

*Planning for the Protection  
of European Sites:  
Appropriate Assessment*

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Guidance For Regional Spatial Strategies  
and Local Development Documents



*Planning for the Protection  
of European Sites:  
Appropriate Assessment*

Under The Conservation (Natural Habitats, &C)  
(Amendment) (England and Wales) Regulations 2006  
Guidance For Regional Spatial Strategies  
and Local Development Documents

Please note that responses to this consultation document should be received no later than the 31st October 2006.

Responses, and any comments about the consultation, may be either:

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- emailed to [rubeena.ahmed@communities.gsi.gov.uk](mailto:rubeena.ahmed@communities.gsi.gov.uk)

The consultation document is available on the DCLG website at:  
[www.communities.gov.uk/index.asp?id=1502244](http://www.communities.gov.uk/index.asp?id=1502244)

On 5<sup>th</sup> May 2006 the responsibilities of The Office of the Deputy Prime Minister (ODPM) were transferred to the Department for Communities and Local Government (DCLG).

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# 1. Introduction

- 1.1 The Natura 2000 network<sup>1</sup> provides ecological infrastructure for the protection of sites which are of exceptional importance in respect of rare, endangered or vulnerable natural habitats and species within the European Community. These sites which are also referred to as European sites<sup>2</sup> consist of Special Areas of Conservation (SACs)<sup>3</sup>, Special Protection Areas (SPAs)<sup>4</sup> and Offshore Marine Site (OMS)<sup>5</sup> (there are no OMS designated at present).

## Habitats Directive

### Article 6(3)

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

### Article 6(4)

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

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

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1 Provided for in Article 3 of the Habitats Directive.

2 Ramsar sites classified under the Ramsar Convention 1971 are not included in the definition of European sites in regulation 10 of the 1994 Habitats Regulations, 1994. For more information on the definition of European Sites see regulation 10 of the 1994 Regulations

3 Very few cSACs still await decisions regarding their designation as SACs so that this title will shortly cease to have relevance. Therefore, for the sake of simplicity, the guide will refer to SACs where the procedures apply to both designations.

4 SPAs are classified under the European Commission (1979) Council Directive 79/409/EEC on the conservation of wild birds (Birds Directive.)  
[http://europa.eu.int/comm/environment/nature/nature\\_conservation/eu\\_nature\\_legislation/birds\\_directive/index\\_en.htm](http://europa.eu.int/comm/environment/nature/nature_conservation/eu_nature_legislation/birds_directive/index_en.htm)

5 In the proposed Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2006.

- 1.2 The purpose of Appropriate Assessment (AA)<sup>6</sup> of land use plans is to ensure that protection of the integrity of European sites is a part of the planning process at a regional and local level. The requirement for AA of plans or projects is outlined in Article 6(3) and (4) of the European Communities (1992) Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“Habitats Directive”).<sup>7</sup>
- 1.3 Schedule 1 of the Conservation (Natural Habitats, &c) (Amendment) (England and Wales)<sup>8</sup> Regulations 2006 (Habitats Regulations) inserts a new Part IVA into the Conservation (Habitats, &c.) Regulations 1994<sup>9</sup> and transposes into English law the requirement to carry out AA for land use plans. This guide offers advice on how AA may be carried out as part of plan preparation and linked to the sustainability appraisal (SA) process. It is not a legal interpretation of the Habitats Directive. It is the responsibility of the Regional Planning Body (RPB) or Local Planning Authority (LPA) to ensure that the AA process is carried out in accordance with the Habitats Directive and the amending Habitats Regulations.
- 1.4 This guidance may be used to assist the Greater London Authority in the preparation of alterations to a Spatial Development Strategy (SDS) or to a new SDS in accordance with the Town and Country Planning (London Spatial Development Strategy) Regulation 2000 and Government Office for London Circular 1/2000.

### **Land use plans**

‘Land use plans’ is the term used in the Habitats Regulations to refer to Regional Spatial Strategies, the Mayor of London’s Spatial Development Strategy, Development Plan Documents, Supplementary Planning Documents and any alterations or replacements under the transitional provisions in Schedule 8 to the Planning and Compulsory Purchase Act 2004 and for ‘old-style’ development plans under the Town and Country Planning Act 1990.

For the purposes of this guidance the term ‘plan’ is used to refer to Regional Spatial Strategies, the Spatial Development Strategy, Development Plan Documents and any alterations or replacements under the transitional provisions in Schedule 8 to the Planning and Compulsory Purchase Act 2004 and for ‘old-style’ development plans under the Town and Country Planning Act 1990.

