



Department for  
Energy Security  
& Net Zero

# Appraisal of Sustainability and Habitats Regulations Assessment of the New National Policy Statement for Nuclear Power Generation (EN-7)

Habitats Regulations Methodology Report

January 2024



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# Preface

The Department for Energy Security and Net Zero (DESNZ) is producing a new National Policy Statement (NPS) for Nuclear Power Generation (EN-7).

This is the Habitats Regulations Assessment (HRA) Methodology Report that precedes the production of EN-7. It sets out in detail the approach to the HRA in light of the legal requirements, relevant case law and the consultation process. The new NPS for nuclear power generation will be assessed without geographical information, until such time that the approach to siting new nuclear deployment has been confirmed. Therefore, at this stage it will be assessed as a high-level strategic plan only.

This Methodology Report will itself be subject to statutory consultation ahead of the production of the draft NPS. The actual HRA report, which will follow the HRA approach set out in the Methodology Report, will accompany the new NPS for new nuclear power generation through the statutory consultation process.

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# Executive Summary

This is the Habitats Regulations Assessment (HRA) Methodology Report that informs the approach to the HRA of EN-7, the new National Policy Statement (NPS) for nuclear power generation. EN-7 will cover the development of infrastructure for new nuclear power generation that will deploy after 2025 and sits within a suite of technology-specific NPSs under the overarching NPS for Energy, EN-1.

In England and Wales, under the Conservation of Habitats and Species Regulations 2017 (as amended)<sup>1</sup> (the 'Habitats Regulations'), an 'Appropriate Assessment' is required to be undertaken of proposed plans or projects which are not necessary for the management of Special Areas of Conservation (SAC) or Special Protection Areas (SPA), but which are likely to have a significant effect on one or more SAC or SPA either individually, or in combination with other plans or projects. Assessment is required where a plan or project may give rise to a significant effect upon an SAC or SPA. These Habitats Regulations sites were originally designed under the following European directives:

- Special Areas of Conservation (SACs)<sup>2</sup>, 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 policy<sup>3</sup> 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 SACs, SPAs, pSPAs, pSACs and listed or proposed Ramsar sites.

Hereafter, all the above sites are referred to as Habitats Sites<sup>4</sup>.

This report outlines the methodology used in undertaking a strategic-level HRA for the new nuclear power generation NPS, EN-7. In accordance with the Habitats Regulations, each National Policy Statement constitutes a 'plan', and therefore the methodology used aligns with that used for other 'plans'. It is important to note that this does not remove the requirement for

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<sup>1</sup> 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 (SAC) and Special Protection Areas (SPA) in the UK no longer form part of the EU's Natura 2000 ecological network, but form part of the UK's national site network. In this document they are referred to as Habitats Sites (see also footnote 4 below). It should be noted that because the UK has left the EU the Habitats Regulations are retained EU law.

<sup>2</sup> Includes candidate SACs (cSAC) and Sites of Community Importance (SCI). Following amendment of the Habitats Regulations, reference to a SCI includes reference to a site of national importance designated under any retained transposing legislation.

<sup>3</sup> Ministry of Housing, Communities and Local Government (2021) National Planning Policy Framework (NPPF), Paragraph 181.

<sup>4</sup> The term 'Habitats Sites' is used instead of 'European Sites' throughout this document. Although the sites were originally derived from European directives and previously called such, following the UK's departure from the EU and the amending legislation that means SPAs and SACs are now part of a national site network, it is considered no longer relevant to use 'European Sites'. The term only remains unchanged when present in a quote.

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detailed, project-level HRAs to be undertaken at development consent stage. At present, the methodology outlined is for a non-locational NPS, i.e. no specific sites, allocations or any spatial component. Although the existing NPS for nuclear power generation (EN-6) did include specific locations for Gigawatt-scale deployments, they are not proposed for inclusion in the new NPS and the siting criteria are under review. Furthermore, the additional nuclear technologies that will be newly introduced to the NPS (modular reactors as discussed in Section 1.1.6 below) will also not have specific proposed locations; by design they are meant to offer flexibility with respect to supply and deployment. Therefore, the assessment will focus on the policy content within the document, with reference to the existing HRA for the overarching energy NPS (EN-1) where necessary. The government is consulting on the proposed approach for a new nuclear power generation siting policy, which will inform EN-7; a new specific NPS that sets out the siting criteria for all potential nuclear technologies. As the timeframe for the release of the siting policy is uncertain, the HRA of EN-7 will be progressed without defined geographical locations for nuclear sites. This may change with the publication of EN-7, when, depending on the stage of the HRA, its inclusion can be reviewed.

