Status of this Advice Note
This version of advice note 10 supersedes all previous versions and includes revisions made in response to emerging best practice.

Summary of this Advice Note
The relevant secretary of state is the competent authority for the purposes of the Habitats Directive\(^1\) and the Habitats Regulations\(^2\) in relation to applications for Nationally Significant Infrastructure Projects (NSIPs). The Habitats Regulations, and Offshore Marine Conservation Regulations where applicable, require competent authorities, before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site or a European Marine site (either alone or in combination with other plans or projects)\(^3\).

Habitats Regulations Assessment (HRA) refers to the whole process of assessment, including the AA stage (where one is required).

When preparing applications for NSIPs under the Planning Act 2008, as amended (PA2008), Applicants should consider the potential effects of the application on protected habitats. If an NSIP, when taken alone or with existing and known future projects, is likely to affect a European site and/or a European Marine site, the Applicant must provide a report with the application showing the site(s) that may be affected together with sufficient information to enable the competent authority to make an AA, if required\(^4\).

This note provides advice for Applicants in relation to the preparation of that report, and the PA2008 processes relating to HRA. For the purposes of this note, the Planning Inspectorate is using the term “HRA” to describe all the steps in the process required by Articles 6(3) and 6(4) of the Habitats Directive. HRA is an iterative process and the emphasis should be on avoiding likely significant effects.

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2. The Conservation of Habitats and Species Regulations 2017 (The Conservation of Offshore Marine Habitats and Species Regulations 2017) will apply beyond UK territorial waters (12 nautical miles). These Regulations are relevant when an application is submitted for an energy project in a renewable energy zone (except any part in relation to which the Scottish Ministers have functions). For ease of expression, both sets of regulations are covered by the term “Habitats Regulations” in this advice note.
3. For all the sites included under these terms, refer to the table of terms and abbreviations at the end of this advice note.
4. Regulation 5(2)(g) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (the APFP Regulations).

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Habitats Regulation Assessment

November 2017

Version 8

Where LSE remain, the assessment should be carried forward by the Applicant in a focussed and tightly scoped way resulting in the submission of HRA Report with a Development Consent Order (DCO) application. The HRA Report will need to provide sufficient information to inform the competent authority’s AA.

A set of matrices are appended to this advice note which the Planning Inspectorate expects Applicants to complete and submit with a DCO application. These matrices will aid Applicants in preparing their information for the purposes of HRA and will form an integral part of the information submitted with the application. This advice note and its appendices explain how the matrices should be prepared by the Applicant and how these matrices will be used to inform the decision making process.

This advice note seeks to:

- provide a brief description of the legal context and obligations placed on both the decision maker and the Applicant under the Habitats Directive and the Habitats Regulations;
- explain how the PA2008 process aligns with the HRA process;
- highlight the relevant bodies that should be consulted by the Applicant throughout the DCO application process, and the suggested timing and level of engagement;
- clarify the information to be provided with a DCO application with respect to the HRA; and
- explain the process that will be carried out by the Planning Inspectorate as part of their duties and the interface with HRA, which will be followed to seek compliance with the legal requirements.

Context

This advice note should be read in conjunction with the Habitats Directive, the Habitats Regulations, the PA2008, relevant Government Planning Policy\(^5\), Government Circulars\(^6\) and recognised European Commission and Government guidance\(^7\). Some documents are mentioned in the footnotes of this advice note to assist Applicants, but it is the Applicant’s responsibility to ensure that all relevant and current policy, legislation and guidance has been considered.

6. For example: ODPM Circular 06/2005: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system.
Background

1. EU Directives

1.1 The UK is bound by the terms of the EU Habitats Directive, and the Wild Birds Directive. The UK also has to meet its obligations under relevant international agreements such as the Ramsar Convention. The aim of the Habitats Directive is to conserve particular natural habitats and wild species across the Europe Union by, amongst other measures, establishing a network of sites known as Natura 2000 sites. The Wild Birds Directive seeks to protect all wild birds and also sites important for the protection of wild birds. The Ramsar convention focuses on wetlands of international importance.

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

1.3 Further to this, Article 6(4) provides that where an AA has been carried out and results in a negative assessment (in other words, where adverse effects to European site(s) cannot be ruled out, despite any proposed avoidance or mitigation measures), consent can only be granted if; there are no alternative solutions, there are Imperative Reasons of Overriding Public Interest (IROPI) for the development and compensatory measures have been secured.

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

2. Consideration of transboundary effects of energy developments on European Sites

2.1 The Department of Energy and Climate Change, now the Department for Business Energy and Industrial Strategy (BEIS) has released guidelines which specify that the Secretary of State, when considering whether to consent energy projects, will apply the principles of the Habitats Directive to any energy development where significant effects on Natura 2000 sites or candidate sites in other Member States are likely. BEIS expects that this will be most relevant to the development of offshore wind farms.

