



Department for
Business, Energy
& Industrial Strategy

Habitats Regulations Assessment of Energy NPS Review

Methodology

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Document History

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Preface

BEIS is undertaking a review of the six National Policy Statements (NPS) for Energy. This is the Habitats Regulations Assessment (HRA) Methodology Report that precedes the production of the HRA of the six Energy NPSs. The reviewed NPSs for Energy will be subject to statutory consultation and the HRA report for the reviewed NPSs will accompany them through this process. There are six NPSs which set out policy for nationally significant energy infrastructure:

- Overarching National Policy Statement for Energy (EN-1);
- National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2);
- National Policy Statement for Renewable Energy Infrastructure (EN-3);
- National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4);
- National Policy Statement for Electricity Networks Infrastructure (EN-5); and,
- National Policy Statement for Nuclear (EN-6).

This document outlines the HRA methodology applied to the production of the HRA report for the six NPS, which will be assessed as high-level strategic plans.

Non-Technical Summary

This is the Habitats Regulations Assessment (HRA) Methodology Report that informs the approach to the HRA of the six reviewed National Policy Statement (NPS) for Energy prior to their issue for statutory consultation. These comprise the Overarching NPS for Energy (EN-1) and the five subsequent NPSs (EN-2 to EN-6) covering the development of infrastructure for fossil fuel electricity generation; renewable energy; gas supply and gas and oil pipelines; electricity networks; and, nuclear.

In England and Wales, under the Conservation of Habitats and Species Regulations 2017 (as amended)¹ (the ‘Habitats Regulations’) an ‘Appropriate Assessment’ is required to be undertaken on proposed plans or projects which are not necessary for the management of the European Site but which are likely to have a significant effect on one or more European Sites either individually, or in combination with other plans or projects. An assessment is required where a plan or project may give rise to a significant effect upon a European Site. These sites include:

- Special Areas of Conservation (SACs)², originally designated under European Council Directive 92/43/EEC (referred to as the Habitats Directive); and,
- Special Protection Areas (SPAs), originally designated under the Conservation of Wild Birds Directive (Council Directive 2009/147/EC (which codifies Directive 79/409/EEC)) for rare, vulnerable and regularly occurring migratory bird species and internationally important wetlands.

As a matter of Government policy³ this also includes:

- Listed or proposed Ramsar sites (wetland sites of international importance, as designated under the Ramsar Convention 1971);
- Potential SPAs (pSPA);
- Possible SACs (pSAC); and,
- Any site identified, or required, as compensatory measures for adverse effects on European Sites, pSPAs, pSACs and listed or proposed Ramsar sites.

Hereafter, all the above sites are referred to as European Sites.

¹ Following the changes made to the Conservation of Habitats and Species Regulations 2017 (as amended) by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network and now form part of the UK's national site network. In this document they are still referred to as European Sites.

² Includes candidate SACs (cSAC) and Sites of Community Importance (SCI)

³ Ministry of Housing, Communities and Local Government (2019) National Planning Policy Framework (NPPF). Paragraph 176.

This report outlines the methodology used in undertaking a strategic-level HRA for the six revised energy NPSs. It is acknowledged that this does not remove the requirement for detailed, project-level HRAs to be undertaken at development consent stage. The methodology outlined is for the assessment of a plan, as the NPSs must be treated as such under the Habitats Regulations. There are no specific sites, allocations or any spatial component to the NPSs. Therefore, the assessment will focus on the policy content within each document.

The methodology outlines the four recognised stages of HRA and the requirements at each stage.

1. Introduction

1.1 The Revised Energy National Policy Statements

- 1.1.1 The Government believes that the UK's energy generation portfolio has an important role to play as the UK transitions towards a low-carbon economy. As such, it is necessary to revise and update the National Policy Statements (NPS) for energy infrastructure to facilitate delivery of energy infrastructure capable of meeting the energy demand of the UK, whilst working towards 'net zero' greenhouse gas emissions by 2050 and a 68% reduction in the UK's emissions by 2030⁴.
- 1.1.2 An overarching National Policy Statement for Energy (EN-1), in conjunction with five technology-specific NPSs, was published in 2011 and set out Government policy for the delivery of major energy infrastructure. The five NPSs are as follows:
- National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2);
 - National Policy Statement for Renewable Energy Infrastructure (EN-3);
 - National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4);
 - National Policy Statement for Electricity Networks Infrastructure (EN-5); and,
 - National Policy Statement for Nuclear (EN-6).
- 1.1.3 Taken together with EN-1, they provide the framework for development consent decisions on applications for new energy infrastructure.
- 1.1.4 In reviewing and where necessary revising the six energy NPSs, they will need to be subject to accompanying Appraisal of Sustainability (AoS) and Habitats Regulations Assessment (HRA) reports to ensure that any changes made to the NPSs are assessed for their respective implications. In the case of the HRA, implications for European designated sites for nature conservation will be addressed. The associated AoS and HRA reports will be submitted alongside the NPSs for statutory consultation.

