

# Habitats Directive: taking a new permission, plan or project through the regulations

Operational instruction

183\_01

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## What's this document about?

A generic methodology for assessing new permissions, plans and projects (PPP) under the Habitats Regulations.



Document details

## Who does this apply to?

The procedure applies to staff in all functions. You must follow this procedure when considering **any** application or proposed new plan or project.



Related documents

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Feedback

Contact for queries

[ConsEcoHelp](#)

## General principles

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<b>Natural England/CCW involvement</b>	It is very important to ensure Natural England/Countryside Council for Wales (CCW) involvement and where possible ultimate agreement with the conclusions of each step of this process.
<b>Pre-application discussions</b>	At any stage you can ask the applicant for more information deemed reasonable to determine the application. If you hold pre-application discussions with other competent authorities, clarify what 'best available information' means, as it helps to determine in combination effects.
<b>NHDS</b>	The National Habitats Directive System (NHDS) must be used to create standard forms, find site information and examples of good practice.
<b>Precautionary principle</b>	PPP can only be permitted having ascertained no adverse effect on the integrity of the site.
<b>Requesting information</b>	If you request information, it must be specific best available information. It's not acceptable to receive raw data or information that you need to interpret or manipulate to make it usable.
<b>In combination</b>	In combination means the sum of influences acting on a feature from all plans and projects in the context of prevailing environmental conditions.
<b>Prevailing environmental conditions</b>	These are reasonably foreseeable impacts arising from regulated and unregulated anthropogenic sources and natural sources, not just impacts associated with our authorisations. They can include: <ul style="list-style-type: none"><li>▪ background/diffuse contributions to the site;</li><li>▪ residual effects of PPP that have been completed/implemented.</li></ul>

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**In combination effects**

These effects can vary over time and/or be one of the following:

<b>additive</b>	the total effect of a number of effects is equal to the sum of the individual effects.
<b>synergistic</b>	the effect of the interaction of a number of effects is greater than the sum of the individual effects.
<b>neutralistic</b>	the effects counteract each other, reducing the overall effect.
<b>overlapping</b>	affecting the same spatial area of a feature and/or the same attributes of the feature. For example the mixing zones of two separate discharges overlap.
<b>discrete</b>	affecting different areas and different attributes of the feature. For example two separate discharges affect geographically discrete areas of a habitat within a site. In combination, the total area of habitat affected may be unacceptable in terms of site integrity.

**Refusing applications**

Where possible identify during pre-application discussions if the application will be refused for reasons other than its impact on the European site. For example, impacting on other features of interest on a site.

**Maintaining an audit trail**

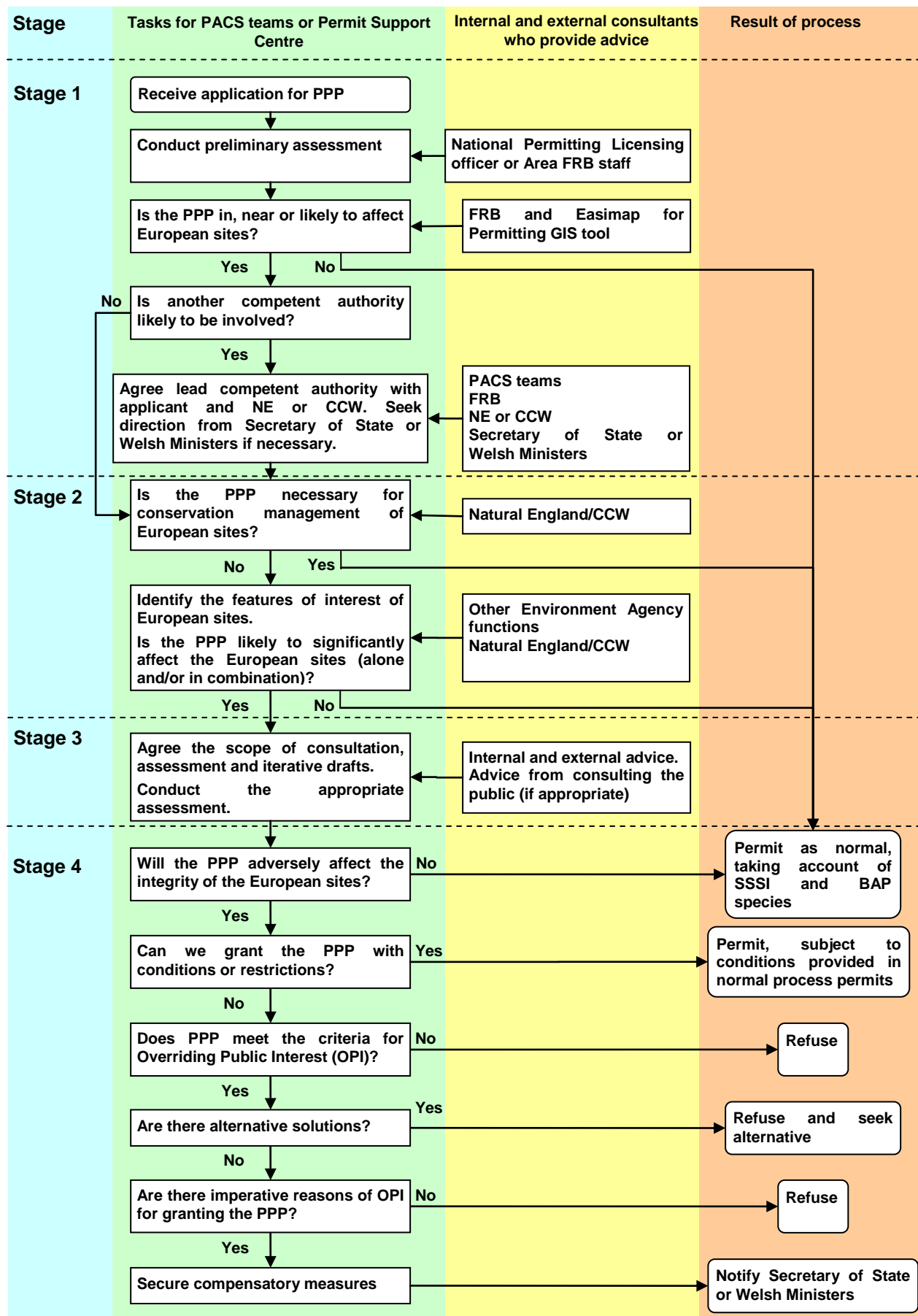
Through out the process we must ensure that we maintain a clear audit trail.

In some cases, even though we may not reach agreement with Natural England/CCW, we may decide to proceed with granting the permission.

In this case we require a Natural England/CCW signature to show that we have fulfilled our duty as a competent authority and consulted the appropriate conservation body under Regulation 61, regardless of whether agreement is reached.

Their signing of the form doesn't necessarily mean they agree with the conclusion. If they have a different opinion, they should record their differences on the form.