The methodology outlines the three recognised stages of HRA and the requirements at each stage. The HRA will accompany EN-7 through statutory consultation.

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# 1. Introduction

## 1.1. The National Policy Statement for New Nuclear Power Generation, EN-6

NPSs apply to infrastructure that is defined as a “Nationally Significant Infrastructure Project” in the Planning Act 2008. There are six NPSs relevant to energy and they set out government policy for the delivery of major energy infrastructure. EN-6 sits under an overarching NPS for Energy (EN-1), in conjunction with four other technology-specific NPSs. The suite of NPSs are as follows:

- Overarching NPS for Energy (EN-1);
- NPS for Natural Gas Generating Infrastructure (EN-2);
- NPS for Renewable Electricity Generation (EN-3);
- NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4);
- NPS for Electricity Networks Infrastructure (EN-5); and,
- NPS for Nuclear Power Generation (EN-6).

Together, the energy NPSs provide the framework for development consent decisions on applications for new energy infrastructure. The current nuclear NPS (EN-6), taken together with EN-1, provides the primary basis for decisions taken by the Planning Inspectorate on nuclear projects that can deploy by the end of 2025.

In 2022/23, the energy NPSs EN-1 to EN-5 were reviewed and where necessary revised. This revision was accompanied by Appraisal of Sustainability (AoS) and Habitats Regulations Assessment (HRA) reports to assess whether any changes made to the NPSs had implications under the respective legislation. The AoS and HRA were submitted alongside the NPSs for statutory consultation. The revised energy NPSs have recently undergone a second public consultation. Comments received during this consultation will be considered by government and the NPSs will be subject to approval by Parliament before final designation.

The current EN-6 lists eight sites considered potentially suitable for new Gigawatt-scale nuclear power stations. However, given the deployment deadline of 2025, the current nuclear NPS no longer has full effect as no new nuclear power generation could be brought forward in the remaining timeframe, although it remains effective for amendments to Development Consent Orders (DCOs) granted under EN-6 and is a material consideration in any planning decisions for new nuclear power stations that will deploy after 2025.

The government previously consulted on the siting criteria and process for a new standalone nuclear NPS in 2017/18. Since then, the government’s position on nuclear has evolved and is set out in the 10 Point Plan<sup>5</sup>, Energy White Paper<sup>6</sup> in 2020, Business Energy Security

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<sup>5</sup> <https://www.gov.uk/government/publications/the-ten-point-plan-for-a-green-industrial-revolution/title>

<sup>6</sup> <https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future/energy-white-paper-powering-our-net-zero-future-accessible-html-version>

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Strategy<sup>7</sup> in 2022 and Powering Up Britain – Energy Security Plan in 2023<sup>8</sup>. A new nuclear power generation NPS will be set in the context of these policy developments and the needs case for nuclear energy as outlined in EN-1.

At this point of development of the new nuclear power generation NPS, DESNZ does not propose to list specific sites and instead proposes to adopt a criteria-based approach similar to that used for all other energy technology NPS (EN-2 to EN-5), although the approach to siting could change pursuant to future policy decisions and public consultation. It is also proposed that the new NPS will remove the deployment deadline which was set out in previous NPS and will set policy for Small Modular Reactors (SMR) and Advanced Modular Reactors (AMR) alongside nuclear power stations over 1GW of single reactor capacity. It is not proposed to include AMRs that only generate heat or synthetic fuels such as hydrogen in this iteration of the NPS due to the need for legislation to change the Planning Act 2008. Those AMRs which produce heat and electricity (combined) will be considered within the NPS. Similarly, the government is proposing to include all nuclear fission projects in England within the national infrastructure planning regime, whereas currently only nuclear power stations with an output of 50MW are considered to be ‘Nationally Significant Infrastructure Projects’ (NSIPs). In Wales, the Welsh Ministers have powers to grant consent to energy projects with a generating capacity of between 10MW and 350MW.