⁴ <https://www.gov.uk/government/news/uk-sets-ambitious-new-climate-target-ahead-of-un-summit>

1.2 Purpose and background to this report

- 1.2.1 This report is the HRA methodology report and outlines the approach to be taken when updating the HRA for the six energy NPSs and assessing the content of the NPSs under the Conservation of Habitats and Species Regulations 2017 (as amended)⁵ (the ‘Habitats Regulations’).
- 1.2.2 The duty to undertake the HRA relates to the energy NPSs themselves as strategic plans. Each energy NPS is a ‘plan’, which provides a strategic framework within which subsequent ‘project’ level assessment will be undertaken as required, as and when individual projects are proposed.
- 1.2.3 The NPSs do not include any sites, locations or other spatial proposals and, therefore, the HRA is an assessment of the policy content only. As such it is high-level and strategic in nature and it does not constitute or take the place of a project HRA for any energy infrastructure development that may fall under the NPSs.
- 1.2.4 The function of the HRA report will be to highlight any potential risks to European Sites through the text / policy approaches of the energy NPS documents themselves. It summarises the findings for all six NPSs and considers the applicability of in-combination effects.
- 1.2.5 This approach takes into account recent European and UK case law that applies to European Sites and guidance that was not available at the time the HRA was produced for the 2011 energy NPSs. According to UK EU withdrawal agreements, EU case law that has shaped and influenced the HRA process up to 31st December 2021, remains relevant in the UK and to the assessment^{6 7}. Other than amendments to keep all stages of the HRA process within UK auspices, no fundamental change has been made to the function and implementation of the Habitat Regulations following amendment by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. Therefore, reference to European case law up to 31st December 2021 is in-keeping with a good practice approach of always using the most current available guidance.
- 1.2.6 The following pieces of case law are considered to be relevant and their implications for plan-level HRA are discussed below.

⁵ Following the changes made to the Conservation of Habitats and Species Regulations 2017 (as amended) by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in the UK no longer form part of the EU’s Natura 2000 ecological network and now form part of a UK national site network. In this document they are still referred to as European Sites.

⁶ EU legislation and UK law - <https://www.legislation.gov.uk/eu-legislation-and-uk-law>

⁷ Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, March 2021 edition UK: DTA Publications Limited. [Refer to A.2.1 Legal Consequences of leaving the EU]

People over Wind

- 1.2.7 This HRA will be prepared in accordance with relevant case law findings, including most notably the ‘People over Wind’ and ‘Holohan’ rulings from the Court of Justice for the European Union (CJEU).
- 1.2.8 The People over Wind, Peter Sweetman v Coillte Teoranta (April 2018) judgment ruled that Article 6(3) of the Habitats Directive should be interpreted as meaning that mitigation measures should be assessed as part of an Appropriate Assessment and should not be taken into account at the screening stage. The precise wording of the ruling on this point is as follows:
- “Article 6(3)... in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site.”
- 1.2.9 In light of the above, the HRA Screening stage will not rely upon avoidance or mitigation measures to draw conclusions as to whether the NPSs could result in ‘likely significant effects’ on European Sites, with any such measures being considered at the Appropriate Assessment stage as relevant.

Holohan

- 1.2.10 The HRA will also fully consider the Holohan v An Bord Pleanala (November 2018) judgement which stated that:
- “Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that an ‘appropriate assessment’ must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.
- Article 6(3) of Directive 92/43 must be interpreted as meaning that the competent authority is permitted to grant to a plan or project consent which leaves the developer free to determine subsequently certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, only if that authority is certain that the development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site.

Article 6(3) of Directive 92/43 must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the ‘appropriate assessment’ must include an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.”

- 1.2.11 The potential for effects on species and habitats, including those not listed as qualifying features, to result in secondary effects upon the qualifying features of European sites, including the potential for complex interactions and dependencies will be considered. In addition, the potential for offsite impacts, such as through impacts to functionally linked land, and or species and habitats located beyond the boundaries of European site, but which may be important in supporting the ecological processes of the qualifying features, will also be taken into account.