# Overview of the four stage process



## Stage 1: Screening for relevant PPP

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**About Stage 1** This is a coarse screening exercise to filter out PPPs that, because of their nature or location, could not affect the interest features of a European site.

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**How to identify relevant PPP** The determining officer or permit support centre staff should use the [Easimap screening tool](#) to identify protected sites around a new PPP, or refer to the specific criteria for Stage 1 in [Functional Appendices 1 to 10](#).

**If it is relevant:** Make sure the applicant knows that the application is subject to the Habitats Regulations. They may need to provide additional information so that decisions can be made.

**If it is not relevant:** Keep a copy of the screening with the application for the audit trail.

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## Stage 1: Competent Authorities

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**Lead competent authorities** Regulation 65(2) of the Habitats Regulations does not require a competent authority to assess the implications of a plan or project, which would be more appropriately assessed by another competent authority.

To avoid these situations, the competent authorities should communicate as soon as possible.

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**Agreeing a competent authority** Authorities must agree a lead competent authority for the different stages of a plan or project. If they disagree, they must refer to Defra and/or Welsh Assembly Government.

For example - decisions on land use planning are usually made faster than other decisions, such as on pollution control or land drainage. An applicant should apply for pollution control authorisation and planning permission at the same time, to avoid unnecessary overlap between the two systems. In this case, the planning authority is the competent authority for the Habitats Regulations assessment.

**! Important:**

- We must not duplicate the assessment for those parts of the project which the planning authority would assess in relation to planning permission.
  - We may still need to do an assessment of likely significant effect for the parts of the project not covered by the planning permission, such as discharge consents.
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## Stage 2: Assessing the likely significant effect of a PPP on a European site

### Overview

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#### Stage 2

This is a second screening exercise to identify PPP that require further assessment. Only those that are considered likely to have a significant effect require an appropriate assessment in Stage 3.

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#### Definition: likely significant effect

A **likely significant effect** is one where you may reasonably predict, that a PPP, may affect the conservation objectives of the features for which the site was designated, excluding trivial or inconsequential effects.

Judgements of likely significant effect must relate to **all** the Habitat Directive interest features for which the site is of European importance and their conservation objectives. The judgement can be positive or negative. This does not include SSSI features, as they are considered under separate legislation.

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#### Potential for adverse effect

The potential for adverse effect on the integrity of the site depends on:

- the scale and magnitude of the plan or project;
  - its predicted impacts;
  - other factors, such as diffuse pollution and unconsented activities at the site.
- 

#### Attributing impacts

It can be difficult, on a European site, to attribute the impact of:

- individual permitted plans or projects;
- groups of plans or projects;
- unconsented activities;
- and natural processes.

Although you should apply the precautionary principle, any judgement made must be reasonable and based upon information attributing cause and effect.

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# Overview of the Stage 2 process

## Summary of the steps

The diagram below is a summary of the procedure for assessing whether a plan or project is likely to have a significant effect on a European site. In each step, consult the FRB officer.

### Step 1

Is the plan or project directly connected with, or necessary to, the management of the site for nature?

No Yes

### Step 2

Identify the qualifying (interest) features of the site from the conservation objectives/citation/Habitats Database.

Consult and seek NE/CCW agreement.

### Step 3

Assess likely significant effect, alone and/or in combination with other plans and projects and taking account of the condition of the site.

Is there a **potential hazard** from the plan or project that could affect the interest features of the site **directly or indirectly**? Are the interest features sensitive to this hazard?

No

Yes

Is there a **potential pathway** such that the potential hazard will affect the interest features of the site?

No

Yes

Is the **scale and magnitude** of any potential effect likely to be significant? Seek additional information from applicant, if necessary.

No

Yes or inconclusive

Plan or project **is** likely to have a significant effect.

Plan or project **is not** likely to have a significant effect.

### Step 4

Appropriate assessment required. Consult/inform our FRB staff and NE/CCW.

Determine the application in the normal manner. Consult/inform our FRB staff and NE/CCW. Complete using standard form.

Inform applicant of result of Stage 2 assessment. Record using standard form.

## Stage 2: Step 1 Is the PPP connected with, or necessary to, managing the site for nature conservation?

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### Step 1

Follow the steps in the table below when you think that a PPP is necessary for managing the site for nature conservation.

Task	Action
1	Do you think that the PPP will harm any of the interest features of a European site? <b>No:</b> Go to task 3. <b>Yes:</b> Go to task 2.
2	If the PPP is necessary for managing one interest feature, but will have an adverse effect on another interest feature, it must be subject to a Regulation 61 assessment. Continue with Stage 2: Step 2
3	If you think a PPP is necessary for managing the site for nature conservation, obtain confirmation in writing from Natural England/CCW. Record and file the confirmation to maintain an audit trail. <b>! Important</b> As good practice, subject large or novel projects to Habitat Regulations tests, even if they are considered necessary for managing the site for nature conservation. <b>Example:</b> The materials used or mode of construction for the building of a structure that is necessary for managing the site.

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## Stage 2: Step 2 Assess the likely significant effect

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### Making judgements

- Consider the worst case scenario of the PPP when implemented in full and/or to their authorised limit.
  - Consider an effect significant when it is neither negligible nor inconsequential.
  - If there's a high degree of uncertainty with the initial judgement, seek further information from the applicant, providing your request is reasonable. If the applicant doesn't make the information available and there remains uncertainty, then make a judgement of likely significant effect.
- 

### Three elements

A judgement on likely significant effect is effectively a brief risk assessment covering three generic elements:

- potential hazard
  - pathway
  - scale
-



**Potential hazard**

**Is there a potential hazard from the proposal which could affect the interest features of the site either directly or indirectly, alone and/or in combination?**

**Are the interest features sensitive to this hazard?**

The National Habitats Directive System (NHDS) automatically finds the list of potential hazards associated with the particular species and habitats. However, this list is not definitive. It refers to the possible impacts or effects of a PPP on an interest feature or the supporting environment on which the feature depends. Potential impacts may be direct or indirect, episodic or ongoing.

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**What to consider**

- Consider the mechanisms by which the impact can occur and the sensitivity of the interest features to the hazard.
  - A PPP may present several hazards to a European site. A single site may be a Special Area of Conservation (SAC) and a Special Protection Area (SPA), or designated for several reasons, including Ramsar.
  - Consider the effects on all qualifying features under law. Ramsar features are under government policy only.
  - Consider beneficial and negative impacts, including potential hazards associated with construction, operation and de-commissioning phases.
  - Consider each case on its facts. Considering known existing impacts may help you to identify hazards.
- 

**Pathway**

**Is there a pathway such that the potential hazard could affect the interest features of the site alone and/or in combination? What is the exposure of the feature to the hazard?**

Consider whether the hazard will affect the conservation objectives of the European site. Relevant issues include:

- the distribution of the designated features across the site in relation to the predicted hazard;
  - the location, timing and duration of the proposed activity.
  - the level of understanding of the effect, such as whether it's been recorded before and, based on current ecological knowledge, whether it can be expected to operate at the site in question.
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**Scale**

**Is the scale and magnitude of any potential effect likely to be significant?**

Consider whether any effect would be so small as to be negligible or large enough to have a significant effect.

