



Habitats Regulations Appraisal (HRA) of Local Development Plans (LDPs)

Guidance for planning authorities in Scotland

November 2023

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Purpose of this guidance

The key purpose of this guidance is to help planning authorities in Scotland undertake the Habitats Regulations Appraisal (HRA) of Local Development Plans (LDPs).

It is a revision of “Habitats Regulations Appraisal of Plans - Guidance for plan-making bodies in Scotland (2015)”.

The [NatureScot website](#) also provides good general information about HRA, including a useful template proforma to use for HRA of both plans and projects. For most types of plans, our standard HRA web advice and template will be appropriate. LDPs, however, often contain multiple policies and proposals that could affect European sites, and a particular methodology and reporting style can therefore be helpful. This guidance sets out our recommended methodology for HRA of LDPs. Some aspects of the guidance may also prove helpful for HRA of other plans that contain multiple policies and proposals.

Our latest revisions

We published the original version of this guidance (entitled “Habitats Regulations Appraisal of Plans - Guidance for plan-making bodies in Scotland”) in August 2010.

This (fourth) version contains a number of key changes:

- It seeks to simplify the process and align it better with our other web guidance.
- It makes the main purpose of the guidance more explicit, i.e. that it primarily relates to Local Development Plans, rather than to all plans.
- It takes account of the ‘People Over Wind’ Court of Justice of the European Union (CJEU) judgement, which means that any mitigation measures should be considered at a later stage in the appraisal process.
- It reflects recent changes to the planning system, for example, by removing reference to ‘Main Issues Reports’, and including reference to ‘Evidence Reports’.

Previous iterations of this guidance have benefitted from the comments and advice of a project steering group and from examples of good practice provided by local authorities. We are grateful to David Tyldesley and Associates for initially preparing the 2015 guidance version. Please [get in touch with us](#) if you have any comments on the current version. The guidance can evolve over time taking account of your feedback.

We recognise that the guidance remains a lengthy document. We can possibly address this in future versions. The summary of key points in the following section may be helpful for grasping the main messages, with the rest of the guidance available for exploring more detail.

Summary of key points

Here is a summary of key points from the guidance (also providing an outline of the HRA process):

1. Under the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (the Habitats Regulations), all competent authorities must consider whether a plan or project could affect a European site before it can be authorised or carried out. This includes considering whether it will have a 'likely significant effect' (LSE) on the qualifying interests of a European site, and if so, they must carry out an 'appropriate assessment' (AA). The overall process is commonly known as Habitats Regulations Appraisal (HRA).
2. The term 'European site' refers to Special Areas of Conservation (SACs) and Special Protection Areas (SPAs).
3. A 'competent authority' is an authority with the power or duty to determine whether or not a proposal can proceed. In the context of this guidance, the competent authority is the plan-making body (i.e. for LDPs, the planning authority).
4. The process of HRA should inform the preparation of the plan in order to help avoid any adverse effects on the integrity of European sites. Subject to certain provisions, the competent authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned.
5. HRA must be undertaken to support the preparation of any Local Development Plan (LDP). It is an integral part of the plan-making process and should inform and be informed by the plan as it is prepared. A record of the HRA should be kept to provide an audit trail of the competent authority's thinking and should accompany any Proposed LDP.
6. Before the HRA Record and the Proposed LDP are published for formal consultation, we recommend that NatureScot is informally consulted on an early/working draft of the HRA record. In order to provide context, it will also be helpful for NatureScot to see an early draft of the Proposed Plan at this stage. Early consultation with NatureScot can help:
 - Resolve doubt, e.g. over whether to consider a particular European site.
 - Focus the appraisal on the key issues and avoid unnecessary work.
 - Inform plan policies and proposals, noting that if planning authorities are unable to ascertain that policies or proposals will not adversely affect the integrity of a European site, they should not be included in proposed plans.

7. For LDPs, the planning authority's Development Plan Scheme (DPS) can help set out how it expects NatureScot and other stakeholders to be involved in its process of preparing the HRA Record.
8. The HRA should be proportionate, practical, realistic and effective.
9. The first key HRA stage/ test for most plans asks the competent (plan-making) authority to identify which aspects of the plan are likely to have a significant effect on a European site (either alone or in combination with other plans or projects) (the plan not being directly connected with or necessary to site management for nature conservation). If there is a 'likely significant effect' ('LSE') then an 'appropriate assessment' (AA) is required in relation to those aspects.
10. There is often misunderstanding of the 'LSE' test. It requires just a simple, but very precautionary, judgement of the potential impacts. It is sometimes referred to as a 'screening' stage, and it acts as a coarse filter that seeks to remove from further assessment those aspects that have no ecological connection to a European site. The test is essentially asking whether any aspect of the plan is 'capable' of having an effect, or can be objectively ruled out. At this stage, it is not about appraising issues in any great detail.
11. Note that the 'People Over Wind' Court of Justice of the European Union (CJEU) judgement means that mitigation measures should not be introduced at the LSE stage as a basis for screening out aspects of the plan. Instead, such mitigation measures should be taken into consideration at the 'appropriate assessment' stage. Also, note that the LSE test should consider 'in-combination' effects, given that combinations of many small effects can be just as damaging as one large effect.
12. Deciding 'no LSE' for all aspects of the plan means you can conclude the HRA at this point, and record your decision. Deciding an aspect of the plan does have a 'LSE' on the qualifying interests of a European site means you continue to the appropriate assessment stage for that aspect of the plan.
13. The appropriate assessment test asks if it can be ascertained that the plan or project will not have an 'adverse effect on site integrity' (AESI) of a European site. The appropriate assessment has to be made in view of the site's conservation objectives. If the conservation objectives will not be undermined then it can be ascertained that there will be no AESI. The plan-making body should be convinced beyond reasonable scientific doubt that the plan or project will not adversely affect the integrity of the site concerned. In the context of 'appropriate assessment', "appropriate" should be taken to mean 'fit for purpose'. In other words, whatever is necessary to determine the impacts on the site. This does not necessarily mean that an appropriate assessment needs to be complicated.
14. If you decide there is a LSE, then it is possible for the appropriate assessment to conclude 'no AESI' without the need to apply mitigation measures to policies or proposals. In some cases, however, mitigation may be required so that the plan-

making body can ascertain no AESI. This guidance discusses the application of mitigation measures, which can take various forms (for example policy caveats and policy restrictions/ conditions). It considers the relationship between mitigation in a higher tier plan and in a lower tier plan/ project. To protect the European site, there must be confidence that the proposed mitigation measures will avoid, minimise or cancel the negative effects of the project or plan.

15. There is a crucial distinction between mitigation and compensation. Only mitigation can be used during an appropriate assessment. Compensation can only be used in closely defined and exceptional circumstances where it has not been possible to conclude that the plan would not adversely affect the integrity of a European site.
16. It is the responsibility of the plan-making body to formally consult SNH (NatureScot) if the HRA includes an appropriate assessment. The statutory consultation with SNH (NatureScot) is required as part of the 'appropriate assessment' and the assessment cannot therefore be finished and finally recorded until NatureScot's representations have been received and the plan-making body has had regard to them.
17. As noted above, we recommend that an HRA Record should be prepared to accompany a Proposed Plan (i.e. Proposed LDP), and formal consultation with NatureScot can take place at the same time for both. However, as discussed, planning authorities are encouraged to consider the implications of draft policies and proposals on European sites early in the plan-making process and to seek the informal views of NatureScot.
18. This guidance also discusses the process for making any necessary modifications to an HRA Record in relation to any proposed modifications to LDPs arising from examination.
19. Note that, if a plan-making body is unable to ascertain that a policy or proposal within a plan 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 the Habitats Regulations. This is the 'derogation process' and it is expected to occur only in the most exceptional of circumstances.
20. The HRA process for plans can be split into five stages:
 - Stage 1 considers whether the plan should be subject to Habitats Regulations Appraisal. If so information should be gathered about the European sites potentially affected. NatureScot can be consulted about the method and scope of the appraisal.
 - Stage 2 considers whether the plan is directly connected with or necessary to site management for nature conservation.
 - Stage 3 acts as a screening stage. If any part of the plan is likely to have a significant effect on the qualifying interests of a European site, either

alone or in combination with other plans or projects, an appropriate assessment is required.

- Stages 4 and 5 are the appropriate assessment and the conclusion of that assessment. The appropriate assessment should consider the implications of the plan for the relevant European site(s) in view of the site's conservation objectives. Mitigation can be considered as part of the appraisal and a conclusion made as to whether the plan would not adversely affect the integrity of a European site.

21. This guidance ends with some tips on compliance, how to keep to the 'rules', and 'pitfalls' to avoid. There are four appendices that provide: a glossary of terms; examples of policies that may be screened in or out of the appraisal; an illustrative outline of a draft HRA Record; and the procedure for exceptional cases.

Terminology

A glossary of terms used in this guidance is provided at Appendix A. Habitats Regulations Appraisal terminology is very specific, and in some instances the words have a meaning distinct to that in common usage. It is therefore essential in undertaking an HRA, and in recording it, that terminology is used accurately in order to avoid confusion, e.g. the distinction between 'likely significant effects' and 'adverse effects on site integrity'.

Section 1: Setting the scene

The legislation

If a plan or project could affect a European site (a Special Protection Area (SPA) or Special Area of Conservation (SAC)), there are certain considerations that must be made before the proposal can proceed. These are set out in Article 6(3) and 6(4) of the Habitats Directive and have been transposed into domestic law in Scotland principally through regulations 48 and 49 of The Conservation (Natural Habitats, &c.) Regulations 1994, as amended (the "Habitats Regulations").

Regulation 48 requires that any plan or project, which is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and is not directly connected with or necessary to the management of the site, shall be subject to an 'appropriate assessment' of its implications for the European site in view of the site's conservation objectives.

In the light of the conclusions of that assessment, and subject to the provisions of regulation 49 of the Habitats Regulations, the competent authority (i.e. in this context the plan-making body) shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, having obtained the opinion of the general public. Regulation 49 and 53 provides that if, in spite of a negative assessment of the implications for the site, and in the absence

of alternative solutions, the plan or project must nevertheless be carried out for imperative reasons of overriding public interest, any necessary compensatory measures must be taken to ensure that the overall coherence of the UK site network is protected.

The Habitats Regulations have been amended in Scotland, including in 2019 as a result of the UK leaving the EU. The Habitats Regulations remain in force, including the provisions for the protection of European sites.

The procedure referred to in this guidance is that of 'Habitats Regulations Appraisal' (HRA) which encompasses the requirements of regulation 48 of the Habitats Regulations, as described above. The procedure is sometimes referred to as an 'appropriate assessment', but this is a misrepresentation because an appropriate assessment is only one particular stage in the process of Habitats Regulations Appraisal.

It is important to remember that an appropriate assessment is only required where the plan-making body determines that the plan is likely to have a significant effect on a European site in Great Britain, or a European Offshore Marine Site, either alone or in combination with other plans or projects, and the plan is not directly connected with or necessary to the management of the site. (See Regulation 48(1) and 85B(1) of The Conservation (Natural Habitats, &c.) Regulations 1994 as amended.)

This guidance is intended to offer general advice on the appraisal process in Scotland, from the perspective of NatureScot. It is not a definitive statement of the law or Government policy, and is no substitute for legal advice when required.

Procedural requirements of the Habitats Regulations

The Habitats Regulations set out a step-by-step sequence of statutory procedures to be followed. The sequence is a series of steps which are designed to test the potential effects of plans and projects on European sites. It has to be followed in a correct and particular sequence in order to comply with the requirements of the Regulations. This provides quite a 'rigid' structure to the appraisal process, which has to be stitched into the plan-making process.

See our website for further information about the [Legislative Requirements for European Sites \(summary\)](#). A key point is that, if a plan would be likely to have a significant effect on a European site either alone or in combination with other plans or projects, an appropriate assessment will be required. Also, note that Scottish Government expects that plans will only need to be subject to Article 6(4) (i.e. the issue of derogation/ compensatory measures) in the most exceptional circumstances (see further discussion at section 7 of this guidance).

The process of HRA should inform the preparation of the plan in order to help avoid any adverse effects on the integrity of European sites. The Regulations do not prescribe a particular methodology for carrying out the appraisal of plans, or how to report the outcomes of appraisals. NatureScot's recommended approach to methodology and reporting is set out in detail in this guidance and outlined as a series of stages below.

- **Stage 1** considers whether the plan should be subject to Habitats Regulations Appraisal (all LDPs should be). If so information should be gathered about the European sites potentially affected. NatureScot can be consulted about the method and scope of the appraisal.
- **Stage 2** considers whether the plan is directly connected with or necessary to site management for nature conservation. If not, then proceed to stage 3.
- **Stage 3** acts as a screening stage. If any part of the plan is likely to have a significant effect on the qualifying interests of a European site, either alone or in combination with other plans or projects, an appropriate assessment is required (i.e. move to stages 4 and 5).
- **Stages 4 and 5** are the appropriate assessment and the conclusion of that assessment. The appropriate assessment should consider the implications of the plan for the relevant European site(s) in view of the site's conservation objectives. Mitigation can be considered as part of the appraisal and a conclusion made as to whether the plan would not adversely affect the integrity of a European site.

To record this process we recommend that an HRA Record should be prepared. This should be the subject of consultation with NatureScot. Where the HRA has included an appropriate assessment, it is recommended that the draft HRA Record is the means by which the plan-making body consults with SNH (NatureScot) in compliance with the Regulations (i.e. Regulation 85B(2) of the Habitats Regulations). For development plans, whether or not an appropriate assessment was carried out as part of the appraisal, we recommend that the HRA Record should be submitted to the Scottish Ministers along with the plan and other relevant material (including any relevant correspondence from NatureScot) when for example submitting the plan for examination or adoption.

The HRA Record should demonstrate in a systematic manner how the plan-making body has identified if any elements of the plan are likely to have significant effects on European sites, and if so, how it is then able to be concluded that there would be no adverse effects on the integrity of European sites.

European sites

Although the glossary in Appendix A defines the technical terms used in this guidance, it is important at the outset to define what is meant in this context by 'European sites'.

In Scotland, European sites, which are to be considered in the appraisal process, are Special Protection Areas (SPA), Special Areas of Conservation (SAC), and 'candidate' Special Areas of Conservation (cSAC). The parts of SPAs, SACs and cSACs which lie below Mean High Water Spring tide are also referred to as 'European Marine Sites', and those in the offshore marine area are also called 'European Offshore Marine Sites' (EOMS).

Scottish Government [policy](#) has afforded the same level of protection to any proposed SACs (pSACs) and SPAs (pSPAs) which have been approved by Scottish Ministers for formal consultation. Therefore, effects on these sites should also be appraised. Plan-making bodies should also bear in mind the advice in respect of pSAC, cSAC and pSPA set out in Section 7 at the end of this guidance. For ease of reading this guidance, all SPA, pSPA, SAC, cSAC and pSAC and all European Marine Sites and European Offshore Marine Sites, to which the procedures for appraisal apply, are referred to as 'European sites'.

Ramsar sites

A Ramsar site is a site listed as a wetland of international importance under the provisions of the 'Ramsar Convention'. All Ramsar sites are also European sites and/or Sites of Special Scientific Interest (SSSI) and are [protected under the relevant statutory regimes](#). Where Ramsar interests coincide with European site qualifying interests protected under an SPA or an SAC, as the case may be, the interests are given the same level of (legal) protection as European sites. Where Ramsar interests are not the same as European site qualifying interests but instead match SSSI features, these receive protection under the SSSI regime.

