



REVIEW OF CONSENTS

UNDER THE
CONSERVATION OF HABITATS AND SPECIES
REGULATIONS 2010

GUIDANCE FOR LOCAL AUTHORITIES

FINAL VERSION 1.5
SEPTEMBER 2012
(Amended 22 Sept 2012)

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Ref. 1806 Review of Consents Guidance for Local Authorities – version 1.5 Highlighted Sept 2012



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CRYNODEB ANWEITHREDOL (refer below for English)

Mae Llywodraeth Cymru wedi ymrwymo'n llwyr i sicrhau gwarchod safleoedd Ewropeaidd a Ramsar yn unol â rhwymedigaethau rhyngwladol. Mae Rheoliadau Cadwraeth Cynefinoedd a Rhywogaethau 2010 yn mynnu fod awdurdodau cymwys yn adolygu'r penderfyniadau a'r cydsyniadau presennol yn unol â darpariaethau Rheoliad 63. Bwriedir i'r Canllaw hwn gael ei ddefnyddio gan Awdurdodau Lleol sy'n cynnal adolygiad o'r fath; er mwyn darparu dull eglur a chyson i'r gwaith dan sylw.

Comisiynwyd y canllaw hwn gan Gyngor Cefn Gwlad Cymru; mae'n gosod y cefndir a'r cyd-destun ar gyfer adolygu cydsyniadau Awdurdod Lleol, ac mae'n mynd ymlaen i gyflwyno dull pedwar cam o gynnal yr adolygiad, a grynhoir isod;

Cam 1: yn adnabod cydsyniadau sy'n 'berthnasol' i adolygiad o'r fath.

Cam 2: yn penderfynu a yw cydsyniadau perthnasol yn debygol o gael effaith sylweddol ar eu pennau eu hunain neu mewn cyfuniad.

Cam 3: yn golygu gwneud asesiad priodol o'r cydsyniadau a adnabuwyd fel rhai a gaiff effaith sylweddol.

Cam 4: yn cyfeirio at benderfynu'r cydsyniadau yn unol â darpariaethau'r adolygiad.

Caiff pob cam o'r adolygiad ei ystyried yn ei dro, gyda chanllaw dull o weithredu manwl ar sut i ymgymryd â phob cam mewn ffordd realistig ac amserol sy'n gyson â gofyniadau'r rheoliadau.

Darperir cyfres o atodiadau i'r brif ddogfen ganllaw sy'n cynnig arweiniad pellach ar feysydd penodol o'r adolygiad lle y byddai dull mwy manwl o gymorth i'r darllenydd, ynghyd ag enghreifftiau perthnasol.

NON-EXECUTIVE SUMMARY

The Welsh Government is fully committed to securing the protection of European and Ramsar sites in accordance with international obligations. The Conservation of Habitats and Species Regulations 2010 require competent authorities to review existing decisions and consents in accordance with the provisions of Regulation 63. This Guidance is intended for use by Local Authorities undertaking such a review; to provide a clear and consistent approach to the work involved.

This guidance was commissioned by the Countryside Council for Wales; it provides both the background and context for the review of Local Authority consents, and goes on to introduce a four stage approach to the review, which is summarised below;

Stage 1: identifies consents that are 'relevant' to such a review,

Stage 2: determines whether relevant consents are likely to have a significant effect alone or in-combination;

Stage 3: involves an appropriate assessment of consents identified as likely to have a significant effect.

Stage 4: refers to the determination of the consents in accordance with the review provisions.

Each stage of the review is considered in turn, with detailed procedural guidance being provided on how to undertake each stage in a realistic and timely manner which is consistent with the requirements of the regulations.

A series of appendices are provided to the main guidance document which offer further guidance on specific areas of the review for which a more detailed approach may be helpful to the reader, together with relevant examples.

A NOTE ON AMENDMENTS TO THE REGULATIONS

The Conservation of Habitats and Species Regulations 2010 (SI No. 490) consolidated the earlier Conservation (Natural Habitats, &c.) Regulations 1994 (SI No. 2716) which had been subject to a series of amendments. Since the consolidated Regulations came into force on the 1st April 2010 there have been subsequent amendments in 2011¹ and 2012². The 2011 amendment was primarily concerned with the classification of sites as Special Protection Areas and further provisions in relation to the protection of marine sites. These amendments are not of consequence to the undertaking of a review of consents in accordance with the provisions of Regulation 63 to which this guidance document relates. The 2012 amendments do have some implications for the Review and the guidance has been amended accordingly. The Regulations may be subject to further amendments after the publication of this guidance document; it is the responsibility of the reader to ensure that the implications of any such future amendments to the interpretation and application of this guidance are appreciated.

Note: CCW cannot take responsibility for the content of non-CCW websites or the stability &/or longevity of embedded web-based hyperlinks. Unless otherwise stated, hyperlinked content and documents are copyright protected.

¹ Wildlife Marine Management: The Conservation of Habitats and Species (Amendment) Regulations 2011. SI No. 625. <http://www.legislation.gov.uk/uksi/2011/625/introduction/made>

² Wildlife Countryside Marine Management: The Conservation of Habitats and Species (Amendment) Regulations 2012 SI No. 1927 <http://www.legislation.gov.uk/uksi/2012/1927/contents/made>

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Note : This document is available for pdf download from the Environmental Assessment section of the Countryside Council for Wales website at:

<http://www.ccg.gov.uk/landscape--wildlife/managing-land-and-sea/environmental-assessment/review-of-consents.aspx>

1. BACKGROUND TO THE REVIEW

1.1 Purpose of this Guidance

The purpose of this guidance is to provide a practical approach to help Local Authorities through the review process required by Regulation 63 of the *Conservation of Habitats and Species Regulations 2010* (SI No. 490)³ (as amended). The main aims are to ensure consistency amongst different authorities and an approach which is legally compliant, proportional and realistic. The guidance is intended to supplement the information available in the Welsh Government's Technical Advice Note (TAN) 5 '*Nature Conservation and Planning*'⁴ and the Countryside Council for Wales (CCW) "*Assessing projects under the Habitats Directive: Guidance for competent authorities*"⁵.

1.2 Statutory Context of the Review

The review of consents is a requirement on competent authorities arising from the provisions of Article 6(1) and 6(2) of the EC Habitats Directive 1992. The requirements are transposed in more detail in the *Conservation of Habitats and Species Regulations 2010* (hereafter referred to simply as 'the Habitats Regulations'). These regulations require a review of consents in light of their potential effects on Special Protection Areas (SPAs) classified under the provisions of the Birds Directive 2009 and Special Areas of Conservation designated under the provisions of the Habitats Directive. Together these form the 'Natura 2000 network' of protected sites and are referred to as 'European sites'. As a matter of National and Welsh Government policy the review should also consider potential effects on sites listed under the provisions of the Ramsar Convention⁶. TAN 5 lists compliance with international and national obligations as a key principle of positive planning for nature conservation in Wales, with chapter 5 providing further background to these legal procedures (see section 5.3.5 and Annex 4 for specific information on the review).

For the purposes of the review, and the application of the guidance contained in this document, 'consent' should be defined in accordance with the provisions of Regulation 61 as any "*consent, permission or other authorisation*"⁷.

1.3 Purpose of the Review?

European sites are designated to help to protect threatened habitats and species that require special conservation measures across the European Community. The protected habitats and species, for which the sites are designated, are referred to as the 'interest features' of the sites. Whilst pristine sites exist, in many cases the sites designated are simply the best of what is remaining of these rare and vulnerable interest features. The review process acknowledges the potential for deterioration of features as a result of development or activities that could have an on-going impact on the interest features. Such development or activities may have been given consent before the sites were designated and afforded legal protection; so their completion or continuation could have significant implications for the long term viability of the sites in question. The review process aims to

³ The Conservation of Habitats and Species Regulations 2010 :

<http://www.legislation.gov.uk/ukxi/2010/490/contents/made>

⁴ Welsh Government Planning Policy Wales, Technical Advice Note 5 (TAN 5): Nature Conservation and Planning (Sept 2009) : <http://wales.gov.uk/topics/planning/policy/tans/tan5/?lang=en>

⁵ CCW Guidance: "Assessing Projects Under the Habitats Directive – Guidance for Competent Authorities" Sept 2008: pdf available to Welsh LAs on request from Evidence and Advice Directorate CCW

⁶ See paragraphs 22-27 "Ramsar sites in Wales: government policy statement" http://www.ramsar.org/cda/en/ramsar-news-archives-2008-ramsar-sites-in-wales/main/ramsar/1-26-45-85%5E21170_4000_0 and paragraphs 8 – 10 of TAN 5 Annex 4

⁷ See also Section A.10 'what may constitute a project' in CCW Guidance: "Assessing Projects Under the Habitats Directive – Guidance for Competent Authorities" Sept 2008.

ensure that the completion of developments or continuation of on-going activities do not present a threat to the integrity of these internationally important sites.

1.4 The Local Authority role in the wider review process

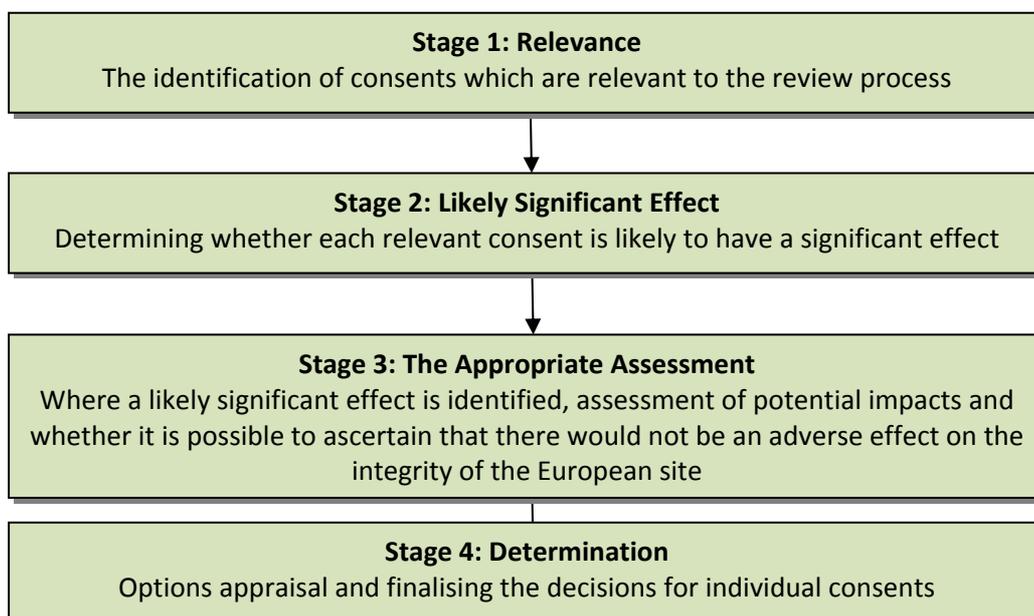
The review process should be seen as a European-wide initiative to ensure the protection of the interest features in European sites across all EC Member States. All 'competent authorities', as defined in regulation 7 of the Habitats Regulations, are obliged to consider the potential impacts associated with the completion of development, or continuation of ongoing activities, in order to safeguard the Natura 2000 network for future generations. In the UK context two of the statutory nature conservation bodies (CCW and Natural England) were amongst the first to complete a Review of existing decisions and consents. More recently, the Environment Agency completed a review of its consents, in March 2010. Due to the nature of activities regulated and consented by the Environment Agency, their review involved detailed assessments of all European sites and has generated a wealth of relevant information which can be used to inform other reviews. The Local Authority review process can therefore utilise this information. Decisions taken in the Local Authority review should be made with due regard to similar decisions taken by the Environment Agency Wales and other competent authorities.

1.5 An introduction to the four stage process

The Environment Agency (EA) developed a four stage approach and there are good reasons why it is sensible to adopt this approach for any Local Authority review. Firstly, to assist in communication; many existing government bodies such as the Welsh Government and CCW were involved in the EA review so they are familiar with the EA approach and terminology. It may be confusing to those staff if a LA review adopted a different approach to essentially the same process. Secondly, many consent holders implicated in a Local Authority review may have had other consents which were relevant to the EA review, so they will also be familiar with the approach and terminology used. Finally, it is important, from a consistency perspective, that competent authorities take a similar approach to the review process to ensure that the outputs are fair and defensible.

The four stage process is introduced in Figure 1 below and is further developed in subsequent parts of the guidance.

Figure 1: An overview to the four stage review process



1.6 Roles and Responsibilities

Every Local Authority is a 'competent authority' as defined by Regulation 7; so they are ultimately responsible for the review of their own consents. Whilst they will consult CCW during the review, the assessment process and final decisions rest with the Local Authority. Within the Local Authority a lead review of consents officer (RoC Officer) or equivalent should be appointed as the main point of contact for the review process. Close liaison with neighbouring authorities is recommended to ensure integrated outputs and consistency of approach.

The Countryside Council for Wales are a statutory consultee under the review process. They will have an advisory role and their expertise and knowledge of the sites in question will be a vital aspect of the review. The specific nature of their involvement at each stage in the review is further clarified in subsequent sections of this guidance.

1.7 The Review of Consents pilot studies

To encourage the 25 Local Authorities in Wales to plan and commence their "Review of Consents" (RoC) the Countryside Council for Wales administered a Welsh Government funded scheme. This commenced in early 2007 and initially consisted of 6 pilot reviews over 24 months with associated yearly facilitated RoC feedback "workshops". Later entries to the funded scheme had partial funding and 18 months to complete their reviews. A total of 15 Local Authorities in Wales have received funding for their RoC and have wholly or partially completed their reviews. Although new entries for RoC grant funding have now ceased it is encouraging that a further three Local Authorities have recently obtained other resources to undertake RoC and are commencing work. CCW encourage the final 7 Local Authorities to commence their review and for others to complete the review of their remaining sites, by reference to this Guidance and with CCW's continued help and advice.

This guidance has been informed by the outputs of the pilots and feedback from the officers involved.

1.8 Before you start

Before starting on a review for a European site there are certain key documents that will be required. These are listed below (with links to relevant websites where documents can be downloaded included in the footnotes):

- a) The citation and boundary map(s) for the European site⁸
- b) The CCW Core Management Plan, unitised maps, Regulation 35 advice (for Marine sites)^{9, 10}
- c) Welsh Government *Planning Policy Wales*¹¹ and Technical Advice Note 5 (TAN5): *Nature Conservation and Planning*¹².

⁸ For SACs go to: http://jncc.defra.gov.uk/ProtectedSites/SACselection/SAC_list.asp?Country=W

For SPAs go to: <http://jncc.defra.gov.uk/page-1403> NB: Note the information in relation to the status of SPA 'qualifying' features following the 2001 SPA review. See <http://jncc.defra.gov.uk/page-5485> for further information: please confirm SPA site species lists with regional CCW officers

⁹ To access CCW core management plan documentation, unitised maps & Reg 35 advice, contact regional CCW officers or go to: <http://www.ccw.gov.uk/landscape--wildlife/protecting-our-landscape/special-sites-project.aspx>

¹⁰ To access the interactive "protected sites map", search for official maps, citations documents & for GIS downloads go to: <http://www.ccw.gov.uk/interactive-maps.aspx>

¹¹ Planning Policy Wales (Edition 4, February 2011)

<http://wales.gov.uk/topics/planning/policy/ppw/?jsessionid=8rfMNIDKG6hptryHK4c2GQWd31tW0r9GhbkwygsmJJtx0VMvPB1Q!1426295193?lang=en>

¹² Refer to : <http://wales.gov.uk/topics/planning/policy/tans/tan5/?lang=en>

2. STAGE 1: THE IDENTIFICATION OF RELEVANT CONSENTS

2.1 Setting the Context

This is a very coarse initial screening exercise to filter out existing consents that by virtue of their nature or location could not conceivably have an effect that is reasonably foreseeable on the interest features of a European site.

In considering relevance it is important to remember that more than one European site may be involved, in more than one Local Authority area. Also that a single protected area may be a SPA and / or a SAC and / or a Ramsar site and that the boundaries of the designations may differ and their respective interest features will not usually be the same.

There are three broad criteria, which apply to the consents included in the review:

- Any consent **within the boundary** of the European site is relevant and should be included in the Review.
- Any consent which is **known to be affecting** the European site, either directly on a designated feature or indirectly by affecting the environmental quality of the site, in a way that could affect its interest features, is relevant and should be included in the Review.
- Any consent located outside the European site, which has the **potential to affect** the features of the European site, whether or not the features are in the site when they might be affected, should be considered relevant and included in the Review.

The Conservation of Habitats and Species (Amendment) Regulations 2011 apply the provisions of Part 6 on the Assessment of Plans and Projects, to any decision to vary or modify a consent. Consequently, where any consent that is found to be relevant to the Review of Consent procedures has been varied or modified, the review must apply to the original consent as varied or modified by the later decision(s). Equally, in looking for relevant consents, Local Authorities should search databases for modifications and variations that may be relevant, as well as original consents.

In accordance with the requirements of Regulation 63, consents which are relevant to the review process are those which remain outstanding and were given prior to the date on which any particular site became a European site (or European offshore marine site). This provision appears to set a relatively straightforward timeframe within which to identify 'relevant' consents. However, in a few cases consent may have been given after the date of designation but before the coming into force of the 1994 Habitats Regulations. These consents ought to be checked. Indeed, under the 1994 Regulations they had to be subject to review because, of course, they were issued without having to comply with the Regulations.

In Wales all SACs have been designated since 1994, so for SACs the review timeframe is straightforward and applies only to consents given before the date of designation. Many SPAs and Ramsar sites have similarly been classified or listed since October 1994 and again the review will apply only to consents given before the date of classification or listing. However, for those SPAs and Ramsar sites classified or listed before October 1994, the review should check any consents issued before the date of classification or listing and also check any consents given between that date and the 30th October 1994.

