by the Conservation (Natural Habitats &c) (Amendment) Regulations 2007.

<sup>59</sup> Regulations 64A was inserted by the Conservation (Natural Habitats &c) (Amendment) Regulations 2007.

*Further considerations in respect of Ramsar sites*

5.3.12 Where a proposed development may affect a listed Ramsar site, Article 3(1) of the Ramsar Convention may be relevant to the planning decision. It 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*'. Whilst some Ramsar sites are also classified as European sites, the interest features of the Ramsar site may be different to those of the SPA or SAC, and the likely significant effects on all the Ramsar interest features will need to be considered.

*Consultation under the Habitats Regulations 1994*

5.3.13 Under the provisions of the Habitats Regulations 1994, there is a statutory duty for a local planning authority to consult CCW when:

- a. undertaking an appropriate assessment for a new plan or project<sup>60</sup> (see **Annex 3** below);
- b. undertaking an appropriate assessment when reviewing an outstanding consent for a plan or project<sup>61</sup> (see **Annex 4** below);
- c. undertaking an assessment of a proposed permitted development<sup>62</sup> (see **Annex 5** below).

Local planning authorities are required to have regard to any representations made by CCW.

5.3.14 The requirement at (a) above will often overlap with the duty to consult in respect of SSSI because the majority of terrestrial European sites will also be SSSI. However, the requirements of the Habitats Regulations apply only in respect of the interest features of the European or European offshore marine site and such features may be more limited than the interest features of the SSSI. It will therefore be important for the local planning authority and CCW to clearly distinguish how the proposed development may affect the international interests and the interests of the SSSI.

## 5.4 Development affecting nationally designated sites

*Sites of Special Scientific Interest - General Duty of Public Bodies*

5.4.1 Paragraph 5.5.8 of PPW refers to the statutory duties placed upon public bodies in respect of Sites of Special Scientific Interest (SSSIs).

<sup>60</sup> Regulation 48(3) The Conservation (Natural Habitats &c) Regulations 1994, as applied by regulation 54.

<sup>61</sup> *ibid.* Regulation 50(2), as applied by regulation 55.

<sup>62</sup> *ibid.* Regulation 62(4).



5.4.2 The Wildlife and Countryside Act 1981, as amended by section 75 of, and Schedule 9 to, the Countryside and Rights of Way Act 2000, imposes an important new duty on public bodies where they are exercising statutory functions which are likely to affect the special features of SSSIs. Section 28G(2)<sup>63</sup> requires them to take reasonable steps, consistent with the proper exercise of these functions, to further the conservation and enhancement of the features for which the site is of special interest. Public bodies specifically include local authorities and the duty applies wherever they are exercising their functions, including when they have 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.

5.4.3 Those public bodies subject to this duty are called section 28G authorities and include Welsh Ministers, Ministers of the Crown, local authorities, statutory undertakers and any other public body.<sup>64</sup> Local planning authorities are section 28G authorities and as such have specific duties and responsibilities in respect of SSSIs. These are described below.

5.4.4 The Assembly Government expects all section 28G authorities, including local planning authorities, to:

- apply strict tests when carrying out functions within or affecting SSSIs, to ensure that they avoid, or at least minimise, adverse effects;
- adopt the highest standards of management in relation to SSSIs which they own; and
- as owners, or otherwise, take positive steps, wherever possible, to enhance the special interest features of a SSSI where their activities may be affecting it, or where opportunities arise in the exercise of their functions.

5.4.5 CCW will advise on a case-by-case basis as to opportunities for enhancement.

#### *Notification under section 28I of the Wildlife and Countryside Act*

5.4.6 A section 28G authority (including a local planning authority) which has power to authorise or grant permission for other parties to carry out operations likely to damage the special features of a SSSI, is required by section 28I of the *Wildlife and Countryside Act 1981* to notify CCW before reaching its decision. This requirement applies whether or not the operation would take place on land included in the SSSI. The authority must then allow 28 days before deciding whether to issue its consent, unless CCW has notified the authority that it need not wait until then. The authority must take account of any advice from CCW in deciding whether or not to permit the proposed operations and if it does decide to do so, in deciding what (if any) conditions should be attached to the permission. If, having regard to its general duty under section 28G, the authority decides nevertheless that it will issue a permission against CCW's advice, it must notify CCW of the permission, the terms on which it is proposed to grant it and how, if at all, it has taken CCW's advice into account.

<sup>63</sup> Section 28G(2) Wildlife and Countryside Act 1981, inserted by the Countryside and Rights of Way Act 2000.

<sup>64</sup> *ibid*, section 28G(3).



The authority must not grant a permission which would allow the operations to start before the end of the period of 21 days beginning with the date of that notice. This allows CCW to consider whether any further action is necessary, such as, in exceptional circumstances, legal action challenging the validity of the permission. Where a section 28G authority fails to comply with its obligations under section 28I of the 1981 Act:

- to notify CCW<sup>65</sup>, or
- to wait for 28 days before granting permission<sup>66</sup>, or
- where the authority grants permission against CCW's advice, to refrain from granting a permission which would allow the operations to start before the end of a period of 21 days beginning with the date on which CCW are given notice of that permission<sup>67</sup>,

it commits an offence unless it had a reasonable excuse for its non-compliance.

Emergency operations will qualify as a reasonable excuse, provided that particulars of the operation (including details of the emergency) were notified to CCW as soon as practicable after the permission was given.<sup>68</sup>

5.4.7 Once issued, a planning permission granted on an application under Part III of the Town and Country Planning Act 1990 gives an owner or occupier a 'reasonable excuse' for carrying out an operation which would otherwise be unlawful without the consent of CCW<sup>69</sup>.

### Permitted development and SSSI

5.4.8 Where an owner or occupier wishes to exercise permitted development rights on an SSSI, and the works involved are specified in the SSSI notification as operations likely to damage the features of special interest, then he or she must apply to CCW for consent under section 28E of the Wildlife and Countryside Act 1981. If CCW refuses consent for such works it will not be possible to exercise the permitted development rights without committing an offence under the 1981 Act. In such cases, or where CCW attaches conditions to a consent or grants consent only for a limited period, the applicant may appeal to the Welsh Ministers<sup>70</sup>. Alternatively, the owner or occupier may apply to the local planning authority for planning permission under Part III of the *Town and Country Planning Act* 1990. When considering such applications local planning authorities will consult CCW. If planning permission is granted which authorises the works in question, the owner or occupier will have a "reasonable excuse" for carrying out those works without obtaining CCW's consent<sup>71</sup> and will be able to do so without committing an

<sup>65</sup> section 28(I)(2), Wildlife and Countryside Act 1981, as amended.

<sup>66</sup> section 28(I)(4), Wildlife and Countryside Act 1981, as amended.

<sup>67</sup> section 28(I)(6), Wildlife and Countryside Act 1981, as amended.

<sup>68</sup> section 55(2), Natural Environment and Rural Communities Act 2006.

<sup>69</sup> section 28P(4), Wildlife and Countryside Act 1981, as amended.

<sup>70</sup> *ibid*, section 28F.

<sup>71</sup> *ibid*, section 28P(4).

offence. Applicants may appeal to the Welsh Ministers against a local planning authority's refusal of an application for planning permission, or against conditions attached to an approval.

### *Certificates of Lawful Development and SSSI*

5.4.9 Section 28P of the *Wildlife and Countryside Act 1981* provides that it is a "reasonable excuse" for not having given notice to CCW of operations likely to damage the special features of a SSSI if the operations were carried out in accordance with a valid planning permission granted following an application to the local planning authority. Unauthorised development affecting a SSSI is not, however, a "reasonable excuse" and, in addition to being a breach of planning control, may also result in the commission of an offence under section 28P(1) of the 1981 Act, if such development involves the carrying out of operations which have been notified by CCW as being likely to damage the SSSI's features and if no notice was given to CCW of the proposed operations or if notice was given but consent has not been granted for the operations.

5.4.10 Planning legislation enables a developer to apply for a certificate of lawful development after the expiry of specified time limits. If a local planning authority is considering an application for a lawful development certificate,<sup>72</sup> and the development or use appears *prima facie* to involve a contravention of the 1981 Act, they should draw its requirements to the applicant's attention. The local planning authority must consider the application for the certificate on the facts of the case, in accordance with the relevant planning provisions. Although a certificate of lawful development does not grant planning permission, the issue of a certificate would render the development immune from enforcement under planning legislation. However, such a certificate would not provide a 'reasonable excuse' for the purposes of section 28P of the 1981 Act and the carrying out of operations which have been notified by CCW as being likely to damage the SSSI's features will therefore be an offence under that Act, unless CCW has given its written consent.

### *Consultations under the General Development Procedure Order*

5.4.11 Under the provisions of Article 10 of the *Town and Country Planning (General Development Procedure) Order 1995* (the GDPO), local planning authorities have a duty to consult CCW before granting planning permission for any development that:

- Is **in or likely to affect** a Site of Special Scientific Interest (SSSI)<sup>73</sup>; or
- Is within a consultation area around a SSSI notified to the local planning authority by CCW<sup>74</sup>; or

<sup>72</sup> Under section 191 or 192 of the Town and Country Planning Act 1990.

<sup>73</sup> Article 10(1)(u)(i) of the Town and Country Planning (General Development Procedure) Order 1995 Statutory Instrument 1995/419.

<sup>74</sup> *Ibid.* Article 10(1)(u)(ii).

- Involves the siting of new establishments or consists of the modification of existing establishments which could have significant repercussions on major accident hazards, where it appears to the authority, in either case, that an area of particular natural sensitivity or interest may be affected<sup>75</sup>; or
- Includes transport links, locations frequented by the public and residential areas where the siting or development is such as to increase the risk or consequences of a major accident, if it appears to the authority that an area of particular natural sensitivity or interest may be affected<sup>76</sup>.

5.4.12 These GDPO consultations should take place as soon as possible and local planning authorities may not determine any application that could affect such a site until at least 14 days after initiating consultation.<sup>77</sup> However, the period in which CCW now has to respond under the provisions of section 281 of the *Wildlife and Countryside Act 1981* (see paragraph 5.4.6 above), is 28 days, and the longer timescale of 28 days in the 1981 Act takes precedence where CCW is being consulted in relation to an SSSI under both section 281 and the GDPO. For its part, CCW will respond as quickly as possible.

5.4.13 SSSIs can be seriously damaged or even destroyed by development outside their boundaries. The GDPO also requires a local planning authority to consult about planning applications in any consultation area around an SSSI defined by CCW. An authority is also required to consult where an application is for development that is **likely to affect** a SSSI, even if the application site falls outside the SSSI and any consultation area.

5.4.14 CCW will generally define the consultation areas as narrowly as is consistent with protecting the scientific interest of the particular sites. A consultation area may extend up to a maximum of 2 kilometres from the boundary of a SSSI. Normally it will not extend beyond about 500 metres, although for areas such as wetlands it may extend as far as the 2 kilometres maximum. CCW will notify the boundaries of such consultation areas to local planning authorities. When notifying a consultation area CCW may advise that it wishes to be consulted only about certain types of development within that area. It may also advise a local planning authority that it would like to be consulted about other types of development (for example a major industrial facility) beyond the 2 kilometres maximum, *on the basis that such development is likely to affect a SSSI*.

5.4.15 Where a consultation area has not been defined, the local planning authority should give particular attention to any planning application in the vicinity of an SSSI so as to decide whether or not such consultation is needed. The local 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. Consultation is not required on proposals, such as minor

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<sup>75</sup> *ibid.* Article 10(1)(zb)(i) and (ii).

<sup>76</sup> *ibid.* Article 10(1)(zb)(iii).

<sup>77</sup> *ibid.* Article 10(4).

house extensions, that would clearly have no effect on a nearby SSSI. But, where there is any doubt whether or not there is likely to be an effect, the local planning authority should contact the appropriate office of CCW for advice. **Annex 10** provides contact points.

### Exceptions to GDPO consultation requirements

5.4.16 There are exceptions to the GDPO consultation requirements described above (5.4.11). A local planning authority need not consult CCW where:

- CCW has advised the authority that it does not wish to be consulted<sup>78</sup> (this exception does not apply, however, in relation to consultations relating to major accident hazards)<sup>79</sup>.
- CCW has provided 'standing advice' to the authority in relation to the category of development in question, provided that the 'standing advice' has either been issued within the past two years or has been amended or confirmed within that period. This exception does not apply to any application which is EIA development<sup>80</sup>.

5.4.17 These exceptions apply only in relation to the GDPO consultation requirements. They do not displace the requirement under section 281 of the Wildlife and Countryside Act 1981 for a planning authority to give notice to CCW before granting a planning permission for operations likely to damage the nature conservation interest features of a SSSI. Nor do they override the requirement for a planning authority to consult CCW in respect of plans and projects under the Habitats Regulations.

## 5.5 Local Sites

**Local Sites:** includes Sites of Interest for Nature Conservation (SINCs), Local Nature Reserves (LNRs)<sup>81</sup>, Wildlife Sites and Regionally Important Geological Sites (RIGS)

5.5.1 Local sites have an important role to play in meeting biodiversity targets and contributing to the quality of life and well-being of the community. Paragraph 5.3.11 of PPW explains the policy in respect of such sites. Policies in UDPs and Local Development Plans provide for their protection. The nature conservation interests for which they have been designated are a material consideration in planning decisions.

5.5.2 Locally designated sites should be subject to the application of rigorous criteria to ensure their designation is justified on biological or geological grounds. The process of designating and maintaining the sites should be transparent with records and assessments publicly available, unless information about particular species is sensitive in terms of their

<sup>78</sup> Article 10(1)(iii) of the Town and Country Planning (General Development Procedure) Order 1995.

<sup>79</sup> *ibid*, Article 10(1A).

<sup>80</sup> *ibid*, Article 10(1)(iv) and (1B).

<sup>81</sup> Local Nature Reserves are designated by local authorities under section 21 of the National Parks and Access to the Countryside Act 1949.

protection. Developers should be able to identify how their proposals may affect the interests for which the sites are designated (either positively or negatively) and where relevant, how the sites contribute to wider ecological networks or mosaics.

5.5.3 The conservation and enhancement of locally designated sites is an important contribution to the implementation of Biodiversity Action Plans and to the management of features of the landscape of major importance for wild flora and fauna (see paragraph 3.2.2 above). Developers should avoid harm to those interests where possible. Where harm is unavoidable it should be minimised by mitigation measures and offset as far as possible by compensation measures designed to ensure there is no reduction in the overall nature conservation value of the area or feature. Where locally designated sites may be affected, developers should consult the local planning authority and Wildlife Trust and/or Local Record Centre to agree the information that will be required to assess the implications of the development and mitigation and compensatory measures.

5.5.4 Where development proposals may affect national or local BAP habitats or species the same principles apply as to locally designated sites in paragraph 5.5.2 above (see further habitats and species of principal importance for biodiversity in Wales in section 6.5 below).

## 6. DEVELOPMENT AFFECTING PROTECTED AND PRIORITY HABITATS AND SPECIES

### 6.1 Introduction

6.1.1 Particular species of flora and fauna within Wales are subject to special protection. This is normally because of their vulnerable conservation status, for example because they are endangered or are suffering decline in numbers or range, either within the context of the UK or the European Community, or because they can be the victims of persecution or cruelty (such as that inflicted on badgers or the collection of the eggs of birds). The species are protected under legislation that is independent of, but closely related to, the town and country planning legislation in Wales.

6.1.2 Part 1 of the *Wildlife and Countryside Act 1981* confers protection upon certain wild animals and plants. Section 25 of the *Wildlife and Countryside Act 1981* 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 (relating to protected species) within their area<sup>82</sup>.

6.1.3 The *Conservation (Natural Habitats, &c) Regulations 1994* (the Habitats Regulations) implement the requirements of the Habitats Directive in relation to species listed in Annexes IV and V of the Directive.

6.1.4 The protection offered by the *Wildlife and Countryside Act 1981* and the *Habitats Regulations* is additional to that offered by the planning system. In addition, some animals are protected under specific legislation (for example the *Protection of Badgers Act 1992*).

### 6.2 Protected species as a material planning consideration

6.2.1 The presence of a protected species is a material consideration when a local planning authority is considering a development proposal that, if carried out, would be likely to result in disturbance or harm to the species or its habitat. Local planning authorities should consult CCW 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 protection of the species and advise developers that they must comply with any statutory species protection requirements that may be relevant.

6.2.2 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. It is considered best practice that such a survey is carried

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<sup>82</sup> section 25(2) of the *Wildlife and Countryside Act 1981*.



out before planning application is submitted. Planning permission should not be granted subject to a condition that protected species surveys are carried out and, in the event that protected species are found to be present, mitigation measures are submitted for approval. 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 them being present. However, the level of likelihood that should trigger a requirement for developers to undertake surveys should be low where there is a possibility that European protected species might be present. It is considered best practice that such screening should be carried out by a competent ecologist on the basis of data provided by the relevant Local Record Centre(s)<sup>83</sup>. Where a survey is required by the authority, 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 given. In appropriate circumstances, the permission may also impose a condition preventing the development from proceeding without the prior acquisition of a licence under the appropriate wildlife legislation.

6.2.3 **Annex 7** of this TAN summarises the law in relation to protected species. Where protected species are found on development sites, their statutory protection 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, such developments may require a licence from CCW or the Welsh Ministers.

### 6.3 Protection of European protected species

6.3.1 Under the Habitats Directive, developments that would result in a breach of the system of strict protection afforded to European protected species of animals and plants are required to be covered by a derogation under Article 16. Article 16 of the Directive is transposed by regulation 44 of the Habitats Regulations, which enables licences to be issued to authorise the carrying out of actions for certain specified purposes [listed in regulation 44(2) (a)-(g)]. A regulation 44 licence is a specific form of derogation given in accordance with Article 16 of the Directive.

Under the provisions of regulation 44 of the Habitats Regulations, however, a licensing authority cannot issue a licence to enable development to be carried out unless it is satisfied that:

- a. there is "no satisfactory alternative" to the derogation<sup>84</sup>, and
- b. the derogation is "not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range"<sup>85</sup>.

<sup>83</sup> The Wales Biodiversity Framework: [http://www.biodiversitywales.org.uk/wales\\_biodiversity\\_partnership\\_documents-134.aspx](http://www.biodiversitywales.org.uk/wales_biodiversity_partnership_documents-134.aspx).

<sup>84</sup> The Conservation (Natural Habitats &c) Regulations 1994, Reg 44(3)(a).

<sup>85</sup> *ibid.* Regulation 44(3)(b.)

6.3.2 CCW is the licensing authority in relation to actions which are to be carried out for the purposes in regulation 44(2) (a)-(d), which include "scientific or education purposes". Such purposes would cover the undertaking of 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 under regulation 39 or 43 of the Habitats Regulations being committed, it is recommended that a licence is obtained from CCW. Any person wishing to carry out survey work that could affect European protected species should contact the relevant local area team of CCW listed in **Annex 10** below.

6.3.3 The Welsh Ministers are the licensing authority in relation to actions which are to be carried out for the purposes in regulation 44(2)(e) - (g), which include the purposes of "preserving public health or 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 European protected species.

6.3.4 Licence applications are determined by the Assembly Government following the granting of planning permission. To ensure that the licensing "tests" set out in regulation 44 are met, the licensing authority requests information from the local planning authority and the developer and, where appropriate, from other persons, in order to assist in making a determination as to whether there is "no satisfactory alternative" to the issue of a derogation licence, and as to whether the issue of a derogation licence is necessary for "preserving public health and public safety, or other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment". CCW is asked to advise as to 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 Assembly Government then considers the evidence on these matters before making its determination.

6.3.5 Thus, any step in the planning or implementation of a development likely to affect a European protected species could be subject to a licence to permit the survey or implement the proposal. The licence must be obtained before the survey or development is carried out. If the presence of a European protected species comes to light for the first time on a site after planning permission has been granted, for example during the course of development, then work that might affect the species concerned should stop and the developer should immediately seek a licence to proceed. The developer may initially require a licence from CCW to undertake a survey to provide full information about the species. This may need to be followed in due course by an application for a licence from the Welsh Ministers to complete the development.

6.3.6 Regulation 3(4) of the Habitats Regulations requires all local planning authorities, in the exercise of their functions, to have regard to the provisions of the Habitats Directive so far as they might be affected by the exercise of those functions. Consequently, the Directive's provisions are relevant in reaching planning decisions where a European protected species may be affected and it is therefore important that such planning decisions

are reached in a manner that takes account of, and is consistent with, the Directive's requirements. Those requirements include a system of strict protection for European protected species, with derogations from this strict protection being allowed only in certain limited circumstances and subject to certain tests being met. As explained above, these requirements are transposed by the provisions of the Habitats Regulations. The issues of whether development could give rise to a breach of the Regulations' requirements, and whether there may be a potential need for a licence to avoid such a breach, are therefore a material consideration in a relevant planning decision, and where a licence may be needed, the three licensing 'tests' required by the Directive should be considered by the local planning authority. The requirement for a licence and the application of the three licensing tests is equally a material consideration in planning appeals. Local planning authorities should give due weight to the presence of a European protected species on a development site to reflect these requirements and this may potentially justify a refusal of planning permission.

6.3.7 It is clearly essential that planning permission is not granted without the planning authority having satisfied itself that the proposed development either would not impact adversely on any European protected species on the site or that, in its opinion, all three tests for the eventual grant of a regulation 44 licence are likely to be satisfied. To do otherwise would be to risk breaching the requirements of the Habitats Directive and regulation 3(4). It would also present the very real danger that the developer of the site would be unable to make practical use of the planning permission which had been granted, because no regulation 44 licence would be forthcoming.

### 6.4 Protection of birds, badgers, other animals and plants

6.4.1 **Annex 7** below explains the legislative provisions for the protection of birds, badgers, other animals and plants and explains where licences may be needed to undertake certain operations associated with development. A list of all protected species of animals and plants can be found at Table 2 of **Annex 8** below.

6.4.2 Part 1 of the Wildlife and Countryside Act 1981 provides protection for wild birds and wild plants, and for certain wild animals. This system of protection is described in Annex 7.

6.4.3 Although the badger is not a rare animal over much of Wales, there is specific legislation for the protection of badgers under the *Protection of Badgers Act 1992*. 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.

6.4.4 CCW is responsible for issuing licences under the Protection of Badgers Act 1992 where it is necessary to interfere with badgers and/or their setts in the course of development. Although consideration of the case for granting a licence is separate from

the process of applying for planning permission, a local 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 all other public bodies may also need a licence in respect of any development which they themselves carry out in any areas where there are known to be badger setts.

## 6.5 Habitats and species of principal importance for biodiversity in Wales

6.5.1 The potential effects of a development on habitats or species listed as priorities in the UK Biodiversity Action Plan (BAP)<sup>86</sup>, habitats or species listed by the Assembly Government as of principal importance for the purposes of conserving biological diversity<sup>87</sup> and by local biodiversity partnerships are capable of being a material consideration in the preparation of local development plans and in making planning decisions.