Dutch Nitrogen

- 1.2.12 The 2018 ‘Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu (Dutch Nitrogen)’ judgement stated that:

“May the positive effects of the autonomous decrease in the nitrogen deposition ... be taken into account in the appropriate assessment..., it is important that the autonomous decrease in the nitrogen deposition be monitored and, if it transpires that the decrease is less favourable than had been assumed in the appropriate assessment, that adjustments, if required, be made.”

- 1.2.13 The Dutch Nitrogen judgement also states that according to previous case law:

“...it is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm to the integrity of the site concerned, by guaranteeing beyond all reasonable doubt that the plan or project at issue will not adversely affect the integrity of that site, that such a measure may be taken into consideration in the ‘appropriate assessment’ within the meaning of Article 6(3) of the Habitats Directive”.

- 1.2.14 This HRA will therefore only consider the existence of conservation and/or preventative measures if the expected benefits of those measures are certain at the time of the assessment. The HRA will also ensure that if a threshold approach is applied it will consider the risk of significant effects being produced even if below the threshold values to ensure that there is no adverse effect on integrity of the European sites.

1.3 Report structure

1.3.1 The Preface sets the context of the report and the Non-Technical Summary provides a summary of the process. The remainder of the report is structured as follows:

- Chapter 1 introduces the purpose and background to the six energy NPSs and this report;
- Chapter 2 sets out the Habitat Regulations Assessment process and its application;
- Chapter 3 HRA Screening;
- Chapter 4 Appropriate Assessment;
- Chapter 5 Alternative Solutions;
- Chapter 6 Imperative Reasons of Overriding Public Interest (IROPI); and,
- Chapter 7 Preparation of the NPS HRA Reports.

2. Habitats Regulation Assessment Process and Applications

2.1 Relevant law and policy

- 2.1.1 Under the Habitats Regulations an assessment is required where a plan or project may give rise to significant effects upon a European Site. These sites include Special Areas of Conservation (SACs), originally designated under the Habitats Directive, and Special Protection Areas (SPAs), originally designated under the Conservation of Wild Birds Directive (Council Directive 2009/147/EC, which codifies Directive 79/409/EEC).
- 2.1.2 These sites now form part of the national site network and going forward, will include any SACs and SPAs newly designated by the UK.
- 2.1.3 The legislation relevant to the UK's national network of European Sites comprises the Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore Marine Habitats and Species Regulation 2017 (as amended), known together as the Habitats Regulations. In addition, it is a matter of UK Government policy⁸ that sites designated under the 1971 Ramsar Convention for their internationally important wetlands (Ramsar sites), both listed and proposed, are also considered in this process and afforded the same protection as sites within the national site network, along with potential SPAs (pSPAs) and possible SACs (pSACs). Hereafter, all the above sites are referred to as European Sites. Furthermore, sites identified, or required, as compensatory measures for adverse effects on European Sites are also included.
- 2.1.4 Areas of land or sea outside of the boundary of a European Site may be important ecologically in supporting the populations for which the European Site has been designated or classified, such that they are 'functionally linked' and should be taken into account in a HRA⁹.

⁸ Ministry of Housing, Communities and Local Government (2019) National Planning Policy Framework (NPPF). Paragraph 176.

⁹ Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, March 2021 edition UK: DTA Publications Limited.

2.1.5 Regulation 63 (1) of the Habitats Regulations states:

“A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives”.

2.1.6 It is confirmed that the six energy NPSs are not directly connected with or necessary to the management of any European Sites. Therefore, there is a requirement for screening for likely significant effects and, if likely significant effects cannot be ruled out, appropriate assessment.

2.1.7 Regulation 64 (1) of the Habitats Regulations states that:

“If the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be)”.

2.1.8 Furthermore, Regulation 68 states:

“Where in accordance with regulation 64—

(a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, or

(b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected”.

- 2.1.9 However, with reference to the underlined text above, although the process is broadly the same, it will be the coherence of the UK national site network that is maintained. The ‘appropriate authority’ will be the relevant Secretary of State or the Welsh Minister. This no longer includes the European Commission. These amendments are made to the Habitats Regulations by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.1.10 Should the later stages of HRA be reached (outlined in Section 2.2 below) and an Annex 1 priority habitat or Annex 2 priority species (marked by an asterisk) are going to be affected, this has an influence on the reasons permitted as *imperative reasons of overriding public interest*. According to Regulation 64 (2) the permissible reasons are limited to those relating to: a) human health, public safety or beneficial consequences of primary importance to the environment; or, b) any other reasons which the competent authority, having due regard to the opinion of the appropriate authority, considers to be imperative reasons of overriding public interest. The ‘appropriate authority’ in England and Wales is the relevant Secretary of State or Welsh Minister, respectively.