For details of the date of designation, classification or listing for all European and Ramsar sites in Wales, including any English sites in proximity to the border, please refer to Appendix 1.

Regulation 69 and TAN 5 give specific clarification on the duty to review planning permissions; they have been used to inform the development of **Table 1** and **Table 2** below. After Natura 2000 sites have been designated, it is also the duty of all competent authorities to comply with Regulation 61 of the Habitats Regulations when assessing and recording their decisions for all relevant new plans and projects.

2.2 LA consents which are not relevant – these are excluded as a matter of law

Certain consent types authorised by Local Authorities are not relevant to the review process, as a matter of law. Such consent types are listed below in **Table 1** together with the reason why they are not relevant.

Table 1: Consents excluded from the review process as a matter of law

Consent	Justification
Any consent directly connected with or necessary to the management of the site for nature conservation purposes (not including broader management activities).	See Regulation 61(1)b
Any consent where development has been completed	See Regulation 63(4) and 69(1)a
Any consent granted subject to a condition as to the time within which the development or activity to which it related was to be begun and the time has expired without the consent having been started	See Regulation 69(1)b
Any consent granted for a limited period and that period has expired	See Regulation 69(1)c
Any planning permission granted or deemed to have been granted by a development order, including a Local Development Order	See Regulation 69(2)a
Any planning permission granted or deemed to have been granted by virtue of the adoption of a simplified planning zone scheme, or of alterations to such a scheme.	See Regulation 69(2)b
Any planning permission granted by virtue of the taking effect of an Order designating an Enterprise Zone	See Regulation 69(2)c
Any Certificate of Lawful Development (or former Established use Certificate)	These are not 'consents' in the context of the Review

It should be noted that there are specific provisions for the assessment of the potential effects of exercising permitted development rights before they are carried out, or continued (see regulations 73 to 78 and Tan 5 Annex 5). Local Development Orders, Simplified Planning Zones and Enterprise Zones are not to be taken as having the effect of granting planning permission which would be likely to have a significant effect on a European site (see regulations 78, 79 and 80). In addition, Certificates of Lawful Development (and former

Established Use Certificates) are not relevant to the review as they are not ‘consents’ in this context.

2.3 Consents which have the potential to be relevant

Whilst there are many consent types issued by a Local Authority, a pragmatic approach needs to be taken as to whether it is reasonable to consider them as *generically* relevant to the review process. During the pilots which informed the development of this guidance, several Local Authorities identified an extensive list of potentially relevant consent types. The initial outputs of the pilots however, together with a realistic assessment of the actual risks associated with certain consent types, enables a more refined identification of consent types that should be regarded as relevant to the review.

In identifying potentially ‘relevant’ consent types, pertinent case law has been taken into account, especially in the way that court judgments provide interpretation of the specific terminology in the Regulations. In a judgment in the Court of Session in Scotland in October 1998¹³, when considering the precautionary nature of the Regulations, Lord Nimmo-Smith stated that:

“the most that can be expected of a planning authority, as a competent authority under the regulations, or of SNH, as the appropriate nature conservation body, is to identify the potential risks, so far as they may be reasonably foreseeable in light of such information as can reasonably be obtained, and to put in place a legally enforceable framework with a view to preventing these risks from materialising”.

The ruling of the European Court of Justice (ECJ) in Case C-127/02 (the Waddenzee judgment)¹⁴ provided further clarification in relation to the assessment of likely significant effects. Paragraphs 45-49 indicate that an effect is ‘likely’ if it cannot be excluded on the basis of objective information and it is ‘significant’ if it undermines the conservation objectives.

In applying these principles to the identification of relevant consent types, it follows that where generic effects from a given consent type are not ‘reasonably foreseeable’ or can be ‘excluded on the basis of objective information’ or would not ‘undermine the conservation objectives’ then such consents would not be relevant to the review process, because they would never be likely to have a significant effect.

The consents listed in **Table 2** have all been identified as having the potential to be relevant to the review process. This does not mean that all consents of this type will always be relevant, but that they have the potential to be and so will need further consideration.

Table 2: Consents with the potential to be relevant to the review process

Consent type	Justification
Extant planning permissions not yet started or started but not yet completed, including all mineral planning permissions	A range of potential effects arising from the commencement of development yet to be started, or continuation of development yet to be completed may affect the interest features

¹³ *WWF-UK Ltd and RSPB v Secretary of State for Scotland et al* [1999]1 C.M.L.R. 1021 [1999] Env LR 632, Court of Session, Edinburgh, 28th October 1998. <http://www.scotcourts.gov.uk/opinions/Nim0607.html>

¹⁴ ECJ judgment, Waddenzee case C-127/02, 7th September 2004. Refer to: “Nature and Biodiversity Cases: Ruling of the European Court of Justice”, Page 95: C-127/02. http://ec.europa.eu/environment/nature/legislation/caselaw/index_en.htm

Consent type	Justification
Extant deemed planning permissions (see further explanation below)	A range of potential effects arising from the commencement of development yet to be started, or continuation of development yet to be completed may affect the interest features
IPPC permits (Part A2 and Part B)	Potential air pollution and/or water quality impacts on interest features.
Tree Preservation Order consents	Potential disturbance to bats which are interest features of a bat SAC
Conservation area consents	Potential disturbance of bats which are interest features of a bat SAC, or hazards associated with felling or demolition and / or removal of boundaries.
Listed building consents	Potential disturbance of bats which are interest features of a bat SAC, or hazards associated with demolition
Coastal consents not yet started or started but yet to be completed, (where the LA is a coast protection authority under the Coast Protection Act 1949)	A range of potential impacts on coastal European sites of operations or activities consented but not yet started or completed
Consents given by the LA as a Highway Authority	Potential effects of operations consented but not yet started or completed
Harbour Authority consents (where LA concerned is a relevant harbour authority)	Potential impacts to coastal European sites of operations or activities consented but not yet started or completed
Hazardous Substance Consents	Potential risks of effects of toxicity
Consents relating to contaminated land under Part IIA EPA (1990)	Potential contamination risks to sites as a result of operations or activities consented but not yet started or completed

For any developments or other consents that have been started, the review can only assess the effects of the completion of the remaining part of the development or consent operations. It should not address the effects of the completed part of the development or operations.

Deemed planning permissions were not granted by the planning authority, however, regulation 69 requires local planning authorities to consider whether any planning permission deemed to be granted under S.90(1) of the Town and Country Planning Act 1990 should, in their opinion, be reviewed. Permissions deemed to be granted under the provisions of the Pipelines Act 1962, the Electricity Act 1989 and the Transport and Works Act 1992, or in respect of development authorised under those Acts, must be reviewed in conjunction with the review of the underlying authorisation, consent or order. Any other permissions deemed to be granted under S.90(1) of the Town and Country Planning Act 1990 should be referred to the Welsh Government, or the Government Department, that made the direction deeming planning permission to be granted.

2.4 Identification of relevant consents

The starting point for the identification of relevant consents will be the electronic records held by each Local Authority. In most cases electronic records are held over a sufficient timescale prior to site designation that the risk from earlier 'paper' consents presenting a threat to the integrity of European sites would not be reasonably foreseeable. However, it is important to ensure that there are no non-electronic 'paper/microfiche etc' consents that may be relevant to the review process. Consultation with staff working on potentially relevant consents will generally be sufficient to ensure that there are no extant paper consents which would present a reasonably foreseeable threat to any European site. If extant paper consents exist, it is likely that Local Authority staff would be aware of them.

The process of identifying relevant consents should be consistent across Local Authorities. However, the process also needs to be relevant to the site(s) in question and take account of the environmental sensitivities associated with the designated features. The first step therefore, before screening all the potentially relevant consent types listed in **Table 2**, is to consider the specific characteristics and sensitivities of the site in question.

2.4.1 Site characterisation

Whilst all the consent types in **Table 2** above are *potentially* relevant to European sites they may not *all* be relevant to *every* European site. Whilst both the nature and location of the site will be influencing factors, the sensitivity of the features for which a site has been designated will usually be the key consideration in identifying consent types that are relevant to the site in question.

For example, an SPA designated for bird species that are dependent upon attributes of a supporting habitat which are not vulnerable to air pollution effects, will not be at risk from LA IPPC/EPR consents. Under such circumstances IPPC/EPR consents could be determined as not relevant from the start and excluded from the review process. Equally a SAC vulnerable to air pollution effects but not recreational activity (perhaps due to limited public access) can focus the review efforts on IPPC/EPR consents and discount planning permissions that do not lead to air quality changes, unless they are in very close proximity to the site.

It will also be seen from **Table 2** that some types of consent, such as Tree Preservation Order consents, are likely to be relevant only to SACs designated for bat species. Other types of consents that would not affect bats need not be reviewed for 'bat sites' and, equally, these types of consents are not likely to be relevant to non-bat sites, although an ecologist should verify that these consents would not be relevant to any of the interest features of other sites.

This step establishes which consent types from **Table 2** have the potential to affect the features of the site under consideration. This is a coarse screening judgement aimed at removing consent types that clearly would not be relevant to the site in question. Where there is uncertainty the consent type should be assumed to be relevant. CCW should be consulted at this initial stage. The Core Management Plan documents will contain much of the information that will be necessary to determine the potential sensitivities of such features to the effects associated with the consents being reviewed.

Following site characterisation, a list of potentially relevant consents (from those listed in **Table 2**) for the site in question should be drawn up and agreed with CCW. The generic screening criteria outlined in **2.4.2** below (with refinements where appropriate) should then be applied to these consent types.

2.4.2 Generic Precautionary Screening Criteria

In order to assist staff and facilitate consistency, generic screening criteria are outlined below. **These are precautionary and should be viewed as a starting point only.** They are suggested in order to minimise the number of consents identified as relevant, but it is important that these criteria should be further refined as far as possible. Only those criteria relating to the consent types identified in 2.4.1 above, as relevant to the site in question, should be regarded as appropriate.

Where a site hosts a mobile feature (see 2.4.5 (c) below) or is considered to be sensitive to impacts associated with increased recreational activities (see 2.4.5 (d) below), specific additional criteria should be developed which take account of such potential impacts.

The suggested initial, generic, precautionary screening criteria are:

- a) Any consent for an activity within the boundary of the European site;
- b) All consents relating to land within 1000m from the boundary of the European site;
- c) Where the features, or their habitats, are sensitive to water quality impacts, all consents granted for land, or any area of water in hydrological connectivity (tributaries, ground water etc.) with the site, to a provisional distance of 2km upstream (or downstream into tidal waters) of the nearest boundary; including those within 25m (provisional) of the boundary of such watercourses;
- d) Any consent for an activity, which is known to affect the European site;
- e) In accordance with existing guidance for Local Authority IPPC/EPR consents¹⁵;
 - i. for releases to air, if the installation is within:
 - 2 km of a European site for an A2 installation (unless otherwise stated in para e (ii) below)
 - 2 km of a European site for an installation which includes Part B combustion incineration (excluding crematoria), iron and steel and non-ferrous metal activities
 - 1 km of a European site for Part B mineral activities and cement and lime activities and
 - ½ km of a European site for all other Part B activities
 - ii. for discharges to water (A2 installations), if the installation is in 'hydrological continuity' (ie: upstream to a river site or either upstream or downstream into tidal waters) within:
 - 3km of a European site: all discharges
 - 10km of a European site: all discharges > 5m³ per day
 - 50km of a European site: all discharges >1000m³ per day
 - 50km of a European site: all discharges containing substances listed in Appendix A of the Environment Agency "Horizontal Guidance Note H1 – Annex (d)"¹⁶.

¹⁵ General Guidance Manual on Policy and Procedures for A2 and B installations: Annex XVII - Applying the Habitats Regulations and the Wildlife and Countryside Act to applications for EP permits. Manual Part B, Annexes. <http://www.defra.gov.uk/environment/quality/industrial/las-regulations/guidance/>

¹⁶ Environment Agency Horizontal Guidance Note H1 – Annex (d). <http://publications.environment-agency.gov.uk/PDF/GEHO0810BSXL-E-E.pdf>

- f) All Mineral consents within 2km of a site;
- g) Consents granted prior to the designation date for the site (see **Appendix 1**, taking account of any subsequent boundary extensions or additional features);
- h) For those SPAs and Ramsar sites classified or listed before October 1994, consents issued before the date of classification or listing and also any consents given between that date and the 30th October 1994;
- i) The project is still extant, that is, still in existence¹⁷, it is within the time in which it is allowed to commence and it has not yet been commenced, or it has been commenced but has not yet been completed, or it is an ongoing activity.

NB: All active mineral consents and active IPPC Environmental Permits should be regarded as 'extant'.

2.4.3 Mineral Planning Permissions

Mineral planning permissions require particularly careful consideration. Some may have been granted many years ago, well before the European site was designated or even recognised as of importance for nature conservation. In some cases, the potential effects on habitats and species, which are now interest features of European sites, may not have been appreciated or fully recognised at the time of the consent. Equally, the interest features of the site may have become established since the consent was granted.¹⁸

Mineral sites may be subject to a number of permissions, granted over long periods of time, and it may not be straightforward to identify which would be the most appropriate consent(s) to review. Work already carried out by the planning authority, under the Environment Act 1995, in respect of the 'rolling' review of old mineral planning permissions, often referred to as the 'ROMPs' process, will be an invaluable starting point to the consideration of mineral planning permissions under the Habitats Regulations.

It is essential that officers undertaking the review of consents for the Habitats Regulations contact the mineral planning officers at the earliest opportunity to discuss how they would advise the review of consents should proceed in respect of a mineral working which could potentially affect a European site. Indeed, such effects may already have been taken into account, as far as material to the ROMPs process, in the ROMPs review of conditions on the mineral permissions.

Revised conditions, or the use of such measures as prohibition or suspension orders under the Town and Country Planning Act 1990, as part of the ROMPs process, should be used as far as possible and in appropriate ways to help to protect European site interest features. However, the Habitats Regulations do not extend the ROMPs powers. Powers under the ROMPs procedures should be used appropriately to minimise the use of additional powers that may be required for modification or revocation, which may trigger financial compensation.¹⁹ However, if the powers under the ROMPs procedures are insufficient to avoid the risk of an adverse effect on the integrity of a European site, the planning authority should nevertheless use its powers under sections 97 and 102 of the Planning Act, to enable it to ascertain that the permission would not adversely affect the integrity of the site,

¹⁷ Pearsall J ed. *The New Oxford Dictionary of English*, acknowledged to be the foremost authority on English

¹⁸ Mineral extraction activity itself may directly create conditions suitable for European habitats and species.

¹⁹ Claims for compensation may be high, especially where voids have consent for landfill. The need for other consents, e.g. Reg 53 (2) derogation licences or consents issued by the Environment Agency may materially affect the outcome of compensation claims. The requirement for such consents may also help to protect European site features.

under the Habitats Regulations review of consents (see further sections **4.6, 4.8, 4.10** and **5.5** later in this guidance).

Mineral planning permissions often relate to large areas of land and the 2km distance mentioned above should be taken from the closest boundary of the entire area of land to which the mineral permission relates. The 2km is a general guide and there will be instances where longer distances may need to be considered.

2.4.4 Further Refinement of the initial generic criteria

The decision as to whether further refinement of the screening criteria is appropriate should be taken by the RoC officer and will be influenced by a number of factors. The above criteria are precautionary in nature and the ease with which they can be applied will be determined largely by the format of available electronic information.

Criteria **2.4.2 (a) – (f)** are based on location or distances which are generally applied using GIS. The screening against criteria **(g) (h) and (i)** however are dependent upon the nature of the electronic records held by each individual authority. During the pilots unless the site was in a particularly rural location, the application of criteria (a) – (f) usually resulted in several thousand consents being identified as being potentially relevant. Whilst there was generally a simple way to filter such consents electronically to identify those consented prior to the designation date (criteria g), the identification of ‘extant’ permissions (criterion (i)) was more difficult. The scale of these potential consents should in future be reduced to some extent, by the application of the advice in **2.4.1** above on site characterisation.

The format of electronic records held by each authority is different and the potential to identify extant consents electronically is likewise varied. Where the information held by an authority is not readily accessible to such filtering, the application of criterion (i) to the large numbers of consents identified through (a) – (h) can become unmanageable. In such cases it is advised that criteria a)–f) are further refined such that a manual approach to the identification of ‘extant’ consents is realistically achievable.

The refinement of the above criteria should be determined on the basis of certain key considerations. These are outlined in section **2.4.5** below and summarised in the flowchart at **Figure 2**.

2.4.5 Key considerations to inform refinement of generic screening criteria

The refinement of the screening criteria should be based initially upon a common sense approach; developed by the RoC Officer in consultation with the relevant staff responsible for the consent types identified as being potentially relevant, having regard to the advice from CCW.

The review process is concerned primarily with the identification of existing consents that have the potential to adversely affect the integrity of the European site in question. Such a question is related to the nature of the consent type and the features for which the site was designated (or classified in the case of SPAs).

Appendix 2 contains further general guidance on the hazards that may be associated with the relevant consent types identified in Table 2. It should be referred to when refining the generic criteria.

Four key considerations to further refine the screening criteria are outlined below. These are not exhaustive and additional refinements may be developed by the RoC Officer in consultation with CCW when a clear rationale exists. The justification and consultation responses from CCW in relation to all criteria must be recorded for auditing purposes.

a) *Consent type*

Whilst an extant planning permission for the development of a large industrial site 1km away could potentially have significant effect on a site, a householder permission to extend an existing property is not likely to have any effect at such a distance.