Supplementary Planning Documents are discussed at the end of this guidance.

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6 Appropriate Assessment refers to the process under Article 6(3) and (4) as well as the second stage of the process after screening to demonstrate that the site does not have an adverse effect on the integrity of a European site.

7 [http://europa.eu.int/comm/environment/nature/nature\\_conservation/eu\\_nature\\_legislation/habitats\\_directive/index\\_en.htm](http://europa.eu.int/comm/environment/nature/nature_conservation/eu_nature_legislation/habitats_directive/index_en.htm)

8 Also referred to as amending Habitats Regulations <http://www.defra.gov.uk/corporate/consult/nat-habitats-2006/index.htm>

9 SI No. 2716.

- 1.5 The guide should be read in conjunction with existing guidance and legislation, in particular: the Birds Directive 79/409/EEC; the European Communities (2000) Managing Natura 2000 Sites<sup>10</sup>; the European Commission (2001) Assessment of plans and projects significantly affecting Natura 2000 sites<sup>11</sup>; and English Nature Guidance Notes.<sup>12</sup>

This guidance updates ODPM (2005) Planning Policy Statement 9, Biodiversity and Geological Conservation, Circular 06/2005/DEFRA Circular 01/2005 paragraph 4. Planning authorities need to undertake AA on plans that are likely to have a significant effect on European sites in order to fulfil the requirements of the Directive in respect of the land use planning system.

## Acknowledgements

- 1.6 This guidance draws upon work prepared by Natural England. The Environment Agency also provided input into the creation of this document. Although the guidance is only applicable to plans relating to land in England, assistance was provided by the Welsh Assembly Government, the Countryside Council for Wales, The Department of Environment for Northern Ireland, the Scottish Natural Heritage and the Scottish Executive Development Department. Levett-Therivel, Scott Wilson and Treweek Environmental also assisted in the preparation of this guide.

## Transitional arrangements

- 1.7 There will not be a transitional provision to cover plans in the course of preparation when the amending Habitats Regulations come into force in October 2006. AA will need to have been done prior to the adoption of any plans that the RPBs and LPAs consider likely to have a significant effect on a European site from this date.
- 1.8 RPBs and LPAs are not expected to recommence AA when they have already started work on AA prior to the publication of this guide. In those instances where this guide puts forward a different approach to the AA process from that laid down in existing guidance (see paragraph 1.5), it is acceptable for RPBs and LPAs to have followed the latter. RPBs and LPAs should seek to follow this guide as soon as possible.

<sup>10</sup> [http://europa.eu.int/comm/environment/nature/nature\\_conservation/eu\\_nature\\_legislation/specific\\_articles/art6/pdf/art6\\_en.pdf](http://europa.eu.int/comm/environment/nature/nature_conservation/eu_nature_legislation/specific_articles/art6/pdf/art6_en.pdf)

<sup>11</sup> [http://europa.eu.int/comm/environment/nature/nature\\_conservation/eu\\_nature\\_legislation/specific\\_articles/art6/pdf/natura\\_2000\\_assess\\_en.pdf](http://europa.eu.int/comm/environment/nature/nature_conservation/eu_nature_legislation/specific_articles/art6/pdf/natura_2000_assess_en.pdf)

<sup>12</sup> HRGN 1: The Appropriate Assessment (Regulation 48), The Conservation (Natural Habitats &c) Regulations (1994) May (1997); HRGN 2: Review of existing planning permissions and other consents, The Conservation (Natural Habitats &c) Regulations (1994) May (1997); HRGN 3: The Determination of Likely Significant Effect under The Conservation (Natural Habitats &c) Regulations (1994) November (1999); HRGN 4: Alone or in combination, May (2001); and HRGN 6: The condition imposed on Permitted Development by The Conservation (Natural Habitats, &c.) Regulations (1994) (Regulations 60-63), November (2001).