10. Decision of the ECJ in Waddenzee (C-127/02) – In the light of the precautionary principle, a risk of significant effects exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the conservation objectives of the site concerned; in case of doubt as to the absence of significant effects an appropriate assessment must be carried out. All aspects of the plan or project which can, either individually or in combination with other plans or projects, affect those objectives must be identified in the light of the best scientific knowledge in the field (paragraph 54 of Waddenzee).
11. If the site hosts a priority natural habitat type or a priority species further conditions apply in relation to the reasons as explained in this advice note.
12. Regulation 8 of the Habitats Regulations.
13. In England, the NPPF paragraph 118. In Wales, TAN5 paragraphs 5.2.2 and 5.2.3.
2.2 Applicants seeking consent for energy developments likely to have a significant effect (either alone or in combination) on a Natura 2000 site in another Member State should obtain and provide all relevant information, as reasonably practicable with their DCO application. The Secretary of State for Business, Energy and Industrial Strategy (SoSBEIS) will then be able to consider the likely effects of their proposals on such sites before deciding whether or not to grant.

3. The HRA process

3.1 The HRA is a multi-stage process which helps determine Likely Significant Effects (LSE) and (where appropriate) assess adverse effects on the integrity of a European site, examine alternative solutions, and provide justification for IROPI. European guidance describes a four stage process to HRA, summarised in Figure 1 below.

Adapted from Defra (2012) Report of the Wild Birds and Habitats Directives Implementation Review (Annex E) - It is assumed for the purposes of this advice note that the project is not directly connected with or necessary to the management of the site.
HRA within the 2008 Act process

4. Pre-application (no prescribed timeframe)

4.1 The Habitats Regulations require that the competent authority (in this case the relevant secretary of state) before authorising a project likely to have a significant effect on a European site ‘must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives’\(^{15}\). Anyone applying for development consent for a NSIP must provide the competent authority with such information as may reasonably be required ‘for the purposes of the assessment’ or ‘to enable them to determine whether an appropriate assessment is required’\(^{16}\). This information normally takes the form of a No Significant Effects Report (NSER) or a Habitats Regulations Assessment Report (HRA Report). The Planning Inspectorate also expects Applicants to complete the matrices included in Appendices 1 and 2 to this advice note, as applicable, and for these to be appended either to the NSER or the HRA Report, as appropriate. The purpose of the matrices and how to complete them is explained under ‘Matrices’ below.

4.2 Applicants should be aware that if insufficient information is submitted with an application, then it may not be accepted for examination. Applicants are therefore strongly advised to use the pre-application consultation process to obtain assurances from the statutory nature conservation bodies (SNCBs) and other bodies that all potential effects have been addressed appropriately and in sufficient detail before an application is submitted. Evidence of the outcome of this consultation should be appended to the NSER or the HRA Report, as appropriate. This will be key to the decision making process, as under the Habitat Regulations the competent authority must consult the SNCB(s) and have regard to any representations made by them\(^{17}\).

4.3 The Planning Inspectorate strongly encourages Applicants to submit signed Statements of Common Ground (SoCG) with their application wherever possible to provide evidence of areas of agreement and disagreement between the Applicant and the relevant SNCBs. SoCGs could include statements in relation to the European sites and qualifying features included in the Applicant’s NSER or HRA Report, baseline data, methodology adopted, the stage of the HRA process reached, and the conclusions reached with regard to likely significant effects and/or effects on site integrity, as appropriate.

4.4 The approach contained within this advice note forms a key component of the preparation of an application, and has been designed to help Applicants to submit a robust application, so that as few outstanding issues as possible are taken forward into the Examination. Applicants are strongly advised to make use of the evidence plan process. This process has been set up to assist Applicants whilst complying with the Habitats Directive. Further information about evidence plans is available through the GOV.UK website\(^{18}\) or by contacting the statutory nature conservation body.

4.5 The Applicant’s DCO application should include the following information (as applicable):

| HRA Stage 1 | The scope of the HRA should be defined and justified. The HRA should include screening for LSE (alone or in combination with other plans or projects). If there are no LSE identified for all the European sites considered, then the report is likely to take the form of a NSER (see below) and HRA stages 2-4 will not be required |

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\(^{15}\) Regulation 63(1) of the Habitats Regulations 2017 and Regulation 28(1) of the Offshore Marine Conservation Regulations.

\(^{16}\) Regulation 63(2) of the Habitats Regulations, Regulation 28(3) of the Offshore Marine Conservation Regulations, and APFP Regulations 5(2)(g).

\(^{17}\) Regulation 63(3) of the Habitats Regulations and Regulation 28(4) of the Offshore Marine Conservation Regulations.

HRA Stage 2

If Stage 1 identifies LSE for any of the European sites considered, an assessment of the implications of the project on the site(s)’s conservation objectives will be required. This will take the form of a HRA Report and should include sufficient information for the AA.

HRA Stages 3 and 4

If Stage 2 concludes that the project will adversely affect the integrity of the site(s), or is inconclusive; consideration of alternatives, compensatory measures and whether the project is justified by IROPI will be required. This will also form part of the HRA Report.

4.6 The Applicant’s NSER or HRA Report should provide the reasoning and evidence behind its conclusions. This is likely to be supported by the information presented in the Environmental Statement (ES) for the DCO application. The Applicant’s NSER or HRA Report must show how the information gathered has been applied to the HRA and the tests applicable to the Habitats Directive. Further advice can be found in the ‘Relationship with environmental impact assessment (EIA)’ section at page 17 of this advice note.