2.2 HRA process overview

- 2.2.1 It has become generally accepted that the requirements of Habitats Regulations Assessment process comprise four stages^{10 11 12}:
- **Stage One: Screening** – the process that identifies the potential for likely effects upon a European Site of a project or plan, either alone or in combination with other projects or plans and considers whether these effects are likely to be significant.
 - **Stage Two: Appropriate assessment** – the consideration of the impact on the integrity of the European Site of the project or plan, either alone or in combination with other projects or plans, in respect of the European site’s structure and function and its conservation objectives. Additionally, where adverse impacts are identified, an assessment of the potential mitigation of those impacts is undertaken. The assessment of the effect on integrity of the site is undertaken including the effect of such mitigation.
 - **Stage Three: Assessment of alternative solutions** – the process which examines alternative ways of achieving the objectives of the project or plan

¹⁰ European Commission (2001) Assessment of plans and projects significantly affecting Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.

¹¹ Guidance on the use of Habitats Regulations Assessment - <https://www.gov.uk/guidance/appropriate-assessment>

¹² Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, March 2021 edition UK: DTA Publications Limited.

that might avoid or reduce adverse impacts on the integrity of the European Site.

- **Stage Four: Assessment where no alternative solutions exist and where adverse impacts remain** - following the identification of imperative reasons of overriding public interest (IROPI), if it is deemed that the project or plan should be allowed to proceed, compensatory measures are identified, and their effectiveness ascertained.

3. HRA Screening

3.1 Scoping European Sites for Screening

- 3.1.1 Prior to screening it is necessary to identify all European Sites that may be affected by the project or plan. The extent of the search is determined by the methodology and scope being used and will depend on the nature of the project or plan as to how far-reaching the impacts could be.
- 3.1.2 Due to the absence of spatial proposals or any nominated sites within the reviewed energy NPSs being assessed, it was not possible to scope in specific European Sites that may be affected. Therefore, as the NPSs have a national coverage, it must be assumed that any of the UK European Sites could be affected as development could be anywhere. In the UK there are presently over 656 SACs, over 284 SPAs and approximately 149 Ramsar sites designated across terrestrial and marine environments¹³.
- 3.1.3 Furthermore, using the 'source-pathway-receptor' approach and considering the potential far-reaching effects from energy infrastructure developments, such as off-shore windfarms or nuclear power stations, it is conceivable that mobile species from European Sites in other countries may be affected. This is considered to potentially be the case for marine mammals, migratory fish and seabirds, many of which travel long distances to utilise other habitats, move within their natural range or during migration. Therefore, they can potentially be affected outside the boundary of the European Site of which they are a qualifying feature. For the purpose of this assessment it is presumed that impacts on European Sites outside the national site network do not need to be considered. In assessing impacts on the suite of European Sites protecting UK habitats and species it is assumed, particularly within UK territorial waters, that potential impacts on mobile species will be adequately addressed.

3.2 Approach to Stage 1 - Screening

- 3.2.1 Guidance from the European Commission¹⁴ recommends that screening should follow the following steps:

¹³ <https://jncc.gov.uk/>

¹⁴ European Commission (2001) Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.

- Step 1: Determine whether the plan is directly connected with or necessary to the management of the European site;
- Step 2: Describe the plan and describe and characterise any other plans or projects which, in combination, have the potential for having significant effects on the European site;
- Step 3: Identify the potential effects on the European site both alone and in combination with other plans and projects; and
- Step 4: Assess the significance of any effects on European sites.

3.3 Step 1: Determine whether the plan is directly connected with or necessary to the management of the European Site

- 3.3.1 This step will simply involve confirming that the NPSs are not directly connected with or necessary to the management of any European sites.
- 3.3.2 Having determined that the project or plan is not directly connected, or necessary for the management of a European Site, it is necessary to undertake screening to determine whether the proposals are likely to have a Likely Significant Effect (LSE) on any European Sites (Steps 2 to 4 below).
- 3.3.3 It is important to note that the burden of evidence is to show, on the basis of objective information, that the project or plan will have no LSE on a European Site. If there may be an LSE, or there is uncertainty and an LSE cannot be ruled out, this would trigger the need for an appropriate assessment. As a result of European case law¹⁵, irrespective of the normal English meaning of 'likely', in this statutory context a 'likely significant effect' is a 'possible significant effect', one whose occurrence cannot be ruled out on the basis of objective evidence i.e. 'no reasonable scientific doubt remains as to the absence of such effects'¹⁶.
- 3.3.4 The Waddenzee judgement¹⁵ also provides further clarification regarding the term 'significant': "where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site's conservation objectives, it must be considered likely to have a significant effect on that site. The assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project."