## 2. The Appropriate Assessment process

- 2.1 It is possible to summarise the AA process prescribed in Article 6(3) and (4) of the Habitats Directive into three main tasks:
1. likely significant effects (AA task 1);
  2. appropriate assessment and ascertaining the effect on site integrity (AA task 2);
  3. mitigation and alternative solutions (AA task 3); and  
*\*imperative reasons of overriding public interest.*<sup>13</sup>
- 2.2 These tasks are collectively described as “appropriate assessment”. This is not to be confused with AA task 2 ‘appropriate assessment and ascertaining the effect on site integrity’ which is the second stage of the process.
- 2.3 “Appropriate assessment” is simply taken to mean an assessment which must be appropriate to its purpose under the Habitats Directive and Regulations, neither of which specify how the stages of AA should be undertaken. The AA must be recorded<sup>14</sup> and carried out with a view to informing the decisions in the plan. The comprehensiveness of the assessment work undertaken should be proportionate to the geographical scope of the option and the nature and extent of any effects identified. The assessment should be confined to the effects on the internationally important habitats and species for which the site is classified. An AA need not be done in any more detail, or using more resources, than is useful for its purpose. It would be inappropriate and impracticable to assess the effects in the degree of detail that would normally be required for the Environmental Impact Assessment (EIA)<sup>15</sup> of a project.
- 2.4 AA applies to Regional Spatial Strategies (RSSs) even though its policies are not normally site specific. This principle also applies to Core Strategies.

Natural England (previously English Nature) is the statutory nature conservation body for AA. It must be consulted from the beginning of the process alongside any other relevant environmental bodies that the RPB or LPA deem appropriate. When engaging Natural England, contact them in advance if possible to give them the opportunity to plan their time. In addition, set up meetings to allow for issues to be discussed face to face where possible.

13 This is not a standard part of the process and will only be carried out in exceptional circumstances, see paragraph 5.20 and summary text box 1: ‘Imperative reasons of overriding public interest’.

14 For more information see (EC, p37, para 4.5.1, 2000)

15 Under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 SI 1999/293 implementing Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

# 3. Appropriate Assessment process and Sustainability Appraisal

3.1 AA and SA<sup>16</sup> are two separate processes each with their own legal requirements:

- SA aims to ensure that the land-use plan contributes to sustainable development by integrating social, environmental and economic considerations into plan preparation and incorporating the requirements of the European Directive 2001/42/EC “on the assessment of the effects of certain plans and programmes on the environment” (the Strategic Environmental Assessment Directive or SEA Directive).
- AA aims to ensure that the plan will not have an adverse effect on the integrity of European sites as described above.

3.2 We recommend that AA should be undertaken in conjunction with the SA. It would be best practice to maximise the relevant evidence gathered in the SA and to use it to inform the AA and vice versa. SA and AA outputs must be clearly distinguishable and reported on separately.

***Note: In terms of assessing options, AA is a standard which must be passed, and SA is a means of comparing options.***

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<sup>16</sup> For more information on SA please see the Sustainability Appraisal Guidance of Regional Spatial Strategies and Local Development Documents, November (2005) <http://www.communities.gov.uk/index.asp?id=1161341>

## 4. Evidence gathering for AA

- *RSS Stage: Drawing up the project plan*
- *DPD Stage: Developing the evidence base*
- *SA Stage A: Scoping*

4.1 Evidence gathering is the first stage in creating a plan. This is done at the same time as developing the scope of SA. This information provides an evidence base for any emerging policy. It would be best practice at this juncture to collect information for AA, especially in relation to:

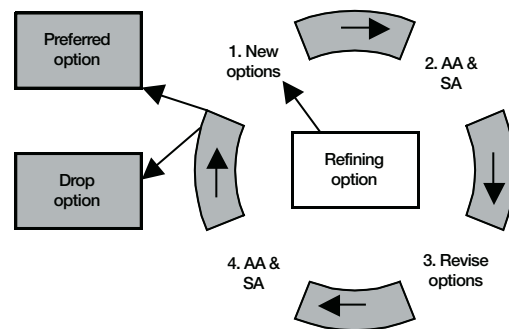
- European sites within and outside the plan area potentially affected;
- the characteristics of these European sites;
- their conservation objectives; and
- other relevant plans or projects.

4.2 It is best practice to consult Natural England on the proposed AA methodology.

# 5. AA and developing plan options

- **RSS Stage: Developing options and policies**
- **DPD Stage: Preparation of preferred options**
- **SA Stage B: Developing options and assessing effects**

5.1 Through the development of options for RSSs at the regulation 11<sup>17</sup> stage (the pre-submission consultation) and DPDs at the regulation 25<sup>18</sup> stage (the pre-submission consultation), the RPB or LPA will be discussing and then appraising options for the plan in sustainability terms with a view to refining these options down to the draft RSS for formal consultation at the regulation 13<sup>19</sup> stage or down to preferred options for a DPD at the regulation 26<sup>20</sup> stage (pre-submission public participation).