6.5.2 Sections 40 and 42 of the Natural Environment and Rural Communities Act 2006 place a duty on the Assembly Government to have regard to the purpose of conserving biodiversity, to publish a list of living organisms and types of habitats of principal importance for the purpose of conserving biodiversity in Wales, and to take, and promote others to take, reasonably practicable steps to further their conservation. The Assembly Government sets out its commitment to the Biodiversity Action Planning process in section 5.2 of PPW which indicates that local planning authorities should further the conservation of habitats and species of principal importance through their planning function. The List of the Species and Habitats of Principal Importance in Wales (see link at **Annex 9** below) comprises the list of species and habitats identified by the National Assembly for Wales as being of principal importance for the purposes of conserving biological diversity.

6.5.3 Local Biodiversity Action Plans (LBAPs) originate from the programme of action for the conservation and sustainable use of biodiversity drawn up by the UK in fulfillment of its obligation under Article 6 of the Convention on Biological Diversity<sup>88</sup>. The UK Biodiversity Action Plan proposed that costed action plans with targets should be drawn up to conserve the UK's most rare and/or threatened habitats and species. A UK Steering Group initially co-ordinated the production of these national habitat and species action plans. In 1995 the Steering Group recommended<sup>89</sup> that LBAPs should be promoted as a means of translating national targets into local action, and also to provide the biodiversity element of local strategies for sustainable development.

<sup>86</sup> Biodiversity The UK Action Plan, 1994, Command 2428, and subsequent Habitat and Species Action Plans.

<sup>87</sup> Listed under the provisions of section 42 of the Natural Environment and Rural Communities Act 2006 (and formerly under section 75 of the Countryside and Rights of Way Act 2000) and in compliance with the commitment of the UK Government to the United Nations Environmental Programme Convention on Biological Diversity of 1992.

<sup>88</sup> United Nations Environmental Programme Convention on Biological Diversity, 5 June 1992.

<sup>89</sup> Biodiversity: The UK Action Plan - Volume II: *Action Plans*, 1995, ISBN 0-11-753228-2.

6.5.4 The Wales Biodiversity Partnership brings together the key players from the public, private and voluntary sectors to promote, monitor and advise the Assembly Government on issues affecting biodiversity in Wales. The Partnership was established in 1996, alongside parallel groups for other parts of the UK, following the recommendations of the UK Biodiversity Steering Group.

6.5.5 LBAPs are produced by Local Biodiversity Partnerships of public, voluntary and private sector organisations. There are twenty-four partnerships in Wales covering each local planning authority area (one partnership covers Pembrokeshire County Council and Pembrokeshire Coast National Park Authority areas). The Wales Biodiversity Partnership provides guidance and support to the Local Biodiversity Partnerships in preparing their LBAPs.

## STATUTORY FRAMEWORK FOR NATURE CONSERVATION RELEVANT TO PLANNING

### The Framework of Principal Legislation for Nature Conservation and Planning in Wales 1949-2009

**The National Parks and Access to the Countryside Act 1949** introduced the concept of National Nature Reserves (NNRs) and Sites of Special Scientific Interest (SSSIs), important for their flora and fauna, geological or physiographical (landform) features; and conferred powers on local authorities to create nature reserves.

**The Countryside Act 1968** strengthened many of the powers given under the 1949 Act and imposed on Ministers, government departments and public bodies (including local authorities) a duty to have regard to the desirability of conserving the natural beauty and amenity of the countryside in the exercise of their functions relating to land.

**The Wildlife and Countryside Act 1981** was introduced partly to secure implementation of the Birds Directive 79/409/EEC, but also strengthened the protection for SSSIs, provided additional safeguards for particular types of area, and restricted the killing, taking from the wild and disturbance of various avian and non-avian species.

**The Environmental Protection Act 1990** established three country conservation councils (Countryside Council for Wales, English Nature, Scottish Natural Heritage) and the Joint Nature Conservation Committee (JNCC) to succeed the Nature Conservancy Council; and provided further protection for SSSIs.

**The Planning and Compensation Act 1991** improved local planning authorities' abilities to safeguard conservation and amenity areas by strengthening their planning enforcement and development control powers. It also required development plans to include policies in respect of the conservation of the natural beauty and amenity of land.

**The Conservation (Natural Habitats &c.) Regulations 1994 (the Habitats Regulations) (as amended)** formally transposed the requirements of the Habitats Directive 92/43/EEC into national law. They build on the existing nature conservation legislation for the protection of habitats and species listed in the Directive and apply its considerations in respect of development plans, development control and pollution control legislation. They also introduce a new system for the conservation of certain marine areas.

**The Environment Act 1995** conferred the functions of local planning authorities upon the National Park authorities. It also conferred powers on Ministers to make regulations for the protection of important hedgerows and to make grants to persons who carry out activities which are conducive to the conservation or enhancement of the natural beauty or amenity of the countryside (including its flora and fauna and geological and physiographical features).



**The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended)** transposed the requirements of the Directive on the Assessment of the Effects of Certain Public and Private Projects on the Environment 85/337/EEC. The regulations require an environmental impact assessment to be carried out before a decision is taken on whether development consent should be granted for certain types of project which are likely to have significant environmental effects.

**The Countryside and Rights of Way Act 2000** improved the procedures for the notification, amendment and denotification of Sites of Special Scientific Interest and included substantially enhanced statutory provisions for their protection and management (see below). These provisions impose general and specific duties on all public bodies to further the conservation and enhancement of SSSI interest features. The Act also enhanced the protection of other countryside areas, including AONBs and common land, and made extensive provision for improved access to the countryside.

**The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004** transposed the requirements of EC Council Directive on the Assessment of the Effects of Certain Plans and Programmes on the Environment 2001/42/EC. The regulations require environmental assessment to be carried out before certain plans or programmes which are likely to have significant environmental effects are adopted or submitted to the legislative procedure for their approval.

**The Planning and Compulsory Purchase Act 2004** places a duty on the National Assembly for Wales to produce the Wales Spatial Plan, and places a duty on local planning authorities to produce local development plans that are to be subject to sustainability appraisal and independent examination. It requires both the National Assembly and the local planning authorities, in producing their respective plans, to exercise their functions with the objective of contributing to the achievement of sustainable development.

**The Natural Environment and Rural Communities Act 2006** addresses a wide range of issues relating broadly to the natural environment. The Act makes provision in respect of biodiversity, pesticides harmful to wildlife and the protection of birds, and in respect of invasive non-native species. It alters enforcement powers in connection with wildlife protection and extends time limits for prosecuting certain wildlife offences. It also addresses a small number of gaps and uncertainties which have been identified in relation to the law on SSSIs.

**The Offshore Marine Conservation (Natural Habitats &c) Regulations 2007** formally transposed the requirements of the Habitats Directive 92/43/EEC in respect of offshore marine areas, beyond the Welsh territorial seas.

**The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009** transposed the requirements of the Environmental Liability Directive 2004/35/EC in relation to Wales. The Regulations make provision for the prevention and remedying of damage to species and natural habitats protected under the Habitats Directive and to the species or habitats for which a SSSI has been notified.

## **International Obligations**

Much of the Government's legislative framework is intended to deliver the obligations of international conventions and Directives; the main ones are outlined below:

**The Bern Convention on the Conservation of European Wildlife and Natural Habitats** contains obligations to conserve wild plants, birds and other animals, with particular emphasis on endangered and vulnerable species and their habitats. The provisions of the Convention underlie the EC Habitats Directive as well as the UK's wildlife legislation.

**The Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat** requires the conservation of wetlands, especially sites listed under the Convention.

**EC Council Directive on the Conservation of Wild Birds (the Birds Directive)** applies to birds, their eggs, nests and habitats. It provides for the protection, management and control of all species of naturally occurring wild birds in the European territory of Member States (Article 1); requires Member States to take measures to preserve a sufficient diversity of habitats for all species of wild birds naturally occurring within their territories (Articles 2 and 3) in order to maintain populations at ecologically and scientifically sound levels; and requires Member States to take special measures to conserve the habitat of certain particularly rare species and of migratory species (Article 4). It also establishes a system of strict protection for all species of naturally occurring wild birds (Article 5), subject to certain derogations (Article 9) and regulates the circumstances in which wild birds may be sold (Article 6) or hunted (Article 7) and the means by which they may be captured or killed (Article 8).

**EC Council Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Habitats Directive)** contributes to the conservation of biodiversity by requiring Member States to take measures to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest. Article 7 of the Directive modifies the Birds Directive.

**The Bonn Convention on the Conservation of Migratory Species of Wild Animals** requires the protection of endangered migratory species listed, and encourages separate international agreements covering particular species. An agreement covering the Conservation of Bats in Europe deals with the need to protect bats and their feeding and roosting areas.

**EC Council Directive on the Assessment of the Effects of certain Public and Private Projects on the Environment** requires environmental assessment to be carried out, before a decision is taken on whether development consent should be granted for certain types of project which are likely to have significant environmental effects.

**EC Council Directive on the Assessment of the Effects of certain Plans and Programmes on the Environment** requires environmental assessment to be carried out before certain plans or programmes which are likely to have significant environmental effects are adopted or submitted for legislative approval.

**EC Water Framework Directive** introduces a new high level water planning process based on river basin districts. Key aims 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.

**EC Council Directive on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage (the Environmental Liability Directive)** specifically defines environmental damage so as to include damage to protected species and natural habitats listed in the Birds and Habitats Directives, and any other species or habitats that a Member State designates for purposes equivalent to the Birds and Habitats Directives' purposes, and includes, amongst other pollution prevention and remedial requirements, provisions for remedying environmental damage on sites classified under the Birds Directive (SPAs) and designated under the Habitats Directive (SACs).

**United Nations Environmental Programme Convention on Biological Diversity, 5 June 1992** establishes three main goals: the conservation of biological diversity; the sustainable use of its components; and the fair and equitable sharing of the benefits from the use of genetic resources.

**European Landscape Convention** aims to promote landscape protection, management and planning, and to organise European co-operation on landscape issues.

## STATUTORY NATURE CONSERVATION DESIGNATIONS

<b>Internationally Important Sites</b>		
<b>Special Protection Areas (SPAs) including SPAs that are European Offshore Marine Sites</b>	Classified under Article 4 of the EC Directive on the Conservation of Wild Birds (79/409/EEC) (the Birds Directive) and Regulation 12 of the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007.	Classified by the Welsh Ministers in the light of recommendations made by CCW through the Joint Nature Conservation Committee (JNCC), beyond the territorial sea adjacent to Wales SPAs are classified by the UK Government on the advice of JNCC.
<b>Special Areas of Conservation (SACs) including candidate Special Areas of Conservation (cSACs) and c/SACs that are European Offshore Marine Sites</b>	Designated under Article 4 of the EC Directive on the Conservation of Natural Habitats and of Wild Fauna & Flora (92/43/EEC) (the Habitats Directive) via Regulations 7 and 8 of the Conservation (Natural Habitats &c) Regulations 1994 and Regulations 7-11 of the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007.	Designated by the Welsh Ministers in the light of recommendations made by CCW through the JNCC, beyond the territorial sea adjacent to Wales' waters SACs are classified by the UK Government on the advice of JNCC.
<b>Ramsar Sites</b>	Designated under Article 2 of the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention, 1971).	Designated by the UK Government in the light of recommendations made by CCW through the JNCC.

<b>Nationally Important Sites</b>		
<b>National Nature Reserves (NNRs)</b>	Declared under section 19 of the National Parks and Access to the Countryside Act, 1949 or section 35 of the Wildlife & Countryside Act, 1981.	Declared by CCW. NNRs may be declared on any land of national conservation importance and which is being managed as a nature reserve (as defined in S.15 of the 1949 Act) to provide opportunities for research into matters relating to, or to preserve, plants and animals and the physical conditions in which they live, or geological or physiographical features of special interest.
<b>Sites of Special Scientific Interest (SSSIs)</b>	Notified under section 28 of the Wildlife & Countryside Act 1981.	Notified by CCW. SSSIs must be notified where CCW are of the opinion that any area of land is of special interest by reason of its flora, fauna, geological or physiographical features. The purpose of the notification is to protect the special features of the site.
<b>Marine Nature Reserves (MNRs)</b>	Designated under section 36 of the Wildlife and Countryside Act 1981.	Designated by the Welsh Ministers on an application made by CCW. MNRs are designated to conserve marine flora or fauna or geological or physiographical features of special interest, or to provide opportunities for the study of the marine flora and fauna and the physical conditions in which they live or the geographical or physiographical features.
<b>Regionally/Locally Important Sites</b>		
<b>Local Nature Reserves</b>	Declared under section 29 of the National Parks & Access to the Countryside Act 1949.	Declared and managed by local authorities. LNRs can be designated on land which a local authority considers should be managed as a nature reserve (as defined in Section 15 of the 1949 Act).

### **Other nature conservation designations**

Limestone pavements are of physiographical, and sometimes biological, interest. They are identified as a priority habitat type in the Habitats Directive. CCW is required to notify local planning authorities of limestone pavements that it considers to be of special interest. Under section 34 of and Schedule 11 to the Wildlife and Countryside Act 1981, the Welsh Ministers or the relevant local planning authority may then make a **Limestone Pavement Order** designating the land concerned and prohibiting the removal or disturbance of limestone on or in it.

**Biogenetic Reserves** - A number of National Nature Reserves and some important SSSIs have been identified as Biogenetic Reserves under a Council of Europe programme for the conservation of heathlands and dry grasslands.

**Areas of Special Protection for Birds (AOSPs)** are established under section 3 of the Wildlife and Countryside Act 1981 by orders made by the Welsh Ministers after appropriate consultation with owners and occupiers. The purpose of such orders is normally to provide sanctuary to particularly vulnerable groups of birds.





## DEVELOPMENT PROPOSALS LIKELY TO AFFECT AN INTERNATIONALLY DESIGNATED NATURE CONSERVATION SITE

See section 5.3 above for the context for this Annex.

**As a matter of policy, the Assembly 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.**

1. In determining planning applications and other forms of consent, local planning authorities should follow the procedures described below in respect of any internationally designated site and, more generally, should have regard to the Habitats Directive in the exercise of their planning functions in order to fulfil the requirements of the Habitats Directive in respect of the land use planning system<sup>90</sup>.
2. Part IV of the Habitats Regulations regulates the granting of planning permission for development which is likely to significantly affect a European site or European offshore Marine Site<sup>91</sup>, and which is not directly connected with or necessary to the management of the site. The procedures explained in detail below apply to planning decisions taken on or after the date the Regulations came into force, regardless of when the application was submitted.

Although the paragraphs below refer to European sites and European offshore marine sites, it is important that these procedures are also applied, as a matter of policy, to Ramsar sites and, as appropriate and necessary, to help to protect pSAC and pSPA until such time as the site becomes a statutory European site or it is determined that the site should not become part of the Natura 2000 network. Planning authorities should ensure that, where the development could have an effect on a pSPA, permission may only be granted if it is certain that the project will not cause significant pollution or deterioration of the pSPA, or significant disturbance of the bird species for which the pSPA has been proposed (either alone or in combination with other plans or projects) and that in the case of pSACs, the ecological characteristics of the pSAC are safeguarded.

3. PPW sets out the Assembly Government's policy in respect of calling in planning applications that are likely to significantly affect sites of international importance; it will have regard to the advice of CCW on which applications are likely to have such effects. Local planning authorities should be prepared to explain their reasons for granting permission for such applications, particularly if they do not decide the case in accordance with the recommendations of CCW. The reasons for the local planning authority's

<sup>90</sup> Regulation 3(4) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>91</sup> These provisions do not apply, in law, in relation to sites which are European sites by reason of regulation 10(1)(c) of the Conservation (Natural Habitats &c) Regulations 1994 or which are European offshore marine sites by reason of regulation 15(c) of the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007: see regulation 48(7) of the 1994 Regulations. However, these provisions should be applied, as a matter of policy, in relation to such sites.

decision, including the relevant factors considered for the purposes of regulation 48, and if applicable, regulation 49, must be transparent and properly documented. Regulation 49 requires an authority proposing to allow development that would adversely affect a European site or European offshore marine site to notify the Welsh Ministers in advance. Regulation 53 places a duty on the Welsh Ministers to secure, where planning permission is granted in accordance with regulation 49, that any necessary compensatory measures are taken to ensure the overall coherence of Natura 2000. The Assembly Government will therefore expect to see, and be satisfied by, evidence to the effect that a plan or project satisfies the requirements of regulation 49(1) and, if applicable, (2) when applications are referred to it under the provisions of regulation 49(5) and that any necessary compensatory measures have been secured.

4. The approach to be taken in considering a development proposal that might affect an internationally designated site is set out below, and applies regardless of whether the decision-taker is the Welsh Ministers, an Inspector or the local planning authority. This process is represented in the flow chart in Figure 1. The European Commission has also issued guidance which planning authorities should consider<sup>92</sup>.

5. The decision-taker must first establish whether the proposed development is directly connected with or necessary to site management for nature conservation<sup>93</sup> of a European site or European offshore marine site. There will be few cases where a development is directly connected with, or the whole of the development is necessary to, site management and, therefore, not further subject to the requirements of regulation 48. If any part of the development is not so connected with or necessary for site management, the whole project must be subject to the procedures of regulation 48.

### Likely significant effect

6. 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<sup>94</sup> on a European site or European offshore marine site. An appropriate assessment is required where there is a probability or risk that the plan or project will have significant effects on a site. The decision on whether an appropriate assessment is necessary should be made on a precautionary basis.

7. The consideration of the likelihood of significant effects is a form of screening process or risk assessment which should be repeated if a project significantly changes during consideration by the planning authority. The planning authority must consider whether the proposed development would be likely to have a significant effect on any European site or European offshore marine site. In doing so, it must adopt a precautionary approach:

<sup>92</sup> *Managing Natura 2000 Sites: the provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*, European Commission, April 2000, *Guidance document on Article 6(4) of the 'Habitats' Directive 92/43/EEC*, European Commission, January 2007, and *Assessment of Plans and Projects Significantly Affecting Natura 2000 Sites*, European Commission, November 2001.

<sup>93</sup> *ibid* Regulation 48(1)(b).

<sup>94</sup> *ibid*. Regulation 48(1)(a).

- The development project should be considered '**likely**' to have such an effect if the planning authority is unable, on the basis of objective information, to exclude the possibility that the project could have significant effects on any "European site", either alone or in combination with other plans or projects.
- An effect will be '**significant**' in this context if it could undermine the site's conservation objectives. The assessment of that risk must be made in the light of factors such as the characteristics and specific environmental conditions of the "European site" in question<sup>95</sup>.

8. This is in line with the ruling of the European Court of Justice in Case C-127/02 (the Waddenzee judgment) which states 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"*.

9. Taking account of advice from CCW, local planning authorities should consider whether the effect of the proposal on the site, either individually or in combination with other proposals<sup>96</sup>, is likely to be significant in terms of the ecological objectives for which the site was designated.

10. The decision-taker may require the proposer to provide such further information as is reasonably necessary to assess the likelihood and significance of potential effects, and thus enable the decision-taker to determine whether an appropriate assessment is required<sup>97</sup>. The additional information which might be needed might include, for example, whether the site's features include any priority natural habitat types or priority species, whether the site's features are at favourable conservation status, and whether there are any impediments to improving their status, especially those that could be addressed by the plan.

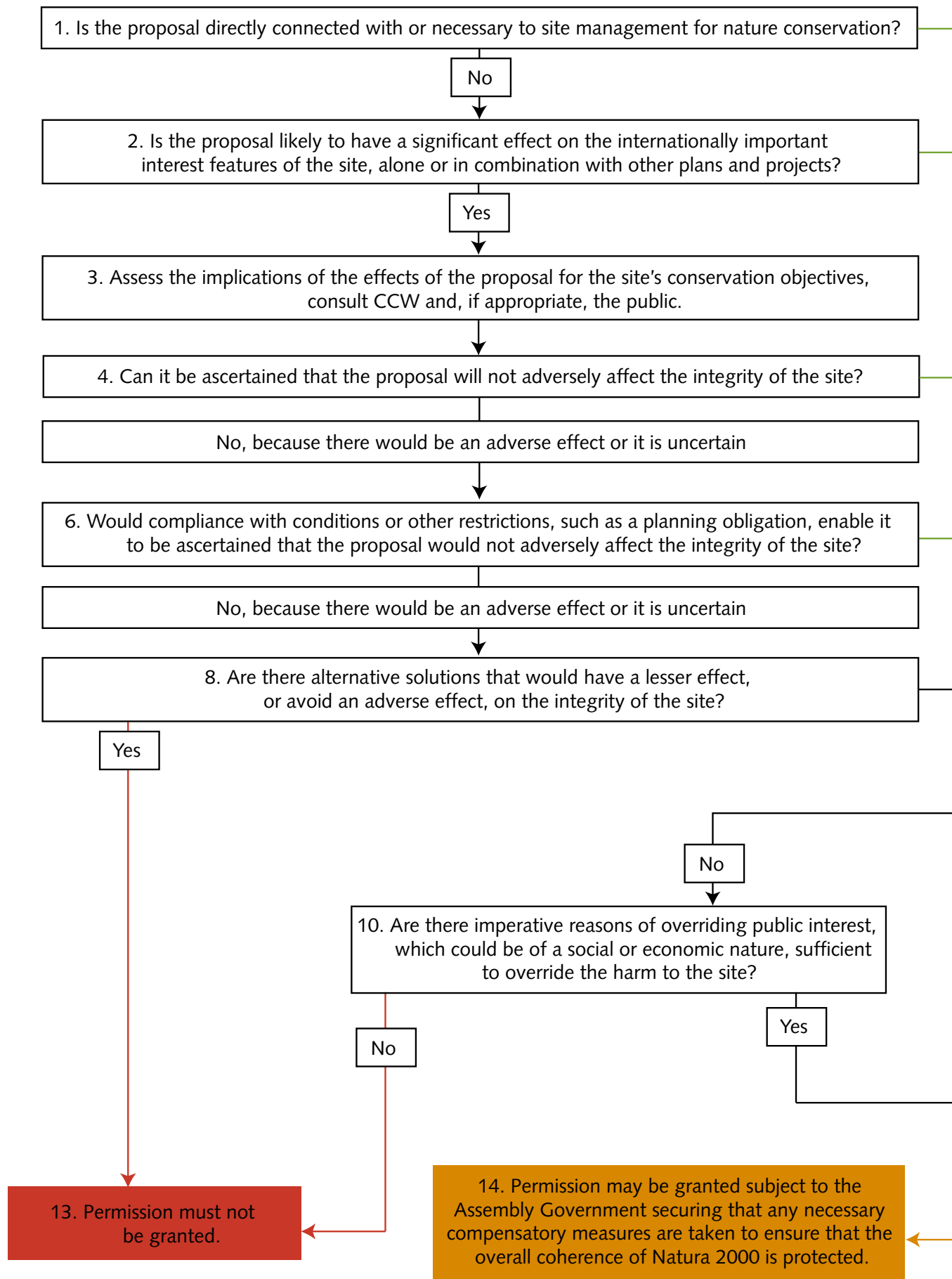
11. It is important that the likelihood of a significant effect is assessed in respect of each interest feature, for which the site is internationally designated, and for each designation where a site is designated, classified or listed under more than one international obligation. Local planning authorities 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. CCW will advise on a case-by-case basis.