Ecology staff or CCW will advise on the potential sensitivities of the features for each site, this information needs to be considered in light of the potential ways that the electronic records can be screened. During the pilots, Cardiff Council were able to filter their planning permissions on the basis of 15 different planning permission 'types'; such an ability allows for each consent type to be assigned different distance criteria on the basis of the potential impacts that could realistically be associated with such consents.

The majority of existing planning permissions held on file relate to small 'householder' permissions which by their nature are unlikely to have effects at and over 1km distance. In some cases it might be that such consents are only considered relevant as close as 10m from the site.

A useful example of such refinements is the approach taken during the pilot by Ceredigion County Council. They were able to electronically identify extant consents for industrial and residential planning permissions, but not for householder consents. As a result they applied the precautionary 1km zone of influence to industrial and residential consents and electronically identified those which were extant. On the basis of the nature of householder consents and the lower risks associated with such permissions, they applied a 10m zone of influence to such consents, which identified a manageable number of permissions. These could subsequently be assessed manually to identify those which were extant.

The results of the relevance screening undertaken by Ceredigion County Council are summarised in **Table 3** below; the number of consents identified as relevant (but unknown if extant) were reduced to a manageable level by the application of criteria specific to the consent type, together with an assessment of the potential risks associated with such consents in respect of the relevant site.

Table 3: Stage 1 results of refinement of screening criteria for Ceredigion County Council in relation to the River Teifi and Cardigan Bay.

Consent Type	Afon Teifi / River Teifi catchment area	Bae Ceredigion / Cardigan Bay
Industrial 1km zone extant	5	0
Residential 1km zone extant	81	20
Householder / other within 50m of Otter site²⁰ unknown if extant	28	N/A
Householder / other 10m zone unknown if extant	81	19

b) *Nature and location of site*

In some cases the location of a site may be of a sufficiently rural nature that either the local environmental conditions (eg: topography), or the planning policy in relation to the surrounding land are such that the potential for extant consents of a given type to be relevant to the site is obviously not reasonably foreseeable.

²⁰ CCW were able to provide GIS data under licence to Ceredigion Council to allow them to determine distances around the SAC itself and also known and potential otter sites within the catchment. Similar information may be available from CCW for other such sites.

For example, a site in an area where the terrain precludes development of any significance could potentially be shown, without the need for an extensive review process, to have no existing extant planning permissions relating to large scale industrial or residential development. Such decisions would need to be made in consultation with CCW, but unnecessary work in relation to such sites should be avoided. With regard to smaller householder type permissions, the number of existing dwellings in sufficient proximity to the site may also be used to exclude extant consents, were any to exist.

c) Mobility of feature

Certain sites are designated for features which are 'mobile' such as birds, bats, otters, newts etc. Where a feature for which a site is designated or classified is known to be dependent on areas of land outside the designated site boundary (for feeding, roosting, breeding or foraging etc), potential effects on the feature whilst off-site are still relevant. This is because it is the integrity of the population for which the site is classified that is protected. Any effects upon that population could potentially affect the integrity of the site. Where such species are present the refinement of any criteria needs to be made in close consultation with ecologists and CCW. It is possible that existing knowledge on key areas beyond the boundary may enable the appropriate refinement of criteria to ensure that consents relevant to such species, while they are 'off-site', will be identified.

See Appendix 3 for an example of refined screening criteria specific to a mobile feature (the lesser horseshoe bat).

d) The potential risks from increased recreational activities

For certain sites, impacts associated with increased recreational activities can present a significant risk when associated with planning permissions. For example SPA sites designated for ground nesting birds can be significantly affected by disturbance associated with recreational activities such as dog walking; coastal and other breeding, roosting and feeding areas for example, for terns, geese or waders can also be disturbed by new or increased recreational pressure which may be generated by new housing development. In England, recreational pressures from additional housing on the Thames basin Heaths SPA, led to the establishment of a Delivery Framework²¹ endorsed by a Joint Strategic Partnership Board, comprising representatives from all the relevant Local Authorities and other stakeholders.

The risks associated with increased recreational activities will be site specific. Assumptions about the effects of recreational pressure on interest features, or the distance from which such pressure may be generated by new housing development, should not be based on information merely transferred from other sites where the problem has been recognised. Unless a consent would introduce housing close to an area previously unaffected by recreational pressure, or a consent may have the effect of opening a vulnerable site to public access for the first time, the issue is most likely to be relevant to sites that meet both of the following criteria:

- a) Potentially at risk from such effects (ie: features are known to be sensitive) and
- b) Currently considered to be negatively affected by such activities, such that any increase could represent a threat to the integrity of the site.

Many sites may meet criterion (a) above but current levels of recreational activities may be such that there is capacity for further residential development without threatening site integrity. Other sites may already be suffering the effects associated with recreational

²¹ Thames Basin Heaths SPA Delivery Framework. Thames Basin Heaths Joint Strategic Partnership Board. Feb 2009. <http://www.rushmoor.gov.uk/index.cfm?articleid=10355>

activities (such as population decline or lower breeding success etc); further residential development that will result in an even higher usage of the site for recreational based activities would be considered as likely to have a significant effect.

The distance at which such sites can be affected by residential consents is a factor of both the attractiveness of the site in question and the alternative recreational locations within the vicinity of the development. The underlying principles of the approach adopted for Thames Basin Heaths may be helpful, but site specific factors mean that caution needs to be applied, and Local Authorities should not simply adopt the same approach for a site elsewhere. CCW should be consulted in relation to such sites.

2.4.6 Setting the zone of influence for refined criteria

Where the decision is taken to refine the generic screening criteria, once it has been agreed how such refinements will be taken forward (on the basis of information in **2.4.4** and **2.4.5** above), the next step is to define an appropriate zone of influence in relation to the new criterion. The approach for each site will be influenced by the format of the electronic records held by each Local Authority and the sensitivity of the features within the site itself. Nevertheless, it is important that there are some consistent underlying principles.

NB: the suggested zones of influence in **Table 4** below are relevant for all sites **EXCEPT:**

- a) those with mobile features (see section 2.4.5(c) above) and**
- b) those which are considered to be sensitive to impacts associated with increased recreational activities (see section 2.4.5(d) above).**

For such sites, the general approach should still be followed, but the zones of influence for each risk category will need to be selected on a case-by-case basis. In most cases CCW will be able to provide advice in relation to **a)** the off-site areas which are of most importance to the mobile feature concerned, and **b)** the potential risks factors in relation to impacts associated with increased recreational activities.

The review process has the potential to result in significant implications for consent holders and it is important that the approach taken across Local Authorities is both fair and reasonable to those affected by the review. A consistent approach to setting zones of influence for refined criteria will reduce the likelihood of discrepancies between approaches taken by each Local Authority, and will provide a rationale against which any differences can be justified.

Excluding sites referred to in the box above, for all other sites where refined screening criteria have been drafted, a zone of influence should be selected from **Table 4** below. The suggested distances are based on a combined risk assessment which takes account of both the scale of potential impacts associated with the consent type in question, and the relative sensitivity of the features within the site itself.

Table 4: A risk based approach to defining zones of influence in relation to refined criteria

Potential Feature impact Sensitivity	Low	Medium	High
Low	10m zone of influence (risk category 1)	100m zone of influence (risk category 2)	250m zone of influence (risk category 3)
Medium	100m zone of influence (risk category 2)	250m zone of influence (risk category 3)	500m zone of influence (risk category 4)
High	250m zone of influence (risk category 3)	500m zone of influence (risk category 4)	1km zone of influence (risk category 5)

The table above generates up to five risk categories as outlined below. Some examples of consent type / feature combinations which might be expected to be associated with each category are also provided to illustrate how the categories might be assigned and the rationale behind such decisions.

The examples given use assignments of potential impact and sensitivity for the purposes of illustrating the approach, for example, a small housing development = medium risk. However, in practice each assignment must be site and circumstances specific and the examples cannot simply be transferred to any European site anywhere as if they will always be applicable.

Risk category 1: 10m zone of influence

This category would be appropriate to consent types which are very low risk in terms of potential impacts, and the relevant European site hosts features considered to be of low sensitivity to the potential associated effects.

An example of a consent/site combination that might fall into category 1 would be householder permissions in relation to a coastal SAC site designated for estuarine habitats. It is not reasonably foreseeable that minor house extensions greater than 10m from the boundary of a coastal SAC site would be relevant.

Risk category 2: 100m zone of influence

This category relates to a combined feature sensitivity: potential impact risk of one low and one medium. In this case either the feature sensitivity or the potential impact is considered to represent a medium risk whilst the other is considered a low risk.

An example of such a scenario might be a planning permission for the construction of small scale residential development (medium risk) in relation to a grassland SAC (with no public access) which will be of low vulnerability to impacts associated with construction. Under such circumstances a 10m zone of influence may not be sufficiently protective and a 100m zone may be more appropriate.

Risk category 3: 250m zone of influence

This category relates to both potential impacts and features sensitivity being medium risk, and also to combined risks of one high and one low.

An example of a category 3 risk combination would include the planning permission referred to in the category 2 example above (small scale residential development), but where the SAC is designated for woodland habitats which are *moderately* vulnerable to impacts associated with construction dust. Under such circumstances a 250m zone would be more appropriate than one of 100m.

A further example of the high: low risk combination which would also result in a 250m buffer would be the construction of a large scale commercial development (high risk) in relation to a SAC designated for woodland habitats which are of low sensitivity to impacts associated with construction operational dust.

Risk category 4: 500m zone of influence

This category relates to a combined feature sensitivity: potential impact risk of one high and one medium. In this case either the feature sensitivity or the potential impact is considered to represent a medium risk whilst the other is considered a high risk

An example of such a risk category would be a planning permission for a small scale residential development (medium risk) in relation to a SPA for ground-nesting birds which are sensitive to disturbance effects associated with construction noise (high risk). A 500m zone would be appropriate for such a consent: feature combination

Risk category 5: 1km zone of influence

This category is appropriate for consent types that represent a high risk to European sites and features which are considered to be of high sensitivity to associated impacts.

A category 5 example would relate to a consent type such as a coast protection act consent (high risk) in relation to an estuarine SAC with coastal habitat features (high risk). A 500m zone would not be sufficiently protective and a 1km zone would be considered more appropriate.

2.4.7 The manual identification of extant consents

Where extant consents cannot be easily identified electronically, the application of refined screening criteria (as outlined above) should result in a list of potentially relevant consents that can be screened on a manual basis to identify those that are 'extant'. During the pilot, several authorities undertook such a 'manual' screening on the basis of existing information. The approaches that can be taken are summarised below and then considered in further detail:

- a) Each Local Authority must report to the Welsh Government for the purposes of the Joint Housing Land Availability Studies, as outlined in TAN 1²². Copies of the current reports for each planning authority are available online²³ and are accompanied by site schedules for each authority. The site schedules contain information on the state of completion of all existing residential permissions for 10 or more dwellings (or a lower limit if appropriate to the LA concerned), and as such will be helpful in determining whether such permissions are extant. As part of this reporting exercise, some form of building completion record should be held by the planning policy team who should be consulted for this purpose.

²² Planning Policy Wales Technical Advice Note 1: Joint Housing Land Availability Studies. June 2006
<http://wales.gov.uk/topics/planning/policy/tans/tan1/?lang=en>

²³ Refer to: <http://wales.gov.uk/topics/businessandconomy/property/jhla/?lang=en>

- b) Aerial photographs and recent Ordnance Survey electronic maps such as Ordnance Survey Mastermap[®] can be compared with plans for the development.
- c) Google[®] street view was found to be very helpful during the pilot in assessing the completion of proposed development.
- d) Completion certificates submitted under Building Regulations requirements may be used to confirm if the development is complete.
- e) Where other methods are not available, site visits (either drive-by or on-site) may be necessary for remaining consents.

2.4.7.1 Joint Housing Land Availability Studies (LAS)

TAN1 states at section 7.7.1 that LPAs “*must maintain accurate housing completion records which identify the number of market and affordable housing units built each year*”. Sites included in the LAS must satisfy at least one of the following conditions; either a) the grant of outline or full planning permission for residential purposes, or b) the land should be identified for residential purposes in an adopted development plan. Normally only sites with a capacity for 10 or more dwellings will be included in the studies, but a LPA may agree a lower limit if it is believed to be more appropriate for its area. Of particular relevance here, a breakdown of the number of units completed according to their type must be provided giving information on the level of completion.

When manually identifying extant permissions, the LAS report will identify all extant residential planning permissions with capacity for 10 units or more. Depending on the level of refinement to the generic screening criteria already applied (ref section 2.4.4), it may be sufficient simply to use these relatively larger site capacities. In other cases, it may be necessary to consider sites with capacity for less than 10 dwellings, and some LAS do record such sites, at the discretion of the planning authority.

2.4.7.2 Aerial Photography and recent OS maps

Aerial photography records held by the Local Authority or available from web based aerial photographs may be used to identify whether existing permissions are completed or not. Depending on the nature of the permission, where copies of the plans (either paper or electronic) are available, these may be compared with such images and also with reference to recent electronic maps with domestic/industrial address point layers, such as Ordnance Survey (OS) Mastermap[®]). The dates that aerial photographs were taken and the data used for the maps will be relevant.

2.4.7.3 Google[®] Street view

During the pilot study several Local Authorities reported that Google[®] “street view”²⁴ provided an excellent tool to assess the completion of potentially extant permissions. Where it might be possible to confirm the completion of a potentially extant permission from a street based view then this tool should be explored.

2.4.7.4 Completion certificates

The presence of a completion certificate held on file in respect of the consented development is sufficient to confirm that the development is complete and that the consent is no longer extant. Building Regulations Officers may be able to provide advice on accessing such records, where they exist.

²⁴ Google[®] Maps with Street View “Street View: Explore the world at street level”
<http://maps.google.com/help/maps/streetview/>

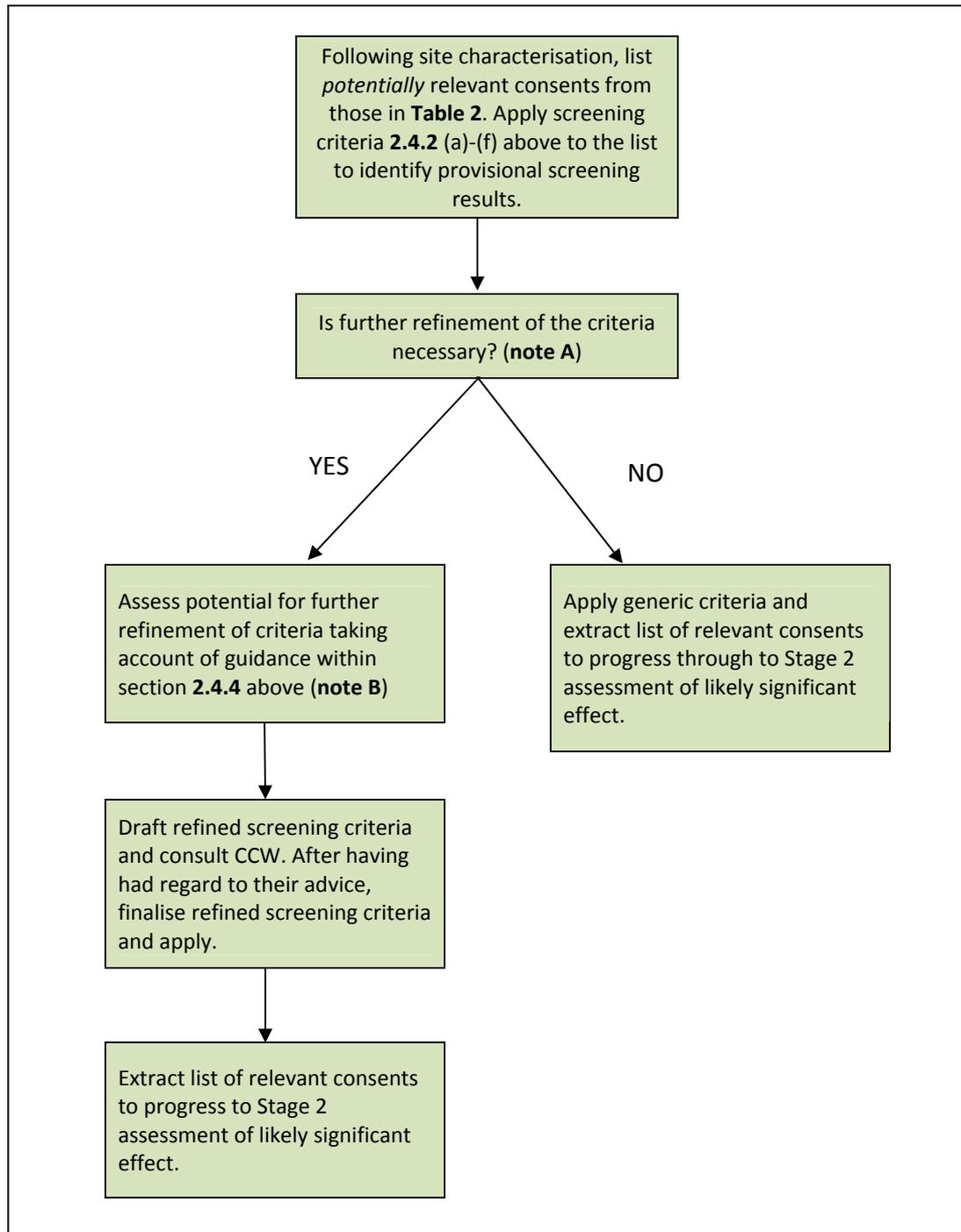
2.4.7.5 Site visits

Where all other desk based methods of identifying extant consents have been explored, a site visit (either drive-by or on-site) may prove to be the most expedient way to determine any remaining extant consents, and help determine which parts of the consent remain to be completed.