4.7 Applicants are referred to the Planning Inspectorate’s ‘Prospectus for Applicants’, which explains the service offered by the Planning Inspectorate to applicants at the pre-application stage, including reviewing draft application documents. Applicants are therefore encouraged to submit draft NSER or HRA Reports and any supporting documents including draft matrices, to the Planning Inspectorate, prior to submission of the DCO application, for comment. Where time allows the Planning Inspectorate will comment on the draft NSER or HRA Report. Applicants are also advised to submit draft documents to the relevant SNCBs, with a view to addressing any comments those bodies may be able to make.

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

4.9 The Applicant’s HRA Stage 1 screening information is typically presented in the NSER and should include:

- a detailed description of the development, processes, timings, and method of work proposed as part of the NSIP;
- details of the methodology used to determine which European sites should be included within the assessment. A definition of and justification for the scope of the assessment should be provided;
- a plan and description of the European site(s) potentially affected, including a description of all qualifying features (a copy of the site data sheet is useful to include);
- an appraisal of the potential effects resulting from the construction and operation of the project (e.g. noise) and the likely significant effect on the European site(s) and qualifying features (e.g. disturbance to bird species);
- an outline and interpretation of the baseline data collected to inform the findings;
- an appraisal of the effects of any other plans or projects which, in combination with the Proposed Development, might be likely to have a significant effect on the European site(s). The scope of that appraisal should be well-defined and agreed with the local authorities and SNCBs;
- an evaluation of the potential for the scheme to require other consents requiring consideration of LSE by different competent authorities (e.g. where a Marine Licence is required separate from development...
a statement which specifies where the DCO boundary of the project overlaps into devolved administrations or other European Economic Area (EEA)\textsuperscript{20} States and map(s), as appropriate;

- a statement which identifies (with reasons) whether significant effects are considered to be likely in respect of European sites in devolved administrations or within other EEA States; and

- evidence (such as copies of correspondence or SoCG) of agreement between the Applicant and all relevant SNCBs (including those in devolved administrations) and/or relevant bodies in other EEA States on the scope, methodologies, interpretation, and conclusions of the screening assessment.

4.10 The Applicant may wish to consider future European site designations or amendments to qualifying features that may be affected by the Proposed Development. These are ones which, once consultation has been initiated, would be considered a European site under policy. The Planning Inspectorate encourages early engagement and discussion with SNCBs to agree the approach and agree the sites and features. In so doing, Applicants should make clear in their reports, the status of such European sites and qualifying features in order to identify where these are not currently legal or policy considerations.

4.11 The general approach taken to HRA throughout preparation of the DCO application should be iterative to ensure that a robust assessment of LSE is carried out. Consultation on LSE should develop throughout the pre-application stage and as the likely outcomes of the HRA process emerge. However, to avoid confusion, only one final version of the Stage 1 screening information should be submitted. If the Applicant wishes to show how the comments of SNCBs have been taken into account during consultations, then a tracked changes version can be submitted indicating how the submitted version has taken on board their comments.

4.12 The general approach taken to HRA throughout preparation of the DCO application should be iterative to ensure that a robust assessment of LSE is carried out. Consultation on LSE should develop throughout the pre-application stage and as the likely outcomes of the HRA process emerge.

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

\begin{itemize}
  \item a. There are no LSE on all the European site(s) and qualifying features considered, either alone or in combination with other plans or projects, and therefore no further assessment is required (see later section entitled ‘NSER’), OR
  \item b. LSE on any of the European site(s) and qualifying features considered exist, either alone or in combination with other plans or projects, therefore requiring an AA by the competent authority (see later section entitled ‘HRA Stage 2: AA’).
\end{itemize}

4.14 Applicants will need to give careful consideration to the avoidance and reduction of effects by the use of mitigation eg through specific timing of particular construction activities, amending the development consent application boundary, or modifying aspects of the project design. The Applicant’s NSER or HRA Report (as appropriate) should provide details of the mitigation measures and demonstrate how these relate to the assessment to reach the conclusion on whether any residual LSE exist, either alone or in combination with other plans or projects. The NSER or HRA Report should also identify how the mitigation measures\textsuperscript{21} are to be secured by reference to requirements in the DCO or other means eg conditions to the Deemed Marine Licence

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\textsuperscript{19} See the guidance document produced by Defra (2012) - Habitats Directive Guidance on competent authority coordination under the Habitats Regulations.

\textsuperscript{20} The countries in the EEA are identified on the Gov.uk website (see - https://www.gov.uk/eu-eea). Link correct at date of publication.

\textsuperscript{21} Regulation 63(6) of the Habitats Regulations and Regulation 28(6) of the Offshore Marine Conservation Regulations.
4.15 As a general guide, if a large amount of information gathering and data collection is required in order to identify the LSE of the project, these probably exist and an AA is likely to be required (meaning a NSER cannot be produced).

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

4.16 Applicants must conclude whether the Proposed Development, either alone or in combination with other plans or projects, is likely to have a significant effect on a European site. Some projects may be unlikely to have significant effects on their own but effects in combination with other plans or projects may be significant. The protective measures of the Habitats Directive could be seriously undermined if the combination of plans and projects escaped assessment. Therefore, the Applicant must consider both effects from the project alone and also in combination with other plans and projects and this needs to be evidenced in the Applicant’s NSER or HRA Report. Applicants should be aware that if insufficient information is submitted with an application, it may not be accepted for examination.