¹⁵ Waddenzee judgement (7th September 2004) Case C127/02

¹⁶ Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, March 2021 edition UK: DTA Publications Limited.

3.3.5 Measures intended to avoid or reduce effects upon European Sites are not taken account of during screening. This is consistent with European case law¹⁷.

3.4 Step 2: Describe the plan and any other plans or projects that could have in-combination significant effects

3.4.1 This step will involve describing the content of the six NPSs and any other plans or projects which have potential for in-combination effects (see Section 3.5 on in-combination assessment below).

3.5 Step 3: Identify potential effects alone and in-combination

3.5.1 It is usual to consider construction, operation and decommissioning effects separately, where they are applicable. Although potential effects throughout construction and operation are different, given the strategic nature of this assessment, the high-level potential effects being considered should encompass all possible impacts from construction and operation. Therefore, they will not be dealt with separately within the assessment process. It is presumed that, on a worst-case scenario basis, the effects of decommissioning will be similar to those of construction and, therefore, also covered by the effects considered.

3.5.2 It is acknowledged that there will be infrastructure-specific effects that may not be identified until the project stage, due to the high-level nature of the assessment. Where possible, potential specific effects will be flagged, but it is prudent to assume that detailed consideration of effects will only be made at project-level HRA for individual proposed infrastructure developments. An example of this would be the radiological emissions from nuclear sites, which will be subject to strict regulation during operation and require a decommissioning strategy with all other relevant licences and approvals granted prior to commencement of decommissioning.

3.5.3 The energy NPSs do not contain specific policies or objectives that could strictly be assessed in their own right. The absence of policies or objectives that could promote development and the lack of nominated sites associated with any of the six NPSs, means there is no direct mechanism by which the NPSs could have any impact on European Sites.

¹⁷ People over Wind v Coillte Teoranta (12th April 2018) Case C-323/17

- 3.5.4 In line with current best practice, it is now considered appropriate to undertake a targeted 'source-pathway-receptor' approach to identifying sites for screening. This allows for the movement of mobile/migratory species such as birds, fish and marine mammals and their potential to interact with infrastructure/ individual sites to be taken into account. However, it is not possible to apply such an approach to this HRA as the NPSs do not contain any spatial component or nominated sites to enable a detailed assessment. Energy infrastructure development, as facilitated by the NPSs, could occur anywhere within England and Wales, thereby potentially affecting any of the European sites across the UK and more widely across Europe.
- 3.5.5 The results of the screening can, however, be used to inform the scope of any future project-level HRA process by highlighting potential effect pathways.
- 3.5.6 The following general potential effects will be considered:
- Habitat loss and fragmentation (direct and indirect e.g. loss of functionally linked land);
 - Changes to terrestrial (fresh) water quality;
 - Changes to marine water quality;
 - Changes to air quality;
 - Changes to surface and groundwater hydrology;
 - Changes in coastal processes;
 - Changes to radiological emissions;
 - Species disturbance (visual, terrestrial noise & vibration, marine noise & vibration);
 - Physical interaction between species and project infrastructure; and,
 - Introduction of Invasive Non-Native Species (INNS).
- 3.5.7 The specific actions and processes that may lead to the broad effects outlined above will be defined in the HRA of the energy NPSs and the list refined as necessary as the assessment evolves.

3.6 Step 4: Assess the likely significance of any effects on European sites

- 3.6.1 The potential for LSEs will be assessed by virtue of the conservation objectives, which if undermined will result in a LSE on one or more qualifying features. Conservation objectives broadly comprise the following targets:
- Maintain the extent and distribution of qualifying habitats and habitats of qualifying species;

- Maintain the structure and function (including typical species) of qualifying natural habitats;
- Maintain the structure and function of the habitats of qualifying species;
- Maintain the supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;
- Maintain the populations of qualifying species; and,
- Maintain the distribution of qualifying species within the site.

3.6.2 The conservation objectives should be read in conjunction with the Supplementary Advice on Conservation Objectives, where this is available for a European Site. The supplementary advice provides extra detail on how the attribute targets can be met. However, given the high-level nature of the assessment for the plan, they are only really relevant to project-level assessments.

3.6.3 The assessment will also consider which types of European sites' qualifying features would be likely to be significantly affected by which types of impact and which conservation objectives this may compromise e.g. habitat loss affecting H4010 Northern Atlantic wet heaths with *Erica tetralix* would result in a failure to meet the conservation objective to 'maintain extent and distribution of qualifying habitats'.

