

Habitats Regulations

Evidence plans for Nationally Significant Infrastructure Projects

September 2012

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Introduction

1. From September 2012, applicants of Nationally Significant Infrastructure Projects (NSIPs) located in England, or both England and Wales, are able to agree evidence plans with relevant statutory nature conservation bodies (SNCBs).
2. An evidence plan is a formal mechanism to agree upfront what information the applicant needs to supply to the Planning Inspectorate (PINS) as part of a Development Consent Order (DCO) application. This will help to ensure compliance with the Habitats Regulations. It will also help NSIP applicants meet the requirement to provide sufficient information (as explained in PINS Advice Note 10: Habitats Regulations Assessment relevant to nationally significant infrastructure projects¹) in their application, so the examining authority can recommend to the Secretary of State:
 - Whether or not to accept the application for examination.
 - Whether an appropriate assessment is required.
3. An evidence plan will reduce the risk of NSIPs being delayed by issues relating to the Habitats Regulations during the evolution of a proposed DCO application, by:
 - Giving greater certainty to all parties on the amount and range of evidence an applicant should collect.
 - Helping address and agree issues earlier on in pre-application so robust, streamlined decisions can be taken.
 - Focusing the evidence requirements so they are proportionate to the NSIP's potential impacts and costs to applicants are minimised.
4. Evidence plans do not replace or duplicate existing requirements. The plans should be formulated to fit with the DCO application process, including the formal pre-application consultation processes and environmental impact assessment scoping. It is also recommended that the applicant considers how information collected in order to complete the evidence plan may also prove helpful in preparing an environmental impact assessment.

Overview of the evidence plan process

5. The option to request and agree an evidence plan is available from September 2012 to all applicants for proposed NSIPs in England, or both England and Wales, entering the pre-application stage (i.e. where PINS has been informally notified of a project and it has been made available on the National Infrastructure pages of the Planning Portal

¹ <http://infrastructure.planningportal.gov.uk/wp-content/uploads/2012/03/Advice-note-10v3.pdf>

website). It is a voluntary process and an evidence plan is a non-legally binding agreement between the applicant and relevant SNCB(s).

6. PINS is the Government agency responsible for dealing with procedural aspects of NSIP applications on behalf of the Secretary of State. It should therefore be given the opportunity to comment on the draft plan without becoming party to the agreement.
7. Where other consents and / or permits to the DCO application are required, other consenting bodies who may also be competent authorities (referred hereafter as “other consenting bodies”) should be given the opportunity by the applicant to comment on a draft evidence plan. Specific working relationships with these bodies should be agreed on a case-by-case basis. Other consenting bodies can become party to the plan but there is no obligation on them for this to happen.
8. In addition, the relevant SNCB(s) will engage agencies such as the Environment Agency on specific evidence requirements where they have the lead expertise. The applicant, as a matter of best practice, should also identify any environmental non-governmental organisations (NGOs) that it would be worthwhile to engage.
9. There are four stages to the evidence plan process:
 - (i) The applicant requests an evidence plan.
 - (ii) The applicant and relevant SNCB(s) agree the initial evidence plan.
 - (iii) The applicant gathers and analyses the evidence and the relevant SNCB(s) assesses the evidence.
 - (iv) The evidence plan process is finalised.
10. It should be recognised that an evidence plan will not preclude additional evidence being asked for by the examining authority at the examination stage or the Secretary of State at the appropriate assessment stage. The aim of the evidence plan is to reduce the chances of this occurring and limit the amount of additional information sought if this cannot be avoided.
11. In participating in the evidence plan process, **applicants** are expected to:
 - Engage pro-actively and constructively with SNCBs, PINS and other consenting bodies throughout the process.
 - Collect the evidence and analyse it using agreed methodologies, adhering to agreed timelines.
 - Accept that evidence requirements may change throughout the process, due to changes in the proposed NSIP application and / or as a result of evidence highlighting new areas of concern.