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### Examples of likely significant effects

The following are possible examples of likely significant effects:

- presenting a barrier between isolated fragments of habitat or population, or reducing the protected site's ability to act as a source of new colonizers;
  - reducing the area of the interest feature or supporting habitat;
  - causing direct or indirect change to the physical quality of the environment or habitat within the site, such as hydrology;
  - altering community structure (species composition);
  - causing ongoing disturbance to qualifying species or habitats;
  - causing direct or indirect damage to the size, characteristics or reproductive ability of populations of qualifying species, or species on which they depend, on a site;
  - altering the exposure of populations of qualifying species or species on which they depend to other impacts;
  - causing a reduction in the resilience of the feature against other anthropogenic or natural changes. For example the ability to respond to extremes of environmental temperature;
  - changing the stability of an interest feature;
  - affecting restoration of a feature where this is a conservation objective.
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## Stage 2: Step 3 - The in combination tests

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### In combination effects from other PPPs

A PPP must be assessed for likely significant effect in combination with other PPPs likely to affect a site. Only include those PPPs that can reasonably be expected to affect features identified as at risk from the proposal, such as:

- of a similar and/or different type;
  - authorised by another competent authority;
  - that may not be likely to have a significant effect on a European site when considered alone;
  - for which permission is currently being sought;
  - that are actually proposed or authorised but **have not been fully implemented or completed**;
  - that are regularly exercised and have continuing effects.  
**Example:** Discharge consents and abstraction licences.
- 

### Impact between permissions

It's important to be aware of the inter-relationships between impacts associated with different permissions.

**Example:** You should assess the potential impact associated with discharge consent in combination with existing relevant abstraction licences.

There is currently no formal mechanism for co-ordinating the registration of plans or projects between competent authorities, but Natural England/CCW may be aware of them as they will be consulted on more than just our PPPs'.

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**Definition:  
cumulative  
effect**

You must consider cumulative effects. The term **cumulative effect** means the sum of previously authorised plans and projects.

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**Considering  
the condition  
of the site**

Whether you're considering the effects of plans or projects alone or in combination, take account of the condition of the European site.

The condition of the site reflects the cumulative effects and other factors, such as unconsented activities, diffuse sources of pollution and natural processes. The EC guidance states:

**'While there is a need for objectivity in interpreting the scope of the term 'significant', clearly such objectivity cannot be divorced from the specific features and environmental conditions of the protected site concerned by the plan or project'.**

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**How to check  
for in  
combination**

Break the assessment down into sections, dealing with each of the site's designated interest features. Concentrate on impact mechanisms acting upon attributes of the same feature.

- identify, as far as possible, the extent of the effects (mechanisms) of the new application with respect to other PPPs and any overlaps;
  - consider the spatial distribution of the features and habitats, including maps where available. If features are currently degraded, consider the potential distribution of the degraded interest features;
  - create a matrix of potential impacts of the new PPP in combination with other impacts, together with a clearly defined scope for what constitutes 'the sum of all the influences';
  - assess the magnitude and significance of the likely impact from both overlapping and discrete effects. This assessment should take account of both the duration of interaction between the effects and sensitive features and the total area of the feature(s) affected.
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**What can act  
in  
combination  
with a PPP?**

Our permissions that have the potential to act together in combination, including those that are currently being considered for which permission is yet to be granted;

- outstanding permissions authorised by other competent authorities, including those currently being considered, but for which permission has not yet been granted, based on the information received in response to your consultations (see [202\\_04 Further guidance and standard letter for consultation with other competent authorities \(New permissions\) \(Appendix 23\)](#));
  - plans and projects not yet submitted, but for which sufficient detail exists upon which to make a judgement.
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**Consider the  
site's  
complexity**

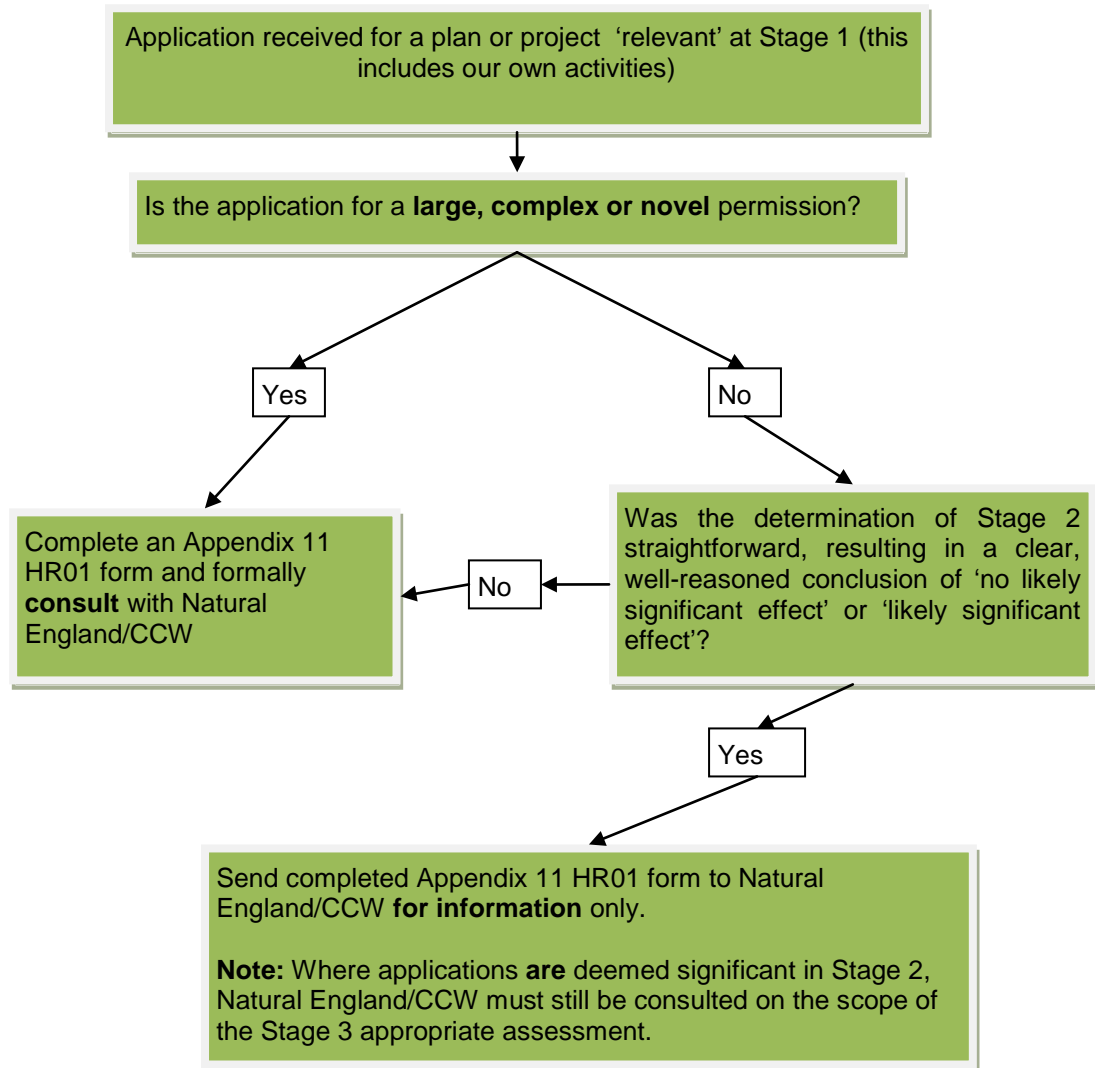
Make sure the assessment reflects the complexity of the site, as the suggested process may be unnecessarily detailed.