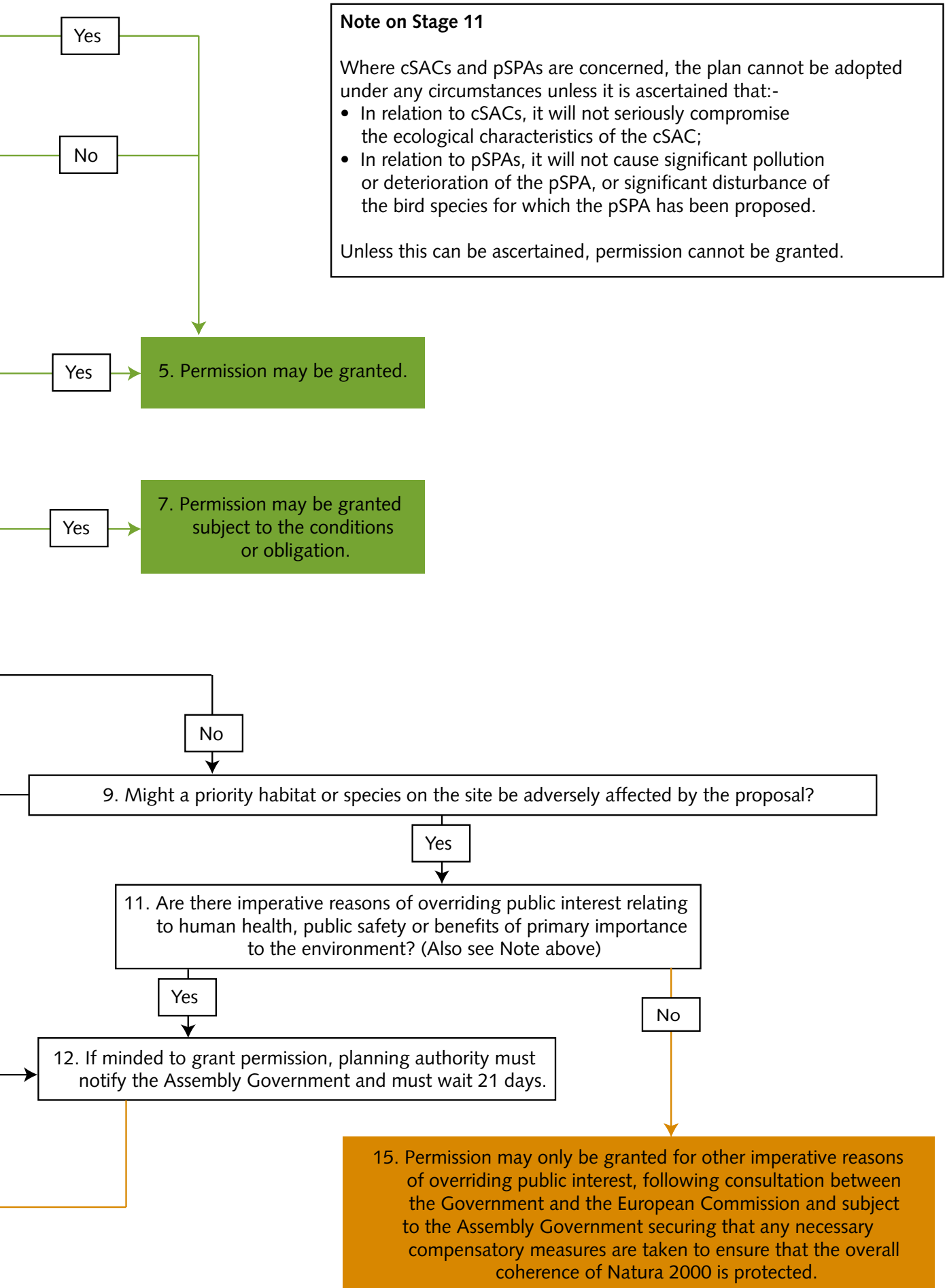
<sup>95</sup> Refer to Case C-127/02, paragraph 49.

<sup>96</sup> Regulation 48(1)(a) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>97</sup> *ibid* Regulation 48(2).

## CONSIDERATION OF DEVELOPMENT PROPOSALS AFFECTING INTERNATIONALLY







12. In considering the combined effects of other plans and projects it will normally be appropriate to take account of outstanding consents that are not started or 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. The effects of projects which have already been implemented and policies and proposals in adopted and published draft plans should also be included in the in-combination test. Thus, the assessment is not confined to proposals that require planning permission, but includes all plans and projects.

13. Compensatory measures (see below) should **not** be taken into account in assessing whether the proposal is likely to have significant effects on a European site or European offshore marine site.

### The appropriate assessment

14. If the decision-taker concludes that a proposed development not directly connected with site management is likely to significantly affect a European site or European offshore marine site, they must make an appropriate assessment of the implications of the proposal for the site in view of the site's conservation objectives<sup>98</sup>. These relate to each of the interest features for which the site was classified or listed and will be provided in more detail by CCW<sup>99</sup>. 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 or listed; and for each designation where a site is classified or listed under more than one international obligation. CCW 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<sup>100</sup>.

15. In the Waddenzee judgment<sup>101</sup> 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 the light of the best scientific knowledge in the field<sup>102</sup>.

<sup>98</sup> Regulation 48(1) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>99</sup> For cross border sites with England, the site conservation objectives would be provided jointly by CCW and Natural England.

<sup>100</sup> Regulation 48(2) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>101</sup> ECJ Case C-127/02.

<sup>102</sup> See also *Managing Natura 2000 Sites*, European Commission, April 2000 as amended by *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 and opinion of the Commission* January 2007.

16. As part of the assessment process, the decision-taker must consult CCW<sup>103</sup> (and Natural England where the site affected lies wholly or partly in England, and the JNCC where the site affected is an European Offshore Marine Site) and must have regard to any representations made by CCW and, where relevant, Natural England and JNCC. The decision-taker may also consult the general public<sup>104</sup>. It is for the decision-taker to decide whether publicity and consultation over and above that required under the planning or other regulatory procedures should be undertaken. In most cases, existing arrangements for publicity and consultation are likely to be adequate but the decision-taker may usefully consult organisations that may have relevant information or expertise, such as the Environment Agency Wales, the Wildlife Trusts, Amphibian & Reptile Conservation Trust, Plantlife, RSPB, The Butterfly Conservation Society (see Annex 11 for websites).

### Ascertaining the effect on site integrity

17. 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)<sup>105</sup>. This test incorporates the precautionary principle. 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 integrity are uncertain but could be significant**<sup>106</sup>, the decision-taker should not grant permission, subject to the provisions of regulations 49 and 53 as described below.

18. In the Waddenzee judgment, 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 effect and where doubt remains as to the absence of adverse effects, 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<sup>107</sup>.

<sup>103</sup> Regulation 48(3) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>104</sup> *ibid.* Regulation 48(4).

<sup>105</sup> Regulation 48(5) The Conservation (Natural Habitats &c) Regulations 1994. See also paragraphs 25-28 below.

<sup>106</sup> 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.

<sup>107</sup> Regulation 49 The Habitats Regulations 1994.

19. The integrity of a site is the coherence of its ecological structure and function, across its whole area, which enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified or listed. In determining the effect on site integrity, the advice of CCW and the citation issued by them saying why the site was classified or listed will need to be carefully considered. Whilst it is the duty of the decision-taker to carry out the appropriate assessment and make a judgement as to the effect on site integrity, it would normally be expected to adopt the advice of CCW on the integrity test. If it does not, the decision-taker should have convincing and exceptional reasons for not adopting the advice, which it should be prepared to explain, and it should be able to show that these reasons are clearly supported by sound scientific evidence.

20. Depending on the nature conservation value of the site, it may be necessary to identify whether particular aspects such as hydrology, disturbance or land-take should be specifically addressed. In the simplest cases, a general statement from CCW of the impact of the development may suffice. The assessment required under the Habitats Regulations does not correspond to an environmental impact assessment (EIA), although for some projects EIA will be necessary. In such cases it will be appropriate to use some of the information assembled for the purposes of the EIA also for the assessment required by the Habitats Regulations. Indeed, in practice it has been useful for environmental impact statements to include a separate chapter providing information that, along with other information such as the responses to consultations, will be required by the decision-taker to undertake the assessments required by the Habitats Regulations<sup>108</sup>.

21. Compensatory measures (see below) should **not** be taken into account in assessing whether the proposal would adversely affect the integrity of European sites or European offshore marine sites.

### 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 (such as a section 106 planning obligation) would help to ensure that site integrity will not be adversely affected<sup>109</sup>. This is an important requirement of the Regulations and local planning authorities should consider whether a consent could be issued in accordance with regulation 48 subject to conditions. In practice, this means that the local 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 a view to preventing the risks from materialising<sup>110</sup>.

<sup>108</sup> See also *Managing Natura 2000 Sites*, European Commission, April 2000 as amended by *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 and opinion of the Commission* January 2007.

<sup>109</sup> Regulation 48(6) The Habitats Regulations 1994.

<sup>110</sup> 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.

23. CCW may suggest the scope of such conditions in its response to the consultation and will comment on the effectiveness of conditions proposed by the local planning authority or the applicant. Regulation 54(4) of the Habitats Regulations 1994 has the effect of prohibiting the grant of outline planning permission unless the local planning authority is satisfied, whether by reason of the conditions or limitations imposed on the permission, or otherwise, that the development will not adversely affect the integrity of a European site or European offshore marine site, and the same approach should be adopted, as a matter of policy, in relation to all other international sites.

**24. If the planning authority cannot ascertain that the development will not adversely affect the integrity of any European site or European offshore marine site (but see below in respect of cSACs), either because there would be an adverse effect or because the effects are uncertain, the project cannot be permitted unless regulations 49 and 53 of the Habitats Regulations are complied with, as described below. The same approach should be adopted, as a matter of policy, in relation to other internationally designated sites too, as described in paragraph 2 (but see below in respect of pSPAs).**

**25. The situations in which potentially damaging projects may be permitted are more restricted where the project could have an effect on a cSAC or a pSPA:**

- **Where the development could have an effect on a cSAC, permission should only be granted if it is certain that the project will not seriously compromise the ecological characteristics of the cSAC (either alone or in combination with other plans or projects).**
- **Where the development could have an effect on a pSPA, permission may only be granted if it is certain that the project will not cause significant pollution or deterioration of the pSPA, or significant disturbance of the bird species for which the pSPA has been proposed (either alone or in combination with other plans or projects).**

### Alternative solutions

26. If the decision-taker cannot ascertain 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. They must first be satisfied that there are no alternative solutions.<sup>111</sup> If there are alternative solutions that would have no effect, or a lesser effect, on the site's integrity, then consent cannot be granted in accordance with the Regulations; permission must be refused or the appeal dismissed. If there are no alternative solutions that would have no effect, or a lesser effect on the site, then the decision-taker

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<sup>111</sup> Regulation 49(1) The Conservation (Natural Habitats &c) Regulations 1994.

can proceed to consider whether there are imperative reasons of overriding public interest for granting permission, as described below. In assessing alternative solutions the decision-taker should consider whether there are or are likely to be other suitable and available sites (or routes in the case of linear projects) which are feasible alternatives for the proposed development, or different, practicable approaches which would have a lesser impact.

27. What constitutes an alternative solution, in any particular case, will depend on the circumstances, including the nature, scale, duration and location of the project, its objectives and who may be proposing it<sup>112</sup>. The first step is for the decision-taker to identify the problem that the plan or project is seeking to solve, or the objectives in making the proposal. From that starting point, it should be possible to identify a range of alternative ways of achieving these objectives, and these alternatives can then be assessed against their likely impact upon the conservation objectives of the European site or European offshore marine site. At this stage, economic considerations should not constrain the consideration of alternative solutions: the assessment should be made against the site's conservation objectives. The decision-taker should bear in mind the advice of CCW, especially in respect of the effects of alternative solutions that may be under consideration. In their own interests applicants should demonstrate that they have fully considered alternative solutions.

### Imperative reasons of overriding public interest

28. If there is no alternative solution, the decision-taker may consider whether there are imperative reasons of overriding public interest to justify the grant of permission despite a potentially negative effect on site integrity.

29. Whilst the European Court of Justice has ruled<sup>113</sup> that the implementation of a project under Article 6(4) (Regulation 49) is, inter alia, subject to the condition that the absence of alternative solutions be demonstrated, the sequential tests of whether there are no alternative solutions and whether there are imperative reasons of overriding public interest can be closely linked in some cases. For example, where a range of alternatives may affect the site in different ways, the decision as to whether to permit a project may depend on the balance between the extent of the harm and the benefits of the project, in its differing alternative forms<sup>114</sup>. The EC guidance clearly sets out the requirement to document that the alternative put forward for approval is the least damaging for habitats, for species

<sup>112</sup> See also *Managing Natura 2000 Sites*, European Commission, April 2000 as amended by *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 and opinion of the Commission* January 2007.

<sup>113</sup> See paragraph 36 of the Judgement of the ECJ Second Chamber in Case C-239/04 *EC v Portuguese Republic*.

<sup>114</sup> See for example the Opinion of The Advocate General dated 27th April 2006 at paragraphs 44 - 46 in the Case C-239/04 *EC v Portuguese Republic*.

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<sup>115</sup>.

30. Different tests apply depending on whether the site hosts a priority habitat type or species<sup>116</sup>. If the site does not host a priority natural habitat type or species, or the project would not affect a priority habitat or species that may be present on the site<sup>117</sup>, planning permission can only 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<sup>118</sup>. Such reasons would need to be sufficient to override the ecological importance of the designation.

31. If the site hosts a priority habitat or species that would be affected by the proposal, 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 having regard to the opinion of the European Commission<sup>119</sup>. Any competent authority wishing to obtain the opinion of the European Commission in this respect, must submit a written request to the Welsh Ministers, in accordance with Regulation 49(3). The UK government may then seek the Commission's opinion and transmit it to the Welsh Ministers, who will transmit it to the local planning authority.

There will be few cases where it can be judged that imperative reasons of overriding public interest will allow a development to proceed which will have an adverse effect on the integrity of European sites or European offshore marine sites (or any other internationally designated sites). Furthermore, it will never be acceptable to proceed on such grounds where this could seriously compromise the ecological characteristics of a cSAC, or could cause significant pollution or deterioration of a pSPA, or significant disturbance of the bird species for which a pSPA has been proposed.

32. This applies equally to new proposals and to developments with valid existing permissions. The judgement will involve an assessment of the importance of the development and whether it is sufficient to override the nature conservation importance of that site. Developments must pass the most stringent tests.

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<sup>115</sup> See section 1.2 page 4, EC *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 and opinion of the Commission* January 2007.

<sup>116</sup> Priority habitats and species are indicated by an asterisk in Annexes I and II of the Habitats Directive. The citation saying why the site was designated will show whether it hosts a priority habitat or species. There are at present no priority species indicated in the Birds Directive, in respect of SPAs.

<sup>117</sup> See section 1.8.1 page 22 European Commission, *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 and opinion of the Commission* January 2007.

<sup>118</sup> Regulation 49(1) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>119</sup> Regulation 49(2) The Conservation (Natural Habitats &c) Regulations 1994.



33. 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 an European site or European offshore marine site but consider the proposed development should nevertheless go ahead, regulation 49(5) of the Habitats Regulations requires the authority to notify the Assembly Government. Planning permission shall not then be granted for a period of 21 days unless the Assembly Government notifies the authority otherwise. This notification procedure will enable the Assembly Government to decide whether to call in the application for its own determination and will enable it to ascertain whether or not compensatory measures have been secured as required by regulation 53. [This procedure should also be followed in relation to other internationally designated sites.]

34. Where there are no alternative solutions, each case will be judged on its merits but the public interest should be both overriding and long-term; the following guiding principles will be relevant to deciding whether imperative reasons of overriding public interest are demonstrated:

- a need to address a serious risk to human health or public safety;
- the provision of a clear and demonstrable direct environmental benefit on a national or international scale;

or, where there are no priority habitats or species affected:

- the interests of national security and defence;
- a vital contribution to strategic economic development or regeneration;
- where failure to proceed would have unacceptable social and/or economic consequences.

35. When considering cases against these principles, in general, projects of national importance are most likely to be judged as giving rise to imperative reasons of overriding public interest. Important regional projects might also be so judged. Whilst projects of more local significance are not ruled out, it is less likely that their potential benefits will be considered to override the harm to the nature conservation value of the sites<sup>120</sup>.

36. In reaching decisions which may impact on Ramsar sites, it will be necessary to take into account the wording of Article 4 of the Ramsar Convention, which allows a Contracting Party to delete or restrict the boundaries of sites 'in its urgent national interest'. A development proposal does not necessarily have to be of national significance in its own right to meet the requirements set out in Article 4 of the Convention. Any benefits arising

<sup>120</sup> See also *Managing Natura 2000 Sites*, European Commission, April 2000 as amended by *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 and opinion of the Commission* January 2007 which provides some examples of projects in Europe considered by the EC to have been of overriding public interest.

from the proposal must, however, demonstrably outweigh the harm to the acknowledged international conservation value of the site. Projects of limited regional or local significance are thus unlikely to meet this test.

37. It is important to note that the option of progressing on grounds of imperative reasons of overriding public interest will not be available where the development, either alone or in combination with other plans or projects:-

- a. could seriously compromise the ecological characteristics of a cSAC; or
- b. could cause significant pollution or deterioration of a pSPA, or significant disturbance of the bird species for which a pSPA has been proposed.

In these situations, the planning authority should not permit the development under any circumstances.

### Compensatory measures

38. Where the importance of the development is judged to outweigh the adverse effect upon the integrity of the European site or European offshore marine site, compensatory measures must be taken to protect the overall coherence of the Community-wide network of SPAs and SACs known as Natura 2000<sup>121</sup>.

39. In order to ensure the overall coherence of Natura 2000, the compensatory measures proposed for a project should address, in comparable proportions, the habitats and species negatively affected and provide functions comparable to those which had justified the selection criteria of the original site, particularly regarding adequate geographical distribution. It would not be enough for the compensatory measures merely to relate to the same biogeographical region in Great Britain. Irrespective of the distance between the original site and the compensatory measures, the latter must fulfil the same ecological function of the site, its role in the geographical distribution of Natura 2000 sites and the reasons for its initial selection<sup>122</sup>.

40. In cases where the habitat types or species affected in a SAC are relatively abundant, and the Government has designated only part of the national resource, it may be possible for an area of similar quality and character to be identified for designation as a SAC which could, at least in part, replace the loss to the SAC network. This will become increasingly difficult with the rarer habitat types and species; in the cases of the rarest especially, all suitable sites are already likely to be designated. In these cases the possibilities for restoration of damaged habitat or creation of replacement habitat will need to be considered. This may be costly and often technically difficult or ecologically untried. In certain cases the habitat affected may be irreplaceable. Agreement to such

<sup>121</sup> Regulation 53 The Conservation (Natural Habitats &c) Regulations 1994.

<sup>122</sup> See section 1.4.2 European Commission, *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 and opinion of the Commission* January 2007.

a plan or project that did not provide for all necessary compensatory measures to secure the coherence of the Natura 2000 network would be contrary to the requirements of the Directive.

41. If habitat creation or restoration is to be used as a compensatory measure, it must be expected that the area concerned should become, within a clear timescale, of sufficient quality to ensure that the coherence of the Natura 2000 network is protected.

42. Classification of an alternative, existing area of bird habitat, as a SPA, will not normally meet the compensatory requirements in respect of a SPA, because all of the most suitable territories should be classified as SPA 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.

43. Article 4(2) of the Ramsar Convention requires Contracting Parties that delete sites or restrict site boundaries in their "urgent national interest" to compensate, as far as possible, for any loss of wetland resources. The Convention refers, in particular, 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 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.

## THE REVIEW OF OUTSTANDING PLANNING PERMISSIONS AND DEEMED PLANNING PERMISSIONS LIKELY TO AFFECT AN INTERNATIONALLY DESIGNATED NATURE CONSERVATION SITE

1. Part IV (and, in particular, regulations 50, 51, 55 and 56) of the Habitats Regulations 1994 require the local planning authority to review extant planning permissions granted by them or their predecessor authorities<sup>123</sup> that are likely to have a significant effect on a site, either individually or in combination with other plans or projects, and to take any appropriate action to affirm, modify or revoke such permissions. The permissions which must be reviewed include all permissions that are valid but under which development has not yet commenced and also all permissions under which development has been started but has not yet been completed<sup>124</sup>. Permissions for ongoing development including landfills and mineral extraction must also be reviewed. Where appropriate, these reviews may be co-ordinated with the reviews of old mineral permissions (ROMPs) which are required under the Planning and Compensation Act 1991 and the Environment Act 1995. Some of these old permissions will have been granted long before the classification and/or designation of the site. This should not, however, be used as a reason to avoid taking appropriate action. This requirement applies, as a matter of law, in relation to all European sites and European offshore marine sites<sup>125</sup> [as defined in paragraph 5.1.2 of this TAN] and is applied as a matter of policy in relation to Ramsar sites, pSPAs and pSACs in Wales. The remainder of this Annex should be read accordingly.

2. Local planning authorities must review permissions as soon as is reasonably practicable, following the procedures set out below. They will normally have identified any relevant permissions during the consultation exercise in preparation for a site's classification. Since the response to the consultation, however, local planning authorities may have granted further planning permissions, some of which may be likely to have a significant effect on the site. However, bearing in mind that it is the Assembly Government's policy that the procedures of the Habitats Regulations should be applied in respect of proposed as well as classified European sites and European offshore marine sites, none of the subsequent planning permissions should have the potential to adversely affect the integrity of the site. Nevertheless, any new permissions that are in place when a European site or European offshore marine site is formally classified or designated will need to be checked

<sup>123</sup> Regulation 55 of the Conservation (Natural Habitats &c) Regulations 1994 also requires local planning authorities to consider whether any planning permissions deemed to be granted under section 90(1) of the Town and Country Planning Act 1990 should, in their opinion, be reviewed. Permissions deemed to be granted under the provisions of the Pipe-lines Act 1962, the Electricity Act 1989 and the Transport and Works Act 1992, or in respect of development authorised under those Acts, must be reviewed in conjunction with the review of the underlying authorisation, consent or order. Any other permissions deemed to be granted under section 90(1) of the Town and Country Planning Act 1990 should be referred to the Government Department that made the direction deeming permission to be granted.

<sup>124</sup> But where developments have been started, the review can only assess the effects of the completion of the remaining part of the development, it should not address the effects of the completed part of the development.

<sup>125</sup> These provisions do not apply, in law, in relation to sites which are European sites by reason of regulation 10(1)(c) of the Conservation (Natural Habitats &c) Regulations 1994 or which are European offshore marine sites by reason of regulation 15(c) of the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007: see regulation 48(7) of the 1994 Regulations. However, these provisions should be applied, as a matter of policy, in relation to such sites.

for a likely significant effect, alone or in combination with other plans and projects, but the Assembly Government would not expect any to require modification or revocation if local planning authorities have acted consistently with Assembly Government policy.

3. 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 (see **Annex 3** above). CCW will advise on individual cases. If the integrity of the site would be adversely affected, **or the effects on the integrity of the site are uncertain but could be significant**<sup>126</sup>, and if the permission does not fulfil the conditions under which a new development proposal affecting the site would be permitted as described in **Annex 3** above, then 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<sup>127</sup>.