- 5.2 AA should be used within this options generation and appraisal process. The AA must have an opportunity to inform the plan's emerging options, and owing to the strong legal protection provided through the Habitats Directive, it would be inadvisable as a rule (see para. 5.20 and the text box 1 on the provisions in the Habitats Directive for exceptional cases) to pursue a plan option which was likely to have adverse impacts on a European site. It is not open to authorities to undertake a retrospective assessment of decisions in a plan<sup>21</sup>.
- 5.3 New options are generated from stakeholder and community engagement, and are subject to SA and AA. This may mean that options are rejected or that the options need to be refined. SA/AA tasks may also need to be revisited as part of this process. The outcome of the process should be a limited set of preferred options which are proofed against any adverse impacts on Natura 2000 sites and for which there is a clear SA audit showing how they fair in sustainability terms.
- 5.4 The AA stages discussed below should be applied to each plan option which is considered suitable to take forward to the submission stage for the RSS and public participation stage for DPDs.

17 Town and Country Planning (Regional Planning) Regulations 2004 SI No.2203.

18 Town and Country Planning (Local Development) (England) Regulations 2004 SI No.2204.

19 Town and Country Planning (Regional Planning) Regulations 2004 SI No.2203.

20 Town and Country Planning (Local Development) (England) Regulations 2004 SI No.2204.

21 See EC Guidance p 37, para. 4.5.1, 2000 for more information.

## AA task 1: Likely significant effects

- 5.5 Any plan or project not directly connected with or necessary to the management of a European site will be subject to the AA process. The term management is synonymous with conservation in this context. In exceptional circumstances where a plan deals with the management of a European site, any non-conservation component will require an AA to be carried out<sup>22</sup>. The majority of plans will be subject to the AA process.
- 5.6 The test to identify whether a plan option is ‘likely to have a significant effect’ on a European site is also referred to as ‘screening’. This will determine whether the subsequent steps of AA are required.

### The precautionary principle

The precautionary principle must be used when assessing whether effects are significant. In cases where information is not available or where there is doubt and further research is needed as a rule rather than attempting to create a case of ‘no significant effects’ which could lead to quite a big piece of work, the RPB or LPA should proceed with the AA process.

In cases where ‘no significant effects’ have been found on a plan, the ECJ judgment in the Waddenzee case C-127/02 implied that all the aspects of the plan or project which can, by themselves or in combination with other plans and projects, affect the site’s conservation objectives must be identified in light of the best scientific knowledge in the field.

The case also ruled that AA is required where there is a probability or a risk that the plan will have a significant effect on a European site.

“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 sites conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effects on that site, either individually or in combination with other plans and projects”.

- 5.7 “The notion of significance needs to be interpreted objectively. At the same time, the significance of effects should be determined in relation to the specific features and environmental conditions of the protected site concerned by the plan or project, taking particular account of the site’s conservation objectives.” (EC, 2000, p34) (The conservation objectives should be collected at the evidence gathering stage, see section 4.1 of this guide)
- 5.8 As part of establishing what effects are significant it may also be useful to consider “the probability of the impact; the duration, frequency and reversibility of the impact.” (EC, 2000, pg. 35)

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<sup>22</sup> See EC, para 4.3.3, pg. 33, 2000 for more details.

**Habitats Regulations 2006**

“Where a land use plan – (a) is likely to have a significant effect on a European site in Great Britain (either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of the site. The plan making authority for that plan shall, before the plan is given effect, make an appropriate assessment of the implications for the site in view of the site’s conservation objectives.” reg. 85B(1)(a)(b) inserted by the 2006 amending Regulations

- 5.9 The assessment of significant effects of a given option needs to take account of the option’s impact in combination with other plans and projects. Only other key plans and projects which the RPB or LPA consider most relevant should be collected for the “in combination” test. An exhaustive list could render the assessment exercise unworkable. Consult Natural England on the list identified.
- 5.10 In considering whether the plan option is likely to have a significant effect on a European site, it should be noted that such a site may be located either within or outside the area covered by the plan. Significant effects may be incurred even in cases where the area of the plan is some distance away.
- 5.11 Natural England can provide advice on a case by case basis on screening.

## AA task 2: Appropriate Assessment and ascertaining the effect on site integrity

- 5.12 If there are found to be likely significant effects, having applied the precautionary principle, the plan option must be subject to AA of its implications for the European site in view of the site’s conservation objectives. The work carried out at the evidence gathering stage and the screening stage at AA task 1 should be drawn upon to assist in assessing the effects of the plan option on the conservation objectives.

