



DRAFT GUIDANCE FOR PLAN MAKING AUTHORITIES IN WALES

THE APPRAISAL OF PLANS UNDER THE HABITATS DIRECTIVE

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FOR THE

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1. INTRODUCTION TO APPRAISAL AND THIS GUIDANCE

Purpose and scope of this Guidance

- 1.1 This guidance is about the appraisal of plans under the provisions of Article 6.3 and 6.4 of the Habitats Directive¹. These sub-Articles of the Directive are now transposed into Welsh law by the Conservation of Habitats and Species Regulations 2010. The 2010 Regulations are a consolidation of the *Conservation (Natural Habitats &c) Regulations* 1994, as amended which were amended in 2007² and again in 2009³, to implement a judgment of the European Court of Justice⁴. Land use plans are defined in regulation 107 and Regulation 106 refers to National Policy Statements, thus the plans required to be appraised by these regulations are:
- The Wales Spatial Plan;
 - National Policy Statements;
 - local development plans adopted or approved under the 2004 Act⁵; and
 - unitary development plans adopted or approved under the 1990 Act⁶, in accordance with the transitional arrangements⁷.
- 1.2 Other plans may also need to be assessed for their effects on European sites under the provision of Regulations 60-61 as amended by the 2012 Amendment Regulations⁸. Furthermore, all competent authorities in Wales must exercise their functions in such a way as to have regard to the requirements of the Habitats Directive⁹. Other plans could have a significant effect on European sites. The appraisal of other plans is especially important where they have a considerable influence on and / or form the policy framework determining the outcome of projects, such as Local Transport Plans, Water Resource Management Plans or Waste Plans. The most effective way of complying with this duty is likely to be to appraise the potential effects of these other plans in accordance with the procedures set out either in regulations 98, 99, 100, 102, 103, 104, and 105, or, if the procedures in these Regulations do not fit the plan-making process well, then regulations 61, 62, 65, 66 and 67. Either would be compliant, and the latter regulations apply to almost all plans and projects. If in doubt as to which regulations should be followed, the plan-making body may refer directly to sub-Articles 6.3 and 6.4 of the Directive itself.
- 1.3 This guidance is designed to help all plan-making authorities (PMAs) comply with the requirements of the Directive, irrespective of which regulations may apply to the appraisals.

¹ Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora

² By The Conservation (Natural Habitats &c) (Amendment) (England and Wales) Regulations 2007

³ By The Conservation (Natural Habitats &c) (Amendment No 2) Regulations 2009

⁴ ECJ case C – 6/04, *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, 20th October 2005

⁵ Planning and Compulsory Purchase Act 2004, Part 6

⁶ Town and Country Planning Act 1990, Part 2

⁷ Section 122 of the Planning and Compulsory Purchase Act 2004, and Article 4 of the Planning and Compulsory Purchase Act 2004 (Commencement No 3 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005

⁸ Regulations 60 and 61 were amended by regulations 19 and 20 of the Conservation of Habitats and Species (Amendment) Regulations 2012

⁹ Regulation 9(5) The Conservation of Habitats and Species Regulations 2010

- 1.4 The Welsh Government has produced guidance on the appraisal of development plans, in Annex 6 of Technical Advice Note (TAN) 5 *Nature Conservation and Planning*¹⁰. In order to ensure that this guidance is consistent with that in TAN 5, and to provide plan making authorities with a single reference document when appraising their plans, this guidance incorporates the advice in TAN 5. Wherever the advice in TAN 5 is relevant to this guidance, the appropriate paragraph number in TAN 5 Annex 6 is shown at the end of the paragraph, for example thus: [2.16], so that readers may quickly cross reference to the TAN 5 advice. However, because this guidance is extended to cover all relevant plans in Wales, and to provide more detailed guidance on practical methodologies, not all paragraphs will have a TAN 5 reference. If there is any inconsistency between this guidance and the advice in TAN 5 the latter should prevail.
- 1.5 It is emphasised that this guidance is about the appraisal of plans. With the agreement of the Welsh Government, CCW has published separate guidance about the assessment of projects, under regulations 61, 62 and 66 of the Regulations¹¹

Overview of the Regulations

- 1.6 One of the principal requirements of the amended Regulations is that before a Unitary Development Plan is adopted by a Planning Authority, or a Local Development Plan is adopted under Part 6 of the 2004 Act¹², the authority must comply with the requirements of regulations 102 – 105. The essential requirement of these regulations is to assess the potential effects of the plan on European Sites in the UK. Government will follow similar procedures in respect of the Wales Spatial Plan and National Policy Statements [1.7].
- 1.7 If a plan is likely to have a significant effect on one or more European sites either alone or in combination with other plans or projects, it must be subject to an appropriate assessment by the plan making authority, in accordance with the requirements of Article 6(3) of the Habitats Directive and regulation 102 of the 2010 Habitats Regulations [1.9].
- 1.8 As part of the Habitats Regulations Appraisal, the plan making authority may need to amend the plan to eliminate or reduce potentially damaging effects on European sites; and/or consider alternative solutions that would avoid any such effects or, failing that, have a lesser effect on the relevant site(s) [1.10].
- 1.9 Subject to the considerations outlined in paragraphs 1.11 to 1.13 below, the plan making authority shall adopt, or otherwise give effect to, the plan only after having ascertained that it will not adversely affect the integrity of a European site.
- 1.10 If there are no alternative solutions and if, in exceptional circumstances, it is proposed that a plan be adopted despite the fact that it may adversely affect the integrity of a European site, the Habitats Regulations Appraisal will need to address and explain the imperative reasons of overriding public interest which the plan making authority considers to be sufficient to outweigh the potentially adverse effects on the European site(s) [1.11].

¹⁰ Welsh Assembly Government, September 2009, TAN 5 Nature Conservation and Planning

¹¹ Tyldesley, D. (2012) *Assessing projects under the Habitats Directive: guidance for competent authorities*, Countryside Council for Wales, Bangor

¹² The Planning and Compulsory Purchase Act 2004, Part 6

- 1.11 The Welsh Assembly Government expects that plans will only proceed to adoption on the basis of imperative reasons of overriding public interest in the most exceptional circumstances. Plan making authorities should, if necessary, adapt their plans during the course of the Habitats Regulations Appraisal to ensure that they will not adversely affect the integrity of any European sites. If a plan is to be adopted on the basis of imperative reasons of overriding public interest, it will be necessary for the plan making authority to develop compensatory measures to ensure that the overall coherence of the network of European sites is protected [1.12].
- 1.12 Furthermore, plan making authorities should note they will not be able to proceed to adoption on the basis of imperative reasons of overriding public interest where the appropriate assessment identifies that their plans may incur the risk of seriously compromising the ecological characteristics of a candidate SAC (cSAC)¹³. Once a cSAC has been submitted to the European Commission under Article 4(1) of the Habitats Directive, the plan making authority must refrain from adopting, or otherwise giving effect to, any plan which (alone or in combination with other plans or projects) could seriously compromise the cSAC's ecological characteristics, even if the authority considers that there are no alternative solutions and imperative reasons of overriding public interest for doing so, until the Commission has decided whether to adopt the cSAC as a Site of Community Importance under the Habitats Directive. It follows that proposed SACs (pSACs) should similarly be protected from the commencement of consultations about their designation by CCW [1.13].
- 1.13 Authorities should also adopt a similar position in relation to potential SPAs (pSPAs). Article 6(3) and (4) of the Habitats Directive (including the imperative reasons of overriding public interest justification) do not apply to such sites until they have been classified as full SPAs¹⁴. Until that time, plan making authorities must not adopt, or otherwise give effect to, any plans that (alone or in combination with other plans or projects) could cause pollution or deterioration of the pSPA or any disturbance affecting the birds for which the pSPA has been proposed, insofar as these matters could be significant with regard to the objectives of Article 4 of the Birds Directive [1.14].
- 1.14 Plan making authorities will find it useful to also refer to the other published guidance and a list of guidance at the time of writing this document is provided at Appendix A [1.26 and 1.27].

Terminology used

- 'Habitats Regulations Appraisal'
- 1.15 The process of assessing the effects of a plan on European sites is often referred to as an "appropriate assessment". However, in practice this has caused confusion, because it is the same term as that used for a particular step in the process. Consequently, in this guidance, the whole process is referred to as the 'Habitats Regulations Appraisal', to clearly distinguish it from the step in Regulation 102(1) or 61(1) referred to as an 'appropriate assessment' [1.7].
- 'European sites'
- 1.16 European Sites in this context are Special Protection Areas (SPA), classified under the EC Birds Directive 1979/2009, and Special Areas of Conservation (SAC),

¹³ See the judgment of the European Court of Justice in Case C-244/05 *Bund Naturschutz in Bayern eV and others v Freistaat Bayern*.

¹⁴ See the judgment of the European Court of Justice in Case C-374-98 *Commission v French Republic* (known as the "Basses Corbieres" case).

candidate Special Areas of Conservation (cSAC) designated by the Welsh Ministers on the advice of CCW in Wales and in Welsh territorial waters under the EC Habitats Directive 1992. The parts of SPAs, SACs and cSACs which lie below Highest Astronomic Tide are also referred to as 'European Marine Sites'. Beyond Welsh territorial waters European offshore Marine Sites (EOMS) are designated by the UK Government, on the advice of the JNCC.

- 1.17 It is Government policy, set out in paragraph 5.3.10 of Planning Policy Wales, to treat proposed SPA (pSPAs) and listed Ramsar sites as if they are fully designated European sites. So effects on these sites should also be assessed. Plan-making authorities should also bear in mind the advice in respect of cSAC and pSPA set out in paragraphs 1.12 and 1.13 above [1.8].
- 1.18 For ease of reading this guidance all SPA, pSPA, SAC, cSAC, pSAC, EOMS and Ramsar sites to which the procedures for appraisal apply, either as a matter of law or policy, are referred to as 'European sites'.
- 'Adoption'
- 1.19 For ease of reading, the decision by a plan making authority to adopt, or otherwise give effect to, a plan is referred to hereafter as 'adoption'. The Habitats Regulations Appraisal must in all cases be completed before that decision is made.

When the Appraisal should be started

- 1.20 The Regulations apply irrespective of when work started on the plan. The appraisal of a plan under the Habitats Regulations is a process that should be undertaken during the preparation of the plan, preferably from the earliest stages, so that the appraisal influences the evolution of the plan [1.7 and 1.16].
- 1.21 However, in cases where work has already begun, the appraisal should be introduced as soon as practicable and, in any event, completed before adoption of the final plan.
- 1.22 For Local Development Plans the Habitats Regulations Appraisal should be programmed to fit in with existing plan-making procedures, including the SEA, wherever possible. In particular, Habitats Regulations Appraisal documentation should be formalised at both the pre-deposit consultation and deposit stages for Local Development Plans and where possible the deposit stage for UDPs. Where a plan making authority chooses to consult the public about the Habitats Regulations Appraisal under the Habitats Regulations provisions, the consultation should be undertaken during a statutory consultation period, where applicable. **However, the recording of Habitats Regulations Appraisal consultation responses should be clearly identified and kept distinct from responses on the plan or the sustainability appraisal or environmental reports [1.18].**

2. PREPARING FOR THE APPRAISAL AND ADVICE ON METHODOLOGY

Deciding how to undertake the appraisal

- 2.1 Within the framework set out here, it is necessary, on a plan by plan basis, to decide how best to carry out the Habitats Regulations Appraisal, what information and analysis may be required and what assumptions and predictions will need to be made. The method and level of detail of the Habitats Regulations Appraisal will affect the time required to undertake the appraisal and will vary according to:
- a) the scale and geographic area of the plan;
 - b) the stage it has reached;
 - c) the nature of its policies and proposals;
 - d) the sites it may affect and how it may affect them;
 - e) the range of plans and projects which may need to be considered in combination with the plan; and
 - f) whether or not affected sites are within or outside the plan area [1.19].
- 2.2 In most cases, it will not be possible to subject a plan to the same level of assessment under regulation 102 or regulation 61 as can be applied to a project under regulation 61 of the Habitats Regulations. There will not normally be the same level of information about:
- a) the changes that may be predicted as a result of implementing a policy or proposal in a plan;
 - b) what the effects of the changes may be on the site(s) affected;
 - c) how the effects may be mitigated; or
 - d) if necessary, how the effects may be compensated for [1.20].
- 2.3 Plans will vary in their content and geographic extent and therefore their propensity to affect European sites. The sites affected may be of a similar kind, for example, uplands, estuaries or rivers or may be of different kinds. This variable, and usually broader, level of Habitats Regulations Appraisal is acknowledged by the EC. It was explicitly addressed, for example, in the Advocate General's opinion leading up to the European Court of Justice's judgment in *Commission v UK*¹⁵. What is expected is as rigorous an appraisal as can reasonably be undertaken in the context of the plan in question, adopting the precautionary approach embedded in the Directive and Regulations, so as to enable the tests set out in Article 6.3 and 6.4 of the Habitats Directive to be answered [1.21].
- 2.4 CCW will advise on the appropriate method, scale and level of detail and other aspects of the appraisal on a case-by-case basis. However, it is the plan making authority's responsibility to ensure that the appraisal is appropriate and compliant.
- 2.5 The complexity of Habitats Regulations Appraisal will vary considerably across Wales. There may be plans that have only a single European site to consider; others will have the potential to affect many such sites, both within and outside the plan area. Multiple site assessments will be needed where the plan to be assessed is extensive in geographic terms, or the density or coverage of European sites is high such that, in either case, the plan could affect several such sites. Multiple site assessments may involve very complex site interactions and the plan making authority, CCW and/or Natural England may need to give special consideration to

¹⁵ Case C-6/04, *Commission v United Kingdom*.

Habitats Regulations Appraisal programming. But whether a multiple or single site assessment is to be undertaken, the essential process will be the same [1.22].

- 2.6 The method described in this guidance checks all the elements of a plan for the likelihood of significant effects, either alone or in combination with other plans or projects, including the strategy, policies and proposals. This ensures a thorough and comprehensive appraisal. But it will also be necessary to consider the effects of the plan as a whole, in case the sum of the effects of the parts of the plan may be greater than the addition of those arising from the individual elements.

Integration with plan making procedures SEA and Sustainability Appraisal

- 2.7 The Habitats Regulations Appraisal should be meshed with existing plan-making procedures wherever possible. Appendix B outlines the integration of the plan-making, sustainability appraisal, strategic environmental assessment and Habitats Regulations Appraisal processes. Local development plans and the final stages of unitary development plans, under the transitional arrangements, are already subject to Sustainability Appraisal under the 2004 Act¹⁶ and strategic environmental assessment (SEA) under the SEA Regulations¹⁷.
- 2.8 The Sustainability Appraisal and SEA of plans are also iterative processes and must, similarly, be carried out at each stage of the plan preparation process. However, Habitats Regulations Appraisal should not be incorporated into the Sustainability Appraisal or SEA processes. It should be run in parallel with these processes, utilising common stages such as environmental information gathering. If the Habitats Regulations Appraisal is integrated with Sustainability Appraisal or SEA Environment Reports by the local planning authority, the elements forming the Habitats Regulations Appraisal must be kept clearly distinguishable [1.5 and 1.6].

The procedural requirements of the Regulations

- 2.9 **Figure 1** below summarises the requirements of regulation 102 and incorporates advice in this guidance about confirming appraisal conclusions with CCW (or the JNCC if a European Offshore Marine Site would be affected). Readers may find it helpful to take a copy of Figure 1 and place it at the side of this guidance [2.2].
- 2.10 Whenever a Habitats Regulations Appraisal is undertaken, it is important that it is clearly documented in the correct terms. It is helpful to use the terminology of Part IVA of the Habitats Regulations to show that the correct tests have been applied. Where the Habitats Regulations Appraisal is included in the Environmental Report / Sustainability Appraisal documents, it should be clearly signposted so that it is apparent which parts are intended to be compliant with the Habitats Regulations. In particular, it will need to be clearly stated whether the plan, alone or in combination with other plans or projects, would, or would not, be likely to have a significant effect on a European site, and where a significant effect is likely, whether it has been ascertained that the plan will not have an adverse effect on the integrity of a European site [1.24].