12. In participating in the evidence plan process, **SNCBs** are expected to:

- Seek pragmatic solutions, e.g. to uncertainties and / or changing evidence.
- Take a proportionate approach, setting appropriate evidence levels, assessment methodologies and interpretation criteria, seeking evidence that is justified and consistent with the matters being considered.
- Only change evidence requirements following:
 - The assessment of evidence provided by the applicant identifying new areas of concern.
 - Relevant evidence, information or research coming to light that would have an impact on what information is required.
 - A material change to the NSIP proposal that is likely to change the potential impacts and therefore the evidence requirements to address these.
- Engage pro-actively, giving clear guidance and advice, aiming to resolve issues in pre-application and adhering to agreed timelines specified in the evidence plan.

Implementing the evidence process

Stage 1: applicant's request for an evidence plan

13. Any applicant of a proposed NSIP in England, or England and Wales, can request an evidence plan. It will be particularly relevant to NSIPs where impacts may be complex, large amounts of evidence may be needed or there are a number of uncertainties. A request for an evidence plan should be made at the start of pre-application (after notifying PINS on an informal basis) by contacting the Major Infrastructure and Environment Unit (MIEU) in Defra (MIEU@defra.qsi.gov.uk).
14. Once a request has been received, the MIEU will inform the relevant SNCB(s), PINS and any other consenting bodies. The MIEU will request that the relevant SNCB(s) agree the initial evidence plan within 3 months, or to a longer timescale with the applicant's agreement.
15. Where there is more than one SNCB involved, one will act as the lead in negotiating the evidence plan with the applicant (to be agreed between SNCBs). The lead SNCB for the evidence plan will inform the MIEU of the timetable for reaching agreement and will subsequently inform the MIEU, PINS and any other consenting bodies once the evidence plan has been agreed with the applicant.

Stage 2: agreeing an evidence plan

16. The evidence plan is a non-legally binding agreement between the applicant and relevant SNCB(s). The applicant prepares and maintains the plan on an ongoing basis until it is considered complete. The initial plan is agreed within 3 months, unless a longer timeframe has been agreed between the applicant and relevant SNCB(s). **Once the evidence plan has been agreed, it will be published on the Planning Portal website (<http://infrastructure.planningportal.gov.uk>).**
17. The applicant should give PINS and any other consenting bodies the opportunity to comment on the content of the draft evidence plan. In addition, it is good practice for the applicant to discuss the draft evidence plan with relevant environmental NGOs so that it addresses issues they may raise at an early stage. This could avoid unexpected and sometimes unnecessary requests for further information later in the process.
18. The primary aim of the evidence plan is to address an NSIP's potential impacts on a European site(s) (e.g. Special Area of Conservation, Special Protection Area or Ramsar site) to help an NSIP comply with the requirements of the Habitats Regulations. It may also include evidence which could be used to assess other relevant matters such as the potential effects on European protected species.
19. The evidence plan, which will evolve as the project develops, should set out how that will be achieved by covering:
 - The specific matters the evidence gathering aims to address (e.g. which European site(s) and how the conservation objectives may be affected) and how the evidence collected will be used to inform the various stages set out in PINS Advice Note 10. This should have particular regard to the conservation objectives for the European site(s).
 - How the applicant will collect and analyse the evidence. This could include specifying survey methodologies, timetable of surveys, approaches to modelling data, uncertainties, thresholds and the format in which to share and present the evidence.
 - Any data sharing and availability issues such as confidentiality, data licensing and sharing of raw data.
 - How the evidence will be assessed by the relevant SNCB and the process for reviewing progress, including the timetable for SNCB feedback.
 - The circumstances in which changes to evidence requirements are discussed and agreed.
 - Any other known projects to be taken into account and how this will be done, e.g. for assessing in-combination impacts.
 - Responsibilities of the parties to the agreement.
 - The timetable for implementing and reviewing the plan.

20. The evidence plan should reflect the stage of development reached by the project. For projects early in the development process it may take the form of a “plan for a plan” setting out, for instance, how evidence requirements will be identified and agreed.
21. The evidence plan should also reflect the assessment needs when it is agreed, e.g. for some NSIPs it may be unclear whether or not a European site could be affected by the project. In this case the evidence plan should first focus on gathering the information needed to allow screening to be undertaken and then be revisited as this information is reviewed with the relevant SNCB(s).
22. Throughout this stage the applicant or SNCB may alert the MIEU if there are difficulties in agreeing the initial plan within the 3 month timeframe. If agreement is not reached in 3 months, and there are no agreed justifications, then the MIEU may assist to facilitate agreement. The MIEU will not though have an arbitration role as this could undermine the independence of the advice provided by the SNCB(s).

