

Appendix 10

The Determination of Likely Significant Effect under The Conservation (Natural Habitats &c) Regulations 1994

1. Introduction

- 1.1 Consistency in applying the requirements of the Habitats Directive, and in interpreting the Conservation (Natural Habitats &c) Regulations 1994, is important for all the country agencies in their casework on international sites. One of the key procedures is under Regulations 48-53, the consideration of plans and projects affecting the Natura 2000 series. If a plan or project is not connected with or necessary for the management of the site **and is likely to have a significant effect**, the competent authority is required to carry out an appropriate assessment to determine whether it will have an adverse effect on site integrity.
- 1.2 This note provides guidance to staff on how to decide whether or not a plan or project “is likely to have a significant effect”. It applies also to the other parts of the Conservation Regulations where the same test is used (e.g. Regulations 20, 24 & 60).
- 1.3 Only the courts can provide authoritative interpretation of the Regulations, but these notes have been developed in the light of practical experience and a close examination of the Regulations, the Habitats Directive and central government guidance, particularly PPG 9.

2. The purposes of the test of significance

- 2.1 The ‘significance’ test acts as a coarse filter for all proposed plans and projects which are not directly connected with or necessary to the management of the site (whether or not the effect is likely to be adverse or beneficial) so directing attention to those which require further assessment. The importance of the international conservation interest of the site should be at the forefront of decision-making.
- 2.2 The attached flow chart provides a step by step approach to recording a decision on likely significant effect in all cases. It includes provision for a fuller consideration to justify the decision in cases where

the qualifying feature is directly or indirectly affected but the effect is not considered likely to be significant and therefore there is no need for an appropriate assessment.

Summary of principles in judging significant effect

- The test of significant effect (‘significance test’) must be made by the ‘competent authority’, but exchange of advice between the competent authority and the country agency is strongly encouraged.
- The ‘significance test’ is a coarse filter intended to identify which proposed plans and projects require further assessment. It is the first stage of the process, and is distinct from the appropriate assessment of ‘adverse effect on integrity’ that follows (see section 1).
- Consideration of ‘likely significant effect’ will have practical and legal consequences and must be based on sound judgement and bear scientific or expert scrutiny (section 2).
- Judgements of likely significant effect should be made in relation to the features for which the European site was designated and their conservation objectives - (Regs 20, 33 and 48); judgements should be made on a case-by-case basis (section 3).
- Proposals having no, or *de minimis*, effects can be progressed without further consideration under the Habitats Regulations although reasons for reaching this decision must be justified and recorded (section 4).
- Some cases require more systematic evaluation of risk, but if a clear judgement cannot be made on the basis of available information, then an appropriate assessment will be required (section 5).
- In all cases, the reasons for reaching the judgement must be recorded by the competent authority and by the country agency when advice is given (section 6).

2.3 The country agencies must clearly distinguish their advice on likely significant effect, from that given on the effects on site integrity which competent authorities are

required to obtain during an appropriate assessment (Reg. 48(3)). The separate stages in this process are explained in other guidance such as PPG9, Circular 6/1995 (Scotland) and TAN5 (Wales). However, as explained in the flow chart (Annex A), there may be circumstances where a fuller, more in depth level of consideration may be needed in order to determine whether significant effects are likely.

3. Implications of the test of significance

3.1 All judgements about ‘significance’ need to be fully documented and dealt with in a systematic manner by all competent authorities including conservation agencies. A judgement that a plan or project is likely to have a significant effect can have financial implications for developers. For example it brings development which is otherwise permitted under the Town and Country Planning (General Permitted Development) Order 1995 (in England and Wales) and Town and Country Planning (General Permitted Development) (Scotland) Order, 1992 (in Scotland), under the scrutiny of the local planning authority. Conversely, the opinion (under Regulation 61(3) of the Habitats Regulations) of the country agencies that a permitted development is **not** likely to have a significant effect is conclusive and cannot be amended. Agencies will be held accountable for the advice given and will need to be able to justify decisions both for and against a ‘significant effect’.

4. Making judgements of “likely significant effect”

4.1 Likely significant effect is, in this context, any effect that may reasonably be predicted as a consequence of a plan or project that may affect the conservation objectives of the features for which the site was designated, but excluding trivial or inconsequential effects.

4.2 The likely scale of impact is important. In some cases the decision that no significant effect is likely will be obvious. Very short lived impacts would generally require only minimal further consideration under such conditions, provided there were no persistent, cumulative effects from repeated or simultaneous impacts of the same nature. Even here there will be exceptions, however. For example very brief disturbance to a seabird colony may have a lasting effect on the population (as determined by careful monitoring), even though activity may appear (through casual observation at the time) to return rapidly to normal.

4.3 At the other extreme, some cases will very clearly be likely to have a significant effect. Any proposal which would require an environmental assessment

under the Environmental Assessment Directive (85/337/EEC) (as amended) on account of its effects, among others, on a European site, can be judged as being likely to have a significant effect, although reasons for this must still be recorded. This will then require an **appropriate** assessment under the Habitats Regulations, which may be addressed by the competent authority alongside or as part of the wider environmental assessment.