¹⁶ Section 62(6) of the Planning and Compulsory Purchase Act 2004

¹⁷ The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004

- 2.11 Where a site in question is a cSAC or pSPA, there will need to be a clear statement as to whether the plan (alone or in combination with other plans or projects):
- i. could seriously compromise the ecological characteristics of any cSAC, or
 - ii. could cause significant pollution or deterioration of any pSPA, or significant disturbance of the bird species for which any pSPA has been proposed [1.25].
- 2.12 In practice, the complexity and timing of appraisals of UDPs has meant that the Habitats Regulations Appraisal has been undertaken at a late stage and separately from the Sustainability Appraisal Report. In time, the Habitats Regulations Appraisal will more comfortably fit plan making processes and will influence the earliest stages, including, for example, the analysis of options in Local Development Plans.
- 2.13 Public consultation is a statutory requirement of SEA procedures, but a discretionary requirement in respect of the Habitats Regulations Appraisal. If a plan making authority chooses to consult the public under the provisions of regulation 102(3), the consultation will need to be undertaken during the normal consultation period on the plan, if a further consultation stage is to be avoided. The consultation implications for the Habitats Regulations Appraisal need not be onerous for a plan if the Habitats Regulations Appraisal record is available for publication at submission stage, see further section 7 below.

Consultation with CCW

- 2.14 There is a key opportunity to consult CCW, and the Environment Agency Wales where relevant, and in future the single environmental body for Wales, Natural Resources Wales, about the Habitats Regulations Appraisal when consulting these bodies in respect of the scope of the sustainability appraisal or SEA.
- 2.15 If the European sites potentially affected are cross-border, that is, partly in England, CCW will co-ordinate responses from Natural England. Where a site that is potentially affected is wholly within England, the plan making authority should contact Natural England directly [1.23].
- 2.16 Many plan making authorities in England have carried out a targeted consultation engaging Natural England (the equivalent organisation to CCW in England), the Environment Agency and voluntary nature conservation bodies early, and as necessary throughout the process, rather than a single, wider public consultation. This improves the quality of the appraisal and helps to achieve wider consensus about its outcomes.

The proposals and changes to be subject to appraisal

- 2.17 It is necessary to identify the elements of the plan that will be subject to appraisal. These will normally comprise all options which are assessed under the strategic environmental assessment / sustainability appraisal process, the overall strategy, the policies and specific proposals.
- 2.18 Appraisal should be confined to the changes proposed by the plan making authority in the subject plan. It is the difference which the plan and its implementation will make, compared to a scenario where the plan is not adopted, that is key to the appraisal process. Thus the appraisal will be concentrating on changes the plan seeks to implement, or the way that the plan would perpetuate, or make more likely, existing trends or proposals.

- 2.19 The plan may contain reference to specific proposals for major projects which are part of national infrastructure and promoted by national government, or subject to consent directly by Welsh Ministers or the Secretary of State. These should be screened out. They will include, but may not be limited to: trunk road and motorway projects; some new bridges; major transmission lines; gas and oil pipelines and certain power stations and electricity transmission lines. It would be inappropriate for sub-national level plans to attempt to appraise the effects of such projects and to do so would also result in unnecessary duplication.
- 2.20 A useful ‘test’ as to whether a project should be screened out at an early stage is to ask the question *“Is the project provided for / proposed as part of another plan, or by another plan making authority and would it be likely to proceed whether or not the subject plan is adopted.”* If the answer is “yes”, it will normally be appropriate to screen the project out of the appraisal.
- 2.21 However, infrastructure projects which are proposed by the plan making authority itself, which could include other roads, bridges, ferries etc, should not be screened out at this stage, because they are proposals being brought forward or promoted through the local plan or transport plan being appraised.
- 2.22 Other infrastructure projects, which are an inevitable consequence of development provided for by the plan, and which would not otherwise be brought forward, should be assessed. For example, whether explicitly referred to in the plan or not, the implications of necessary water supply and waste, including waste water, disposal and road infrastructure should be assessed, where these could potentially affect European sites and they are proposed as part of, or an inevitable consequence of, the plan being appraised. These kinds of infrastructure projects should not be screened out at this stage unless they have already been, or will be, subject to Habitats Regulations Appraisal under procedures relating to another plan, such as a Flood Management Plan.
- 2.23 However, when it is necessary to consider the effects of the subject plan in combination with the effects of other plans or projects, the residual effects of these other infrastructure projects which have otherwise been screened out, may well be relevant and may need to be brought back into consideration. In this way all relevant combinations will be checked for significant effects.
- 2.24 The “candidate site” process, recommended in the Local Development Plan Manual (paragraph 6.5.1), should provide sufficient information about the potential for particular candidate development sites to impact on internationally designated sites. Strategic and non-strategic development plan sites within and near such sites’ boundaries should be considered as part of the Local Development Plan Habitats Regulations Appraisal as soon as possible in the plan making process. The responsibility for undertaking Habitats Regulations Appraisal rests with local planning authorities [2.10].
- 2.25 Under the Local Development Plan system landowners, developers and residents will have a greater opportunity to engage earlier in the development plan preparation process and consequently alternative sites are likely to be put forward at an earlier stage in that process. Local planning authorities should therefore have adequate time to carry out a Habitats Regulations Appraisal in relation to any proposed significant changes to the development plan which result from such representations. Far fewer alternative sites should be put forward at the deposit stage under the Local Development Plan system. Where this occurs, however, and where local planning

authorities are minded to include such alternative sites in their development plans, they will need to carry out a further Habitats Regulations Appraisal if the inclusion of those sites would cause their plans to change significantly. Although the responsibility for carrying out the further Habitats Regulations Appraisal will rest with local planning authorities, the third parties who are promoting the alternative sites at the deposit stage will need to provide sufficient information to enable the local planning authorities to carry out this process. Otherwise, the local planning authorities will not be able to include the sites in their Local Development Plans when they submit their plans to the Welsh Ministers [2.10].

Potential effects of the plan on European sites

- 2.26 The production of the plan itself does not adversely affect any site. Neither does the plan authorise any plan or project that could have such an effect. All projects that may flow from the provisions of a plan will require planning permission, or other form of authorisation, or they will be subject to a decision by a competent authority to undertake the project, even if it did not need consent. Each will, therefore, be subject to the requirements of regulation 61 of the 2010 Habitats Regulations.
- 2.27 Guidance from the EC¹⁸ and the judgment of the European Court of Justice in *EC v the UK*, case C – 6/04 determined that it was the influence of British land use plans over the decision on projects that gave then the potential to have a significant effect on a European site, despite the implementation of the plans being dependent on projects which would require further permissions. In a critical part of her Opinion in that case, Advocate General Kokott said (paragraph 44) “*that is so if - as laid down in UK law for the plans at issue here - subsequent decisions are in principle to be in accordance with the plans*”.
- 2.28 Furthermore, the Advocate General advised (again in paragraph 44) that the objectives of the Directive could be jeopardised if the requirements for protecting a site prevailed over a plan’s policies and proposals only at the last moment, as an exception to the normal course of implementation. These points were implicitly adopted in the judgment of the Court.
- 2.29 On the other hand, the EC has advised that plans which are no more than general policy statements need not be subject to Article 6 of the Directive¹⁹ this is discussed further below.
- 2.30 An analysis of the judgment of the European Court of Justice and the underpinning opinion of the Advocate General in this case, and experience of Habitats Regulations Appraisal in practice, shows that a plan could have a significant effect on a European site for one or more of the following reasons, which are not mutually exclusive.
- Types of change*
- 2.31 Theoretically, the plan may contain a type of change that could adversely affect a European site, irrespective of how much of the change there would be or where it may be located. However, in practice, it is more likely that it is the amount or location of change, rather than what the change may be *per se*, that is likely to cause significant effects.

¹⁸ EC, 2000, *Managing Natura 2000 Sites: The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*, April 2000 as revised January 2007

¹⁹ EC, 2000, *Managing Natura 2000 Sites: The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*, April 2000 as revised January 2007 at 4.3.2

Magnitude of change

- 2.32 The plan may contain proposals for a quantity of a kind of change that would be likely to have a significant effect on a European site. The amount of change could cause the significant effect because of where the change is located. Relocating the change or reducing the magnitude of change may avoid the effects. In other cases, the magnitude of change would cause significant effects, no matter where it may be located in the plan area. For example, there is only one source of water available to supply additional development anywhere in the plan area, and increased abstraction from that source, at the level required to meet the stated amount of development, would be likely to affect a European site.

Location of change

- 2.33 The plan may contain policies or proposals that could directly or indirectly affect a European site because they provide for, or steer, a potentially damaging amount or type of change onto a European site, or adjacent to it. For example, the location of the change may be close to the European site, or may have ecological, hydrological or physical links to it, or may generate other indirect effects such as disturbance from increased recreational visits to the site.

Blocking later options

- 2.34 The plan may contain policies or proposals for developments or infrastructure projects that could block future options or alternatives for the provision of other development or projects in the future, which will be required in the public interest. These proposals may lead to adverse effects on European sites, which would otherwise have been avoided, had the non-damaging options not been blocked by the provisions of the plan.

Justifying damaging development

- 2.35 The plan may contain a proposal for change that could adversely affect the integrity of a European site. At project regulation stage, the proposal can proceed only if it is able to pass the tests of regulation 62 (no alternative solutions and imperative reasons of overriding public interest). The proposal may argue that it is an imperative reason of overriding public interest to implement the plan, the justification for the proposal being granted consent is that it would help to deliver the provisions of the plan. If the proposal was not provided for in the plan, it would not have any justification to enable it to pass the test.

Combined / cumulative effects

- 2.36 The plan may contain policies or proposals that alone would not be likely to have significant effects but if their effects are combined with the effects of other policies or proposals provided for or coordinated, internally in the plan the combined or cumulative effects would be likely to be significant.
- 2.37 Or the plan alone would not be likely to have significant effects, but if its effects were combined with the effects of other plans or projects, the combined effects would be likely to be significant.

Unforeseen effects of a programme

- 2.38 The plan may contain proposals that are, or could be, part of a programme or sequence of development delivered over a period. The implementation of the early stages would not have a significant effect on European sites, but these early development stages would dictate the nature, scale, duration, location or timing of the whole programme. It may be found that later stages of the programme could have an adverse effect on European sites, which could have been avoided if the plan had been assessed and adjusted earlier.

Proposals likely to fail the Regulations' tests at project level

- 2.39 Plans should not include general or specific proposals the implementation of which would be vulnerable to fail the Habitats Regulations tests at the project application stage.
- 2.40 Proposals in development plans should be checked to ensure that their chances of meeting the requirements of the Regulations are not so slight that it is not in the interests of good planning to include them in the plan.

Understanding likely significant effects

- 2.41 The consideration of the likelihood of significant effects is a form of screening process or risk assessment which should be repeated if a plan changes significantly during its production. A change to the plan will be significant if it gives rise to a new possibility that the plan could have a significant effect on a European site, either alone or in combination with other plans or projects. It is important to bear in mind that the sensitivity and complexity of many European sites is such that even a minor change to a plan, e.g. a single policy could have repercussions for a site's integrity [2.6].
- 2.42 The plan making authority must consider whether the plan is likely to have a significant effect on any European site. In doing so, it must adopt a precautionary approach.
- * The plan should be considered '**likely**' to have such an effect if the plan making authority is unable (on the basis of objective information) to exclude the possibility that the plan could have significant effects on any European site, either alone or in combination with other plans or projects.
 - * An effect will be '**significant**' in this context if it could undermine the site's conservation objectives. The assessment of that risk must be made in the light of factors such as the characteristics and specific environmental conditions of the European site in question²⁰ [2.7].
- 2.43 The planning authority should also consider, in the same way, whether the development plan is likely to have a significant effect on any Ramsar site or pSPA. Reference should be made to the further guidance on assessing likely significant effects in paragraphs 6 – 9 of Annex 3 of TAN 5 [2.8].

Taking account of measures to avoid the likelihood of significant effects

- 2.44 Habitats Regulations Appraisal should be an iterative process. During the screening stage, or other early stages, the plan making authority may be able to introduce counter-acting measures that would obviously avoid the possibility of a significant effect on a European site. This speeds the appraisal process in its early stages and enables the assessors to concentrate on those aspects of the plan that could have significant effects on European sites that are not easily eliminated. It narrows the scope of the appraisal and reduces the time and cost of undertaking it.

²⁰ These tests are derived from the ruling of the European Court of Justice in Case C-127/02, paragraph 49, known as the Waddensee ruling.

- 2.45 The High Court has ruled on when it is appropriate to take account of avoidance and reduction (mitigation) measures in planning decisions subject to the Habitats Regulations Appraisal process²¹. Excerpts from the judgment succinctly explain the points. The same principles apply to plans.

61 As a matter of common sense, anything which encourages the proponents of plans and projects to incorporate mitigation measures at the earliest possible stage in the evolution of their plan or project is surely to be encouraged.

76 I am satisfied that there is no legal requirement that a screening assessment under Regulation 48(1)[now Regulation 61] must be carried out in the absence of any mitigation measures that form part of a plan or project. On the contrary, the competent authority is required to consider whether the project, as a whole, including such measures, if they are part of the project, is likely to have a significant effect on the SPA. If the competent authority does not agree with the proponent's view as to the likely efficacy of the proposed mitigation measures, or is left in some doubt as to their efficacy, then it will require an appropriate assessment because it will not have been able to exclude the risk of a significant effect on the basis of objective information.....

Distinguishing between counter-acting measures

- 2.46 Measures to avoid, cancel or reduce the effects of a plan on a European site (here referred to as **avoidance measures**, **cancellation measures** and **reduction measures** respectively) should be proposed as part of the plan and the plan making authority will take these into account in the appraisal, often collectively referred to as 'mitigation measures' [2.15].
- 2.47 Avoidance measures eliminate the likelihood of any effects on the European site (see **Figure 2**). Cancellation measures have the effect of cancelling out potentially adverse effects on the European site before their effects are felt. Reduction measures are designed to reduce likely significant effects, perhaps to a level that is insignificant or in a way that makes them unlikely to occur.
- 2.48 As indicated above, when assessing the potential effects of the plan, at the likely significant effect stage, it is important to take account of avoidance, cancellation and reduction measures that have been or can be built into the plan during the iterative process of the early stages of plan-making.
- 2.49 It is also important to carefully distinguish between these avoidance, cancellation and reduction measures (relevant to regulation 102), and compensatory measures that only become relevant under regulation 105. The compensatory measures are designed to ensure the coherence of the Natura 2000 network is protected where adverse effects on site integrity cannot be ruled out, and in the absence of alternative solutions, the plan must proceed for imperative reasons of overriding public interest (see regulation 103 and section 9 below). Compensatory measures should not be taken into account in assessing the likelihood of significant effects of the plan on European sites.