4. 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<sup>128</sup>. Insofar as the adverse effects are not overcome by such obligations, local planning authorities must modify or revoke the permission, or make a discontinuance order, in a manner which is sufficient to avoid the potential threat to the integrity of the site<sup>129</sup>. They should also take such action if a developer proceeds with damaging development while the local 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 Welsh Ministers. Where compensation is payable, the authority must refer the determination of the amount to the Lands Tribunal, unless the Welsh Ministers indicate otherwise<sup>130</sup>.

5. Under the Regulations, where such a review takes place, the relevant local planning authority must consult CCW. The Assembly Government encourages CCW to engage in discussions with the local planning authority and developers in order to assist the authority in carrying out the review. The following possibilities may arise as a result of such consultation:

- i. A revised conclusion may be reached, on the advice of CCW, that the permission is not likely to have a significant effect on the site, in which case no review will be necessary.
- 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.

<sup>126</sup> 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 ([2000] EWHC Admin 305, at paragraph 55).

<sup>127</sup> Regulation 56(3) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>128</sup> *ibid.* Regulation 56(1).

<sup>129</sup> *ibid.* Regulation 56(1).

<sup>130</sup> Regulation 59 The Conservation (Natural Habitats &c) Regulations 1994.

- 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 site or any other nature conservation site.
- iv. Permissions might lapse through time expiry or, in the case of 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 Regulations, the permission may still be affirmed and implemented<sup>131</sup> if there are imperative reasons of overriding public interest for doing so. All compensatory measures must be taken which are necessary to ensure that the overall coherence of the Natura 2000 network of SACs and SPAs is protected.
- vii. If there are no imperative reasons of overriding public interest (see **Annex 3** above)<sup>132</sup>, the local planning authority is obliged, under the Habitats Regulations, to revoke or modify the permission to remove the risk of an adverse effect on the integrity of the site. In such cases, the local planning authority would be liable to pay any compensation due to the developer.

6. In general it is not Assembly Government policy to reimburse local authority liabilities. However, the Assembly Government may consider providing assistance where costs are high, provided the Assembly Government is satisfied that all alternative options and possibilities have been fully explored and where the action taken was no more than necessary to remove the risk to the site<sup>133</sup>. The Assembly would need to be satisfied in such cases that discussion and negotiation had explored all the possibilities set out in (i) - (v) above in order to minimise the cost to the public purse.

7. Local planning authorities should not seek to duplicate controls that are the statutory responsibility of other bodies (including local authorities in the exercise of their non-planning functions). Regulations 84A, 84B and 85<sup>134</sup> require the review of authorisations granted by local authorities for environmental permits by the Environment Agency for

<sup>131</sup> Other than in relation to cSACs.

<sup>132</sup> Or if the site is a cSAC whose ecological characteristics would be seriously compromised.

<sup>133</sup> Ministerial Letter on TAN 5 and related policy issues, dated 16 September 2009.

<sup>134</sup> Regulations 84A to 85 The Habitats Regulations 1994 as amended by the Pollution Prevention and Control (England and Wales) Regulations 2000 Statutory Instrument 2000/1973, the Conservation (Natural Habitats &c) (Amendment) Regulations Statutory Instrument 2007/1843 and the Environmental Permitting (England and Wales) Regulations 2007 Statutory Instrument 2007/3538.



environmental permits, water discharge consents and water abstraction licences. If in reviewing a planning permission local planning authorities consider that action falls to be taken under these other regulations (84A to 85) they should nevertheless exercise their powers under regulation 56 unless it appears to them that other action to be taken by them or by another authority will secure that the project will not adversely affect the integrity of the site. In carrying out reviews and in exercising their own powers local planning authorities should ensure that the action to be taken is the least onerous to those affected<sup>135</sup>. 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 applications.

### Ramsar sites

8. For the majority of Ramsar sites, reviews of consents in relation to their effect on European sites and European offshore marine sites under Part IV of the Habitats Regulations will normally be sufficient to ensure the Ramsar interests are adequately protected.

9. When carrying out reviews in relation to the effect of consents on European sites and European offshore marine sites, local planning authorities are expected to extend the scope of their appropriate assessments to consider the effects on coincident or overlapping Ramsar sites. Where the local planning authority reaches the conclusion that there would be no adverse effect on the integrity of the European site or European offshore marine site from allowing the consent to proceed, but there would be an adverse effect on integrity of the Ramsar site, it should consider whether to issue a modification or revocation order using powers available under section 97 of the *Town and Country Planning Act 1990*.

10. Local planning authorities are expected to adopt a similar approach where listed Ramsar sites are not within the Natura 2000 network by carrying out an appropriate assessment analogous to that required by Part IV of the Habitats Regulations and by issuing modification or revocation orders under Section 97 of the *Town and Country Planning Act 1990*, at the earliest opportunity following the listing of a Ramsar site. Where the integrity of a Ramsar site would be adversely affected by the full implementation of an extant consent and modification or revocation of the consent is warranted, the Assembly Government may again consider providing assistance to local authorities where the costs are high, provided the Assembly Government is satisfied that all alternative options and possibilities have been fully explored and where the action taken was no more than necessary to remove the risk to the site<sup>136</sup>.

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<sup>135</sup> *ibid.* Regulation 51(3).

<sup>136</sup> Ministerial Letter on TAN 5 and related policy issues, dated 16 September 2009.

## RESTRICTIONS OF PERMITTED DEVELOPMENT THAT MAY AFFECT AN INTERNATIONALLY DESIGNATED NATURE CONSERVATION SITE

1. Regulation 60 of the Habitats Regulations imposes a condition on all permitted development which is granted planning permission by Article 3 of the Town and Country Planning (General Permitted Development) Order (“the GDPO”) to ensure that any permission granted under the GDPO is not in breach of the terms of the Habitats Directive<sup>137</sup>. This condition provides that any development which is likely significantly to affect a European site or European offshore marine site (including cSACs), either alone or in combination with other plans or projects, and which is not directly connected with or necessary to the management of the site, must not be begun unless the developer has received written notification of the approval of the local planning authority. The authority may give such approval only if it determines, after consulting CCW, that the development is not likely to have a significant effect on any European site or European offshore marine site, or that in the light of the conclusions of an appropriate assessment, that the development would not adversely affect the integrity of any such site<sup>138</sup>. It should be emphasised that the condition does not automatically withdraw permitted development rights for such developments, but requires them to be subject to a prior approval process. This regulation does **not apply to pSPAs, pSACs and Ramsar sites as a matter of policy**.
2. The flow chart in Figure 2 explains the process developers should follow where the particular development they propose would benefit from a permitted development right. It identifies the role of the local planning authority and CCW.
3. It should be noted that even if the development is able to proceed as permitted development after passing through this process, the provisions of section 28E (obligations of owners and occupiers of SSSI land) and section 28H (obligations of public bodies in relation to carrying out operations likely to damage SSSI features) of the *Wildlife and Countryside Act* 1981 still apply and, if the development involves the carrying out of operations which were listed in the SSSI notification as ones which appear to CCW to be likely to damage the interest features of the site, notice must be given to CCW and their written consent obtained, if necessary, before the development is undertaken.
4. If developers are uncertain whether their proposal is likely to have a significant effect on the site, they should seek an opinion from CCW through the appropriate local office (see **Annex 10**)<sup>139</sup>. There is no charge for this. Developers should provide the following information:

<sup>137</sup> Regulation 60 The Habitats Regulations 1994 and Article 3(1) The Town and Country Planning (General Permitted Development) Order 1995 Statutory Instrument 1995/418.

<sup>138</sup> Regulation 62 The Conservation (Natural Habitats &c) Regulations 1994.

<sup>139</sup> *ibid* Regulation 61.

- a) A short description of the proposed development or works showing:
  - i. their broad purpose;
  - ii. their physical extent, including the area of land or water likely to be covered;
  - iii. any residues likely to be produced and proposals for disposal, and any emissions to air, water, soil, and by noise, vibration, heat, light or radiation;
  - iv. the timetable for the proposed development.
- b) A map (or maps) showing the location of the proposed development in relation to the boundary of the European site (or European offshore marine site) and the position of all proposed buildings, service access routes and works (whether permanent or temporary).
- c) A description of possible direct or indirect effects (including disturbance) on the wildlife, water quality, hydrology, geological or landform features of the site.
- d) Information about any measures that the developer proposes to incorporate into the project to prevent, reduce, ameliorate or offset any land-take, residues or emissions.

5. Where CCW has sufficient information to provide an opinion, it will notify the developer and the local planning authority. If the information provided is inadequate or incomplete, CCW will advise what additional information it needs<sup>140</sup>. Where CCW gives notification, under regulation 61(3), that its opinion is that the development is **not** likely to have a significant effect on a European site or European offshore marine site, that opinion is conclusive for the purpose of relying on the planning permission granted by the GDPO<sup>141</sup>.

6. The local planning authority will normally enter the process at the point where either the developer or CCW decides that the proposal would be likely to have a significant effect on the site. The developer applies to the local planning authority for written approval under regulation 62<sup>142</sup>. The local planning authority sends a copy of the application to CCW and takes account of any representations made by them.

7. Where a developer has not previously sought the opinion of CCW as to the likelihood of the development having a significant effect on the site, it will be the first time that CCW comments on the proposal. Where, in its representations, CCW states that the development would not be likely to have a significant effect on the site, the local planning authority should send a copy of the representations to the applicant and the development may proceed without the prior written approval of the local planning authority<sup>143</sup>.

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<sup>140</sup> *ibid.* Regulation 61(4).

<sup>141</sup> *ibid.* Regulation 61(3).

<sup>142</sup> *ibid.* Regulation 62 (1) (2) and (3).

<sup>143</sup> *ibid.* Regulation 62(6).

8. In all other cases, however, the local planning authority must undertake an appropriate assessment of the implications of the proposal for the site, in view of the site's conservation objectives, taking account of any representations made by CCW. In the light of the conclusions of that assessment, the local planning authority must then decide whether or not the proposal would adversely affect the integrity of the site. Where the local 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 that the effects are uncertain but that the development could potentially have an adverse effect on the integrity of the site** the local 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 local planning authority he may appeal against the decision not to approve the development<sup>144</sup> or he may apply for a certificate of lawful development.

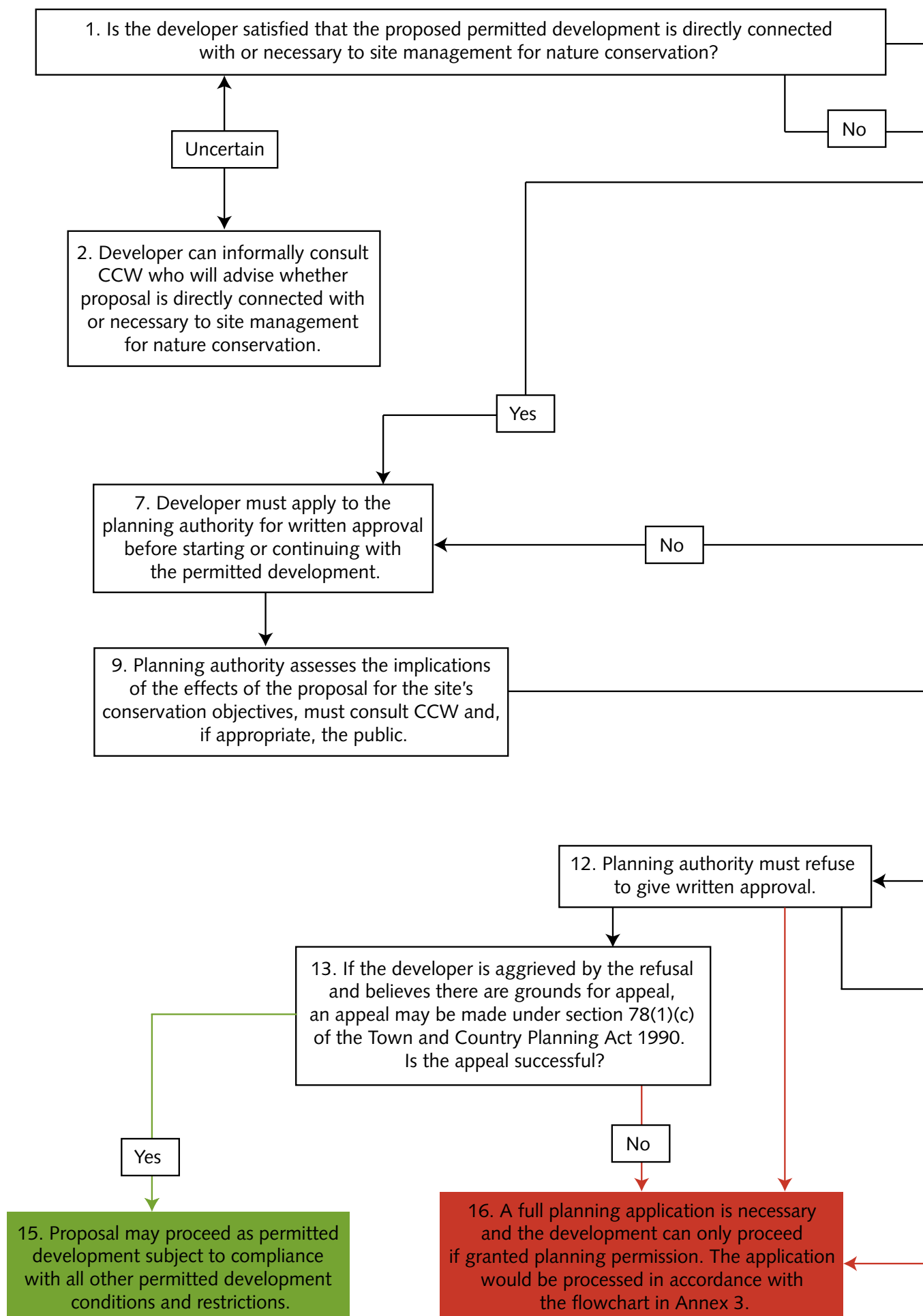
9. Regulation 63(2) provides for a fee to be paid to the local planning authority in connection with applications for approval under regulation 62. Advice on likely significant effect, appropriate assessment and site integrity is provided in **Annex 3** above.

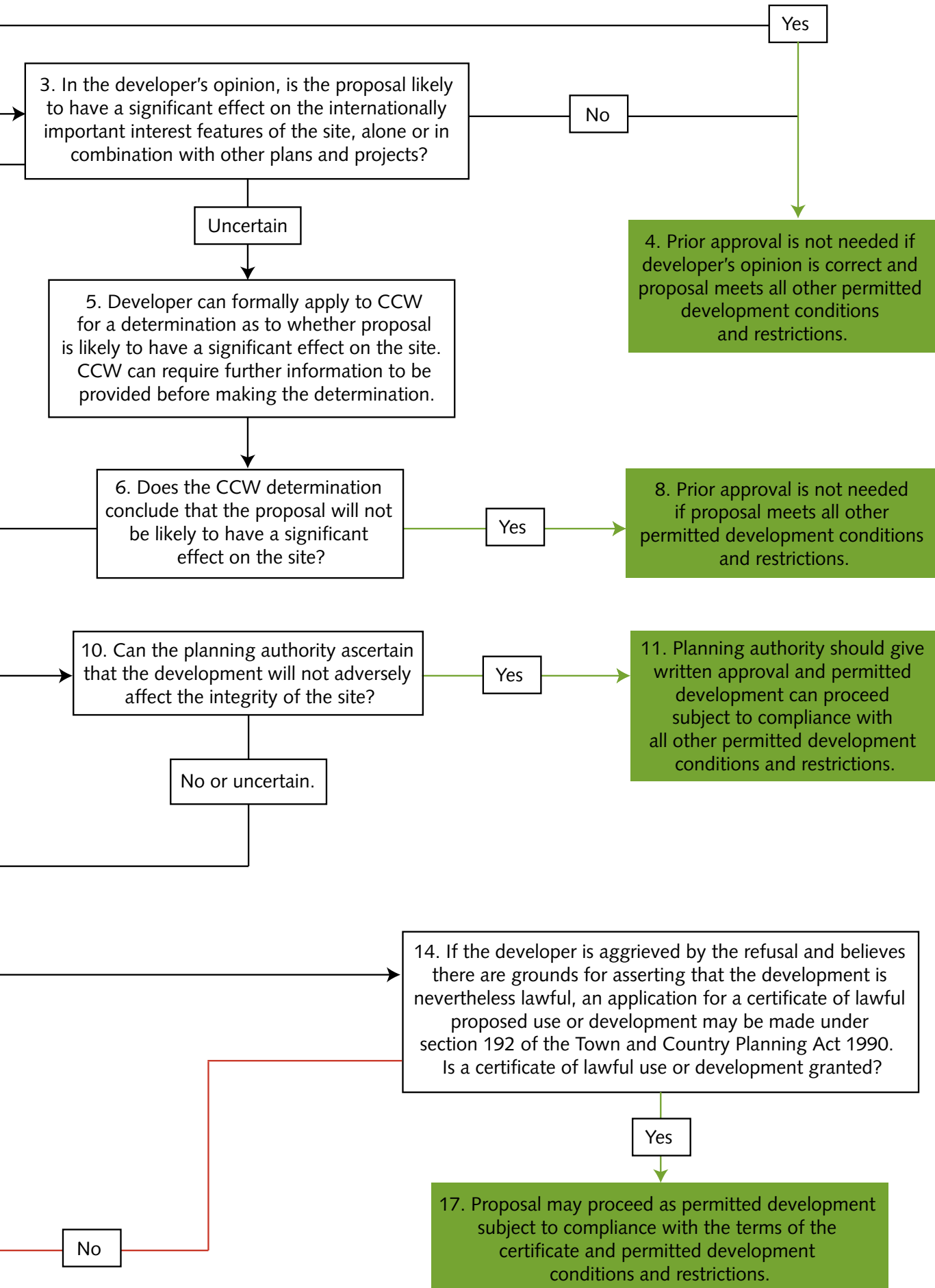
Developers should bear in mind that if they proceed with a development in or near a European site or European offshore marine site on the assumption that it benefits from a permitted development right, without first checking whether it is likely to have a significant effect on the site, they run the risk of undertaking the project without the benefit of planning permission and being liable to enforcement proceedings. Developers should also bear in mind that the local planning authority cannot impose conditions on the written approval under regulation 62. CCW and the local planning authority must assess the effects of the development as proposed. It is in the developer's own interests, therefore, to ensure that any possible measures that might remove the risk that the development might have an adverse effect on the integrity of the site, are incorporated into the development as proposed and submitted to CCW and/or the local planning authority. However note that appropriate assessment will still be necessary unless the risk that the development could have a significant effect on a European site or European offshore marine site can be excluded, on the basis of objective information.

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<sup>144</sup> *ibid.* Regulation 63(3).

## PERMITTED DEVELOPMENT RIGHTS POTENTIALLY AFFECTING INTERNATIONALLY









## THE APPRAISAL OF DEVELOPMENT PLANS IN WALES UNDER THE PROVISIONS OF THE HABITATS REGULATIONS

### 1. Introduction

#### *The Application of Habitats Regulations to Development Plans*

1.1 Part IVA<sup>145</sup> of the Conservation (Natural Habitats &c.) Regulations 1994 (“the Habitats Regulations”) transposes the requirements of Article 6(3) and (4) of the Habitats Directive (92/43/EEC) in relation to “land use plans”. These plans are defined in regulation 85A and include the following:

- local development plans adopted or approved under the 2004 Act<sup>146</sup>; and
- unitary development plans adopted or approved under the 1990 Act<sup>147</sup>, in accordance with the transitional arrangements<sup>148</sup>.

For the purposes of this Annex, these are defined as “development plans”.

1.2 Habitats Regulations Appraisal (HRA) is used in this Annex to describe the process by which the requirements of Part IVA of the Habitats Regulations are applied to development plans. The process consists of the following elements:

- determining whether the development plan, alone or in combination with other plans or projects, is likely to have a significant effect on any European sites or European offshore marine sites and if so:
  - scoping the “appropriate assessment”;
- undertaking the “appropriate assessment” (in consultation with CCW and/or Natural England) to identify any significant effects that the development plan may have on European sites or European offshore marine sites, either alone or in combination with other plans or projects, in view of those sites’ conservation objectives;
- where the “appropriate assessment” identifies potentially significant impacts on a European site or European offshore marine site, identifying whether there are possible alternative solutions or mitigation measures which, if adopted, will avoid or counteract those adverse impacts;

<sup>145</sup> Part IVA is inserted into the Conservation (Natural Habitats, &c) Regulations 1994 (SI 1994/2716) by the Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (SI 2007/1843).

<sup>146</sup> Planning and Compulsory Purchase Act 2004, Part 6.

<sup>147</sup> Town and Country Planning Act 1990, Part 2.

<sup>148</sup> Section 122 of the Planning and Compulsory Purchase Act 2004, and Article 4 of the Planning and Compulsory Purchase Act 2004 (Commencement No 3 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005.

- determining, in the light of the “appropriate assessment”, whether the development plan will or will not adversely affect the integrity of any European site or European offshore marine site, either alone or in combination with other plans or projects;
- where there is a possibility that the plan could have such an adverse effect, determining whether there are any alternative solutions to the development plan, or to the potentially damaging elements within that plan, which would avoid or reduce such effects upon the European site(s) or European offshore marine site(s); and
- where there are no such alternative solutions, determining whether there are imperative reasons of over-riding public interest for giving effect to the development plan.

1.3 A methodology on how HRA should be applied to development plans is outlined below (Figure 3). It is important to understand the terms and concepts of the process in principle in order to understand how to apply it to the development plan process. This document concentrates on how to use these concepts when assessing development plans.

1.4 HRA of development plans is an iterative process. The effects of a development plan on European site and European offshore marine site interests must be assessed at each relevant stage of plan preparation and the assessment refined and developed as the plan progresses through its preparation. The guidance below outlines the basic approach to HRA.

1.5 Sustainability Appraisal (SA) and Strategic Environmental Assessment of plans (SEA) are also iterative processes and must, similarly, be carried out at each stage of the plan preparation process. However, HRA should not be incorporated into the SA or SEA processes. It should be run in parallel with these processes, utilising common stages such as environmental information gathering. If the HRA is integrated with SA or SEA Environment Reports by the local planning authority, the elements forming the HRA must be kept clearly distinguishable.

1.6 Although references to SEA processes are incorporated into the SA processes in the Local Development Plan (LDP) Manual, this Annex refers to SEA processes separately in order to clarify the manner in which HRA is applicable also to Unitary Development Plans (UDPs).

1.7 One of the principal requirements of Part IVA of the Habitats Regulations is that before a local planning authority<sup>149</sup> adopts a development plan, it must consider the potential effects of the plan on European sites and European offshore marine sites (as defined in paragraph 5.1.2 of this TAN), both alone and in combination with other

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<sup>149</sup> The local planning authority may be a National Park Authority.

plans or projects. The European site(s) or European offshore marine site(s) potentially affected may be within or outside Wales. **The Regulations apply to all development plans, irrespective of when the local planning authority started the development plan.** The overall process of considering the effects of a development plan on European sites and European offshore marine sites is referred to in this guidance as the '**Habitats Regulations Appraisal**' (HRA), in order to distinguish the overall process from the specific step within it commonly referred to as the 'appropriate assessment'.

