

Guidance

Appropriate assessment

Guidance on the use of Habitats Regulations Assessment

From: **Ministry of Housing, Communities and Local Government**

(/government/organisations/ministry-of-housing-communities-local-government), Ministry of Housing, Communities & Local Government (2018 to 2021)

(/government/organisations/ministry-of-housing-communities-and-local-government-2018-2021) and **Department for Levelling Up, Housing and Communities**

(/government/organisations/department-for-levelling-up-housing-and-communities)

Published 22 July 2019

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What is a Habitats Regulations Assessment?

A Habitats Regulations Assessment (HRA) refers to the several distinct stages of Assessment which must be undertaken in accordance with the [Conservation of Habitats and Species Regulations 2017 \(as amended\)](https://www.legislation.gov.uk/uksi/2010/490/contents/made) (<https://www.legislation.gov.uk/uksi/2010/490/contents/made>) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) to determine if a plan or project may affect the protected features of a habitats site before deciding whether to undertake, permit or authorise it. European Sites and European Offshore Marine Sites identified under these regulations are referred to as 'habitats sites' in the [National Planning Policy Framework](https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary) (<https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary>).

All plans and projects (including planning applications) which are not directly connected with, or necessary for, the conservation management of a habitat site, require consideration of whether the plan or project is likely to have significant effects on that site. This consideration – typically referred to as the 'Habitats Regulations Assessment screening' – should take into account the potential effects both of the plan/project itself and in combination with other plans or projects. Where the potential for likely significant effects cannot be excluded, a [competent authority](https://www.legislation.gov.uk/uksi/2017/1012/regulation/7/made) (<https://www.legislation.gov.uk/uksi/2017/1012/regulation/7/made>) must make an appropriate assessment of the implications of the plan or project for that site, in view of the site's conservation objectives. The competent authority may agree to the plan or project only after having ruled out adverse effects on the integrity of the habitats site. Where an adverse effect on the site's integrity cannot be ruled out, and where there are no alternative solutions, the plan or project can only proceed if there are imperative reasons of overriding public interest and if the necessary compensatory measures can be secured.

Paragraph: 001 Reference ID: 65-001-20190722

Revision date: 22 07 2019

When may appropriate assessments be required in the planning process?

If a proposed plan or project is considered likely to have a significant effect on a protected [habitats site](https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary) (either individually or in combination with other plans or projects) then an appropriate assessment of the implications for the site, in view of the site's conservation objectives, must be undertaken ([Part 6 of the Conservation of Habitats and Species Regulations 2017](https://www.legislation.gov.uk/ukxi/2017/1012/part/6/made) (<https://www.legislation.gov.uk/ukxi/2017/1012/part/6/made>)). This does not apply to plans or projects directly connected to the conservation management of the features for which the site was designated.

A significant effect should be considered likely if it cannot be excluded on the basis of objective information and it might undermine a site's conservation objectives. A risk or a possibility of such an effect is enough to warrant the need for an appropriate assessment.

The [conservation objectives](https://publications.naturalengland.org.uk/category/6490068894089216) (<https://publications.naturalengland.org.uk/category/6490068894089216>) relate to each of the habitats and species for which the site was designated and will be provided in more detail by Natural England. A competent authority must consult Natural England for the purposes of the assessment and must have regard to any representations that Natural England may wish to make within a reasonable time (as specified by the competent authority). Natural England's [formal advice on conservation objectives](https://publications.naturalengland.org.uk/category/6490068894089216) (<https://publications.naturalengland.org.uk/category/6490068894089216>) is publicly available for both European terrestrial sites and European marine sites.

Paragraph: 002 Reference ID: 65-002-20190722

Revision date: 22 07 2019

What must an appropriate assessment contain?

The scope and content of an appropriate assessment will depend on the nature, location, duration and scale of the proposed plan or project and the interest features of the relevant site. 'Appropriate' is not a technical term. It indicates that an assessment needs to be proportionate and sufficient to support the task of the competent authority in determining whether the plan or project will adversely affect the integrity of the site.

An appropriate assessment must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project. The [competent authority](https://www.legislation.gov.uk/ukxi/2017/1012/regulation/7/made) (<https://www.legislation.gov.uk/ukxi/2017/1012/regulation/7/made>) will require the applicant to provide such information as may reasonably be

required to undertake the [assessment](https://www.legislation.gov.uk/ukxi/2017/1012/regulation/63/made)
(<https://www.legislation.gov.uk/ukxi/2017/1012/regulation/63/made>).