In relation to the open-sited nature of the NPS, there is a concern that this could put a large burden on Planning Authorities. It is also to be noted that nuclear fusion will not be specifically included in this NPS as there are plans for this to be addressed in a future NPS.

## 1.2. Purpose and background to this report

This report is the HRA methodology report and outlines the approach that will be taken when producing the HRA for the new nuclear power generation NPS and assessing the content under the Conservation of Habitats and Species Regulations 2017 (as amended)<sup>9</sup>, the ‘Habitats Regulations’.

The duty to undertake the HRA relates to the nuclear NPS being a strategic ‘plan’. The NPS provides a strategic framework within which subsequent ‘project’ level assessment will be undertaken as required, as and when individual projects are proposed.

The NPS will not include any sites, locations or other spatial proposals and, therefore, the HRA is an assessment of the policy content only. It is high-level and strategic in nature, and it does not constitute or take the place of a project HRA for any nuclear infrastructure development that may fall under the NPS.

The function of the HRA report will be to highlight any potential risks to Habitats Sites through the text / policy approaches of the nuclear NPS document itself and considers the applicability of in-combination effects.

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<sup>7</sup> <https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy>

<sup>8</sup> <https://www.gov.uk/government/publications/powering-up-britain/powering-up-britain-energy-security-plan>

<sup>9</sup> 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.



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This approach takes into account recent European and UK case law that applies to Habitats Sites and current guidance with respect to HRA. According to UK EU withdrawal agreements, EU case law that has shaped and influenced the HRA process up to 31<sup>st</sup> December 2021, remains relevant in the UK and to the assessment<sup>10 11</sup>. 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 31<sup>st</sup> December 2021 is in-keeping with a good practice approach of always using the most current available guidance.

The following pieces of case law are considered to be relevant and their implications for plan-level HRA are discussed below.

## People over Wind

This HRA will be prepared in accordance with relevant case law findings, including most notably the ‘People over Wind’ ruling from the Court of Justice for the European Union (CJEU).

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.”

In light of the above, the HRA Screening stage will not rely upon avoidance or mitigation measures to draw conclusions as to whether the NPS could result in ‘likely significant effects’ on Habitats Sites, with any such measures being considered at the Appropriate Assessment stage as relevant.

## Holohan

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

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<sup>10</sup> EU legislation and UK law - <https://www.legislation.gov.uk/eu-legislation-and-uk-law>

<sup>11</sup> Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, June 2023 edition UK: DTA Publications Limited. [Refer to A.2.1 Legal Consequences of leaving the EU]

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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.”

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 Habitats 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 Habitats Sites, but which may be important in supporting the ecological processes of the qualifying features, will also be taken into account.

## Dutch Nitrogen

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.”*

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”.*

Where/ if relevant to the HRA, projected trajectories of change related to effects on Habitats Sites will be monitored and reassessment required if not being met. This HRA will also 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. However, using the precautionary principle irrespective of whether a threshold is not met the assessment will consider if risk the is likely to be significant to ensure that there is no adverse effect on integrity of the Habitats Sites.

## Report structure

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 new NPS for nuclear power generation and the purpose of this report;

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- Chapter 2 sets out the Habitat Regulations Assessment approach, relevant law and policy and a process overview;
  - Chapter 3 outlines the methodology for Stage 1 Screening, including the scoping of Habitats Sites for screening;
  - Chapter 4 outlines the methodology for Stage 2 Appropriate Assessment, which includes the discussing of mitigation measures;
  - Chapter 5 discusses the derogations; alternative solutions, Imperative Reasons of Overriding Public Interest (IROPI) case test and securing compensation; and,
  - Chapter 6 discusses preparation of the NPS HRA Report.

## 2. Habitats Regulations Assessment Approach

### 2.1. Relevant Law and Policy

Under the Habitats Regulations, an assessment is required where a plan or project may give rise to significant effects upon a Habitats 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).