1.8 The requirements of Part IVA of the Habitats Regulations apply, as a matter of law, in relation to European sites and European offshore marine sites as defined by paragraph 5.1.2 above<sup>150</sup>. As a matter of policy, however, the Assembly Government also expects local planning authorities to treat all Ramsar sites and pSPAs as though they were statutory European sites (or, as the case may be, European offshore marine sites) and they should be treated as such in HRA. The remainder of this Annex should be read accordingly.

1.9 If a development plan is likely to have a significant effect on one or more European sites or European offshore marine sites, either alone or in combination with other plans or projects, and where the development plan is not directly connected with or necessary to the management of such sites, it must be subject to an appropriate assessment in accordance with the requirements of Article 6(3) of the Habitats Directive and regulation 85B of the Habitats Regulations.

1.10 As part of the HRA, the local planning authority may need to amend the development plan to eliminate or reduce potentially damaging effects on European sites and European offshore marine sites; and/or consider alternative solutions that would avoid any such effects or, failing that, have a lesser effect on the relevant site(s).

1.11 If there are no alternative solutions and if, in exceptional circumstances, it is proposed that a plan be adopted despite the fact that it may adversely affect the integrity of a European site or European offshore marine site, the HRA will need to address and explain the imperative reasons of overriding public interest (IROPI), which the local planning authority considers to be sufficient to outweigh the potentially adverse effects on that site(s).

1.12 The Assembly Government expects that development plans will only proceed to adoption on the basis of IROPI in the most exceptional circumstances. Local planning authorities should, if necessary, adapt their plans during the course of the HRA to ensure that they will not adversely affect the integrity of any European sites or European offshore marine sites. If a development plan is to be adopted on the basis of IROPI, it will be necessary for local planning authorities to develop compensatory measures to ensure that the overall coherence of the Natura 2000 network of SACs and SPAs is protected.

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<sup>150</sup> These requirements do not apply, in law, in relation to sites which are European sites by reason of regulation 10(1)(c) of the Habitats Regulations or which are European offshore marine sites by reason of regulation 15(c) of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007: see regulation 85B(6) of the Habitats Regulations. However, these provisions should be applied, as a matter of policy, in relation to such sites.

1.13 Furthermore, local planning authorities should note they will **not** be able to proceed to adoption on the basis of IROPI where the appropriate assessment identifies that their development plans (either alone or in combination with other plans or projects) may incur the risk of seriously compromising the ecological characteristics of a cSAC<sup>151</sup>. Once a cSAC has been submitted to the European Commission under Article 4(1) of the Habitats Directive, the local planning authority must refrain from adopting any development plan which (alone or in combination with other plans or projects) could seriously compromise the cSAC's ecological characteristics, even if there are public interest reasons for doing so, until the Commission has decided whether to select the cSAC as a Site of Community Importance under the Habitats Directive.

1.14 Local planning authorities should also adopt a similar position in relation to pSPAs. Article 6(3) and (4) of the Habitats Directive (including the IROPI justification) do not apply to such sites until they have been classified as full SPAs<sup>152</sup>. Until that time, local planning authorities must avoid adopting any development plans that (alone or in combination with other plans or projects) could cause pollution or deterioration of the pSPA or any disturbance affecting the birds for which the pSPA has been proposed, insofar as these matters could be significant with regard to the objectives of Article 4 of the Birds Directive.

1.15 These concepts and considerations are explained further in Section 2 below.

### *Timing and Relationship to Plan Making Processes*

1.16 Ideally, the HRA should be undertaken from the earliest stages of plan preparation onwards, so that it influences the evolution of the plan. However, in cases where plan preparation has already begun, the assessment should be carried out as soon as possible. Development plans cannot proceed to adoption/approval until the HRA process has been completed.

1.17 Local planning authorities are required by statute to consult the public as part of SA and SEA procedures, but public consultation is a discretionary requirement in respect of the HRA (regulation 85B(3)).

1.18 The HRA should be programmed to fit in with existing plan-making procedures, including the SEA, wherever possible. In particular, HRA documentation should be formalised at both the pre-deposit consultation and deposit stages for LDPs and where possible the deposit stage for UDPs. Where a local planning authority chooses to consult the public about the HRA under the Habitats Regulations provisions, the consultation should be undertaken during a development plan statutory consultation period. However, the recording of HRA consultation responses should be clearly identified and kept distinct from responses on the plan or the SA/SEA.

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<sup>151</sup> See the judgment of the European Court of Justice in Case C-244/05 *Bund Naturschutz in Bayern eV and others v Freistaat Bayern*.

<sup>152</sup> See the judgment of the European Court of Justice in Case C-374-98 *Commission v French Republic* (known as the "*Basses Corbieres*" case).

1.19 Within the framework set out here, it is necessary, on a plan by plan basis, to decide how best to carry out the HRA, what information and analysis may be required, what assumptions and predictions will need to be made, etc. The method and level of detail of the HRA will affect the time required to undertake the HRA and will vary according to:

- the scale and geographic area of the development plan;
- the stage it has reached;
- the nature of its policies and proposals;
- the sites it may affect and how it may affect them;
- the range of plans and projects which may need to be considered in combination with the development plan; and
- whether or not affected sites are within or outside the plan area.

#### Detail of the HRA

1.20 It is recognised that a HRA of a plan is likely by its nature to be less specific and detailed than the assessment of an individual project would be. In most cases, it will not be possible to subject a development plan to the same level of assessment under regulation 85B as can be applied to a specific project under regulation 48 of the Habitats Regulations. There will not normally be the same level of information about:

- the changes that may be predicted as a result of implementing a policy or proposal in a development plan;
- what the effects of the changes may be on the site(s) affected;
- how the effects may be mitigated; or
- if necessary, how the effects may be compensated for.

1.21 This issue was acknowledged in the Advocate General's opinion in *Commission v UK*<sup>153</sup>. What is expected is as rigorous an HRA as can reasonably be undertaken in the context of the development plan in question, so as to enable the tests set out in Article 6(3) and (4) of the Habitats Directive to be answered.

#### Complexity of the Appraisal

1.22 The complexity of HRA will vary considerably across Wales. There may be development plans that have only a single European site or European offshore marine site to consider; others will have the potential to affect many such sites, both within and outside the plan area. Multiple site assessments will be needed where the plan to be assessed is extensive in geographic terms, or the density or coverage of European sites is high such that, in either case, the plan could affect several such sites. Multiple site assessments may involve very complex site interactions and the local planning authority, CCW and/or

<sup>153</sup> Case C-6/04, *Commission v United Kingdom*.



## Nature Conservation & Planning

Natural England may need to give special consideration to HRA programming. But whether a multiple or single site assessment is to be undertaken, the essential process will be the same.

1.23 If the European sites potentially affected are cross-border, that is, partly in England, CCW will co-ordinate responses from Natural England. Where a site that is potentially affected is wholly within England, the local planning authority should contact Natural England directly.

### Transparency of Compliance

1.24 Whenever a HRA is undertaken, it is important that it is clearly documented in the correct terms. It is helpful to use the terminology of Part IVA of the Habitats Regulations to show that the correct tests have been applied. Where the HRA is included in the Environmental Report/Sustainability Appraisal documents, it should be clearly signposted so that it is apparent which parts are intended to be compliant with the Habitats Regulations. In particular, it will need to be clearly stated whether the development plan would, or would not, be likely to have a significant effect on any European sites or European offshore marine sites, and where a significant effect is likely, whether it has been ascertained that the plan will not have an adverse effect on the integrity of each European site and European offshore marine site.

1.25 Where the sites which might be affected are cSACs or pSPAs, there will need to be a clear statement as to whether the development plan (alone or in combination with other plans or projects):

- i. could seriously compromise the ecological characteristics of any cSAC, or
- ii. could cause significant pollution or deterioration of any pSPA, or significant disturbance of the bird species for which any pSPA has been proposed.

### Other Relevant Guidance

1.26 Planning Authorities are referred to the following guidance documents issued by the European Commission:

- European Commission, 2000, *Managing Natura 2000 Sites: the provisions of Article 6 of the 'Habitats' Directive 92/43/EC*;
- 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*<sup>154</sup>; and
- European Commission, 2007, *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EC*.

<sup>154</sup> Although this document contains useful guidance on the carrying out of HRA, it pre-dates the European Court of Justice's judgment in Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee* and the High Court's judgment in *The Queen on the Application of Hart District Council v. The Secretary of State for Communities and Local Government and others* [2008] EWHC 1204 (Admin) and should be read in the light of those two judgements.

1.27 Planning Authorities will find it useful to also refer to the following guidance from the Welsh Assembly Government (WAG):

- Welsh Assembly Government, 2002, *Sustainability Appraisal of Unitary Development Plans in Wales: A Good Practice Guide*;
- Welsh Assembly Government, 2004, *Strategic Environmental Assessment (SEA) of Unitary Development Plans - Interim Good Practice Guide (Amendment of SEA Elements of Sustainability Appraisal of Unitary Development Plans 2002)*;
- Welsh Assembly Government, et al, 2005, *A Practical Guide to the Strategic Environment Assessment Directive* published by Office of the Deputy Prime Minister;
- Welsh Assembly Government, 2005, *Town and Country Planning (Local Development Plan) (Wales) Regulations 2005*;
- Welsh Assembly Government, 2005, *Local Development Plans Wales*;
- Welsh Assembly Government, 2006, *Local Development Plans Manual*; and
- Planning Inspectorate Wales, 2006, *A Guide to the Examination of Local Development Plans*.

## 2. The Habitats Regulations Appraisal

### *Introduction*

2.1 This section provides guidance on the procedures required by Part IVA of the Habitats Regulations and on a methodology for undertaking the various steps in the HRA independent of the plan making process. Specific plan-making stages are sign-posted when relevant to one or more of the HRA steps or processes.

### *Assessing the Likelihood of Significant Effects (Screening) (Figure 3, Boxes 1-4)*

2.2 (You may find it helpful to take a copy of Figure 3 and place it at the side of this guidance whilst reading the text.)

### *Acquiring information about internationally designated sites*

2.3 The first two steps when starting an HRA of a development plan are to identify the internationally designated sites within and outside the plan area that may be affected by the plan and to acquire, examine and understand the characteristics of those sites and their conservation objectives. This should be done for all European sites in the plan area and those potentially affected outside of the plan boundary. European sites in England as well as Wales and European offshore marine sites will need to be included where relevant (Boxes 1 and 2, Figure 3), as will Ramsar sites and pSPAs. Once done, these steps should not need to be repeated during the development plan process unless new information comes to light (e.g. through consultation) or new sites come into being.

2.4 If there is any doubt as to whether an internationally designated site may be affected, a **precautionary approach** should be adopted and the site should be included in the HRA. CCW will assist with this process: they will identify relevant sites, both within and outside the plan boundary, and they will supply details about those sites, including the sites' conservation objectives. Where a development plan has the potential to affect an internationally designated site in England, Natural England should be advised. Natural England will provide similar assistance in relation to any such sites in England.

*Identifying the likelihood of significant effects (Figure 3, Boxes 3-4)*

2.5 To decide whether a development plan at any stage requires an appropriate assessment, it is necessary to apply the two tests set out in regulation 85B(1) of the Regulations (Boxes 3 and 4, Figure 3):

- (1) is the plan likely to have a significant effect on a European site or European offshore marine site (either alone or in combination with other plans or projects)?
- (2) is it directly connected with or necessary to the management of the site?

2.6 The consideration of the likelihood of significant effects is a form of screening process or risk assessment which should be repeated if a development plan changes significantly during its production. A change to the plan will be significant if it gives rise to a new possibility that the plan could have a significant effect on a European site or European offshore marine site, either alone or in combination with other plans or projects. It is important to bear in mind that the sensitivity and complexity of many of these sites is such that even a minor change to a plan, e.g. a single policy could have major repercussions for a site's integrity.

2.7 The Regulations require the planning authority to consider whether the development plan is likely to have a significant effect on any European site or European offshore marine site<sup>155</sup>. In doing so, it must adopt a precautionary approach:

- The development plan should be considered '**likely**' to have such an effect if the planning authority is unable (on the basis of objective information) to exclude the possibility that the plan could have significant effects on any European site or European offshore marine site, either alone or in combination with other plans or projects.
- An effect will be '**significant**' in this context if it could undermine the site's conservation objectives. The assessment of that risk must be made in the light of factors such as the characteristics and specific environmental conditions of the European site or European offshore marine site in question<sup>156</sup>.

<sup>155</sup> This requirement does not apply, however, in relation to sites which are European sites by reason of regulation 10(1)(c) of the Habitats Regulations or which are European offshore marine sites by reason of regulation 15(c) of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007: see regulation 85B(6) of the Habitats Regulations.

<sup>156</sup> Refer to Case C-127/02, paragraph 49.

2.8 The planning authority should also consider, in the same way, whether the development plan is likely to have a significant effect on any Ramsar site or pSPA. Reference should be made to the further guidance on assessing likely significant effects in paragraphs 6-9 of Annex 3.

2.9 Consideration of the likelihood of significant effects should be multi-disciplinary. Planners will help to estimate, as far as may reasonably be predicted at any plan making stage, the likely nature, magnitude, duration, location and spatial extent of changes resulting from implementation of the development plan's policies and proposals. The area affected may extend beyond the boundaries of the plan area. Ecologists will need to consider what effects those changes would be likely to have on the interest features and conservation objectives of the relevant internationally designated sites, either directly through such mechanisms as land take or fragmentation of a site, or indirectly through effects such as hydrological change or disturbance. This process should be undertaken in close consultation with CCW (and, if there are potential impacts on internationally designated sites in England, with Natural England).

2.10 The "candidate site" process, recommended in the LDP Manual (paragraph 6.5.1), should provide sufficient information about the potential for particular candidate development sites to impact on internationally designated sites. Strategic and non-strategic development plan sites within and near such sites' boundaries should be considered as part of the LDP HRA as soon as possible in the plan making process. The responsibility for undertaking HRA rests with local planning authorities. Under the LDP system landowners, developers and residents will have a greater opportunity to engage earlier in the development plan preparation process and consequently alternative sites are likely to be put forward at an earlier stage in that process. Local planning authorities should therefore have adequate time to carry out an HRA in relation to any proposed significant changes to the development plan which result from such representations. Far fewer alternative sites should be put forward at the deposit stage under the LDP system. Where this occurs, however, and where local planning authorities are minded to include such alternative sites in their development plans, they will need to carry out a further HRA if the inclusion of those sites would cause their plans to change significantly. Although the responsibility for carrying out the further HRA will rest with local planning authorities, the third parties who are promoting the alternative sites at the deposit stage will need to provide sufficient information to enable the local planning authorities to carry out this process. Otherwise, the local planning authorities will not be able to include the sites in their LDPs when they submit their plans to the Welsh Ministers.

# APPLICATION OF REGULATION 85B OF THE HABITATS REGULATIONS TO PLANS

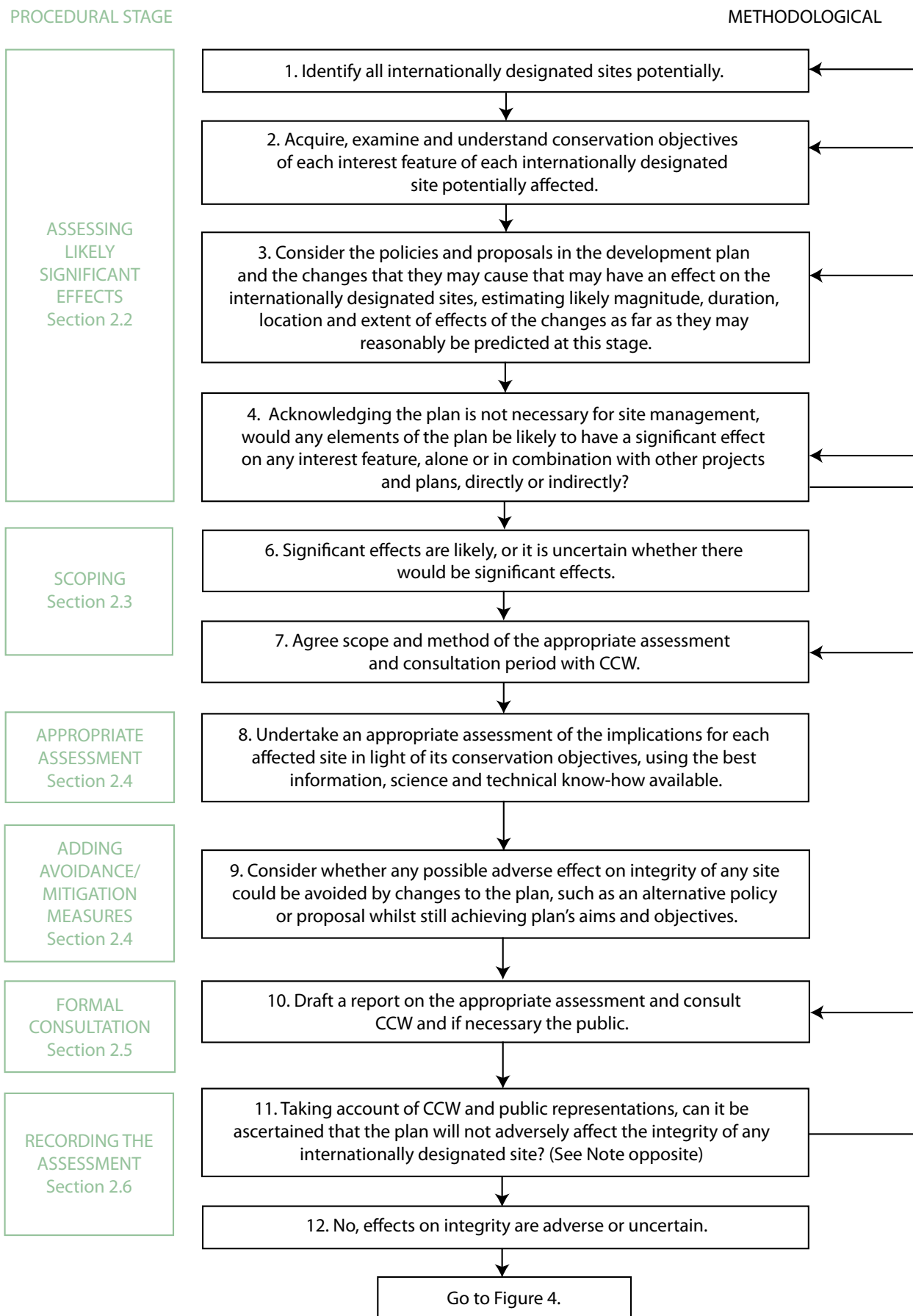
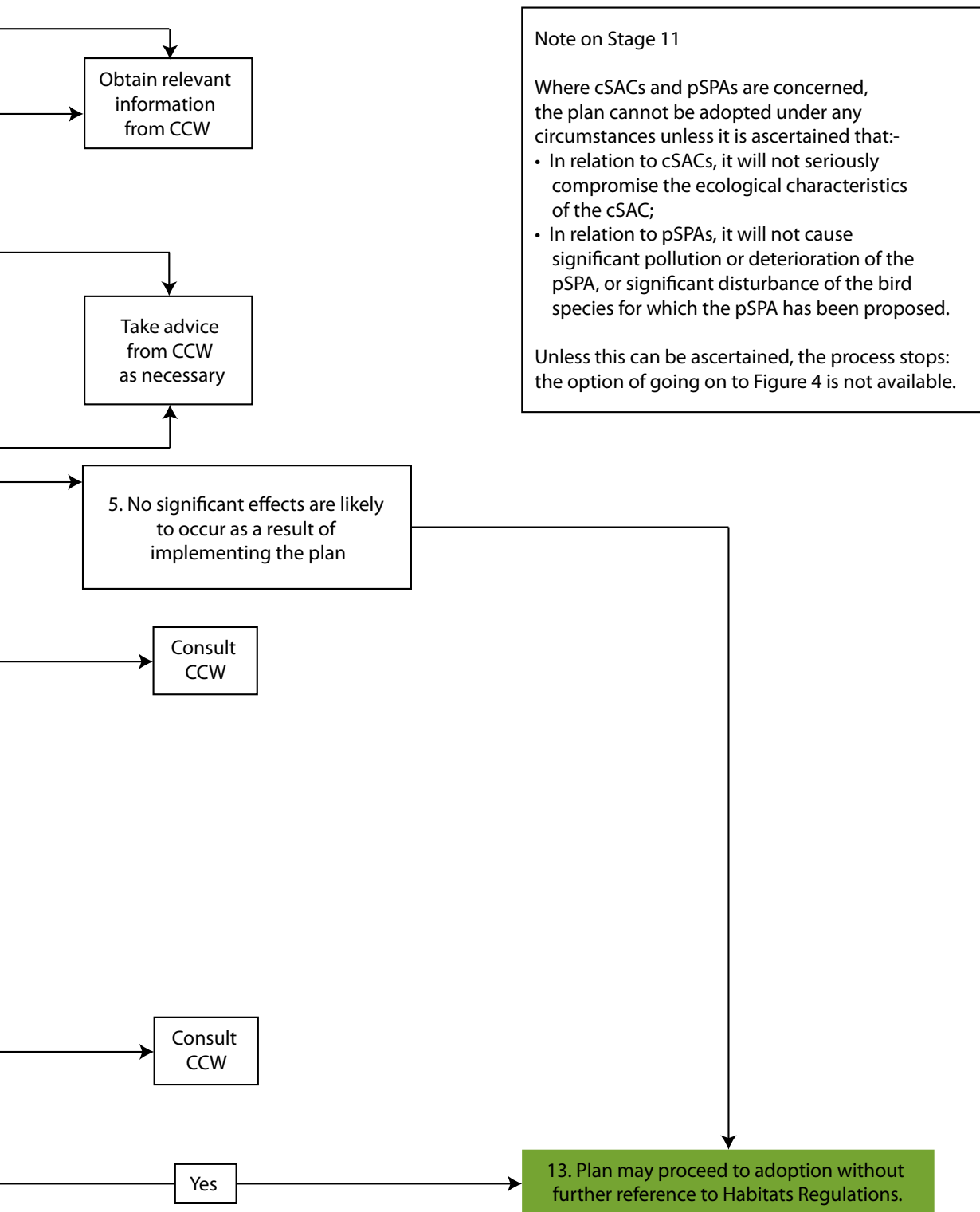


FIGURE 3

STEPS



Note on Stage 11

Where cSACs and pSPAs are concerned, the plan cannot be adopted under any circumstances unless it is ascertained that:-

- In relation to cSACs, it will not seriously compromise the ecological characteristics of the cSAC;
- In relation to pSPAs, it will not cause significant pollution or deterioration of the pSPA, or significant disturbance of the bird species for which the pSPA has been proposed.

Unless this can be ascertained, the process stops: the option of going on to Figure 4 is not available.



*'In combination' effects*

2.11 If the development plan is not likely to have a significant effect on its own, the planning authority must go on to consider whether it is likely to have significant effects in combination with other plans and projects. Further guidance on assessing 'in combination' effects is can be found in paragraph 12 of Annex 3 above.