Proportionate appraisal and positive planning

It is important to ensure that plans are appraised for their effects on European sites in compliance with the Regulations. Further guidance on ensuring compliance is set out in Section 7 of this guidance.

The precautionary principle is embedded in the Regulations and should be applied. However, the following points should be borne in mind:

- Many plans are necessarily strategic in nature.
- The actual or likely effects of implementing plans, especially in the absence of detailed proposals that will necessarily follow adoption of the plan, are inevitably uncertain to a greater or lesser degree.
- Projects that may flow from the provisions of plans will, in any event, be subject to detailed, statutory assessment for their effects on European sites, and will only be permitted if they meet the tests of the Regulations.

Nevertheless, it is not appropriate merely to delegate consideration of the effects of plans on European sites to project assessment level, or to rely solely on a general policy in the plan protecting European sites. Therefore, the precautionary principle needs to be applied in the plan appraisal, in a way that recognises the more general nature of plans, and does not unnecessarily or unreasonably prevent or impede the adoption of plans. If the implications of uncertainty are taken to an extreme, it would be impossible for many plans ever to meet such an extreme test, simply because of their non-specific and more general nature.

The HRA process should not be a legal obstacle course, but an effective way of helping to protect European sites, whilst making and implementing plans for sustainable economic growth.

The appraisal process should be proportionate, practical, realistic and effective. It has to operate in a framework within which appraising the effects of a plan can rarely be as detailed and precise as assessing the effects of a specific project at consent application stage.

Plan-making bodies should:

- follow the requirements of the Regulations;
- have regard to the potential for the plan to affect European sites, at all stages of plan making;
- take such measures as can be identified to ensure adverse effects do not occur, based on the best information available; and
- put in place plans which effectively achieve their intended purpose, whilst protecting Scotland's most important wildlife sites.

Where effectively applied, the appraisal process does more than just protect the European sites that may potentially be affected. It leads to better plans. It helps plans deliver economic growth that is genuinely sustainable. It improves the understanding of plan-making bodies about the possible effects of their proposals on internationally important sites and their vital role in biodiversity conservation. Adverse effects on the integrity of European sites will be avoided, and plans will set a robust framework within which proposals can be taken forward to project appraisal, fully informed as to their possible effects on such sites.

The role of NatureScot in HRA and LDP preparation

A key part of NatureScot's engagement in the Town and Country Planning system is early and active involvement in the preparation of LDPs. NatureScot is committed to working jointly with planning authorities and other stakeholders on LDPs in a collaborative manner in order to reach sustainable solutions. This includes advising planning authorities on applying HRA to the plan. NatureScot will therefore welcome, and respond positively to, early opportunities to discuss the content of development plans and implications for European sites, including the spatial strategy, policies and proposals.

Planning authorities should be considering the possible effects on European sites of options for the spatial strategy, policies and proposals early in the plan-making process. As the Proposed Plan represents the planning authority's settled view as to the content of the plan they wish to adopt, it is very important that this has been subject to HRA to ensure that the plan will not adversely affect the integrity of a European site, and could therefore proceed to adoption. The appraisal should therefore be carried out before publication of the Proposed Plan.

The views of NatureScot should be sought early in the process, so that any mitigation can be built in to the plan-making process as soon as possible. As part of its positive engagement, NatureScot can help advise on any likely significant effects of draft policies and proposals on European sites, the appropriate assessment of these, and on mitigation if necessary, to the extent that information in the plan at this stage enables appraisal to be carried out and advice to be given. This will save time and effort later in

the process, and should result in fewer representations from NatureScot at the Proposed Plan stage.

Therefore, while it is the responsibility of the planning authority to prepare the HRA Record and to formally consult SNH (NatureScot) on it if this includes an appropriate assessment, planning authorities are encouraged if possible to informally consult NatureScot on drafts of the HRA Record (within an agreed timescale). This will create significant benefits when any later formal consultation on the record takes place under regulation 85B(2).

The planning authority's Development Plan Scheme (DPS) could helpfully set out how it expects NatureScot and other stakeholders to be involved in its process of preparing the HRA Record.

In summary, NatureScot welcomes early and collaborative engagement in the preparation of development plans. Planning authorities are encouraged to consider the implications of draft policies and proposals on European sites early in the plan-making process and to seek the informal views of NatureScot.

Undertaking appraisal in parallel with Strategic Environmental Assessment (SEA)

Public plans that require appraisal under the Habitats Regulations are also likely to fall within the scope of section 5(3) of the Environmental Assessment (Scotland) Act 2005. In particular, any plan or programme which requires an appropriate assessment under the Habitats Regulations is also likely to require SEA (see Section 5(3)(b) of the Act).

In order to achieve savings in resources and time, plan-making bodies can consider opportunities to combine the earlier stages of SEA and HRA where appropriate, even though the differing requirements mean that the two assessments cannot be fully integrated. One option is to conduct the earlier stages in parallel, such as environmental information gathering, prediction of plan effects, and some early consultation stages. The early consideration of potential effects of policy options on European sites can be carried out and recorded as part of the SEA.

If the HRA is undertaken in parallel with SEA, it is important that the findings of both appraisals are separately and clearly documented and that the record of the HRA uses the correct terminology, applying it appropriately. Further advice on terminology is given in Appendix A of this guidance.

It can be borne in mind that as there is no obligation to consult the public under the Habitats Regulations, it is also not necessary to include the HRA Record in an Environmental Report. However, if the HRA Record is included in the Environmental Report it will be necessary for clarity to set it out in a separate chapter or distinct section, or appendix. It is also important in such cases that the title of the document should include reference to the Habitats Regulations Appraisal as well as to it being the Environmental Report. In practice, it is easier to set out the HRA in a separate record, and where appropriate provide a cross-reference to it in the Environmental Report. Some plans lend themselves to a parallel approach more than others.

In summary, plan-making bodies may find it beneficial to integrate their SEA and HRA processes by using the early stages of SEA to inform the HRA. This can include gathering the evidence-base of European sites, identifying aspects of the plan likely to have significant effects, noting aspects of the plan needing to be considered as part of the cumulative/ in-combination assessments, and considering if straightforward mitigation measures can be applied. Reporting of SEA and HRA assessments generally follow different timetables. However if the plan lends itself to including a HRA record within the same documentation as the SEA Environmental Report, care must be taken to ensure they are clearly distinguished, including the use of the correct terminology when referring to each.

Section 2: Plans that should be subject to appraisal

Deciding whether a plan should be subject to Habitats Regulations Appraisal

As discussed further below, all LDPs are required to be subject to HRA. This section of the guidance therefore provides context and may be helpful for consideration of other types of plans.

The first stage in the appraisal process is to establish whether the relevant plan should be subject to HRA. This depends in part on the type of plan and in part on its potential effects on European sites. It is not possible, categorically, to produce a list of plans that must always be subject to appraisal, and to advise that all other plans will never need to be subject to appraisal. The European Court of Justice has widely interpreted what is meant in the Habitats Directive by a 'plan or project'. The [European Commission's guidance on the provisions of Article 6 of the 'Habitats' Directive](#) (Section 4.4) notes that:

“...the Directive does not circumscribe the scope of either 'plan' or 'project' by reference to particular categories of either. Instead, the key limiting factor is whether or not they are likely to have a significant effect on a site”.

The above EC guidance, the judgment of the European Court of Justice in *EC v the UK*, case C – 6/04, and the Advocate General's opinion in that case, are helpful when considering which plans should be subject to appraisal. The court's judgment did not hinge on whether our land use plans were 'plans' in the meaning of the Directive, because that was accepted in the UK's legal submissions. Rather, the question was the extent to which the plans would be likely to have a significant effect on a European site, given that the implementation of the plans was dependent on projects which would require further permissions.

To help determine whether a plan should be subject to HRA, note that if the answer to any of the following considerations is yes, then the plan-making body should proceed to identify the European sites that may potentially be affected and gather information about them:

- Is the plan a 'local development plan' (regulation 85A), or a core path plan (regulation 69A) or a revision thereof?

- Does the plan provide a framework for deciding applications for project consents and / or does it influence decision makers on the outcome of applications for project consents?
- Does the plan contain a programme, or policies, or proposals which could affect one or more particular European site?

However, if a plan is a general statement of policy showing only the general political will or intention of the plan-making body, and no effect on any particular European site can reasonably be predicted, then it is unlikely the plan will need to be subject to HRA. But, in case of any doubt, the plan-making body should seek legal advice.

Appraisal of the effects of Scottish '**land use plans**' on European sites is specifically required by Part IVA (regulations 85A – 85E) of The Conservation (Natural Habitats, &c.) Regulations 1994 as amended. (Part IVA was inserted by The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (SSI 2007/80).) Part IVA covers strategic development plans, local development plans and supplementary guidance, as provided for under Part 2 of the Town and Country Planning (Scotland) Act 1997 as amended. These are prepared by strategic development planning authorities, planning authorities and National Park Authorities (regulation 85A), including plans which are jointly prepared by two or more authorities (regulation 85D). Core Path Plans are explicitly required to be subject to appraisal of their effects on European sites under regulation 69A of the Habitats Regulations. The Planning (Scotland) Act 2019 now removes the need for the preparation of strategic development plans. The Act also removes the ability for supplementary guidance to be prepared, adopted and issued in connection with the development plan which then forms part of the development plan.

Other types of plans, not explicitly identified in the Regulations, will need to be subject to appraisal for their effects on European sites because regulation 47(1)(b) applies the requirements to all other plans and projects not specifically cited in Part IVA of the Regulations.

Consequently, for example, where a planning authority intends to prepare or give authorisation to any other plan, including any masterplan or development brief which is not Supplementary Guidance under Part 2 of the 1997 Act and is not a land use plan under Part IVA of the Habitats Regulations, they should have regard to the generality of provisions under regulations 47 and 48 of the Regulations.

In her Opinion on case C-6/04, Advocate General Kokott said (paragraph 44) that land use plans could have likely significant effects "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". The Advocate General advised (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.

The EC has advised 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" (i.e. see Section 4.4.2 of the [European](#)

[Commission's guidance on the provisions of Article 6 of the 'Habitats' Directive](#)). Many aspects of plans are general statements of policy expressing a plan-making body's general policy framework, or political aspirations or general intentions. However, even if only part of a plan would be likely to have a significant effect on a European site, because of its more specific provisions, it should be subject to appraisal.

It should be borne in mind that the Scottish Ministers have the power, under regulation 48A, to require a plan-making body in Scotland to undertake an appropriate assessment of a plan in a manner which the Ministers may prescribe, if they consider that one should be undertaken and, either it has not been undertaken, or it has been undertaken in a manner which, in the opinion of the Scottish Ministers, does not comply with the Habitats Directive and Regulations.

In summary, when considering whether a plan should be subject to appraisal, take it through the considerations in the above bullets. Plans or parts of plans which are merely general policy statements, or which only show the general political will or intention of a public body, will not be likely to have a significant effect on a European site. However, it is a case-by-case decision as to whether a plan should be subject to appraisal, a critical test being whether it, or any part of it, would be likely to have a significant effect on a European site. A plan-making body should seek legal advice if in doubt.

Section 3: Getting started and early discussions

Identifying the European sites that should be considered in the appraisal

Identifying the relevant sites to consider or check is not always a straightforward process. It is important to ensure all sites potentially affected are considered, but it is equally important to avoid excessive data gathering on sites that are not likely to be affected, and to keep the assessment proportional to the likelihood of significant effects. As a general guide, and subject to case-by-case analysis by an ecological adviser, as necessary, the sites described in the following list should be considered as potentially relevant:

Selecting European sites that should be considered in the appraisal	
Criteria	European sites to check
All plans	Sites within the plan area, including those for the criteria listed below.
For plans that could affect the aquatic environment	Sites upstream or downstream of the plan area in the case of river or estuary sites.
	Peatland and other wetland sites with relevant hydrological links to land within the plan area, irrespective of distance from the plan area.
For plans that could affect mobile species	Sites which have significant ecological links with land in the plan area, for example, land in the plan area may be used by migratory birds, which also use a SPA, outwith the plan area, at different times of the year (see for example NatureScot guidance on Assessing Connectivity with Special Protection Areas).

Selecting European sites that should be considered in the appraisal	
Criteria	European sites to check
For plans that could increase recreational pressure on European sites potentially vulnerable to such pressure	Such European sites in the plan area.
	Such European 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 (the appropriate distance in each case will need to be considered on its merits, in light of any available evidence).
	Such European sites within a longer travel distance of the plan area, which are major (regional or national) visitor attractions such as European sites which are National Nature Reserves where public visiting is promoted, sites in National or Regional Parks, coastal sites and sites in other major tourist or visitor destinations (the appropriate distance in each case will need to be considered on its merits, in light of any available evidence).
For plans that would increase the amount of development	Sites that are used for, or could be affected by, water abstraction in or close to the plan area.
	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.
	Sites that could be affected by transport or other infrastructure (e.g. by noise or visual disturbance).
	Sites that could be affected by increased deposition of air pollutants arising from the proposals, including emissions from significant increases in traffic.
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.

Bear in mind that European Offshore Marine Sites, beyond the 12 nautical miles limit of Scotland's territorial waters, could possibly be affected by some plans, including those for managing change in the marine environment.

When identifying which European sites to consider, use the list above to help you. Make sure sites which could be significantly affected are not omitted from consideration, but do not simply select every conceivable site irrespective of any possible link to the effects of the plan. Think about the possible links and avoid gathering information unnecessarily. If there is any doubt as to whether to include a European site for consideration, please discuss the issue with NatureScot.

In reality, authorities are usually not starting with a blank sheet. Existing LDPs, for example, will have been prepared on the basis of an understanding of the European sites that are most likely to be affected, and the key issues potentially affecting these. Although there will be a need to check whether there is any more up to date information available.

Gathering information about the European sites

Information about the relevant European sites, including details of the qualifying interests, conservation objectives and site condition, can be obtained from

[NatureScot's SiteLink website](#). Conservation Advice Packages or Conservation and Management Advice Packages have been prepared for the majority of SACs and can also be found on NatureScot's SiteLink website. These set out the conservation objectives for a site, key factors affecting the interests and conservation measures that would benefit the interests.

Further site information may be obtained from the [Joint Nature Conservation Committee \(JNCC\) protected areas webpage](#).

Map-based information on the presence and boundaries of European sites can be obtained from [NatureScot's Natural Spaces website](#).

NatureScot will assist where necessary in identifying relevant sites, including any outside the plan area, and supplying information about them. Natural England should be consulted in respect of European sites that may be affected in England. The JNCC should be consulted in respect of any European Offshore Marine Sites that may be affected. It is less likely that sites in Wales or Northern Ireland would be affected but, if so, Natural Resources Wales or the Department of the Environment (Northern Ireland) should be consulted respectively.

The qualifying interests potentially affected will vary between the different European sites, but effects should relate to these interests for the site's classification (SPAs) or designation (SACs). It will be necessary to consider how the plan's policies and proposals may affect the achievement of the conservation objectives.

Those undertaking the appraisal should find it useful to consider:

- the condition of the sites;
- the pressures for change acting upon them; and
- the ways in which they may be vulnerable to changes likely to come from the plan being assessed.