An appropriate assessment must consider the indirect effects on the designated features and conservation objectives, including the following principles:

- an appropriate assessment must catalogue the entirety of habitat types and species for which a site is protected.
- an appropriate assessment must identify and examine the implications of the proposed plan or project for the designated features present on that site, including for the typical species of designated habitats as well as the implications for habitat types and species present outside the boundaries of that site and functionally linked; insofar as those implications are liable to affect the conservation objectives of the site.
- where the competent authority rejects the findings in a scientific expert opinion recommending additional information, the appropriate assessment must include an explicit and detailed statement of reasons which is capable of dispelling all reasonable scientific doubt on the effects of the proposal on the site.
- a competent authority is permitted to grant a plan or project consent which leaves the applicant free to determine subsequently certain parameters relating to the construction phase, only if that authority is certain that the consent includes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site.

In the light of this the competent authority must determine whether the proposal will not adversely affect the integrity of the site(s). The integrity of a site is the coherence of its 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 the species for which it was designated.

Paragraph: 003 Reference ID: 65-003-20190722

Revision date: 22 07 2019

What are mitigation measures?

Where it cannot be concluded that there will be no adverse effects on a site's integrity, there is a need to consider potential mitigation. Mitigation measures are protective measures forming part of a project and are intended to avoid or reduce any direct adverse effects that may be caused by a plan or project, to ensure that it does not have an adverse effect on the integrity of a habitats site(s). Any measures used to inform the decision about the effects on the integrity need to be sufficiently secured and likely to work in practice. Measures aimed at compensating for the negative effects

of a project cannot be considered mitigation measures. The [mitigation hierarchy](https://www.gov.uk/guidance/national-planning-policy-framework/15-conserving-and-enhancing-the-natural-environment#para175) (<https://www.gov.uk/guidance/national-planning-policy-framework/15-conserving-and-enhancing-the-natural-environment#para175>) should apply and in the first instance effort should be made to avoid an adverse effect on site integrity altogether; but if this is not possible impact reduction measures should be applied. For example, this may involve:

- switching to a less damaging method of construction;
- undertaking works at a less sensitive time of year (e.g. outside a breeding season);
- not proceeding with some parts of the plan or project;
- incorporating additional works into the plan or project to avoid or reduce its impact.

Paragraph: 004 Reference ID: 65-004-20190722

Revision date: 22 07 2019

What are the implications of the People over Wind Judgment for Habitats Regulations Assessments?

In April 2018, the Court of Justice of the European Union delivered its judgment in [Case C-323/17 People Over Wind & Peter Sweetman v Coillte Teoranta \('People over Wind'\)](https://curia.europa.eu/juris/document/document.jsf?docid=200970&doclang=EN) (<https://curia.europa.eu/juris/document/document.jsf?docid=200970&doclang=EN>).

The judgment clarified that when making screening decisions for the purposes of deciding whether an appropriate assessment is required, competent authorities cannot take into account any mitigation measures

As a result, a competent authority may only take account of mitigation measures intended to avoid or reduce the harmful effects of a plan or project as part of an appropriate assessment itself.

This is a departure from the approach established by domestic case law, which had permitted mitigation measures to be taken into account at the screening stage.

Paragraph: 005 Reference ID: 65-005-20190722

Revision date: 22 07 2019

What are the key principles which can be considered by competent authorities when considering whether appropriate assessment is required?

Measures which have been specifically added to achieve the purpose of avoiding or reducing its harmful effects on a habitats site should not be considered at the screening stage.

One way of determining whether measures should not be considered at the screening stage may be to consider whether the particular aspects have been included primarily to mitigate the likely habitats-related effects on the site. If they have, this may suggest that an appropriate assessment is required. In many cases, this may not give rise to significant practical difficulties since, if the measures proposed are sufficiently robust and achieve the required certainty then they will be considered as not giving rise to an adverse effect on integrity of the site at appropriate assessment.

For example, it would appear that off-site Suitable Alternative Natural Greenspaces may be considered as a mitigation measure under People over Wind as their primary purpose is to draw recreational pressure away from sites and so prevent an adverse effect from occurring. In these cases the competent authority must now assess the robustness of mitigation measures through an appropriate assessment.

Paragraph: 006 Reference ID: 65-006-20190722

Revision date: 22 07 2019

Features that are integral to the design or physical characteristics of the project that is being assessed, for example, the layout, timing and location of a scheme, may be considered at the screening stage.