These sites now form part of the national site network and going forward, will include any SACs and SPAs newly designated by the UK.

The legislation relevant to the UK's national network of Habitats 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 policy<sup>12</sup> 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 Habitats Sites. Furthermore, sites identified, or required, as compensatory measures for adverse effects on Habitats Sites are also included.

Areas of land or sea outside of the boundary of a Habitats Site may be important ecologically in supporting the populations for which the Habitats Site has been designated or classified, such that they are 'functionally linked' and should be taken into account in a HRA<sup>13</sup>.

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”.*

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<sup>12</sup> Ministry of Housing, Communities and Local Government (2021) National Planning Policy Framework (NPPF). Paragraph 181.

<sup>13</sup> Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, June 2023 edition UK: DTA Publications Limited.

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

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)”.*

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”.*

However, with reference to the Natura 2000 network (above), although the process is broadly the same, UK SACs and SPAs are no longer part of the Natura 2000 network, and 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.

Should the later stages 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

The HRA process can be described in basic terms as comprising three stages<sup>14</sup>:

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<sup>14</sup> <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#how-to-carry-out-an-hra>

- **Stage One: Screening** – the process that identifies the potential for likely effects upon a Habitats 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 Habitats Site of the project or plan, either alone or in combination with other projects or plans, in respect of the Habitats Site’s conservation objectives. Additionally, where adverse impacts are identified, an assessment of the potential mitigation of those impacts is undertaken and included when determining the scope for adverse effects on integrity of the Habitats Site;
- **Stage Three: Derogations** – consideration of whether proposals that would have an adverse effect on the integrity of a Habitats Site (after mitigation) qualify for an exemption.

The derogations at Stage Three have previously been described separately as Stage Three and Stage Four<sup>15 16 17</sup>. However, described, both require the meeting of three legal tests.

1. There are no feasible alternative solutions that would be less damaging or avoid damage to the Habitats Site.
2. The proposal needs to be carried out for Imperative Reasons of Overriding Public Interest (IROPI).
3. The necessary compensatory measures can be secured.

The first test requires the assessment of alternative solutions, a process which examines alternative ways of achieving the objectives of the project or plan that might avoid or reduce adverse impacts on the integrity of the Habitats Site. It needs to be categorically demonstrated that there are no feasible alternatives to the project or plan to meet this test. If there is an alternative which is less harmful or avoids adverse effects, it should be employed, in which case the Appropriate Assessment is likely to require revision.

Where no alternative solutions exist and where adverse impacts remain, the proposal can only be taken forward if the second derogation test, establishing that there is an IROPI case for the plan or project, is met.

The third test is the identification of compensatory measures, ascertaining their effectiveness and ensuring that they are certain and secured.

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<sup>15</sup> 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.

<sup>16</sup> Guidance on the use of Habitats Regulations Assessment - <https://www.gov.uk/guidance/appropriate-assessment>

<sup>17</sup> Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, June 2023 edition UK: DTA Publications Limited.

## 3. HRA Screening

### 3.1. Scoping Habitats Sites for Screening

Prior to screening, it is necessary to identify all Habitats 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.

The new nuclear power generation NPS is being assessed in the absence of spatial proposals or any nominated sites at this present time. Therefore, specific Habitats Sites have not been scoped in and as the NPS has national coverage, it must be assumed that any of the Habitats Sites within the UK could be affected.

In the UK there are presently 656 SACs, 286 SPAs and approximately 142 Ramsar sites designated across terrestrial and marine environments<sup>18</sup>. This includes sites in Scotland and Northern Ireland, which although are unaffected by the NPS, conceivably effects from new nuclear projects in England and Wales could potentially affect Habitats Sites in these countries, i.e. transboundary effects. Table 3-1 below sets out the number of designations in each country and those designations that straddle a boundary or are partially located offshore.