Site Management Statements prepared for Sites of Special Scientific Interest (SSSI), where these are also European sites, can assist in this regard, and can be found on NatureScot's SiteLink website.

Information relating to ecology of individual species, including some of their recorded sensitivities, can also be found on websites of conservation organisations with bird interests.

It may be helpful to compile a table, or spreadsheet, to summarise this information, although it will be wise to be succinct and stay focused. The table may form a handy reference when assessing the various elements of the plan. A hypothetical and simplified example of such a table is provided in Appendix C. We do, however, stress the need to be proportionate.

Discretionary discussions on the method and scope of the appraisal

Although there is no requirement to consult at this stage, it may be helpful to discuss with NatureScot, and possibly other key stakeholders, the methodology and scope of

the appraisal. These conversations are likely to draw on previous understanding of the European sites that are most likely to be affected, and the key issues potentially affecting these. This could help to focus the appraisal on the key issues and effects that could potentially impede or influence the plan, and avoid undertaking unnecessary work. Where plan-making bodies may find this additional discussion with NatureScot helpful, it need not take the form of a ‘formal’ consultation.

In addition to agreeing the list of European sites potentially affected, this stage could decide a general methodology, which may simply be to adopt the method in this guidance, or variations where these are considered appropriate. Early work on LSE ‘screening’ could also be undertaken in consultation.

Fitting HRA with the Proposed LDP Evidence Report and SEA scoping

During the preparation of a Proposed LDP, planning authorities are required to produce an Evidence Report. The [Local Development Planning Guidance](#) (para 108) notes that detailed policies and site proposals should not be included in the Evidence Report and detailed site appraisal will not be appropriate at the Evidence Report stage. However, the Evidence Report is expected to set out the methodology for assessing sites, including deliverability considerations, to be used when assessing sites prior to their allocation in the Proposed Plan. The Evidence Report preparation should be aligned with the scoping requirements of Strategic Environmental Assessment (SEA) (para 87 of the LDP guidance). In the preparation of the SEA, there is a need to identify and consider existing environmental problems relevant to the plan and to manage environmental sensitivities. The material that informs the SEA scoping report and the Evidence Report can be similar.

Consequently, there is potential for the Evidence Report and SEA scoping to consider the European sites that could be affected, the key issues that could affect these, and the type of assessment may consequently be required. Given that detailed policies and site proposals are not to be included in the Evidence Report, not all possible issues will be foreseeable. However, as noted, authorities will not be starting with a blank sheet insofar as existing LDPs will have been prepared based on an understanding of key issues potentially affecting relevant European sites (albeit this will need to be checked to ensure it is still relevant and up to date). At this stage, engagement with NatureScot can help inform the preparation of the Evidence Report.

Section 4: Screening the plan for likely significant effects

Introduction to ‘screening’

‘Screening’ is a term that is used in this guidance to describe the ‘likely significant effect’ (LSE) stage of the Habitats Regulations Appraisal. It is not a term that is used in the Directive or Regulations. The screening stage described below is not necessarily a single stage in the preparation of a plan. It could be a stage that is repeated, for example, when the plan is being prepared; and perhaps again towards the end of a plan-making process, when modifications or further proposals are considered for inclusion at a late stage.

The purpose of the LSE ‘screening’ stage is to identify those aspects of the plan where it is not possible to rule out the risk of significant effects on a European site, either alone or in combination with other aspects of the same plan or other plans or projects. This provides a clear scope for the parts of the plan that will require appropriate assessment and remove from further assessment those aspects of the plan that would have no likely significant effect on a European site.

It is important that screening is undertaken with appropriate expertise. Some Habitats Regulations Appraisals have under-estimated the potential effects of some plans. For example, it has been assumed, in some cases, that there would be no adverse effects from further development of a particular kind, in a general location, simply because it has been accepted in the past; this is not necessarily the case. Conversely, some appraisals have over-estimated potential effects, leading to unnecessary or abortive work.

Interpretation of a ‘likely significant effect’

This is essentially a screening stage to determine whether an appropriate assessment is required. It should look at whether there is any connectivity between aspects of the plan and the qualifying interests of a European site. How the test should be interpreted has been informed by case law.

A ‘likely’ effect is one that cannot be ruled out on the basis of objective information. The test is a ‘likelihood’ of effects rather than a ‘certainty’ of effects (see Section 4.5.1 of the [European Commission’s guidance on the provisions of Article 6 of the ‘Habitats’ Directive](#)). Although some dictionary definitions define ‘likely’ as ‘probable’ or ‘well might happen’, in the Waddenzee case the European Court of Justice ruled that a project should be subject to appropriate assessment “if it cannot be excluded, on the basis of objective information, that it will have a significant effect on the site, either individually or in combination with other plans and projects”. (I.e. see paragraph 45 of European Court of Justice case C-127/02 dated 7th September 2004, ‘the Waddenzee ruling’.) Therefore, ‘likely’, in this context, should not simply be interpreted as ‘probable’ or ‘more likely than not’, but rather whether a significant effect can objectively be ruled out.

The test of significance is where a plan or project could undermine the site’s conservation objectives. The assessment of that risk (of ‘significance’) must be made in the light, amongst other things, of the characteristics and specific environmental conditions of the site concerned.

The competent authority should not be swayed by the notion that the likely significance of any effect of any plan or project on a site is necessarily related to the proportion or size of area affected. It is the potential effect on the ecological functioning of the site that is relevant here.

An effect that could undermine the conservation objectives would be a significant effect and the likelihood of it occurring is a case-by-case judgment, taking account of the precautionary principle and the local circumstances of the site. The judgment of

'likelihood' is in turn conducted in a very precautionary manner, taking account of the ecological circumstances of the European site.

Screening the draft / proposed plan for likely significant effects

This should be a relatively quick and straightforward decision but should be fully justified and recorded. The following paragraphs explain in detail how to potentially undertake the screening stage for plans with multiple policies/proposals. It is a series of systematic steps to eliminate, or 'screen out', elements of the plan not likely to have a significant effect on a European site, and to ensure that other elements of the plan are 'screened in' to the appropriate assessment, and therefore subject to further appraisal.

We have subdivided the 'screening out' process into three key 'points':

- 1: screening out general policy statements.
- 2: screening out projects referred to in, but not proposed by, the plan.
- 3: screening out aspects of a plan that could have no likely significant effect on a site, alone or in combination with other aspects of the same plan, or with other plans or projects.

Screening point 1 – Screening out general policy statements

What do do?: Identify and screen out general policy statements, including 'general criteria based policies', and record that they will not be likely to have a significant effect on a European site.

A general statement of policy sets out a strategic aspiration for the plan-making body for a certain issue. An example of a 'general policy statement' is provided in Appendix B at Example Policy 1. Policies which are no more than general statements of policy or general political aspirations can be screened out of the appraisal because they are unlikely to have a significant effect on a site.

A general 'criteria based' policy expresses the tests or expectations of the plan-making body when it comes to consider particular proposals. An example is provided in Appendix B at Example Policy 2. Whilst these can be screened out, a distinction needs to be drawn between them and more site-specific criteria based policies, which should be subject to further appraisal, such as that given in Example Policy 3 in Appendix B.

The outcome could be a list in the screening matrix, such as the example in Appendix C, of the aspects of the plan which would not be likely to have a significant effect on a European site because they are general policy statements.

If the whole plan falls into this category of a general statement of policy, it is reasonable to record that the plan as a whole would not be likely to have a significant effect, and is not subject to further appraisal.

Screening point 2 – Screening out projects referred to in, but not proposed by, the plan

What to do?: Screen out any references to specific proposals for projects referred to in, but not proposed by, the plan – for example those which are identified:

- as part of national infrastructure and promoted by national government, and where the plan will play no part in its delivery; or
- as subject to consent directly by Scottish Ministers.

An example is provided at Example Policy 4 in Appendix B. Such elements of the plan will include, but may not be limited to, trunk road and motorway projects; major airport expansions; major transmission lines; gas and oil pipelines. An exception would be where agreement has been reached that the principle of such a project is to be established by the plan itself, or that the plan will provide further detail, including mitigation if necessary.

However, when it is necessary to consider the effects of the plan being appraised in combination with the effects of other plans or projects, the residual effects of these other infrastructure projects may be relevant and should be checked for in-combination effects (see later sections discussing ‘in-combination effects’).

Development proposed by the plan-making body in its own plan, which will utilise the benefit of the major infrastructure improvements discussed above, should not be screened out at this stage.

Similarly, infrastructure projects which are proposed by the plan-making body itself in its own plan, which could include other locally proposed roads, bridges, causeways, ferries etc., should not be screened out at this stage.

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 their direct and indirect effects. 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.

A useful ‘test’ as to whether a project should be screened out at this stage is to ask the question: “Is the project provided for / proposed as part of another plan or programme, by another competent authority, and would it be likely to proceed under the other plan or programme irrespective of whether this plan is adopted?” If the answer is “yes”, it will normally be appropriate to screen the project out at this stage.

The outcome could be a list in the screening matrix, such as the example in Appendix C, of the projects referred to in the plan but not proposed as part of, or as a consequence of, the plan.

Screening point 3 – Screening out elements of the plan that would have no likely significant effects on any European site

What to do?: Screen out elements of the plan that could have no likely significant effects on a European site at all. Each aspect of the plan should be considered in turn, individually or in sections, and consider whether any of reasons outlined in (a) to (e) in the following paragraph apply.

There are many reasons why a particular aspect of a plan – such as a policy or proposal – would not be likely to have a significant effect on a European site. These include, but may not be limited to, aspects of the plan:

- (a) **Intended to protect the natural environment**, including biodiversity, or 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;
- (b) **Which will not themselves lead to development or other change**, e.g. because they relate to design or other qualitative criteria for development or other kinds of change;
- (c) **Which make provision for change but which could have no conceivable effect on a European site, because there is no link or pathway** between them and the qualifying interests, or any effect would be a positive effect, or would not otherwise undermine the conservation objectives for the site;
- (d) **Which make provision for change but which could have no significant effect on a European site, because any potential effects would be insignificant**, being so restricted or remote from the site that they would not undermine the conservation objectives for the site (see however sections below regarding in combination with other aspects of the same plan, or in combination with other plans or projects);
- (e) **For which effects on any particular European site cannot be identified, because the policy is too general**, for example, it is not possible to identify where, when or how the policy may be implemented, or where effects may occur, or which sites, if any, may be affected. These aspects of the plan may also be very similar to or the same as those screened out under point 1, relating to general policy statements.

Aspects of a plan that would be screened out in respect of (a) and (b) above are generally easy to recognise when working through the plan appraisal. Further guidance on (c), (d) and (e) is provided below. Examples are given in Example Policies 5 to 11 in Appendix B.

In relation to **point 3a**, above, the European Court of Justice has indicated that if the effects of a plan or project would not undermine the conservation objectives of a European site, its effects cannot be regarded as significant (i.e. reference the European Court of Justice case C-127/02 dated 7th September 2004, usually referred to as ‘the

Waddenzee ruling'). Thus, where a plan may affect a European site, but its effects are positive, that aspect of the plan can be screened out of assessment.

This step will therefore screen out aspects of the plan which could not have any negative effect at all on a European site, because there is no link, nor pathway, nor other relationship between the effects of the policy or proposal and any European site, including cases where the link is severed or eliminated by distance, or because any potential effects would be positive, not negative.

However, long distance alone is not necessarily sufficient to screen out a likely significant effect of a policy or proposal; there should still be no link. Thus, the source of additional water supplies for additional housing in an urban development in one plan area may lie many kilometres away, but there is a link, because increased abstraction from a SAC river, or a SPA reservoir, many kilometres distant from the development requiring the increased supply, may have an effect on the site.

In relation to **point 3c**, above, for a policy or proposal to affect a European site, there has to be a link or connection between the qualifying interests of the site and the changes that a plan may cause. These may be obvious, such as direct land take, but are more likely to be indirect, with potential for changes through a 'pathway' to the physical, chemical, hydrological, or biological characteristics of a site.

In relation to **point 3d**, above, a hypothetical example of effects under this criterion would be as follows: A plan provides for new development focused in existing urban or other lowland areas. There is only one European site that could possibly be affected. It is a relatively isolated, inaccessible, high, upland moorland SPA. The likelihood of such development affecting the SPA is so remote that such effects can reasonably be screened out, on the basis of objective information and rational appraisal. It is reasonable to conclude that the plan would not be likely to have a significant effect on the SPA. Indeed, the likelihood is that there would be no effect at all, or the effects would be minor and therefore not undermine the conservation objectives. For example, the very small possible increase in recreational visitors to the moorlands would have a negligible effect on the birds' habitat and would not make a noticeable difference to the disturbance of the birds, even in combination with other development proposals in other plan areas.

In relation to **point 3e**, above, other development or change policies may be stated in very strategic or general terms. They may be judged to be more than a general statement of policy, which would be screened out in point 1 above. However, they nevertheless express their promotion of change in such general terms that it is impossible to predict any effects they may have on any particular European site. Such policies may be general topic-related policies of a development plan, listing general criteria against which planning applications will be judged.

A strategic policy may provide only an overall amount of change, such as a total figure for new housing or employment provision, with no reference to location. They are implemented through later policies in the same plan, which are more specific and therefore more appropriate to assess for their effects on European sites.

These kinds of policies may be found in a plan's Strategy. For example, this may state that there is a need for a broad quantity of housing or employment development, but it makes no proposal as to how or where the development is to be provided. Rather this is delegated to the later chapters with the topic specific policies and proposals. These will be subject to appraisal as the assessor works through the plan.

However, in looking at a plan's overall level of proposed change, it will be necessary to check in some cases that the total quantity and nature of change is not so great that, no matter where it was located, it could not be delivered without affecting a European site. Such a policy should not be screened out at this step. An example may be where the only option for discharge of waste water is to a SAC river system which is already polluted, or would be polluted to a degree that would mean the additional discharges, no matter how well they were treated, would be likely to affect the site's qualifying interests.

There may also be circumstances where an aspect of a general policy clearly has an implication for a specific European site. This may be because the likely location(s) of the proposed change are limited (for example by existing infrastructure or spatial distributions) in such a way as to steer the likely location(s) towards one or more locations which may have a likely significant effect on a European site. In those circumstances it should not be screened out, and a specific policy caveat may be required.

It may be convenient to collect the aspects of the plan which are screened out for the reasons above into groups that help to explain the reasons why they have been excluded from further appraisal procedures. This helps to make the appraisal more transparent and understandable. It also helps in relation to carrying out the in-combination assessment. The record of screening for likely significant effects may be summarised in a table similar to the screening summary table in Appendix C.

Concluding screening points 1 – 3

It is likely that when the plan has been systematically screened as explained above, all the aspects of the plan that would not be likely to have a significant effect on a European site alone will have been screened out. It follows that, for the remaining aspects of the plan, it will not be possible, on the basis of objective information, to eliminate the likelihood of a significant effect on a European site. These aspects of the plan which have not been 'screened out' for the reasons outlined above should be subject to an 'appropriate assessment' under stage 4.

Taking account of the ['People Over Wind' Court of Justice of the European Union \(CJEU\) judgement](#), mitigation measures should not, at this stage, be introduced as a basis for screening out the remaining aspects of the plan. Instead, remaining aspects of the plan will need to be 'screened in' to the 'appropriate assessment' stage, when mitigation measures can then be considered.