4.17 Whilst there is no legal definition of what constitutes a plan or project for the purposes of the Habitats Regulations, the Planning Inspectorate advises that the following should be considered (please note this list is not exhaustive):

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

No significant effects report (NSER)

4.18 The European Court of Justice (ECJ) in the Waddenzee case considered that the effects of the project should be ‘identified in the light of the best scientific knowledge in the field’. There should be a continuous evaluation of the assessment findings against thresholds of LSE. If at any time during the process it is determined ‘no significant effect (alone or in combination)’ and no reasonable scientific doubt remains, then the assessment can be concluded. The Applicant should then provide the results of their assessment with the DCO application in the form of a NSER, to meet the requirements of Regulation 5(2)(g) of the APFP.
Regulations (any European sites potentially affected by the Proposed Development must be identified). It would be helpful if the NSER was also cross referenced at Box 15 of the application form provided with the DCO application.

4.19 In considering the NSER’s conclusion that there are no LSE requiring AA, the Examining Authority (ExA) will have regard to the ECJ’s decision in the Waddenzee case, in which the ECJ took the view that ‘the competent national authorities, taking account of the conclusions of the appropriate assessment... are to authorise such activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects’.

4.20 There is no prescribed format for the NSER or for the reporting of the outcomes of the screening stage. However, Applicants are expected to include within the NSER the information requested in this advice note and complete the screening matrices set out in Appendix 1 (see section below). The NSER must be clear, be supported by sufficient information, and provide convincing reasons why the applicant has reached the view that there are no LSE and that an AA will not be required.

Screening outcomes

4.21 If the Applicant has concluded that the project is likely to have a significant effect on any European site, alone or in combination with other projects, the Applicant needs to provide information in accordance with the HRA Stage 2: AA of the process (see below).

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

HRA Stage 2: Appropriate Assessment

4.22 Where LSE on a European site, either from the project alone or in combination with other plans or projects, cannot be discounted, the Applicant needs to consider whether those effects will adversely affect the integrity of the site in view of its conservation objectives. The conservation objectives should be provided in the Applicant’s HRA Stage 2: AA information.

4.23 The Applicant should also include along with their HRA Stage 2: AA information the information required in the NSER (see HRA Stage 1: Screening). This should clearly state which European site(s) and qualifying features are being taken forward to HRA Stage 2: AA and which European site(s) and qualifying features have been screened out of further assessment.

4.24 The HRA Stage 2: AA information is typically presented in the applicant’s HRA Report and should include:

- information identifying the qualifying features, conservation objectives and conservation status of each of the qualifying features that might be affected;
- evidence about the project’s effects on the integrity of protected sites;

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28. Paragraph 59 of the ECJ judgment in Waddenzee (see footnote 10 for details)
29. Regulation 63(5) of the Habitats Regulations and Regulation 28(5) of the Offshore Marine Conservation Regulations
30. Decision of the ECJ in Waddenzee (see footnote 10 for details)

31. Paragraph 54 of Waddenzee (see footnote 10 for details)

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

4.25 The Applicant’s HRA Report is also expected to include the integrity matrices for all of the European sites taken to HRA Stage 2: AA, in order to summarise this part of the assessment (see Appendix 2 and below).

Negative Appropriate Assessment

4.26 Unless the Applicant’s HRA Report concludes, that no reasonable scientific doubt remains30 "identified in the light of the best scientific knowledge in the field"31, that the project will not adversely affect the integrity of any European site, alone or in combination with other plans or projects, the Applicant’s assessment will need to move to HRA Stages 3 and 4 of the process.

Matrices

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

Screening Matrices (HRA Stage 1: Screening) - which summarise the screening exercise for LSE of the project on the European sites and qualifying features considered (see Appendix 1), and

Integrity Matrices (HRA Stage 2: AA) - which summarise the potential adverse effects on integrity of the European sites, where LSE have been identified (see Appendix 2).

Separate Screening Matrices (and, if necessary, Integrity Matrices) should be provided for each European Site considered.

The matrices are intended to clearly present the outcomes at each stage of the process in a standardised tabular form for the benefit of all those involved in the application and examination. They can be used by Applicants to ensure a robust, screening assessment, and assessment of adverse effects on site integrity (as appropriate) and can be used to facilitate meaningful consultation during the pre-application stage and beyond. The aim is to reduce the demands and complexity during the examination with respect to HRA, and to assist the competent authority with its assessment, duty to consult, and making its decision.

30. Decision of the ECJ in Waddenzee (see footnote 10 for details)
31. Paragraph 54 of Waddenzee (see footnote 10 for details)
The matrices should not duplicate the information included in the NSER or HRA Report but should include explicit cross references to evidence in the applicant’s information for each qualifying feature of the European sites considered. When cross referencing to evidence to support the conclusions, the specific document, paragraph number and page reference should be provided. Where explicit cross reference has not been provided, if the application is accepted, the ExA will request that the Applicant provides more detailed matrices.