2.12 Although the development plan may not contain any site specific detail at the early stages of the development plan process, the local planning authority's consideration of 'in combination' effects will need to take into account:

- projects which have already been implemented or completed;
- projects which have been given consent but which have not yet been implemented or completed;
- projects for which applications for consent have been made; and
- ongoing projects that are subject to periodic regulatory reviews, such as discharge consents or waste management licences.

2.13 It may be necessary for the local planning authority to take into account projects outside its area, as well as those within its area, when determining whether there may be 'in combination' effects on internationally designated sites.

2.14 In addition, the consideration of 'in combination effects' will need to take into account any other plans that could have a significant effect on any relevant internationally designated sites if combined with the development plan. This will require consideration of the existing condition of the sites and their species, the likely effects of policies and proposals contained in existing plans but which have not yet been fully implemented, and the likely effects of policies and proposals contained in draft plans that are currently being brought forward by the local planning authority or by other public bodies. Table 1 provides examples of the types of plans that a local planning authority may need to take into account when considering 'in combination' effects. Further advice may be obtained from CCW (and, where relevant, from Natural England).

**Annex 6 Table 1: Examples of plans which may need to be considered 'in combination' with the development plan**

<b>The Plans</b>	<b>Plan-making bodies</b>
The Wales Spatial Plan	Welsh Assembly Government
Nearby local development plans or UDPs in Wales	Adjacent LPAs
Sectoral plans that have a strong influence on project decisions, such as regeneration, transport or waste plans	Welsh Assembly Government, local authorities etc
Strategies that have a strong influence on project decisions such as Shoreline Management Plans	For example, the Environment Agency and local authorities
Regional Spatial Strategies in nearby English Regions	English Regional Planning Bodies
Structure and Local Plans or emerging Development Plan Documents in nearby English local authorities	English local planning authorities

### *Incorporating avoidance*

2.15 Actions to avoid the likelihood of significant effects of a development plan on an internationally designated site should be considered at an early stage in plan making. Avoidance or cancellation measures may be able to eliminate the likelihood of any significant effects on the internationally designated site(s) and thus avoid the need for appropriate assessment.

2.16 The HRA process does not formally require the generation and choice of development plan alternatives in the same way as required in the SEA Environmental Report. Under Habitats Regulations, the generation of plan alternatives is required only if the local planning authority concludes, in the light of the appropriate assessment, that the development plan may adversely affect the integrity of an European site or European offshore marine site and the local planning authority nevertheless proposes to proceed with the development plan (or the relevant policy or proposal) under regulation 85C. (See below).

2.17 However, if proposed development plan alternatives show a difference in the presence or level of likely significant effect on any internationally designated site or sites to which this procedure applies as a matter of law or policy, the local planning authority should consider selecting plan alternatives with no or less effect on the site(s) at an early stage in plan preparation. If all of the plan alternatives indicate likely significant effects on such internationally designated sites, the local planning authority should discuss the plan with CCW before scoping for the appropriate assessment is begun.

**2.18 The most precautionary course of action for an local planning authority is to remove potentially harmful policies and proposals at the earliest stages of plan preparation or to adjust those policies and proposals so as to ensure that development flowing from or controlled by the development plan is not likely to have a significant effect on any internationally designated sites to which this procedure applies, either alone or in combination with other plans or projects.** If a local planning authority considers that such action is premature or inappropriate, considering all factors, it should proceed with caution.

*Whether the plan is necessary for "European site" management*

2.19 The second test under regulation 85B(1) is whether the development plan is directly connected with or necessary to the management of any European site or European offshore marine site. Even if the plan has a policy to protect European sites and European offshore marine sites, or has some benefits for the management of such a site for nature conservation, such matters will not be sufficient to satisfy this test. **It is not expected that any development plans in Wales will meet this test.** However, the local planning authority should record its conclusions on this test in the HRA for transparency purposes.

*Screening decision on "likelihood of significant effect"*

2.20 If a local planning authority considers, after completing these steps of the HRA, that the development plan will **not** be likely to have a significant effect on any European site or European offshore marine site, or (as a matter of policy) on any Ramsar site or pSPA, (either alone or in combination with other plans or projects), it should report its findings to the relevant Members of the plan making authority and **submit the HRA results/ report to the Welsh Assembly Government as part of the statutory development plan consultation processes.**

**2.21 The local planning authority should consult and reach agreement with CCW (and Natural England, where relevant) on its conclusion, no matter what stage of development plan preparation has been reached.** If there is a disagreement about the results between CCW or Natural England and the local planning authority, the Welsh Assembly Government will expect that all steps have been taken by the local planning authority to resolve the matter. If the local planning authority decides to maintain its position in spite of opposition from CCW (and/or Natural England), the local planning authority will proceed to adoption at its own risk.

2.22 If a determination is made by the local planning authority that the development plan is **not** likely to have significant effects on any internationally designated site to which this procedure applies, either as a matter of law or of policy(s), it may proceed without further reference to the HRA process (see Steps 4-5-13, Figure 3).

*Scoping for Appropriate Assessment (Figure 3, Boxes 6-7)*

2.23 Where it is determined that a development plan is likely to have a significant effect on one or more European sites or European offshore marine sites, either alone or in combination with other plans or projects, and that the plan is not directly connected with or necessary to the management of those sites, it must be subject to an 'appropriate assessment' under the Regulations. An appropriate assessment should also be carried out, as a matter of policy, where it is determined that a development plan is likely to have a significant effect on a Ramsar site or pSPA.

2.24 Selection of the best method for appropriate assessment is a judgement that should take account of good practice, although the options may be limited by the information available and the technical or scientific know-how. The method of assessment of the impact should be discussed and agreed with CCW to ensure it is "appropriate" as early as possible. A draft written proposal by the local planning authority would help inform this discussion. CCW will advise on the scope of the appropriate assessment on a plan by plan, and site by site, basis.

2.25 Where the HRA is being undertaken in parallel with the stages of a development plan SEA, the proposed scoping of the appropriate assessment could be done at SEA scoping stage. However the likely significant effects of the development plan, and thus the need for appropriate assessment, may not be apparent at the LDP SEA scoping stage due to the strategic nature of the plan proposals, which is why the iterative application of the HRA process should be followed.

2.26 Scoping an appropriate assessment is likely to involve the following:

- Adopting the method in this Annex or devising and agreeing with CCW an alternative assessment methodology;
- Identifying any additional information about the internationally designated sites necessary to undertake appropriate assessment;
- Identifying any plans or projects whose effects may need to be assessed in combination with the development plan's effects;

- Identifying any further information about changes likely to occur, both as a result of implementing the development plan's policies or proposals alone and as a result of its implementation in combination with other plans or projects, and the effects that these changes may have on the internationally designated sites; and
- If appropriate assessment is being conducted separately from the SEA process, deciding on whether to consult publicly and if so, on an appropriate consultation period, as the Habitats Regulations do not specify a time period for public consultation.

2.27 Additional information about the internationally designated sites might include, for example, information as to whether the site's features include any priority natural habitat types or priority species, whether the site's features are at favourable conservation status, and whether there are any impediments to improving their status, especially those that could be addressed by the plan.

2.28 Additional information about the changes likely to occur as a result of the implementation of the plan's proposals might include such matters as further details as to the precise boundaries of a proposed site, the proposed distribution or numbers of houses, and/or the floorspace of proposed employment or retail developments, etc. It might also include information about drainage, water abstraction, noise, etc. issues likely to result from the implementation of the plan's proposals.

2.29 The local planning authority should also agree with CCW the period which that body will be given to respond to the consultation on the appropriate assessment carried out under regulation 85B(2) when scoping is discussed. No specific period is prescribed by the Regulations.

### *The Appropriate Assessment (Figure 3, Boxes 8-9)*

2.30 The purpose of the Appropriate Assessment is to ensure that, prior to the development plan's adoption, all the aspects of the plan which could, by themselves or in combination with other plans or projects, affect any European site(s) or European offshore marine site(s) are identified in the light of the best scientific knowledge in the field<sup>157</sup>, so that a judgement can be made as to whether or not the development plan could have an adverse effect on the integrity of any such sites. The Appropriate Assessment also serves that same role, as a matter of policy, in relation to potential effects on Ramsar sites and pSPAs.

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<sup>157</sup> Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee*.

2.31 The work already undertaken by the local planning authority to determine the likelihood of significant effects of the development plan (see above) and the scoping of the appropriate assessment (see above) should enable the significant effects of the development plan (see above) and the scoping of the appropriate assessment to focus on those aspects of the development plan that are likely to have a significant effect on the conservation objectives of any one or more of the internationally designated site(s) described above. An ecological assessment of those potential effects will be required in order to determine whether they might adversely affect the integrity of the site(s) concerned.

2.32 At the appropriate assessment stage, when ascertaining whether the development plan's policies and proposals will have, or could have, adverse effects on the integrity of these internationally designated site(s), either alone or in combination with other plans or projects, regard should be had to avoidance, cancellation and reduction (mitigation) measures and whether there will be opportunities to further amend the development plan after considering the effects in more detail. However, compensatory measures should not be taken into account at appropriate assessment stage in assessing the impact of the plan on internationally designated sites<sup>158</sup>.

2.33 It is essential to appreciate that the appropriate assessment embodies the precautionary principle. It is for a local planning authority to ascertain that implementation of the development plan will not adversely affect the integrity of any internationally designated site<sup>159</sup> in order for the plan to proceed (subject to steps 14-20 in Figure 4). Further guidance on the appropriate assessment steps is provided in paragraphs 14-16 of Annex 3 above.

#### *Formal Consultation on Appropriate Assessment (Figure 3, Box 10)*

2.34 The local planning authority **must** consult CCW<sup>160</sup>, and have regard to its advice, under the provisions of regulation 85B(2) **before** ascertaining whether the plan could adversely affect the integrity of any European sites or European offshore marine sites, alone or in combination with other plans or projects. It should also follow the same process before assessing the plan's potential effects on any pSPAs or Ramsar sites. The local planning authority should discuss a draft of the output from the appropriate assessment with CCW prior to the formal consultation required by regulation 85B (2). Alterative consultation with CCW, as the development plan progresses is the best way to ensure that the requirements of regulation 85B(2) have been met.

<sup>158</sup> See, in relation to European sites and European offshore marine sites, the following document: European Commission, 2007, *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC*, section 1.4.

<sup>159</sup> Or, in the case of cSACs and pSPAs respectively, to ascertain that the development plan (i) will not seriously compromise the ecological characteristics of the cSAC, or (ii) will not cause significant pollution or deterioration of the pSPA, or significant disturbance of the bird species for which the pSPA has been proposed.

<sup>160</sup> Local planning authorities will also need to consult Natural England, which should be done through CCW, before ascertaining whether their plans could adversely affect the integrity of "European sites" in England.



2.35 Under the SEA Regulations<sup>161</sup>, the local planning authority must formally consult CCW on the SEA development plan scoping report and on the Environmental Report<sup>162</sup>. The SEA scoping stage may be an appropriate time to also consult CCW on the local planning authority's HRA determination as to whether the plan is likely to have significant effects and, where relevant, the draft scope of the appropriate assessment. However, development plan alternatives may not have been generated at SEA scoping stage. If they have not, CCW will be unlikely to confirm that the tests of the likelihood of significant effects have been finalised until all alternatives have been put before them. Therefore, the local planning authority should ensure that formal consultation under regulation 85B(2) of the Habitats Regulations is done at the most appropriate stage in their development plan process.

2.36 The local planning authority will also need to decide whether to consult the public for the purposes of the appropriate assessment and if so, how the consultation should be carried out<sup>163</sup>. It is good practice to make information on HRA available to the public at each formal development plan consultation stage, if possible. Where wide public consultation is deemed to be unnecessary, it may still be important to consult interested parties with expertise in nature conservation issues relevant to the appropriate assessment, such as the Royal Society for the Protection of Birds, the Environment Agency or the Forestry Commission.

2.37 Having formally consulted CCW and other stakeholders that may have information or expertise to assist the appropriate assessment the local planning authority must ascertain whether the development plan will avoid any adverse effect on the integrity of any European site or European offshore marine site (regulation 85B(4)), both alone and in combination with other plans or projects. A similar determination should also be made in relation to Ramsar sites and pSPAS<sup>164</sup>. The local planning authority should conclude that a plan would not adversely affect the integrity of an internationally designated site only if it has made **certain** that this is the case. In order to be certain, the local planning authority should be satisfied that no reasonable scientific doubt remains as to the absence of such effects<sup>165</sup>.

2.38 If the local planning authority ascertains following the appropriate assessment that the development plan will **not** adversely affect the integrity of any internationally designated site, either alone or in combination with other plans or projects, it should report these conclusions to the relevant Members of the plan making authority. The local planning authority should then submit the HRA to the Assembly Government at the relevant formal plan consultation stage, normally deposit stage for the LDP and UDP. See above for the relevant process and below in respect of development plan changes.

<sup>161</sup> The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (S.I. 2004/1656).

<sup>162</sup> *ibid*, regulations 12 and 13.

<sup>163</sup> Regulation 85B(3) of the Regulations.

<sup>164</sup> But see paragraph 2.42 of this Annex as regards pSPAs.

<sup>165</sup> Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee*.

2.39 If the local planning authority cannot ascertain that the development plan will not adversely affect the integrity of any European site or European offshore marine site (but see below in respect of cSACs), either because there would be an adverse effect or because the effects are uncertain, the plan cannot be progressed to adoption unless regulations 85C and 85E of the Habitats Regulations are complied with, as described below and in Figure 4<sup>166</sup>. This conclusion should also be reported to Members of the plan making authority and advised to CCW and the Assembly Government as soon as possible. The same approach should also be followed in relation to Ramsar sites (but see below in respect of pSPAs).

2.40 The situations in which local planning authorities may progress the development plan to adoption are more restricted where the plan could have an effect on cSACs or pSPAs:

- Where the development plan could have an effect on a cSAC, the local planning authority may progress the plan to adoption only if it is certain that the adoption of the plan will not seriously compromise the ecological characteristics of the cSAC (either alone or in combination with other plans or projects).
- Where the development plan could have an effect on a pSPA, the local planning authority may progress the plan to adoption only if it is certain that the adoption of the plan will not cause significant pollution or deterioration of the pSPA, or significant disturbance of the bird species for which the pSPA has been proposed (either alone or in combination with other plans or projects).

#### *Recording the Habitats Regulations Appraisal (Figure 3, Boxes 11-13)*

2.41 A sustainability appraisal report or SEA Environmental Report could include a chapter or appendix that sets out a straightforward explanation of the HRA, including:

- a summary of the assessment of the likelihood of significant effects (both alone and in combination with other plans and projects);
- the representations made by CCW and others;
- if applicable, the findings of the appropriate assessment;
- whether it has been ascertained that the plan will not adversely affect the integrity of the internationally designated sites (and will not impact on any cSACs or pSPAs in the manner described in paragraph 2.42 of this Annex), either alone or in combination with other plans and projects;
- any avoidance or mitigation measures relied upon to make that judgement; and
- if relevant, a summary of any considerations under regulations 85C and 85E (see below).

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<sup>166</sup> See paragraph 1.11 of this Annex for authorisation of plan adoption that impact upon a cSAC.

## *Nature Conservation & Planning*

Where this is done, however, the HRA should be clearly identified and should be kept distinct from the SA/SEA.

### *Development Plan Changes and HRA*

2.42 The iterative processes of development plan preparation, with its accompanying SEA, should ensure that environmental effects of the plan are fully taken into account and that any potentially adverse effects on the integrity of internationally designated sites are avoided or minimised by the time a development plan is made the subject of a UDP Inquiry or LDP Examination. However, it is important to bear in mind that the HRA is a distinct process with its own requirements.

2.43 If a change to an LDP is deemed necessary at the LDP Examination in order to make the LDP sound then it may be necessary for a further HRA to be conducted by the local planning authority. A further HRA will be necessary where the change could give rise to a possibility that the plan could have a significant effect on an internationally designated site, either alone or in combination with other plans or projects.

2.44 A further HRA may also be necessary if an Inspector recommends that a UDP be adopted subject to modifications, and those modifications could give rise to a possibility that the plan could have a significant effect on an internationally designated site, either alone or in combination with other plans or projects.

2.45 Where a further HRA is necessary as a result of such recommended changes or modifications, the planning authority must formally consult CCW (in accordance with regulation 85B) before ascertaining whether the development plan would adversely affect the integrity of a European site or European offshore marine site if it were to incorporate such changes or modifications, and should also do, as a matter of policy, before ascertaining the effects on pSPAs and Ramsar sites. (The local planning authority may also consult the public if it wishes, but does not have to do so.) The further HRA should be recorded and reported as previously indicated above and if the further HRA is carried out as a result of proposed modifications to a UDP, it should be made available to the public during consultation on the modifications.

*Alternative Solutions and Imperative Reasons of Overriding Public Interest  
(Figure 4, Boxes 14-18)*

*Alternative Solutions*

2.46 If a local planning authority is unable to ascertain that a proposed development plan policy or proposal will not adversely affect the integrity of a European site or European offshore marine site, it may progress to adoption of the development plan only in the closely defined circumstances set out in regulations 85C and 85E of the Habitats Regulations. **As indicated in 1.1 above, the Assembly Government expects that a development plan will only need to proceed by way of these later tests in regulations 85C and 85E in the most exceptional circumstances. In most cases, a local planning authority should change the development plan during the course of the HRA to ensure that it will not adversely affect the integrity of any European site or European offshore marine site.** The same approach should also be followed, as a matter of policy, in relation to Ramsar sites.

2.47 The option of progressing a development plan to adoption under regulations 85C and 85E will not be available where the development plan, either alone or in combination with other plans or projects:-

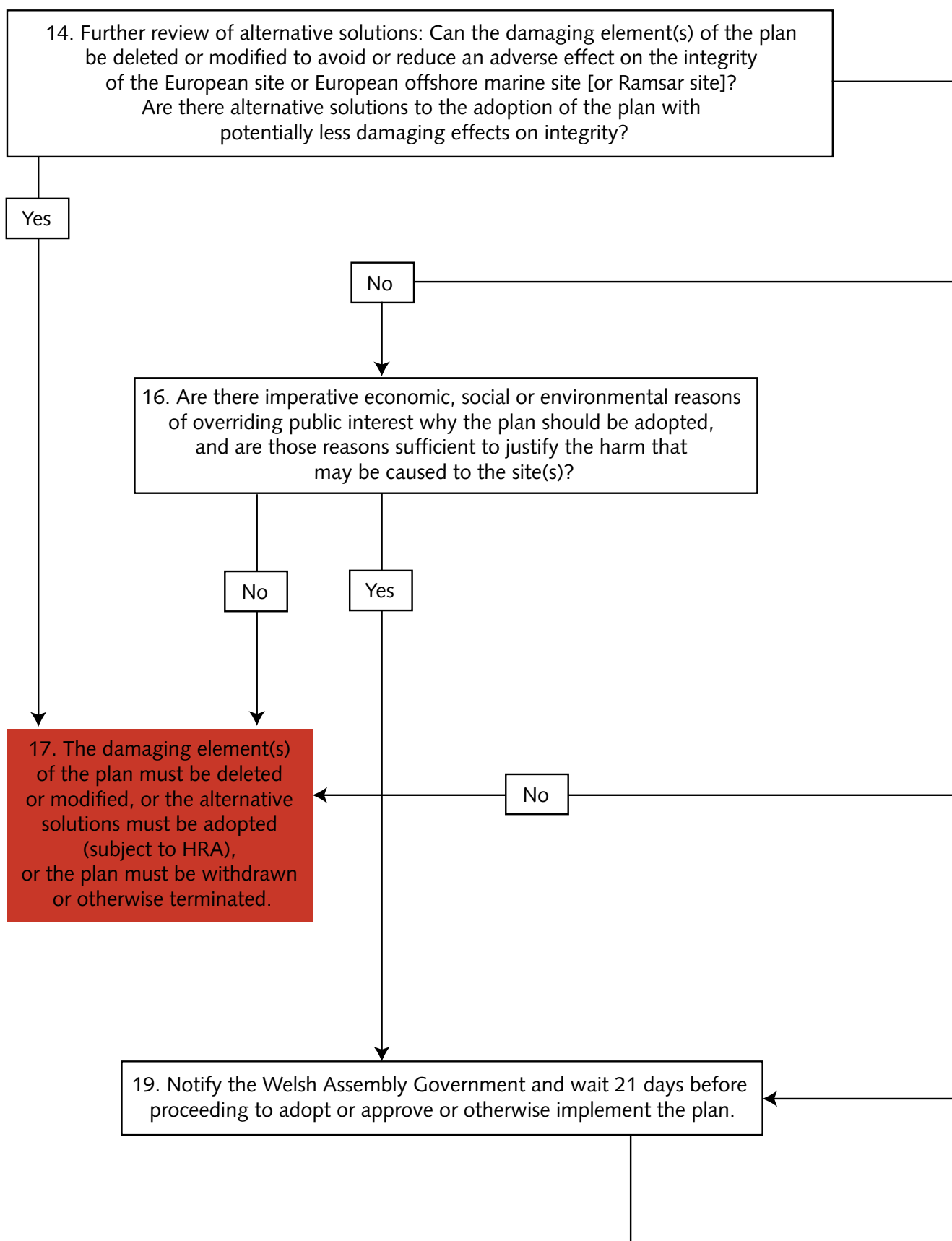
- i. could seriously compromise the ecological characteristics of a cSAC; or
- ii. could cause significant pollution or deterioration of a pSPA, or significant disturbance of the bird species for which a pSPA has been proposed.

In these situations, the local planning authority may not proceed to adopt the development plan under any circumstances.

2.48 In any exceptional case, where regulation 85C is applied to a proposed development plan, the local planning authority must first be satisfied that there are no alternative solutions. If there are any feasible alternative solutions that would have no effect, or a lesser effect, on a European site or European offshore marine site's integrity, the proposed development plan must be changed to apply the least damaging alternative and thereby remove or minimise the effect on the site's integrity. The same approach should also be adopted, as a matter of policy, in relation to Ramsar sites.