If, in the circumstances of a particular plan, there are other reasons why aspects of the plan would not be likely to have a significant effect on a European site, these should be recorded with sufficient explanation and added to the screening summary table.

Consideration of likely significant effects in combination

The requirement in the Habitats Regulations is to undertake an appropriate assessment of a plan if it would be likely to have a significant effect on a European site “alone or in combination with other plans or projects”. The Regulations recognise that in some cases the effects of a plan on its own would be either unlikely or insignificant. Nevertheless, the Regulations also recognise that there may be a number of plans or projects, each of which would be unlikely to have a significant effect alone, but which, if their individual effects were to be added together, by them all coming forward over time, the effects in combination would be likely to be significant.

It is clear that the protective measures of the Regulations could be seriously undermined if these combinations of plans or projects escaped assessment; their combined effects could be at least as likely to be damaging to a site as the effects of one large plan or project alone.

The ‘in-combination’ test, therefore, is about addressing ‘cumulative effects’.

Elements of the plan that have individually been screened out because any effects of change are likely to be minor should also be considered in combination along with other aspects of the same plan and other plans and projects.

Identifying other relevant plans or projects for in-combination effects

Until the elements of the plan that need to be screened for ‘in-combination’ effects are identified through the screening points 1 – 3, above, there is little point in attempting to draw up a list of the other plans and projects with which they may need to be tested for their combined effects. To try to produce a list at the outset of the Habitats Regulations Appraisal process could involve substantial abortive or irrelevant work.

The in-combination test 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.

The in-combination test may need to include the following types of other plans and projects:

- (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;
- (d) projects that are subject to outstanding appeal procedures;
- (e) any known unregulated projects that are not subject to any consent;
- (f) ongoing projects subject to regulatory reviews, such as discharge consents or waste management licenses;
- (g) existing development where any residual effects do not form part of the environmental baseline;
- (h) policies and proposals that are not yet fully implemented in plans that are still in force; and
- (i) draft plans that are being brought forward by other public bodies and agencies.

The types of plans likely to require appraisal are discussed in Section 2 above and should be considered where an in-combination test is needed. The in-combination test cannot reasonably be expected to include the possible effects of projects not yet applied for (and not in another plan) 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 or projects. The key plans and projects to consider ‘in-combination’ are those that exist or are approved. Generally, it would not be feasible to consider the cumulative effects with others which have not yet been approved, since there can be no certainty that they will receive approval. However, if plans or projects are in the pipeline and are reaching a similar point in the approval process, then it makes sense for the cumulative effects of these to be assessed and understood.

To assist in checking the HRA Records of other development plans as part of the in-combination assessment, it may be easiest just to contact neighbouring planning authorities, or NatureScot, noting that it can sometimes be a time-consuming exercise to search for relevant reports on various websites, which may or may not be there.

To decide whether a plan requires an appropriate assessment, it is necessary to apply the tests in regulation 85B(1) (or regulation 48(1)) as to whether there would be a likelihood of a significant effect on a European site in Great Britain, alone or in combination with other plans or projects, applying the principles in the Waddenzee case discussed above.

Having assessed the plan’s overall strategy, its options, policies and proposals, individually and in relevant combinations, the plan-making body can complete the application of the tests in regulation 85B or 48 to the plan. If all elements of the plan have been ‘screened out’, in accordance with the advice in this section, it can be concluded that the plan would not be likely to have a significant effect on a European site either alone or in combination with other plans or projects. Whilst the Regulations do not require the plan-making body to seek agreement from NatureScot as to their conclusions at this stage, nevertheless they are encouraged to do so.

If there are any elements of the plan which have not been screened out, either alone or in combination with other plans or projects, the plan-making body should undertake an appropriate assessment of the plan, as described in Section 5 below.

Section 5: The ‘appropriate assessment’ (Stage 5 and 6)

The appropriate assessment - scoping

‘Scoping’ is a term used here for convenience, to help to explain part of the process related to preparing the appropriate assessment. It is not a term used in the Regulations. Scoping is not a statutory requirement, but it is recommended here to help to ensure that the assessment is focused, fit for purpose, compliant and proportional; in other words ‘appropriate’. We recommend that it should involve discussing the proposed scope of the appropriate assessment with NatureScot.

At this stage the formal consultation period under regulation 85B(2) (in the case of land use plans) (or regulation 48(3) for all other plans) should also be agreed with NatureScot, if an appropriate assessment is likely to be required. This is because a specific time period for consultation with NatureScot is not prescribed by the Regulations. For an appropriate assessment relating to a local development plan, the time period for formal consultation is likely to be the same as that for the accompanying plan.

A written document outlining the proposed scope of the appropriate assessment, provided to NatureScot at this stage, would be useful to help inform discussion. This document can include:

- A summary of the screening process indicating those elements of the plan considered to have a likely significant effect on the qualifying interests of a European site and that will be subject to appropriate assessment.
- A summary of the evidence base about relevant European sites.
- Information on the proposed scope and methodology for the appropriate assessment.
- References to any relevant background reports. These reports should be made available, even if not attached to the scoping document.

In addition to NatureScot, and depending on the nature of the plan, it may be beneficial to consult SEPA and non-governmental conservation organisations when considering the proposed scope of the appropriate assessment. These organisations may also have valuable relevant ecological information and expertise. If a European Offshore Marine Site may be affected by the plan, the JNCC should be consulted. If a site in England would be affected, Natural England should be consulted. Where a site affected requires consultation with both NatureScot and JNCC (site spans the 12 nautical miles limit of territorial waters), or NatureScot and Natural England (site spans the border), NatureScot can coordinate consultation feedback on the proposed scope with the agreement of Natural England / JNCC as appropriate.

It is critical that the appropriate assessment is based upon a defensible evidence base and method. A scoping discussion with NatureScot can help to achieve this. The appropriate assessment may be scrutinised, for example, as a production (document) at the Examination of a development plan if it relates to an unresolved representation about the plan.

The appropriate assessment - site integrity

The [European Commission's guidance on the provisions of Article 6 of the 'Habitats' Directive](#) (at Section 4.6.6) discusses the concept of the 'integrity of the site', and notes that:

"The 'integrity of the site' can be usefully defined as the coherent sum of the site's ecological structure, function and ecological processes, across its whole

area, which enables it to sustain the habitats, complex of habitats and/or populations of species for which the site is designated.”

The European Commission’s guidance also states that the integrity of a site clearly relates to its conservation objectives.

The integrity of the site can therefore be considered to be the structure and the functioning of its ecological systems, the features for which the site is designated (habitats and/or species) and the ability of the site to meet its conservation objectives. An adverse effect would be something that impacts the site features, either directly or indirectly, and results in disruption or harm to the ecological structure and functioning of the site and/or affects the ability of the site to meet its conservation objectives across all parts of the site.

Another form of adverse effect on integrity would be a physical impact on the site which may indirectly affect the ecological structure and functioning of the site features or their supporting structures and/or the ability of the site to meet the conservation objectives.

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 appropriate assessment - conservation objectives

The appropriate assessment is undertaken under the provisions of regulations 85B(1) or 48(1). It is an assessment of the implications of the plan for the sites where a likely significant effect has been identified, in view of their ‘conservation objectives’ (see glossary in Appendix A). It follows that the conservation objectives (provided by NatureScot and available on its Sitelink website) are critical to, and the focus of, the assessment.

It may be necessary for the plan-making body to seek further advice about the implications of the plan in light of the conservation objectives. It will be useful to identify and understand the particular sensitivities of a site, or the influences of other activities acting upon it, in order to interpret the objectives in a meaningful way.

Appendix C provides an outline example of a draft Habitats Regulations Appraisal Record, including an appropriate assessment, with a section for the implications for each qualifying interest of the European site in light of its conservation objectives.

The appropriate assessment - considering effects at different life stages of a proposal

Proposals that are subject to appropriate assessment may have different effects on a European site at different stages in their life-cycle. For example, the effects that require assessment may occur during construction, or during the operational stage. Some effects may occur, or reoccur, at decommissioning stage.

Sometimes the effects on a site may arise indirectly - for example through ancillary or related operations such as the provision of essential infrastructure to service a development, or fluvial or marine dredging to accommodate a new marina or port

development. The assessment should concentrate on all of the aspects of a plan's proposals that would give rise to significant effects, alone or in combination with each other, or with other plans or projects.

As an example of effects at different stages of the life of a proposal, there is the Finalised Draft of the Falkirk Local Plan 2007: This appraisal assessed the potential threats from an economic development allocation at both construction and operational stages. Opportunity ED.GRA 1: Kinneil Kerse – Site Safeguarding, comprised the safeguarding of 64 hectares of land for petrochemical development to fulfill the requirements of the then SPP 2. No specific proposals had been put forward, so the appraisal of the plan anticipated the kind of effects on the Firth of Forth SPA, which was located between 0m and 300m from the allocation, which may occur, including (inter alia): a) during construction: through construction noise and movement disturbance or mobilisation of contaminants and loss of habitat adjacent to the SPA; and b) during operation: through increased risk of major pollution events, increase in air-borne pollution, increased boat traffic, noise, light, movement and flaring.

The appropriate assessment - considering in-combination effects

The in-combination assessment at this stage will flow through from the consideration which was given to this aspect at the earlier stage of screening for likely significant effects.

The appropriate assessment - the precautionary principle

Subject to the exceptional circumstances described in Section 7 below, before a plan which would be likely to have a significant effect on a European site, alone or in combination with other plans or projects, may be given effect, the plan-making body must ascertain, in light of the conclusions of the appropriate assessment, that it would not adversely affect the integrity of a European site (regulations 85B(4) and 48(5)).

Appropriate assessment embodies the precautionary principle. It seeks proof of the negative (the need to ascertain that there will be no adverse effect on site integrity) and “Where doubt remains as to the absence of adverse effects on the integrity of the site...the competent authority will have to refuse authorization” (CJEU ‘Waddenzee case’).

The appropriate assessment - considering mitigation

It is entirely possible that a suitably detailed (‘fit for purpose’) appraisal of the relevant issue(s) at appropriate assessment stage could reach a conclusion that the plan would have no adverse effect on the integrity of a European site without the need to apply mitigation measures to policies or proposals. However, sometimes, it may only be possible to reach this conclusion by applying mitigation.

As noted earlier in this guidance, taking account of the [‘People Over Wind’ Court of Justice of the European Union \(CJEU\) judgement](#), mitigation measures should be introduced at appropriate assessment stage, rather than being introduced as a basis for ‘screening out’ aspects of the plan at the earlier ‘likely significant effect’ stage.

Examples of straightforward possible mitigation measures that may be used (where applicable) early in the appropriate assessment stage to quickly demonstrate no adverse effect on the integrity of any European site are:

- (a) Deletion of the policy or proposal;
- (b) Changing the nature or type of a potentially damaging proposal;
- (c) Reduction in the scale of the potentially damaging provision, whether it be an overall level of growth across all or part of the plan area, or a single proposal of a specific scale or size;
- (d) Relocation or alteration of the spatial distribution of the potentially damaging provision;
- (e) Phasing or timing of 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.

Other kinds of mitigation measures that may be introduced at 'appropriate assessment' stage may include:

- A. Case-specific policy restrictions;
- B. Case-specific policy caveats;
- C. Prescribing how adverse effects on site integrity will be avoided by mitigation measures in a lower tier plan, to be confirmed by a more detailed Habitats Regulations Appraisal at that level;
- D. Deleting aspects of the plan that will probably fail the tests of the Directive at project application stage;
- E. Requiring delivery of explicit and bespoke Management Plans;
- F. Contribution to a large scale Mitigation Strategy.

We discuss these other kinds of mitigation measures more fully below.

A. Case-specific policy restrictions

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 body may need to add a case-specific policy restriction.

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 body 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. This upgrade would 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.

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 48 and will need to pass those tests before they can be permitted. 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.

To be an appropriate restriction enabling the plan-making body to ascertain no adverse effect on the integrity of a European site, the restriction must be:

- case-specific;
- explicit; and
- added to the policy.

It should not merely be added to the explanatory text or commentary, or not merely inserted into the implementation or monitoring chapters.

The way that such a case-specific policy restriction may operate is explained in the following example hypothetical LDP housing policy HOU1:

- Policy HOU1 makes provision for 1000 additional houses in the plan area to 2026. It does so by a series of site specific allocations for new housing development throughout the plan area in a schedule listed HOU1(a) to (h). However, additional housing which would be allocated under HOU1(g) would be in a particular loch catchment area and would be likely to have a significant effect on a European site, because additional discharges from waste water treatment works would increase the effects of eutrophication on the loch, which is an SPA. This would affect the capacity of the loch to support the bird populations for which it is classified. An appropriate assessment of the plan indicates that it will not be possible to ascertain that such increased discharges would not have an adverse effect on the integrity of the European site.

However, the water company could upgrade the wastewater treatment works and, by additional treatments, not only avoid additional pollution, but reduce the overall levels of pollutants from the works. This would improve the water quality of the loch whilst accommodating additional development in the catchment, including that on the proposed allocation site HOU1(g). Avoiding the adverse effects depends on the appropriate timing of the works on which the additional housing is dependent. At the appropriate assessment stage of the Habitats

Regulations Appraisal, therefore, a change is made to the policy wording of the plan, so that a restriction is added to the housing policy as follows:

“Additional housing development within the X Loch catchment, including the allocation in HOU1(g), will not be permitted until the ABC waste water treatment works has been upgraded to accommodate the additional development and ensure that there would be no increase in the levels of pollutants which would have an adverse effect on the integrity of the X Loch SPA”.

B. Case-specific policy caveats

Where the effects of a policy depend on how it is implemented in due course, through the development management process, there may be a 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’ in the LSE stage; and in the appropriate assessment the uncertainty of the policy outcome will remain unless it can be removed by an amendment to the plan.

In order for the plan-making body 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 body 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 plan, (i.e. under the provisions of section 25 of the Town and Country Planning (Scotland) Act 1997 as amended) if it was implemented in a way that could, or would adversely affect site integrity.

It is recommended that plan-making bodies do not rely merely on a general policy in the plan 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, it may not be appropriate to ascertain in the appropriate assessment stage that there would not be an adverse effect on site integrity simply because there is another policy saying that such sites would be protected. The inherent tension, conflict, or contradiction between the two aspects of the plan may need to be resolved in a way that enables the plan-making body to ascertain that there would not be an adverse effect on the integrity of the European site, with the appropriate degree of certainty. One way of achieving this is to add a case-specific policy caveat.

An added caveat must be case-specific and explicit. It should say that development would not be in accordance with the plan if it cannot be ascertained that it would not have an adverse effect on site integrity. It should be added to the policy, not merely to the explanatory text.

Examples of case-specific policy caveats are:

- “To be in accordance with this development plan, and for permission to be granted, detailed proposals, including applications for planning permission in principle, for the [specified development] must demonstrate that [the specific aspects of the development that raise concerns in the appropriate assessment]

would not adversely affect [the specified interest feature(s)] of the [specified European site(s)] either alone or in combination with other plans or projects”.

- “With regard to any proposed development at [location], planning permission will only be granted if there would be no adverse effect on the integrity of [specified European site(s)], either alone or in combination with other plans or projects”

So, where general policies could apply to potential development sites known to be in proximity to European sites and have a clear link or pathway between them, and cover the types of activity that could have adverse effects on the interests for which the sites were designated, an additional caveat may be appropriate.