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## Stage 2: Step 4 Make the final decision and consulting with FRB and Natural England/CCW

### Consultation flowchart

Use the flowchart below to determine whether to send an Appendix 11 to Natural England/CCW for information, or consultation.



### Local agreements

If local agreements/Technical Advisory Group (TAG) papers remove the need for an assessment, (for example, if the application can be determined to be 'not relevant' at Stage 1), there would be no need to complete an Appendix 11 document.

**De minimus** PPP having no effect or effects considered to be de minimis, that is, trivial or inconsequential, can be progressed without further consideration under the Habitats Regulations. Reasons for reaching this decision should be justified and recorded using the [276\\_05 Habitats Directive: Form for recording likely significant effect \(Stage 2\)](#) form, which should be sent to Natural England/CCW for information only, regardless of the conclusion reached in the document.

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**Large/complex or novel PPP** Where the permission is **large/complex/novel**, Natural England/CCW must still be **consulted** with the Appendix 11 and given 20 working days to respond, regardless of the conclusion. Determination of whether a permission can be classed as large/complex/novel must be made by the assessing officer, on a case by case basis, with a precautionary bias.

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**For information/consultation** When completing the Appendix 11 form, you should clearly mark on the top of it, whether it is being sent **For information** or **For consultation**. It should then be sent to the relevant Natural England/CCW local staff (refer to Natural England/CCW website or area FRB staff for relevant names).

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**! Important** Appendix 11s must still be completed for all relevant permissions, even if they are sent to Natural England/CCW for information only, as they form an important part of our audit trail.

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**Consultation period** The consultation period with Natural England/CCW is 20 working days. Any extension to this period must be agreed in writing at the local level within the 20 working day period and include both the reasons for the extension and the timetable for the return of consultation responses.

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**Handling consultation information** No response within the consultation period will be taken as meaning 'no comment', however areas should take reasonable steps to ensure that responses from consultees have not been delayed or lost.

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**Dual compliances** In cases where an Appendix 11 is required for Habitats Directive compliance and an [Appendix 4](#) for CRoW compliance, both must be sent to Natural England/CCW, even where the species are the same.

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**Actions** Include enough information, in non technical terms, to show how you made the assessment, which might include a map. Record this using the [276\\_05 Habitats Directive: Form for recording likely significant effect \(Stage 2\)](#) form generated by the National Habitats Directive System database.

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**The end of Stage 2** If at the end of Stage 2, we conclude that there is a likely significant effect then we progress to Stage 3 – the appropriate assessment.

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## Stage 3: Carrying out an appropriate assessment

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### The aim of Stage 3

To establish whether the PPP have no adverse effect upon the integrity of the protected site, alone or in combination. There are two possible outcomes:

- the PPP **can** be shown to have no adverse effect on the integrity of the protected site and will be granted;
  - the PPP **cannot be** shown to have no adverse effect on the integrity of the site.
- 

### The appropriate assessment

We take the Habitats Regulation's description to mean that the **assessment** must be **appropriate to its purpose**. Specifically, in view of the site's conservation objectives, that the proposal would **not** have an adverse effect on the integrity of the European site.

**We are expected to 'identify the potential risks, so far as they may be reasonably foreseeable in light of such information as can reasonably be obtained, and to put in place a legally enforceable framework with a view to preventing these risks from materialising'**

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# Overview of the stage 3 process

## Overview of the Stage 3 process

Stage 3 is an iterative process. Consider different ways of carrying out the proposal and the conditions or restrictions to apply. Involve Natural England/CCW. Establish clear communications and be aware of time constraints imposed by source legislation.

### Step 1

Decide on scope of consultation and apply our extended public consultation procedure, if necessary.

### Step 2

Agree scope of appropriate assessment with NE/CCW, other competent authorities and the applicant.

- characterise European site and conservation objectives
- describe in detail the plan or project
- assess in detail each likely impact on interest features

- compare with historical data
- predict impacts
- compare with unauthorised impacts

- existing information
- additional surveys
- management and/or unauthorised impacts

### Step 3

Applicant submits information. We carry out initial assessment and consult with NE/CCW.

Require further information from applicant, if necessary.

Repeat these actions until sufficient information is available to conclude the appropriate assessment.

### Step 4

Can you ascertain that the PPP will **not** adversely affect the integrity of the European site? Record our conclusions, consult NE/CCW and obtain written confirmation.

Determine application in the usual manner.

Can legally enforceable restrictions or conditions avoid adverse effects? Seek further information/ investigation from applicant and repeat action, if necessary, recording conclusion and consulting NE/CCW

Authorise plan or project subject to conditions, provided normal process permits. Continue from Stage 4.

### Step 5 & 6

Continue from Stage 4, Steps 1 and 2.

## Environmental Impact Assessment (EIA)

An appropriate assessment is not the same as an EIA. However, information contained within relevant EIA should inform the appropriate assessment.

## Environmental Statements

Sometimes PPP also need an Environmental Statement (ES). This information will inform the appropriate assessment, which we still have to complete, as the appropriate assessment is confined to the effects on the European interest features of the site.

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## Parts of PPP with planning permission

Do not duplicate the assessment, for parts of a PPP covered by planning permission, as you can adopt the reasoning and conclusions of the planning authority. The Secretary of State may issue guidance to this effect.

**! Important** The planning authority must consult us and we must respond fully at this stage. However, you are not bound to adopt the conclusions of another competent authority if you don't agree with them.

Being unhappy with the scope of the assessment carried out for planning purposes may result in our requiring further investigations, under an appropriate assessment, at the permitting stage.

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## The scope of the appropriate assessment

The assessment must not be influenced by wider considerations, including effects on those Sites of Special Scientific Interest (SSSI) features that are not interest features of a European site.

The scope and content of an appropriate assessment depends on the location, size and significance of the proposed plan or project.

Natural England/CCW can advise on a case by case basis identifying particular aspects that the appropriate assessment should address.

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## Assessment details can vary

It may be that the effect of the PPP is likely to be wholly beneficial to the European site. Or it may be that the ecological functioning of the site and the likely impacts are well understood and documented elsewhere, for instance in studies commissioned to inform the Habitats Directive Review of Consents.