**Habitats Regulations 2006**

“the plan making authority for that plan shall, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site’s conservation objectives” 85B (1)(b)

“In light of the conclusions of the assessment, and subject to regulations 85C, (considerations of overriding public interest), the competent authority: (d) shall give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site.” Reg. 85B(4) inserted by the 2006 amending Regulations

- 5.13 The implications for the conservation objectives should be examined to ascertain whether the plan option has an adverse affect on the integrity of the European site.

- 5.14 “Integrity” is described in ODPM Circular 06/2005: Biodiversity and Geological Conservation as “the site’s coherence, ecological structure and function across its whole area that enables it to sustain the habitat, complex of habitats and/or the levels of populations of species for which it was classified” (ODPM Circular 06/2005, para. 20).
- 5.15 The assessment at this juncture should not be influenced by other environmental, social or economic issues.

#### **Habitats Regulations 2006**

“In light of the conclusions of the assessment, and subject to regulations 85C, (considerations of overriding public interest), the competent authority: (d) shall give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site.” Reg. 85B(4) inserted by the 2006 amending Regulations

- 5.16 The RPB or LPA must be able to support their decision on integrity with evidence. The degree of certainty as required in the Waddenzee ECJ judgment mentioned above is “where no reasonable scientific doubt remains as to the absence of such effects”.

## **AA task 3: Mitigation measures and alternative solutions**

- 5.17 Where an option has been found to have adverse effects on the integrity of the European site, these effects should be mitigated. The primary aim of the mitigation of an option should be to cancel out any adverse effects fully. Where it is not possible to eradicate negative effects completely, there should be a sufficient reduction so that an adverse impact on the integrity of the European site can be nullified. Measures will normally involve the modification of an option.
- 5.18 In this case it would be necessary to make sure that the mitigation measures would not have an adverse effect on integrity. Therefore the RPB or LPA will need to run the modified option through some of the SA/AA stages again.
- 5.19 Mitigation measures need to be viable, timely and possible to implement.
- 5.20 After mitigation measures have been exhausted on an emerging option and it is shown to still have a potentially negative effect on the integrity of a European site, and in absence of any other alternative solution, as a rule the option should be dropped.
- 5.21 In the exceptional circumstance and as an exception to that rule, if the pursuit of the option is justified by ‘imperative reasons of overriding public interest’, consideration can be given to proceeding in the absence of alternative solutions (see the box 1 below). In these cases compensatory measures must have to be put in place to offset negative impacts.

### Habitats Regulations 2006

“If the competent authority are satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), they may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site.” reg. 85C (1)

Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either – (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or

(b) any other reasons of overriding public interest provided the competent authority has had due regard to the opinion of the European Commission in satisfying themselves that there are such reasons.” reg. 85C(2) inserted by the 2006 amending Regulations

### Box 1: Imperative reasons of overriding public interest and compensatory measures

In the exceptional event where the RPBs or LPAs proceed with a plan despite a negative assessment, it must be demonstrated that this is for ‘imperative reasons of overriding public interest’ and must provide strong justification to support their case. In these circumstances the relevant Government Office should be informed from the outset in these circumstances. They should show that there were no possible mitigation measures and/or alternative solutions to cancel out the negative effects on the integrity of the European site, along with either of the following:

- that the plan is being undertaken for reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; and/or
- that the plan is being undertaken for imperative reasons of overriding public interest.

RPBs and LPAs when proceeding with a plan which is likely to cause negative impacts on a European site must also carry out compensatory measures. These must be taken to ensure that the overall coherence of the network of European sites is protected. The relevant Government Office must be consulted. The Secretary of State for Communities and Local Government will inform the European Commission about the compensatory measures adopted.

The Commission's guidance on AA provides for further advice which could be taken in pursuit of an option under these circumstances.

## 6. Updating AA findings on changes if necessary and making it available to the public

- *RSS Stage: Submission, Examination-in-Public and Issue of the RSS*
- *DPD Stage: Public participation, Examination and Adoption*
- *SA Stage C: Prepare the SA Report, Consult on the SA Report, Appraise any significant changes*

### 6.A Regional Spatial Strategies

6.A1 At the regulation 12<sup>23</sup> stage (submission to the Secretary of State), the RPB should submit the AA findings at the same time as the draft RSS and SA Report to the Secretary of State. It is best practice to summarise the AA evidence in a non-technical summary. We recommend that the AA findings are prepared at the same time as the SA Report. It is for the RPB to ensure that the requirements of the Habitats Directive and amending Habitats Regulations have been met. The RPB at the submission consultation stage (regulation 13) should make the AA findings available to the public. These should be consulted upon as the RPB see appropriate.