In-combination assessment

3.6.4 During screening, the potential for LSE on European Sites needs to be considered 'alone' and 'in-combination'. Where an LSE alone is concluded, the consideration of potential in-combination effects with other plans and projects can be taken forward to appropriate assessment (this is discussed in Section 4.2 below). If, however, there is an effect but it is not considered to have an LSE on a European Site, i.e. the effect is minor and not significant, it is necessary to undertake an in-combination assessment at screening stage. The non-significant effect arising from the NPS, may, in-combination with effects from another plan or project, then have an LSE on the European Site.

3.6.5 The way in which effects may combine to produce an effect on a European Site that is more likely to be significant, will need to be considered.

- 3.6.6 Cumulative effects may increase the effects on qualifying features in an additive or synergistic way, increase the sensitivity or vulnerability of the qualifying features, or result in impacts to qualifying features more intensely over an area, to qualifying features over a larger area or by affecting new areas of the same qualifying feature, dependent on the type of feature. Effects on different qualifying features are not likely to be cumulative effects.¹⁸
- 3.6.7 Where it can be demonstrated that the NPS will have no impact, i.e. no appreciable effect, then there is no requirement to undertake an in-combination assessment. In short, there is nothing to combine with that might then have a potential effect on a European Site.
- 3.6.8 However, due to the strategic and high-level nature of the NPSs, it may not be possible to screen out European Sites from appropriate assessment. Therefore, potential in-combination effects will be discussed at appropriate assessment stage. The approach is discussed further in Section 4.2 below.

¹⁸ Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, March 2021 edition UK: DTA Publications Limited.

4. Appropriate Assessment

4.1 Approach to Stage 2 – Appropriate Assessment

4.1.1 For European Sites where LSE is predicted (alone or in-combination), or it cannot be concluded that there is no LSE, an appropriate assessment will be undertaken *‘if a likely significant effect cannot be excluded on the basis of objective information’*. That is to say, *‘if the plan or project is likely to undermine the site’s conservation objectives, the assessment of that risk being made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project’* (in accordance with the Waddenzee judgement, paragraph 45 and 49).

4.1.2 The appropriate assessment can only consider the potential effect pathways identified during Stage 1 Screening against the conservation objectives for European Sites. Depending on the qualifying features, the conservation objectives for SACs and SPAs typically cover the extent, distribution, structure and function of qualifying natural habitats, supporting processes relied upon by habitats (and species) and the population and distribution of qualifying species. In conjunction with the Supplementary Advice on Conservation Objectives for a European Site, the conservation objectives provide a framework for assessment and information on how qualifying features may be adversely affected. Ramsar sites do not have conservation objectives; however, as they usually overlay SACs and SPAs, the conservation objective for these sites will be applied to the Ramsar site.

European site integrity

4.1.3 The integrity of a site is defined as “the coherence of the site’s ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the populations of the species for which the site is, or will be designated”¹⁹.

¹⁹ Natural England (2019) MPA Conservation Advice Glossary of Terms. Available here: https://designatedsites.naturalengland.org.uk/pdfs/MPA_CAGlossary_March2019.pdf

- 4.1.4 European Commission guidance on the provisions of Article 6 (and therefore relevant to Regulation 63 of the Habitat Regulations), emphasises that site integrity involves its ecological functions and that the assessment of adverse effect should focus on and be limited to the site's conservation objectives²⁰.
- 4.1.5 The appropriate assessment of the energy NPSs includes an assessment of adverse effects to the extent possible on the basis of the precision of the plan. A precautionary approach will be taken to scoping European Sites in or out of appropriate assessment during screening due to the absence of a spatial component to the plans. Likewise, it is not possible to subsequently undertake a detailed assessment of potential for adverse effects on receptors. Furthermore, the NPSs cover a large range of potential energy infrastructure developments which would show some variation in the specific impacts they may have on different qualifying features.
- 4.1.6 The strategic-level appropriate assessment will, therefore, be based on the potential effects identified (refer to Section 3.5.6 above). It will highlight the risks to achieving high-level conservation objectives for European Sites as a result of the potential facilitation of energy infrastructure development that may result from the six energy NPSs.
- 4.1.7 This method is in line with two pieces of case law²¹, which clarified that an appropriate assessment of a plan does not have to provide a conclusive answer to all the questions legitimately raised about the potential for significant adverse effect on the integrity of the designated site.
- 4.1.8 In the Opinion of Advocate General Kokott²² at paragraph 49 she noted that an assessment of plans cannot by definition take into account all effects because *“Many details are regularly not settled until the time of the final permission”* and *“[i]t would also hardly be proper to require a greater level of detail in preceding plans or the abolition of multi-stage planning and approval procedures so that the assessment of implications can be concentrated on one point in the procedure. Rather, adverse effects on areas of conservation must be assessed at every relevant stage of the procedure to the extent possible on the basis of the precision of the plan. This assessment is to be updated with increasing specificity in subsequent stages of the procedure”*.