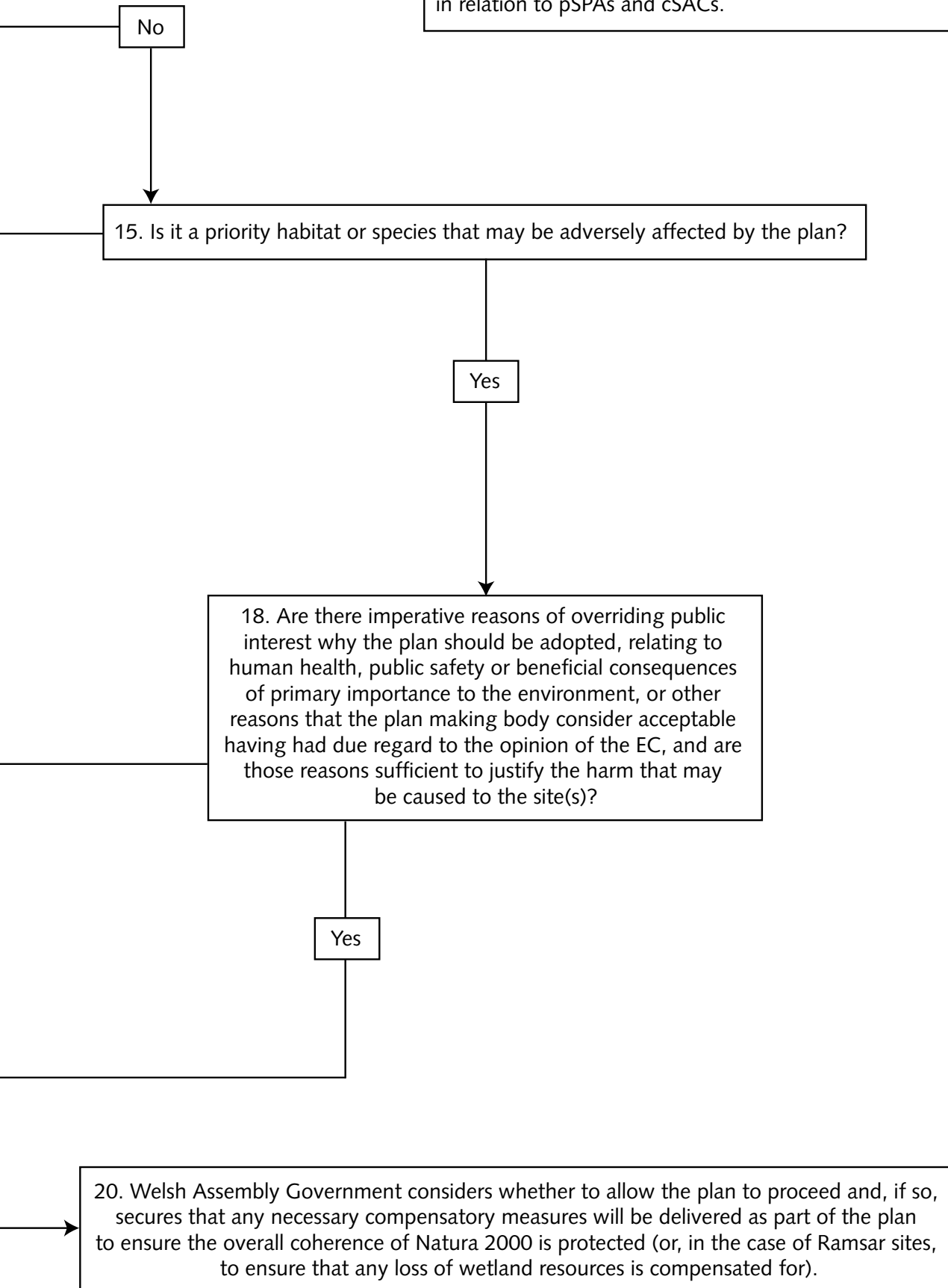
## ASSESSMENT UNDER REGULATIONS 85C and 85E

(Additional procedures where it cannot be ascertained that there would be no adverse effect on the



integrity of an international site [see Note below])

**Note** - The procedures set out in this Figure do not apply in relation to pSPAs and cSACs.





2.49 What constitutes an alternative solution in any particular case will depend on the nature of the proposed policies or the scale or location of any proposal(s) that may cause the adverse effects on the site. Alternative solutions are likely to include deletion or modification of the offending policies, or removal of proposals from the plan, or the relocation or reduction in scale of proposals. Even if the development plan's overall strategy needs to be adjusted to accommodate these changes, this adjustment would still be considered to be an alternative solution to the adoption of the plan in its current form (Figure 4, Boxes 14-18).

2.50 Further guidance on the consideration of alternative solutions, is found in Annex 3, paragraphs 27-28 of this TAN.

2.51 If there are no such alternative solutions, the local planning authority may consider whether there are imperative reasons of overriding public interest to justify the adoption of the plan despite its potentially negative effect on European site or European offshore marine site integrity. Different tests apply depending on whether the European site(s) or European offshore marine site(s) that may be affected host a priority habitat type or species that would be affected by the plan<sup>167</sup>. The European Commission has issued guidance which states that it is not the mere presence of a priority habitat or species that is relevant to this test but whether it could or would be adversely affected by the plan.

2.52 If the European site or European offshore marine site does **not** host a priority natural habitat type or species that could be affected by the plan, **the plan may be adopted only if it must be given effect for imperative reasons of overriding public interest, including those of a social or economic nature**<sup>168</sup>. Such reasons would need to be sufficient to outweigh the adverse effects on the European site or European offshore marine site's interest features. The same approach should be adopted, as a matter of policy, in relation to the adoption of Ramsar sites.

2.53 If a site **does** host a priority habitat or species that could be affected by the development plan, the overriding public interest considerations which may justify the adoption of the plan are even narrower. In these circumstances, the imperative reasons of overriding public interest must **relate to human health, public safety, or beneficial consequences of primary importance to the environment, or other imperative reasons of overriding public interest, provided the planning authority has had due regard to the opinion of the European Commission in satisfying itself that there are such reasons**<sup>169</sup>.

<sup>167</sup> Priority habitats and species are indicated by an asterisk in Annexes I and II of the Habitats Directive.

The citation saying why the site was designated will show whether it hosts a priority habitat or species.

<sup>168</sup> Regulation 85C(1) of the Regulations.

<sup>169</sup> Regulation 85C(3) of the Regulations.

**2.54 If the planning authority desires to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it must submit a written request to the Welsh Ministers as required by regulation 85C(4). The UK government may then seek the Commission's opinion and transmit it to the Welsh Ministers, who will transmit it to the local planning authority.**

2.55 There will be few cases where it should be judged that there are imperative reasons of overriding public interest which allow a plan to proceed, despite the fact that the plan will have an adverse effect on the integrity of European sites, European offshore marine sites or Ramsar sites. The judgement will involve an assessment of the importance of the plan's proposals and whether they are sufficient to override the harm to the nature conservation importance of that site at an international level.

2.56 Further guidance in respect of imperative reasons of overriding public interest is found in Annex 3, paragraphs 28-37 of this TAN and in the European Commission's guidance document on Article 6(4) of the Habitats Directive 92/43/EC<sup>170</sup>.

*Further procedures under Regulations 85C and 85E (Figure 4 Boxes 19-20)*

2.57 If a local planning authority continues to pursue its development plan without change to adoption, despite a negative or uncertain outcome of the HRA on any European site or European offshore marine site, regulation 85C(8) and (9) requires the authority to notify the Welsh Ministers and, having done so, not to give effect to the plan for 21 days unless the Welsh Ministers notify it that it may do so.

2.58 Regulation 85C(7) provides that in any such case the Welsh Ministers may give directions to the planning authority prohibiting them from adopting the development plan, either indefinitely or for the period specified in the direction.

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<sup>170</sup> European Commission, 2001, *Guidance document on the Assessment of Plans and Projects significantly affecting Natura 2000 sites* [http://ec.europa.eu/environment/nature/natura2000/management/guidance\\_en.htm#art6](http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm#art6). Although this document contains useful guidance on the carrying out of HRA, it pre-dates the European Court of Justice's judgment in Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee* and the High Court's judgment in *The Queen on the Application of Hart District Council v. The Secretary of State for Communities and Local Government and others* [2008] EWHC 1204 (Admin) and should be read in the light of those two judgements.



## KEY LEGISLATIVE PROVISIONS FOR THE PROTECTION OF SPECIES

### Introduction

1. The breach of protected species legislation can often give rise to a criminal offence. A grant of planning permission does not relieve a developer from compliance with the protected species legislation and offences may be committed during the development of land, even where the development is in accordance with a valid planning permission.

### Protection afforded to species under the Habitats Regulations

#### *European protected species of animals*

2. The species of animals listed in Annex IV(a) to the Habitats Directive whose natural range includes any area in Great Britain are referred to as European protected species within the Habitats Regulations<sup>171</sup>. European protected species of animals are identified with a 'Yes' in the third column of Table 2 in **Annex 8** below.

3. When dealing with cases where a European protected species of animal may be affected, a local 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.

4. Under regulation 39 of the Habitats Regulations, subject to certain exceptions and in the absence of a licence, it is unlawful to:

- a. deliberately capture, injure or kill; or
- b. deliberately disturb; or
- c. deliberately take or destroy the eggs of;  
a wild animal of a European protected species,

or to:

- d. damage or destroy a breeding site or resting place of a wild animal of a European protected species.

This offence applies to all stages of the life of the animal.<sup>172</sup>

<sup>171</sup> Regulation 38 of the Habitats Regulations 1994.

<sup>172</sup> Regulation 39(4) The Habitats Regulations 1994.

5. It is also an offence, subject to certain exceptions and in the absence of a licence, to possess or control, transport, sell or exchange or offer for sale or exchange<sup>173</sup> any live or dead animal, or part of an animal, which has been taken from the wild and is of any species or subspecies listed in Annex IV(a) to the Habitats Directive, or any part of, or anything derived from, such an animal.<sup>174</sup>

### *European protected species of plants*

7. The species of plants listed in Annex IV(b) to the Habitats Directive whose natural range includes any area in Great Britain are referred to as 'European protected species' within the Habitats Regulations<sup>175</sup>. European protected species of plants are those listed in the first part of Table 3 in **Annex 8** below.

8. When dealing with cases where a European protected species of plant may be affected, a local 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.

9. Under regulation 43 of the Habitats Regulations, subject to certain exceptions and in the absence of a licence, it is unlawful deliberately to pick, collect, uproot or destroy a wild plant of a European protected species<sup>176</sup>. It is also an offence, subject to certain exceptions or in the absence of a licence, to possess, control, transport, sell, exchange, or offer for sale or exchange<sup>177</sup> any live or dead plant which has been taken from the wild and which is of a species or subspecies listed in Annex II(b) or Annex IV(b) to the Habitats Directive, or any part of, or anything derived from such a plant.<sup>178</sup>

10. All of the above offences apply to all stages of the biological cycle of the plants to which they apply<sup>179</sup>.

## **Protection afforded to species by the Wildlife and Countryside Act 1981**

### *Protection of Birds*

11. 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 to damage, take or destroy the nest of any wild bird whilst that nest is being built or in use, or to take or destroy its eggs.<sup>180</sup> Consequently, even common birds such as blackbirds or robins, and their nests and eggs are protected

<sup>173</sup> Regulation 39(2) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>174</sup> Regulation 39(3) The Conservation (Natural Habitats, &c) Regulations 1994.

<sup>175</sup> Regulation 42 The Conservation (Natural Habitats, &c) Regulations 1994.

<sup>176</sup> Regulation 43(1) The Conservation (Natural Habitats, &c) Regulations 1994.

<sup>177</sup> Regulation 43(2) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>178</sup> S.13(2) Wildlife and Countryside Act 1981.

<sup>179</sup> Regulation 43(4) The Conservation (Natural Habitats &c) Regulations 1994.

<sup>180</sup> S.1(1) Wildlife and Countryside Act 1981, as amended.

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 in, on or near a nest containing eggs or young; or to disturb their dependent young.<sup>181</sup> For eagles and ospreys (listed in Schedule ZA1 of the 1981 Act) it is also an offence to take, damage or destroy the nest at any time. (Table 1 of **Annex 8** below contains the list of bird species in Part 1 of Schedule 1 which are protected at all times.) Licences to enable surveys to be carried out can be granted by CCW under section 16 of the Act but licences cannot be issued to facilitate development.

### Protection of animals

12. Part I of the Wildlife and Countryside Act 1981 (as amended) affords protection to wild animals of the species listed in Schedule 5, most of which are not European protected species (see Table 2, **Annex 8** below). All local authorities are informed about changes to the Schedule. With certain exceptions detailed in Table 2, **Annex 8** below, and in the absence of a licence or a relevant defence, it is an offence in respect of any wild animal of a species listed in Schedule 5 to:

- i. intentionally kill, injure or take any wild animal of such a listed species<sup>182</sup>;
- ii. intentionally or recklessly damage or destroy or obstruct access to any structure or place which any wild animal of a listed species uses for shelter or protection (at any time even when the animal is not there)<sup>183</sup>;
- iii. intentionally or recklessly disturb a wild animal of a listed species whilst it is occupying such a structure or place which it uses for that purpose<sup>184</sup>;
- iv. trade<sup>185</sup> in a wild animal of a listed species whether alive or dead, or any part of it or anything derived from it, or publish an advertisement, or cause an advertisement to be published, which is likely to be understood as meaning that a person trades, or intends to trade, in this way<sup>186</sup>;
- v. intentionally or recklessly disturb a dolphin, whale or basking shark wherever it may be<sup>187</sup>;
- vi. possess or control a live or dead wild animal of a listed species, or any part of it or anything derived from it<sup>188</sup>.

<sup>181</sup> Section 1(5) Wildlife and Countryside Act 1981, as amended.

<sup>182</sup> Section 9(1) Wildlife and Countryside Act 1981, as amended.

<sup>183</sup> Section 9(4)(a) Wildlife and Countryside Act 1981 as amended by Countryside and Rights of Way Act 2000 Schedule 12 paragraph 5.

<sup>184</sup> *ibid.* S.9(4)(b).

<sup>185</sup> 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, S.9(5) Wildlife and Countryside Act 1981.

<sup>186</sup> Section 9(5) Wildlife and Countryside Act 1981.

<sup>187</sup> *ibid.* section 9(4)(A).

<sup>188</sup> *ibid.* section 9(2).



## Nature Conservation & Planning

13. Some species are covered by one or more, but not all, of these provisions, as listed in **Annex 8**, Table 2 below.

### Protection of plants

14. Part I of the *Wildlife and Countryside Act 1981* (as amended) also affords protection to wild plants, most of which are not European protected species. Section 13 of the *Wildlife and Countryside Act 1981* (as amended) gives legal protection to certain wild plants listed in Schedule 8, and lesser protection to other wild plants not so listed. 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:

- 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;
- 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; or
- iv. publish, or cause to be published any advertisement likely to be understood as conveying that a person buys or sells, or intends to buy or sell, any of those things.

15. With the exception of the Bluebell, all plants listed in Schedule 8 are fully protected. The Bluebell is protected against sale only<sup>189</sup>.

### Protection of Badgers Act 1992

16. With certain exceptions, or in the absence of a licence, it is unlawful to kill, injure, take, possess or cruelly ill-treat a badger, or attempt to do so. It is also an offence intentionally or recklessly to damage a badger sett or any part of it, or to destroy a sett, or to obstruct access to, or any entrance of, a badger sett, or to cause a dog to enter a badger sett or to disturb a badger when it is occupying a sett. CCW 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.

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<sup>189</sup> Section 13(2) *Wildlife and Countryside Act 1981*, as amended.

## LISTS OF SPECIES PROTECTED BY LAW

This list is up-to-date at the time of publication. As legislation is updated these lists may be amended. Details of any amendments to legislation will be placed on the Welsh Assembly Government Website and you are advised to check them regularly. An up-to-date list by species can be found at: <http://www.jncc.gov.uk/page-3408> and an up-to-date list by Schedule will be available in due course.

**Table 1**

### Birds Protected at all times: Schedule 1 Wildlife and Countryside Act 1981 as amended

Avocet	Godwit, Black-tailed	Redstart, Black	Warbler, Cetti's
Bee-eater	Goshawk	Redwing	Warbler, Dartford
Bittern	Grebe, Black-necked	Rosefinch, Scarlet	Warbler, Marsh
Bittern, Little	Grebe, Slavonian	Ruff	Warbler, Savi's
Bluethroat	Greenshank	Sandpiper, Green	Whimbrel
Brambling	Gull, Little	Sandpiper, Purple	Woodlark
Bunting, Cirl	Gull, Mediterranean	Sandpiper, Wood	Wryneck
Bunting, Lapland	Harriers (all species)	Scaup	
Bunting, Snow	Heron, Purple	Scoter, Common	
Buzzard, Honey	Hobby	Scoter, Velvet	
Chough	Hoopoe	Serin	
Corncrake	Kingfisher	Shorelark	
Crake, Spotted	Kite, Red	Shrike, Red-backed	
Crossbills (all species)	Merlin	Spoonbill	
Curlew, Stone	Oriole, Golden	Stilt, Black-winged	
Divers (all species)	Osprey	Stint, Temminck's	
Dotterel	Owl, Barn	Swan, Bewick's	
Duck, Long-tailed	Owl, Snowy	Swan, Whooper	
Eagle, Golden	Peregrine	Tern, Black	
Eagle, White-tailed	Petrel, Leach's	Tern, Little	
Falcon, Gyr	Phalarope, Red-necked	Tern, Roseate	
Fieldfare	Plover, Kentish	Tit, Bearded	
Firecrest	Plover, Little Ringed	Tit, Crested	
Garganey	Quail, Common	Treecreeper, Short-toed	

Table 2

Protected Animals: Schedule 5 Wildlife and Countryside Act 1981 (as amended) and Schedule 2 Habitats Regulations 1994 (European protected animal species)

Key to Table 2

- EPS = European Protected Species where 'yes' is entered in the column the species is subject to the more rigorous protection of the Habitats Regulations 1994 as amended in addition to S.9(4)(b) and (c) and 9(4A) and 9(5) as the case may be.
- 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 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) and (c) = S.9(4)(b) and (c) intentionally or recklessly disturb an animal of a listed species whilst it is occupying a structure or place which it uses for shelter or protection, or obstruct access to any such structure or place.
- 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(4)(A) = S.9(4)(A) 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) and (c)	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		•*			•		

Common Name	Scientific Name	EPS	9(1)	9(4) (a)	9(4) (b) and (c)	9(5)	9(4A)	9(2)
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		•	•	•	•		•
<b>Butterflies</b>								
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					•		

Common Name	Scientific Name	EPS	9(1)	9(4) (a)	9(4) (b) and (c)	9(5)	9(4A)	9(2)
High Brown Fritillary	<i>Argynnis adippe</i>					•		
Marsh Fritillary	<i>Eurodryas aurinia</i>		•	•	•	•		•
Pearl-bordered Fritillary	<i>Boloria euphrosyne</i>					•		
Black Hairstreak	<i>Strymonidia pruni</i>					•		
Brown Hairstreak	<i>Thecla betulae</i>					•		
White Letter Hairstreak	<i>Stymonida w-album</i>					•		
Large Heath	<i>Coenonympha tullia</i>					•		
Mountain Ringlet	<i>Erebia epiphron</i>					•		
Chequered Skipper	<i>Carterocephalus palaemon</i>					•		
Lulworth Skipper	<i>Thymelicus acteon</i>					•		
Silver Spotted Skipper	<i>Hesperia comma</i>					•		
Large Tortoiseshell	<i>Nymphalis polychloros</i>					•		
Wood White	<i>Leptidea sinapis</i>					•		
Cat, Wild	<i>Felis silvestris</i>	Yes			•	•		
Cicada, New Forest	<i>Cicadetta montana</i>		•	•	•	•		•
Cricket, Field	<i>Gryllus campestris</i>		•	•	•	•		•
Cricket, Mole	<i>Gryllotalpa gryllotalpa</i>		•	•	•	•		•
Damselfly, Southern	<i>Coenagrion mercuriale</i>		•	•	•	•		•
Dolphins	Cetacea (all species)	Yes				•	•	
Dormouse	<i>Muscardinus avellanarius</i>	Yes			•	•		
Dragonfly, Norfolk Aeshna	<i>Aeshna isosceles</i>		•	•	•	•		•
Frog, Common	<i>Rana temporaria</i>					•		
Frog, Pool	<i>Rana lessonae</i>	Yes						

Common Name	Scientific Name	EPS	9(1)	9(4) (a)	9(4) (b) and (c)	9(5)	9(4A)	9(2)
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 pavidia		•	•	•	•		•
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	Yes			•	•		
Moth, New Forest Burnet	Zygaena viciae		•	•	•	•		•
Moth, Reddish Buff	Acosmetia caliginosa		•	•	•	•		•
Moth, Sussex Emerald	Thalera fimbrialis		•	•	•	•		•
Mussel, Fan	Atrina fragilis		•			•		•



Common Name	Scientific Name	EPS	9(1)	9(4) (a)	9(4) (b) and (c)	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		•	•	•	•		•
Seahorse, Shortsnouted	Hippocampus hippocampus							
Seahorse, Spiny	Hippocampus guttulatus							
Shad, Twaite	Alosa fallax			•				
Shark, Angel	Squatina squatina							
Shark, Basking	Cetorhinus maximus		•	•	•	•		•
Shrimp, Fairy	Chirocephalus diaphanus		•	•	•	•		•
Shrimp, Lagoon Sand	Gammarus insensibilis		•	•	•	•		•
Slow-worm	Anguis fragilis		•*			•		
Snail, Glutinous	Myxas glutinosa		•	•	•	•		•
Snail, Lesser Whirlpool Ram's-horn	Anisus vorticulus	Yes						
Snail, Roman	Helix pomatia							
Snail, Sandbowl	Catinella arenaria		•	•	•	•		•
Snake, Grass	Natrix helvetica		•*			•		
Snake, Smooth	Coronella austriaca	Yes			•	•		

Common Name	Scientific Name	EPS	9(1)	9(4) (a)	9(4) (b) and (c)	9(5)	9(4A)	9(2)
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			•	•		
Turtle Flatback	Natator depressus		•	•	•	•		•
Turtle, Olive Ridley	Lepidochelys olivacea							
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 Section 13(2) and Schedule 8 Wildlife and Countryside Act 1981 as amended and Regulation 42 Habitats Regulations 1994 (European protected plant species) as amended**

Dock, Shore	<i>Rumex rupestris</i>
Fern, Killarney	<i>Trichomanes speciosum</i>
Gentian, Early	<i>Gentianella anglica</i>
Lady's-slipper	<i>Cypripedium calceolus</i>
Marshwort, Creeping	<i>Apium repens</i>
Naiad, Slender	<i>Najas flexilis</i>
Orchid, Fen	<i>Liparis loeselii</i>
Plantain, Floating-leaved Water	<i>Luronium natans</i>
Saxifrage, Yellow Marsh	<i>Saxifraga hirculus</i>

**Plants Protected by S.13 and Schedule 8 Wildlife and Countryside Act 1981 as amended**

Adder's-tongue, Least	<i>Ophioglossum lusitanicum</i>
Alison, Small	<i>Alyssum alyssoides</i>
Anomodon, Long-leaved	<i>Anomodon longifolius</i>
Beech-lichen, New Forest	<i>Enterographa elaborata</i>
Blackwort	<i>Southbya nigrella</i>
Bluebell	<i>Hyacinthoides non-scripta</i> (in respect of S.13(2) only)
Bolete, Royal	<i>Boletus regius</i>
Broomrape, Bedstraw	<i>Orobanche caryophyllacea</i>
Broomrape, Oxtongue	<i>Orobanche loricata</i>
Broomrape, Thistle	<i>Orobanche reticulata</i>
Cabbage, Lundy	<i>Rhynchosinapis wrightii</i>
Calamint, Wood	<i>Calamintha sylvatica</i>
Caloplaca, Snow	<i>Caloplaca nivalis</i>
Catapyrenium, Tree	<i>Catapyrenium psoromoides</i>
Catchfly, Alpine	<i>Lychnis alpina</i>
Catillaria, Laurer's	<i>Catellaria laureri</i>
Centaury, Slender	<i>Centaureum tenuiflorum</i>
Cinquefoil, Rock	<i>Potentilla rupestris</i>
Cladonia, Convoluted	<i>Cladonia convoluta</i>