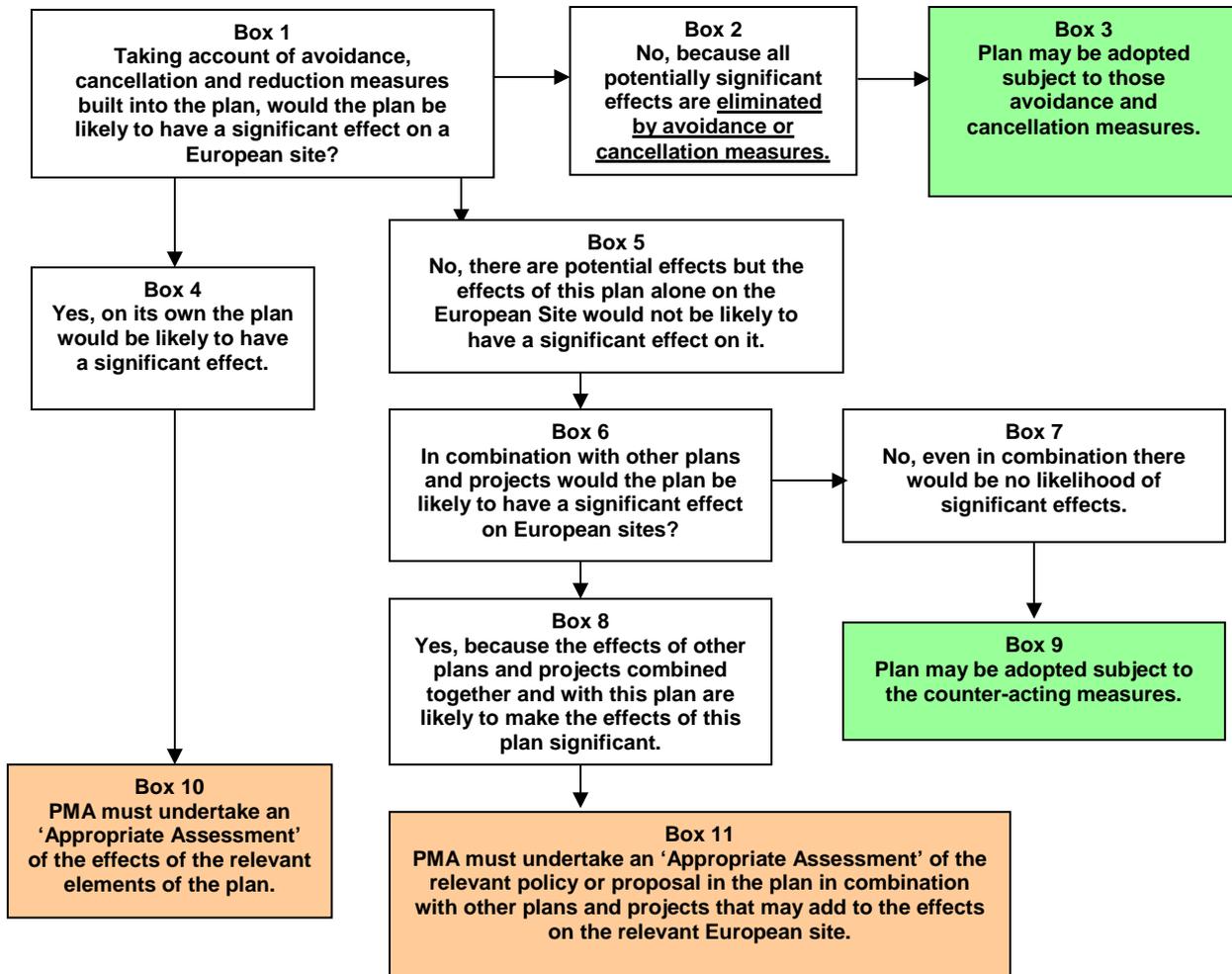
²¹ Hart DC v Secretary of State Communities and Local Government, Luckmore Ltd, Barratt Homes Ltd, and CCW Claim No CO/7623/2007 High Court of Justice Queens Bench Division Judgment of Sullivan J 1st May 2008 [2008] EWHC 1204 Admin, 2008 WL 2148207

Implications of applying avoidance, cancellation and reduction measures to the plan

- 2.50 The difference between avoidance, cancellation and reduction measures is not an academic one. If avoidance or cancellation measures are proposed, and they are considered to be fully effective and certain to be delivered in the implementation of the plan, then the plan cannot have any effect on European sites and is not subject to the further tests of the Habitats Regulations. The plan may proceed to adoption without further reference to the Habitats Regulations Appraisal process (see Boxes 1 – 2 – 3 **Figure 2**) [2.15].
- 2.51 However, reduction measures may not be enough to enable a plan to pass the likely significant effect test of the Regulations. This is because the Regulations require projects to be considered either alone or in combination with other plans or projects, to see if their combined effects would be likely to be significant. Because the effects have been reduced but not eliminated, the effects of the plan being assessed may have to be combined with the effects of other plans, or other projects. The combined effects may be significant, even though the measures reduced the effects of the subject plan to insignificant levels (see **Figure 2** Boxes 1 – 5 – 6 – 8 – 11).
- 2.52 In many cases it will be evident how to avoid, cancel or reduce the effects of the plan on European sites. Policies or proposals may need to be deleted or modified. Any options in the early stages of plans, which are identified as potentially having adverse effects on a European site, should be modified to avoid the effect, or deleted in favour of other options. Detailed ecological assessments may not be needed if adjustments to the plan would eliminate the likelihood of a significant effect on a European site.
- 2.53 The appraisal should also consider how the counter-acting measures will be delivered. There must be an acceptable level of certainty that the measures will be delivered in a way, and in time, to achieve their function and purpose. They may be built into the plan itself or, they may be external measures that would be implemented alongside the plan, in order to constrain the effects of the plan so as to avoid adverse effects. There should be a clear commitment, in the plan, to the measures required to avoid and reduce the effects of the plan on the European sites.
- 2.54 Any reference to a 'mitigation strategy', or similar terminology, within the plan, should state how the mitigation will be delivered and whether particular aspects need to be in place prior to the implementation of the element of the plan to which the mitigation measures apply.
- 2.55 The Habitats Regulations Appraisal process does not formally require the generation and choice of development plan alternatives in the same way as required in the SEA Environmental Report. Under the Habitats Regulations, the generation of plan alternatives is required only if the plan making authority concludes, in the light of the appropriate assessment, that the development plan may adversely affect the integrity of a European site and the plan making authority nevertheless proposes to proceed with the plan (or the relevant policy or proposal) under regulation 103 [2.16].
- 2.56 However, if proposed plan alternatives show a difference in the presence or level of likely significant effect on any European site, the plan making authority should consider selecting plan alternatives with no or less effect on the site(s) at an early stage in plan preparation. If all of the plan alternatives indicate likely significant effects on European sites, the plan making authority should discuss the plan with CCW before scoping for the appropriate assessment is begun (see section 6 below) [2.17].

FIGURE 2

FURTHER DETAIL ON THE EARLY STAGES OF ASSESSMENT UNDER THE HABITATS REGULATIONS



2.57 The most precautionary course of action for a plan making authority is to remove potentially harmful policies and proposals at the earliest stages of plan preparation or to adjust those policies and proposals so as to ensure that development flowing from or controlled by the development plan is not likely to have a significant effect on any European site, either alone or in combination with other plans or projects. If a plan making authority considers that such action is premature or inappropriate, considering all factors, it should proceed with caution [2.18].

2.58 If deletion of a policy or proposal is not proposed, there may be a range of other counter-acting measures that could be introduced to the plan, at an early stage, to avoid likely significant effects, for example, by:

- a) relocating a proposal; or
- b) being more specific about the area where it should or should not be located; or
- c) reducing the scale of the proposal; or
- d) changing the nature of the proposal; or

- e) phasing or timing a proposal so that its possible effects can be adequately managed over time; or
- f) programming a proposal so that it is dependent on key infrastructure provision or upgrading, such as water supply or waste water treatment, being in place before it could proceed; or
- g) requiring buffer zones to be put in place; or
- h) building in specific mitigation measures such as management plans and monitoring regimes into the option from the outset, so that its full costs and requirements are compared with those of other options.

Dealing with uncertainty

2.59 One of the most difficult aspects of the Habitats Regulations Appraisal is dealing with the inherent uncertainty that is encountered in every appraisal. As described in section 1 above, the very nature of a plan means that its effects will not normally be as clear as those of a project at application stage. Research and practice in England has shown that uncertainty can arise in four ways, each of which needs to be addressed differently. These are:

- a) Scientific uncertainty;
- b) Regulatory uncertainty;
- c) Planning hierarchy uncertainty; and
- d) Implementation uncertainty.

Scientific Uncertainty

2.60 Scientific uncertainty usually arises owing to uncertainty about the predicted effects of one or more aspect of a plan on the interest features of a European site. Scientific uncertainty may be due to a lack of scientific know-how, or a lack of ecological information, or inadequate or out-of-date scientific data. It may also occur where the assessor is unable to satisfactorily predict and estimate the nature, scale or spatial extent of changes proposed by the plan.

2.61 In accordance with the Habitats Directive and Regulations, wherever scientific uncertainty is encountered a precautionary approach should be adopted. If in doubt, further assessment should be undertaken, or the worst outcome assumed, that is, the most damaging outcome for the European site.

Regulatory uncertainty – relying on the controls of other regulatory regimes

2.62 As discussed in 2.19 – 2.20 above, some plans will include references to proposals that are planned and implemented through other planning and regulatory regimes, for example, trunk road or motorway improvements. These will be included in plans because they have important implications for spatial planning, but they are not proposals of the plan making authority, nor are they proposals brought forward by the plan itself. Their potential effects will be assessed through other procedures. The plan making authority may not be able to assess the effects of these proposals. Indeed, it may be inappropriate for them to do so, and would also result in unnecessary duplication. The possible effects of such proposals, in combination with those brought forward through the plan, of course, may be relevant.

- 2.63 There is a need to focus the Habitats Regulations Appraisal of plans on the strategy, policies and proposals directly promoted by the plan, and on other developments that are an inevitable or highly likely consequence of the plan, which would not otherwise come forward. The appraisal should not attempt to assess each and every other proposal for development and change, especially where these are planned and regulated through other statutory procedures which will themselves be subject to a Habitats Regulations Appraisal or Assessment.
- Planning hierarchy uncertainty- Relying on lower tier appraisals 'down the line'*
- 2.64 The higher the level of a plan in the hierarchy the more general and strategic will be its provisions and therefore the more uncertain its effects will be. The protective regime of the Directive is intended to operate at differing levels. The EC has advised²² that, in contrast to land use and sectoral plans, which can have direct or indirect legal effects for the use of land and the regulation of projects, "*a distinction needs to be made with 'plans' which are in the nature of policy statements i.e. policy documents which show the general political will or intention of the ministry or lower authority.*" Many aspects of plans are general statements of policy expressing a plan making authority's general policy framework, or political aspirations or general intentions. In the same way that whole plans which are general statements of policy could not have a significant effect on a European site, it follows that those parts of a plan which are general statements of policy cannot be regarded as likely to have a significant effect on a site. They can be screened out in the early stages.
- 2.65 These general policy statements may include 'criteria based policies' because even though they may promote or encourage changes, which in theory could affect a European site, they only express the tests or expectations of the plan making authority when it comes to consider particular proposals. As with other general policy statements described in paragraph 2.64 above can be screened out at an early stage because they will not have a significant effect on a European site.
- 2.66 However, a distinction needs to be drawn between general criteria based policies and more specific criteria based policies which are effectively allocating development or change of a particular type to a particular location, but set out further tests that the change will need to meet. This helps to keep the Habitats Regulations Appraisal focused and relevant on aspects of the plan which could affect a European site.
- 2.67 In some circumstances appraisal 'down the line' will be more effective in assessing the potential effects of a proposal on a particular site and protecting its integrity. However, as explained in section 6 below, this kind of uncertainty, where a plan makes provision for a general type or scale of change, but not its particular magnitude or specific location, should not be 'screened out' at likely significant effect stage. Rather it should be subject to appropriate assessment, to make sure that the criteria, which should be applied before relying on the mitigation measure of lower tier appraisal 'down the line', are met.
- 2.68 Because the higher tier plans are more uncertain, and may possibly rely on unrealistic assumptions about the effects on European sites in lower tier appraisals, it is important to adopt a precautionary approach. If, even at the higher tier of plan making, adverse effects on European sites could occur as a result of the amount or location of development to be provided for, it would be prudent to adapt the higher tier plan to avoid such effects in any case.

²² EC, 2000, *Managing Natura 2000 sites: the provisions of Article 6 of the Habitats Directive 92/43/EEC* at 4.3.2

Implementation uncertainty

- 2.69 In order to clarify the approach where there is uncertainty because effects depend on how or perhaps when a plan may be implemented, and to ensure compliance with the Regulations, it may be appropriate to impose a caveat in relevant policies, or introduce a free-standing policy, which says that any development project that could have an adverse effect on the integrity of a European site will not be in accordance with the development plan, within the meaning of S.38(6) of the Planning and Compulsory Purchase Act 2004. See further section 6 below dealing with the appropriate assessment stage.
- 2.70 This would help to enable those undertaking the appraisal to reasonably conclude that there would be no adverse effect on site integrity, even where there are different ways of implementing a plan, and even applying the precautionary principle, because no element of the plan can argue that it draws support from the plan, if it could adversely affect the integrity of a European site.
- 2.71 It is not sufficient for the Habitats Regulation Appraisal to conclude no significant effects, merely because the plan concerned contains a policy protecting internationally designated sites. Any potential tension between elements of the plan, which seek to protect the designated sites and those which nevertheless make provision for change which could affect them, should be resolved in favour of protecting the integrity of the European sites before it is adopted.

Plans which are necessary for European site management

- 2.72 An early test under regulation 102(1) is whether the plan is directly connected with or necessary to the management of any European site, for the purposes of conserving the habitats or species for which the site is designated. Even if the plan has a policy to protect internationally designated sites, or the plan has some benefits for the management of such a site for nature conservation, this will not qualify a plan for exemption under this test. It is expected that very few plans indeed will pass this test and those that do will normally be developed by, or in close association with, CCW [2.21].
- 2.73 The determination of whether a plan needs an appropriate assessment will always depend on whether it is likely to have a significant effect on a European site, alone or in combination with other plans or projects, as considered in sections 3 - 6 below. This is acknowledged in Box 4 in Figure 1.

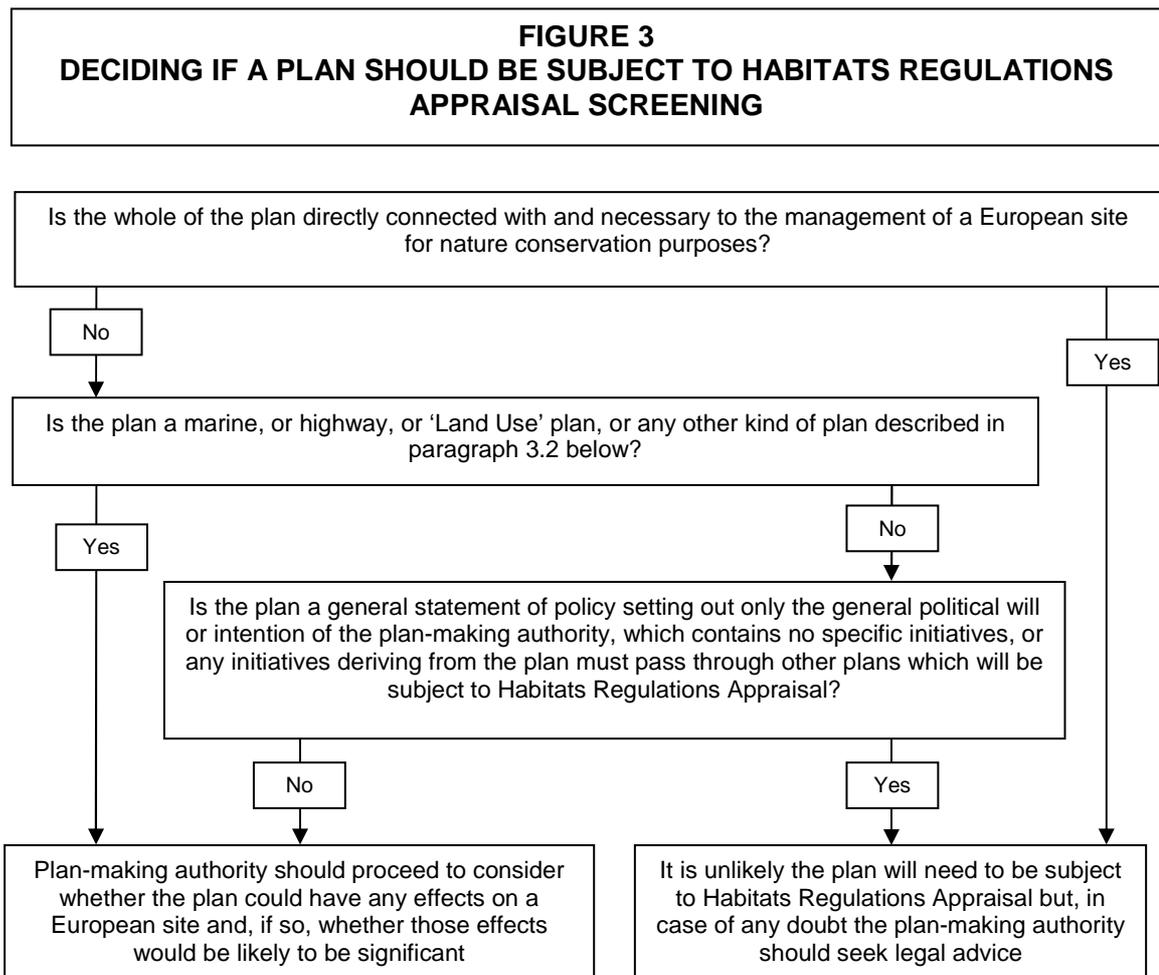
Other considerations in respect of the Directives

- 2.74 It should be borne in mind during the appraisal process that there are wider duties in respect of the Directives. Regulation 9A, inserted by the 2012 amendments, imposes general duties on all competent authorities and CCW, in relation to the maritime area, to ensure steps are taken to preserve, maintain and re-establish a sufficient diversity and area of wild bird habitat. Elsewhere (on land), competent authorities must take steps to contribute to this objective in the exercise of their functions, but may take appropriate account of economic and recreational requirements.
- 2.75 Furthermore, regulation 9A(8) requires that so far as lies within their power, a competent authority, in exercising any function, must use all reasonable endeavours to avoid any pollution or deterioration of habitat of wild birds, whether within a European site or not.

3. DECIDING WHETHER PLANS NEED APPRAISAL AND WHETHER THEY MAY AFFECT ANY EUROPEAN SITES

Plans which should be subject to Habitats Regulations Appraisal

3.1 The first stage in the appraisal process to establish whether a plan should be subject to Habitats Regulations Appraisal. This depends in part on the type of plan and in part on its potential effects on European sites. Figure 3 illustrates the steps that are required to determine whether a plan should be subject to screening for the likelihood of significant effects on a European site, as part of a Habitats Regulations Appraisal.