²⁰ European Commission (2018) Managing Natura 2000 Sites. The Provision of Article 6 of the 'Habitats' Directive 92/43/EEC.

²¹ Feeney versus Oxford City Council and the Secretary of State CLG (24th October 2011) Case No CO/3797/2011 and the Cairngorms Campaign and others versus the Cairngorms National Park Authority and others 2012 SOH153

²² European Commission v UK (2005) ECR I-9017 Case C-6/04

4.2 In-combination assessment

- 4.2.1 Where an in-combination assessment has been taken forward to Stage 2, appropriate assessment. The potential for adverse effects on European Site integrity as a result of the in-combination effect needs to be assessed. However, mitigation can now be taken into consideration. It must be noted that adverse effects can only be assessed at the relevant stage to the extent possible on the basis of the precision of the plan.
- 4.2.2 Given the nature of any energy NPS and the absence of any direct development potential (as would be the case by having nominated sites), there is inevitably going to be a delay between the adoption of the NPSs and any subsequent energy infrastructure development. It is not possible to know when (or indeed if) any subsequent project proposal will come forward and it is not therefore possible to predict what other plans and projects will be relevant to future project assessments.
- 4.2.3 No formal in-combination assessment will be undertaken but the types of project and plan, including other nation-level plans, that might be relevant to later project-level HRA will be identified. As energy infrastructure could be developed anywhere in England and Wales, plans with a national focus will need to be considered alongside those classed as regional or local. All new energy infrastructure development is likely to require a project-level HRA, within which in-combination effects will be assessed on a case-by-case basis. The information gathered as part of the in-combination assessment for the HRA of the reviewed energy NPSs will provide a guide for starting a project-level in-combination assessment.

4.3 Mitigation measures

- 4.3.1 Possible mitigation measures that could be applied at the project HRA level and may be sufficient to avoid or mitigate any adverse effect on European Site integrity will be evaluated. However, mitigation of this kind is project-specific and without a project it can only be considered in generic terms at this strategic level.
- 4.3.2 Mitigation can be incorporated into a plan through changes to the text to include a commitment ensuring that any arising development is subject to HRA, where necessary in accordance with the Habitats Regulations. The scope for mitigation such as this, which is embedded within the NPSs, will be explored.

- 4.3.3 Therefore, the mitigation chapter of the HRA for the energy NPSs will outline standard mitigation proposals and include mitigation required for effects of the site alone or in-combination with other plans and projects. These measures will necessarily be of a broad scope and will draw on generic avoidance and mitigation measures for large infrastructure projects. It will additionally include suggestions for mitigation that could be included in the text of the NPSs, where this proves to be feasible.

5. Alternative Solutions

5.1 Approach to Stage 3 – Assessment of alternative solutions

- 5.1.1 Regulation 107(1) of the Habitats Regulations states that “If the plan-making authority are satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest...they may give effect to the land use plan notwithstanding a negative assessment of the implications for the European Site or the European offshore marine site...”.
- 5.1.2 Defra’s guidance on the application of article 6(4)²³ states that the purpose of the alternative solutions test is to determine whether there are any other feasible ways to deliver the overall objective of the plan [or project], which will be less damaging to the integrity of the European Site(s) affected. Therefore, the absence of feasible alternative solutions must be demonstrated before the assessment can move on to the next stage.
- 5.1.3 The requirement is for ‘alternative solutions’, not merely ‘alternatives’ to be considered. According to The Habitat Regulations Assessment Handbook²⁴, there are four principal steps in establishing the presence or absence of alternative solutions:
- Step 1 – define the objectives or purpose of the plan and the problem it is causing that needs to be solved i.e. the harm that it would cause to the integrity of a European Site;
 - Step 2 – understand the need for the plan;
 - Step 3 – are there financially, legally and technically feasible alternative solutions;
 - Step 4 – are there alternative solutions with a lesser effect on the integrity of the European Site?

²³ Defra (December 2012) Habitats and Wild Birds Directives: guidance on the application of article 6(4) Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures.

²⁴ Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, March 2021 edition UK: DTA Publications Limited.