Cladonia, Upright Mountain	<i>Cladonia stricta</i>
Clary, Meadow	<i>Salvia pratensis</i>
Club-rush, Triangular	<i>Scirpus triquetrus</i>
Colt's-foot, Purple	<i>Homogyne alpina</i>
Cotoneaster, Wild	<i>Cotoneaster integerrimus</i>
Cottongrass, Slender	<i>Eriophorum gracile</i>
Cow-wheat, Field	<i>Melampyrum arvense</i>
Crocus, Sand	<i>Romulea columnae</i>
Crystalwort, Lizard	<i>Riccia bifurca</i>
Cudweed, Broad-leaved	<i>Filago pyramidata</i>
Cudweed, Jersey	<i>Gnaphalium luteoalbum</i>
Cudweed, Red-tipped	<i>Filago lutescens</i>
Cut-grass	<i>Leersia oryzoides</i>
Deptford Pink	<i>Dianthus armeria</i>
Diapensia	<i>Diapensia lapponica</i>
Earwort, Marsh	<i>Jamesoniella undulifolia</i>
Eryngo, Field	<i>Eryngium campestre</i>
Feather-moss, Polar	<i>Hygrohypnum polare</i>
Fern, Dickie's Bladder	<i>Cystopteris dickieana</i>
Flapwort, Norfolk	<i>Leiocolea rutheana</i>
Fleabane, Alpine	<i>Erigeron borealis</i>
Fleabane, Small	<i>Pulicaria vulgaris</i>
Frostwort, Pointed	<i>Gymnomitrium apiculatum</i>
Fungus, Hedgehog	<i>Hericium erinaceum</i>
Galingale, Brown	<i>Cyperus fuscus</i>
Gentian, Alpine	<i>Gentiana nivalis</i>
Gentian, Dune	<i>Gentianella uliginosa</i>
Gentian, Fringed	<i>Gentianella ciliata</i>
Gentian, Spring	<i>Gentiana verna</i>
Germander, Cut-leaved	<i>Teucrium botrys</i>
Germander, Water	<i>Teucrium scordium</i>
Gladiolus, Wild	<i>Gladiolus illyricus</i>
Goblin Lights	<i>Catolechia wahlenbergii</i>
Goosefoot, Stinking	<i>Chenopodium vulvaria</i>
Grass-poly	<i>Lythrum hyssopifolia</i>

Grimmia, Blunt-leaved	Grimmia unicolor
Gyalecta, Elm	Gyalecta ulmi
Hare's-ear, Sickle-leaved	Bupleurum falcatum
Hare's-ear, Small	Bupleurum baldense
Hawk's-beard, Stinking	Crepis foetida
Hawkweed, Northroe	Hieracium northroense
Hawkweed, Shetland	Hieracium zetlandicum
Hawkweed, Weak-leaved	Hieracium attenuatifolium
Heath, Blue	Phyllodoce caerulea
Helleborine, Red	Cephalanthera rubra
Helleborine, Young's	Epipactis youngiana
Horsetail, Branched	Equisetum ramosissimum
Hound's-tongue, Green	Cynoglossum germanicum
Knawel, Perennial	Scleranthus perennis
Knotgrass, Sea	Polygonum maritimum
Lecanactis, Churchyard	Lecanactis hemisphaerica
Lecanora, Tarn	Lecanora archariana
Lecidea, Copper	Lecidea inops
Leek, Round-headed	Allium sphaerocephalon
Lettuce, Least	Lactuca saligna
Lichen, Arctic Kidney	Nephroma arcticum
Lichen, Ciliate Strap	Heterodermia leucomelos
Lichen, Coralloid Rosette	Heterodermia propagulifera
Lichen, Ear-lobed Dog	Peltigera lepidophora
Lichen, Forked Hair	Bryoria furcellata
Lichen, Golden Hair	Teloschistes flavicans
Lichen, Orange Fruited Elm	Caloplaca luteoalba
Lichen, River Jelly	Collema dichotomum
Lichen, Scaly Breck	Squamarina lentigera
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	<i>Selinum carvifolia</i>
Moss	<i>Drepanocladus vernicosus</i>
Moss, Alpine Copper	<i>Mielichoferia mielichoferi</i>
Moss, Baltic Bog	<i>Sphagnum balticum</i>
Moss, Blue Dew	<i>Saelania glaucescens</i>
Moss, Blunt-leaved Bristle	<i>Orthotrichum obtusifolium</i>
Moss, Bright Green Cave	<i>Cyclodictyon laetevirens</i>
Moss, Cordate Beard	<i>Barbula cordata</i>
Moss, Cornish Path	<i>Ditrichum cornubicum</i>
Moss, Derbyshire Feather	<i>Thamnobryum angustifolium</i>
Moss, Dune Thread	<i>Bryum mamillatum</i>
Moss, Flamingo	<i>Desmatodon cernuus</i>
Moss, Glaucous Beard	<i>Barbula glauca</i>
Moss, Green Shield	<i>Buxbaumia viridis</i>
Moss, Hair Silk	<i>Plagiothecium piliferum</i>
Moss, Knothole	<i>Zygodon forsteri</i>
Moss, Large Yellow Feather	<i>Scorpidium turgescens</i>
Moss, Millimetre	<i>Micromitrium tenerum</i>
Moss, Multifruited River	<i>Cryphaea lamyana</i>
Moss, Nowell's Limestone	<i>Zygodon gracilis</i>
Moss, Rigid Apple	<i>Bartramia stricta</i>
Moss, Round-leaved Feather	<i>Rhyncostegium rotundifolium</i>
Moss, Schleicher's Thread	<i>Bryum schleicheri</i>
Moss, Triangular Pygmy	<i>Acaulon triquetrum</i>
Moss, Vaucher's Feather	<i>Hypnum vaucheri</i>
Mudwort, Welsh	<i>Limosella australis</i>
Naiad, Holly-leaved	<i>Najas marina</i>
Orache, Stalked	<i>Halimione pedunculata</i>
Orchid, Early Spider	<i>Ophrys sphegodes</i>
Orchid, Ghost	<i>Epipogium aphyllum</i>
Orchid, Lapland Marsh	<i>Dactylorhiza lapponica</i>
Orchid, Late Spider	<i>Ophrys fuciflora</i>
Orchid, Lizard	<i>Himantoglossum hircinum</i>
Orchid, Military	<i>Orchis militaris</i>



Orchid, Monkey	<i>Orchis simia</i>
Pannaria, Caledonia	<i>Pannaria ignobilis</i>
Parmelia, New Forest	<i>Parmelia minarum</i>
Parmentaria, Oil Stain	<i>Parmentaria chilensis</i>
Pear, Plymouth	<i>Pyrus cordata</i>
Penny-cress, Perfoliate	<i>Thlaspi perfoliatum</i>
Pennyroyal	<i>Mentha pulegium</i>
Pertusaria, Alpine Moss	<i>Pertusaria bryontha</i>
Physcia, Southern Grey	<i>Physcia tribacioides</i>
Pigmyweed	<i>Crassula aquatica</i>
Pine, Ground	<i>Ajuga chamaepitys</i>
Pink, Cheddar	<i>Dianthus gratianopolitanus</i>
Pink, Childling	<i>Petroraghia nanteuillii</i>
Polypore, Oak	<i>Buglossoporus pulvinus</i>
Pseudocyphellaria, Ragged	<i>Pseudocyphellaria lacerata</i>
Psora, Rusty Alpine	<i>Psora rubiformis</i>
Puffball, Sandy Stilt	<i>Battarraea phalloides</i>
Ragwort, Fen	<i>Senecio paludosus</i>
Ramping-fumitory, Martin's	<i>Fumaria martinii</i>
Rampion, Spiked	<i>Phyteuma spicatum</i>
Restharrow, Small	<i>Ononis reclinata</i>
Rock-cress, Alpine	<i>Arabis alpina</i>
Rock-cress, Bristol	<i>Arabis stricta</i>
Rustwort, Western	<i>Marsupella profunda</i>
Sandwort, Norwegian	<i>Arenaria norvegica</i>
Sandwort, Teesdale	<i>Minuartia stricta</i>
Saxifrage, Drooping	<i>Saxifraga cernua</i>
Saxifrage, Tufted	<i>Saxifraga cespitosa</i>
Solomon's-seal, Whorled	<i>Polygonatum verticillatum</i>
Solenopsora, Serpentine	<i>Solenopsora liparina</i>
Sow-thistle, Alpine	<i>Cicerbita alpina</i>
Spearwort, Adder's-tongue	<i>Ranunculus ophioglossifolius</i>
Speedwell, Fingered	<i>Veronica triphyllos</i>
Speedwell, Spiked	<i>Veronica spicata</i>

Spike-rush, Dwarf	<i>Eleocharis parvula</i>
Stack Fleawort, South	<i>Tephrosieris integrifolia</i> (ssp. <i>maritima</i> )
Star-of-Bethlehem, Early	<i>Gagea bohemica</i>
Starfruit	<i>Damasonium alisma</i>
Stonewort, Bearded	<i>Chara canescens</i>
Stonewort, Foxtail	<i>Lamprothamnium papulosum</i>
Strapwort	<i>Corrigiola litoralis</i>
Sulphur-tresses, Alpine	<i>Alectoria ochroleuca</i>
Threadmoss, Long-leaved	<i>Bryum neodamense</i>
Turpswort	<i>Geocalyx graveolens</i>
Violet, Fen	<i>Viola persicifolia</i>
Viper's-grass	<i>Scorzonera humilis</i>
Water-plantain, Ribbon Leaved	<i>Alisma gramineum</i>
Wood-sedge, Starved	<i>Carex depauperata</i>
Woodsia, Alpine	<i>Woodsia alpina</i>
Woodsia, Oblong	<i>Woodsia ilvensis</i>
Wormwood, Field	<i>Artemisia campestris</i>
Woundwort, Downy	<i>Stachys germanica</i>
Woundwort, Limestone	<i>Stachys alpina</i>
Yellow-rattle, Greater	<i>Rhinanthus serotinus</i>

## **LIST OF SPECIES AND HABITATS OF PRINCIPAL IMPORTANCE FOR THE CONSERVATION OF BIOLOGICAL DIVERSITY IN WALES**

Sections 40 and 42 of the Natural Environment and Rural Communities Act 2006 place a duty on the Assembly Government to have regard to the purpose of conserving biodiversity, to publish a list of living organisms and types of habitats of principal importance for the purpose of conserving biodiversity in Wales, and to take, and promote others to take, reasonably practicable steps to further their conservation. The list of species and habitats of principal importance for the conservation of biological diversity identified by the National Assembly for Wales can be found at the following link:  
[http://www.biodiversitywales.org.uk/biodiversity\\_in\\_wales-2.aspx](http://www.biodiversitywales.org.uk/biodiversity_in_wales-2.aspx)

## COUNTRYSIDE COUNCIL FOR WALES

The Countryside Council for Wales (CCW) champions the environment and landscapes of Wales and its coastal waters as sources of natural and cultural riches, as a foundation for social and economic activity and as a place for leisure and learning opportunities.

In terms of nature conservation, the principal functions of CCW are:

- The notification of areas of land which, in the opinion of CCW, are of special interest by reason of their flora, fauna or geological or physiographical features, known as Sites of Special Scientific Interest (SSSI), the regulation of operations likely to damage those interest features, and the encouragement of their management for conservation;
- The implementation, on behalf of Government, of international conventions and European Directives on or affecting nature conservation in Wales, with responsibilities for the Habitats and Birds Directives and the Ramsar Convention;
- The establishment, declaration and management of National Nature Reserves (NNR);
- The provision of advice to Government on the development and implementation of policies for or affecting nature conservation, and the provision of advice and information on nature conservation to other organisations and individuals;
- The widespread provision of advice and support for education on conservation;
- The commissioning and support of research relevant to CCW's role and responsibilities;
- Issuing licences which permit people to work with certain protected animals and plants;
- Through the Joint Nature Conservation Committee (JNCC) to work with equivalent organisations in England, Scotland and Northern Ireland to advise Government on UK and international nature conservation issues.

In the town and country planning system, CCW is a statutory consultee in respect of:

- Local development plans, including their Habitats Regulations appraisal and strategic environmental assessment;
- Planning applications and other applications for consents, or proposals by a section 28G authority to carry out operations, which are likely to affect the interest features of a SSSI;
- Plans and projects likely to have a significant effect on a European site (and as a matter of policy a Ramsar Site, cSAC or pSPA);

## Nature Conservation & Planning

- The assessment of permitted development likely to have a significant effect on a European site;
- All plans and projects subject to the requirements of the various Environmental Impact Assessment Regulations in Wales;
- Proposals involving major accident hazards where an area of particular natural sensitivity or interest might be affected.

Protocols between local planning authorities and CCW can help to make the partnership more effective. Topics could include:

- matters on which the authority will consult CCW;
- timescales for responding to consultations;
- the content of CCW responses;
- the type and format of information provided by CCW;
- regular meetings, input to development plan preparation and discussions on major issues and cases;
- informing CCW of planning decisions; and
- named contacts and responsibilities

### CCW contact points

#### **Headquarters:**

Maes y Fynnon  
Ffordd Penrhos  
Bangor  
Gwynedd LL57 2DW  
Tel. 01248 385 500  
e-mail: [enquiries@ccw.gov.uk](mailto:enquiries@ccw.gov.uk)

#### **North Wales** (offices in Bangor, Dolgellau and Mold):

Tel. 0845 1306 229  
e-mail: [northernteam@ccw.gov.uk](mailto:northernteam@ccw.gov.uk)

#### **West Wales** (offices in Aberystwyth, Llandeilo and Swansea):

Tel. 0845 1306 229  
e-mail: [westernteam@ccw.gov.uk](mailto:westernteam@ccw.gov.uk)

#### **South and East Wales** (offices in Abergavenny, Cardiff, Cardiff Bay, Llandrindod Wells and Newtown):

Tel. 0845 1306 229  
e-mail: [southernteam@ccw.gov.uk](mailto:southernteam@ccw.gov.uk)

Details for each of the regional offices are available on CCW's website: [www.ccw.gov.uk](http://www.ccw.gov.uk)

## OTHER USEFUL CONTACTS

The Amphibian and Reptile Conservation Trust - [www.arc-trust.org](http://www.arc-trust.org)  
The Association of Local Government Ecologists - [www.alge.org.uk](http://www.alge.org.uk)  
The Bat Conservation Trust - [www.bats.org.uk](http://www.bats.org.uk)  
Local Record Centres Wales - [www.lrcwales.org.uk](http://www.lrcwales.org.uk)  
British Trust for Ornithology - [www.bto.org](http://www.bto.org)  
Buglife - The Invertebrate Conservation Trust - [www.buglife.org.uk](http://www.buglife.org.uk)  
British Bryological Society - [www.britishbryologicalsociety.org.uk](http://www.britishbryologicalsociety.org.uk)  
British Lichen Society - [www.thebls.org.uk](http://www.thebls.org.uk)  
Butterfly Conservation - [www.butterfly-conservation.org](http://www.butterfly-conservation.org)  
Countryside Council for Wales - [www.ccw.gov.uk](http://www.ccw.gov.uk)  
The Environment Agency Wales - [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)  
Environment Link (Wales) - [www.waleslink.org](http://www.waleslink.org)  
Flora Locale - [www.floralocale.org](http://www.floralocale.org)  
The Forestry Commission Wales - [www.forestry.gov.uk/wales](http://www.forestry.gov.uk/wales)  
The Geological Society - [www.geolsoc.org.uk/index.html](http://www.geolsoc.org.uk/index.html)  
Institute of Ecology and Environmental Management - [www.ieem.net](http://www.ieem.net)  
The Mammal Society - <http://88.208.205.92/>  
The Mammals Trust - [www.ptes.org/](http://www.ptes.org/)  
The Marine Conservation Society - [www.mcsuk.org](http://www.mcsuk.org)  
The National Biodiversity Network - [www.searchnbn.net](http://www.searchnbn.net)  
National Federation of Badger Groups - [www.badger.org.uk](http://www.badger.org.uk)  
National Federation of Biological Recording - [www.nfbr.org.uk](http://www.nfbr.org.uk)  
The National Trust - [www.nationaltrust.org.uk/main](http://www.nationaltrust.org.uk/main)  
Plantlife International - [www.plantlife.org.uk](http://www.plantlife.org.uk)  
Pond Conservation Trust - [www.pondconservation.org.uk](http://www.pondconservation.org.uk)  
Royal Society for the Protection of Birds - [www.rspb.org.uk](http://www.rspb.org.uk)  
Wales Biodiversity Partnership - [www.biodiversitywales.org.uk](http://www.biodiversitywales.org.uk)  
Wildfowl and Wetlands Trust - [www.wwt.org.uk](http://www.wwt.org.uk)  
The Wildlife Trusts - [www.wildlifetrusts.org](http://www.wildlifetrusts.org)  
The Woodland Trust - [www.woodlandtrust.org.uk](http://www.woodlandtrust.org.uk)  
The Worldwide Fund for Nature - [www.wwf.org.uk](http://www.wwf.org.uk)





## **THE BIRDS DIRECTIVE**

The Council of European Communities Directive of 2 April 1979 on the conservation of wild birds (79/409/EEC).

## **THE HABITATS DIRECTIVE**

The Council of European Communities Directive of 21 May 1992 on the conservation of natural habitats and wild fauna and flora (92/43/EEC).

## **THE RAMSAR CONVENTION**

Convention on wetlands of international importance especially as waterfowl habitat (Ramsar 2.2.1971: as amended by the Protocol of 3.12.1982).

All the above can be accessed via the Joint Nature Conservation Committee (JNCC) website: [www.jncc.gov.uk/page-1372](http://www.jncc.gov.uk/page-1372).

## GLOSSARY

**Appropriate assessment** - the assessment that is required to be undertaken by a competent authority in respect of plans or projects which are likely to have a significant effect on a "European site" (see paragraph 5.1.2 of this TAN), or as a matter of policy a proposed "European site" or Ramsar site, under the provisions of Article 6(3) of the EC Directive 92/43/ECC (the Habitats Directive) and regulations 48 and 85B of the Conservation (Natural Habitats &c) Regulations 1994 and regulation 25 of the Offshore Marine Conservation (Natural Habitats &c) Regulations 2007.

**Avoidance measures** - measures taken or proposed to be taken that are designed to avoid (eliminate) adverse effects of change, such as locating a development away from areas of ecological interest.

**Biodiversity (or Biological Diversity)** - is the term applied to the variety of life on earth and is short for biological diversity. It includes all plants, animals and micro-organisms (species diversity), the places where they live (habitat diversity) and the genetic differences between individuals that drives adaptability and evolution (genetic diversity). It includes habitats influenced by human kind. In a nutshell you can consider biodiversity to be "all life on the planet."

**Cancellation measures** - measures taken or proposed to be taken that are designed to cancel out adverse effects of change, should they occur, in respect of areas of ecological interest.

**Compensatory measures/compensation** - measures taken or proposed to be taken to offset, or make up for, residual adverse effects resulting from development or other change after all avoidance, cancellation and reduction measures have been applied.

**Designated Sites** - collective term for specific sites, capable of being identified on a map, and recognised for their nature conservation value which is usually described in a written citation. The following abbreviations are used in the TAN:

- **pSAC** - Possible Special Area of Conservation, i.e. from the point at which CCW has identified the site as a possible SAC, through the consultation stage and until immediately before it is submitted to Europe.
- **cSAC** - Candidate Special Area of Conservation, i.e. between being submitted to Europe and the point at which it is adopted by the European Commission.
- **SCI** - Site of Community Importance, i.e. once adopted by the European Commission (treated as a SAC).
- **SAC** - Special Area of Conservation - once designated by the Minister.

- **pSPA** - Potential Special Protection Area, i.e. from the point at which CCW has identified the site as a possible SPA until it is classified by the Minister.
- **SPA** - Special Protection Area, i.e. once classified by the Minister.
- **pRamsar** - Possible wetland of international importance, Ramsar Convention, i.e. from the point at which CCW has identified the site as a possible Ramsar until it is classified by the Minister.
- **Ramsar** - Wetland of international importance, Ramsar Convention - once classified by the Minister.

**Ecosystem** - a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit in ecological terms.

**Enhancement** - measures to increase the quality, quantity, net value or importance of biodiversity or geological interest.

**Geodiversity** - the variety of geological environments, phenomena and active processes that make landscapes, rocks, minerals, fossils, soils and other superficial deposits along with the natural processes that shape the landscape and the framework for life on earth.

**Geology** - the physical features of the Earth which enable us to understand its origin, history, structure and composition, and through the fossil record, the evolution of life.

**Green space** - generally used to refer to public open space which is normally vegetated rather than hard surfaced. Green space occurs in a number of forms, including urban parks and gardens and country parks, and has value and potential for biodiversity and geological conservation.

**Habitat** - the place in which a particular plant or animal lives. Often used in the wider sense referring to major assemblages of plants and animals together; the place or type of site where an organism or population naturally occurs.

**Habitats Regulations** - this term is used in the TAN (including its Annexes) to refer to The Conservation (Natural Habitats, &c) Regulations 1994.

**Integrity (of an internationally designated site)** - the coherence of its ecological structure and function, across its whole area, which enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was designated (SAC), classified (SPA) or listed (Ramsar site).

**Internationally designated sites** - where this term is used in the TAN (and its Annexes) it includes European Sites, European Offshore Marine Sites and (as a matter of Assembly Government policy) pSPAs, pSACs and Ramsar sites.

**Mitigation** - measures taken to avoid, cancel or reduce negative impacts (see 'avoidance', 'cancellation' and 'reduction' measures above and below).

**Nature conservation** - the preservation, protection, wise use, sustainable management, restoration and enhancement of flora, fauna and geological and physiographical features.

**Precautionary principle** - the application of the precautionary principle requires the taking of cost-effective measures to prevent a threat of serious or irreversible environmental damage, even though there is lack of full scientific certainty about the degree of harm or probability of risk. In the context of the Habitats Directive, it means ensuring that the effects of a plan or project are fully assessed, if there is doubt about their significance, and not undertaking or permitting a plan or project unless it can be ascertained that there would be no adverse effects on the integrity of the site, unless there are no alternative solutions and there are imperative reasons of overriding public interest for proceeding with the plan or project.

**Reduction measures** - Measures taken or proposed to be taken that are designed to minimise or otherwise reduce adverse effects of change that cannot be eliminated by avoidance measures in respect of areas of ecological interest, such as limiting the timing, scale or duration of a project or its emissions or consumption rates

**Restoration** - the re-establishment of a damaged or degraded system or habitat to a close approximation of its pre-degraded condition.

**Scoping** - the process of identifying what should be included in a strategic environmental assessment, an environmental impact assessment, an appropriate assessment or a Habitats Regulations Appraisal.

**Screening** - the process of identifying whether a project, plan or programme should be subject to strategic environmental assessment, environmental impact assessment, appropriate assessment or a Habitats Regulations Appraisal.