3.2 Habitats Regulations Appraisal is explicitly required by Regulations 84, 102, 106, 107A and 107B of the *Conservation of Habitats and Species Regulations 2010*, as amended, in Wales, for:

- a) the Wales Spatial Plan;
- b) any National Policy Statements;
- c) any Marine Policy Statement;
- d) Marine Plans;
- e) Local Development Plans or any alteration or replacement of a Local Development Plan;
- f) any alteration or replacement of a Unitary Development Plan;
- g) any plan made by a highway authority to construct or improve a highway.

- 3.3 Other types of plans will need to be subject to appraisal for their effects on European sites because regulation 60, (as replaced by Regulation 19 of the 2012 Amendment Regulations) specifically requires the assessment and review provisions to apply to all other 'plans' not explicitly identified in the Regulations as listed in paragraph 3.2 above.
- 3.4 However, in defining what might constitute a plan in the context of Article 6 of the Directive, the EC has advised²³ that *"a distinction needs to be made with 'plans' which are in the nature of policy statements i.e. policy documents which show the general political will or intention of the ministry or lower authority. An example might be a general plan for sustainable development across a Member State's territory or a region. It does not seem appropriate to treat these as 'plans' for the purpose of Article 6(3), particularly if any initiatives deriving from such policy statements must pass through the intermediary of a land use or sectoral plan. However, where the link between the content of such an initiative and likely significant effects on a Natura 2000 site is very clear and direct, Article 6(3) should be applied."*

Revocation of plans

- 3.5 To ensure full compliance, it will be advisable to ensure that the effects of revocations of plans are subject to appraisal to the extent that their provisions are not continued, altered or replaced by another plan whose effects are subject to Habitats Regulations Appraisal.

Plans unlikely to have a significant effect on a European site

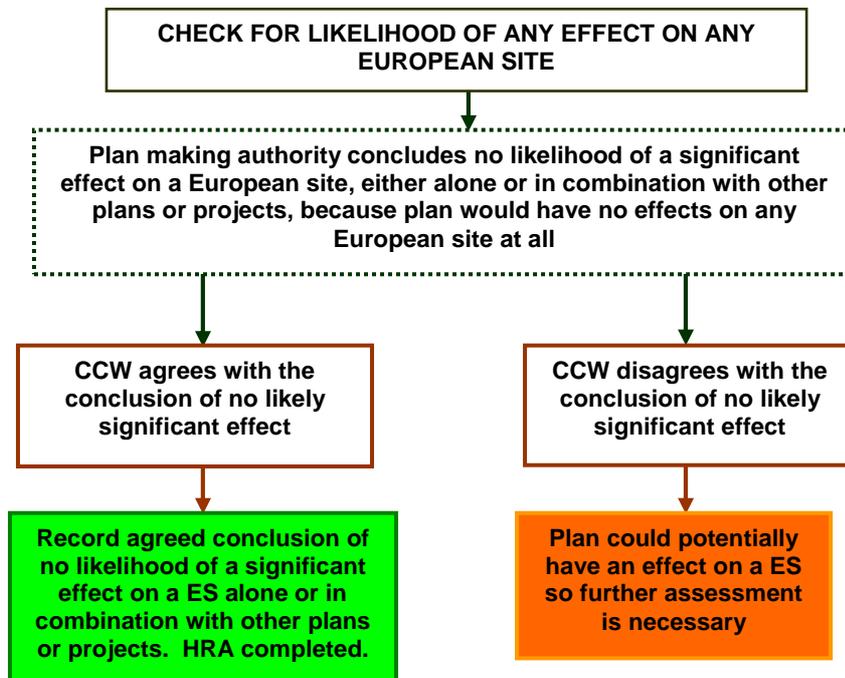
- 3.6 Most plan making authorities will have had a regular dialogue with CCW about their plans, or previous plans. The likelihood of proposals affecting any European sites may well have been the subject of previous discussion or correspondence. In some cases the fact that significant effects would be unlikely can be established quickly, by a meeting or brief exchange of correspondence, where the plan making authority describes the plan, its objectives and likely content and / or identifies the nature, scale and location of proposed changes and CCW advises on the likelihood of significant effects. The conclusions of meetings and telephone discussions should be confirmed in writing.
- 3.7 In practice, it has been found that some 'plans', including various types of supplementary guidance, are produced simply to guide the design of development or the procedure for submitting and considering applications for various types of project consent. Such plans do not actually propose any changes at all and can therefore be screened out from further assessment, at an early stage, because although they are 'plans' they cannot have any effect on a European site.
- 3.8 Some plan areas will have no European sites within or close to their boundaries. In such cases CCW encourages plan making authorities to take all necessary ecological advice about possible effects on more distant sites. In other cases there may be European sites in or close to the plan area, but the plan making authority may consider that none would be affected, because of the nature of the plan or the nature of the interest features, or both.

²³ EC, 2000, *Managing Natura 2000 sites: the provisions of Article 6 of the 'Habitats' Directive 92/43/EEC* April 2000 at 4.3.2

- 3.9 The reason why plans would not be likely to affect the site may be quite obvious, for example, depending on the interest features:-
- (a) development and other proposals in the plan are located well away from the designated site and indirect effects are not relevant or could not occur at that distance;
 - (b) nothing in the plan's policies or proposals would be likely to lead to development or other changes that would trigger consultation, with CCW, under development management procedures in respect of effects on European Sites if they had been in the form of a planning or other type of application;
 - (c) the interest features of the European site are not likely to be affected by any development or other changes that the plan proposes, as discussed above;
 - (d) the plan could not have a significant effect on any European site because it only contains general policies and it makes no proposals that could affect a site.
- 3.10 Where no significant effects are anticipated, the plan making authority should explain why it considers that the plan would not affect any European site when consulting CCW about the scope of the SEA / Sustainability Appraisal. The plan making authority should ask CCW to confirm that the plan will not be likely to have a significant effect on any European site, usually within the meaning of regulation 102 / 61, and that no further appraisal is required under the Habitats Regulations.
- 3.11 CCW will either confirm that this is the case, or seek further information, or advise the plan making authority which site may be affected and why further appraisal to establish whether the effects of the plan are likely to be significant should be undertaken, see Figure 3.
- 3.12 In due course, the exchange of correspondence should be submitted to the Inspector for the examination of the plan, where relevant.
- 3.13 If a plan making authority considers, after completing these steps of the Habitats Regulations Appraisal, that the plan will **not** be likely to have a significant effect on any European site (either alone or in combination with other plans or projects), it should submit the Habitats Regulations Appraisal record to the Welsh Government and CCW. This can be part of a normal statutory plan submission where relevant. It may proceed without further reference to the appraisal process (see Steps 4 – 5 – 13, Figure 1) [2.22 and 2.24].
- 3.14 The procedures described in this Guidance will often be sufficient to establish that further appraisal work is unnecessary and the requirements of Regulation 61 / 102 have been met. In any event, CCW will be a statutory consultee on the draft Plan and its environmental report or sustainability appraisal. It will have a further opportunity at consultation stage to ensure that nothing in the plan would be likely to have a significant effect on a European site. However, if a significant effect is not identified until submission stage, it could have serious consequences for the timely examination and adoption of the plan where relevant.

- 3.15 A recommended procedure where a plan making authority is satisfied that its plan will not have any effect on any European site is illustrated in **Figure 4** below. The Figure illustrates an appropriate procedure, setting out the reasoning for the conclusions and the informal consultation with CCW to agree the outcome. It will be seen that if CCW does not agree the conclusion, further appraisal work will be required.
- 3.16 The local planning authority should consult and reach agreement with CCW (and Natural England, where relevant) on its conclusion, no matter what stage of plan preparation has been reached. If there is a disagreement about the results between CCW or Natural England and the plan making authority, the Welsh Government will expect that all steps have been taken by the plan making authority to resolve the matter. If the plan making authority decides to maintain its position, in spite of opposition from CCW (and/or Natural England), it will proceed to adoption at its own risk [2.23].

FIGURE 4 RECOMMENDED PROCEDURE WHERE PLAN MAKING AUTHORITY CONCLUDES NO SIGNIFICANT EFFECT ON A EUROPEAN SITE



4. AGREEING THE EVIDENCE BASE

Identifying the relevant European sites

- 4.1 Where the plan could potentially affect one or more European site in some way, the next step is to identify the European sites that may be affected by the plan. Identifying the relevant sites is not straightforward. However, once done, these steps should not need to be repeated during the plan-making process unless new information comes to light (e.g. through consultation) or new sites come into being. It will normally be necessary to cast a wide net around the plan area and to understand how land use and development may affect land that is outside the plan boundaries. It will be necessary to identify all European sites:
- (a) in the plan area; and
 - (b) outside the plan area that may be affected, for example, through related infrastructure such as water supply reservoirs or treatment works or other waste stream infrastructure that receive waste or discharges from the plan area; and
 - (c) outside the plan area that may experience indirect effects, such as increased pollution or disturbance from recreational pressure [2.3].
- 4.2 European sites in England as well as Wales and Welsh territorial waters and European offshore marine sites will need to be included where relevant, as will Ramsar sites and pSPAs and any pSACs [2.30].
- 4.3 As a general guide, and subject to case-by-case analysis by an ecologist in the appraisal team, the following European sites should be checked for the likelihood of significant effects:
- i. all sites within the plan area; and
 - ii. for plans that could affect the aquatic environment:
 - a. all sites downstream of the plan area in the case of river or estuary sites;
 - b. all peatland and other wetland sites with significant hydrological links to land within the plan area, irrespective of distance from the plan area;
 - iii. for plans that could affect mobile species: all sites which have significant ecological links with land in the plan area, for example, land in the plan area may be used by bats or migratory birds, which also use a SAC or SPA respectively, outside the plan area, at different times of the year;
 - iv. for plans that could increase recreational pressure on sites potentially vulnerable to such pressure:
 - a. all such sites in the plan area;
 - b. all such sites within a reasonable travel distance of the plan area boundaries that may be affected by local recreational or other visitor pressure from within the plan area (say 5km for local recreation attractions);
 - c. all such sites within a longer travel distance of the plan area that comprise major (regional or national) visitor attractions such as

promoted National Nature Reserves, sites in Regional Parks, coastal sites and sites in other major tourist or visitor destinations (say 20km for regional and national recreation and day-tourism attractions);

- v. for plans that would increase the amount of development:
 - a. sites that are used for, or could be affected by, water abstraction irrespective of distance from the plan area;
 - b. sites used for, or could be affected by, discharge of effluent from waste water treatment works or other waste management streams serving land in the plan area, irrespective of distance from the plan area
 - c. sites that could be affected by proposed transport or other infrastructure projects
 - d. sites that could be affected by increased deposition of air pollutants arising from the proposals, including emissions from significant increases in traffic.
 - vi. for plans that could affect the coast, sites in the same coastal 'cell', or part of the same coastal ecosystem, or where there are interrelationships with or between different physical coastal processes.
- 4.4 If there is any doubt as to whether a European site may be affected, a precautionary approach should be adopted and the information for the site should be obtained [2.4].
- 4.5 CCW will assist with this process: they will identify relevant sites, both within and outside the plan boundary, and they will supply details about those sites, including the sites' conservation objectives. Where a development plan has the potential to affect an internationally designated site in England, Natural England should be advised. Natural England will provide similar assistance in relation to any such sites in England [2.4].

Acquiring information about the European sites

- 4.6 It will be necessary to acquire, examine and understand the citation and map of each site and the conservation objectives of each interest feature of each site potentially affected. These features will vary between the different European sites, but relate to the reasons for the site's classification (SPAs), designation (SACs and EOMS) or listing (Ramsar sites).
- 4.7 The assessors should then consider the condition and conservation status of the sites, the pressures upon them, and the ways in which they may be vulnerable to the kinds of changes likely to be brought about by the plan being assessed.
- 4.8 It is usually helpful to compile a spreadsheet or table to summarise this information. This will form a handy reference when assessing the various elements of the plan. Such a table may be constructed as shown on the next page.

DRAFT GUIDANCE ON HABITATS REGULATIONS APPRAISAL OF PLANS CCW SEPTEMBER 2012

Information	Site 1	Site 2	Site 3
Site name	River A	Moorland B	Wetland C
Designation status	SAC	SPA	Ramsar site
Date of designation	Designated 3/01/09	Classified 5/4/98	Listed 23/5/02
Interest features	Otter Atlantic salmon	Hen harrier (breeding)	Assemblage of over 20,000 over-wintering waterfowl
Condition	Otter unfavourable Atlantic salmon favourable conservation status	Unfavourable conservation status	Wildfowl numbers steadily increasing
Conservation objectives	Summary from CCW Management Plan	Summary from CCW Management Plan	Summary from CCW Management Plan
Factors currently influencing favourable conservation status	Otter disturbance from riparian engineering works and increasing recreational use Atlantic salmon water abstraction, water quality, impediments to migration	Changes in habitat management and prey availability	Long-term habitat depletion from rising sea level and increasing disturbance
Vulnerabilities to change / potential effects of the plan	Increased housing within 5km of river likely to increase recreational disturbance	Potential slate quarrying	Vulnerable to cumulative loss of small areas of intertidal habitat and disturbance from bank side industrial uses

5. SCREENING THE PLAN FOR LIKELY SIGNIFICANT EFFECTS

Identifying likely significant effects

- 5.1 The appraisal as to whether the plan will have any effects on European sites, and the likelihood of significant effects, needs to be a multi-disciplinary task. Planners and engineers will help to estimate, as far as may reasonably be predicted at any plan making stage, the likely nature, magnitude, frequency, timing, duration, location and spatial extent of changes resulting from implementation of the plan policies and proposals. As indicated above, the sites affected may be located beyond the boundaries of the plan area [2.9].
- 5.2 Ecologists will need to consider what effects those changes would be likely to have on the interest features and conservation objectives of the relevant European sites, either directly through such mechanisms as land take or fragmentation of a site, or indirect effects such as hydrological change or disturbance. This process should be undertaken in close consultation with CCW (and, if there are potential impacts on European sites in England, with Natural England). [2.9].
- 5.3 In considering the conservation objectives, the appraisal must also take into account any initiatives being progressed that specifically contribute towards the achievement of those objectives. A plan could include elements that may undermine any such initiatives.
- 5.4 Critical to the method is an understanding of the spatial distribution of the European sites and their respective interest features in the context of the spatial distribution of the effects of development and other changes provided for in the plan. For example, it is necessary to understand the location and likely changes that will flow from the plan policies providing for concentration of development in growth areas, regeneration priority areas or transport corridors etc. Most plan strategies will direct change to particular areas.
- 5.5 It is therefore important that the early stage of appraisal begins to identify the possible interactions between changes proposed by the plan and the site interest features. By way of example, a great crested newt Special Area of Conservation in an urban setting may be affected by development through changes in water quality or quantity, or the extent and quality of other habitats on which the newts rely. These may be affected, for example, by water run-off, water abstraction, infilling, discharges, pollution, other hydrological changes, loss of greenspace in the vicinity of the newt habitat and increased numbers of people visiting or otherwise using the site. The area that is sensitive to change in relation to an urban great crested newt SAC is likely to be relatively small, but a single SAC may comprise a number of separate parcels of land and supporting habitat, each important for the newt population in one way or another.
- 5.6 On the other hand, the sensitive area related to a heathland SPA that experiences disturbance of its breeding birds as a result of recreational use by people living in houses around, may extend to several kilometres away from the site boundary.
- 5.7 Understanding as much as possible in these early stages also helps to identify any areas where fresh research or survey work will be required. Early commencement of any necessary work will help to reduce the time taken to assess the plan and minimise potential delays in the final completion of the Habitats Regulations Appraisal.