**Table 3-1: Summary of Habitats Sites in the UK**

	SAC	SCI	cSAC	SPA	Ramsar	Totals
England	242			82	68	392
England/ Scotland	3			1	1	5
England/ Wales	7			2	3	12
England/ Offshore	3			2		5
England/ Wales/ Offshore	1			1		2
Northern Ireland	57			16	20	93
Northern Ireland/ Offshore	1					1
Scotland	238	1		160		399
Scotland/ Offshore	2			3		5
Wales	85			17	50	152
Wales/ Offshore	2			1		3
UK Offshore Waters	15		1	1		17
Totals	656	1	1	286	142	1,086

Source: JNCC - SAC figures correct as of 20<sup>th</sup> April 2023; SPA figures correct as of 30<sup>th</sup> September 2022.

<sup>18</sup> <https://jncc.gov.uk/>

Using the 'source-pathway-receptor' approach and considering the potential far-reaching effects from energy infrastructure developments, such as nuclear power stations, it is conceivable that mobile species from Habitats Sites in other countries may be affected. This is considered to potentially be the case for marine mammals, migratory fish and birds, 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 Habitats Site of which they are a qualifying feature. For the purpose of this assessment, it is presumed that impacts on Habitats Sites outside the national site network do not need to be considered. In assessing impacts on the suite of Habitats Sites protecting UK habitats and species it is assumed, particularly within UK territorial waters, that potential impacts on mobile species will be adequately addressed.

With respect to the UK marine environment, the Marine Coastal Access Act (MCAA) 2009 places specific duties on the Marine Management Organisation (MMO) in relation to marine conservation zones (MCZs) and marine licence decision making. The MMO may need to be consulted as part of the HRA process for components of nuclear development that affect the marine environment, such as dredging and cooling water inflow/ outflow pipes.

### 3.2. Approach to Stage 1 - Screening

In accordance with Regulation 63 of the Habitat Regulations:

*(1) 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.*

Therefore, the initial stage of screening is a simple assessment to ascertain whether a project, plan or proposal:

- risks having a significant effect on a Habitats Site, either alone or in combination with other projects or plans.
- is directly connected with or necessary for the conservation management of a Habitats site; and,

It can be stated with confidence that the new nuclear power generation NPS is not directly connected with or necessary for the conservation management of any Habitats Site. This will be confirmed within the HRA reporting and is not discussed further in this Methodology Report.

Section 3.1 above sets out how for the purpose of assessing the NPS, Habitats Sites have been scoped in for assessment. In addition to this the following components are also required:

- Describe the plan, including information about geographical coverage and timeframes, where relevant;



- Identify the potential effects on the Habitats Site alone and assess whether likely to be significant;
- Identify other plans or projects which, in combination, may have potential for significant effects on the Habitats Site.

At this stage, measures intended to avoid or reduce effects upon Habitats Sites are not taken account of during screening. These can only be considered at Stage 2 – Appropriate Assessment. This is consistent with case law<sup>19</sup>.

### Describe the Plan

This step will involve describing the content of the nuclear NPS, highlighting where and how it may have capacity to give rise to impacts that could affect Habitats Sites.

### Identify potential effects on the Habitats Sites alone

Having determined that the project or plan is not directly connected, or necessary for the management of a Habitats Site, it is necessary to undertake screening to determine whether the proposals are likely to have a Likely Significant Effect (LSE) on any Habitats Sites.

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 Habitats 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 case law<sup>20</sup>, 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'<sup>21</sup>.

The Waddenzee judgement<sup>15</sup> 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."*

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

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

21 Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, June 2023 edition  
UK: DTA Publications Limited

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It is usual in assessing potential effects 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 will 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.

It is acknowledged that there may be specific effects linked to the deployment of nuclear technologies that may not be identified until the project stage, due to the high-level nature of the assessment of the NPS. 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 individually proposed 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.

The nuclear NPS does not contain specific policies or objectives that could strictly be assessed in their own right. Moreover, it provides an overall framework and criteria for the identification and delivery of new nuclear sites. The absence of policies or objectives that directly promote development and the lack of nominated sites associated with the current draft nuclear NPS, means there is no clear mechanism by which the NPS could have any impact on Habitats Sites.

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 NPS does not contain any spatial component or nominated sites to enable a detailed assessment. New nuclear development and associated infrastructure, as facilitated by the NPS, could occur anywhere within England and Wales, thereby potentially affecting any of the Habitats Sites across the UK and more widely across Europe.