2.5 Recording the decision

All consents identified as relevant will need to be considered further in Stage 2 (assessment of likely significant effect) described in chapter 3. All relevant consents should be recorded as part of the audit trail.

Figure 2: Flowchart for the identification of relevant consents



Notes:

A: further refinement of the criteria will be *necessary* if the list generated is considered to be unmanageable either due to a) the difficulties in identifying 'extant' consents or b) the large number of extant consents requiring a Stage 2 assessment.

B: The potential for refinement of the screening criteria will be site specific and should be informed by the nature of the consents themselves and the sensitivity of the features within the European site to the hazards posed by the consent types.

3. STAGE 2: DETERMINATION OF LIKELY SIGNIFICANT EFFECT

3.1 Underlying Principles

The significance test is a second screening exercise intended to identify those existing consents that require further assessment under the Habitats Regulations. Only those that are considered likely to have a significant effect will require a subsequent appropriate assessment (to establish whether it is possible to ascertain no adverse effect on the integrity of a site). The significance test is a distinct stage separate from the appropriate assessment stage described in chapter 4. The importance of the international conservation interest of the European site must be at the forefront of decision making.

Judgements of likely significant effect must be made in relation to the interest features for which the site is of European importance and their conservation objectives²⁵. Judgements must be made on a case-by-case basis and sections 3.1.1 – 3.3.7 below provide further guidance on a stepwise approach to assessing likely significant effect.

3.1.1 What do the words mean?

The term 'likelihood' is important. The test is a likelihood of effects rather than a certainty of effects. However, as explained below, if there is doubt and further information is needed, it should be concluded that there is a likelihood of significant effects.

In the Waddenzee case²⁶ the ECJ judgment stated that a project should be subject to appropriate assessment *"if it cannot be excluded, on the basis of objective information, that it will have a significant effect on the site, either individually or in combination with other plans and projects"*. This is an important ruling because it establishes that 'likely' should not be interpreted as 'probable' or 'more likely than not'. Rather **an effect should be considered likely if it 'cannot be excluded on the basis of objective information'**. The judgment goes on to clarify (at paragraph 47) that where 'a plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect'. Therefore **an effect should be considered significant if it undermines the conservation objectives**.

The competent authority should not be swayed by the notion that the scale of potential damage is necessarily proportional to the proportion of the site or population likely to be affected. It is the potential effect on the ecological functioning of the site that must inform the check for likelihood of significant effects.

In considering small scale effects, the competent authority may find it helpful to be aware of previous decisions, by authoritative decision makers, where small losses or effects on European sites were a key aspect of the decision taken. An analysis of decisions relating to the scale of effects on European and Ramsar sites has been collated on behalf of Natural England and was published as an English Nature Research Report²⁷. It demonstrates that in many cases authoritative decision makers have concluded that even the loss of considerably less than 1% of designated sites would be likely to be significant and in some cases could adversely affect site integrity.

²⁵ See also Planning Policy Wales TAN 5, Annex 3 paragraphs 6-13.

<http://wales.gov.uk/topics/planning/policy/tans/tan5/?lang=en>

²⁶ ECJ judgment, Waddenzee case C-127/02, 7th September 2004. Refer to: "Nature and Biodiversity Cases: Ruling of the European Court of Justice", Page 95: C-127/02.

http://ec.europa.eu/environment/nature/legislation/caselaw/index_en.htm

²⁷ English Nature Research Report No. 704. "How the scale of effects on internationally designated conservation sites in Britain has been considered in decision making: A review of authoritative decisions" 2006. <http://naturalengland.etraderstores.com/NaturalEnglandShop/R704>

Any judgement of likely significant effect needs to be made with regard to the precautionary principle and the local circumstances of the site.

3.1.2 The precautionary principle

The precautionary principle is embedded in the decision making procedures of the Regulations. Whilst this is clear at the appropriate assessment stage, with the requirement to ascertain that there would not be an adverse effect on site integrity (subject to there being no alternative solutions and imperative reasons of over-riding public interest), a precautionary approach should also be taken in the decision on likely significant effect. The Waddensee judgment supported the application of the precautionary principle at Stage 2. Paragraph 44 of the ruling summarises the Court's conclusions on this point.

“In the light, in particular, of the precautionary principle, which is one of the foundations of the high level of protection pursued by Community policy on the environment, in accordance with the first subparagraph of Article 174(2) EC, and by reference to which the Habitats Directive must be interpreted, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned”

This ruling effectively applies the precautionary principle throughout the entire assessment and does not limit its application to the appropriate assessment stage.

3.1.3 An introduction to in-combination

The existing consent is assessed for 'likely significant effect' either alone or in combination with other plans or projects. This requires a competent authority to take an overview of existing consents likely to affect a site, including those:

- of the same or different type;
- authorised by the LA or another competent authority;
- which may not be likely to have a significant effect on a European site when considered alone;
- for which consent has been applied for, but not yet determined;
- that are authorised but have not been fully implemented or completed, or
- which are subject to renewal and have continuing effects such as LA IPPC consents and abstraction licences issued by EAW which have not themselves been subject to review.

It is important to be aware of the inter-relationships between impacts associated with different consents. Further guidance on how to approach the in-combination assessment is provided within section 3.3.5 and **Appendix 6**²⁸.

3.1.4 Counteracting measures

An existing consent may include a range of measures to counteract possible effects (**counteracting measures**). Some will be designed to avoid or eliminate any, or specific types of, effects (**avoidance measures**). Some will be designed to minimise or reduce adverse effects (**reduction measures**). Together, avoidance and reduction measures are often referred to as **mitigation measures**.

When considering a consent under the review provisions, it is the existing consent (including any mitigation measures subject to which that consent was given) that is being reviewed. The Stage 2 decisions in respect of likely significant effect is made in light of the *existing* consent and should not be influenced by further conditions or restrictions, to which the

²⁸ See also section B.17 of CCW Guidance: "Assessing Projects Under the Habitats Directive – Guidance for Competent Authorities" Sept 2008

existing consent could potentially be made subject at a later date. The consideration of such further mitigation is part of the stage 3 appropriate assessment and more detail is provided in section 4.6 below.

Under the Regulations, other counteracting measures may be designed to *compensate* for the adverse effects (which cannot be mitigated) that a consent would, or may, have on the integrity of the site. Such **compensatory measures** are only relevant where the consent is affirmed under the provisions of regulation 62 (imperative reasons of over-riding public interest), and are not to be considered until Stage 4 in the review process (see chapter 5 below).

3.2 Consents that are directly connected with the management of the site?

Regulation 61(1)(b) excludes consents, permissions or other authorisations from the requirements of the Regulations where they are directly connected with or necessary to the management of the site. Such consents would not therefore be likely to have a significant effect. A consent which is not 'directly connected with or necessary for site management', but is incidentally beneficial to one interest feature, whilst having a potentially negative effect on another interest feature must be subject to review.

If an existing consent is thought to be necessary for the management of the site for nature conservation, confirmation should be obtained from CCW. A written file note should be recorded to provide an audit trail.

3.3 A stepwise approach to Stage 2

The following stepwise approach is intended to guide the reader through the stage 2 decision making process. The information required for the stage 2 assessment will vary from consent to consent; the subsequent appropriate assessment stage will generally involve the more in depth assessment. The judgement of likely significant effect is effectively a brief risk assessment comprising three generic steps as outlined below. These three steps together with further guidance on in-combination contained in **Appendix 6** should form the basis for any determination of likely significant effect²⁹. A standard proforma to record a Stage 2 assessment of likely significant effect is provided in **Appendix 5** which may be used to facilitate the decision making and consultation process outlined below.

Specific guidance on assessing likely significant effects for IPPC / EPR consents is contained in Appendix 4. For all other consent types, follow the approach outlined below.

3.3.1 Step 1: Identification of potential effects associated with the consent

The first step in an assessment of likely significant effects is to consider the consent itself and identify the potential effects that would be associated with its implementation. Depending on the stage of the project and circumstances of the assessment, checking the project may involve gathering more information on it than is submitted with the application. The competent authority can require the consent holder to submit such further information as is reasonably required by the competent authority to determine whether an appropriate assessment is required. **Appendix 2** considers the generic hazards associated with the consent types identified as potentially relevant to the review in more detail, and should be referred to for further guidance. The following paragraphs include suggestions of the type of information that may help determine the potential effects, and which may not be immediately obvious from the project's proposals. It is not exhaustive, but may assist in gaining an

²⁹ See also Part B.2 of CCW Guidance: "Assessing Projects Under the Habitats Directive – Guidance for Competent Authorities" Sept 2008

understanding of the type of information that will aid in the determination of the likelihood of significant effects.

Location of the project

The competent authority may need to consider potential effects on or disturbance of areas outside the European site, for example, where species for which the site is designated or classified utilise land as supporting habitat. Such adjacent land may provide a habitat buffer, a sound screen that offers protection from disturbance or it may provide linear routes, feeding, roosting, breeding or resting areas for species that are features of interest for the European site. It is therefore important for the competent authority to be fully aware of how adjacent land is or will be used and what role it might play in maintaining the integrity of the European site.

In the case of mobile species, off-site impacts should also be considered (see section **2.4.5(c)**). In 1998 and 1999 the then Secretary of State for Scotland refused planning permission for two wind farms, one on Islay and one on the Mull of Kintyre, because they would be located in the flight path used by over-wintering geese flying between the SPA where they roosted and land out-with the SPA boundary where they fed during the day. Thus, the projects would not have been located in the SPA and, at the time they could have been affected, the features of the SPA would not have been in the SPA. Nevertheless, it was found that the wind farms would be likely to have a significant effect on the SPA, and it could not be ascertained that the integrity of the site would not be adversely affected.

The life stages of the project

All stages of a project should be subject to checking and assessment as necessary, including decommissioning or restoration and aftercare / after use proposals. If the life of the project is not known, it should be assumed that it is a permanent source of potential harm.

Inputs and outputs of the project

The consent may consume resources or discharge emissions in ways that could result in harm to a European site. The nature, source, volume, timing, rate of consumption, method of transport and other characteristics of construction or operational inputs may need to be considered. Similarly, the nature, destination, volume, timing, rate of discharge, method of transport and other characteristics of emissions and waste may need to be assessed for the likelihood of significant effects on a European site. Air pollution, discharges to water and dust deposition, for example, can be particularly difficult issues to assess, especially relatively low levels of emission in combination. The appendices provide further guidance on these aspects.

Timing of operations

The project may involve activity that is continual, or that takes place at certain times of the day or year. Potential effects on a site may vary in nature, scale or likelihood of risk depending on the season or time of day that they might occur.

Risk of unplanned events

The project may not affect the site during normal operations, but the project may be at high risk of unplanned events such as fire, chemical and fuel spills, the escape of biological material (including invasive species), or delays which might extend operations from 'harmless' times of year into periods when significant effects are likely. The competent authority will need to give consideration to such risks, and their predicted frequency. A site may be able to absorb the effects of such an event once, but a number of events may be significant. The level of risks and the significance of impacts, if the unplanned event(s) occurred, need to be considered.

3.3.2 Step 2: Identification of interest features and their sensitivities to the potential effects

Self-evidently, one of the first steps is to establish which features may be affected by the consent being assessed. Work undertaken as part of the initial site characterisation within stage 1 (see section 2.4.1) will inform this judgement and CCW should also be consulted.

Consideration should be given to the probability that the effects will undermine the conservation objectives of the European site. In other words it is an assessment of the exposure of the sensitive feature to the potential effects, on the European site in question. Relevant issues include:

- The distribution of the designated features across the site in relation to the potential effects (refer to CCW unitisation maps).
- The location, timing and duration of the potential effects.
- The level of understanding of the effect. For instance, are there known problems at the site which are affecting one or more designated features? There may be cases where CCW and EA Wales have already identified a problem in relation to a designated feature (either as part of the EA review process or from general management issues) and that some collaborative work has already been undertaken in relation to the problem. In such circumstances the available information should be used to scope which groups of relevant consents are contributing to the problem.

Site specific issues and information could include any influences currently impacting on the site, such as recreational pressure, air pollution or water shortages. Such issues may give vital indications as to the types of effects that could cause harm. Such information should be sought from CCW if it is not apparent from the site's Core Management Plan.

3.3.3 Step 3: Identification of whether potential effects are considered 'likely to have a significant effect' upon the interest features.

Relevant issues to consider include reference to the prevailing environmental conditions at the site (e.g. diffuse sources, un-consented activities and natural processes) to put the effects associated with the consents into context. Factors which influence the determination of likely significant effects include:

- Extent of habitat or species population affected: For some features such as limestone pavement any loss of the interest feature is likely to be unacceptable. However, a very small-scale loss of supporting habitat for instance in a large physiographic SAC or an estuarine SPA might in certain circumstances not be significant.
- The duration of the impact: Very short lived impacts would generally not be significant provided there were no persistent, cumulative effects from repeated or simultaneous impacts of the same nature. There may however be exceptions, for example a brief disturbance to a seabird colony may have a lasting effect on the population if it occurred in the breeding season.
- The cumulative effects of permissions: Permissions should be assessed as to cumulative effects of a hazard from a group of permissions of the same type (e.g. levels of a pollutant from discharge consents) and also the cumulative effects in association with other types of consents (e.g. EPR permits Part A2). One activity may be subject to several consents; these can have a cumulative effect both with each other and with effects from other consented activities.

An effect should be considered significant when it is neither negligible nor inconsequential. The following are examples of the types of generic effects, which have the potential to undermine the conservation objectives and hence are likely to be significant, notwithstanding the need to judge each case on its own merits:

- causing change to the coherence of the site or to the *Natura 2000* series (e.g. presenting a barrier between isolated fragments, or reducing the ability of the site to act as a source of new colonisers);
- causing reduction in the area of the interest feature or supporting habitat. Note there can be no hard and fast area based significance criteria, decisions must be made on a case by case basis;
- causing direct or indirect change to the physical quality of the environment or habitat within the site (e.g. hydrology);
- altering community structure / species composition;
- causing ongoing disturbance to qualifying species;
- causing direct or indirect damage to the size, characteristics or reproductive ability of populations of qualifying species, or species on which they depend;
- altering the exposure of populations of qualifying species or species on which they depend to other impacts;
- causing a reduction in the resilience of the feature against other anthropogenic or natural changes (for example its ability to respond to extremes of environmental temperature);
- changing the stability of an interest feature;
- affecting restoration of a feature where this is a conservation objective.

3.3.4 Step 4: Determination of likely significant effects alone

Determination of likely significant effect 'alone' should be the first judgement at Stage 2 and the decision should be recorded as part of the audit trail. The 'alone' judgement considers the consent in isolation and is concerned with whether the associated impact mechanisms are a threat to the site in their own right, irrespective of the existing contributions from other consents.

Where a consent has been determined as having a likely significant effect 'alone' it should be taken forward to stage 3 for an appropriate assessment 'alone'. It does not therefore need to be considered 'in-combination' at this time, and should be excluded from any 'in-combination' assessment undertaken for other consents in the review process which have been identified as not having a likely significant effect 'alone'. Depending on the initial outcome of the appropriate assessment, an in-combination assessment may be required for such consents at a later stage in the assessment process.

3.3.5 Step 5: Determination of likely significant effects in combination

Where consents have been identified as having some potential effect, but not having a likely significant effect 'alone', they will then need to be assessed 'in-combination'. In combination refers to the sum of influences acting on a feature from all consents, in the context of prevailing environmental conditions. This should take account of reasonably foreseeable impacts arising from regulated and unregulated anthropogenic sources and natural sources. It is therefore not restricted to consideration of impact mechanisms associated with Local Authority consents which must be assessed together with plans or projects regulated by other competent authorities in the context of the prevailing environmental conditions. Prevailing environmental conditions (the baseline) include background/diffuse contributions to the site and the ongoing effects of plans and projects that have been completed/implemented.

As a review process by definition is likely to be determining several consents at the same time, the in-combination aspect of the assessment is important. Considering consents 'in-combination' provides vital information on the relative contributions from all sources and this information is central to later decisions regarding action to be taken to secure site integrity. A standard consultation letter template in relation to obtaining information of consents that may act in-combination is contained in **Appendix 7**.

Appendix 6 provides further practical guidance on in-combination assessments developed to inform the Environment Agency review of consents; whilst no two in-combination assessments will be quite the same, the guidance provided is intended to provide an approach which aims to facilitate consistency. The level of detail that is appropriate for each in-combination assessment will need to be determined on a case-by-case basis; it is anticipated that in some cases the approach outlined could be followed generally, whilst other cases will require a thorough and detailed assessment to be undertaken. Whatever the level of detail it is important from a consistency perspective that the general principles of the approach outlined in the appendix are followed.

3.3.6 Step 6: Consultation with CCW

Once decisions have been made for all relevant consents, they should be recorded and sent to CCW for consultation. The consultation should be made using non-technical terms so that CCW staff will understand the implications without the need for further discussion with sufficient information to show how the assessment has been made. A standard proforma is included at **Appendix 5** which could be used for the purposes of the consultation. Other consultation formats are possible but should aim to provide at least the information presented in the standard proforma.

If CCW disagree with the judgements reached over likely significant effect then every effort should be made to resolve the disagreement as soon as possible.

3.3.7 Step 7: Recording the decision

Once the consultation process with CCW has been completed, final decisions should be recorded as part of the audit trail. Following the assessment of likely significant effects, the decision for each individual consent will be recorded as either:

- a) **Likely to have a significant effect** (either alone or in-combination), and the consent will progress to a Stage 3 appropriate assessment, or
- b) **Not likely to have a significant effect** (either alone or in-combination), and the consent can be affirmed.

Where there is uncertainty, in accordance with the precautionary principle (see **3.1.2** above) a decision of likely significant effects should be recorded.