Compiling a screening schedule

- 5.8 It is recommended that a schedule is compiled listing all elements of the plan, including all of the options, the strategy, policies and proposals. Each element is checked for the likelihood of it leading to a significant effect on a European site, firstly alone, then, if not alone, in combination with other elements of the same plan, or other plans or projects.
- 5.9 In order to compile this schedule, each element of the plan has to be categorised as to its likely effects on each interest feature of each European site potentially identified as subject to assessment in the evidence base, this will include all of the reasons for the designation / classification or listing of the site, in the case of SAC, including primary and non-primary reasons for designation. There are four categories of potential effects as follows. Each is discussed in more detail below.
- (a) Category A: elements of the plan / options that would have no negative effect²⁴ on a European site at all;
 - (b) Category B: elements of the plan / options that could have an effect, but the likelihood is there would be no significant negative effect on a European site either alone or in combination with other elements of the same plan, or other plans or projects;
 - (c) Category C: elements of the plan / options that could or would be likely to have a significant effect alone and will require the plan to be subject to an appropriate assessment before the plan may be adopted;
 - (d) Category D: elements of the plan / options that would be likely to have a significant effect in combination with other elements of the same plan, or other plans or projects and will require the plan to be subject to an appropriate assessment before the plan may be adopted;
- 5.10 The four categories reflect the ways in which a plan may affect a European site, as discussed in section 2 above. Categories A, C and D are subdivided so that the specific reason why the assessor has allocated the policy or proposal to that category is more transparent, and more directly related to the ways that the plan may affect the European site. The schedule may look like the illustrative example in Table 2. Where relevant, the schedule could also list major infrastructure and other projects which are referred to in the plan but not proposed by the plan making authority, and therefore not subject to this plan appraisal (see paragraphs 2.17 – 23 and 2.62 – 2.63 above)
- 5.11 The reasons why the assessor allocates a plan element or option to a particular category should be recorded, here in the third column, so as to give the appraisal transparency and to justify decisions as to whether appropriate assessment is or is not necessary and, if so, to provide a basis for its scope.

²⁴ 'Negative' effects in the context of this and all the following lists, are effects that would be likely to undermine the conservation objectives of a European site.

Table 2
Illustrative Example of an Assessment Schedule

Reference (option or policy etc)	Element of the plan or Option	Assessment category	Can the element be changed at screening stage to avoid likely significant effect (LSE)	Is an appropriate assessment required?
Option A	An option for housing location	C2	Yes Option relocated no LSE	No
Option D	Another option for housing location	D2	No Combined effect arises from other plans	Yes in combination appropriate assessment required
STRAT2	A strategy for locating new employment sites	C4	No No further detail as to scale or location available	Yes (but in the AA stage adverse effect on integrity will be avoided by lower tier appraisal see section 6)
STRAT4	A strategy indicating the need for 1,000 new dwellings in the plan area but with no indication as to location	A5	N/A The strategy is about the need for new dwellings not their location or distribution	No the strategy is implemented through later policies in the plan, which are location specific
Policy HOU8	A policy about the design of housing	A1	N/A	No
Policy REG22	A policy about reuse of employment sites	C6	Yes (if a caveat is not applied at screening stage)	Yes (but in AA stage adverse effects on integrity can be avoided by adding a policy caveat see section 6)
Proposal EMP22	A new employment location	C1/C2	No	Yes
Proposal REC10	A recreation proposal	B	N/A	No

Category A: No negative effect

- 5.12 Only negative effects are considered here because the European Court of Justice ruled that only effects that could undermine the conservation objectives of a European site are considered likely to have significant effects. There are likely to be five types of options, policies and proposals in the plan that could have **no negative effect at all** on any European site, either alone or in combination with other policies, plans or projects, as shown in Table 3 below. They include general statements of policy because, in the same way that whole plans which are general statements of policy could have no effect on a European site, as suggested by EC guidance (see paragraph 3.4 above), individual elements of a plan would similarly have no effect if they are no more than a general statement of policy and there are no 'clear and direct' links to European sites.
- 5.13 Deciding which policies, if any, can be assigned to A4 will be a matter of judgement on a case by case basis, where the assessor is sure that they would not have an adverse effect on any European site. Examples of such policies may be those that steer development away from the coast, or from rivers and their floodplains, or away from other concentrations of European sites and associated sensitive areas.

Category A: No negative effect	A1	Options / policies that will not themselves lead to development e.g. because they relate to design or other qualitative criteria for development, or they are not a land use planning policy.
	A2	Options / policies intended to protect the natural environment, including biodiversity
	A3	Options / policies intended to conserve or enhance the natural, built or historic environment, where enhancement measures will not be likely to have any negative effect on a European Site
	A4	Options / policies that positively steer development away from European sites and associated sensitive areas
	A5	General policy statements or policies which only express general intentions or political aspirations and there are no 'clear and direct' links to European sites.

Category B: No significant effect

- 5.14 Secondly, the screening process may identify an option or policy or proposal that could have an effect but would not be likely to have a significant (negative) effect on a European site (alone or in combination with other plans or projects) because the effects are trivial or 'de minimus', even if combined with other effects. Identifying such policies or proposals needs to be approached with caution, so as to ensure compliance with the requirements for 'in-combination' effects and the application of the precautionary principle, but such policies may be identified.

Category C: Likely significant effect alone

- 5.15 Thirdly, the screening process identifies any options, policies or proposals that would be likely to have a significant effect alone. Ideally, once identified, such options, policies or proposals should be removed from the plan, or the plan should otherwise be changed, to avoid the likelihood of significant effects, see further below. If not, the plan must be taken forward for an appropriate assessment.
- 5.16 The reasons why options, policies or proposals may affect a European site alone are shown in Table 4 below.
- 5.17 As indicated in C.5 below, this analysis will check for any proposals that could have the effect of **blocking options or alternatives** to future proposals that would then have a negative effect on a European site, which could have been avoided if the option or alternative was still available, for example a development allocation that may eliminate a possible alternative route for a new road or pipeline, see paragraph 2.34 above.
- 5.18 The assessor should ask a question along these lines where a development proposal is anywhere in the vicinity of a European site "*Are there any other known development or infrastructure projects, at any stage of consideration, that may need to be located on or close to this location, either as a preferred or alternative option, that could be blocked, precluded or impeded by this proposal?*"
- 5.19 As indicated in C7 below, the analysis will check for any proposals that are doomed or vulnerable to failure at a later stage, see paragraph 2.39 - 42 above. The assessor should ask a question along these lines: "*is this proposal vulnerable to failure because of its actual or possible adverse effects on a European site and, if so, is it in the public interest to retain it in the plan, given the prospect of it being incapable of implementation?*"

- 5.20 Options, policies or proposals falling into category C4 will need to go to appropriate assessment to check that the three criteria set out in paragraphs 6.19 – 21 below apply, so enabling the plan making authority to ascertain that this plan would not have an adverse effect on a European site.

Table 4		
Category C: Likely significant effect alone	C1	The option, policy or proposal could directly affect a European site because it provides for, or steers, a quantity or type of development onto a European site, or adjacent to it
	C2	The option, policy or proposal could indirectly affect a European site e.g. because it provides for, or steers, a quantity or type of development that may be very close to it, or ecologically, hydrologically or physically connected to it or it may increase disturbance as a result of increased recreational or other pressures
	C3	Proposals for a magnitude of development that, no matter where it was located, the development would be likely to have a significant effect on a European site, see paragraph 2.32 above
	C4	An option, or policy that makes provision for a type of development, generally, (and may indicate a broad scale and / or one or more broad locations e.g. a particular part of the plan area), so a likelihood of a significant effect cannot be ruled out, but the more precise scale and / or detailed location of the development is to be selected following consideration of options in a later, more specific, lower tier plan , subject to Habitats Regulations Appraisal
	C5	Options, policies or proposals for developments or infrastructure projects that could block options or alternatives for the provision of other development or projects in the future, which will be required in the public interest, that may lead to adverse effects on European sites, which would otherwise be avoided see paragraph 2.34 above and 5.18 -19 above
	C6	Options, policies or proposals which depend on how the policies etc are implemented in due course, for example, through the development management process. There is a theoretical possibility that if implemented in one or more particular ways, the proposal could possibly have a significant effect on a European site, and is not merely a general statement of policy, see paragraph 2.69 above
	C7	Any other options, policies or proposals that would be vulnerable to failure under the Habitats Regulations at project assessment stage; to include them in the plan would be regarded by the EC as 'faulty planning', see paragraph 2.39 - 40 above and 5.19 above
	C8	Any other proposal that may have an adverse effect on a European site, which might try to pass the tests of the Habitats Regulations at project assessment stage by arguing that the plan provides the imperative reasons of overriding public interest to justify its consent despite a negative assessment, see paragraph 2.35 above

List D: Likely significant effects in combination

- 5.21 Fourthly, the screening process identifies any options, policies or proposals that would be likely to have a significant effect in combination. Ideally, the policies or proposals should be removed from the plan, or the plan otherwise changed, to avoid the likelihood of significant effects. If not, the plan must be taken forward for an appropriate assessment, including the relevant combination. The combination could be the cumulative effects of proposals, in the plan itself, and/or in other plans or projects.

- 5.22 Any element of the plan that could have an effect but would not be likely to have a significant effect alone should be assessed in combination with other elements of the plan (internally) for its cumulative effects and with other relevant plans and projects (externally) that may add to the effects of the plan in a relevant way. Reasons why plans may affect a European site in combination are shown in Table 5.

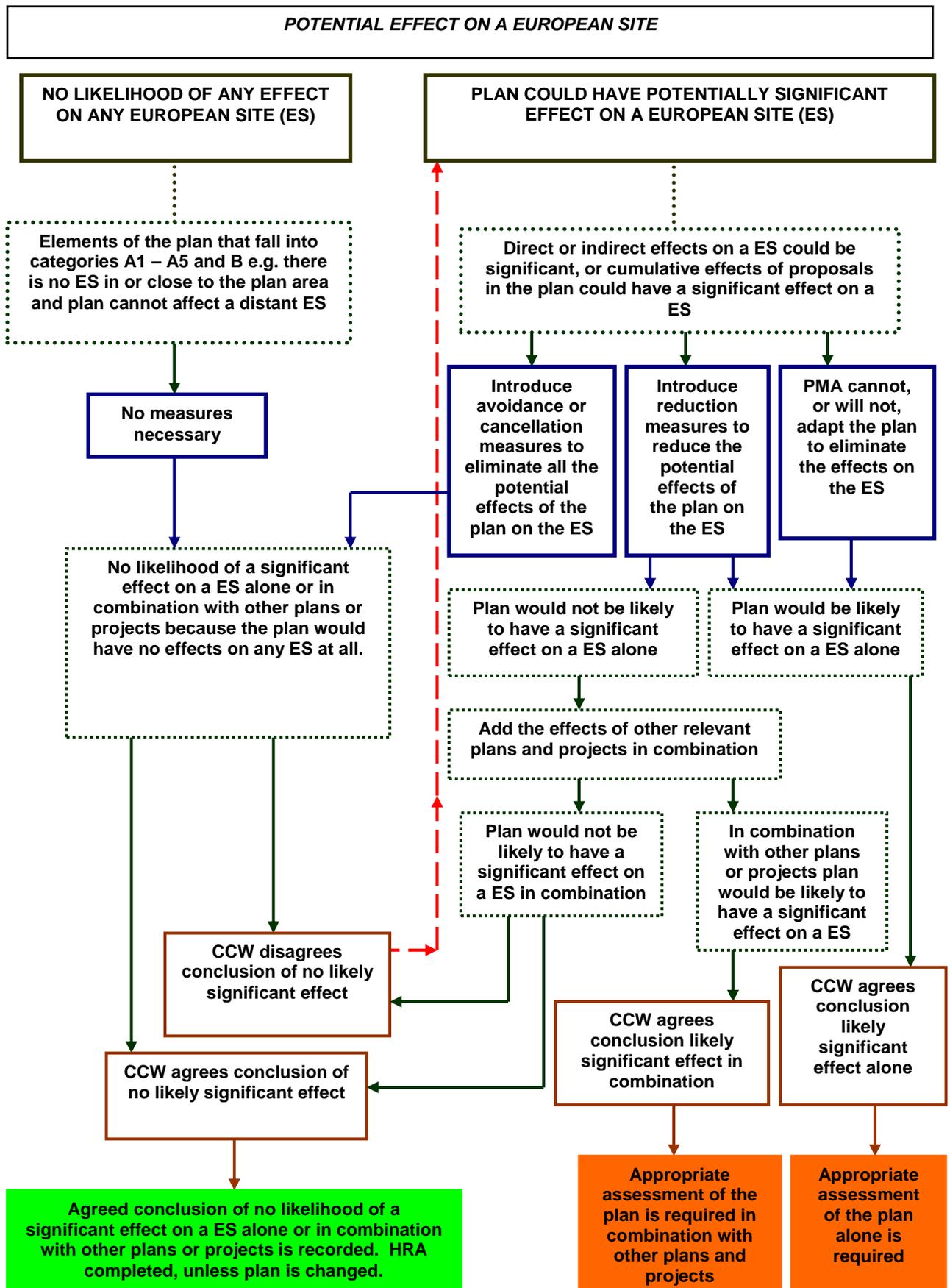
Category D: Likely significant effect in combination	D1	The option, policy or proposal alone would not be likely to have significant effects but if its effects are combined with the effects of other policies or proposals provided for or coordinated by the plan (internally) the cumulative effects would be likely to be significant
	D2	Options, policies or proposals that alone would not be likely to have significant effects but if their effects are combined with the effects of other plans or projects , and possibly the effects of other projects provided for in the plan as well, the combined effects would be likely to be significant
	D3	Options or proposals that are, or could be, part of a programme or sequence of development delivered over a period, where the implementation of the early stages would not have a significant effect on European sites, but which would dictate the nature, scale, duration, location, timing of the whole project, the later stages of which could have an adverse effect on such sites

- 5.23 The analysis at D.3 will check for the cumulative effects of changes that form **part of a series of proposals**, implemented in sequence over time, and where the implementation of early projects may determine the effects of later projects on a European site, see paragraph 2.38 above.
- 5.24 The assessor should ask a question along these lines: *“Does this policy or proposal form part of a sequence of proposals that may be implemented in stages, over a period of time, and if so, is it possible that implementing this proposal determines the scale, location, route, or timing of a wider programme in a way that may determine or influence whether a later proposal may adversely affect a European site?”*
- 5.25 Further guidance on ‘in combination’ effects is provided below.

Introducing measures to avoid the likelihood of significant effects

- 5.26 As soon as potential effects are identified, ideally, the plan making authority should introduce measures to eliminate or reduce them, for example, by modifying the elements concerned or removing them altogether from the plan. If the likely significant effects of elements of the plan can be avoided or reduced by modifications to the plan as it evolves, these measures should be taken.
- 5.27 At this stage it may be clear to the assessors that a relatively minor change to the plan would allow the appraisal to conclude that the policy or proposal would not have a significant effect, alone or in combination.
- 5.28 If this change is / can be implemented during the screening process, the relevant policy or proposal should be changed as part of the iterative process of screening. The process is illustrated in Figure 5 below.

FIGURE 5 COUNTER-ACTING MEASURES AND APPLICATION OF REGULATION 61 / 102



- 5.29 Some plans may already contain site safeguard policies, which the plan making authority does not propose to change, and which generally provide for the conservation (and enhancement) of European sites. However, this is considered to be insufficient to ensure that another policy in a plan, which could affect such a site, would not have any effects on the site. A likely significant effect cannot be ruled out where another policy in the plan makes provision for development that could affect the European site. Where there is a tension or conflict between the policies it must be resolved in favour of the protection of the integrity of the European site.
- 5.30 To retain potentially damaging elements of a plan, simply relying upon a general environmental protection policy, is not in the interests of the plan or the successful implementation of planned sustainable development.

In combination effects

- 5.31 It should be possible to identify the other plans or projects in a targeted way; not trawling for every conceivable plan or project, whilst identifying all the relevant ones. To be relevant to the *in combination* effect the residual effects of other plans or projects will need to either make the unlikely effects of the subject plan likely, or insignificant effects of the plan significant, or both.
- 5.32 If the effects of other plans or projects will already be significant on their own they are not added to those of the plan being assessed. Only effects of other plans or projects which, like those of the plan under consideration here, alone would not be likely to be significant, need to be added to the *in combination* test. Consequently, until the elements of the plan that may have a significant effect in combination, but not on their own, are identified, it is pointless attempting to draw up a list of other plans and projects that should be combined. To do so at the outset of appraisal could involve substantial abortive or irrelevant work.
- 5.33 It is important to constrain the *in combination* appraisal to all relevant plans and projects, but not including irrelevant ones, to make the appraisal manageable and effective whilst still complying with the Regulations.
- 5.34 Reference should be made to the further guidance on assessing *in combination* effects in TAN 5. However, plan making authorities should be alert to the combined effects of programmes that may be given consent and implemented in stages, sequentially, perhaps because of a phasing of resources or particular sequence of implementation.
- 5.35 In terms of the type of other plans and projects, the combination will need to include:
- a) the incomplete parts of projects that have been started but which are not yet completed;
 - b) projects given consent but not yet started;
 - c) projects that are subject to applications for consent not yet decided;
 - d) projects that are subject to outstanding appeal procedures;
 - e) any known projects that are not subject to any consent;
 - f) policies and proposals that are not yet fully implemented in plans that are still in force; and
 - g) policies and proposals in draft plans which have been published for final consultation purposes, but not including options or alternatives in earlier stages before sites are selected for allocation, or other proposals are firmed up [2.12].