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.

The following general potential effects will be considered:

- Habitat loss, deterioration 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).

The specific actions and processes that may lead to the broad effects outlined above will be defined in the HRA of the nuclear NPS and the list refined as necessary as the assessment evolves.

The potential for LSEs will be assessed by virtue of Conservation Objectives. These are published by the relevant Statutory Nature Conservation Body (SNCB) for each Habitats Site and by meeting the objectives, the site will contribute to favourable conservation status (FCS) for that species or habitat type at a UK level. Therefore, undermining the Conservation Objectives will result in an 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.

The Conservation Objectives should be read in conjunction with the Supplementary Advice on Conservation Objectives, where this is available for a Habitats Site. The Supplementary Advice is published by the relevant SNCB and provides extra detail on how the attribute targets can be met. However, given the high-level nature of the assessment for the plan, Supplementary Advice is only really relevant to project-level assessments. There may also be case-specific advice given by the SNCB that must be considered, but again, this will only be relevant to project-level assessment.

The assessment will also consider the effect of certain impacts on the Conservation Objectives. For example, habitat loss would result in a failure to meet the Conservation Objective to “maintain extent and distribution of qualifying habitats”.

MMO may also need to be consulted with respect to potential impacts and marine licensing implications for MCZs.

The purpose of this exercise is to identify whether the nuclear NPS could have an LSE 'alone' on one or more Habitats Sites. In determining the potential for impact pathways by the various means set out above, an assessment can be made to this effect.

### Identify other plans or projects which may act in-combination to have likely significant effects on Habitats Sites

During screening, the potential for LSE on Habitats 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 Habitats 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 Habitats Site.

The type of effect and the way in which they may combine to produce an effect on a Habitats Site will be considered and whether or not that combined effect is likely to be significant.

Effects may combine to increase the adverse effect on any qualifying feature in an additive or synergistic way. This could be through increasing the sensitivity or vulnerability of the qualifying feature, result in larger extent or increased intensity of an impact, or affect additional areas of a qualifying feature or its habitat. Effects on separate qualifying features are unlikely to combine to produce a more adverse effect.

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. As there is nothing to combine with that might then result in a potential effect on a Habitats Site.

However, due to the strategic and high-level nature of the NPS, it may not be possible to screen out Habitats 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.

### Findings of Stage 1

The findings with respect to Stage 1 will be summarised and it will be confirmed whether or not the assessment of the nuclear NPS should proceed to Stage 2, Appropriate Assessment.

## 4. Appropriate Assessment

### 4.1 Approach to Stage 2 – Appropriate Assessment

For Habitats Sites where LSE is predicted (alone or in-combination), or it cannot be concluded that there is no LSE on the basis of objective information, an appropriate assessment will be undertaken. 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<sup>22</sup>, paragraph 45 and 49).

The appropriate assessment can only consider the potential effect pathways identified during Stage 1 Screening against the Conservation Objectives for Habitats 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 Habitats (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 and often have the same or very similar qualifying features, the conservation objective for these sites will be applied by proxy.

### 4.2. Habitat Site Integrity

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”*<sup>23</sup>.

Guidance 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 objectives in that respect.

The appropriate assessment of the nuclear NPS 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 Habitats Sites in or out of appropriate assessment during screening. This is necessary where there is an absence of a spatial component to the plan. It should be noted that for a non-locational plan, it is not possible to subsequently undertake a detailed assessment of potential for adverse effects on receptors.

The strategic-level appropriate assessment will, therefore, be based on the potential effects identified (refer to Section 3.2.14 above). It will highlight the risks to achieving high-level

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<sup>22</sup> Waddenzee judgment (7th September 2004) Case C127/02

<sup>23</sup> Natural England (2019) MPA Conservation Advice Glossary of Terms. Available here: [https://designatedsites.naturalengland.org.uk/pdfs/MPA\\_CAGlossary\\_March2019.pdf](https://designatedsites.naturalengland.org.uk/pdfs/MPA_CAGlossary_March2019.pdf)

conservation objectives for Habitats Sites as a result of the potential facilitation of nuclear development that may result from the NPS.