In reality, there will need to be case-by-case judgement as to whether it is overly-cautious to apply a repetitive caveat to all policies that have not been screened out, given that there will inevitably be ‘grey areas’ involved (with some policies having been quite close to being screened out). Sometimes the judgement may be that there is adequate certainty without a case-specific policy caveat, and that the overarching European site policy can be relied upon.

C. Adding mitigation measures in a lower tier plan

It may be difficult to assess the potential effects of ‘higher tier plans’ where there are ‘tiers’ of plan-making and higher tier plans make provisions which lower tier plans must take forward to implement in detail. However, the appraisal of lower tier plans could protect the sites that may potentially be affected before they are assessed at project application stage. The Advocate General’s opinion in ECJ case c-6/04 EC v. the UK confirmed the hierarchy of assessment that must take place from higher level to lower level plans. In her opinion Advocate General Kokott said (paragraph 49): “adverse effects on areas of conservation must be assessed at every relevant stage of the procedure to the extent possible on the basis of the precision of the plan. This assessment is to be updated with increasing specificity in subsequent stages of the procedure”. The following paragraphs set out an approach which if applied correctly will allow the appropriate assessment to be completed.

In Scotland, this hierarchy of assessment could apply, for example, between the National Planning Framework and a Local Development Plan, or between a Local Development Plan and a Masterplan, so long as the three criteria (labelled a, b, and c) below are met.

It will be necessary to check whether policies or proposals will be subject to further and more detailed assessment in a lower tier plan before the proposals are subject to assessment at project application stage. If so, it will then also be necessary to check whether the later assessment can ensure that there would be no adverse effect on site integrity. This would be the case where the lower tier plan will contain details for assessment which are not available at the strategic level, and it will apply particular mitigation measures. This way of ascertaining no adverse effect on site integrity is not a way of deferring or delaying the appraisal process, but a way of securing mitigation measures in a lower tier plan where they cannot be secured in detail in the higher tier plan.

The following are proposed as criteria for the consideration of whether it would be appropriate for a higher tier plan to identify how adverse effects on site integrity will be avoided by a more detailed Habitats Regulations Appraisal, with more detailed mitigation measures, at a lower tier plan level. This will be where all three of the criteria are met. In such a case, subject to appropriate adjustments to the plan itself, the plan-making body can reasonably ascertain that there would be no adverse effect on the integrity of the European site arising from the policy or proposal in the higher tier plan.

In order to ascertain that there would be no adverse effect on the integrity of a European site, a plan-making body may only rely on mitigation measures in a lower tier plan if the following three criteria are all met:

- (a) The higher tier plan appraisal cannot reasonably predict any effect on a European site in a meaningful way; whereas
- (b) The lower tier plan, which will identify more precisely the nature, scale or location of development, and thus its potential effects, retains enough flexibility within the terms of the higher tier plan over the exact location, scale or nature of the proposal to enable an adverse effect on site integrity to be avoided; and
- (c) The Habitats Regulations Appraisal of the plan at the lower tier is required as a matter of law or Government policy.

In considering the above, the following points should be taken into account –

- The principles may apply to the iterative assessment processes in the appraisal of a single plan as it evolves through the plan-making process. Therefore, an assessment may not be possible in the early stages of a plan and assessment may need to await greater specificity in later stages or versions of the plan;
- In terms of criterion (a) in the box above, if any specific effects can be described (even if there may be other effects), then this is unlikely to mean that the ‘appraisal cannot reasonably predict’ the effects;
- An assessment can be ‘meaningful’ wherever it is able to inform the policies and proposals of the plan. It is not necessary to be able to undertake a full and detailed assessment to be meaningful in this context. If the HRA is able to influence even the general nature, scale and location of proposals, it is ‘meaningful’ and an assessment should be made of the effects as far as is possible.

It may be possible and appropriate for the higher tier plan to specify strategic mitigation measures, which set out in broad terms what must be provided at the lower tier plan level, in order to be able to conclude that there would be no adverse effects.

A higher tier plan appraisal will not obviate the need for the lower tier plan to be subject to Habitats Regulations Appraisal. Whilst it is for the relevant plan-making body to determine what is an appropriate assessment in any particular case, it may be helpful for the Habitats Regulations Appraisal Record of the higher tier plan to indicate what further appraisal may be necessary in the lower tier plan. It may be able to provide a

structure and scope for the appraisal and sources of information that would be relevant, or what further information would be needed, that may not be available in the higher tier appraisal. This would help to expedite the lower tier plan appraisal and help to illustrate why the higher tier plan appraisal cannot reasonably predict the effects on a European site. In such circumstances the Habitats Regulations Appraisal Record of the higher tier plan should be accessible alongside the approved higher tier plan, for example referenced within it, or accessed from the same web page.

Here are two examples of hierarchical mitigation:

- A Local Development Plan identified a number of broad effects arising from the development of a large-scale development site. The planning authority concluded however that further detail on the precise location of development within the site was required before it could be established that the development would not have an adverse effect on a European site. It therefore considered whether the proposal should be screened out of the HRA because 'the higher tier plan appraisal cannot reasonably predict any effect on a European site in a meaningful way', suggesting that further HRA would be required at project application stage. However the fact that the HRA had identified likely significant effects at this level meant an appropriate assessment was required and that a policy caveat would be added at this stage to ensure that the lower tier project application was developed within appropriate boundaries set by the higher level plan.
- A higher level plan included a policy which allocated a large area as a strategic location for employment-related development. A European site (SAC) was nearby and various likely significant effects were identified, relating to hydrology, air quality and recreational pressure. The higher level plan indicated that this site must be brought forward by a subsequent lower level plan. The planning authority was able to conclude that the higher level plan would not have an adverse effect on the integrity of the SAC by the policy requiring the lower level plan to demonstrate this in terms of a hydrological risk appraisal, air quality modelling and analysis, and a recreational assessment. Significantly the policy went on to state that if the results of these further assessments showed that part of the higher level plan could not be delivered without adverse effects on the SAC which could not be fully mitigated, then the lower level plan would only make provision for the amount and location of development for which it could be concluded that there would be no adverse effect on the integrity of the SAC, even if this level was below that in the strategic allocation.

D. Proposals which should not be included in plans

To include proposals that would be vulnerable to failure under the Habitats Regulations at project assessment stage would be regarded by the EC as 'faulty planning' (e.g. Opinion of Advocate General Kokott in EC v the UK, case C – 6/04, paragraph 48).

Consequently, if at appropriate assessment stage, a plan-making body considers that an adverse effect on site integrity is a real possibility, and would create problems for the delivery of the proposal, the proposal should be deleted from the plan or otherwise

modified to enable the plan-making body to ascertain there would not be an adverse effect on the integrity of the site.

E. Relying on specific Mitigation Plans

There may be circumstances where the uncertainty as to adverse effects on a site could be resolved by a plan-making body requiring the pre-preparation and approval of specific types of mitigation plans, to deal with specific effects on a European site, before, during or after the construction of the proposal that could affect the site. Three examples are given below. In each case the planning authority can ascertain no adverse effect on the integrity of the site because the proposals will not be permitted unless they are satisfied that the management plans proposed will avoid an adverse effect on site integrity.

Examples of specific mitigation plans:

- Sutherland Local Plan (2010) - Dornoch is located adjacent to the Dornoch Firth and Morrich More SAC and the Dornoch Firth and Loch Fleet SPA. The qualifying interests of the SAC include sand dunes, while the SPA is important for wintering birds. The future growth of housing being proposed for this settlement in this Local Plan was screened in for appropriate assessment because of possible increased recreational impacts and disturbance to the dunes and the birds. As mitigation, there was added to the plan's development factor policy for Dornoch the requirement that proposals for development on the allocated sites for housing should be accompanied by a Recreational Management Plan, which should include measures for the avoidance or mitigation of any adverse effects as necessary.
- Nigg Masterplan (2009) - Highland Council prepared a masterplan for the future use of the large-scale former oil rig fabrication yard at Nigg, Easter Ross. A favoured option was for the assembly of offshore renewable energy generation devices. The Nigg Yard lies adjacent to (but pre-dates) the Moray Firth SAC and the Cromarty Firth SPA. The SAC is designated for the resident population of bottlenose dolphins. The appropriate assessment focused on possible disturbance to the dolphins as a result of redevelopment works at the yard (including the possible construction of a new quay), operational use for major offshore renewables engineering works, and associated vessel movements. The masterplan now sets out mitigation measures for dredging and disposal operations, and lists various management plans (e.g. covering noise from piling, construction and vibration; and boat movements) which may need to accompany applications for development.

Example of an explicit / bespoke management plan:

- Rural West Edinburgh Local Plan Alteration (2010) - This Local Plan Alteration by City of Edinburgh Council safeguards land for a potential second runway at Edinburgh Airport. Development to the north of the airport could have had a significant effect on the Firth of Forth SPA arising from disturbance or deterioration of water quality in the existing Almond River, which discharges into the SPA. The Almond River may be disturbed if works took place here by the

diversion or culverting of the watercourse and pollution from runoff from developed surfaces. As mitigation through the appropriate assessment, the Local Plan Alteration requires a management plan to be prepared, approved and implemented for any development proposal within the safeguarded area to the north of the airport which would require the diversion or culverting of the River Almond.

Mitigation plans must be explicitly referred to in the policy of the plan, not merely in the explanatory text. They must be required to be submitted and approved before the proposal can be permitted. There must be certainty that if properly worked up and approved, the mitigation plans will avoid an adverse effect on the integrity of the European site.

The explanatory text relating to the policy referring to the mitigation plans should explicitly refer to the specified development, the specific aspects of the development that raise concerns in the appropriate assessment and the specific qualifying interest(s) of the European site(s) potentially affected.

F. Contribution to a large scale Mitigation Strategy

As part of a framework set by a plan for the requirement of developer contributions, a bespoke mitigation strategy may be established in order for the plan to avoid adverse effects on site integrity. This may include a policy requiring all relevant development to make an appropriate financial contribution to the delivery of the mitigation strategy, which would be beyond the resources of individual projects, but if provided strategically would enable all projects to avoid adverse effects on site integrity.

The need for developer contribution towards a large-scale mitigation strategy must be explicitly referred to in the policy or policies of the plan, not merely in the explanatory text. Details of the mitigation strategy must be worked up in advance and set out in the plan. The necessary planning agreement or planning obligation should be secured before specific proposals can be permitted. There must be certainty that if properly worked up and implemented, the mitigation strategy will avoid an adverse effect on the integrity of a European site.

The explanatory text relating to the policy relying on the large-scale mitigation strategy and on developer contributions should explicitly refer to the relevant developments or proposals, the specific aspects of the developments or proposals that raise concerns in the appropriate assessment, and the specific qualifying interest(s) of the European site(s) potentially affected.

Example of a large-scale mitigation strategy:

- The Thames Basin and Dorset Heaths - In the south-east and south-west of England new housing development, close to heathland SPAs, which are classified for their populations of breeding nightjars, woodlarks and Dartford warblers, could have had significant effects on the bird populations. This is because of increased disturbance from the large numbers of additional visitors travelling from up to 5km away, as well as more local impacts of additional housing close to the heaths, such as more fires, dumping and encroachment.

As well as a 'buffer zone' policy prohibiting new housing development within 400m of the SPA boundaries, the strategic and local plans in the area have also included a requirement for all new housing developments within 5km of the SPAs to contribute a pro-rata share of the cost of a strategic 'Delivery Plan'. This will improve access and habitat management and provide suitable alternative natural green space, which will attract recreational visits that may otherwise go to the heaths. This will result in there being no net increase in visitor numbers to the heathlands and thus no increase in disturbance to the birds.

Proposals with planning permission or other development consent

Aspects of a plan might have been screened in as likely to have a significant effect on a European site, but which have an unimplemented and extant planning permission. In granting planning permission the planning authority would have had to carry out an appropriate assessment. Mitigation may have been necessary to attach to the planning permission to ensure no adverse effect on site integrity. In these circumstances, the appropriate assessment of the plan can draw upon the appropriate assessment of the consented project. The mitigation set out in the appropriate assessment of the plan can quote the mitigation measures incorporated into the planning permission, and provide for a mitigation requirement to be included in the plan that development at the allocated site should be carried out in accordance with the terms of the planning permission. Care will however be necessary if the planning permission lapses before adoption of the plan. In such a situation the allocation should be re-assessed prior to adoption of the plan to consider if any change of circumstance requires the mitigation to be amended.

Where the unimplemented but extant planning permission is a planning permission in principle (PPP), this may still be subject to applications for approval of matters specified in conditions. Such conditions may provide for more detailed mitigation information to be provided to the planning authority in regard to protection for European sites. The appropriate assessment can draw upon these, and in anticipation of such further applications for approval being submitted to the planning authority, the development plan can include the requirement for necessary mitigation information.

Hypothetical example of aspect of plan with detailed development consent:

- A windfall site for a small housing development was granted planning permission following an appropriate assessment. The development was adjacent to a Special Protection Area (corncrake), with likely significant effect on corncrake due to significant disturbance to breeding during construction. Permission was granted subject to a condition that no construction activity should take place during the corncrake breeding season (15 April to 31 August). A new Local Development Plan was produced soon after, with the site included as an allocation. The HRA of the LDP screened the site into the appropriate assessment, and the mitigation was able to draw upon that for the planning permission. To apply this to the LDP, reflecting the fact that the site already had planning permission, the following was inserted into the plan: 'Development should be carried out in accordance with the terms of planning permission xxxxx/2014/FUL in regard to the timing of construction works'. With development

initiated as the plan was being prepared, the planning permission remained extant at the time of adoption.

Hypothetical example of aspect of plan with development consent in principle:

- A large housing proposal close to a loch designated as a Special Protection Area for breeding Slavonian grebe was granted planning permission in principle. Two matters specified in conditions for the further approval of the planning authority were submission of a Recreational Management Plan to avoid disturbance to breeding birds, and a Construction Method Statement to avoid disturbance and maintain water quality. Prior to such applications being made, the proposal was included in an emerging LDP, with the site screened in as part of the appropriate assessment. The matters specified for further approval were drawn upon as mitigation, and these were included as developer requirements for the allocation in the LDP. If necessary more details could be added in the LDP as to exact requirements for the Recreation Management Plan and Construction Method Statement.

Mitigation – the role of Delivery Programmes for Development Plans

Delivery Programmes accompany the production of development plans at the Proposed Plan and Adoption stages and set out:

- a list of actions required to deliver policies and proposals in the plan,
- the name of the person to carry out the action,
- the timescale for the conclusion of each action.

The proposed Delivery Programme is prepared at the same time as the Proposed Plan, and it is adopted within three months of adoption of the plan to which it relates. Where specific mitigation is identified in the plan to enable a policy or a proposal to be retained (e.g. preparation of a management plan, or the upgrading of a waste water treatment works), this should be included in the Delivery Programme. It is important to note that the Delivery Programme is not part of the development plan, and so to carry the decision-making weight of the development plan, the mitigation must first be included, and assessed, within the policies/ proposals of the plan. Inclusion in the Delivery Programme will be a useful means of achieving delivery of the necessary mitigation at the appropriate time.