- 5.36 It may be necessary for the plan making authority to take into account projects outside its area, as well as those within its area, when determining whether there may be ‘in combination’ effects on European sites [2.13].
- 5.37 In addition, the consideration of ‘in combination effects’ will need to take into account any other plans that could have a significant effect on any relevant European sites if combined with the subject plan. This will require consideration of the existing condition of the sites and their species, the likely effects of policies and proposals contained in existing plans but which have not yet been fully implemented, and the likely effects of policies and proposals contained in draft plans that are currently being brought forward by the plan making authority or by other public bodies. Table 6 provides examples of the types of plans that a plan making authority may need to take into account when considering ‘in combination’ effects. Further advice may be obtained from CCW (and, where relevant, from Natural England) [2.14].

Table 6 Plans to consider in the combination of plans and projects	
The Plans	Plan-making bodies
The Wales Spatial Plan	Welsh Government
Nearby local development plans or UDPs in Wales	Adjacent local planning authorities
Sectoral plans that have a strong influence on project decisions such as transport or waste plans	Welsh Assembly Government, local authorities etc
Strategies that have a strong influence on project decisions such as Shoreline Management Plans	For example the Environment Agency and local authorities
Regional Spatial Strategies in nearby English Regions until they have been revoked	Adjacent English local planning authorities
Structure and Local Plans or emerging Development Plan Documents in nearby English local authorities	English plan making authorities

[TAN 5, Annex 6, Table 1]

- 5.38 However, the in-combination test cannot reasonably be expected to include the possible effects of projects not yet applied for or plans (or draft plans) not yet published for consultation. This may mean that the first plan in a series is not subject to in-combination tests, because alone it would not have significant effects. It is the second and subsequent plans or projects that will need in-combination checks with the first and any other earlier plans.

Output of checking for likely significant effects

- 5.39 The output of this screening stage is likely to be a schedule with all options, policies and proposals assigned to a category from A to D as described above. Options, policies and proposals in categories A and B require no further assessment. Those in categories C and D could have a significant effect on a European site, alone or in combination with other plans or projects. These should all proceed to an appropriate assessment.
- 5.40 The schedule at this stage might look like the illustration in Table 2 earlier in this section.
- 5.41 If, however, any such elements could be deleted from the plan the plan making authority could consider deleting them, and re-screening the revised plan for the likelihood of a significant effect, so eliminating the need for, or reducing the scope of, an appropriate assessment.

6. THE APPROPRIATE ASSESSMENT

Scoping the appropriate assessment

- 6.1 In cases where the Habitats Regulations assessment is being undertaken independently of sustainability appraisal, it is recommended that the scope and method of the appropriate assessment for plans likely to have a significant effect on one or more European site should be discussed and agreed with CCW. At this scoping stage the formal consultation period under regulation 61(3) / 102(2) should also be agreed with CCW, if an appropriate assessment is likely to be required, because a specific period is not prescribed by the Regulations [2.25, 2.28, 2.31].
- 6.2 Where the Habitats Regulations Appraisal is being undertaken as part of the sustainability appraisal, preparation of the scoping report for the sustainability appraisal will provide the opportunity to address the proposed scoping of the Habitats Regulations Appraisal [2.27].
- 6.3 Under the SEA Regulations²⁵, the plan making authority must formally consult CCW on the SEA scoping report and on the Environmental Report²⁶. The SEA scoping stage may be an appropriate time to also consult CCW on the authority's Habitats Regulations Appraisal determination as to whether the plan is likely to have significant effects and, where relevant, the draft scope of the appropriate assessment. However, development plan alternatives may not have been generated at SEA scoping stage. If they have not, CCW will be unlikely to confirm that the tests of the likelihood of significant effects have been finalised until all alternatives have been put before them. Therefore, the plan making authority should ensure that formal consultation under regulation 61(3) / 102(2) of the Habitats Regulations is done at the most appropriate stage in their plan-making process (see further section 7 below) [2.37].
- 6.4 Selection of the best method for appropriate assessment is a judgement that should take account of good practice, although the options may be limited by the information available and the technical or scientific know-how. The method of assessment of the impact should be discussed and agreed with CCW to ensure it is "appropriate" as early as possible. CCW will advise on the scope of the appropriate assessment on a plan by plan, and site by site, basis [2.26].
- 6.5 A formal scoping report is unlikely to be necessary but a written proposal would inform this consultation process and help to guide the discussions about the appraisal. It should include a summary of the evidence base described above, including a list of sites and information as to whether the site's features include any priority natural habitat types or priority species, whether the site's features are at favourable conservation status, and whether there are any impediments to improving their status, especially those that could be addressed by the plan. It could also include elements of the plan to be considered, including options, and the vulnerabilities of the interest features to the likely changes. Any background reports should also be referred to and available, even if they are not attached to the scoping paper. It is also useful to ensure that there is a list of all papers, reports and data sets, and their version and date, used at each stage, because these may change over time. It will be important to know which version was used at which stage of the Habitats Regulations Appraisal process [2.26 and 2.29].

²⁵ The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (S.I. 2004/1656).

²⁶ *ibid*, regulations 12 and 13

- 6.6 Scoping the Appropriate Assessment is likely to involve the following:
- (a) Adopting the method in this guidance or devising and agreeing with CCW an alternative and appropriate assessment methodology;
 - (b) Agreeing the evidence base about the European sites;
 - (c) Identifying any additional information about the internationally designated sites necessary to undertake appropriate assessment;
 - (d) Identifying any plans or projects whose effects may need to be assessed in combination with the plan's effects;
 - (e) Exploring the screening process, agreeing which sites can be excluded from appraisal;
 - (f) If the appropriate assessment is being conducted separately from the SEA process, deciding on whether to consult publicly and if so, on an appropriate consultation period for both CCW and the public, because the Habitats Regulations do not specify a time period for consultation;
 - (g) Agreeing elements of the plan that are categorised as having no likelihood of a significant effect (categories A and B in section 5 above); and
 - (h) Agreeing elements of the plan that could have a significant effect (categories C and D in section 5 above) [2.28].
- 6.7 Additional information about the changes likely to occur as a result of the implementation of the plan's proposals might include such matters as further details as to the precise boundaries of a proposed site, the proposed distribution or numbers of different types of development or other changes, or the scale of proposed changes, such as the floorspace of proposed employment or retail developments etc.. It might also include information about drainage, water abstraction, noise, movement and other issues likely to result from the implementation of the plan's proposals [2.30].
- 6.8 In addition to CCW, it may be beneficial to consult the Environment Agency Wales and conservation organisations such as the Wildlife Trusts and the RSPB, which may also have valuable ecological information and expertise. In the event that a European Offshore Marine Site may be affected by the plan the JNCC should be consulted [2.38].
- 6.9 Any alternative methodology for the appraisal should be agreed with CCW. The method should be 'appropriate', i.e. fit for purpose, effective and compliant with the Regulations.
- 6.10 It is critical that the appraisal is based upon a defensible evidence base. The appraisal will be scrutinised at the Examination of the plan, where relevant, and questions may be asked by the Inspector, or representations may be made, about the basis for conclusions drawn.

- 6.11 Where the Habitats Regulations Appraisal is being progressed in parallel with the sustainability appraisal, the scoping report of the appraisal will normally include a description of the alternatives / options to be considered and appraised. The same alternatives / options should be included in the Habitats Regulations Appraisal.

The Appropriate Assessment

- 6.12 The purpose of the appropriate assessment is to ensure that, prior to the plan's adoption, all the aspects of the plan which could, by themselves or in combination with other plans or projects, affect any European site are identified in the light of the best scientific knowledge in the field²⁷, so that a judgement can be made as to whether or not the plan could have an adverse effect on the integrity of any such sites (the integrity test described below and in section 7). The appropriate assessment is applied as a matter of policy, in relation to potential effects on Ramsar sites and pSPAs.
- 6.13 Guidance on undertaking appropriate assessments is given in the CCW guidance on the assessment of projects²⁸. However, it should be borne in mind that appropriate assessment for a plan is unlikely to be as detailed an appraisal as one undertaken at project level. Occasionally, where a proposal in a plan is advancing rapidly at project development level, concurrently with the plan-making process, such detailed information could be available, but usually such detailed appraisals are unlikely to be achievable or feasible. Amendments to the plan to avoid adverse effects on European sites can be taken into account [2.32].
- 6.14 The work already undertaken by the plan making authority to determine the likelihood of significant effects of the plan (see above) and the scoping of the appropriate assessment (see above) should enable the appropriate assessment to focus on those aspects of the plan that are likely to have a significant effect on the conservation objectives of any European site potentially affected. An ecological assessment of those potential effects will be required in order to determine whether they might adversely affect the integrity of the site(s) concerned [2.33].
- 6.15 At the appropriate assessment stage, when ascertaining whether the plan's policies and proposals will have, or could have, adverse effects on the integrity of these European site(s), either alone or in combination with other plans or projects, regard should be had to avoidance, cancellation and reduction (mitigation) measures and whether there will be opportunities to further amend the plan after considering the effects in more detail. However, compensatory measures should not be taken into account at appropriate assessment stage in assessing the impact of the plan on European sites²⁹ [2.34].
- 6.16 The following mitigation measures may be necessary in order for a plan making authority to ascertain that there would be no adverse effects on the integrity of a European site:
- a) Deletion of the policy or proposal that may cause the adverse effect;
 - b) Reduction in the scale of the potentially damaging provision;

²⁷ Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee*.

²⁸ Tyldesley, D., and Hoskin, R. (2008) *Assessing projects under the Habitats Directive: guidance for competent authorities*, Countryside Council for Wales, Bangor

²⁹ See: European Commission, 2007, *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC*, section 1.4.

- c) Relocation or alteration of the spatial distribution of the potentially damaging provision;
 - d) Changing the nature of the proposal;
 - e) Phasing or timing a proposal so that its possible effects can be adequately managed over time;
 - f) Programming a proposal so that it is dependent on key infrastructure provision or upgrading, such as water supply or waste water treatment, being in place before it could proceed;
 - g) Requiring buffer zones to be put in place;
 - h) Introduction of a case-specific policy restriction or caveat (see paragraphs 6.24 – 6.27 below);
 - i) Specify that the plan or a part of it, relies on a later or lower tier Habitats Regulations Appraisal, which will protect the integrity of any site that may be affected (see paragraphs 6.19 – 6.23 below);
 - j) Deletion of aspects of the plan which the EC considers should not be included in plans, namely proposals that would be likely to fail the tests of the Directive at project decision stage, and proposals that it may be argued are imperative and of overriding public interest, simply because they are incorporated into the plan and the plan relies on them being implemented (see paragraphs 2.35 and 2.39 – 40, and 5.15 – 20 and category C8).
- 6.17 The plan should remove potentially harmful policies and proposals and explicitly include measures to ensure that all development flowing from, or controlled by, the plan would not have an adverse effect on the integrity of a European site. The plan making authority should consult and reach agreement with CCW before concluding that a plan would have no adverse effect on the integrity of a European site.
- 6.18 If the screening schedule identified any options, policies or proposals in categories C4 or C8, they should be addressed in the appropriate assessment as follows.

Relying on later or lower tier plan appraisal to add mitigation measures

- 6.19 Options, policies or proposals in category C.4, where a plan makes provision for a type of change, generally, and perhaps its broad location or general scale, but not its particular magnitude or specific location, may be more appropriately appraised either later in the plan making process, or in a lower tier plan, where there will be one. However, reliance on the later or lower tier plan appraisal is only appropriate where the later or lower tier appraisal will ensure that there would be no adverse effect on site integrity and that this can be established with appropriate certainty before the proposals are assessed as projects, at application stage. The following paragraphs set out an approach which if applied correctly will allow the appropriate assessment to be completed.
- 6.20 If the later appraisal or assessment will ensure that there would be no adverse effect on site integrity, because more detail will be available, it is acceptable to rely on the later or lower tier appraisal as a mitigation measure if all of three criteria are met.

- 6.21 This way of ascertaining no adverse effect on integrity at an early stage in plan making or at a more strategic level plan, is not a way of deferring or delaying the appraisal process, but a valid mitigation measure in the appropriate assessment of an earlier or higher tier plan, and a way of securing further mitigation measures in a later or lower tier plan appraisal.
- 6.22 Subject to appropriate adjustments to the plan itself the plan-making authority can reasonably ascertain that there would be no adverse effect on the integrity of the European site arising from the policy or proposal if the following three criteria are all met:
- a) The earlier, or higher tier, plan appraisal cannot reasonably predict the effects on a European site in a meaningful way; whereas
 - b) The later or lower tier plan, which will identify more precisely the nature, scale or location of development, and thus its potential effects, retains sufficient flexibility over the exact location, scale or nature of the proposal to enable an adverse effect on site integrity to be ruled out (even if that would mean ultimately deleting the proposal); and
 - c) The later or lower tier appraisal is required as a matter of law or Government policy, so it can be relied upon.
- 6.23 It may be helpful for the Habitats Regulations Appraisal of the earlier or higher tier plan to indicate what further appraisal may be necessary in the later or lower tier appraisal and how the requirements may be adjusted, in the event that the later or lower tier Habitats Regulations Appraisal shows that adverse effects on a European site might not be ruled out.

Case-specific policy restrictions and caveats

- 6.24 In order to ascertain that there would be no adverse effects on integrity other kinds of mitigation measures may be required during the appropriate assessment. These may include either, or both, the introduction of case-specific policy restrictions or case-specific policy caveats.

Case-specific policy restrictions

- 6.25 Where the outcome of an appropriate assessment in relation to a particular policy is uncertain because the policy provides for change which could affect a European site, if measures were not put in place to prevent such effects, the plan-making authority may need to add a case-specific policy restriction.
- 6.26 For example, if delivery of a particular tranche of housing development, in a particular location would exacerbate water pollution problems in or affecting a European site, the plan-making authority could add a restriction on the policy provision for the housing, which prohibited permissions being given until such time as the waste water treatment works have been upgraded, so as to reduce the level of pollution and in turn provide additional capacity at the works to accommodate the additional housing without adding to the water quality problems.
- 6.27 There will, of course, be a further safeguard in such cases. Both the waste water treatment upgrade and the housing developments will be projects subject to regulation 61 and will need to pass those tests before they can be permitted.

- 6.28 However the plan should not rely on this last-minute application of the Regulations. The advantage is that the plan flags up the water quality issue at a strategic level, and at an early stage, so enabling the infrastructure to be planned and delivered in a way that avoids the housing development having to be refused permission at project stage because of its effects on the European site. This kind of policy restriction ensures that protection of the site does not have to rely, as a last resort, and / or at the last moment, on regulation 61 assessment of the project and its subsequent refusal at application stage.
- 6.29 To be an appropriate restriction enabling the plan-making authority to ascertain no adverse effect on the integrity of a European site, the policy restriction must be case-specific and explicit and must be added to the policy and not merely to the explanatory text or commentary, and not merely inserted into the implementation or monitoring chapters.
- Case-specific policy caveats*
- 6.30 Where the effects of a particular policy depend on how it is implemented in due course, through the development management process, there may be a theoretical possibility that if implemented in one or more particular ways, the policy could have a significant effect on a European site. Such policies cannot, therefore, be 'screened out' and in the appropriate assessment the uncertainty of the policy outcome will still remain, unless it can be removed by an amendment to the plan.
- 6.31 In order for the plan-making authority to be able to ascertain with confidence that the policy or proposal would not have an adverse effect on the integrity of a European site, it will be necessary to ensure that implementing the policy in ways that would affect the integrity of a European site, would not be in accordance with the development plan. In order to do this, the plan-making authority may need to add a specific caveat. This would remove the presumption in favour of the development (which it may otherwise enjoy by virtue of it being in accordance with the development plan³⁰) if it was implemented in a way that could, or would adversely affect site integrity.
- 6.32 Again, it is not appropriate to rely merely on a general policy aimed at protecting internationally designated nature conservation sites. If one aspect of a plan would be likely to have a significant effect on a European site, the inherent tension, conflict, or contradiction between the two aspects of the plan must be resolved in a way that favours the protection of the integrity of the European site. This can be achieved by the addition of a policy caveat, but it must be case-specific and explicit, it should say that the development would not be in accordance with the plan if it would have an adverse effect on site integrity, and it should be added to the policy (not merely the explanatory text)
- 6.33 Whether or not the Habitats Regulations Appraisal is being undertaken independent of the sustainability appraisal any appropriate assessment should be formally recorded when completed, see further section 7 below.