- 5.1.4 The objectives of the energy NPSs as originally outlined will frame the alternative solutions that should be considered. In some cases, wide ranging alternatives may deliver the same overall objective, but generally the range of alternative options are curtailed by the boundary created by the objectives e.g. alternative solutions for a new motorway would not normally include the assessment of other modes of transport²¹.
- 5.1.5 At this strategic stage it is not possible to define a specific ‘problem’ as risks to the integrity of the European Sites will be identified at a high level and largely precautionary. Alternatives will be considered during the project stage of any arising energy infrastructure development.
- 5.1.6 As a plan, the alternatives to the energy NPSs to be discussed in the HRA report are based on presenting variations of the NPSs, as identified by BEIS and outlined in the AoS. The alternatives are likely to be based on variation of the need case in Chapter 3 of EN-1, which may affect the technology-specific NPSs that sit under the overarching EN-1 NPS. The degree to which each option will impact upon the integrity of European Sites is discussed, including the ‘do nothing’ option, which would result in no NPS. The assessment of these ‘alternatives’ will help to determination if they are ‘feasible alternatives’. Alternatives need to be legally, financially and technically feasible²⁵. Ultimately, the consideration of alternatives will be undertaken “*to the extent possible on the basis of the precision of the plan*”²⁶.

²⁵ Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, March 2021 edition UK: DTA Publications Limited.

²⁶ Refer para 49 of the Advocate General’s Opinion in Case C-6/04 EC v UK (2005)

6. Imperative Reasons of Overriding Public Interest (IROPI)

6.1 Reaching Stage 4 - IROPI

6.1.1 Provided it can be demonstrated that there are no feasible alternative solutions and where adverse impacts remain upon a European Site, the assessment will move on to IROPI. This stage considers whether the plan or project is:

- **Imperative:** it must be essential (whether urgent or otherwise), weighed in the context of the other elements below, that the plan or project proceeds;
- **Overriding:** the interest served by the plan or project outweighs the harm (or risk of harm) to the integrity of the site as identified in the appropriate assessment. In this context, the European Commission guidance states that it is reasonable to assume that the interest can only be overriding if it is a “long-term interest”;
- **In the public interest:** a public benefit must be delivered rather than a solely private interest.

6.1.2 Also, at this stage it will need to be determined if any SAC priority habitats or species will be affected. This affects the types of reasons that could be considered by the competent authority. Otherwise, as outlined in Section 2.1.9, the opinion of the relevant Secretary of State or Welsh Ministers is required.

6.2 Compensation

6.2.1 In accordance with guidance produced by Defra (2012), should a project or plan proceed through the derogations, it is within Stage 4 that compensatory measures are identified. They need to be sufficient to off-set the harm and can include creation or re-creation of comparable habitats, which will eventually be designated as a European Site or habitat that forms an extension to an existing European Site.

6.2.2 The competent authority must have confidence that the compensation proposed will deliver the desired outcome and should consider the following:

- Is the proposed compensation technically feasible, based on sound scientific understanding?
- Is there a robust delivery and management plan in place for the duration?

- Where is the proposed compensation in relation to the affect site? Does this affect its efficacy?
- How much time is needed for the compensation to establish to the required quality?
- Is the methodology proposed reasonable or technically proven?
- Are the measure sustainable in the long-term? Will long-term management need to be secured?

6.2.3 The appropriate authority must secure the necessary compensatory measures to ensure that the coherence of the national site network of European Sites is protected. The mechanisms for guaranteeing compensation will be through the consenting process for individual projects.

6.2.4 The strategic and high-level nature of this assessment means that generic rather than specific compensation will be outlined at this stage. Without defined impacts, it is not possible to determine what compensatory measures will be required and to what extent they need to be applied. Any compensation is therefore specific to each project and needs to be fully explored and designed at the project-level HRA.

7. Preparation of the NPS HRA Reports

7.1 Approach to report preparation

7.1.1 It is proposed to combine the assessment of the six reviewed NPSs (EN-1 to EN-6) into one report rather than producing individual documents.

7.1.2 This is considered practicable given the high-level and strategic nature of the assessment required and because the existing HRAs for EN-1 to EN-5 are reported together. The NPS for Nuclear, EN-6, was assessed separately due to the inclusion of nominated sites. For the purpose of the NPS update, the nominated sites are not being considered only the policy document. The draft will be taken through statutory consultation and a final version produced once all consultation responses have been addressed.

7.2 HRA report structure

7.2.1 The HRA report structure will be as follows:

- Non-technical summary;
- Chapter 1 introduces the purpose and background to the six energy NPSs and this report;
- Chapter 2 sets out the Habitat Regulations Assessment process and its application;
- Chapter 3 provides the results of the Stage 1 Screening;
- Chapter 4 Appropriate Assessment (AA);
- Chapter 5 assessment of alternative solutions (as identified by BEIS and outlined in the AoS);
- Chapter 6 discusses Imperative Reasons of Overriding Public Interest (IROPI); and,
- Chapter 7 Conclusion.