Stage 3: gathering evidence, analysis and feedback

23. This stage is an iterative process which will involve the evidence plan being reviewed as evidence is collected and analysed. Interim results should also be shared with others such as PINS, other consenting bodies and, if appropriate, environmental NGOs.
24. This approach ensures there is continual analysis, assessment and feedback of the evidence collected and is designed to avoid unexpected issues being raised at a late stage in pre-application or during examination.
25. To achieve this, reviews should be built into the evidence plan at regular intervals. This will help to ensure evidence requirements remain proportionate to the NSIP’s potential impacts. It can also help identify the need for mitigation measures at an early stage in the project’s development. Any changes to an evidence plan must be agreed by all parties to the plan. In addition, PINS and other consenting bodies should also be given the opportunity to comment on updated evidence plans.
26. Communication should be planned and scheduled regularly throughout pre-application, in particular to coincide with new information becoming available, e.g. when results emerge from a survey. This approach will help the applicant and relevant SNCB(s) to:
 - Determine whether to continue or halt specific survey work and / or analysis.
 - Identify that there is sufficient information and that no further information is required to inform the DCO application.
 - Agree to change the evidence requirements and collect additional evidence, including how this should be collected and analysed, updating the plan and timetable as necessary. Note that changes due to a lack of earlier input by the

SNCBs should be avoided. It is therefore envisaged that changes will be restricted to dealing with:

- (i) Additional evidence (e.g. from the interim results of evidence collected) such as additional species and / or habitats found to be present on the site.
 - (ii) Evidence, information or research that has emerged outside the evidence plan (e.g. from environmental NGOs) which would affect the information required and would need to be taken into account in the decision making process (i.e. decisions must be based on best available science).
 - (iii) A significant modification to the initial NSIP proposal that is likely to change the potential impacts of the NSIP and therefore the evidence requirements to address these.
- Identify any potentially adverse effects and agree steps to assess the potential efficacy of potential mitigation measures. This may help to agree mitigation proposals in pre-application. In addition, it may allow early consideration of derogations under article 6(4) of the Habitats Directive².
 - Formally agree that specific issues have been resolved for inclusion in the Statement(s) of Common Ground (e.g. impacts on x can be scoped out; mitigation measures mean that impacts on y are not considered significant).

27. The MIEU will monitor this stage to ensure adherence to evidence plans. If disagreements arise over changes to the requirements in the evidence plan the MIEU will assist to facilitate agreement between the parties. As in stage (ii), the MIEU will not have an arbitration role. As an evidence plan is updated, the MIEU will ensure the most up-to-date version is on the PINS website.

Stage 4: finalising the evidence process

28. The evidence process should be considered finalised when all evidence agreed in the plan has been collected, analysed using agreed methodologies, reviewed and agreed by the applicant and SNCB during pre-application. The aim is that on completion of the evidence plan:

- Discussions should have started on mitigation proposals, if needed, and possibly have been concluded.
- Written agreement is in place through a Statement(s) of Common Ground that sets out:
 - The likely significant effects which have been identified and defined in sufficient detail to adequately inform whether an appropriate assessment is required. Where this is not the case, the uncertainties and / or gaps that remain should be

² See draft Defra guidance on 'Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures' (www.defra.gov.uk/consult/files/habitats-directive-iropi-draft-guidance-20120807.pdf).

clearly set out along with the reasons they exist and any agreed approaches to dealing with the uncertainties and / or gaps.

- Which issues are insignificant, which ones have been resolved (i.e. mitigation measures agreed) and which ones remain outstanding and why (e.g. where it has not been possible to collect the required evidence).

29. The completed evidence plan process could play an important role in preparing the application documents to be submitted to PINS on behalf of the Secretary of State. The outputs from the evidence plan may contribute to:

- The applicant's Environmental Statement and Habitats Regulations Assessment (HRA) report (if required).
- Statement(s) of Common Ground which confirm that potential impacts have been properly addressed, which issues have been resolved and which issues are outstanding.
- Identifying and agreeing any mitigation measures and informing, where appropriate, any discussion of derogations under article 6(4) of the Habitats Directive.