In these cases, an appropriate assessment may simply be a [completed form](#). You need to consider the positive and negative effects of the PPP. However, the emphasis of an appropriate assessment needs to be on the potential for negative effects on the site.

In other cases, you'll need to do a more detailed assessment involving the collection of new information.

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## Assess case by case

The appropriate assessment concentrates on the specific interest features of the European site. Therefore, standards and assessment protocols applied under current functional procedures designed to ensure broad environmental protection, may not be adequate.

The [Habitats Directive Functional Technical Appendices](#) identify issues to guide the assessment process. But you must make decisions on a case by case basis in the light of the conservation objectives.

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## Summary of outcomes

The table below lists potential outcomes from carrying out an appropriate assessment.

If the application...	then...
passes the Habitats	take other national, regional or local conservation interests into account in the final decision making



If the application...	then...
meets the Regulations tests	stage, in the light of other policy or legislative provisions.
fails the Habitats Regulations tests	it may only proceed if there are no alternative solutions that enable a conclusion of no adverse effect and there are imperative reasons for overriding public interest.

### Appeals

A decision to refuse a permission may be the subject of an appeal. Take legal advice in these circumstances. It is a matter on which we will need to exercise careful judgement in each case.

## Stage 3: Step 1 - The scope of the appropriate assessment

### Scoping the assessment

As the competent authority we may, if we consider it useful, take opinions from the wider general public for the purposes of the appropriate assessment.

We can use whatever steps we consider necessary, such as:

- consulting the public as part of the consultation you're carrying out, perhaps by advertising;
- contacting an academic or other institution, such as the Centre for Environment, Fisheries and Aquaculture Science (CEFAS);
- contacting national park authority (or equivalent body);
- consulting specialist non government organisations, such as the Royal Society for the Protection of Birds.

### Ecological advice

Natural England/CCW specialists may be able to advise on the ecological requirements of the interest features, and on other sources of information (where not confidential in nature) such as management plans, site specific surveys, Biodiversity Action Plans, species recovery reports, Wetland Birds Survey data and Rare Breeding Birds Panel data.

FRB staff may have information, including, fish surveys, macro-invertebrate and macrophyte surveys, River Habitat Surveys, River Corridor Surveys etc.

## Stage 3: Step 2 - What appropriate assessments should cover

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### Conservation objectives

Appropriate assessments **must consider the site specific conservation objectives**. They provide information on attributes and broad targets that will define favourable conservation status of the feature on a site specific basis.

These are available from Natural England/CCW but FRB teams frequently have copies.

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### Planning the appropriate assessment

To plan the appropriate assessment consider the time needed to collate existing information on:

- distribution of designated habitats, species (or the habitats of species) and any trend data on extent, quality and abundance;
- ecological requirements of designated habitats and species, particularly their sensitivity to the hazards identified for that site;
- extent and magnitude of exposure of designated habitats and species to potential hazards, that is, physical, chemical and biological;
- evidence of biological effect, including the exceedence of site specific critical thresholds/targets;
- analysis of existing datasets and/or developing and applying predictive models;
- carrying out field surveys and investigations.

Also consider the time to:

- meet source legislation timescales;
  - agree deadlines to include the determination period for the PPP;
  - communication arrangements over any necessary iteration in the process.
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## Stage 3: Step 3 - Make the initial assessment

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### Actions

Ask the applicant to provide information that is reasonable and necessary for the purpose of the assessment in a structured form, following the agreed scope.

Make sure that the applicant understands that we as the competent authority will carry out the formal appropriate assessment.

Carry out an initial assessment in consultation with FRB and other function staff.

Discuss the initial assessment with Natural England/CCW if there is any doubt about the interpretation, adequacy of the data.

Check if there is sufficient information available to reach a conclusion on any adverse effect on integrity of the European site?

- **If yes:** continue to Stage 3: Step 4;
  - **If no:** ask the applicant for additional information.
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## Stage 3: Step 4 – The adverse affect test

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### The adverse affect test

**! Important** You must make the decision having regard to the advice of Natural England/CCW, the information provided by the applicant and any other available information, for instance from the review of consents process.

From your assessment, you must determine whether any of the hazards you identified have the potential to adversely affect the achievement of the conservation objectives of any European interest feature either directly or indirectly through an effect on the ecological structure and/or function of the site.

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### Site integrity

This 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 classified.

The structure of a European site has two components:

- the physical structure and the species composition of relevant biological communities;
  - the distribution of these communities across the site.
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### Adverse effect on integrity

An **adverse effect on integrity** is one that prevents the site from maintaining at least the same contribution to favourable conservation status for the relevant feature as it did at the time of its designation.

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## Function of a European site

This is the capacity of the site to sustain its interest features, so that they continue to contribute to the favourable conservation status of those features.

You must have an understanding of relevant ecological interrelationships to determine whether a PPP will adversely affect the coherence of the ecological structure and function and the integrity of a European site.

For this reason, you can't necessarily use simple thresholds, such as a critical load, as an absolute measure of adverse effect on site integrity.

**Example:** Fragmentary or complex sites, where the degree to which the site as a whole is dependent on any functional linkage between the fragments.

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## Remember the precautionary principle

Sometimes, a PPP will result in an improvement in the condition of an attribute that supports an interest feature, but still adversely effect the integrity of the European site.

Apply the precautionary principle to risks that may reasonably be foreseen to have a cause and effect.

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## How to complete the appropriate assessment

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### Actions

The following can act as a check list for completing the appropriate assessment.

- Use the Stage 2 information to identify the likely effects;
- Ensure the identified features are still correct;
- Identify feature and effect overlaps;
- Assess the magnitude and significance of the likely impact. Take account of both the duration of interaction between the effects and sensitive features and the total area of the feature(s) affected;
- Consider discrete and overlapping **in combination effects** in the context of other non-Environment Agency controlled influences upon the site's qualifying features;
- Combine the results to produce a single assessment that identifies the in combination effects (covering both the overlapping and discrete effects) related to the new permission.
- Quantify the proportion of the feature or sub-feature and/or supporting habitat impacted if possible, in the context of impacts attributable to different influences.
- Does the appropriate assessment, completed to fulfil the requirements of the scope, conclude that the new permission will not adversely affect the integrity of the European site?

**Yes:** Record this on the [220 04 Habitats Directive: Form for recording 'appropriate assessments' \(Stage 3\)](#) and send it to Natural England/CCW for consultation.

**No:** Continue to Stage 3: Step 5

- Consider any representations made by Natural England/CCW for minor adjustments to the document.

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### When you can't reach agreement

If you don't reach agreement, seek advice from [ConsEcoHelp](#), to ensure that we have fulfilled our obligation to 'have regard' to any representations made by a conservation body under Regulation 61(3).