4.4 In some cases the judgement about a likely significant effect will be less clear cut and it will be necessary to look particularly at the nature of the effect and its timing, duration and reversibility, taking into account any readily available information on the site, and especially its conservation objectives.

4.5 Permanent reductions in habitat area or species populations are likely to be significant unless they are very small scale. In the case of certain sites a loss of, say, a few square metres of the site area **may** not be considered significant (for example, there may be circumstances when this might apply in the case of estuarine SPAs which are selected for their bird interest), in others, such as limestone pavement, **any** further loss of the area of qualifying interest may be unacceptable. Any activity which affects the attainment of conservation objectives will probably be significant.

4.6 The following is a list of **examples** of types of effects which are likely to be significant and therefore need to be considered more fully as part of the consideration in the flow chart (Annex A). It is important to remember that they may result from either on-site or off-site activities and may need to be considered in combination with other plans or projects.

- Causing change to the coherence of the site or to the Natura 2000 series (eg presenting a barrier between isolated fragments, or reducing the ability of the site to act as a source of new colonisers);
- Causing reduction in the area of habitat or of the site;
- Causing direct or indirect change to the physical quality of the environment (including the hydrology) or habitat within the site;
- Causing ongoing disturbance to species or habitats for which the site is notified;
- Altering community structure (species composition);
- Causing direct or indirect damage to the size, characteristics or reproductive ability of populations on the site;
- Altering the vulnerability of populations etc to other impacts.

- Causing a reduction in the resilience of the feature against external change (for example its ability to respond to extremes of environmental conditions);
- Affecting restoration of a feature where this is a conservation objective.

5. When there is ‘no significant effect’

5.1. When it is clear that the plan or project is not likely to have a significant effect then only limited further consideration - to enable the reasons for reaching this decision to be justified and recorded - is required. After this, permission for the plan or project may be granted.

6. Use of evidence in judging likely significant effect

6.1 The judgement of whether a significant effect is likely should be based on the best readily available information. Where full information does not exist or is not readily available it will not usually be appropriate for further data (eg survey work) to be collected at this stage in the process although in some circumstances further information may be requested in order to clarify decision-making. Sources of information may include evidence of similar operations affecting sites with similar conservation objectives and the judgement of relevant specialists that an effect is likely, based on available evidence. However cases will always be different, and consideration must be given to the local circumstances. Early consultation between project promoters, competent authorities and country agencies is encouraged, in order that the best information can be made available to help to define the likely significance of effects.

7. Suggested process for documenting judgement of ‘likely significant effect’

7.1 Preliminary Considerations The competent authority should, with advice from the country agencies, first consider and record the features for which the site has been selected and the conservation objectives for the site. In all cases, the following should be recorded:

- What are the qualifying interest features?
- What are the conservation objectives?
- What other relevant site information is available? e.g. site (SSSI, NNR, SAC/SPA, European Marine site) management plans; list of operations which may cause damage or deterioration.

7.2 As a first step it is necessary to determine whether the proposal is connected with or necessary for the management of the site for its conservation objectives. A judgement then needs to be made as to whether to proceed to a fuller consideration or to state at this stage that an appropriate assessment is not needed (ie that there is no likely significant effect). The latter would be the case only when it was beyond doubt that the interest features would not be directly or indirectly affected.

7.3. Fuller Considerations Where there is not a clear cut case for there being no likely significant effect on the interest features or conservation objectives, you should carry out and record a brief risk assessment, e.g:

- The **potential hazards** of the plan or project and their likely consequences for the conservation objectives of the SAC/SPA features.
- For each hazard, the **probability** that the hazard will affect the SAC/SPA conservation objective in this case.
- For each hazard, the **magnitude**, likely duration and irreversibility or reversibility of the effect (recording briefly the assumptions made or evidence used in reaching that conclusion).

7.4 It may be possible to reach a decision as to whether a significant effect is likely at this stage, or you may wish to ask for further information - although not at this stage requiring an appropriate assessment. If such information is not readily available or if the results are inconclusive, then an appropriate assessment would normally be required.

7.5 The outcome of this fuller consideration should be a fully justified decision that either:

- an appropriate assessment is not needed; or
- an appropriate assessment is needed, together with some guidance on the likely scope of this assessment.

If in doubt please seek advice from the relevant country agency specialist.

The text of this guidance note was developed by the country agencies for the Government’s inter-departmental steering group on the Habitats Directive and approved by it. It is the third in a series of guidelines which has been developed for

staff in the country agencies, but may also be useful for other competent authorities, and developers and promoters of projects to help their understanding of the key principles used in the decision making process. Further guidance notes are planned in the series which will cover the effects of plans or projects alone and in combination; adverse effect on integrity and the consideration of permitted developments affecting European sites.

The guidance notes supplement existing guidance available in PPG9 on Planning and Nature Conservation (in England) and Planning Guidance (Wales) (Planning Policy and Technical Guidance Note (Wales) 5: (Nature Conservation and Planning) and Circular 6/1995 (in Scotland).

A step-by-step approach to determining whether a significant effect is likely on a Natura 2000 site

ANNEX A