The precautionary principle

- 6.34 It is essential to appreciate that the appropriate assessment embodies the precautionary principle. It is for a plan making authority to ascertain that implementation of the plan will not adversely affect the integrity of any European

³⁰ Under the provisions of section 38 of the 2004 Act

site³¹ in order for the plan to proceed (subject to steps 14 – 20 in Figure 6 below). Further guidance on the appropriate assessment steps is provided in paragraphs 14 - 16 of Annex 3 TAN 5 [2.35].

- 6.35 The appropriate assessment includes the formal consultation with CCW described below. It is therefore suggested that the plan making authority prepares a draft record of the Habitats Regulations Appraisal, including:
- (a) a draft of the appropriate assessment; and
 - (b) the plan making authority's initial conclusions as to whether it can ascertain that, with the proposed changes, other counter-acting measures in the plan and appropriate reliance on later or lower tier appraisals, there would be no adverse effect on the integrity of any European site.

Iterative consultation with CCW, as the plan progresses is the best way to ensure that the requirements of regulation 61(3) / 102(2) have been met [2.36].

³¹ Or, in the case of cSACs and pSPAs respectively, to ascertain that the development plan (i) will not seriously compromise the ecological characteristics of the cSAC, or (ii) will not cause significant pollution or deterioration of the pSPA, or significant disturbance of the bird species for which the pSPA has been proposed.

7. PRE-SUBMISSION CONSULTATION WITH CCW, ASCERTAINING EFFECTS ON SITE INTEGRITY AND RECORDING THE APPRAISAL

Formal Consultation

- 7.1 It is recommended that CCW is formally consulted on a draft of the appropriate assessment. The plan making authority will need to decide whether to consult the public and if so how³². Where wide public consultation is unnecessary, stakeholders should be given the opportunity to comment on the appraisal before it is finalised [2.38].
- 7.2 Under the SEA Regulations, and as part of the normal practice for producing sustainability appraisal reports, CCW is consulted (along with other statutory bodies and the general public) on the sustainability appraisal / Environmental Report.
- 7.3 However, the plan making authority must consult CCW, and have regard to its advice, under the provisions of regulation 102(2) **before** ascertaining whether the plan would adversely affect the integrity of a European site, for the purposes of any appropriate assessment [2.36].
- 7.4 The Record on the Habitats Regulations Appraisal needs to include at least an indication of the authority's opinion as to the effects of the plan on the integrity of European sites, but it must not finally ascertain the effect on site integrity until the plan making authority has considered CCW's representations. Earlier consultations with CCW, for example on the scope of the sustainability appraisal, may have been at a stage that was too early to enable CCW to provide meaningful advice as to the effect on site integrity.
- 7.5 The procedure shown in boxes 10 and 11 of Figure 1 in section 2 is recommended. The plan making authority should prepare a draft record of the Habitats Regulations Appraisal, including an otherwise complete, but draft, appropriate assessment, and send it to CCW with any supporting documentation, reports etc, along with the draft plan and the Environmental Report or the sustainability appraisal report. This would constitute a formal consultation under regulation 61 / 102 of the Habitats Regulations, as well as, and simultaneously with, the formal consultation on the plan and the sustainability appraisal report or Environmental Report under the SEA Regulations.
- 7.6 CCW will comment on the appraisal and provide a letter to the plan making authority indicating whether it agrees with the conclusions in the draft record of the Habitats Regulations Appraisal.
- 7.7 The plan making authority may need to amend the draft record as a result of CCW's comments. The plan making authority would then forward the finalised record of the Habitats Regulations Appraisal and the letter from CCW to the Welsh Government or the Inspector for examination, as may be appropriate. It is possible that CCW may need to be consulted again on the record, as revised, and a second letter provided to the plan making authority.

³² Regulation 102(2) and (3) of the Habitats Regulations 2010.

Ascertaining effects on site integrity

- 7.8 The plan making authority should conclude that a plan would not adversely affect the integrity of a European site only if it has made **certain** that this is the case. In order to be certain, the plan making authority should be satisfied that no reasonable scientific doubt remains as to the absence of such effects³³ [2.39]
- 7.9 If the plan making authority ascertains, following the appropriate assessment that the development plan will **not** adversely affect the integrity of any European site, either alone or in combination with other plans or projects, it should report these conclusions to the relevant Council, Board or Committee of the plan making authority. If this conclusion differs from that of CCW, the plan making authority should notify the Welsh Government before adopting the plan [2.40].
- 7.10 If the plan making authority cannot ascertain that the development plan will not adversely affect the integrity of a European site (but see below in respect of cSACs and pSPAs), either because there would be an adverse effect or because the effects are uncertain, the plan cannot be progressed to adoption unless regulations 62/66 or 103/105 of the Habitats Regulations are complied with as discussed in section 9 below. This conclusion should also be reported to Members of the plan making authority and advised to CCW and the Welsh Government as soon as possible [2.41].
- 7.11 The situations in which plan making authorities may progress the development plan to adoption are more restricted where the plan could have an effect on cSACs or pSPAs:
- Where the development plan could have an effect on a cSAC, the plan making authority may progress the plan to adoption only if it is certain that the adoption of the plan will not seriously compromise the ecological characteristics of the cSAC (either alone or in combination with other plans or projects).
 - Where the development plan could have an effect on a pSPA, the plan making authority may progress the plan to adoption only if it is certain that the adoption of the plan will not cause significant pollution or deterioration of the pSPA, or significant disturbance of the bird species for which the pSPA has been proposed (either alone or in combination with other plans or projects) [2.42].

Recording the Habitats Regulations Appraisal

- 7.12 Whether or not the Habitats Regulations Appraisal is being undertaken independently of the SEA or sustainability appraisal, the conclusions of the whole appraisal must be recorded, no matter what stage it reached or how much work was involved.
- 7.13 Where relevant, a sustainability appraisal or environmental report could include a chapter that sets out a straightforward explanation of the Habitats Regulations Appraisal, including:
- a) a summary of the screening process and the options, policies and proposals likely to have significant effects (alone or in combination), and what the effects would be;

³³ Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee*.

- b) the representations from CCW and others on the Habitats Regulations Appraisal;
- c) whether it has been ascertained that the plan will not adversely affect the integrity of any European site (and will not impact on any cSAC or pSPA in the manner described in paragraph 2.42 of Annex 6 of TAN 5), either alone or in combination with other plans and projects;
- d) all counter-acting measures relied upon to make the judgements about significant effects and effects on site integrity;
- e) references and links to any supporting documentation or reports; and
- f) if relevant, a summary of any considerations under regulations 62/66 or 103/105 [2.43].

- 7.14 **Appendix C** provides a suggested outline of the content of a Habitats Regulations Appraisal Record to give an indication of the level of detail and scope of the content that CCW considers to be appropriate. However, it is emphasised that the length and complexity of the record will necessarily reflect the complexity of the appraisal.
- 7.15 A Habitats Regulations Appraisal Record is not like an Environmental Impact Statement. It is recording an authority's conclusions about a site safeguard process, rather than producing a wide ranging report on various environmental effects in order to inform a public consultation and decision making process. It does not have to include a statutorily specified range of contents, although it should provide clear conclusions on each of the relevant tests. It does not necessarily have to be a free standing document; it can refer to other documents, such as web-based data sets, supporting documents or consultant's reports, so long as they are available to interested parties, and do not require a long paper chase to track them down.
- 7.16 The record is likely to have a limited and informed readership. It should be compliant with Regulations, rational, understandable and fit for purpose but need not be lengthy. It should explain its key conclusions in respect of the likelihood of the plan having a significant effect on a European site and how adverse effects on the integrity of European sites will be avoided. The record need not itself contain all the detailed analytical work that informed the conclusions, but this should be made available on request to consultees.
- 7.17 In complex cases, the record may need to refer to reports, such as those prepared by specialist consultants to deal with multiple potential effects on a range of European sites.
- 7.18 Where relevant it should address the requirements of regulations 62/66 or 103/105 but CCW believes that plans should not normally lead to adverse effects on the integrity of European sites and where necessary should adopt the measures set out in this guidance to achieve that aim.

8. RECHECKING THE PLAN BEFORE ADOPTION

Revision of the plan and Further Assessment

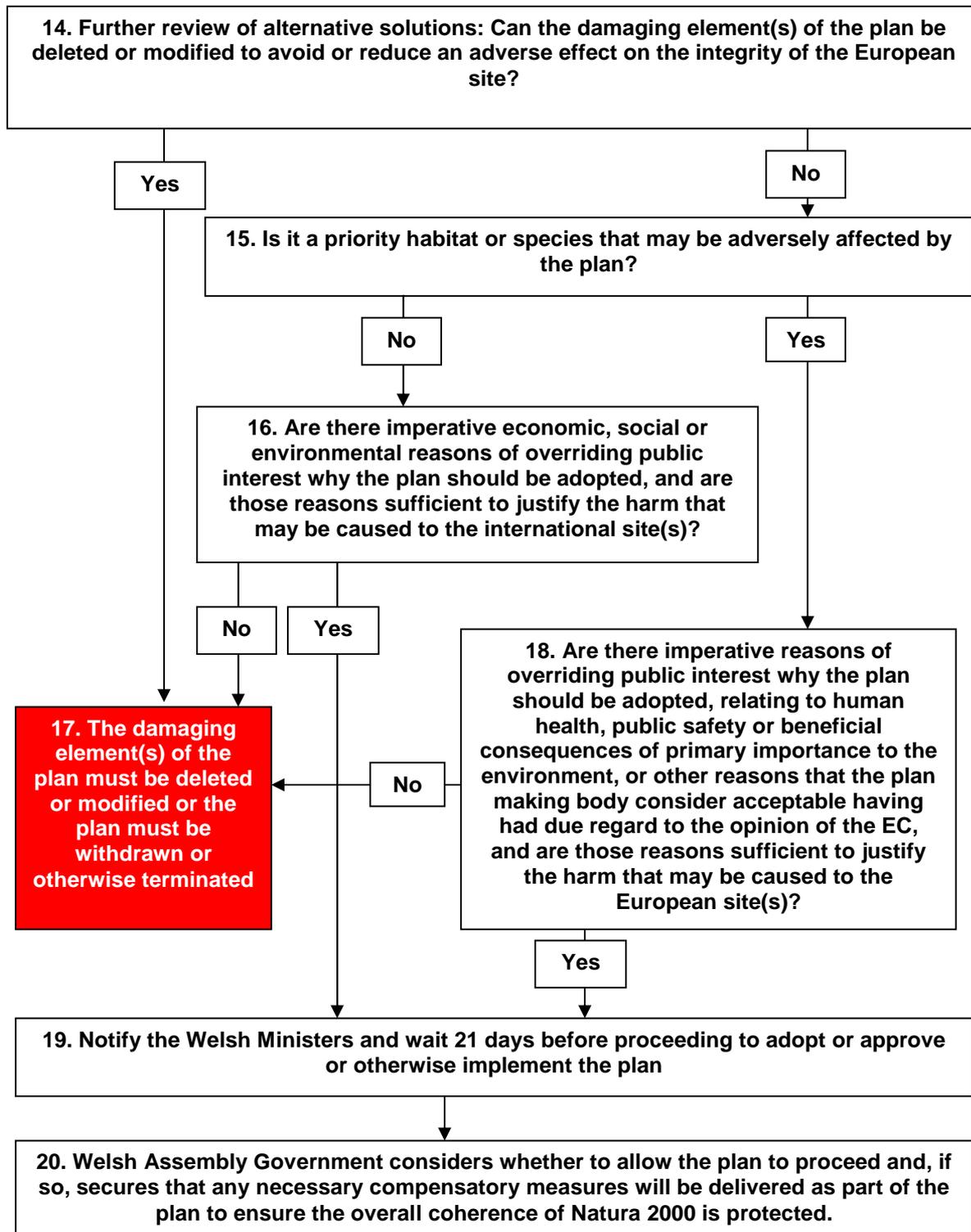
- 8.1 The iterative processes of development plan preparation, with its accompanying SEA, should ensure that environmental effects of the plan are fully taken into account and that any potentially adverse effects on the integrity of European sites are avoided or minimised by the time a development plan is made the subject of a UDP Inquiry or Local Development Plan Examination. However, it is important to bear in mind that the Habitats Regulations Appraisal is a distinct process with its own requirements [2.44].
- 8.2 If a change to a Local Development Plan is deemed necessary at the Examination in order to make the Local Development Plan sound then it may be necessary for a further Habitats Regulations Appraisal to be conducted by the plan making authority. A further Habitats Regulations Appraisal will be necessary where the change could give rise to a significant effect on a European site, either alone or in combination with other plans or projects [2.45].
- 8.3 A further Habitats Regulations Appraisal may also be necessary if an Inspector recommends that a UDP be adopted subject to modifications, and those modifications could give rise to a significant effect on a European site, either alone or in combination with other plans or projects [2.46].
- 8.4 Where a further Habitats Regulations Appraisal is necessary as a result of such recommended changes or modifications, the planning authority must formally consult CCW (in accordance with Regulation 61 or 102) before ascertaining whether the development plan would adversely affect the integrity of a European site if it were to incorporate such changes or modifications. (The plan making authority may also consult the public if it wishes, but does not have to do so.) The further Habitats Regulations Appraisal should be recorded and reported as indicated in section 7 above, and if the further Habitats Regulations Appraisal is carried out as a result of proposed modifications to a UDP, it should be made available to the public during consultation on the modifications [2.47].

9. ALTERNATIVE SOLUTIONS AND IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST

- 9.1 If a plan making authority is unable to ascertain that a proposed plan policy or proposal will not adversely affect the integrity of a European site, it may progress to adoption of the plan only in the closely defined circumstances set out in regulations 103 / 105 or 62 / 66 of the Habitats Regulations and illustrated in **Figure 6** below [2.48].
- 9.2 As indicated above, the Welsh Government expects that a plan will only need to proceed by way of these later tests in the most exceptional circumstances. Normally, a plan making authority should change the plan during the course of the Habitats Regulations Appraisal to ensure that it will not adversely affect the integrity of any European site [2.48].
- 9.3 The option of progressing under regulations 103 / 105 or 62 / 66 will not be available where the plan, either alone or in combination with other plans or projects:-
- a) could seriously compromise the ecological characteristics of a cSAC; or
 - b) could cause significant pollution or deterioration of a pSPA, or significant disturbance of the bird species for which a pSPA has been proposed.
- In these situations, the plan making authority may not proceed to adopt the plan under any circumstances [2.49].
- 9.4 In any exceptional case, where regulation 103 or 62 is applied to a proposed plan, the plan making authority must first be satisfied that there are no alternative solutions. If there are any feasible alternative solutions that would have no effect, or a lesser effect, on a European site's integrity, the proposed plan must be changed to apply the least damaging alternative and thereby remove or minimise the effect on the site's integrity [2.50].
- 9.5 What constitutes an alternative solution in any particular case will depend on the nature of the proposed policies or the scale or location of any proposal(s) that may cause the adverse effects on the site. Alternative solutions are likely to include deletion or modification of the offending policies, or removal of proposals from the plan, or the relocation or reduction in scale of proposals. Even if the plan's overall strategy needs to be adjusted to accommodate these changes, this adjustment would still be considered to be an alternative solution to the adoption of the plan in its current form [2.51].
- 9.6 Further guidance on the consideration of alternative solutions, is found in TAN 5 Annex 3 [2.52].
- 9.7 If there are no such alternative solutions, the plan making authority may consider whether there are imperative reasons of overriding public interest to justify the adoption of the plan despite its potentially negative effect on European site integrity. Different tests apply depending on whether the European site(s) that may be affected host a priority habitat type or species that would be affected by the plan³⁴. The European Commission has issued guidance, which states that it is not the mere presence of a priority habitat or species that is relevant to this test but whether it could or would be adversely affected by the plan [2.53].

³⁴ Priority habitats and species are indicated by an asterisk in Annexes I and II of the Habitats Directive. The citation saying why the site was designated will show whether it hosts a priority habitat or species.