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

4.27 The Applicant should use their NSER or HRA Report to populate the matrices. Where the Applicant’s conclusion regarding either screening or integrity for a qualifying feature of a European site is disputed by an Interested Party, or if additional relevant information comes to light, the Planning Inspectorate will prepare revised matrices for those disputed sites using the evidence gathered throughout the Examination, up to a specified date in the examination. The revised matrices will form the core of the Report on the Implications for European Sites (RIES). The purpose of the RIES is to compile, document, and signpost the information and evidence available to the competent authority for the purposes of undertaking their HRA. The RIES is released once during the Examination period in order to fulfil the requirement to consult with the relevant nature conservation body; as required by regulation 63(3) of the Habitats Regulations. Further detail on the RIES is provided in the ‘Examination’ section of this advice note.

4.28 The HRA Stage 1 screening matrices must reflect the screening exercise undertaken in its entirety, showing the screening result for all European sites including all features for which the European site(s) are designated, even if the screening exercise has concluded no LSE on certain European sites or features. This may include European sites and features screened out at the very beginning of the process, for example, those not mentioned by the consulted SNCBs as having the potential to be affected.

4.29 Applicants are strongly advised to take advantage of pre-application consultation and use completed matrices to identify and discuss issues with consultees, including the relevant SNCBs, with the aim of minimising the number of issues that might otherwise remain unresolved and require exploration during the examination.

4.30 Templates for the matrices are provided at Appendix 1 (HRA Stage 1: Screening Matrices) and Appendix 2 (HRA Stage 2: Integrity Matrices). As relevant, matrices should be appended to or included within the Applicant’s NSER (screening matrices) or HRA Report (both matrices) but do not replace the Applicant’s NSER or HRA Report. Matrices must be submitted in both Microsoft Word and PDF format to allow for editing during the examination as explained above, and for publication of the matrices as submitted.

4.31 If the relevant matrices are not submitted with the DCO application and in sufficient detail, the ExA will request them in the first round of examination questions (see later section entitled ‘Examination’).
HRA Stage 3: Assessment of alternatives

4.32 The Applicant’s assessment should identify and assess alternatives that have been considered. Details should be provided in the Applicant’s HRA Report.

4.33 Alternative solutions could include a project of a different scale, a different location, and an option of not having the scheme at all – the ‘do nothing’ approach.

HRA Stage 4: Consideration of IROPI

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

- human health, public safety or beneficial consequences of primary importance to the environment; or
- having due regard to any opinion from the European Commission, any other imperative reasons of overriding public interest.

Compensatory measures

4.35 In the event that the Applicant determines a negative impact at HRA Stage 2: AA, an assessment of compensatory measures must also be included in the HRA Report which forms part of the DCO application documents. Consultation must have been undertaken with the relevant SNCBs and landowners, and Applicants are strongly encouraged to undertake this consultation as early as possible within the Pre-application stage.

Statement(s) of Common Ground

4.36 The Applicant is strongly encouraged to seek to agree SoCGs with relevant organisations, in particular the SNCBs, and submit these with the DCO application. The SoCG should not only clearly identify the extent to which relevant matters are agreed, but also areas where disputes remain. This will assist the ExA in focussing on the principal issues to be considered in the Examination, and reduce the potential areas of contention.

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

4.38 Where a SoCG between the Applicant and the relevant SNCB is not provided with the DCO application, and the project is accepted, the Applicant and SNCB should note that the ExA is likely to request one during the pre-examination stage.
5. **Acceptance of the application (28 days)**

*Submitting the DCO application*

5.1 When an application containing the Applicant’s NSER or HRA Report is submitted, this will be reviewed against the Acceptance checklist (see *Advice Note 6 - Preparation and Submission of Application Documents*), in order to decide whether the Applicant has complied with procedural requirements to submit ‘sufficient’ information to enable an AA to be carried out if necessary, or to enable the competent authority to determine that one is not required.

5.2 In determining whether ‘sufficient’ information has been provided, the Planning Inspectorate on behalf of the relevant secretary of state will have regard to the information provided in:

- the Applicant’s NSER or HRA Report;
- other relevant application documents, for example the Consultation Report; and
- any evidence provided in the Applicant’s NSER or HRA Report that the Applicant’s conclusion is agreed (or not agreed) by the relevant SNCBs, such as signed SoCGs that record areas of agreement and disagreement.

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

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

5.5 Acceptance of a project does not preclude the ExA requiring additional information on habitats matters during the Examination, in particular where SNCBs are not satisfied with the information provided.

6. **Pre-examination (approximately three months)**

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

6.2 A Preliminary Meeting will be held to hear views about how the application is to be examined. Anyone who has made a Relevant Representation will be invited to make representations to the ExA about the Examination procedure prior to the Preliminary Meeting. They will also be invited to attend the Preliminary Meeting, as will SNCBs and other statutory consultees.

6.3 Any persons attending the Preliminary Meeting are recommended to make any representations about how HRA issues should be examined to the ExA, through Relevant Representations or at the Preliminary Meeting, so that the ExA can decide how to structure the Examination and consider whether any further written information may be required during the Examination.