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## Stage 3: Step 5 Mitigation and avoiding adverse effects

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### Considering mitigation and adverse affect

If you cannot conclude that the PPP will not adversely affect the integrity of a European site, you need to consider if there are any opportunities for mitigating or avoiding those adverse effects. Examples of ways to mitigate or avoid adverse effects could include:-

- changes to the timing of the plan/project, or the siting, layout or design of the proposal, including use of alternative equipment;

You must:

- Avoid discussing the conclusions of the appropriate assessment with the applicant, until they have been finalised, as the assessment is our responsibility as a regulator.
- Ensure that any measures proposed to avoid an adverse effect on site integrity are practical, deliverable, and legally enforceable and do not themselves result in other adverse effects.

Finally, the technical/project officer must reassess the conclusions of the appropriate assessment in the light of any modifications, conditions or restrictions that you may agree or impose.

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## Applications with uncertain results of appropriate assessment

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### Reasons for uncertainty

We must use 'best available information' when assessing the impact of new PPP and make decisions using professional judgement. However, there may be circumstances when this is not possible.

Often uncertainty of results from an appropriate assessment affect our ability to judge whether there will not be an adverse effect on site integrity. These include:

- insufficient confidence in a prediction. For example a model that hasn't been validated;
- insufficient understanding of the effects of a PPP on an interest feature;
- insufficient evidence available at the time of the appropriate assessment, to support a conclusion that there will be no adverse effect on the site caused by the application.

**! Important** Information is available from the Review of Consents on the National Habitats Directive System.

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### Substantial uncertainty

In cases where there is substantial uncertainty associated with the assessment, then consider:

- Are there any alternative solutions?

**Yes:** Refuse the application. A new application is submitted for the alternative solution.

**No:** Try to identify whether there may be imperative reasons of overriding public interest why the PPP should proceed.

- Can you identify imperative reasons of overriding public interest?

**Yes:** Refer the case to the Secretary of State/Welsh Ministers.

**No:** Refuse the application.

**! Important** It is not sufficient that you can't determine the impact on site integrity. Always treat each case on its own merits using the best scientific information available. Always get legal advice before turning down an application where alternative solutions can be identified.

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### Time limited licences

If the source legislation allows, you may grant a time limited licence. But only do this if the scale, duration and any other conditions which may be imposed by the PPP, will not adversely affect the integrity of the European site during the period that the licence is valid.

You must still carry out an appropriate assessment and conclude no adverse effect **before** giving the permission, providing a clear audit trail showing how we, as the competent authority, have considered and applied all the tests required by the Habitats Regulations before determining the application.

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## Stage 3: Step 6

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### Appropriate assessment conclusions

The appropriate assessment can only result in one of two conclusions:

- there is **no** adverse effect on site integrity. Determine the application in the usual manner, subject to any conditions identified through the appropriate assessment.
  - it **cannot** be concluded that there will be no adverse effect on site integrity. Continue to Stage 4.
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### Conclusion

Record the conclusions of the appropriate assessment on the [220\\_04 Habitats Directive: Form for recording 'appropriate assessments' \(Stage 3\)](#) form and send to Natural England/CCW for consultation.

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### Use plain language

Wording must be as non-technical as possible, with highly technical issues kept as separate, technical reports to which the appropriate assessment should refer.

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### Consultation period

The consultation period with Natural England/CCW is **20 working days**. Any extension to this period must be agreed in writing at the local level within the 20 working day period and must include:

- the reasons for the extension
- the timetable for the return of consultation responses

No response from any consultee(s) within the consultation period will automatically be taken as meaning 'no comment'. However you must take reasonable steps to ensure that responses from consultees have not been delayed or lost.

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### Signing form 220\_04

If we decide to grant the permission where a conclusion of no adverse effect is made, and agreement with Natural England/CCW is not reached, the document 220\_04 (Appendix 12 / HR02) must still be signed by Natural England/CCW, as an important part of our audit trail.

The signing of the 220\_04 form by Natural England/CCW does not necessarily mean that agreement has been reached. In the cases where opinion differs, it would be expected that Natural England/CCW would record their differences on the 220\_04 form when it is returned.

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## Stage 4: Determining the application

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### Policy

We may only agree to a PPP that is judged likely to have a significant effect on a European site, if we have ascertained that it would not adversely affect the integrity of the site.

Despite a negative conclusion, the PPP may proceed if there are no alternative solutions and it is required for imperative reasons of overriding public interest.

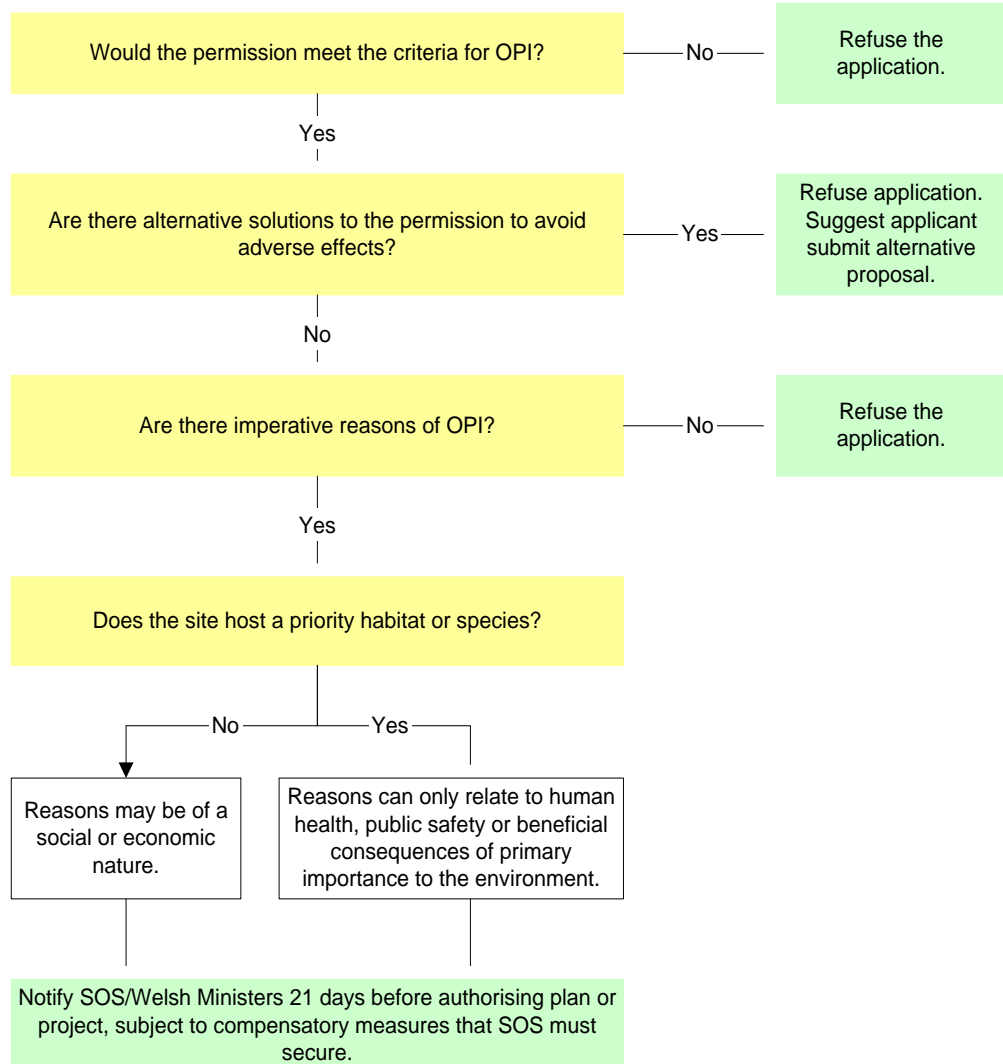
We must secure compensatory measures to protect the overall coherence of the Natura 2000 series. These issues are considered in more detail in the following sections.