Whether or not something is integral to the project and not a mitigation measure will have to be determined on a case by case basis on its particular characteristics at the screening stage. Some features of a plan or project may be the product of other considerations, irrespective of any nature conservation issues, for example safety considerations. The design of a development may also have been devised to take account of the distance from or relationship to the site and intervening physical matters. A competent authority may wish to consider whether the measures have been included in a plan or project only to respond to likely effects on a habitats site.

Paragraph: 007 Reference ID: 65-007-20190722

Revision date: 22 07 2019

Can a project or non-strategic plan, such as a neighbourhood plan, rely on a more strategic level appropriate assessment such as that undertaken for a local plan?

An appropriate assessment for a more strategic plan, such as the local plan, can consider the impacts on sites and confirm the suitability or likely success of mitigation measures for associated non-strategic policies and projects.

An individual assessment of non-strategic policies and projects may not be necessary in some limited cases where the strategic appropriate assessment is sufficiently robust. This would need to contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt on the impacts of the non-strategic policies (e.g. neighbourhood plans) and/or project(s). As long as these measures have been properly considered in a recent plan, and the development will not create additional risks of a significant effect on a habitats site, they may not need further assessment at the non-strategic level.

This is a high standard to meet and will need to be assessed on a case by case basis. The following are some indicative criteria to consider:

- the strategic appropriate assessment was properly carried out;
- it remains valid and there is no new material and relevant information that should be considered (e.g. provided by ongoing site condition monitoring, or further relevant detail that has become available at the lower, non-strategic level);
- it specifically caters for and addresses all the impacts in the relevant area from the non-strategic plan or project (alone and in combination) and there is the necessary certainty around the use of any mitigation measures.

Where there is any doubt about this, an appropriate assessment will be required in order to test the non-strategic plan or project and any relevant mitigation measures.

Paragraph: 008 Reference ID: 65-008-20190722

Revision date: 22 07 2019

What is the impact of the People Over Wind judgment on neighbourhood plans, permission in principle, development orders and planning zones?

Up to December 2018 legislation did not permit a competent authority to approve a neighbourhood plan, permission in principle, and certain development orders, where screening identifies a 'likely significant effect.' The People over Wind judgment means that it is no longer possible to apply mitigation measures at the screening stage. Therefore, some plans and orders where there could be a likely significant effect on a habitats site were unable to progress, irrespective of what mitigation is proposed, which was

not the policy intention. In order to address this issue the [Conservation of Habitats and Species and Planning \(Various Amendments\) \(England and Wales\) Regulations 2018](#) (<https://www.legislation.gov.uk/uksi/2018/1307/contents/made>) amend legislation to allow that where a likely significant effect on the environment is identified, a competent authority may undertake an appropriate assessment to consider impacts and any mitigation measures, and then make a decision whether or not to approve the plan or order. This applies to the following plans and orders:

- [neighbourhood plans](#) (<https://www.legislation.gov.uk/uksi/2018/1307/regulation/3/made>), where the prescribed basic condition relating to habitats has been amended to take account of the full Habitats Regulations Assessment;
- [permission in principle](#) (<https://www.legislation.gov.uk/uksi/2017/1309/made>);
- [special development orders](#) (<https://www.legislation.gov.uk/uksi/2018/1307/contents/made>);
- [local development orders](#) (<https://www.legislation.gov.uk/uksi/2018/1307/contents/made>);
- [neighbourhood development orders](#) (<https://www.legislation.gov.uk/uksi/2018/1307/contents/made>);
- [simplified planning zones](#) (<https://www.legislation.gov.uk/uksi/2018/1307/contents/made>);
- [enterprise zones](#) (<https://www.legislation.gov.uk/uksi/2018/1307/contents/made>).

Paragraph: 009 Reference ID: 65-009-20190722

Revision date: 22 07 2019

Are there any implications of the People Over Wind judgment for undertaking an Environmental Impact Assessment?

No, the [Environmental Impact Regulations \(Town and Country Planning \(Environmental Impact Assessment\) Regulations 2017/571 \(as amended\)\)](#) (<https://www.legislation.gov.uk/uksi/2017/571/contents/made>) do allow for certain mitigation measures to be taken into account at the 'screening stage' for Environmental Impact Assessment.

Paragraph: 010 Reference ID: 65-010-20190722

Revision date: 22 07 2019



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