6.4 The ExA will use the information provided in the HRA Stage 1: Screening and HRA Stage 2: AA submitted with the application for an initial assessment of the principal issues, ie whether there would be adverse effects on the integrity of any European sites, and if so what these may be. Submitted SoCGs can also play an important role in the initial assessment of the principal issues. The initial assessment will take place before the Preliminary Meeting and will help to inform the structure of the Examination.

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33. *Appendix 2 of Advice Note 6 – Section 55 Acceptance of Applications Checklist.*
34. *Section 55 of the 2008 Act and Regulation 5(2)(g) of the APFP Regulations.*
35. *As defined in section 102 of PA2008.*
6.5 The procedural decision (which will be made by the ExA at or after the Preliminary Meeting) will set out the ExA's initial questions and a timetable for receipt of any further written information, including any information required to supplement the applicant's NSER or HRA. If the relevant matrices have not already been provided, they will be requested from the Applicant by the ExA at this stage.

7. Examination (up to 6 months)

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

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

Requiring additional information

7.3 At any time during the Examination the ExA may require the Applicant to provide additional information. This may be additional environmental information, or further clarification about the project, including:

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

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

7.5 If the ExA thinks that the information is needed in order to make the submitted E5 comply with the requirements for an E5 contained in the Relevant Regulations, the ExA must suspend consideration of the application until the information is provided (for further information see ‘Relationship with environmental impact assessment (EIA); below). However, Applicants should note that the suspension of the Examination does not affect the overall maximum timetable of six months within which the ExA must complete the examination of the application. This emphasises the importance of seeking and reaching agreement at the Pre-application stage between all parties that sufficient information has been provided in the application documents, to reduce the risk that further information is requested by the ExA, which the Applicant cannot provide within the statutory six months Examination period.

36. The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended).
37. Under Section 100(2) of the PA2008.
38. Under Section 100(2) of PA2008.
39. The relevant regulations will depend on the circumstances and if transitional provisions apply. Accordingly the relevant regulations will be either the Infrastructure Planning (EIA) Regulations 2009 (as amended) or the Infrastructure Planning (EIA) Regulations 2017. See regulation 37 of the 2017 EIA Regulations for the transitional provisions.
41. Section 98(1) of PA2008.
Hearings

7.6 Unless the ExA considers that a Hearing is necessary, the examination of HRA matters will normally take the form of consideration of written evidence. For further information about the Examination process, see Advice Note 8.5 (Participating in the Examination).

Updating of Matrices and preparation of the RIES

7.7 The Planning Inspectorate, on behalf of the ExA, will revise and update the initial matrices provided with the DCO application documents by the Applicant, where the Applicant’s conclusions have been disputed during the Examination. This will be carried out by incorporating the evidence gathered throughout the Examination up to a specified date in the timetable. There will be a clear audit trail to explain the basis for any revisions, and to identify where agreement has been reached between Interested Parties as part of the Examination. All of the evidence referred to in the revised matrices will be publicly available.

7.8 The revised matrices will be issued in a RIES by the Planning Inspectorate. The purpose of the RIES is to compile, document and signpost to the competent authority all the information and evidence available to them for the purposes of undertaking their HRA. The RIES will identify the position with respect to HRA of the Applicant, SNCBs, and other relevant stakeholders, highlight the issues which were the focus of the Examination, and identify any issues which remain in dispute or where uncertainty remains. It may also fulfil statutory duties for consultation under regulation 63(3). The RIES will identify whether a case for Alternatives and IROPI has been discussed in the Examination but will not consider this in detail. These aspects will be considered in the ExA’s Recommendation Report.

7.9 Provision for the issue of a RIES will usually be included in the timetable, towards the end of the Examination period. Comments on the RIES from the Interested Parties, including the Applicant and relevant SNCBs, will be invited. The timeframe for consultation on the RIES will be determined by the ExA and can be discussed during the Preliminary Meeting. A minimum of 21 days will normally be allowed by the ExA within the timetable to enable Interested Parties to review the RIES and to respond to this consultation.

7.10 Any comments received will be taken into account in the ExA’s Recommendation Report (see below), but the RIES is only published once and will not be revised or amended following consultation.

8. Recommendation (three months)

8.1 The RIES (as issued during the Examination), the consultation responses to it, responses to the ExA’s questions, and all matters relating to HRA issues will form part of the evidence base for the ExA’s report and recommendation to the relevant secretary of state (the competent authority).

8.2 The ExA’s report will address the LSE of the project on any European site(s) and qualifying features and, if appropriate, also consider whether the project will have an adverse effect on the integrity of European site(s). The ExA’s report will have regard to the RIES, and the comments received from Interested Parties including SNCBs. Where necessary, the ExA’s report will assess evidence from the Examination relating to the case for no alternatives, IROPI and compensatory measures.