6.A2 The Panel at the Examination-in-Public will need to satisfy themselves that a satisfactory AA has been carried out and consider any representations made on the AA. Given the timeframes leading from the Examination-in-Public to the publication of the RSS revision, although not a requirement, it is recommended that those providing representations carry out AA work to support their case, if necessary. The Panel Report will be published outlining the proposed changes to the RSS.

#### **Habitats Regulations 2006**

“The plan making authority shall for the purposes of the assessment, consult the appropriate nature conservation body within such reasonable time as the authority may specify.” reg. 85B (2)

“They shall also, if they consider it appropriate, take the opinion of the general public into account, and in doing so shall take such steps for that purpose as they consider appropriate.” Reg. 85B(3) inserted by the 2006 amending Regulations

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<sup>23</sup> Town and Country Planning (Regional Planning) Regulations 2004 SI No.2203.

- 6.A3 The Secretary of State will consider the Panel Report and publish any proposed changes. Proposed changes will be subject to the AA process tasks 1–3 as appropriate. The extent of AA work necessary will depend on the nature and extent of the change and whether it is likely to have a significant effect on a European site.
- 6.A4 After a period of consultation the RSSs will be published incorporating the Secretary of State’s final changes. The AA findings on the published RSSs should also be made available to the public.
- 6.A5 There are no additional requirements for monitoring of AA for plans. This is satisfied within existing mechanisms.

## 6.B Development Plan Documents

- 6.B1 AA findings should be made available to the community and may be consulted on as appropriate on the preferred options at the regulation 26<sup>24</sup> stage (pre-submission public participation). This means the AA findings are published at the same time as the SA Report. We recommend that the AA evidence is summarised in a non-technical summary.
- 6.B2 Following receipt of the consultation responses, the LPA will refine the preferred options or option and prepare the submission DPD. It may be necessary to revisit the AA at this point if the changes made for submission are such as to affect the validity of the AA report.
- 6.B3 The LPA will submit the DPD to the Secretary of State at the regulation 28 stage. It is the responsibility of the LPA to ensure that the submitted DPD has met the requirements of the Habitats Directive and amending Habitats Regulations. The DPD will be examined by an independent Inspector. The Inspector will consider the soundness of the DPD using the AA as part of the evidence base. It is not the role of the Inspector to assess the compliance of the plan with the Habitats Directive.
- 6.B4 Given the frontloading inherent in the new system, new sites should not be raised for consideration for the first time at the submission or examination stage. Where in exceptional circumstances this occurs and any statutory processes have not been undertaken for sites submitted late in the preparation of a DPD, an Inspector would not be able to recommend their inclusion in the binding report. It is therefore the responsibility of those promoting such changes to show that the proper procedures have been undertaken (PPS12 p38).
- 6.B5 The Inspector will produce a binding report following the Examination. Where the Inspector suggests significant changes in the binding report he or she must be satisfied that they will not have an adverse effect on the integrity of any European sites based on the AA findings provided at or before the Examination.
- 6.B6 There are no additional requirements for monitoring of AA for plans. This is satisfied within existing mechanisms.

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<sup>24</sup> Town and Country Planning (Local Development) (England) Regulations 2004 SI No.2204.

# 7. Supplementary Planning Documents

- 7.1 Supplementary Planning Documents (SPDs) should follow the same procedures for AA as set out for RSS and DPDs in sections 3, 4, and 5 of this guide. AA should be applied to the draft SPD and its results published alongside the draft SPD at the regulation 17<sup>25</sup> stage (public participation). If the SPD is changed substantially between draft and adoption, the AA would need revisiting to ensure that it is still valid. Any changes to the AA should be published along with the adopted SPD.
- 7.2 The amount of extra work necessary to undertake an AA of an SPD will normally be limited by the fact that the parent policy in the DPD will already have been subject to AA. Moreover the number and differentiation of options for an SPD will normally be much less than those for a DPD (see SA guide para 4.1.9). As with RSSs and DPDs there are no additional requirements for monitoring of AA. This is satisfied within existing mechanisms.

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<sup>25</sup> Town and Country Planning (Local Development) (England) Regulations 2004 SI No.2204.