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## Stage 4: Overview of determining PPP considered to have an adverse effect on site integrity

### Summary

Follow this process when you cannot conclude that there will be no adverse effect on site integrity.



## Stage 4: Step 1 Is the permission likely to meet the guiding principles for OPI?

### Grounds for OPI

If there are no grounds for OPI, then refuse the application for permission.  
If there are grounds then go to Step 2



## Stage 4: Step 2 – Considering alternative solutions

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### Article 7(4)

Article 7(4) of the Habitats Regulations allows projects to be approved only if **no** alternative is available.

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### Who is involved?

The responsibility to look for and assess alternative solutions lies with the competent authority, that is, with us for our PPP.

You may take advice from :

- other competent or relevant authorities;
  - the permission holder or applicant;
  - Natural England/CCW and regional legal advisors are also involved.
- 

### Considering alternatives

You need to:

- decide whether feasible alternative solutions exist in consultation with others, that are the least damaging for the species, habitat and integrity of the Natura 2000 site, regardless of economic consideration;
- include the zero option, such as, is there a need for the plan/project at all?
- assess the relative impact of alternative solutions on the site against the site's conservation objectives;
- ensure no other feasible alternatives exist that would not affect the integrity of the site. If you don't, the SoS/Welsh Ministers/EC may decide that not **all** the alternatives have been considered.

**! Important** Other factors, such as economic criteria, should not overrule ecological criteria in this assessment but you can consider them.

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### The decision

If there is a reasonable alternative solution, then refuse the application. Encourage the applicant to reapply using the alternative solution.

If not progress to OPI.

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## Stage 4: Step 3 Are there imperative reasons of OPI?

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### **Imperative reasons of OPI**

Imperative reasons of overriding public interest cannot consider short term economic interests or other interests which would only yield short term benefits for society.

This is because they would not be sufficient to outweigh the long term conservation interests protected by the Habitats Directive.

Only public interests, promoted either by public or private bodies, can be balanced against the conservation aims of the Habitats Directive. Projects that lie entirely in the interest of companies or individuals are not covered.

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### **Examples of OPI**

The following are examples of imperative reasons of overriding public interest (OPI):

- a need to address a serious risk to human health and public safety;
  - the interests of national security and defence;
  - providing a clear and demonstrable direct environmental benefit on a national or international scale;
  - a vital contribution to strategic economic development or regeneration;
  - failure to proceed would have unacceptable social and/or economic consequences.
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## How to consider imperative reasons of Overriding Public Interest

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### Action

You should:

- inform the applicant about providing suitable compensatory habitat measures should the plan or project eventually be affirmed. There is no legal requirement on the operator but it is government guidance;
- refer any question on **applicability** of OPI to SoS/Welsh Ministers immediately, for them to give direction on whether there are OPI;
- consider if the site is classified for priority habitat types and species. If it is then, the only considerations that can justify you authorising the PPP are those relating to:
  - human health;
  - public safety;
  - or beneficial consequences of primary importance to the environment;
  - or other reasons which, in the opinion of the EC, are OPI;
- if we intend to proceed with a new PPP, we must notify our proposal to:
  - the SoS/Welsh Ministers responsible for the consent regime;
  - or the functions of the competent authority concerned.

**! Important** The SoS/Welsh Ministers have 21 days to agree or otherwise give directions prohibiting permission or plan/project go ahead. The competent authority cannot agree to the PPP going ahead during those 21 days.

If we propose to agree to a PPP (despite a negative assessment of the implications for a European site), on the basis that there are no alternatives and imperative reasons of overriding public interest, notify the SoS /Welsh Ministers, who will need to secure compensatory measures, using the form in 279\_05 Information to the Secretary of State/Welsh Ministers according to Regulations 62(5) and 64(2) of the Habitats Regulations.

Approval cannot be given in advance of 21 days from the date of notification to the SoS /Welsh Ministers.

In practice, the PPP should not be authorised until a direction has been received from the SoS or Welsh Ministers.

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## About securing compensatory measures, Regulation 66

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**Compensatory measures** These are specifically different from mitigation measures.

<b>Mitigation measures</b>	Aim to minimise, or even cancel, the negative impacts on a site that are likely to arise as a result of the implementation of the plan or project.
<b>Compensatory measures</b>	Independent of the project (including any associated mitigation measures). Intended to offset the negative effects of the plan or project so that the overall ecological coherence of the Natura 2000 Network is maintained.

Compensatory measures must provide the same function that justified the initial selection of the site. They cannot damage another neighbouring Natura 2000 site.

If they require a new designation as part of the compensation measures, submit this to the SoS/Welsh Ministers/EC:

- before measures are implemented;
- and before the initiation of the project;
- but after its authorisation.

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**Responsibility for securing compensatory measures** If OPI is agreed, the SoS/Welsh Ministers responsible for the consent regime or the functions of the competent authority concerned must secure compensatory measures, to ensure that the overall coherence of the Natura 2000 network is protected.

The aim is to offset the negative impacts of a project and to provide compensation corresponding precisely to the negative effects on the species or habitats concerned.

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**Informing the EC** Under Article 6(4) of the Habitats Directive, Government is required to inform the EC of the compensatory measures to be adopted.

Defra (Wildlife Habitats and Biodiversity Division) is responsible for coordinating all UK submissions to the EC under Article 6(4). They usually use the [279\\_05 Habitats Directive: Form to record information for the Secretary of State/Welsh ministers \(OPI\)](#) form.

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## EC guidance on Article 6(4)

The EC guidance paper on Article 6(4) (January 2007) advises that:

‘In order to ensure the overall coherence of Natura 2000, the compensatory measures proposed for a project should therefore: a) address, in comparable proportions, the habitats and species negatively affected; b) provide functions comparable to those which had justified the selection criteria of the original site, particularly regarding the adequate geographical distribution. Thus, it would not be enough that the compensatory measures concern the same biogeographical region in the same member state.

‘The distance between the original site and the place of the compensatory measures is not necessarily an obstacle as long as it does not affect the functionality of the site, its role in the geographical distribution and the reasons for its initial selection.

‘Member states should pay particular attention when the negative effects of a plan or project are produced in rare natural habitats types or in natural habitats that need a long period of time to provide the same ecological functionality. Under these circumstances, the zero option should be seriously considered’.