The appropriate assessment - certainty

The plan-making body must ascertain that the plan would not adversely affect the integrity of a European site. This should only be concluded if it has made certain that this is the case. In order to be certain, the plan-making body should be convinced that no reasonable scientific doubt remains as to the absence of such effects (see paragraph 61 European Court of Justice case C-127/02 dated 7th September 2004, 'the Waddenzee ruling').

The Scottish court has also considered how certain a competent authority needs to be in considering whether it can ascertain that there would be no adverse effect on site integrity. In a judgment in the Court of Session in October 1998, Lord Nimmo-Smith ruled that an absolute guarantee that there would be no adverse effect on site integrity

is not possible. (See WWF-UK Ltd and RSPB v Secretary of State for Scotland et al [1999] 1 C.M.L.R. 1021 [1999] Env LR 632, Court of Session, Edinburgh, 28th October 1998.) The best that can be achieved is for the competent authority to identify the potential risks, so far as they may be reasonably foreseeable, in light of such information as can reasonably be obtained, and put in place a legally enforceable framework with the aim of preventing the risks from materialising.

The elimination of 'tension' in a plan, as described in the earlier section on 'case-specific policy caveats', is one means of ensuring certainty in the appropriate assessment. Where plans contain policies or proposals that may have an adverse effect on the integrity of a European site, at the project stage a proposer may argue that despite being unable to conclude no adverse effects on site integrity, it should be permitted. This is because it can be argued that the proposal satisfies the tests of regulation 49 of the Habitats Regulations in that inclusion in the plan itself bestows it with a case for imperative reason of overriding public interest. Restrictions or caveats of the kind described in paragraphs above may help to avoid this contradiction and any resulting uncertainty.

If the plan-making body cannot ascertain that the plan will not adversely affect the integrity of a European site, either because there would be an adverse effect or because the effects are uncertain, the plan cannot be progressed to adoption unless regulations 85C and 85E (or 49 and 53) are complied with. This is briefly discussed in Section 7 below.

Section 6: Consultation on the appropriate assessment and recording the appraisal

Preparing a draft of the Habitats Regulations Appraisal Record

There are significant benefits in preparing a robust Habitats Regulations Appraisal Record:

- It provides the essential audit trail which demonstrates the plan-making body's compliance with its obligations under the Habitats Regulations.
- It enables the plan-making body to systematically work through whether any mitigation or modifications to the plan are required in order to be able to conclude that it would not lead to any adverse effects on the integrity of any European site.
- For a higher tier plan which has relied on a future Habitats Regulations Appraisal of a lower tier plan in order to conclude it will not have an adverse effect on the integrity of a European site, it allows the scope and direction of the further appraisal to be specified.
- In recording any residual effects, it assists the future in-combination assessment of other plans or projects.

We recommend that the draft record of the Habitats Regulations Appraisal should contain at least the items listed in (i) to (vii) below.

Appendix C provides an example of an outline draft Habitats Regulations Appraisal Record for illustrative purposes. NatureScot should be formally consulted on a draft of any appropriate assessment. Prior to this, it is recommended that NatureScot is informally consulted on a working draft of the HRA record. This will help to ensure, for example, that any mitigation measures discussed beforehand are correctly included in the record and in the plan, and that the record contains all the necessary information. The draft record should include a summary of the appraisal's conclusions accurately reflecting the following:

- i. Whether or not the plan is directly connected with or necessary to the management of a European site (regulations 48(1)(b) or 85B(1)(b)).
- ii. The European site(s) and qualifying interests which were considered in the screening and, where applicable, the appropriate assessment stages, which would be likely to be significantly affected. Also the conservation objectives used to assess the implications of the plan for the site (regulations 48(1) or 85B(1)).
- iii. A summary record of the screening stage, in particular listing the policies and proposals in the plan that were screened out of the need for appropriate

assessment, either alone or in combination with other plans or projects, and brief reasons why.

- iv. As applicable, a list of the other plans or projects with which the plan that is being considered was combined in any in-combination assessment, and the outcome of that assessment.
- v. As applicable, whether the plan would or would not be likely to have a significant effect on a specified European site, either alone or in combination with other plans or projects (regulations 48(1)(a) or 85B(1)(a)).
- vi. Where relevant, an appropriate assessment of any element of the plan likely to have a significant effect on a European site, either alone or in combination with other plans or projects, with a clear conclusion as to whether it can be ascertained that that element of the plan will not adversely affect the integrity of the European site. This should include details of any mitigation measures that have been relied upon when deciding that it can be ascertained that the element of the plan would not have an adverse effect on site integrity. It may also be helpful to record any remaining residual effects.
- vii. Where relevant, whether the plan-making body is minded to conclude, pending the representations from NatureScot, that it can be ascertained by means of the appropriate assessment that the plan would not have an adverse effect on the integrity of a site (regulations 48(5) or 85B(4)).

Consultation

The plan-making body will need to decide whether to consult the public and if so how (see Regulations 48(4) and 85B(3) of the Habitats Regulations). The plan-making body may choose to give key stakeholders the opportunity to comment on the appraisal before it is finalised. The draft HRA record should be prepared to accompany a development plan Proposed Plan, and formal consultation with SNH (NatureScot) can take place at the same time.

The statutory consultation with SNH (NatureScot) is technically a part of the 'appropriate assessment' and the assessment cannot therefore be finished and finally recorded until NatureScot's representations have been received and the plan-making body has had regard to them.

The plan-making body must consult SNH (NatureScot), and have regard to its advice, under the provisions of regulations 48(3) and 85B(2) before ascertaining whether the plan would not adversely affect the integrity of the European sites, for the purposes of the appropriate assessment.

The Habitats Regulations Appraisal cannot finally ascertain the effect on site integrity until the plan-making body has considered NatureScot's representations. Earlier consultations with NatureScot, for example on the scope of the Habitats Regulations Appraisal, may have been at a stage that was too early to enable NatureScot to provide meaningful advice as to the effect on site integrity. Further consultations with

NatureScot therefore are likely to be desirable as the appropriate assessment is undertaken.

In terms of the formal consultation with SNH (NatureScot) under regulation 85B or 48, it is suggested that the plan-making body could prepare a draft record of the Habitats Regulations Appraisal, including an otherwise complete, but draft, appropriate assessment, and send it to NatureScot with any supporting documentation, reports etc, along with the draft plan. This would constitute a formal consultation simultaneously with that on the plan and, where produced, the Environmental Report.

Should NatureScot disagree with the conclusions of the appraisal, the Regulations require only that the plan-making body should have regard to any representations they make. In practice, plan-making bodies are advised to work with NatureScot to resolve any issues arising. In the English courts, the Akester judgment found that in the circumstances of that case, unless the competent authority concluded that the advice of the appropriate national conservation body was simply wrong, it was difficult to see how it could have come to the conclusion that no doubt remained as to whether there would be adverse effects on the European sites, when Natural England advised that that was not the case. The judge found that given Natural England's role, the competent authority was bound to accord significant weight to its advice and there had to be 'cogent and compelling' reasons for departing from it. (See *R. (on the application of Akester and Melanaphy) v Department for Environment, Food and Rural Affairs* Wightlink Ltd et al (CO1834/2009) [2010] EWHC 232 (Admin).)

For Local Development Plans, where NatureScot remains of the view that there are fundamental problems with the conclusion(s) of the Habitats Regulations Appraisal, the formal response to the draft HRA record will be accompanied by representations to the relevant elements of the plan itself. This is because only unresolved representations to the plan can be considered as part of any subsequent examination of the plan.

NatureScot will provide a formal response on the draft Habitats Regulations Appraisal Record by sending a letter to the plan-making body indicating whether it agrees with the conclusions, and hence (for development plans) whether any unresolved representations remain for Examination of the plan. The plan-making body should give NatureScot's advice considerable weight, and should have cogent and compelling reasons for rejecting that advice when undertaking their appropriate assessment.

Proposed modifications

If modifications to the plan are proposed after the draft Habitats Regulations Appraisal record has been submitted to NatureScot for consultation, it will be necessary to screen the proposed changes for the likelihood of a significant effect on a European site. Potentially this may trigger another appropriate assessment if such effects would be likely. It is possible that NatureScot may need to be consulted again on the record, as revised, and a second letter provided to the plan-making body.

The Habitats Regulations Appraisal Record should be modified in light of NatureScot's representations and any modifications that may be made to the plan at a late stage. In the case of development plans falling under Part IVA of the Regulations, we recommend that the plan-making body should forward their record of the Habitats

Regulations Appraisal and the letter from NatureScot when they submit the Proposed Plan to the Scottish Ministers for examination.

The plan-making body may need to amend the HRA Record before it is finalised, as a result of NatureScot's comments. The plan may also need to be amended as a result of NatureScot's comments on the record.

Modifying and completing the appraisal record

The HRA Record should be modified/ finalised as necessary before moving towards the adoption of the plan, or otherwise giving effect to the plan.

For plans falling under Part IVA of the Regulations, a planning authority will normally be bound to accept the Reporter's recommendations in the report of any examination, but one of the exceptions to this rule is where a Reporter's proposed change would not, in the opinion of the planning authority, be compatible with the requirements of the Habitats Regulations. (See Regulation 2, The Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009.)

In relation to modifications to Local Development Plans (LDPs) arising from examination, the responsibility for making necessary associated modifications to the HRA Record lies with the planning authority. On receipt of the Examination Report, the planning authority should undertake the necessary appraisal of the plan as if it were modified, consulting as required on the updated appraisal, and then finalising the HRA Record before moving towards adoption of the plan.

For LDPs there are different possible ways of presenting information on the modified HRA Record following examination. One approach is for the planning authority to produce an addendum which updates the previous HRA Record as necessary so that it reflects the recommendations contained in the LDP Examination Report. NatureScot should then be sent a draft copy of the addendum, and can advise whether it agrees with its conclusions. The addendum can then be finalised before the planning authority adopts the Local Development Plan.

Section 7: Postscript: ensuring compliance

Exceptional Cases

The Scottish Government expects that a plan will only need to proceed by way of the tests and procedures in regulations 49 and 85C in the most exceptional circumstances.

A plan-making body 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.

If a plan-making body is unable to ascertain that a 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 85C and 85E (for land use plans)

or regulations 49 and 53 (for other plans) of the Habitats Regulations. Appendix D discusses the procedures.

If a plan-making body continues to pursue its plan without change to adoption, despite a negative or uncertain outcome of the Habitats Regulations Appraisal, regulation 85C(5 and 6) / 49(5) requires it to notify the Scottish Ministers. It is expected that this would occur only in the most exceptional of circumstances.

The situations in which plan-making bodies may progress a plan to adoption are more restricted where the plan could have an effect on a pSAC, cSAC or pSPA. This is briefly discussed below.

Helping to keep to the ‘rules’

Whether any particular appraisal is compliant with the Regulations is a matter which can only be determined by the courts. Plan-making bodies should take legal advice if they are uncertain as to the compliance of a particular appraisal, or the need for appraisal.

However, there are some ‘rules’ which, if followed, are likely to help to ensure that the appraisal process is in accordance with the statutory requirements. These are summarised below and several have been discussed earlier in this guidance:

- (a) If in doubt as to whether appraisal is necessary, consider whether the plan would be likely to have a significant effect on a European site, and if uncertain as to whether appraisal is required, consider the need for legal advice.
- (b) Always record the outcome of the appraisal process, including if it is a decision not to subject a plan to appropriate assessment - for example, because it is not likely to have a significant effect on any European site. Record the reasons why the decision was taken.
- (c) Where a site may be affected, consider the effects of the plan on each qualifying interest of each site, using the conservation objectives as a guide.
- (d) Make sure that all policies and all proposals and programmes are screened and assessed individually, or in suitable groups where this may save time.
- (e) Even if the individual policies, proposals and programmes in a plan would not have a likely significant effect on a site, check whether they would have a likely significant effect when their individual effects are added together – the ‘whole-plan in-combination perspective’.
- (f) Consider the possible effects on European sites outwith the plan area and its immediate surroundings in respect of connectivity between the sites and the effects of the plan.
- (g) Undertake an in-combination appraisal if the plan would not be likely to have a significant effect on its own, but could have if combined with the effects of other plans or projects.

- (h) Where relevant, amend the plan and take into account 'mitigation measures' in the decision whether it can be ascertained that it would not adversely affect site integrity.
- (i) Always make sure that any record of appraisal includes, as a minimum, the matters listed in the section of this guidance on 'Preparing a draft of the Habitats Regulations Appraisal Record' to the extent that they are relevant.
- (j) To aid any in-combination assessment within the Habitats Regulations Appraisals of other plans, it can be helpful to distinguish elements of the plan with residual effects on European sites.
- (k) Ensure that the peculiarities and particulars of European site terminology are correctly understood. This should enable a logical and clear HRA Record, with the correct tests used at each stage of the process.

Possible pitfalls

From past experience it is possible to identify some potential pitfalls in the appraisal process:

- (a) Do not approximate wording in the Regulations in making the record of the appraisal, but exactly match them, such as "likely to have a significant effect".
- (b) Do not combine or confuse steps and tests in the appraisal process.
- (c) Do not apply the tests and steps in a different order to that set out in the Regulations.
- (d) Do not 'lump together' the qualifying interests of a site for the purpose of assessment; each should be assessed separately unless they have very similar characteristics and would be affected in the same way by the plan.
- (e) Do not assess effects on a site that do not affect the qualifying interests for which it is designated.
- (f) Do not take account of 'compensatory measures' when deciding whether it can be ascertained that the plan would not have an adverse effect on site integrity. Compensatory (or compensation) measures are not the same as mitigation measures.
- (g) Do not make assumptions about the possible effects on a site, for example that a particular type of development would be acceptable because it has been permitted in the past, without taking appropriate advice.
- (h) Do not merely rely on the presence, or subsequent insertion, of a general policy seeking to protect European sites, in order to ascertain that the plan would not have an adverse effect on site integrity, if the plan could in some way have a likely significant effect on a European site.

- (i) Do not ascertain that there would not be an adverse effect on the integrity of a European site unless the plan-making body has made certain there would be no such effects, this being the case where no reasonable scientific doubt remains as to the absence of such effects.

Special considerations for proposed and candidate European sites

It is Government policy to treat proposed SPAs (pSPAs) and proposed SACs (pSACs) as if they are fully designated European sites. However, as a result of judgments in the European Court of Justice, there are further considerations in respect of pSPAs, pSAC and cSAC which may need to be taken into account by plan-making bodies, where adverse effects on the integrity of such sites cannot be ruled out. Plan-making bodies are recommended to seek legal advice in such cases and to discuss with NatureScot how the possible effects could be avoided, because they could preclude the plan from being adopted in certain circumstances.

Appendix A – Glossary of terms used in this guidance

Where the definitions include a term that is defined elsewhere in this glossary, the term is underlined.