30. Where relevant, the evidence plan may also help to inform:

- The "report on the implications for European sites" prepared by the examining authority during the examination of an accepted application.
- Any appropriate assessment undertaken by the Secretary of State as competent authority prior to deciding whether to grant development consent and to make a DCO.

Roles and responsibilities

Applicant

- Decides whether it needs an evidence plan.
- Drafts and maintains the plan on an ongoing basis until it is considered complete.
- Collects, analyses, reviews and shares evidence at regular intervals. Updates the relevant SNCB(s), PINS and other consenting bodies of modifications to the NSIP.
- Meets with the relevant SNCB(s) and others such as other consenting bodies and environmental NGOs to discuss progress and, if necessary, agree any changes to evidence requirements.
- Works with the relevant SNCB(s) to resolve as many issues as possible at the pre-application stage and sets out the issues agreed, or not agreed, in the Statement(s) of Common Ground, using the evidence plan as a mechanism to do this.

- Finalises the evidence plan and uses it to inform its DCO application and any HRA report.

Statutory Nature Conservation Body(s)

- Engages with an applicant at the start of pre-application to discuss the project and potential likely impacts on a European site(s) and their conservation objectives.
- Negotiates and agrees an initial evidence plan within 3 months (or longer if agreed) ensuring that evidence demands are proportionate to the potential impacts of the proposed NSIP.
- Assesses and reviews evidence provided by the applicant at regular reviews, giving feedback on progress.
- Proposes changes to the evidence requirements which remain proportionate and are based on findings of the evidence assessed.
- Works with the applicant to resolve as many issues as possible during pre-application, including through the Statement(s) of Common Ground.

Planning Inspectorate (National Infrastructure Directorate)

- Where possible, review and comment on an evidence plan on a case-by-case basis.

Other consenting bodies (which may also be competent authorities)

- Review and comment on evidence plans throughout pre-application. They can become formal parties to the evidence plan though this is at the competent authorities' discretion.

Major Infrastructure and Environment Unit

- Oversees and monitors the evidence process, e.g. monitoring agreement of evidence plans within the 3 month timeframe and the progress of each evidence plan.
- If necessary, facilitates agreement of an evidence plan or if there are any subsequent disputes that cannot be easily resolved throughout a plan's duration. The MIEU does not have an arbitration role.

Environmental NGOs

- Environmental NGOs may hold data and evidence that may be relevant to the assessment of an NSIP under the Habitats Regulations. It is therefore best practice to involve environmental NGOs at an early stage of pre-application, including by seeking their views on an evidence plan. Applicants are not obliged to consult environmental NGOs on the evidence plan and do so at their discretion.

Annex A: content of evidence plans

Issue	Reasoning for inclusion in the evidence plan
<p>Working arrangements</p>	<p>The evidence plan should identify the relevant SNCB(s) and any other consenting bodies, which may also be competent authorities, that will be involved during pre-application and working arrangements agreed. This should include:</p> <ul style="list-style-type: none"> - How the applicant will provide evidence to the SNCB(s), including the format it will be provided. This should include any data sharing and availability issues such as confidentiality, data licensing and sharing of raw data. - How the SNCB(s) will assess and feedback its views on the evidence to the applicant. This should include agreeing the specific timelines for the SNCB(s) to respond to the applicant. - The circumstances in which an evidence plan may change. - Timescales and planned communication. - Agreeing which elements of the plan form part of the statutory engagement from an SNCB or other body (e.g. Environment Agency) and which elements would fall under charging if applicable. - Which SNCB will act as the lead in discussing and negotiating the evidence plan where the proposal falls within the responsibilities of two or more SNCBs. <p>For those NSIPs which are located partly in England and partly in Wales or located entirely in England but which may impact negatively on European sites in Wales or Scotland, the working arrangements should also include the relevant devolved administration’s SNCB.</p> <p>Any environmental NGOs should be identified by the applicant so that they can engage with them during the evidence plan process and get their input at an early stage.</p> <p>In agreeing the evidence plan, the applicant should consider and agree with the relevant SNCB(s) as to how it will fit within the formal pre-application NSIP consultation processes.</p>
<p>Scope of evidence required</p>	<p>The intention is to establish and agree the matters which need addressing and the areas the applicant will need to provide evidence on to allow assessment by the relevant SNCB(s) in pre-application.</p> <p>Matters to consider could include: which European protected sites the proposed NSIP may have a likely significant effect on; what are the features for which the site has been designated (including habitats, plant, animal or bird species); which features could be impacted; where is the potential risk of being unable to avoid adverse effect on integrity.</p> <p>The evidence plan should also list any other projects to be taken into account, e.g. in assessing in-combination impacts. Note that:</p> <ul style="list-style-type: none"> - The evidence plan is a “living document” and the scope of evidence can be changed. - Changes may emerge from analysis of evidence and/or changes in project design. - Any new requirements should be confirmed formally through the process and all parties must agree to them. - Changes can lessen as well as widen the scope of evidence required (e.g. additional species of bird found to be impacted or marine mammal not found in the area and not impacted).