4. STAGE 3: THE APPROPRIATE ASSESSMENT

4.1 Background and Underlying Principles

Before deciding to affirm, modify or revoke an existing consent, which is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), an appropriate assessment must be made of the implications for the European site, in view of that site's conservation objectives.

The Habitats Regulations do not specify how the assessment should be undertaken but describe it simply as 'an appropriate assessment'. This is taken to mean that the assessment must be appropriate to its purpose under the Habitats Regulations. Its purpose is to ascertain, in view of the site's conservation objectives, that the consent would not have an adverse effect on the integrity of the European site. The information provided and the conclusion reached as a result of the appropriate assessment will determine whether an existing permission is affirmed, modified or taken forward to Stage 4 for consideration of alternative solutions and imperative reasons of over-riding public interest and potentially revocation.

Sections 4.2 - 4.11 below provide a suggested stepwise approach to an appropriate assessment and should be read in conjunction with the supplementary consent specific information contained in the relevant appendices³⁰. The assessment must not be influenced by wider considerations, including effects on SSSI features that are not interest features of a European site. If the application fails the Habitats Regulations test then it may only be affirmed if there are no alternative solutions (which would have a lesser effect so as to enable a conclusion of no adverse effect on integrity) and there are imperative reasons of over-riding public interest.

4.1.1 Roles and Responsibilities

Before starting an appropriate assessment it is important to be clear over roles and responsibilities.

- It is the responsibility of the competent authority to undertake the appropriate assessment and make the final decisions regarding whether or not it is possible to ascertain no adverse effects on site integrity (Regulation 61(1)).
- The consent holder is responsible for providing any additional information that may reasonably be required to enable an appropriate assessment to be undertaken (Regulation 61(2)).
- The competent authority must for the purposes of the assessment consult CCW and have regard to any representations made by them (Regulation 61(3)).

4.1.2 The concept of site integrity

TAN 5 defines the integrity of a site as '*the coherence of its ecological structure and function, across its whole area, which enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified or listed*'. There is limited guidance on the concept of site integrity but Natural England has produced some specific guidance³¹ which has been largely reproduced in **Appendix 8**.

³⁰ See also Planning Policy Wales TAN 5, Annex 3 paragraphs 14-22 <http://wales.gov.uk/topics/planning/policy/tans/tan5/?lang=en> and Part C of CCW Guidance: "Assessing Projects Under the Habitats Directive – Guidance for Competent Authorities" Sept 2008.

³¹ Natural England European Sites Guidance: Guidance to decisions on site integrity: A framework for provision of advice to competent authorities. C Chapman & C Philp, May 2004.

4.1.3 Dealing with uncertainty

Regulation 64(2) applies Regulation 61(5) to the review of consents so that the competent authority shall affirm a plan or project only after having ascertained no adverse effect on the integrity of the European site. This is a precautionary approach, but there can never be an absolute guarantee about what will happen in the future. Lord Nimmo-Smith, in his judgment on the application for Judicial Review in relation to the Cairngorm Funicular Railway case, stated that the most which can be expected of a competent authority under the Regulations is:

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

However the Waddenzee European Court of Justice case – C-127/02 (previously referred to) stressed the precautionary approach more strongly in relation to ascertaining ‘no adverse effect on integrity’ and the requirement for the competent authority to be certain of no adverse effect in the light of the best scientific knowledge available before granting or affirming permissions:

“The competent national authorities, taking account of the appropriate assessment of the implications for the site concerned in the light of the site’s conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.” (paragraph 59)

An authority needs to be aware that a decision to modify or revoke a consent is likely to be the subject of an objection and a subsequent public inquiry. The decision-making process therefore needs to be transparent, with the appropriate assessment reasoning clearly set out as part of the decision.

4.2 Step 1: Agreeing the scope

The first step in any appropriate assessment is to agree the scope and timescales. Both the scope and the content of an appropriate assessment will depend on the nature, location, duration and scale of the effects associated with the consent and the interest features of the relevant site. As a statutory consultee CCW should always be asked to advise on the scope; they have the local site knowledge and in-house expertise to advise on a site by site basis, identifying particular issues that the appropriate assessment should address.

Under Regulation 63(2) the competent authority may (if it considers it to be appropriate) take the opinion of the general public, using such steps as they consider appropriate. For the purposes of the Local Authority review, such consultations are likely to be required only under exceptional circumstances.

The scoping for the consultation step may however be a useful opportunity to obtain the opinion of other bodies such as a National Park Authority (or equivalent body), or specialist non-governmental organisations such as the Royal Society for the Protection of Birds who may also make a helpful contribution. Other competent authorities that have already reviewed, or are likely to need to review, their own plans/projects or permissions relevant to the European site could also be involved in the assessment at this Stage.

Such consultations are not likely to be required in most cases, but if it is decided to consult such bodies, they should be sent a copy of the assessment of likely significant effect, and be given the opportunity to be involved in the scoping of the appropriate assessment. Records of any such consultations should be kept for auditing purposes.

The scope for ascertaining whether it is possible to ascertain no adverse effect on site integrity should be determined on a case by case basis, but should generally cover the following 3 broad elements:

- Detailed description of the consents and the manner in which they are carried out
- Characterisation of the European Site, in order to ascertain current condition in relation to its conservation objectives
- Detailed assessment of likely impacts from the consents.

Due to the nature of the Local Authority consents, it is likely that few consents will be subject to an appropriate assessment. On the basis of the outputs from the pilots, most will be screened out at stage 2 as not likely to have a significant effect. So most appropriate assessments will be taken forward at an individual consent level, rather than a European site level, as was the case in the EA review of consents where numerous consents were identified as likely to have a significant effect for each site. This approach is helpful as the decision on whether it is possible to conclude no adverse effect on site integrity needs to be recorded for each consent individually. Consent specific appropriate assessments facilitate a clear audit trail for each decision.

4.3 Step 2: Consideration of the need for additional information

Once the scope of the appropriate assessment has been agreed decisions can be taken over the need for additional information. The Regulations specify that the consent holder is responsible for providing any information that is reasonably required to enable the competent authority to undertake the appropriate assessment³². It is in the consent holder's interests to provide all the relevant information, in the right format, at the right time, in order for the competent authority to carry out the appropriate assessment.

This may take the form of the consent holder, or agents acting for them, preparing all the information and analysis required for the assessment. This can look as though it is the consent holder actually doing the assessment, but that is not the case. It is for the competent authority to critically assess and quality assure the information provided, even if the consent holder is best placed to provide such information. In this regard it is important that whilst the consent holder may provide information, they can only suggest a conclusion which they feel the information supports. The final decision rests with the competent authority, which can have regard to any proposed conclusions put forward by the consent holder, but must ultimately come to its own independent decision. It would be inappropriate for the competent authority to simply accept the conclusions put forward by the consent holder (or agents acting on their behalf) without a thorough assessment of the information and a clearly laid out basis for doing so as part of the audit trail.

The competent authority may also need to appoint consultants to assist it in carrying out the appropriate assessment. It is important that the competent authority transparently and diligently undertakes the appropriate assessment, making full use of available ecological expertise and having regard to the advice of CCW.

³² Ref Habitats Regulation 63(2). See Also TAN 5 section 4.4:
<http://wales.gov.uk/topics/planning/policy/tans/tan5/?lang=en>

4.4 Step 3: Assessment of impacts

It is important that an appropriate assessment is made in respect of each interest feature for which the site is designated, classified or listed; and for each designation where a site is designated under more than one international obligation. CCW will advise on a case-by-case basis.

In the Waddenzee judgment, the European Court of Justice ruled that an appropriate assessment implies that **all** the aspects of the plan or project which can, by themselves or in combination with other plans and projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field.

The stage 2 check for likelihood of significant effects should have highlighted what aspects of the consent are likely to affect which site features and their conservation objectives. It is this information which will have triggered the need for further analysis in the appropriate assessment. So the appropriate assessment stage starts with the following baseline information; which aspects of the consent will be potentially damaging, and which features and their conservation objectives are likely to be affected. In order to assess the effect on site integrity and to reduce uncertainty about the effects the appropriate assessment will need to examine the effects in greater detail.

The level of further analysis required for this more detailed assessment will be dependent on the nature of the consent being reviewed and the impact mechanisms identified. An *appropriate* assessment might well require some detailed modelling / survey work to be undertaken or could simply involve a desk based assessment of currently available information. The Habitats Regulations require that the assessment is of "the implications for the site in view of that site's conservation objectives" (Regulation 61(1)).

4.5 Step 4: Making an assessment in view of the Conservation Objectives

Conservation objectives are required by the 1992 Habitats Directive (92/43/EEC). The aim of the Habitats Directive is the maintenance or, where appropriate, the restoration of the 'favourable conservation status' of habitats and species features for which SACs and SPAs are designated.

'Favourable conservation status' is precisely defined in the Directive, but in general terms, a site is in favourable conservation status when each feature is in satisfactory condition and all the things needed to keep it that way are in place for the foreseeable future. CCW considers that the concept of favourable conservation status provides a practical and legally robust basis for conservation objectives for Natura 2000 and Ramsar sites, as explained in each Core Management Plan.

The Core Management Plan documents for each site contain all the relevant information in relation to the conservation objectives for each site. There is one conservation objective for each interest feature and they consist of two elements; *the vision for the feature* and the underlying *performance indicators* which are specific ecological attributes of the features which make the conservation objectives measurable.

The appropriate assessment must firstly look at the potentially damaging aspects of the project and the potential effects on the site features and achievement of the conservation objectives in greater detail, to characterise the impacts in terms of their likelihood, nature, scale, severity and duration.

The decision on whether it is possible to conclude no adverse effect on site integrity must be made in view of the conservation objectives. Where a consent is considered to significantly undermine the achievement of the conservation objectives it will be unlikely that a

competent authority will be able to ascertain that the consent would not adversely affect the integrity of the site. Such a consent could not be affirmed (subject to the provisions of Regulation 62), and should be taken forward for negotiation as to agreed modification or, if necessary, modification or revocation without the developer's agreement.

4.6 Step 5: Consideration of counter-acting measures

In accordance with Regulation 61(5), to which the review provisions refer at 64(2), the competent authority can only affirm a consent after having ascertained that it will not adversely affect the integrity of the European site. In considering whether the consent will adversely affect the integrity of the site, the authority must have regard to any conditions or restrictions to which the consent could be made subject (Regulation 61(6)). It is therefore possible that the review will result in a consent modification which enables a conclusion of no adverse effect on integrity to subsequently be recorded.

The appropriate assessment must look at any potential mitigation measures, that are in addition to those which already form part of the consent, to determine whether they can reduce the likelihood, nature, scale, and duration of the effect to a lower level. The appropriate assessment should consider mitigation measures that are capable of implementation and will reduce the impact to avoid an adverse effect on the integrity of the site³³.

Regulation 98(4) makes specific provision for the variation of environmental permits considered within the review, whilst Regulation 70 refers to the consideration of mitigation measures as part of the review of planning permissions or deemed planning permissions. Regulation 70 outlines a clear sequential approach to introducing measures to avoid adverse effects as outlined in TAN 5 Annex 4, and summarised below³⁴:

- Firstly, consider whether any adverse effects could be overcome by the developer entering into an agreement under section 106 of the Town and Country Planning Act 1990 (Regulation 70(1)(a));
- Secondly, if such effects could be overcome in that way, invite the developer to enter into an agreement under section 106 so as to enable the planning authority to ascertain that there would be no adverse effect on site integrity (Regulation 70(1)(b))
- In so far as adverse effects would not be overcome by use of a section 106 agreement, (either because that is not enough or the consent holder is not willing), the authority must make an order under section 97 of the Town and Country Planning Act 1990 for modification or revocation of the consent, or a discontinuance order under section 102 of the 1990 Act in a manner that is sufficient to avoid the potential threat to the integrity of the site (regulation 70(2)).

As outlined in regulation 71, any order made under regulation 70(2) takes effect when the appropriate notices are served, but must be confirmed by the Welsh Ministers. The planning authority should also take such action if the developer proceeds with damaging development whilst the planning authority is endeavouring to secure a S.106 planning obligation.

Revocation under such powers is a last resort and should not be considered until Stage 4 of the review provisions.

A relevant counter-acting measure would be the selection of an alternative location for a development to that of the existing permission, for which planning permission could be

³³ See also Planning Policy Wales, TAN 5, section 4.6 and 4.7.

<http://wales.gov.uk/topics/planning/policy/tans/tan5/?lang=en>

³⁴ See also Planning Policy Wales, TAN 5, annex 4, paragraphs 4-5.

given, (subject to the normal planning process and considerations) and which would not be damaging to that site or any other nature conservation site.

Alternatively, the developer may voluntarily relinquish all or part of a planning consent in recognition of the nature conservation value of the site. This occurred, for example, in the case of the review of the planning permission for the Selby coalfield in Yorkshire. There, a unilateral planning obligation, the scope and terms of which were negotiated with and agreed by English Nature, was entered into by the mining developer agreeing not to mine beneath areas that may result in subsidence, which in turn may adversely affect the Derwent Valley SPA / SAC / Ramsar site.

4.7 Step 6: In-combination assessment

With any potential mitigation measures proposed, the appropriate assessment must undertake an in combination assessment to ensure that, if the consent is affirmed (or modified to incorporate proposed mitigation measures), the residual effects will not become more significant when combined with effects from other plans or projects. The other plans or projects will be those that similarly have a residual effect after mitigation measures have been implemented, or those that were not subjected to an appropriate assessment because the effects were not considered to be significant when checked. Further information on in-combination element of the assessment is provided in **Appendix 6**.

4.8 Step 7: Reaching a decision on the integrity test

The 'integrity test' is the term used for the test that the competent authority must carry out before deciding to affirm a consent that would be likely to have a significant effect on a European site.

The integrity test has the effect of reversing the normal test of regulatory controls, which usually require the regulator to show harm to the public interest in order to refuse consent for a project. The integrity test requires the decision taker to ascertain that the project, alone or in combination with other plans and projects, will **not** have an adverse effect on the **integrity of the site**, before the project can be allowed to proceed. (The concept of site integrity is discussed further in **Appendix 8**)³⁵.

This is the precautionary principle, but here it is applied as a matter of law, not as a matter of discretion or policy. Consequently, the EC guidance³⁶ on when and how to apply the precautionary principle does not apply.

The competent authority must decide whether it can be ascertained that the consent will not have an adverse effect on the integrity of the site. If it cannot rule out such an effect (having regard to potential mitigation measures), the consent must be further modified or, if necessary, revoked, subject only to the provisions of Regulation 62, in respect of there being no alternative solutions and imperative reasons of overriding public interest, see Chapter 5 below.

4.9 Step 8: Consultation with CCW

In determining the effect on site integrity, the advice of CCW and the citation issued by them saying why the site was classified or listed will need to be carefully considered. Whilst it is the duty of the decision-taker to carry out the appropriate assessment and make a final judgement as to the effect on site integrity, it would normally be expected to adopt the

³⁵ See also Part D 'The integrity test' in CCW Guidance: "Assessing Projects Under the Habitats Directive – Guidance for Competent Authorities" Sept 2008

³⁶ Commission of the European Communities, 2000. Communication from the Commission on the Precautionary Principle. Com (2000)

advice of CCW on the integrity test. If it does not, the decision-taker should have convincing and exceptional reasons for not adopting the advice, which it should be prepared to explain, and it should be able to show that these reasons are clearly supported by sound scientific evidence.

4.10 Step 9: Consents where there is no likelihood of the development being carried out or continued.

Regulation 70(3) makes important provisions in respect of the review of planning permissions for which the Local Authority consider that there is no likelihood of the development being carried out or continued. Such consents should be assessed under the review provisions up to and until a decision as to adverse effect on integrity has been reached, upon completion of an appropriate assessment (where one is required). For such consents however, where the authority is unable to conclude no adverse effect on integrity following an appropriate assessment, they nevertheless need not proceed further under the review provisions for so long as they consider that the planning permission remains with no likelihood of the development being carried out or continued.

Were this situation to change at any point in the future, whereby the authority considers that there is a likelihood of development being carried out or continued, the consent should then continue promptly through the remaining review provisions.

4.11 Step 10: Recording the decision

For each individual consent the final decision of whether a conclusion of no adverse effect on integrity can be ascertained should be clearly recorded. A full audit trail should be kept such that the basis for the decisions taken is clear and transparent. This is particularly important in circumstances where the appropriate assessment is undertaken at a site level (in respect of several consents which have a likely significant effect upon that site), rather than for each individual consent.

Further to appropriate assessment, each consent identified as likely to have a significant effect at Stage 2 will be associated with one of the following conclusions:

- a) The consent can be shown to have no adverse effect on the integrity of the site (either alone or in-combination).
- b) The consent cannot be shown to have no adverse effect on site integrity (either alone or in-combination) but conditions or restrictions exist, to which the consent can be made subject, which would allow such a conclusion to be recorded.
- c) The consent cannot be shown to have no adverse effect on site integrity (either alone or in-combination). No conditions or restrictions exist, to which the consent can be made subject, which would allow such a conclusion to be recorded. However it is the opinion of the authority that there is no likelihood of the development to which the consent relates being carried out or continued (see **4.10** above).
- d) The consent cannot be shown to have no adverse effect on site integrity (either alone or in-combination). No conditions or restrictions exist, to which the consent can be made subject, which would allow such a conclusion to be recorded. It is the opinion of the authority that there is a likelihood of the development to which the consent relates being carried out or continued.

5. STAGE 4: DETERMINATION

As outlined in section 4.11 above, there are four potential conclusions that could be reached, for each consent which is subject to an appropriate assessment. The *determination* of these consents refers to the action to be taken in respect of each possible conclusion.