This method is in line with two pieces of case law<sup>24</sup>, 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.

In the Opinion of Advocate General Kokott<sup>25</sup> 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”*.

### 4.3. In-combination Assessment

Where an in-combination assessment has been taken forward to Stage 2, through identification of LSE alone or in-combination, the potential for adverse effects on Habitats 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.

Given the nature of the nuclear NPS, there is inevitably going to be a delay between the adoption of the NPS and any subsequent nuclear technologies 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.

No formal in-combination assessment will be undertaken, but the types of project and plan, including other national-level plans that might be relevant to later project-level HRA will be identified. As nuclear technology 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 nuclear development is likely to require a project-level HRA, within which in-combination effects will be assessed on a case-by-case basis and within a relevant and defined timeframe. The information gathered as part of the in-combination assessment for the HRA of the new nuclear power generation NPS will provide a guide for starting a project-level in-combination assessment.

PINS Advice Note Seventeen ‘Cumulative effects assessment relevant to nationally significant infrastructure projects’<sup>26</sup>, sets out the approach taken to cumulative effects assessment with

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<sup>24</sup> Feeney v Oxford City Council & Ors [2011] EWHC 2699 Admin and The Cairngorm Campaign & Ors v The Cairngorms National Park Authority & Ors [2013] ScotCS CSIH\_65A”

<sup>25</sup> European Commission v UK (2005) ECR I-9017 Case C-6/04

<sup>26</sup> PINS Advice Note Seventeen: Cumulative effects assessment relevant to nationally significant infrastructure projects. Available here: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-17/>

respect to development consent orders for NSIPs. This takes a staged approach, which could be adopted for project-level in-combination assessments:

- Stage 1 – Establish the long-list – determine the zone of influence of environmental effects to provide a justifiable search area;
- Stage 2 – Establish the short-list – apply threshold criteria, e.g. temporal scope;
- Stage 3 – Information gathering – undertaken for short-listed plans and projects, to include obtaining HRAs;
- Stage 4 – Assessment – interrogation of gathered information to determine whether there is potential for in-combination effects on a given Habitats Site.

It will be key to ensure that an in-combination assessment is appropriately focussed and proportionate, whilst reasonably identifying all risks of in-combination effects with other plans and projects.

### 4.4. Mitigation Measures

Mitigation and avoidance measures that could be applied at the project HRA level considered likely to be effective in minimising or eliminating potential adverse effects on Habitats Sites will be evaluated. Mitigation can only be considered in generic terms at this strategic level without project-level detail to determine specifically what is needed.

Mitigation can be incorporated into a plan through changes to the text, for example, to include commitments to arising development being subject to HRA (or similar assessment), where necessary, in accordance with the Habitats Regulations (or any subsequent replacement legislation). The scope for mitigation such as this, which is embedded within the NPS, will be explored.

Therefore, the mitigation chapter of the HRA for the nuclear NPS will outline avoidance and mitigation measures considered appropriate for potential adverse effects on Habitats Sites and Priority Species. 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 mitigating text that could be included in the text of the NPSs, where this proves to be feasible.

## 5. Derogations

Should it be shown that even after mitigation there are residual adverse effects on site integrity, then a project will need to go through the derogations. These are a series of three tests that need to be met in order to allow the plan or project to proceed. Plans rarely pass Stage 2 due to the potential for amending the plan and writing in safeguards to ensure that the integrity of Habitats Sites is maintained. Although the derogations are more relevant to projects, the following sections set out the requirements for the three tests and how these might be applicable to the NPS. The three tests are:

- There are no feasible alternative solutions that would be less damaging or avoid damage to the Habitats Site;
- The proposal needs to be carried out for imperative reasons of Overriding Public Interest;
- The necessary compensation measures can be secured.

### 5.1. Approach to Assessment of Alternative Solutions

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...”*.

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 or avoid damage to the Habitats Site(s) in question. To allow a derogation it must be demonstrated that there is no alternative solution that would be less damaging before the assessment can move on to the next stage.