<p>Approach to uncertainties and likely significant effect</p>	<p>The evidence plan should agree the approach to key terms such as:</p> <ul style="list-style-type: none"> - What constitutes no likely significant effect that means that specific evidence does not need (or no longer needs) to be collected. - Identify the criteria where it is not possible to ascertain no adverse effect on integrity (alone or in-combination). - What may constitute an adverse effect that requires mitigation measures to be agreed. - Other known projects to be taken into account, e.g. in assessing cumulative / in-combination impacts. - Any likely uncertainties, including how they should be dealt with by the applicant, taking into account the precautionary principle. 																
<p>Evidence to be collected</p>	<p>The evidence plan should set out the evidence that needs to be collected (e.g. type of surveys, timetable of surveys, approaches to modelling and the format of providing the evidence to the relevant SNCB) to meet the agreed scope of evidence.</p> <p>The list of evidence to be collected should be updated throughout the process and could be set out in the plan as:</p> <table border="1" data-bbox="375 808 1453 1003"> <thead> <tr> <th data-bbox="375 808 483 1003">Scope and Aims</th> <th data-bbox="483 808 683 1003">Assessment methods</th> <th data-bbox="683 808 815 1003">Type of Survey</th> <th data-bbox="815 808 967 1003">Level of detail (e.g. sample numbers)</th> <th data-bbox="967 808 1062 1003">Start</th> <th data-bbox="1062 808 1158 1003">End</th> <th data-bbox="1158 808 1291 1003">Review points</th> <th data-bbox="1291 808 1453 1003">Contractor</th> </tr> </thead> <tbody> <tr> <td> </td> </tr> </tbody> </table> <p>“Review points” should be built into the evidence plan to allow the SNCB(s) to feedback to the applicant. This could include discussion of:</p> <ul style="list-style-type: none"> - Whether to continue with the survey (e.g. if no effects are found after a certain period of survey work has been completed). - Whether to expand evidence collection / scope as additional impacts are identified or conclusions are uncertain and further evidence could provide more certainty. - Mitigation measures to reduce any adverse effects. 	Scope and Aims	Assessment methods	Type of Survey	Level of detail (e.g. sample numbers)	Start	End	Review points	Contractor								
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<p>Methodology and standards for data analysis, outputs and consultations</p>	<p>This should include the agreed methods for assessment and analysis along with the models to be used to assist this and input parameters.</p> <p>The details, and timing, of consultations which will feed into the review meetings and support the applicant’s HRA report should also be discussed and agreed.</p>																
<p>Timetable for implementing and reviewing the plan</p>	<p>The overall timetable for the evidence plan will need to take into account the time needed to undertake the required evidence collection, the date the applicant expects to submit its application to PINS and the formal pre-application NSIP consultation processes.</p> <p>The timetable should allow sufficient time throughout pre-application to:</p> <ul style="list-style-type: none"> - Analyse the evidence robustly and identify potentially significant impacts. - Collect additional evidence if required. - Resolve as many outstanding issues as possible, e.g. mitigation measures. <p>The schedule for the review meetings should be agreed. These should be increased, or decreased, depending on the results of the evidence collected and progress towards completion of the plan.</p>																

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