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## Factors influencing judgements

Judgements made on the appropriateness and ratios of any compensatory measures are made on a case by case basis because of the variability of effects.

Factors that may influence this judgement are:

- location - distance from the affected site;  
The measures should be secured as close as possible to the area affected;
  - time to recreate or restore the habitat(s) affected and to the required quality;
  - Compensatory measures must recreate or restore the habitat(s) or habitat(s) of the species which are affected by the plan or project and must be of a quality at least the same as that affected;
  - any temporal effects;  
As stated above, compensatory measures should, ideally, be in place and be seen to be successful before work on a plan or project commences. From experience, such scenarios are unlikely because of the time required to recreate or restore habitat and therefore the area required as compensation may be greater than that which is lost as in most cases the effectiveness of compensation is not 100%;
  - the risk associated with the methodology to recreate or restore;  
The methodology must be technically proven or considered reasonably so;
  - the long term sustainability of the measures.  
The recreated or restored habitat must also be sustainable or reasonably so given natural changes. This may include the securing of medium to long term management of the area concerned;
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## Monitoring

Establish a monitoring package to:

- ensure that the compensation package is effective;
  - allow you to make provisions so that remedial measures can be introduced where a need is identified.
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## Examples of compensatory measures

These may include:

- restoring the habitat to maintain its conservation value and compliance with the conservation objectives of the site;
  - improving the remaining habitat in proportion to the loss due to the plan or project.
  - recreating a habitat on a new or enlarged site;
  - proposing a new site under the Habitats and Birds Directive;
  - reintroducing species;
  - recovering and reinforcing species, including prey species;
  - purchasing land;
  - acquiring rights;
  - creating a reserve, including strong restrictions in land use;
  - incentives for economic activities that sustain key ecological functions.
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## Advice when considering compensatory measures

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### What to consider

When implementing compensatory measures consider:

- tight coordination and cooperation between competent authorities, assessment authorities and the supporters of the compensatory programme;
  - clear objectives and target values, according to the conservation objectives of the site;
  - the technical feasibility of the measures in relation to their conservation target;
  - the legal and/or financial feasibility of the measures according to the timing required;
  - explaining the timeframe in which to meet the conservation objectives;
  - a timetable for implementation and coordinating the schedule for the plan or project implementation;
  - public information and/or consultation stages;
  - specific monitoring and reporting schedules, based on progress indicators according to the conservation objectives;
  - having the budget programme approved during the suitable period to guarantee the success of the measures.
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## Timing

Timing of compensatory measures must ensure the continuity of the ecological processes essential for maintaining the biological structure and functions that contribute to the overall coherence of the Natura 2000 network. Note that:

- a site must not be irreversibly affected before compensation is in place;
  - the result of compensation should be effective at the time the damage occurs on the site concerned. Under certain circumstances where this cannot be fully achieved, overcompensation would be required for the interim losses;
  - time lags might only be admissible when it is ascertained that they would not compromise the objective of 'no net losses' to the overall coherence of the Natura 2000 network;
  - time lags must not be permitted if they lead to population losses for any species protected in the site under Annex II of the Habitats Regulations 92/43/EEC or Annex I of the Birds Directive 79/409/EEC, especially when it entails priority species.
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## Sound legal and financial basis

Compensatory measures require that a sound legal and financial basis for long term implementation and for their protection, monitoring and maintenance be secured in advance of impacts upon habitats and/or species occurring.

**! Important** Under the polluter pays principle, the promoter of a project bears the cost of compensatory measures.

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## Examples and case studies

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### Bathside Bay, Harwich, UK

This was a Harbour Revision Order, and planning permission, to develop an operational container port affecting 1.87% of the Stour and Orwell Estuaries SPA.

The Secretary of State agreed with the inspector's conclusions that the project would have an adverse effect on the integrity of the European sites and there were no alternative solutions.

All parties agreed compensatory measures for the loss of habitat supporting SPA birds, including mitigation and compensation measures for wildlife species that are not SPA features. A sediment replacement programme was also proposed.

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**Immingham  
Outer  
Harbour,  
North  
Lincolnshire**

This was an expansion of Immingham Harbour to develop a five berth roll-on, roll-off (ro-ro) terminal in a tidal harbour. The project would impact on 22 ha of habitat from within the Humber Flats, Marshes and Coast SPA (and pRamsar) and Humber Estuary pSAC.

The Secretary of State for Transport concluded that the proposal had imperative reasons of overriding public interest for social and economic reasons, particularly in relation to the national and regional economic importance of the port and the need for the port to continue to remain competitive internationally, and also the importance of the port for local employment. With the conclusion that mitigation measures would not avoid an adverse impact, compensatory measures were proposed for the creation of wetland, coastal and maritime habitats on former agricultural land.

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**Prosper  
Haniel  
Colliery,  
Germany**

An extension of an underground coal mining activity, into previously unexploited areas, which would cause large-scale ground subsidence, flooding and increased groundwater levels, with considerable impact to ecosystems in the area. There were no alternatives for the project and there were compelling social and economic reasons of OPI.

Compensatory measures proposed included creation of non priority habitat types (beech and oak forests) by re-forestation or transformation and/or improvement of existing forests; and creation of new and improvement of existing alluvial forests and restoration or optimisation of riverbeds to compensate for loss of priority habitat (to a total area 2.5 to 3 times larger than the areas to be affected/destroyed).

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**New coastal  
railway line,  
Bothnia,  
Sweden**

The project proposed construction of a coastal railway line from Nordmaling to Umea as part of a longer Bothnia railway line, affecting a SPA and a pSCI containing priority habitat types and a number of Annex 1 bird species including woodpeckers.

Execution of the project was to be conditional upon a comprehensive and more realistic compensation package being submitted for further approval.

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**Construct a  
dam, Spain**

A new dam, La Brena II, of which the associated new reservoir would occupy 626 ha of a nearby Natura 2000 site (1.05% of its surface area), designated as a SPA and pSCI. This would destroy habitat of Iberian lynx, a priority species and loss of habitat for several bird species.

Compensatory measures focussed on Iberian lynx and its habitat, including expropriating 2134 ha of land, improving quality of habitat and food resources, and construction of Iberian lynx refuges.

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## Related documents

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### Links

- [Habitats Directive: Related documents](#)
  - [42\\_06 Habitats Directive: Habitats and species protected under Habitats Regulations](#)
  - [276\\_05 Habitats Directive: Form for recording likely significant effect \(Stage 2\)](#)
  - [220\\_04 Habitats Directive: Form for recording 'appropriate assessments' \(Stage 3\)](#)
  - [279\\_05 Habitats Directive: Form to record information for the Secretary of State/Welsh ministers \(OPI\)](#)
  - [202\\_04 Habitats Directive: Standard letter for consulting other competent and/or relevant authorities about new permissions](#)
  - [Habitats Directive Functional Technical Appendices](#)
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