Adverse effect (site integrity)	An effect on the <u>qualifying interests</u> of a <u>European site</u> which is negative in terms of the achievement of the <u>conservation objectives</u> for that site. The following definition of the integrity of a site has been stated by the European Commission. The <u>integrity</u> of the site is “ <i>the coherent sum of the site’s ecological structure, function and ecological processes, across its whole area, which enables it to sustain the habitats, complex of habitats and/or populations of species for which the site is designated.</i> ”
Alternative solutions	This is a part of the tests in regulations 85C and 49 of the <u>Habitats Regulations</u> . In any exceptional case, where it can not be ascertained that the plan will not adversely affect the integrity of a European site, and where regulation 85C or 49 is applied to a proposed plan, the plan-making body must first be satisfied that there are no alternative solutions. The Scottish Government expects these special provisions to be used only in the most exceptional circumstances, with plans being amended to avoid <u>adverse effects</u> on European sites, so rendering the application of the alternative solutions test unnecessary.
Appropriate assessment	This is one part of the <u>Habitats Regulations Appraisal</u> process which is described in this guidance. An ‘appropriate assessment’ is only required where the plan-making body determines that the plan is <u>likely to have a significant effect</u> on a <u>European site</u> in Great Britain, or a <u>European Offshore Marine Site</u> , either alone or <u>in combination</u> with other <u>plans or projects</u> , and the plan is not directly connected with or necessary to the conservation management of the site. See information on appropriate assessment on NatureScot’s website.
Birds Directive	Directive 2009/147/EC of the European Parliament and of the European Council of 30 th November 2009 on the conservation of wild birds.
Compensatory measures	Where a plan or project must be carried out (in the absence of alternative solutions) for imperative reasons of over-riding public interest, Scottish Ministers have a duty to secure compensatory measures necessary to ensure that the overall coherence of the UK site network is protected (regulation 53 and 85E of the <u>Habitats Regulations</u>). Compensatory measures should only be considered in this context. Compensatory measures are distinct from aspects of mitigation arising from the effects of plans and projects within a site.

Competent authority	An expression used in the <u>Habitats Regulations</u> , referring to the authority that is responsible for making a decision about a project application or adopting a <u>plan</u> . Any public body or public office is capable of being a competent authority as defined by regulation 6 of the <u>Habitats Regulations</u> .
Conservation objectives	These are referred to, but not defined, in the Regulations. They are set by NatureScot for each <u>qualifying interest</u> of each <u>European site</u> and the approach endorsed by Scottish Government. They form the basis of assessing the potential effects of <u>plans and projects</u> on European sites.
European marine sites	The parts of <u>European sites</u> which are marine areas; and lie below Mean High Water Spring tide. They are also known as marine SACs and marine SPAs. See information on European marine sites on NatureScot's website.
European Offshore Marine Site	Defined by regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 S.I. 2007 Number 1842, and comprise <u>Special Protection Areas</u> (SPA), <u>Special Areas of Conservation</u> (SAC), and candidate Special Areas of Conservation (cSAC) which lie beyond the 12 nautical mile limit of Scotland's territorial waters.
European site	Defined by regulation 10 of The Conservation (Natural Habitats, &c.) Regulations 1994 as amended, and may be summarised as follows: <u>Special Protection Areas</u> (SPA), <u>Special Areas of Conservation</u> (SAC) , a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive before exit day; or a site which before exit day was included in a list of sites proposed to the European Commission (known as candidate SACs in the UK). In this guidance, for convenience, <u>European Offshore Marine Sites</u> are included in the definition of 'European sites' to make the text more readable. See information on European sites on NatureScot's website.
Habitats Directive	EC Council Directive 92/43/EEC of 21 st May 1992 on the conservation of natural habitats and of wild fauna and flora. See information on the Habitats Directive on NatureScot's website.
Habitats Regulations	The Conservation (Natural Habitats, &c.) Regulations 1994, Statutory Instrument 1994 No 2716 as chiefly amended in 1996, 1999, 2004, 2007, 2009, 2011, 2012 and 2019, abbreviated in this guidance to 'the Regulations' or 'the Habitats Regulations', as the context requires. They transpose the <u>Habitats Directive</u> into domestic law. There are some differences between these Regulations and the <i>Conservation of Habitats and Species Regulations</i> 2017 which apply in England and Wales. See information on the Habitats Regulations on NatureScot's website.

Habitats Regulations Appraisal (HRA)	This term is used to describe the whole procedure of plan appraisal, described in Sections 2 – 6 of this guidance, including for the purposes of this guidance deciding whether a plan is subject to the Regulations (Section 3); the ‘ <u>screening</u> ’ process (Section 4) for determining whether an ‘ <u>appropriate assessment</u> ’ is required; and the ‘appropriate assessment’ stage (Section 5) including consultation with NatureScot (section 6). See information on Habitats Regulations Appraisal on NatureScot’s website.
Habitats Regulations Appraisal Record	This is the record of the <u>Habitats Regulations Appraisal</u> process. It should set out in a concise way the reasoning for the conclusion by the <u>plan-making body</u> (as applicable) that the <u>plan</u> would not be <u>likely to have a significant effect</u> on a <u>European site</u> , either alone or <u>in combination</u> with other plans or projects and, where an <u>appropriate assessment</u> has been carried out as part of the appraisal, whether it has been ascertained that it would not <u>adversely affect the integrity</u> of a European site. It forms the means by which formal consultation with NatureScot (SNH) takes place as part of any appropriate assessment, as well as consultation more generally with NatureScot at the draft/proposed plan stage over the likelihood of effects of the plan on European sites. This document is also required for submission to Scottish Ministers for development plans at the examination/approval for adoption stage (see Appendix C for an example outline of a draft HRA Record).
Imperative reasons of overriding public interest	This is a part of the tests in regulations 85C and 49 of the <u>Habitats Regulations</u> . It makes provision for certain plans or projects to proceed despite not being able to ascertain that they will not adversely affect the integrity of a European site (both SAC and SPA) and where there are no alternative solutions. Such plans can only proceed if there is a valid argument of "imperative reasons of overriding public interest, including those of a social or economic nature". Where priority qualifying interests are involved these reasons can only relate to human health, public safety, or to beneficial consequences of primary importance for the environment. Other imperative reasons of overriding public interest may be considered in these circumstances, subject to an opinion from the Scottish Ministers. The Scottish Government expects these special provisions to be used only in the most exceptional circumstances. Plans should be amended to avoid <u>adverse effects</u> on <u>European sites</u> , so rendering the application of the imperative reasons of overriding public interest test unnecessary.
In combination	The requirement in the <u>Habitats Regulations</u> is to undertake an <u>appropriate assessment</u> of a <u>plan</u> if it would be <u>likely to have a significant effect</u> on a <u>European site</u> “ <i>either alone or in combination with other plans or projects</i> ”. The <u>appropriate assessment</u> should take into account in combination effects where relevant.

Integrity of the site	See <u>adverse effect</u> (site integrity) above.
Land use plans	Strategic development plans, local development plans and supplementary guidance as defined by regulation 85A of the <u>Habitats Regulations</u> 1994 as amended. It might be noted that the Planning (Scotland) Act 2019 now removes the need for the preparation of strategic development plans. The Act also removes the ability for supplementary guidance to be prepared, adopted and issued in connection with the development plan which then forms part of the development plan.
Likely significant effect (LSE)	A likely effect is one that cannot be ruled out on the basis of objective information. The test is a 'likelihood' of effects rather than a 'certainty' of effects (see Section 4.5.1 of the European Commission's guidance on the provisions of Article 6 of the 'Habitats' Directive). Where a project is likely to undermine the site's conservation objectives, it must be considered likely to have a significant effect on the site. The assessment of that risk must be made in the light, amongst other things, of the characteristics and specific environmental conditions of the site concerned. In essence this means that where there is doubt over whether a significant effect is likely or not, and there is clear connectivity between the proposed plan or project and the qualifying interest(s) of the European site in terms of the conservation objectives, an appropriate assessment should be carried out. See information on likely significant effects on NatureScot's website.
Mitigation measures	Measures to avoid, cancel or reduce the effects of a plan on a <u>European site</u> which should be proposed as part of the plan and which the <u>plan-making body</u> will take into account in the <u>Habitats Regulations Appraisal</u> . The 'People Over Wind' Court of Justice of the European Union (CJEU) judgement means that at 'screening stage' (for likely significant effects) we should not introduce mitigation measures that are designed for the purpose of reaching a conclusion of "no likely significant effect". Instead, these measures need to be considered at the appropriate assessment stage. It is also important to carefully distinguish between these mitigation measures (avoidance, cancellation and reduction measures), which are relevant to regulation 85B and 48, and <u>compensatory measures</u> that only become relevant under regulation 85E or 53.
Natura 2000	Prior to leaving the EU Scotland's sites contributed to the Natura network (or Natura 2000 network). Now they form part of the Emerald Network, spanning Europe and into Africa. See information on the Emerald Network on NatureScot's website.

Plan (or project)	<p>A plan is not defined in the Directive or the Regulations (except to the extent that <u>land use plans</u> and core path plans are explicitly referred to in the Regulations). The European Court of Justice has widely interpreted what is meant in the Directive by a 'plan or project'.</p> <p>Section 4.4 of the European Commission's guidance on the provisions of Article 6 of the 'Habitats' Directive notes that: "...the Directive does not circumscribe the scope of either 'plan' or 'project' by reference to particular categories of either. Instead, the key limiting factor is whether or not they are likely to have a significant effect on a site".</p>
Plan-making body	<p>In the context of this guidance, any public body in Scotland which is responsible for producing a <u>plan</u> that may be subject to appraisal under the <u>Habitats Regulations</u>.</p>
Priority habitat	<p>A habitat that is marked with an asterisk (*) in Annex I of the <u>Habitats Directive</u>, indicating that special conservation measures are required to protect them because they are in danger of disappearance and for the conservation of which the EC has particular responsibility in view of the proportion of their natural range which falls in the EC area. In any consideration of <u>imperative reasons of overriding public interest</u> under regulations 85(C)(2) or 49(2) where the site hosts a priority habitat, such reasons must relate to human health, public safety or beneficial consequences of primary importance to the environment, or any other reasons having regard to the opinion of the European Commission. See information on priority habitats as qualifying interests of SACs in Scotland on NatureScot's website.</p>
Qualifying interests (of a site)	<p>The habitats or species for which a site has been classified (SPA) or designated (SAC).</p>
Ramsar site	<p>A site listed as a wetland of international importance under the provisions of the 'Ramsar Convention'. A Ramsar site is not a <u>European site</u> as a matter of law, but all Ramsar sites in Scotland are also European sites and / or Sites of Special Scientific Interest and are protected under the relevant statutory regime. See information on Ramsar sites on NatureScot's website.</p>
Scoping	<p>'Scoping' is a term used in this guidance for convenience, to help to explain a part of the appraisal process. It is not a term used in the Regulations. Scoping is not a statutory requirement, but it is recommended to help to ensure that the <u>appropriate assessment</u> is focused, fit for purpose, compliant and proportional, in other words 'appropriate'.</p>

Screening	‘Screening’ is a term that is used in this guidance for convenience, to describe the initial stages of the <u>Habitats Regulations Appraisal</u> in the consideration of whether the policies and proposals of a plan are <u>likely to have a significant effect</u> on a <u>European site</u> , either alone or <u>in combination</u> with other plans or projects, and should thus be subject to <u>appropriate assessment</u> . It is not a term used in the Regulations.
Site condition	Site condition gives an indication of the conservation status of habitats and species at the site level. It is linked to the concept of ‘favourable conservation status’ which is defined in detail in Article 1 of the <u>Habitats Directive</u> ; in summary, the conservation status is ‘favourable’ where all that is necessary to sustain the habitats or species in the long-term is in place (please refer to the detailed definitions in Article 1).
Special Area of Conservation (SAC)	Area designated in respect of habitats and/or species under Articles 3 – 5 of the EC <u>Habitats Directive</u> and since leaving the EU under <u>regulations 7 and 8 of the Habitats Regulations</u> . Prior to leaving the EU Scotland’s sites contributed to the Natura network. They form part of the Emerald Network, spanning Europe and into Africa. See information on SACs on NatureScot’s website.
Special Protection Area (SPA)	Area classified in respect of bird species under Article 4 of the <u>Birds Directive</u> and since leaving the EU under <u>regulations 9A-C of the Habitats Regulations</u> . Prior to leaving the EU Scotland’s sites contributed to the Natura network. They form part of the Emerald Network, spanning Europe and into Africa. See information on SPAs on NatureScot’s website.

Appendix B – Examples of types of policies referred to in the guidance

This appendix provides examples of some policies and proposals in order to illustrate the screening stage of the guidance. They are based on actual policies or proposals, but may be adapted for illustrative purposes, so the origins of the policies are not stated. It is emphasised that they are illustrative only and are not endorsed as best practice. It is conceivable that what may be appropriately screened out in one plan may not be appropriate to screen out in another plan, because of the particular circumstances of the plan, the European sites, their qualifying interests, conservation objectives and likely significant effects alone or in combination with other plans or projects.

Examples of general policy statements (screening point 1):

- Example Policy 1 - A general statement of policy (screened out)

“STRATEGY FOR ECONOMIC DEVELOPMENT

Promote a stronger and more diverse local economy building on the area’s location and other strategic assets

Enable and safeguard land for business growth in sustainable locations

Create and maintain vital and viable town, district and local centres

Promote the leisure and tourism sector with emphasis on quality

Manage risk from major hazards, with a balance achieved between health and safety aspects and regeneration needs.”

- Example Policy 2 - A general criteria-based policy (screened out)

“NEW DEVELOPMENT IN THE BUILT ENVIRONMENT

New development will be required to contribute positively to the quality of the built environment.

Proposals should accord with the following criteria:

(1) The siting, layout and density of new development should create a coherent structure of streets, amenity space and buildings which respects and complements the site’s environs and creates a sense of identity within the development;

(2) Streets and public spaces should have buildings fronting them, and where this is not possible, a high quality architectural or landscape treatment will be required as an alternative;

(3) The design of new buildings should reflect the surrounding urban fabric in terms of scale, height, massing and building line;

(4) Building materials, finishes and colours should be chosen to complement those prevailing in the local area;

(5) Existing buildings or structures which contribute to the local townscape should be retained and integrated sensitively into the layout; and

(6) The contribution to the townscape of important landmarks, skylines and views should be respected.”

- Example Policy 3 - A more specific criteria-based policy (not to be screened out)

“NEW ECONOMIC DEVELOPMENT

The employment sites shown on the proposals map are allocated for business, general industry, storage or distribution uses. Planning permission will only be granted where a proposal conforms to the further site specific uses and requirements set out in Appendix x and they meet the following criteria:

[List of detailed criteria relating to impacts on residential amenity, transport etc not reproduced here.]”

(Note: this policy should not be screened out because although it is a criteria-based policy, the development it promotes is specific to the allocations, and until the allocations have been checked individually for the likelihood of significant effects, the policy providing for them cannot be screened out.)

Example of proposals referred to in, but not proposed by, the plan subject to appraisal (screening point 2):

- Example Policy 4 (partly or wholly screened out)

“PROPOSAL PT1: TRANSPORT PROPOSALS

Transport Proposals are listed below according to whether they improve accessibility within the National/International Network or whether they relate to primarily regional or internal movements.

National/International (some deletions)

- Forth replacement crossing
- Light rapid transit connections between Fife and Edinburgh
- Passenger rail on Dunfermline-Kincardine-Alloa-Stirling line

City Region

- Not reproduced here

Fife Regional

- Not reproduced here”

(Note: the projects listed under national / international transport proposals are referred to in the plan for completeness, and to enable the plan to take account of their spatial planning implications. However, they can be screened out of the plan’s appraisal because they are proposed by, and will be assessed by, the Scottish Government and it would be inappropriate for this plan appraisal to attempt to assess their effects.)