5.1 Consent affirmation

Where a conclusion of no adverse effect on integrity has been recorded (decision **(a)** above), the consent can be affirmed and the review process is complete for that consent.

5.2 Consent modification

Where a conclusion of no adverse effect on site integrity (either alone or in-combination) cannot be determined, but conditions or restrictions exist, to which the consent can be made subject, either by agreement or otherwise, which would allow such a conclusion to be reached (decision **(b)** above), the consent should be modified to include any such conditions or restrictions. The review process can be considered complete upon appropriate modification of such a consent.

5.3 Consent flagged

Where decision **(c)** in section 4.11 above is recorded, no further action is necessary at this time. The consent should however be flagged in some way so that if the situation changes, and the authority consider that there is a likelihood of the development to which the consent relates being carried out or continued, the review process can be promptly reinstated. Such a consent would then be assigned to decision **(d)** with the appropriate guidance outlined below in relation to such consents then being followed.

5.4 Consideration of alternative solutions and imperative reasons of over-riding public interest

Where decision **(d)** above is recorded, and there are no conditions or restrictions to which the consent could be made subject which would allow a conclusion of no adverse effect on the integrity of the site to be ascertained, regulation 64(2) applies the provisions of regulation 62 (considerations of over-riding public interest).

In the absence of alternative solutions, if the competent authority determines that the plan or project must be carried out for imperative reasons of over-riding public interest³⁷, the consent may be affirmed (or affirmed with modifications to reduce adverse effects to a minimum), notwithstanding a negative assessment of the implications for a European site³⁸, and subject to prior notification of the Welsh Government. Under such circumstances, regulation 66 requires the competent authority to secure that any necessary compensatory measures are taken to ensure the overall coherence of Natura 2000 is protected³⁹.

³⁷ See also Part E of CCW Guidance: "Assessing Projects Under the Habitats Directive – Guidance for Competent Authorities" Sept 2008

³⁸ See also Planning Policy Wales TAN 5: Annex 3 paragraphs 26-37 on alternative solutions and imperative reasons of over-riding public interest. <http://wales.gov.uk/topics/planning/policy/tans/tan5/?lang=en>

³⁹ See also Planning Policy Wales TAN 5: Annex 3 paragraphs 38-43 on compensatory measures.

5.5 Consent revocation or further modification

If alternative solutions are deemed to exist, or in the absence of alternatives if there are no imperative reasons of over-riding public interest, consents which were recorded as decision **(d)** above must be further modified or if necessary revoked⁴⁰ in order to enable the authority to ascertain that there would not be an adverse effect on the integrity of the European site.

Revocation of an existing consent under the review provisions is likely to be the subject of an objection and a subsequent public inquiry. Where such action is to be taken, it is imperative that a clear audit trail exists outlining the justification and rationale behind such a decision. CCW should be consulted and the Welsh Government should be kept informed.

Any compensation to the consent holder will be dependent on the nature of the consent being revoked and the underlying legal provisions relevant to such a consent.

With particular reference to planning permissions, Annex 4 of TAN 5, paragraph 6, explains that it is not the policy of the Welsh Government to reimburse Local Authority liabilities. However, it goes on to say that the Government may consider providing assistance where costs are high, provided that the Government is satisfied that all alternative options and possibilities have been fully explored and where the action taken by the planning authority was no more than that necessary to remove the risk to the integrity of the site.⁴¹ The Government would need to be satisfied that all possibilities had been explored to minimise the cost to the public purse. It may be that options other than revocation or modification of the planning permission would have the same effect of avoiding the development adversely affecting the integrity of a site.

Alternatively other action may at least reduce the degree of modification or revocation required to protect a site, and thus reduce the liability to the public purse. In such cases, the alternative procedures should be considered and if appropriate adopted, so minimising the cost of the action liable to pay compensation, under the planning Act. This may include appropriate action in respect of conditions or the use of orders on mineral planning permissions under the procedures for the review of old mineral planning permissions (ROMPs).

Where other competent authorities, including other Local Authorities, are considering action under the review of consents, which alone or in combination may have adverse effects on a site, all authorities should liaise before determining the outcomes of the review.

⁴⁰ See also Planning Policy Wales TAN 5: Annex 4 para 5.

<http://wales.gov.uk/topics/planning/policy/tans/tan5/?lang=en>

⁴¹ See further Ministerial letter on TAN 5 and related policy issues dated 16th September 2009

<http://wales.gov.uk/docs/desh/policy/090916tan5letteren.doc>

APPENDICES

Appendix 1

List of European sites ⁴² and designation dates

- List A: Wales SAC list (partial list) ⁴³
- List B: England SAC list (within 30km)
- List C: Wales SPA list
- List D: England SPA list (within 30km)
- List E: Wales Ramsar list
- List F: England Ramsar list (within 30km)

List A: Partial Welsh SAC list and designation dates

Unless included in the table below, all other SACs in Wales were designated on 13th December 2004

Exceptions to 13th Dec 2004 designation date:

SAC Name	Designation date
Aberbargoed Grasslands SAC	02/Nov/2000
Coedydd Derw a Safleoedd Ystlumod Meirion/ Meirionnydd Oakwoods and Bat Sites SAC	31/Aug/2008*
Dee Estuary/ Aber Dyfrdwy SAC	10/Dec/2009
Fenn`s, Whixall, Bettisfield, Wem and Cadney Mosses SAC	01/Apr/2005
River Dee and Bala Lake/ Afon Dyfrdwy a Llyn Tegid SAC	01/Apr/2005
River Wye/ Afon Gwy SAC	01/Apr/2005
Severn Estuary/ Môr Hafren SAC	10/Dec/2009
Wye Valley and Forest of Dean Bat Sites/ Safleoedd Ystlumod Dyffryn Gwy a Fforest y Ddena SAC	01/Apr/2005
Wye Valley Woodlands/ Coetiroedd Dyffryn Gwy SAC	01/Apr/2005

* designation date for Meirionnydd Oakwoods and Bat Sites SAC reflects the designation date for changes to the SAC boundary and modification of features. The designation date for the original site boundary was 13th Dec 2004.

List B: England SAC list (within 30km of Welsh Borders)

SAC name	Designation date
Avon Gorge Woodlands SAC	01/Apr/2005
Braunton Burrows SAC	01/Apr/2005
Brown Moss SAC	01/Apr/2005
Downton Gorge SAC	01/Apr/2005
Exmoor & Quantock Oakwoods SAC	01/Apr/2005
Exmoor Heaths SAC	01/Apr/2005
Hestercombe House SAC	01/Apr/2005
Lundy SAC	01/Apr/2005
Mendip Limestone Grasslands SAC	01/Apr/2005
Mendip Woodlands SAC	01/Apr/2005
North Somerset and Mendip Bats SAC	01/Apr/2005
Oak Mere SAC	01/Apr/2005

⁴² For full lists of all SAC/SPA and Ramsar sites in the UK (and selectable for Wales) refer to "UK Protected Sites " The Joint Nature Conservation Committee (JNCC) at <http://jncc.defra.gov.uk/page-4>

⁴³ For a full list of SACs applicable to Wales refer to list: "SACS in Wales": The Joint Nature Conservation Committee (JNCC) at http://jncc.defra.gov.uk/ProtectedSites/SACselection/SAC_list.asp?Country=W

SAC name	Designation date
River Clun SAC	01/Apr/2005
Sefton Coast SAC	01/Apr/2005
The Stiperstones and The Hollies SAC	01/Apr/2005
West Midlands Mosses SAC	01/Apr/2005

List C: Welsh SPA list

SPA name	Designation date
Bae Caerfyrddin / Carmarthen Bay SPA	10/Jun/2003
Berwyn SPA	16/Jan/1998
Burry Inlet SPA	14/Jul/1992
Castlemartin Coast SPA	12/Jan/1996
Craig yr Aderyn (Bird's Rock) SPA	29/Jun/2001
Dyfi Estuary / Aber Dyfi SPA	29/Jun/2001
Elenydd – Mallaen SPA	12/Jan/1996
Glannau Aberdaron and Ynys Enlli/ Aberdaron Coast and Bardsey Island SPA	10/Jun/1992
Glannau Ynys Gybi/ Holy Island Coast SPA	01/Jun/1992
Grassholm SPA	31/Jan/1986
Liverpool Bay / Bae Lerpwl SPA	20/Aug/2010
Migneint–Arenig–Dduallt SPA	26/Mar/2003
Mynydd Cilan, Trwyn y Wylfa ac Ynysoedd Sant Tudwal SPA	10/Jun/2003
Ramsey and St David's Peninsula Coast SPA	24/Jul/1996
Severn Estuary SPA	13/Jul/1995
Skokholm and Skomer SPA	31/Aug/1982
The Dee Estuary SPA	17/Jul/1985
Traeth Lafan/ Lavan Sands, Conway Bay SPA	10/Jun/1992
Ynys Feurig, Cemlyn Bay and The Skerries SPA	10/Jun/1992
Ynys Seiriol / Puffin Island SPA	01/Feb/2002

List D: England SPA list (within 30 km)

SPA name	Designation date
Chew Valley Lake SPA	17/Jul/1985
Mersey Estuary SPA	20/Dec/1995
Ribble and Alt Estuaries SPA	16/Feb/1995
Somerset Levels and Moors SPA	26/Jun/1997
Walmore Common SPA	05/Dec/1991

List E: Welsh Ramsar List

Ramsar name	Designation date
Burry Inlet Ramsar	14/Jul/1992
Cors Caron Ramsar	28/Sep/1992
Cors Fochno and Dyfi Ramsar	05/Jan/1976
Corsydd Môn a Llyn/ Anglesey and Llyn Fens Ramsar	02/Feb/1998
Crymlyn Bog Ramsar	08/Jun/1993
Llyn Idwal Ramsar	07/Nov/1991
Llyn Tegid Ramsar	07/Nov/1991
Midland Meres and Mosses Phase 2 Ramsar	02/Feb/1997
Severn Estuary Ramsar	13/Jul/1995*
The Dee Estuary Ramsar	10/Dec/2009*

*reflects dates for latest boundary amendments. Original designation dates are earlier.

List F: England Ramsar list (within 30km)

Ramsar name	Designation date
Mersey Estuary Ramsar	20/Dec/1995
Midland Meres and Mosses Phase 1 Ramsar	09/May/1994
Ribble and Alt Estuaries Ramsar	16/Feb/1995
Somerset Levels and Moors Ramsar	26/Jun/1997
Walmore Common Ramsar	05/Dec/1991

Appendix 2

Relevant Consent types and associated potential hazards and effects

Purpose

The purpose of this appendix is to provide consent specific guidance in relation to the generic effects that can be associated with each consent type listed within **Table 2** of the main guidance document as having the potential to be relevant to the review process. **Table 5** below considers each consent type and identifies examples of the potential risks or effects that may be associated with such consents. Each hazard or effect is then subsequently considered in turn in **Table 6**.

Table 5: Consent types and potential hazard or effects

Consent type	Examples of Potential hazard or effects
Planning permissions not yet started or started but yet to be completed, including all mineral planning permissions.	<ul style="list-style-type: none"> • Increased recreational activities • Construction dust • Disturbance • Predation • Habitat Loss • Physical Damage • Light Pollution • Surface water pollution
Deemed planning permissions	<i>As above</i>
IPPC permits (Part A2 and Part B)	<ul style="list-style-type: none"> • Potential emissions to air • Discharges into water. • Dust
Tree Preservation Order consents	<ul style="list-style-type: none"> • Habitat loss (loss of important bat roost or foraging sites in particular)
Conservation area consents	<ul style="list-style-type: none"> • Hazards associated with demolition (dust, disturbance etc) • Long term implications of boundary removal (eg: walls etc) and potential for increased access and associated disturbance.
Listed building consents	<ul style="list-style-type: none"> • Hazards associated with demolition (dust, disturbance etc)
Coastal Consents not yet started or started but yet to be completed, (where the LA is a coast protection authority under the Coast Protection Act)	<ul style="list-style-type: none"> • Habitat Loss • Physical damage • Disturbance

Consent type	Examples of Potential hazard or effects
Consents given by the LA as a Highway Authority	<ul style="list-style-type: none"> • Disturbance • Light pollution
Harbour Authority Consents (where LA concerned is a relevant harbour authority)	<ul style="list-style-type: none"> • Increased recreational activities • Disturbance • Physical damage
Non EPR noise, smoke and odours	<ul style="list-style-type: none"> • Disturbance • Toxicity
Contaminated Land under Part IIA EPA (1990)	<ul style="list-style-type: none"> • Toxicity

Table 1: Consents which are potentially relevant to the review and associated hazards

Potential Effects

The hazards identified in **Table 5** above are considered in further detail in **Table 6** below. When making decisions in terms of Stage 1 (relevance) or Stage 2 (likely significant effects), the hazards identified below should be considered in turn against each feature present within the European site in question.

Further information on potential hazards and relevant sensitivity matrices (derived from the EA review) are contained within the CCW LAWROC5 Excel© spreadsheet⁴⁴. A proforma to assist with decisions on likely significant effect is provided in **Appendix 5**, which may be helpful to the Stage 2 decision making process.

Table 6: Potential Effects associated with relevant consent types

Hazard	Potential effects
Recreational activities	<p>One of the impacts associated with planning permissions relate to the effects of increased recreational activities within sensitive sites which are accessible to the public. Many SACs and SPAs are attractive to local residents as leisure destinations.</p> <p><u>Except in cases of large scale residential development, or unless a consent would introduce housing close to an area previously unaffected by recreational pressure or a consent may have the effect of opening a vulnerable site to public access for the first time, impacts associated with increased recreational activities will only be likely to have a significant effect where the site is already considered to be at risk from existing recreational usage (see 2.4.5(d)).</u></p> <p>SPA sites are generally considered to be most at risk, where bird species sensitive to disturbance effects associated with increased recreational activities (eg: dog-walking, horse-riding, trail bikes, kite surfing, jet-skiing etc) can be affected. Dog walkers can cause significant disturbance to ground-nesting bird species when dogs are allowed off the lead. Designated habitat features can also be sensitive to recreational impacts associated with trampling and erosion.</p>
Dust	<p>Construction work generates large amounts of dust which can have a detrimental effect on vegetation through impacts associated with smothering and additional effects of pH alterations (some construction dust can be strongly alkaline) and toxicity.</p>

⁴⁴ Available on request from the Evidence and Advice Directorate CCW

Hazard	Potential effects
Disturbance	<p>Noise associated with construction activities can be relevant to features which are sensitive to disturbance such as SPA birds and SAC species (eg: bats, newts etc). It should be noted that fish species can be particularly sensitive to the impacts of noise and vibrations transmitted through the water column.</p> <p>When considering noise effects; duration and exposure are important. Where the noise is over a short duration (ie: during construction phase only) effects are far less significant than noise associated with ongoing operations once the development is complete. Seasonality is also a factor as many species are more sensitive to noise effects at certain times of year (eg: during breeding season whilst trying to attract a mate and raising young)</p> <p>Other factors causing both noise and visual disturbance can involve increased traffic movements (vehicular in the case of highway consents or boating traffic in the case of harbour authority consents)</p>
Predation	<p>Where residential development occurs within proximity to a European site, predation from household pets may represent a hazard to the designated features. This is of particular relevance to domestic cats and designated bird species.</p> <p>A 400m exclusion zone has been implemented in relation to the effects of residential development in respect of certain sensitive sites in England⁴⁵. This buffer is based upon best available information and expert judgement and makes reference to the impacts associated with cat predation but is not specific to the hazard only. The nature of the land between the development and the European site will be critical when considering distance based criteria as this will greatly influence the likelihood of cats regularly hunting within the European site. Effects are far less likely if cats have to cross major roads / significant urban development rather than open green space.</p> <p>Developments that involve waste management uses can also have the effect of attracting increased numbers of gulls or corvids which in turn can increase predation in the area on other species</p>
Habitat loss	<p>In relation to construction activities, whilst it is unlikely that there will be an existing planning permission relating to land within a European site, development on land which is important to mobile species (see section 2.4.5 (c) may result in loss of habitat which is important for roosting or feeding. Other supporting habitats, for example, for invertebrates, may also be lost to development outside the designated area.</p> <p>In relation to tree felling activities, the importance of the trees to designated bat species should be considered.</p> <p>In relation to demolition activities, the potential importance of buildings for bat populations is of particular significance.</p>
Physical Damage	<p>This hazard is identified in relation to planning permissions. Whilst it is unlikely that a planning permission will result in physical damage within a site boundary, there is potential for physical damage in relation to off-site areas that are important to mobile species.</p> <p>There is also some overlap with impacts associated with recreational activities in relation to physical damage as a result of trampling.</p> <p>With coastal and harbour consents physical damage may result within the boundary of designated sites from maintenance works and harbour related activities</p>

⁴⁵ Thames Basin Heaths SPA Delivery Framework. Thames Basin Heaths Joint Strategic Partnership Board. Feb 2009. <http://www.rushmoor.gov.uk/index.cfm?articleid=10355>

Hazard	Potential effects
Light pollution	Many species for which sites are designated can be sensitive to effects of artificial lighting. Planning permissions that involve light pollution that may affect a European site or in land which is important to mobile species should be considered. Many species of bat, bird and even fish are particularly sensitive to the effects of light pollution ⁴⁶ .
Emissions to air	Emission to air can have effects on European sites both through atmospheric concentrations (critical levels) and deposition of pollutants to land (critical loads). The web based Air Pollution Information System ⁴⁷ (APIS) provides relevant information at a European site level on the sensitivity of each feature to the effects of air pollution and provides site relevant critical load / level values against which to make any assessments.
Discharges to water	Both EPR and non-EPR related discharges to water (including surface water pollution from planning permissions) should be considered upstream of sites that are sensitive to water quality (and downstream for tidal sites). Such sites would include those whose features are dependent upon water quality such as riverine SACs, wet habitats (such as bogs, wet heath, wet woodlands etc). If uncertain as to the sensitivity of features to water quality effects the CCW core management plans will provide relevant information.
Boundary removal	The long term implications of the removal of walls and boundaries etc should be considered. Where there is an existing wall or fence along the boundary of a European site (or an off-site area which is important to mobile species) its removal may result in increased access to currently undisturbed areas; where walls are removed visual disturbance could also be potentially increased.
Toxicity	Potential toxic effects are associated with contaminated land consents, and other consents relevant to non-EPR emissions. The nature of toxic compounds are very broad and these will need to be assessed on a case by case basis.