9. Competent Authority’s Decision (three months)

9.1 The competent authority will consider all the examination evidence prior to making a determination on the DCO application. The table overleaf, below, summarises the interface between the NSIP process and the HRA process (as shown in Figure 1).
<table>
<thead>
<tr>
<th>Planning Act process stages</th>
<th>HRA stages</th>
<th>Activity</th>
<th>Responsible parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-application</td>
<td>Stage 1: Screening</td>
<td>Evidence plans consultation and work with SNCB(s).</td>
<td>Applicant</td>
</tr>
<tr>
<td>(no prescribed timeframe)</td>
<td>Provision of information to support Stages 2-4</td>
<td>Applicant undertakes HRA and concludes on LSE of project on any European site(s), and consults with statutory consultees.</td>
<td>Consultees including SNCBs</td>
</tr>
<tr>
<td></td>
<td>If negative AA anticipated, Applicant to prepare ‘no alternatives’ assessment, statement of IROPI, and details of compensatory measures in consultation with SNCBs and landowners.</td>
<td></td>
<td>Planning Inspectorate</td>
</tr>
<tr>
<td></td>
<td>Applicant prepares and consults on Screening Matrices and, if applicable, Integrity Matrices.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Applicant prepares draft NSER or HRA Report and submits to Planning Inspectorate and SNCBs for comment.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Preparation of SoCG.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application/ Acceptance</td>
<td>The secretary of state determines whether sufficient information has been provided by the Applicant and whether or not the application meets the standards required to be formally accepted for Examination. Applicants will document the information in either a NSER or an HRA Report.</td>
<td>Planning Inspectorate on behalf of the secretary of state</td>
<td></td>
</tr>
<tr>
<td>(28 days)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pre-examination</td>
<td>Initial assessment by ExA of the principal issues from the DCO application information, including matrices required by this advice.</td>
<td>ExA</td>
<td></td>
</tr>
<tr>
<td>(approximately three months)</td>
<td>Applicant advertises accepted application and invites Interested Parties, including SNCBs and others, to submit representations by a set deadline.</td>
<td>Applicant</td>
<td></td>
</tr>
<tr>
<td>Examination</td>
<td>Procuderal decision sets out how the HRA issues will be examined.</td>
<td>ExA</td>
<td></td>
</tr>
<tr>
<td>(up to 6 months)</td>
<td>ExA will request relevant matrices if not provided.</td>
<td>Applicant</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ExA examines the LSE, and whether adverse effects on the integrity of the European site can/cannot be excluded. ExA may request further information from any Interested Parties.</td>
<td>Interested Parties including SNCBs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Planning Inspectorate on behalf of the ExA will update the HRA matrices as necessary on the basis of information gathered during the examination, and will release these within a RIES for consultation.</td>
<td>Planning Inspectorate</td>
<td></td>
</tr>
</tbody>
</table>

**Stages 3 and 4 only apply in light of a negative AA**

<table>
<thead>
<tr>
<th>Examination</th>
<th>Stage 3: Assessment of alternatives</th>
<th>ExA examines evidence (including submitted ‘no alternatives’ assessment) to identify if alternative solution(s) exists and would avoid adverse effects on the integrity of the European site(s).</th>
<th>ExA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>ExA examines any case for IROPI that has been put forward.</td>
<td>ExA</td>
</tr>
<tr>
<td></td>
<td>Stage 4: IROPI Compensatory measures</td>
<td>ExA examines any compensatory measures and the consultations undertaken with the SNCBs to determine if these are appropriate and sufficient.</td>
<td>ExA</td>
</tr>
<tr>
<td>Recommendation</td>
<td>All</td>
<td>The ExA makes a report and recommendation to the secretary of state as the competent authority.</td>
<td>ExA</td>
</tr>
<tr>
<td>(three months)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decision</td>
<td>All</td>
<td>The secretary of state will undertake any necessary AA, consider alternatives, compensation measures and IROPI and come to a decision.</td>
<td>Secretary of state</td>
</tr>
</tbody>
</table>
11. Other Considerations

Relationship with environmental impact assessment (EIA)

11.1 The majority of NSIP proposals are likely to require both HRA and EIA. Although the HRA and EIA are separate and distinct elements of the DCO process, both are integral to it. The EIA will assess effects on European sites and will include an assessment of effects on flora and fauna (as defined in the EIA Regulations). This is information which is likely to inform the Applicant’s HRA. The 2017 EIA Regulations require the secretary of state or relevant authority, where appropriate to co-ordinate HRA and EIA. The EU has prepared guidance on how this should be implemented. As the UK has opted for a co-ordinated procedure rather than a joint procedure, the EIA and HRA do not have to be presented in a single document. If the Applicant chooses to combine the information in to a single document, they should take care to ensure that the information relevant to the HRA and its conclusions is clearly discernible.

11.2 The need to make the distinction between the conclusions of the EIA and HRA processes flows from the different requirements of the EIA Regulations and the Habitats Regulations. While the outcome of the EIA as reported in the ES identifies likely significant environmental effects from the Proposed Development these do not preclude the decision maker from granting authorisation whereas significant effects identified through HRA may do so.

Co-ordinating parallel consents and other AA

11.3 NSIPs, by virtue of their scale and complexity, are likely to require separate licences or permits under other regulatory regimes. Activities requiring consent not included, nor capable of being included in an application for development consent under the PA2008, may also have a significant effect on a European site and may also require AA by a different decision maker (competent authority) under other regulatory regimes before it can be authorised.

11.4 Applicants are encouraged to consult other competent authorities about the level of information those competent authorities will require in order to undertake their AA, if required. Applicants should confirm with those competent authorities whether they are likely to wish to adopt the reasoning or conclusions of the AA carried out by the competent authority (the relevant secretary of state) under the PA2008 process.