The requirement is for ‘alternative solutions’, not merely ‘alternatives’ to be considered. According to The Habitat Regulations Assessment Handbook<sup>27</sup>, 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 Habitats 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 Habitats Site?

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<sup>27</sup> Tyldesley, D. and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, March 2021 edition UK: DTA Publications Limited.



The objectives of the nuclear NPS 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 transport<sup>21</sup>.

At this strategic stage it is not possible to define a specific 'problem' as risks to the integrity of the Habitats Sites will be identified at a high level and are largely precautionary. Alternatives will be considered during the project stage of any arising nuclear technology development.

As a plan, the alternatives to the nuclear NPS that will be discussed in the HRA Report are based on presenting variations of the NPS, as identified by DESNZ and outlined in the AoS. The degree to which each variation will impact upon the integrity of Habitats Sites is discussed, including the 'do nothing' option, which would result in no NPS. The assessment of these 'alternatives' will help to determine if they are 'feasible alternatives'. Alternatives need to be legally, financially and technically feasible. Ultimately, the consideration of alternatives will be undertaken *"to the extent possible on the basis of the precision of the plan"*<sup>28</sup>.

### Making an IROPI Case

Provided it can be demonstrated that there are no feasible alternative solutions (i.e. the first test has been met) and where adverse impacts remain upon a Habitats Site, the assessment will move on to the second test, which seeks to establish whether there are 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.

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, the opinion of the relevant Secretary of State or Welsh Ministers is required.

### Securing Compensation

If the first two tests have been met and there are no feasible alternative solutions and there are IROPI, then compensatory measures need to be identified and secured. The measures need to fully offset the damage which will or could be caused. This may include creation or re-creation of comparable habitats, which, if not already within the Habitats Site, will eventually be designated as a Habitats Site. It will be necessary to work with the relevant statutory nature conservation body to identify, design and secure suitable compensation measures. The

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<sup>28</sup> Refer para 49 of the Advocate General's Opinion in Case C-6/04 EC v UK (2005)

compensatory measures themselves must not have a negative effect on the national site network of Habitats Sites as a whole.

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 affected 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 measures sustainable in the long-term? Will long-term management need to be secured?

The appropriate authority, i.e. the relevant Secretary of State or the Welsh Minister, must secure the necessary compensatory measures to ensure that the coherence of the national site network of Habitats Sites is protected. The mechanisms for guaranteeing compensation will be through the consenting process for individual projects.

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.

# Preparation of the NPS HRA Reports

## Approach to Report Preparation

This Methodology Report was written on the basis of a proposed non-locational nuclear siting policy (EN-7), which DESNZ is consulting on, and does not include any geographical information or nominated sites.

Should the government's policy for the new nuclear NPS change following the public consultation, this will be addressed in the HRA Report, in both methodology and the section describing the format of the NPS as the 'plan' being assessed.

This Methodology Report will precede the HRA Report and be taken through statutory consultation and a final version produced once all consultation responses have been addressed.

## HRA Report Structure

The HRA report structure will be broadly as follows:

- Non-technical summary;
- Chapter 1 – Introduction - sets out the purpose and background to the new nuclear power generation NPS;
- Chapter 2 - The NPS for Nuclear Power Generation - details the content of the new NPS;
- Chapter 3 – Habitats Regulations Assessment Process and Applications – discusses the underpinning legislation and methodology;
- Chapter 4 – Pre-Screening of the new NPS – indicates which components of the NPS can be removed from the screening (to be decided on review of draft);
- Chapter 5 – HRA Screening Results;
- Chapter 6 – Strategic level Appropriate Assessment of the NPS;
- Chapter 7 – In-combination Assessment;
- Chapter 8 – Mitigation Measures;
- Chapter 9 – Discusses the derogations, including alternative solutions, making a case for Imperative Reasons of Overriding Public Interest (IROPI) and securing compensation; and,
- Chapter 10– Conclusion.

This publication is available from: [www.gov.uk/government/consultations/approach-to-siting-new-nuclear-power-stations-beyond-2025](https://www.gov.uk/government/consultations/approach-to-siting-new-nuclear-power-stations-beyond-2025)

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