⁴⁶ See campaign for dark skies website: <http://www.britastro.org/dark-skies/wildlife.html>

⁴⁷ Refer to: www.apis.ac.uk

Appendix 3

Example of further detailed screening criteria for lesser horseshoe bat feature

Table 7: Permissions with likely significant effect on lesser horseshoe bat feature of SAC⁴⁸

Types of permission	Distance from SAC	Additional features associated with permission site	Potential effect on LHS bat feature
Barn conversion/change of use Outbuilding conversion/change of use Chapel conversions Church conversions Loft conversions Old Mill conversions Hospital conversions School building conversions	4 km	Wooded corridors, river corridors, valleys, foraging habitats. Known flight paths	Loss of maternity roost Loss of night roost Reduction in population and range
Renovations & modifications to buildings esp. listed buildings/manor houses	4 km	Wooded corridors, river corridors, valleys, foraging habitats. Known flight paths	Loss of maternity roost Loss of night roost Loss of hibernation roost Reduction in population and range
Mineral – mines & quarries (excluding sand and gravel quarries)	10 km	Linked by wooded corridors, sheltered valleys or river corridors to SAC, especially if located within 10km from known maternity roost associated with SAC	Loss of hibernation roost Loss of mating roost Reduction in population and range
General development >0.5ha causing loss of semi-natural habitat Developments of > 5 houses	10 km	Wooded corridors, river corridors, valleys, foraging habitats Located between maternity and hibernation sites	Loss of flight paths Loss foraging areas Reduction in population and range
Demolishment of buildings especially chapels, churches, barns, outbuildings, offices, hospitals, schools.	4 km	Wooded corridors, river corridors, valleys, foraging habitats	Maternity roost Night roost Reduction in population and range
External lighting	4 km	Habitats corridors (woodland & river valley) linked to roost. Known flight paths. Especially located between known maternity and hibernation roosts and foraging areas.	Degradation or loss of roost due to reduction in emergence times Loss of flight lines Loss of foraging areas Reduction in population and range
TPO consents for tree felling	50meters	Adjacent to maternity roost	Emergence from maternity roost

⁴⁸ Taken from: "Screening criteria for reviewing Planning Permissions in Snowdonia National Park Planning Authority ... Meirionnydd Oakwoods and Bat Sites Special Area of Conservation" Produced by the Snowdonia ROC Working Group: Emily Meilleur, Liz Jenkins, Dafydd Roberts, Dewi Roberts: June 2010

Appendix 4

Instructions on undertaking a Stage 2 test of likely significance in relation to Local Authority IPPC/EPR consents identified as potentially relevant to the review

1) Purpose of Appendix

Section 2.4.2 (e) within the main guidance document refers to the screening criteria against which to identify IPPC/EPR consents which are considered to be 'relevant' to the review process. The screening criteria are taken from existing Defra guidance^{49,50}, which is relevant to the determination of new permissions and goes on to provide further information on the subsequent assessment for such relevant consents. Whilst the further guidance contained therein will form the basis of any assessment under the review provisions, the fact that the consents being reviewed are 'existing' rather than 'proposed' activities does introduce further information sources against which such an assessment can be made

On the basis of the outputs of the Environment Agency review of consents the key pollutants of concern from point sources, in relation to European sites, are those that contribute to **nitrogen and acid deposition** and associated critical load exceedances. A key pollutant in relation to nitrogen critical load exceedance is **ammonia (NH₃)**, and there are additional concerns in relation to atmospheric concentrations of this pollutant, in particular in relation to emissions from livestock units; smaller units are not licensed through LA IPPC/EPR and must be assessed separately through the planning permission for the units^{51 52}.

The general guidance contained in the Defra manual in relation to how to carry out a conservation assessment under the Habitats Regulations states that such an assessment should provide:

- a) *"Details of the predicted process contribution to concentrations and deposition at the designated site(s) for released pollutants which have the potential to pollute that site. It is acceptable to use look-up charts or tables to estimate the impact on the conservation site⁵³. More complex dispersion modelling can be used if there is doubt whether there might be a "likely significant effect" to such a conservation site or whether the installation constitutes "an operation likely to damage" such a site (or if there is a need to clarify the nature of the impact from the installation).*
- b) *Information on the background (ambient) concentration and deposition at the European Site(s) (Natura 2000). The relevant nature conservation agency should be able to advise how to get hold of this information.*
- c) *An estimate of the predicted environmental concentration and deposition at the European Site(s) (Natura 2000) based on the above two bullets.*

⁴⁹ General Guidance Manual on Policy and Procedures for A2 and B installations: (Manual Part B Annexes). Annex XVII - Applying the Habitats Regulations and the Wildlife and Countryside Act to applications for EP permits. <http://www.defra.gov.uk/environment/quality/industrial/las-regulations/guidance/>

⁵⁰ For further guidance refer also to "Local Authority Unit in the Environment Agency" (Guidance documents to help you understand the Environmental Permitting (EP) Regulations) <http://www.environment-agency.gov.uk/business/topics/permitting/36421.aspx>

⁵¹ Note: to assess for air quality aspects of non IPPC/EPR agricultural planning permissions in relation to livestock units refer to CCW Guidance: "Interim Casework Internal Guidance, Livestock Production" Khalid Aazem September 2010 and to SCAIL (link below).

⁵² Simple Calculation of Atmospheric Impact Limits for Agriculture (SCAIL-Agriculture) is a screening tool for assessing the impact from livestock units on semi-natural areas like SSSIs and SACs. http://www.scail.ceh.ac.uk/agriculture/scail_agriculture.html

⁵³ The Defra guidance refers the readers to 'look up tables' available from EA H1 guidance. However these have since been removed from the updated version of H1, so the sentence is not included in the extract given above. The approach outlined in section 2 of this appendix should be followed which refers to the SCAIL model rather than look-up tables.

This general approach to an assessment of likely significant effects should be adopted as part of the review process, and the following sections provide further guidance and information in relation to such an assessment.

2) Pollutants that contribute to nitrogen and acid deposition and associated critical load exceedances.

As the EA review identified these as the key pollutants in relation to ongoing impacts on European sites, it makes sense to consider these first. If it can be shown that there is no likely significant effect as a result of these pollutants then any further pollutants can be subsequently screened. The primary pollutants that contribute to acid deposition include sulphur dioxide, nitrogen oxides and ammonia. The pollutants that contribute to nitrogen deposition derive mainly from ammonia (NH₃) and nitrogen oxides (NO_x). Further information on acid and nitrogen deposition can be found on the Air Pollution Information System (APIS) website⁵⁴, within the pollutant overview pages.

Using existing information

It is anticipated that information provided as part of the original permit application, together with any relevant subsequent information in relation to the permit itself, will contain some basic air dispersion modelling which should be referred to. In most cases it is considered unlikely that such information will include actual process contributions *to the nearest site boundary*, however where this information is available then such values can simply be used for the purposes of the assessment. Process contribution estimates should be assessed against background concentration and deposition data at the site in question in relation to the appropriate critical load / level for the most sensitive feature. Such information in relation to individual European sites and feature sensitivities is available through the APIS website under the Site Relevant Critical Load pages⁵⁵.

Where information on process contribution to concentration and deposition *at the nearest site boundary* is not readily available from the permit documentation, it may still be possible to assess the consent based on process contribution to concentration and deposition *at other locations*.

The basic modelling undertaken as part of the original application, or subsequently, may provide process contribution information to a location much closer to the source than the European site being considered. As long as the influence of prevailing wind direction on dispersion of pollutants has been taken into account, the contribution to the site boundary can generally be assumed to be lower than that at any closer location.

In light of the nature of the LA IPPC/EPR activities consented by Local Authorities, it is anticipated that in many cases the process contributions from LA sources to site boundaries will be trivial, both in terms of atmospheric concentrations and deposition. However it is important that such assertions can be supported, and the information contained within any associated basic modelling may be sufficient to demonstrate that likely significant effects at the site boundary can be excluded on the basis of objective information, avoiding the need for further assessment. Where the available information appears to support such a 'trivial' contribution then the basis for such a decision should be recorded for auditing purposes and the consent can be concluded as not likely to have a significant effect in relation to pollutants that contribute to nitrogen and acid deposition. Other pollutants should then be screened as outlined in section (4) below.

⁵⁴ Refer to APIS: <http://www.apis.ac.uk>

⁵⁵ The Site Relevant Critical Loads tool provides critical loads for acidity and nitrogen for designated features within an SAC or SPA site. A user can view an overview of each interest feature for each site. Critical loads will be assigned to each feature if it is sensitive to either nutrient nitrogen or acidity. Furthermore, deposition data for nitrogen and sulphur at each site is provided, apportioned to major sources, and presented in pie charts. Users can also select a grid reference if they know the exact location of their feature

Situations when further information might be required

Where available information indicates that potential process contributions to the site boundary are not trivial, or where there is uncertainty, then further assessment should be undertaken, both in terms of impacts associated with atmospheric concentrations and deposition of pollutants.

Under such circumstances, reliable estimates of process contribution to a given grid reference can be obtained through the web-based SCAIL (Simple Calculation of Atmospheric Impact Limits) combustion model⁵⁶; the required model input parameters should be available from the permit itself, or information submitted as part of the original permit application. Information in relation to the grid reference and habitat type should be available as part of the CCW core management plan documentation referred to in section 1.8 of the main guidance. Where there is uncertainty over which generic habitat type to select from the drop down list then the “Habitats Table” available on the APIS website⁵⁷ might be helpful. This table relates SAC habitats to other ‘equivalent’ habitat types and may provide further confidence over which of the generic habitat types listed in SCAIL are appropriate to the site in question.

SCAIL requires a grid reference to be inputted in relation to the nearest boundary of the site in question and it draws on existing datasets to estimate the background levels against which the process contribution will be assessed. SCAIL also extracts the appropriate impact limits (critical load / level) in relation to the habitat type selected. The model run outputs from SCAIL can therefore be used to inform a decision on whether the consent has a likely significant effect.

3) Determining likely significant effect

If the individual consent process contribution is >1% of the relevant environmental threshold (critical load or critical level), and that threshold is already exceeded, then the consent should be determined as having a likely significant effect (either alone or in-combination) and should be taken forward for an appropriate assessment.

4) Screen for ‘other’ pollutants

Due to the nature of the A2 and Part B processes consented by local authorities, it is unlikely that pollutants other than those outlined in section 2 above will represent a significant threat to European sites, unless the installation is in very close proximity to the boundary of the site. However, where impacts associated with acid and nitrogen deposition have been excluded on the basis of the approach outlined above, as a precaution an initial screen of any other pollutants (such as VOCs and particulates etc) should be undertaken to confirm that the emission rates can be shown to be trivial and inconsequential to the site in question. Appendix B of Annex F (Air emissions) of the Environment Agency H1 guidance⁵⁸ provides environmental standards against which such pollutants can be assessed. Where there is uncertainty, or the emission rates are not considered to be insignificant, the consent should be taken forward for an appropriate assessment.

⁵⁶ Refer to SCAIL: <http://www.scail.ceh.ac.uk/cgi-bin/combustion/input.pl>

⁵⁷ Under the ‘search by habitat or species’ menu is the option to click on a highlighted link which will take the user to this Habitats Table.

⁵⁸ Refer to: <http://www.environment-agency.gov.uk/business/topics/permitting/36414.aspx>

Appendix 5

Example Local Authority proforma for Test of Likely Significance

Habitats and Species Regulations 2010 Screening Matrix - Test of Likely Significance	
Record of Assessment of Likely Significant Effect On A European/International Site (SAC/SPA/Ramsar)	
Part A: The Proposal	
Project/file Ref number	
Date consent issued	
Brief description of Project	
Project centre grid reference:	Eastings: Northings:
Distance to European/International Site	
Site name and status:	
Site EU reference number:	
Site centre grid reference	Eastings: Northings:
List of site interest features:	
	<u>Feature 1 name :</u>
	<u>Feature 2 name :</u>
	etc.... (add additional rows as necessary)
Is the proposal directly connected with or necessary to the management of the site for nature conservation? (If yes give reasons)	
Part B: Project activities: Hazards and Effects	
In reference to the individual elements and <u>consented activities of the project</u> describe any hazards and effects with potential to give rise to impacts on the European Site (either alone or in combination with other plans or projects).	

Part C: Assessment of Significance of Effects	
<p>In reference to the site interest features and their conservation objectives describe any likely direct, indirect or secondary effects from the <u>uncompleted and/or continuing consented activities</u> of the project (either alone or in combination with other plans or projects) likely to give rise to significant effects on the European/Ramsar Site.⁵⁹</p> <p>Note: Consider: 1) any <u>likely</u> changes to the site arising as a result of reduction of habitat area, 2) disturbance to designated species features - including “mobile” species outside site boundaries, 3) habitat or species fragmentation, 4) reduction in species density and 5) changes in key indicators of conservation value.</p> <p><u>Feature 1 name :</u> <u>Effects :</u></p> <p><u>Feature 2 name :</u> <u>Effects :</u></p> <p><u>etc....</u></p>	
<p>Is the project likely to have a significant effect ‘alone’?</p> <p>(note: if ‘yes’ then an in-combination assessment is not required at this time, go straight to ‘list of agencies consulted’ box)</p>	
<p>If there is no likely significant effect ‘alone’, are there other projects or plans that in-combination with the project being assessed could affect the site ? NOTE: provide details</p>	
<p>Is the project likely to have a significant effect ‘in-combination’?</p>	
<p>List of agencies consulted (contact name and telephone/e-mail address)</p> <p>▪</p>	
<p>CCW consultation response comments:</p> <p>CCW Signature:</p>	

⁵⁹ Assess in terms of the level of “risk” (likelihood) and the “magnitude/severity/scale” (significance) of effects including the timing of activities. Include activity to feature pathways (use maps etc.) & additional documents if necessary to describe effects. Take account of mitigation conditions the project was subject to as consented.

Part D: Overall Conclusions

Is the project likely to have a significant effect (alone or in-combination) with other projects or plans? (Yes or No)

IF THE ANSWER IS 'YES' (or there is any uncertainty) THE PROPOSAL IS LIKELY TO HAVE A SIGNIFICANT EFFECT: AN APPROPRIATE ASSESSMENT WILL BE REQUIRED.

Name of Assessing Officer:		Name of Supervising Officer:	
Job Title:		Job Title:	
Signed:	Date:	Signed:	Date:
Manager if applicable		Signed:	Date:
Sources of Data ▪			
Level of Assessment Completed (TOLS/Appropriate Assessment, etc.) ▪			
Where can the results of the Assessment(s) be accessed and viewed ▪			

Part E: Committee Decision

Record of Planning Committee decision of Test of Significance.

Appendix 6

Detailed guidance on in-combination assessments (developed to inform the EA review of consents)

The in combination assessment should be broken down into sections dealing with each of the site's designated interest features. Consideration of impact mechanisms should therefore concentrate on those acting upon attributes of the same feature, as this is where in combination effects will occur. The judgement should be made on the worst case scenario of all relevant permissions which may have an impact being implemented to their authorised limit.

All impacts that affect the achievement of the conservation objectives of a given feature have the potential to act in combination.

The in combination test should be done after any relevant specific screening criteria have been applied.

In combination effects can be additive, synergistic or neutralistic:

<i>Additive effects</i>	Those where the total effect of a number of effects is equal to the sum of the individual effects
<i>Synergistic effects</i>	Those where the effect of the interaction of a number of effects is greater than the sum of the individual effects
<i>Neutralistic effects</i>	Those where the effects counteract each other, thereby reducing the overall effect

In combination effects can be overlapping or discrete:

<i>Overlapping</i>	That is affecting the same spatial area of a feature and/or the same attributes of the feature; e.g. the mixing zones of two separate discharges overlap
<i>Discrete</i>	That is affecting different areas and different attributes of the feature; e.g. two separate discharges affect geographically discrete areas of a habitat within a site. In combination, the total area of habitat affected may be unacceptable in terms of site integrity.

In combination effects may also vary over time.

Practical Guidance

Guidance is offered in two sections. The first outlines the scope of the test and assessment, the second outlines a suggested assessment process.

Scope

For each feature at a site, the in combination assessment must assess the impact of all plans and projects on the site which affect the same feature as the hazards posed by the consent being considered (this must be in the context of prevailing environmental conditions). These influences may include:

- All Local Authority permissions which have the potential to act in combination, including those that are currently being considered for which permission is yet to be granted.
- Outstanding plans, projects or permissions authorised by other competent authorities, including plans and projects currently being considered, but for which permission has not yet been granted, based on the information available as part of the EA review.

The in combination assessment will include:

- An assessment of potential impacts. This will require identification of the potential risks posed by the influences on the site (see **Appendix 2**) and consideration of those risks with respect to the interest feature's sensitivities. If a feature is sensitive to hazards posed by different types of permissions, they could act in combination and require assessment.
- A clearly defined scope for what constitutes 'the sum of all the influences' as laid out above.
- For each interest feature, a risk analysis based on the potential impacts identified in the multifunctional matrix, identifying and quantifying the overall impacts and how the various influences relate to it.