11.5 The Applicant’s HRA Report should make clear that any LSE of the Proposed Development, which may be regulated by other competent authorities, have been properly taken into account in the applicant’s HRA for the DCO application.

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

European Protected Species (EPS) and Wild Birds

11.7 Obtaining a DCO after satisfying the requirements for HRA does not obviate the need for any licence that may also be required e.g. for impacts on European Protected Species or wild birds.

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42. The Infrastructure Planning (EIA) Regulations 2009 (as amended), Schedule 4, Part 1, paragraph 19 or the Infrastructure Planning (EIA) Regulations 2017, Schedule 4, paragraph 4.
44. Commission guidance document on streamlining environmental assessments conducted under Article 2(3) of the EIA Directive (26/07/2016).
46. Regulation 67 of the Habitats Regulations.
### Terms and abbreviations used in this advice note

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA</td>
<td>Appropriate Assessment</td>
</tr>
<tr>
<td>Applicant</td>
<td>The party applying for development consent. Responsible for carrying out the necessary preparatory work in support of the application to enable the competent authority to carry out its duties</td>
</tr>
<tr>
<td>APFP</td>
<td>The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended)</td>
</tr>
<tr>
<td>Competent Authority</td>
<td>In the case of NSIPs the competent authority, the decision-maker, is the relevant secretary of state</td>
</tr>
<tr>
<td>cSAC</td>
<td>candidate Special Area of Conservation</td>
</tr>
<tr>
<td>DCO</td>
<td>Development Consent Order</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>ES</td>
<td>Environmental Statement</td>
</tr>
</tbody>
</table>
| European site/ European marine site (in accordance with the statutory definition in the Habitat Regulations) | Natura 2000 sites (SCIs, SACs, cSACs SPAs) and; In England:  
- pSPAs and possible Special Areas of Conservation; and  
- listed or proposed Ramsar sites; and  
- sites identified, or required, as compensatory measures for adverse effects on Natura 2000 sites, pSPAs, possible SACs, and listed or proposed Ramsar sites  
In Wales:  
- pSPAs, and  
- listed Ramsar sites |
| ExA | Examining Authority |
| Habitats Regulations | The Conservation of Habitats and Species Regulations 2017 |
| HRA | Habitats Regulations Assessment |
| Integrity Matrices | Method for summarising the AA stage (HRA Stage 2) within the application information. A separate matrix should be produced for each European site considered within the AA. |
| IROPI | Imperative Reasons of Overriding Public Interest |
| LSE | Likely Significant Effect |
| NPPF | National Planning Policy Framework |
| NSIP | Nationally Significant Infrastructure Project |
| pSPA | potential Special Protection Area |
| Qualifying features | The features for which the European site is designated and to be protected and managed for conservation. |
| Ramsar Convention | The Convention on Wetlands of International Importance especially as Waterfowl Habitat, as amended in 1982 and 1987 |
| RIES | Report on the Implications for European Sites |
| SAC | Special Area for Conservation |
| SCI | Site of Community Importance |
### Screening Matrices
Method for summarising the screening stage (HRA Stage 1) within the application information. A separate matrix should be produced for each European site considered at the screening stage.

<table>
<thead>
<tr>
<th>SoCC</th>
<th>Statement of Community Consultation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The applicant is advised to take the SNCBs’ and local planning authorities’ advice about how to incorporate HRA consultation into the published SoCC(^{47}).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SoCG</th>
<th>Statement of Common Ground</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Applicants are advised to make use of a SoCG to identify matters which have been agreed with the nature conservation bodies and to flag areas which remain in dispute. The Screening and Integrity Matrices can also be used for this purpose. If the application is accepted SoCGs will help the ExA to assess the issues and to decide how to carry out the examination.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Secretary of state</th>
<th>Secretary of state</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The role of the secretary of state as competent authority is to determine if there are LSE and carry out the AA, if required, before a decision is made. They are also required to consult with the relevant SNCBs (and the public, if considered appropriate) before deciding whether to authorise the NSIP, and where adverse effects remain they must undertake further assessments on alternatives and prepare a justification statement for IROPI if consent is to be granted.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SNCB</th>
<th>Statutory Nature Conservation Body</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SNCBs include Natural England (for European sites located within England), Natural Resources Wales (for European sites located within Wales), the Joint Nature Conservation Committee (JNCC) (for European sites located beyond 12 nautical miles)(^{48}), Scottish Natural Heritage (for European sites located within Scotland) and Northern Ireland Environment Agency (for European sites located within Northern Ireland).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SPA</th>
<th>Special Protection Area</th>
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</table>

<table>
<thead>
<tr>
<th>TAN</th>
<th>Technical Advice Note</th>
</tr>
</thead>
</table>

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47. Required to be prepared by the Applicant by Section 47 of the 2008 Act.
48. Pursuant to an authorisation made on the 9th December 2013 by the JNCC under paragraph 17(c) of Schedule 4 to the Natural Environment and Rural Communities Act 2006, NE is authorised to exercise the JNCC’s functions as a statutory consultee in respect of applications for offshore renewable energy installations in offshore waters (0-200nm) adjacent to England.