FIGURE 6
ASSESSMENT UNDER REGULATIONS 62/66 or 103/105
 (Additional procedures where it cannot be ascertained that there would be no adverse effect on the integrity of an international site)



- 9.8 If a European site does not host a priority natural habitat type or species that could be affected by the plan, the plan may be adopted if it must be given effect for imperative reasons of overriding public interest, including those of a social or economic nature³⁵. Such reasons would need to be sufficient to outweigh the adverse effects on the European site interest features [2.54].
- 9.9 If a site **does** host a priority habitat or species that could be affected by the plan, the overriding public interest considerations which may justify the adoption of the plan are even narrower. In these circumstances, the imperative reasons of overriding public interest must relate to human health, public safety, or beneficial consequences of primary importance to the environment, or other imperative reasons of overriding public interest, provided the planning authority has had due regard to the opinion of the European Commission in satisfying itself that there are such reasons³⁶ [2.55].
- 9.10 If the plan making authority desires to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it must submit a written request to the Welsh Ministers as required by regulation 61(3) or 103(4). The UK government may then seek the Commission's opinion and transmit it to the Welsh Ministers, who will transmit it to the plan making authority [2.56].
- 9.11 There will be few cases where it can be judged that imperative reasons of overriding public interest will allow a plan to proceed that will have an adverse effect on the integrity of European sites. The judgement will involve an assessment of the importance of the plan's proposals and whether they are sufficient to override the harm to the nature conservation importance of that European site [2.57].
- 9.12 Further guidance in respect of imperative reasons of overriding public interest is found in TAN 5, Annex 3 paragraphs 28 - 37 and the European Commission's guidance document on Article 6(4) of the Habitats Directive 92/43/EC, as revised in 2007 [2.58].
- 9.13 If a plan making authority continues to pursue its plan without change to adoption, despite a negative or uncertain outcome of the Habitats Regulations Appraisal, regulation 62(5) or 103(8) requires it to notify the Welsh Ministers and, having done so, not to give effect to the plan for 21 days unless the Welsh Ministers notify them that they may do so [2.59].
- 9.14 Regulations 62(6) and 103(7) provide that in any such case the Welsh Government may give directions to the authority prohibiting it from adopting the plan, either indefinitely or for the period specified in the direction [2.60].

Adoption of the Plan and Compensatory Measures

- 9.15 In the exceptional circumstances of the Welsh Government allowing the adoption of a plan under the provisions of regulation 103 (no alternative solutions and imperative reasons of overriding public interest) the Welsh Government shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected³⁷.

³⁵ Regulations 62(1) and 103(1) of the 2010 Regulations

³⁶ Regulations 62(2)(b) and 103(3) of the 2010 Regulations

³⁷ Regulation 66 or 105 of the 2010 Regulations

- 9.16 It is likely that such measures and a programme of implementation and monitoring of their effectiveness will have been identified and agreed with CCW in advance of the plan being adopted.
- 9.17 If no compensatory measures are available it is unlikely to be open to the Welsh Government to allow the plan to be adopted in accordance with the Regulations.
- 9.18 Further guidance on compensatory measures is found in TAN 5 paragraphs 38 - 43.

10. MONITORING

- 10.1 There are no explicit statutory provisions with regard to monitoring following a Habitats Regulations Appraisal. However, appropriate monitoring of effects of the plan on the European sites is considered to be an important part of monitoring proposals to be incorporated, in any event, into the sustainability appraisal / SEA processes. At the very least, monitoring can provide valuable information for future plan appraisals. It may also contribute to a plan making authority's wider duties to have regard to the Habitats Directive in the exercise of all of its functions³⁸. Results of monitoring could also lend greater credibility and confidence to future appraisals.
- 10.2 In selecting monitoring indicators it will be important to ensure that the results help to identify, and perhaps measure or assess, the effects of the plan on the sites. General monitoring of site condition may reveal little about the effects of the plan, especially where the conservation status or population of species or condition of habitats on the European sites are influenced by a range of factors not relevant to the plan, such as ecological succession or deficient habitat management.
- 10.3 Alternatively, monitoring may focus on trends of change, to see whether the relevant aspects of the site's conservation objectives and features are moving towards or away from sustainable conservation.

³⁸ Regulation 9(5) of the Conservation of Natural Habitats and Species Regulations 2010

APPENDIX A
OTHER GUIDANCE AVAILABLE

Plan making authorities will find it useful to also refer to the following guidance from the European Commission, Welsh Assembly Government (WAG) and others:

European Commission, 2000, *Managing Natura 2000 Sites: the provisions of Article 6 of the 'Habitats' Directive 92/43/EC, as amended by*

European Commission, 2007, *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EC.*

WAG, 2009 *Technical Advice Note 5: Nature Conservation and Planning*

WAG, 2002, *Sustainability Appraisal of Unitary Development Plans in Wales: A Good Practice Guide*

WAG, 2004, *Strategic Environmental Assessment (SEA) of Unitary Development Plans – Interim Good Practice Guide (Amendment of SEA Elements of Sustainability Appraisal of Unitary Development Plans 2002)*

WAG, et al, 2005, *A Practical Guide to the Strategic Environment Assessment Directive* published by Office of the Deputy Prime Minister

WAG, 2005, *Town and Country Planning (Local Development Plan) (Wales) Regulations 2005*

WAG, 2005, *Local Development Plans Wales*

WAG, 2006, *Local Development Plans Manual*

Planning Inspectorate Wales, 2006, *A Guide to the Examination of Local Development Plans.*

Tyldesley, D. (2012) *Assessing projects under the Habitats Directive: guidance for competent authorities*, Countryside Council for Wales, Bangor

Royal Society for the Protection of Birds, 2007, *The Appropriate Assessment of Spatial Plans in England: A guide to why, when and how to do it.*

APPENDIX B
INTEGRATION OF THE HABITATS REGULATIONS ASSESSMENT WITH THE
SUSTAINABILITY APPRAISAL AND STRATEGIC ENVIRONMENTAL
ASSESSMENT PROCESSES FOR LOCAL DEVELOPMENT PLANS

Key and Abbreviations

Text in italics in the Table refers mainly to guidance and legislation relevant to Local Development Plans, however, the Table has wider applicability in that many of the plan stages described in the first column will be relevant to other plans.

HR10	<i>The Conservation of Habitats and Species Regulations 2010</i>
IGPG 04	<i>Strategic Environmental Assessment (SEA) of Unitary Development Plans – Interim Good Practice Guide (Amendment to SEA Elements of Sustainability Appraisal of Unitary Development Plans, 2002, WAG 2004</i>
LDP Regs 05 =	<i>Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 SI 2005 / 2839 (W. 203)</i>
PCPA 04 =	<i>Planning and Compulsory Purchase Act 2004</i>
PGSEAD 05	<i>A Practical Guide to the Strategic Environmental Assessment Directive September 2005, ODPM, DoENI, SE, WAG</i>
SA	Sustainability Appraisal
SAUDPW 02	<i>Sustainability Appraisal of Unitary Development Plans in Wales: A Good Practice Guide, WAG, 2002</i>
SEA	Strategic Environmental Assessment
SEA Regs 04	<i>The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 SI 2004 / 1656 (W.170)</i>

Plan Preparation Process	Sustainability Appraisal Process	SEA Process	Habitats Regulations Assessment Process
Commencement	Screening - Consider whether plan subject to SA	Screening – determine whether plan subject to SEA <i>Regs 9 - 11 SEA Regs 04 and section 4 IGPG 04</i>	Determining whether plan would be likely to have significant effects on any European site see section 5 above and regs 60, 61(1) and 102(1) and 105
Scope of the plan, Process and Method Clarify plan's purpose, aims and objectives <i>S.62(2) PCPA 04</i>	Set sustainability objectives <i>Section 4 SAUDPW 02</i>	Set environmental objectives to test plan based on international, EC and national environmental objectives <i>Reg12 and Sch 2.1 & 2.5 SEA Regs 04 and Stage A Figure 6 and section 5 of PGSEAD 05 and section 8 IGPG 04</i>	Include an objective relevant to protection / enhancement of European sites
Delivery Agreement including Community Involvement Scheme and Timetable (<i>Part 2 LDP Regs 05</i>)	Devise SA method and programme in consultation with partners <i>Section 3 SAUDPW 02</i>	Devise SEA method and programme in consultation with partners and how it will integrate with SA method and programme <i>Stage A Figure 6 and section 5 of PGSEAD 05 and section 5 IGPG 04</i>	Devise Habitats Regulations Appraisal method and programme in consultation with CCW and how it will integrate with SA/SEA method and programme, see sections 1 and 2 above

Plan Preparation Process	Sustainability Appraisal Process	SEA Process	Habitats Regulations Assessment Process
<p>Assembling the Evidence Base Baseline Information and evidence to plan , surveys required S.61 PCPA 04</p>	<p>Environmental, social and economic information to inform the sustainability appraisal <i>Section 5 SAUDPW 02</i></p>	<p>State of the environment and its evolution in absence of plan implementation, characteristics of areas likely to be affected, environmental problems <i>Reg12 and Sch 2.2, 2.3 & 2.4 SEA Regs 04 and Stage A Figure 6 and section 5 of PGSEAD 05 and section 6 IGPG 04</i></p>	<p>Establish a sound evidence base, see section 3 above</p>
<p>Key Issues and Options Generate options and possible content of plan. Early <i>Pre-deposit participation Regs 14-15 LDP Regs 05</i></p>	<p>Identify, describe and evaluate sustainability of reasonable alternatives and outline reasons for selection <i>Section 6 SAUDPW 02</i></p>	<p>Identify, describe and evaluate likely significant environmental effects of reasonable alternatives and outline reasons for selection <i>Reg12(2) and Sch 2.8 SEA Regs 04 and Stage B Figure 6 and section 5 of PGSEAD 05</i></p>	<p>Check options for likelihood of significant effects on European sites, see sections 2 and 5 above</p>
<p>Set consultation arrangements <i>Pre-deposit participation Initial Consultation Report Regs 14-15 LDP Regs 05</i></p> <p>Scoping Report Stage</p>	<p>Decide how to consult consultation bodies and public <i>Section 3 SAUDPW 02</i></p>	<p>Decide how to consult consultation bodies and public, <i>Reg 13 SEA Regs 04 and Stage A Figure 6 and section 5 of PGSEAD 05</i></p>	<p>Set consultation arrangements with CCW see section 6 above</p>
<p>Develop Strategy, Policies and Proposals S.62-63 PCPA 04, Regs 11-12 LDP Regs 05</p>	<p>Initial Appraisal Appraisal of plan's aims and strategy against sustainability objectives – <i>the sustainability appraisal required by S.62(6)(a) PCPA 04 and Section 6 SAUDPW 02</i></p>	<p>Initial Appraisal Appraisal of plan's aims and strategy against environmental criteria / objectives <i>Stage B Figure 6 and section 5 of PGSEAD 05 and section 9 IGPG 04</i></p>	<p>Initial Appraisal Assess whether any aspect of the draft plan would be likely to have a significant effect on a European site see section 5 above</p>
<p>Select strategy and assess plan's policies and proposals</p>	<p>Assess selected strategy and plan's policies and proposals against sustainability objectives and criteria <i>Section 6 SAUDPW 02</i></p>	<p>Assess selected strategy and plan's policies and proposals against environmental objectives and criteria <i>Stage B Figure 6 and section 5 of PGSEAD 05</i></p>	
<p>Adjust plan in light of SA / SEA / Habitats Regulations assessment</p>	<p>Consider further and better alternatives and mitigation measures <i>Section 6 SAUDPW 02</i></p>	<p>Consider further and better alternatives and mitigation measures <i>Stage B Figure 6 and section 5 of PGSEAD 05</i></p>	<p>Consider further and better avoidance or mitigation measures see 2.4 above</p>
<p>Draft the Deposit Version of the Plan</p>	<p>Draft Sustainability Appraisal Report <i>Section 8 SAUDPW 02</i></p>	<p>Draft Environmental Report <i>Stage C Figure 6 and section 5 of PGSEAD 05</i></p>	<p>Consult CCW on draft appropriate assessment and incorporate representations into the Appraisal record</p>

Plan Preparation Process	Sustainability Appraisal Process	SEA Process	Habitats Regulations Assessment Process
<p>Deposit Draft Plan for Public and Statutory Consultations Consultation with statutory bodies and other stakeholders, public consultation <i>Regs 17 – 21 LDP Regs 05</i></p> <p>Consider Representations, Revise / Modify Plan <i>Independent Examination S.64 PCPA 04, Regs 23-24 LDP Regs 05</i></p>	<p>Sustainability Appraisal Report under <i>S.62(6)(b) PCPA 04</i> placed on deposit with draft plan and submitted to WAG <i>Section 8 SAUDPW 02</i></p> <p>Consider representations about Sustainability Report, decide if changes to plan required and assess significant changes to the plan</p>	<p>Consultation on Environmental Report contained in the Sustainability Appraisal, consult consultation bodies and public, <i>Reg 13 SEA Regs 04 and Stage D Figure 6 and section 5 of PGSEAD 05</i></p> <p>Consider representations about Environmental Report, decide if changes to plan required and assess significant changes to the plan <i>Reg 8(3) SEA Regs 04 and Stage D Figure 6 and section 5 of PGSEAD 05</i></p>	<p>Record and publish the Habitats Regulations Appraisal</p> <p>Consider representations about Habitats Regulations Appraisal, decide if changes to plan required and assess significant changes to the plan under regulations 61 or 102, consult CCW if necessary before ascertaining whether adverse effect on integrity of European site</p>
<p>Adoption of Plan Consider whether to adopt the plan, formal notices under <i>S.67 PCPA 04, Reg 25 LDP Regs 05</i></p> <p>Monitoring <i>Annual Monitoring Report S.76 PCPA 04 and Reg 37 LDP Regs 05</i></p>	<p>Consider whether to adopt the plan in light of Sustainability Appraisal</p> <p>Implement monitoring provisions of the Sustainability Appraisal Report <i>Section 7 SAUDPW 02</i></p>	<p>Consider whether to adopt the plan in light of SEA, <i>Stage D Figure 6 and section 5 of PGSEAD 05</i></p> <p>Implement monitoring provisions of the SEA Report, <i>Stage E Figure 6 and section 5 of PGSEAD 05</i></p>	<p>Consider whether to adopt the plan in light of Habitats Regulations Appraisal</p> <p>Implement monitoring provisions of the Habitats Regulations Appraisal</p>

APPENDIX C
SUGGESTED OUTLINE OF A HABITATS REGULATIONS APPRAISAL RECORD
FOR A PLAN

A suggested outline of a HRA (Habitats Regulations Appraisal) Record for a typical development plan type of document is set out below, but the actual content will depend on the complexity of the Appraisal.

Outline Content of Habitats Regulations Appraisal Record		
Title	Title	This should explicitly refer to the Habitats Regulations
	Contents	Summary of contents
Introduction	Need for Assessment	Briefly setting out the statutory requirement either under regulations 102-107 or 61,62 and 66
	Method and timing	Referring to the methodology in this guidance and not seeking to repeat it except by way of summary flowcharts, such as those in this Guidance and how the Habitats Regulations Appraisal fits with the wider plan making process
	References	List of key references and web links especially to data sources and to the plan itself and its supporting technical papers, consultants reports, etc
	European Sites	Definition of European sites and map of the area showing distribution, description of interest features and conservation objectives, brief analysis of site condition and vulnerability of interest features to the kind of changes likely to flow from the plan
	Limitations	A brief resume of limitations of data or know-how in making appraisals
Screening	The Strategy	Assessment of the likely effects of the plan strategy on European sites
	Likely significant effects of policies and proposals	A screening schedule or summary of options, policies and proposals and their likelihood for significant effects and need for appropriate assessment, e.g. see Table 2 of this guidance.
Appropriate Assessment and Effects on Site Integrity	Measures for avoiding adverse effects on site integrity	A list of the measures by which effects on site integrity will be avoided and where other appraisals will be required. Application of these measures to elements of the plan likely to have a significant effect alone or in combination. List of other appraisals required in later or lower tier plan appraisals including their scope and timing.
	Changes to the plan	List of changes made or to be made to the plan as a result of the Appraisal
	Conclusion of the Appropriate Assessment	Setting out whether it can be ascertained that, in light of the application of these measures and appraisals of later or lower tier plans, the plan would not have an adverse effect on the integrity of any European site alone or in combination with other plans or projects
Consultation	Stakeholders	How stakeholders were engaged in the appraisal
	CCW and JNCC	Summary of advice of CCW and in respect of European Offshore Marine Sites, the JNCC

Outline Content of Habitats Regulations Appraisal Record		
Dealing with Adverse Effects (where applicable)	Residual adverse effects on site integrity	A description of the adverse effects on site integrity that would or could occur despite the measures applied and the need for other appraisals
	Alternative solutions	An explanation as to why it is considered that there are no alternative solutions to the elements of the plan that would or could have an adverse effect on a European site
	Imperative reasons of overriding public interest	An explanation as to why it is considered that there are imperative reasons of overriding public interest that the plan making authority considers to outweigh the potential negative effects on site integrity
	Compensatory Measures	A description of compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected
Monitoring	Monitoring	Outlining any monitoring measures necessary to support the appraisal and future appraisals
Annexes	Possible Annexes	List of key web links Maps and more detailed description of European sites potentially affected by the plan Screening schedule categorising the component parts of the plan (if not presented in the main body of the record) Monitoring measures in more detail where necessary