Examples of policies with no likely significant effect on a European site because they are intended to protect the natural or built environment (screening point 3(a))

- Example Policy 5 (screened out)

“BIODIVERSITY

The Council will promote the biodiversity of the Council area and ensure that the aims and objectives of the Local Biodiversity Action Plan are promoted through the planning process. Accordingly:

- (1) Developments which would have an adverse effect on the national and local priority habitats and species identified in the Local Biodiversity Action Plan will not be permitted unless it can be demonstrated that there are overriding national or local circumstances;
- (2) The safeguarding, enhancement and extension of the key habitats and species of conservation concern identified in the Local Biodiversity Action Plan will be given particular attention in the consideration of development proposals;
- (3) Development proposals should incorporate measures to promote, enhance and add to biodiversity, through overall site planning, and infrastructure, landscape and building design, having reference to the Supplementary Planning Guidance Note on ‘Biodiversity and Development’; and
- (4) Priority will be given to securing appropriate access to and interpretation of areas of local nature conservation interest. The designation of Local Nature Reserves, in consultation with communities, local wildlife groups and statutory bodies will be pursued.”

- Example Policy 6 (screened out)

“HERITAGE: LISTED BUILDINGS

The Council will protect listed buildings and will have particular regard to their special architectural and historic features and, where appropriate, archaeological interest in considering proposals for their alteration, extension, or change of use. There is a presumption against the partial or total demolition of a listed building.”

- Example Policy 7 (screened out)

“HISTORIC GARDENS AND DESIGNED LANDSCAPES

There will be a general presumption against development which would adversely affect the character or setting of sites identified in the ‘Inventory of Gardens and Designed Landscapes in Scotland’ and other historic gardens and landscapes of national, regional or local significance. The Council will seek to encourage sensitive management of historic gardens and designed landscapes.”

Example of policy with no likely significant effect on a European site because it will not lead to development or other change (screening point 3(b))

- Example Policy 8 (screened out)

“PROTECTION OF MINERAL RESOURCES

There will be a general presumption against significant permanent development which would sterilise mineral deposits which are likely to be capable of environmentally acceptable extraction.”

(Note: although the policy protects mineral resources from sterilisation, in case they are required for extraction, it does not provide for their extraction and does not in itself provide for development or change.)

Example of policy with no likely significant effect on a European site because it promotes development that, in this context, could not have any conceivable effect on a European site (screening point 3(c)):

- Example Policy 9 (screened out)

“RE-USE OF BUILDINGS

The Council will generally support the re-use or conversion of existing vacant buildings of architectural and townscape merit, provided that the building is structurally sound and capable of beneficial conversion, and an acceptable internal layout and level of amenity can be provided.”

Example of policy with no likely significant effect on a European site because although it promotes development in specific areas (in this example the named town centres) there is no physical, ecological, hydrological, chemical or biological link or other pathway between its provisions and the qualifying interests of any European site (screening point 3(c)):

- Example Policy 10 (screened out)

“TOWN CENTRES

Development proposals bringing about an improvement to the range and quality of retail and commercial leisure facilities in the town centres of X, Y and Z will be considered favourably. Measures for improving the environment and accessibility of town centres will be supported.”

(Note: for clarification, in this case example, no river SACs flowed through or close to the town centres.)

Example of policy with no likely significant effect on a European site because although it promotes development / change, it is so general that it is not known where, when or how the aspect of the plan may be implemented, or where any potential effects may occur, or which European sites, if any, may be affected (screening point 3(e)):

- Example Policy 11 (screened out)

“VACANT, DERELICT AND CONTAMINATED LAND

The Council will seek to reduce the incidence of vacant, derelict and contaminated land. Subject to compliance with other local plan policies, development involving the rehabilitation and reuse of derelict land will be encouraged.”

(Note: it is possible that this policy may equally have been screened out in Screening Point 1, General Policy Statements)

Appendix C – Example outline draft Habitats Regulations Appraisal Record

This appendix provides an illustrative example of the outline of a Draft Habitats Regulations Appraisal Record that may be appropriate to record the HRA of plans that have multiple policies or proposals. It is not a prescriptive formula and is not intended as a template for all records. An example of how to record a Habitats Regulations Appraisal for projects and simpler plans is available on the NatureScot website as a [Habitats Regulations Appraisal proforma](#). Each record should be tailored to suit its purpose and the complexity of the plan's potential effects on European sites. In many cases a simpler record may be all that is needed (for example where it is concluded that no element of a plan has any effect on a European site). While illustrations are included below for how to record the HRA, it is essential that a robust evidence-based approach is followed in order to reach sound conclusions. This appendix should not therefore be read or applied in isolation from the rest of the guidance.

This illustrative example assumes that for some aspects of the plan an 'appropriate assessment' was necessary, whereas many plans may not need to progress to an appropriate assessment because they would not be likely to have a significant effect on a European site. For reasons discussed in the guidance, the example does not include any consideration of issues that may arise, in exceptional circumstances, under regulations 85C/85E and 49/53, in the event that the appraisal cannot ascertain that there would be no adverse effect on the integrity of a European site.

Stage 1: What is the plan and gathering information.

Title

This should explicitly refer to the Habitats Regulations and the plan which is being appraised. For example, 'Appraisal in relation to regulation 48/85B of the Conservation (Natural Habitats, &c.) Regulations 1994 as amended (Habitats Regulations Appraisal) for the XX Council Proposed Local Development Plan'.

Or, where relevant, under regulation 61 of The Conservation of Habitats and Species Regulations 2010 as amended, or regulation 25 of The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 as amended).

Name of competent authority

This is the authority with the power or duty to determine whether or not the plan can proceed. It includes any Minister, government department, public or statutory undertaker, public body of any description or person holding a public office.

Introduction

It may be useful to include an introduction. This could briefly refer to the background legislation and requirement for appraisal and summarise the procedural requirements.

It could briefly outline the methodology to help readers understand the process followed, to the extent that it may be relevant to the appraisal. The introduction could also refer to any good practice guidance which was followed, such as a reference to this guidance, if applicable. The introduction could also include a brief explanation of why the plan is subject to appraisal (i.e. Stage 1).

Background information about European sites

This should include information relevant to the appraisal. The record here could include:

- A list of the European sites potentially affected and a brief summary of the reasons why they were selected. A checklist based on the table in section 3 could be included.
- Information about the European sites potentially affected, perhaps summarised in a table or matrix such as that outlined below.
- A summary of any early discussions with NatureScot, for example, about the selection of sites and the methodology and scope of the appraisal.

Illustrative example of a table summarizing information about the European sites potentially affected (see Section 3)		
Information	Site 1	Site 2
Site name	River A	Loch B
Designation status	SAC	SPA
Date of designation	Designated 15/03/05	Classified 08/04/96
Qualifying interests	Otter Atlantic salmon	White-fronted goose (over-wintering)
Conservation objectives	<i>These would be inserted from the NatureScot website, or included as a hyperlink.</i>	<i>These would be inserted from the NatureScot website, or included as a hyperlink.</i>
Site condition	Otter - unfavourable Freshwater pearl mussel - unfavourable Atlantic salmon - favourable	Favourable
Factors currently influencing the site	Otter disturbance from flood defence or other riparian engineering works, water quality and increasing recreational use. Atlantic salmon - water	Changes in habitat management within the SPA and changes in agricultural practices at feeding grounds outwith the SPA.

	abstraction, water quality, river engineering, and other impediments to migration.	
Vulnerabilities to change / potential effects of the plan	<p>The Atlantic salmon and freshwater pearl mussel interests may be adversely affected by reduced flows as a result of abstraction which, if substantial enough, may expose and dry out available habitat, increase water temperatures, and reduce dilution of pollution. This may degrade habitat or can directly damage or stress the salmon or pearl mussels. Proposals which may require abstraction therefore have potential to affect the SAC.</p> <p>Atlantic salmon and freshwater pearl mussels are sensitive to disturbance to their river habitat. This includes silt and sediment entering the watercourse, as well as other forms of pollution. The greatest risk of pollution from development is usually at the construction stage, especially if there is a clear connection between the development site and the river. These kind of changes might destroy or degrade habitat or can directly damage or stress the salmon or pearl mussels.</p>	Proposed allocations may have an impact on the SPA geese due to the possible loss of foraging habitat, arising from direct habitat loss and / or disturbance of foraging geese.

Stage 2: Is the plan or project directly connected with or necessary to site management for nature conservation?

This test is to identify and remove from further assessment those plans which are clearly necessary to, or of value to, or inevitable as part of, management of the site for its qualifying interests. For the majority of plans competent authorities deal with the answer to stage 2 will be 'no' and stage 3 should be considered. This will be the case for Local Development Plans.

Stage 3: Screening - is the plan or project (either alone or in combination with other plans or projects) likely to have a significant effect on the site?

There is a need to consider in-combination effects when carrying out this screening stage.

An example presentational approach is to list the potential reasons for 'screening out', then record consideration of each aspect of the plan in a table and provide a reason why aspects of the plan is screened out (or has a likely significant effect). For example:

"In screening the plan the following elements were screened out as having no likely significant effect on the qualifying interests of a European site, alone or in combination with other plans or projects:

1: General policy statements

2: Projects referred to in, but not proposed by, the plan

3: Aspects of the plan that could have no likely significant effect on a site, alone or in combination with other aspects of the same plan, or with other plans or projects

- (a) Elements of the plan intended to protect the natural environment, including biodiversity, or 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;
- (b) Elements of the plan which will not themselves lead to development or other change, e.g. because they relate to design or other qualitative criteria for development or other kinds of change;
- (c) Elements of the plan which make provision for change but which could have no conceivable effect on a European site, because there is no link or pathway between them and the qualifying interests, or any effect would be a positive effect, or would not otherwise undermine the conservation objectives for the site;
- (d) Elements of the plan which make provision for change but which could have no significant effect on a European site, because any potential effects would be insignificant, being so restricted or remote from the site that they would not undermine the conservation objectives for the site (such elements should however be considered in combination with other aspects of the same plan, or in combination with other plans or projects);

- (e) Elements of the plan for which effects on any particular European site cannot be identified, because the policy is too general, for example, it is not possible to identify where, when or how the policy may be implemented, or where effects may occur, or which sites, if any, may be affected. These aspects of the plan may also be very similar to or the same as those screened out under point 1, relating to general policy statements.

Each element of the plan is considered below:"

Relevant part of the plan	Is the element of the plan likely to have a significant effect on a European site? If no, please explain why.
E.g. Policy a	No – General policy statement
Policy b	No – General policy statement
Policy c	No – General criteria-based policy

If helpful, and as possible background to the above table, the following additional screening matrices might help provide a means of exploring the potential for in-combination effects with elements of: (1) the same plan; and (2) other plans and projects. Please only use such matrices, however, if they assist with the assessment rather than adding unnecessary complexity. Sometimes a simpler approach may be more appropriate.

Here is a possible screening matrix comparing policies and proposals in the plan 'in combination' with other aspects of the same plan:

	Policy A	Policy B	Proposal 1	Proposal 2	Other multiple combinations
Policy A	N/A	X	X	X	X
Policy B	X	N/A	X	X	X
Proposal 1	X	X	N/A	LSE	X
Proposal 2	X	X	LSE	N/A	X
Other multiple combinations	X	X	X	X	N/A

LSE = Likely significant effect
X = No likely significant effect
N/A = not applicable"

Here is a possible screening matrix comparing policies and proposals in the plan 'in combination' with elements of other plans and projects. Other existing HRA Records can help to provide information on elements of other plans that are relevant.

	Plan B: Proposal B1	Plan B: Proposal B2	Plan C: Proposal C1	Project D	Other multiple combinations
Proposal A1	X	X	X	X	X
Proposal A2	X	X	X	X	X
Proposal A3	X	X	LSE	X	X
Proposal A4	X	X	X	X	X
Policy A5	X	X	X	LSE	X
Other multiple combinations	X	X	X	X	X

LSE = Likely significant effect in combination

X = No likely significant effect in combination

If applicable, the record should continue with a list of any aspects of the plan that would be likely to have a significant effect on a European site, either alone or in combination, which therefore require appropriate assessment. The following table suggests how this might be laid out with associated information.

Aspect of the plan likely to have significant effect, alone or in combination	Qualifying interest of the European site	Summary of the likely significant effect
For example the relevant policies or proposals	The site name and the qualifying interest likely to be significantly affected	The likely significant effects and whether it is an effect alone or in combination

Stage 4: The appropriate assessment - undertake an appropriate assessment of the implications for the site in view of its conservation objectives

This part of the HRA Record should set out the assessment of those elements of the plan likely to have a significant effect on a European site, alone or in combination, in light of their conservation objectives, including consideration of mitigation measures. The level of detail required will vary depending on the effects to be considered and the complexity of the assessment, as well as the nature of the individual plan. In essence, an assessment is appropriate when it is sufficient to inform a conclusion as to whether it can be ascertained that the plan will not adversely affect the integrity of any European site, in light of the implications of the plan for the site's conservation objectives. The assessment should be fully reasoned, logically set out, with clearly identifiable conclusions. The assessment could potentially be summarised in a table or matrix (or set of tables or matrices) as illustrated below. The record of the appropriate assessment may sometimes be more clearly and succinctly presented in the Habitats Regulations Appraisal Record by referring to a separate document that contains detailed baseline information, evidence, predictions, calculations or analysis, available on the authority's website or otherwise to those who may wish to examine the detail. Sometimes, however, the assessment may be relatively straight-forward, and might be explained in a few paragraphs of text.

Aspect of the plan likely to have significant effect, alone or in combination	Implications for each qualifying interest of the European site in light of its conservation objectives	Mitigation measures applied or taken into account in assessment, <i>if required</i> .	Whether it can be ascertained that the aspect of the plan would not adversely affect the integrity of a European site
The relevant policies or proposals	Description of nature, magnitude, timing etc of any potential negative effects in light of its conservation objectives	<p>E.g. what has been deleted from the plan; what has been changed in the plan; what measures have been introduced; any case specific policy restrictions or caveats; whether the conclusion relies on mitigation measures in lower tier plan/appraisal.</p> <p><i>Please note</i> that it is quite possible for the appropriate assessment to conclude ‘no adverse effect on integrity of the site’ in the absence of any mitigation measures, i.e. on the basis of suitably reasoned and thorough assessment. Planning authorities should not feel obliged to add mitigation measures where none are required.</p>	The plan-making body’s initial conclusions as to adverse effect on site integrity pending NatureScot consultation representations as part of the assessment

Stage 5 – Can it be ascertained that the plan will not adversely affect the integrity of a European site?

In the light of the appraisal, ascertain whether the plan will not adversely affect the integrity of the site. Conclusions should be reached beyond reasonable scientific doubt. If more than one SAC and/or SPA is involved, give separate conclusions. If mitigation or modifications are required, these should be detailed.

Conclusions

The conclusion should set out whether the plan can be approved based on the HRA, perhaps subject to required mitigation or modifications.

Appendix D – Exceptional cases

What to do if adverse effects on site integrity cannot be ruled out

If a plan-making body is unable to ascertain that a 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 85C and 85E or 49 and 53 of the Habitats Regulations. The effect of these regulations is discussed on our website at [Legislative Requirements for European Sites \(summary\)](#), and is also outlined as stages 6 to 9 of our [HRA web guidance](#).

In practice Scottish Ministers consider it unlikely that such circumstances would arise.

If there are no imperative reasons of overriding public interest sufficient to override the ecological importance of the site, the plan must not be adopted unless amended to avoid such effects.