Make sure the assessment reflects the complexity of the site. It may be that the suggested process outlined below is unnecessarily detailed. All decisions must be made using best available information.

Suggested Assessment Process

- 1 Identify likely effects
Identify as far as possible the extent of the effects (mechanisms) of each plan or project (mapping them where possible). Identify all areas where the effects of different plans and projects 'overlap' in spatial terms. Where a feature appears to be affected or at risk of being affected on the basis of this preliminary assessment, proceed to Step 2.
- 2 Identify the features
Consider available information regarding the spatial distribution of the feature (including maps where available, and maps of key habitats within the designated site for mobile species where available⁶⁰). Where features are currently degraded, i.e. not contributing to favourable conservation status, the assessment should bear in mind the potential distribution of the degraded interest features.
- 3 Identify areas of feature/effect overlap
Combine the information from Steps 1 and 2 to identify where the areas of influence coincide with the location of sensitive features (taking account of supporting habitat within the designated site for mobile species). Consider whether the features in those locations are sensitive to the effect mechanisms. Best available information on feature sensitivity to different factors should be used, taking into account the nature of the in combination effect, any temporal issues and the feature attribute affected.
- 4 Assess the magnitude of effect
Assess the magnitude and significance of the likely impact, taking account of both the duration of interaction between the effects and sensitive features and the total area of the feature(s) affected.

After the in-combination aspect of the assessment has been completed, the decision on likely significant effect 'in-combination' should be clearly recorded as part of the audit trail.

⁶⁰ Refer to appropriate core management plan document (or Regulation 35 packages for marine sites)

Appendix 7

Template letter to other competent authorities for requests of plans and projects for in combination-assessment

Recipients name	Our ref:	
Recipient address line 1	Your ref:	Customer reference
Recipient address line 2	here	
Recipient address line 3		
Recipient address line 4	Date:	dd month yyyy
Recipient address line 5		

Dear Sir/Madam

THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010
IN COMBINATION ASSESSMENT FOR REVIEW OF CONSENTS for <EUROPEAN
SITE(s)>:

I am contacting you on behalf of the <Local Authority>. We are currently assessing our existing permissions for plans and projects, as required under Regulation 63 of the Conservation of Habitats and Species Regulations 2010 SI 2010/490 ('Habitats Regulations'). An integral part of this assessment is the consideration of our permissions for plans and projects 'in combination' with plans and projects regulated by other Competent or Relevant Authorities and/or other permissions issued by you for the same plan or project or for other plans or projects.

During our discussions with <Countryside Council for Wales/Environment Agency Wales> it has come to light that you may have certain permissions for plans and projects which may be deemed as 'relevant' under the Habitats Regulations in relation to <European/Ramsar site(s)> which should be considered 'in combination' with our own. The Regulations limit the scope of the in combination test to "other plans or projects". These should include:

- approved but as yet uncompleted plans or projects, e.g. housing developments, construction of roads;
- permitted ongoing activities such as discharge consents, abstraction licences, planning permissions, dredging licences, EPR permits or Transport and Works Act orders; and
- Land use plans including Unitary Development Plans (UDP) Local Development Plans (LDP), waste management plan or other land use plan.
- Other plans and projects (including land-use plans) for which an application has been made and which are currently under consideration but not yet approved by competent authorities.

Note that the above examples do not represent a complete or exhaustive list of potential plans and projects, other plans will need to be considered to cover all potential in-combination effects arising from your consented activities.

Any consideration of the effects of the plan or project currently on the table, in combination with other plans or projects, may involve consideration of its effects in

combination with any of the above notwithstanding that they may have previously been considered 'not likely to have a significant effect', either alone or in combination.

Note: in some circumstances, it may also be appropriate to include plans and projects not yet submitted, but for which sufficient detail exists on which to make judgements on their impact on the <European/Ramsar sites>. For example, an Environmental Impact Assessment may be being carried out and consulted on by a developer prior to an application being submitted.

As all competent/relevant authorities must demonstrate that they have 'had regard' to the advice provided by the statutory nature conservation body, we require further details from you regarding permissions for plan(s) and/or project(s) associated with <European/Ramsar sites >. This will inform our judgement as to whether those plans or projects listed should form part of our in-combination assessment. In addition we require information concerning any other plan(s) or projects(s) which you judge may be relevant to our in-combination assessment.

In order to assess the effects of your permissions for (the) plan(s) and project(s) in combination with our own, we will need you to provide us with certain data. This should include details of permit number, permit type, permit conditions, permit location with National Grid Reference and any relevant data relating to the activity which is being permitted. For example, if the permission is for releases to air, we should be provided with details of what is permitted by your organisation and any quality assured monitoring data. We would request that data provided not be in a raw state. We would also require details of any applications which are currently being considered.

On completion of the assessment, we will provide you with details of the outcome which can be fed into your own review of permissions for existing plans and projects. It must be emphasised that by making this assessment we will only be concerned with the effects of our own permissions for plans and projects 'in combination' with yours, this will not replace any obligations your organisation has as a Competent or Relevant Authority under the Habitats Regulations.

Please provide this information within 28 days. If we do not hear from you by <today + 28days> we will assume that you have no 'relevant' permissions for plans and projects for us to assess 'in combination'.

If you have any queries regarding this request, please contact me on the telephone number below. If you require further general information about the Habitats Regulations, please contact your local Countryside Council for Wales office, or visit their website^{61 62}

Yours faithfully

<name>

Direct dial
Direct fax
Direct e-mail

⁶¹ CCW Environmental Assessment pages: includes RoC specific pages including LA RoC Guidance for Local Authorities in Wales. <http://www.ccw.gov.uk/landscape--wildlife/managing-land-and-sea/environmental-assessment.aspx>

⁶² CCW Natura 2000/Ramsar site Index to Core Management Plans and unitised site maps : <http://www.ccw.gov.uk/landscape--wildlife/protecting-our-landscape/special-sites-project.aspx>

Appendix 8

Further guidance on the concept of site integrity

There is limited guidance on the concept of site integrity; Natural England has however produced some more specific guidance on site integrity which has been largely reproduced below⁶³.

When considering integrity it is important to refer back to the Habitats Directive⁶⁴ itself, since all terms in the Directive should be defined in the context of delivering Favourable Conservation Status (FCS). Article 1 provides a definition of FCS.

For habitats,

- their range and area must be stable or increasing,
- the species structure and functions necessary for long term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the status of the typical species is considered to be favourable.

For species,

- the population dynamics data on species indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats,
- the natural range is stable and likely to continue to be, and there is and will probably continue to be a sufficiently large habitat to maintain its population on a long term basis.

Article 1b then goes on to describe '*natural habitats*' as "terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural". A definition of site integrity should reflect that each site should function so as to contribute to FCS across the Natura 2000 network.

Integrity is considered at a site level, and the most commonly used definition is found in PPG9 where it is defined as:

"The coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or levels of populations of the species for which it was classified"

EC guidance builds on this and makes the following further points about site integrity; it states that the focus of site integrity is on the specific site, thus it is not allowed to destroy a site or part of a site on the basis that the conservation status of the habitat type and species it hosts will anyway remain favourable within the territory of the Member State. It goes on to provide further guidance which states that a site can be described as having a high degree of integrity where:

- the inherent potential for meeting its conservation objectives are realised,
- the capacity for self-repair and self-renewal under dynamic conditions is maintained and,
- a minimum of external management of the site is required.

Therefore, when looking at 'the integrity of the site', it is important to take into account a range of factors, including the possibility of effects manifesting themselves in the short, medium and long-term. In a dynamic context 'integrity' can be considered as a site having a sense of resilience and ability to evolve in ways that are favourable to conservation.

⁶³ Natural England European Sites Guidance: Guidance to decisions on site integrity: A framework for provision of advice to competent authorities. C Chapman & C Philp, May 2004

⁶⁴ The Habitats Directive, European Commission Website:
http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm

Joint EA/EN/CCW guidance on application of the Habitats Directive refers to an adverse effect on integrity as “likely to be one that prevents the site from maintaining at least the same contribution to favourable conservation status (FCS) as it did at the time of designation”. This statement has caused confusion with regards the extent to which a site can be restored beyond its condition at the time of its designation/classification. However the key words within the statement are 'at least' which provide the scope, where appropriate, for restoration where the site was not considered to be in a condition, at the time of designation, which enables it to contribute to the FCS of the habitat or species for which it has been classified. This interpretation is supported throughout the Directive which repeatedly refers to maintenance *or restoration*. If the Directive was written with the intention of simply maintaining sites in their condition at the time of selection or classification, on the assumption that this would be sufficient to enable favourable conservation status to be achieved, then the word 'restoration' would not have been necessary.

What does it mean to conclude no adverse effect on site integrity?

A simple, pragmatic checklist for assessing likely effect on integrity is provided below. This has been derived from the provisions of the Habitats Directive as outlined above, and is supported by existing UK case studies. The checklist below should be used to identify if there is a potential mechanism through which an adverse effect on integrity may occur. Further site-specific factors would then need to be considered, in particular in the case of dynamic coastal sites.

Has the appropriate assessment shown:

1. That the area of annex I habitats (or composite features) will not be reduced?
 2. That there will be no direct effect on the population of the species for which the site was designated or classified?
 3. That there will be no indirect effects on the populations of species for which the site was designated or classified due to loss or degradation of their habitat (quantity/quality)?
 4. That there will be no changes to the composition of the habitats for which the site was designated (eg reduction in species structure, abundance or diversity that comprises the habitat over time)?
 5. That there will be no interruption or degradation of the physical, chemical or biological processes that support habitats and species for which the site was designated or classified?
-

If the answer to *all* of these questions is 'Yes' then it is reasonable to conclude that there is not an adverse effect on integrity. If the answer is 'No' to *one or more* of the questions then further site-specific factors will need to be considered in order to reach a decision. The theoretically derived checklist above is supported by the consideration of actual case studies, as outlined in **Table 8** below, and the definition of integrity used in each case.

Table 8: Supporting Case Studies for derived integrity checklist

Checklist criteria	Supporting Case Studies
1. The area of annex I habitats (or composite features) will not be reduced	Harwich Harbour Adverse effect on integrity was “the direct loss of inter-tidal habitats as result of reduction in tidal range and the accelerated rate of erosion”.
2. No direct effect on the population of Annex II species (on or across the site)	Largie Estate, Tayinloan Definition of adverse effect on integrity. The integrity of the site was related to the “sustainability of the local population of Greenland White fronted Geese”.
3. No indirect effects on the populations of Annex II species due to loss of their habitat (quantity/quality) in the long term	Barksore Marshes The inspector declared that the permanent loss of 16.5% of grazing marsh in SPA “was not an insignificant proportion: and [was] aware of no policy guidance to suggest that even smaller losses (say 5% or 1%) of a valued habitat type within an SPA should be regarded as being acceptable. Habitats can be as much affected by a number of small losses as by one major reduction.”
4. No changes to the composition of the habitats. (eg reduction in species structure, abundance or diversity that comprises the habitat over time.)	Claypit Woods In this case the “use of woods for combat games would have a significant effect on the achievement of the conservation objectives implied by its designation as a cSAC”. Since the damage caused by trampling might harm long-term future of the woodland by impeding natural regeneration.
5. No interruption or degradation of the physical, chemical or biological processes that support habitats and species for which the site was designated.	Manor Farm Dilham In this case the “depression in the chalk piezometric levels would reduce the supply of basic oligotrophic water to the fen and therefore the extent of that supply’s influence. Abstraction would be harmful to the ‘critical functioning of the alkaline fen, and as such would have an adverse effect on integrity.” Loch Poll - SPA designated for black throated divers which need oligotrophic conditions. Effect on integrity was determined as “the change in nutrient status from oligotrophic to mesotrophic.”

The key further site-specific factors that need to be considered when forming judgements on integrity in individual cases are listed below, and each is then considered in more detail in subsequent sections:

- Scale of impact and integrity
- Duration of impact and recovery/reversibility
- Long-term impacts and biological-lag
- Conflicting feature requirements
- Off-site impacts
- Dynamic sites

Scale of impact and integrity

The scale of any impact is an important factor in reaching a conclusion over whether it is possible to ascertain no adverse effect on site integrity. It is not possible to provide specific criteria on scale but there are certain key factors which should be taken into account which are outlined below:

- Is the feature itself directly affected? Any direct loss of a designated feature would serve to reduce either the area of a key habitat or the population of a key species. When considering loss of designated features it is necessary to distinguish between permanent loss of a feature (eg: through construction of a building) and reversible loss of a feature (eg: through invasion of scrub). The issue of scale is of particular relevance in cases of reversible loss (because in the case of permanent loss, it is the irreversibility that is crucial). For example, we may be able to conclude no adverse effect on integrity in the case of a small temporary loss of a feature whilst being unable to conclude no adverse effect on integrity in the case of an equivalent permanent loss of that feature.
- If the feature is indirectly affected, would the scale of the impact be sufficient to prevent the site from sustaining the habitat, complex of habitats and/or levels of populations of the species for which it was classified? If so then it would not be possible to demonstrate no adverse effect on site integrity.
- The location of the impact and the rarity of features affected is also an influencing factor with regards scale. For example, if the small area impacted contains key/pristine habitat (ie: limestone pavement which was only present in isolated patches elsewhere, or an important roost site within an SPA), then the scale may be more significant than for a similar impact in a less ecologically rich part of the site. It is useful therefore when considering scale to take into account the proportion of a feature directly or indirectly affected rather than the proportion of a site.

Duration of impact and recovery/reversibility

The duration of any impact(s) and the potential for recovery/reversibility are important factors to consider when determining whether it is possible to demonstrate no adverse effect on integrity. The following key points need to be worked through:

- What is the anticipated duration of any potential impact (as opposed to the duration of the plan or project)? The issue of duration should also be considered with reference to the issue of scale. For example a conclusion of no adverse effect on integrity may be able to be reached in the case of a small-scale effect from which the site/feature can quickly recover.
- Is recovery possible and if so would it be natural recovery or would management be required?
- What is the timescale of any anticipated recovery (for example vegetated shingle habitats take thousands of years to form and recovery times would be of this magnitude, other habitats may be expected to recover within a year)? The longer the recovery time the more difficult it will be to demonstrate no adverse effect on integrity.
- Is there any uncertainty regarding whether recovery will take place?

Long-term impacts and biological-lag

There are mechanisms for impact which may not manifest themselves through evidence of damage on site in the short term. Examples include impacts associated with atmospheric deposition, exceedance of water quality standards and changes to the high-flow regime in rivers. Impacts of this type are often difficult to attribute directly to effects on the features; however they are linked to site integrity. Several of the indicators on the integrity checklist can be linked to long-term impact mechanisms.

Decisions relating to integrity in such cases need to be based upon best available information and professional judgement. Certain environmental standards (eg: critical loads and environmental quality standards) are set for ecosystem protection. Unless there are specific reasons why the standard is not appropriate to the site/feature in question and assuming the issue of scale has been considered, then exceedence of any such standard would represent a threat to the integrity of the site. It would not generally be possible to ascertain no adverse effect on site integrity in such circumstances.

Note of Caution:

With certain environmental standards, such as critical loads, we must have sufficient confidence that the level is actually exceeded. Any assumptions or errors in modelling approaches need to be refined as far as possible (and ground-truthed where appropriate) before a conclusion is recorded

Conflicting feature requirements

There are circumstances where a given environmental condition may be beneficial to one feature whilst being detrimental to another. For example managing degraded lowland raised mire whilst maintaining scrub & trees for nightjar. The key step in these situations is to consider whether the activity is directly connected with or necessary to the management of the site? If so then the Habitats Regulations apply no further and the issue of integrity is not relevant. If however a plan or project is not necessary for the management of a site, but happens to have an incidental benefit for a feature, this should not be considered as mitigation for any negative effects on another feature. Under such circumstances any mitigation would need to offset the damage to the feature affected.

Off-site Impacts

There is a difference between an off-site impact which affects a population/habitat whilst it is on the site (eg: discharges into a watercourse upstream of the site) and an off-site impact which affects a mobile species whilst it is off site (eg: impacts on migrating salmon passing through an estuary to return to their designated river). This section considers the latter and is therefore limited to consideration of designated mobile species such as birds and migratory fish.

The impacts on the mobile designated features of a site should be considered not only within the site boundary but also off site. **Any** impact to the designated species (or habitat upon which they are dependent) which causes a significant decline in the size, distribution, structure or function of the population **within** the designated site, should be considered to have an adverse effect on the integrity of the site. However, a clear link needs to be made between the population being impacted and that of the population within the designated site.

Dynamic Sites

Coastal sites are more dynamic than terrestrial sites and are often subject to relatively rapid changes in both their physical characteristics and their wildlife interest. There are circumstances where plans or projects that *are not* 'directly connected with or necessary for the management of the site', but are either compatible with or supportive of a site's structure and function, can lead to changes in the distribution and abundance of those populations and habitats (or changes in physical and/or biological processes) for which the site was notified. In such circumstances discretion needs to be exercised in arriving at any judgement on adverse effect on integrity.

Appendix 9

Changes from previous versions:

This version (1.5) includes the following changes from version 1.3 Aug 30 2011 (version 1.4 was not published):

- 1 General editing and minor changes to the text to reflect the 2012 Amendment Regulations
- 2 Section 2.1, replacement of the 5th and 6th paragraphs and text in the box to improve clarity of the scope of consents to be considered for review, following feedback from users of the guidance
- 3 Minor consequential amendments to sections 2.4.2, 2.4.3 and 2.4.4
- 4 Amendments to include references to Local Development Orders in section 2
- 5 Minor amendment to projects for in combination assessment to reflect the completion of the EAW Review of Consents process

22/09/12