



Section 5:

Habitats Regulations Assessment

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Habitats Regulations Assessment (HRA)

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HOW TO USE THIS GUIDANCE

This section provides practical guidance for undertaking Habitats Regulations Assessment (HRA). The structure of this guidance is summarised below.

Chapter 5.1: introduces the legislation and circumstances where Habitats Regulation Assessment may be needed;

Chapter 5.2: illustrates the stages that have to be followed with the assistance of a MOD Competent individual; and

Chapter 5.3: highlights the sources of guidance material and organisations that need to be consulted.

Who is the guidance aimed at?

Chapters 5.1 to 5.3 within this Section of the handbook provide a basic level of guidance to meet the requirements for legal compliance within MOD and are targeted at Project Managers and Integrated Project Team (IPT) Leaders. If you need to assess the requirement for, or undertake an Habitats Regulation Assessment on your Plan or Project and want to know more detail about the process, statement of requirement and quality assurance of HRAs; information on the staff within MOD who are able to advise and assist is contained in Box 5.2.

Frequently asked questions

A summary of where to find information in this guidance booklet (based on frequently asked questions) is provided below. This summary is intended as a tool to direct the reader to the relevant section of the guidance booklet based on specific questions they may have.

| Frequently Asked Question | Relevant section of guidance booklet |
|--|--|
| What is HRA? | Paragraph 5.1.2 |
| Should I undertake HRA or SA? | Summary Section – Figure S.3 |
| When does HRA apply to my Plan or Activity? | Paragraph 5.1.13 |
| Who is responsible for undertaking HRA? | Paragraph 5.1.22 , Appendix 5C |
| What are the likely timescales and resource requirements for HRA? | Paragraph 5.1.5 |
| What assistance is available to help understand the requirements of HRA and to actually undertake HRA? | Box 5.2 |

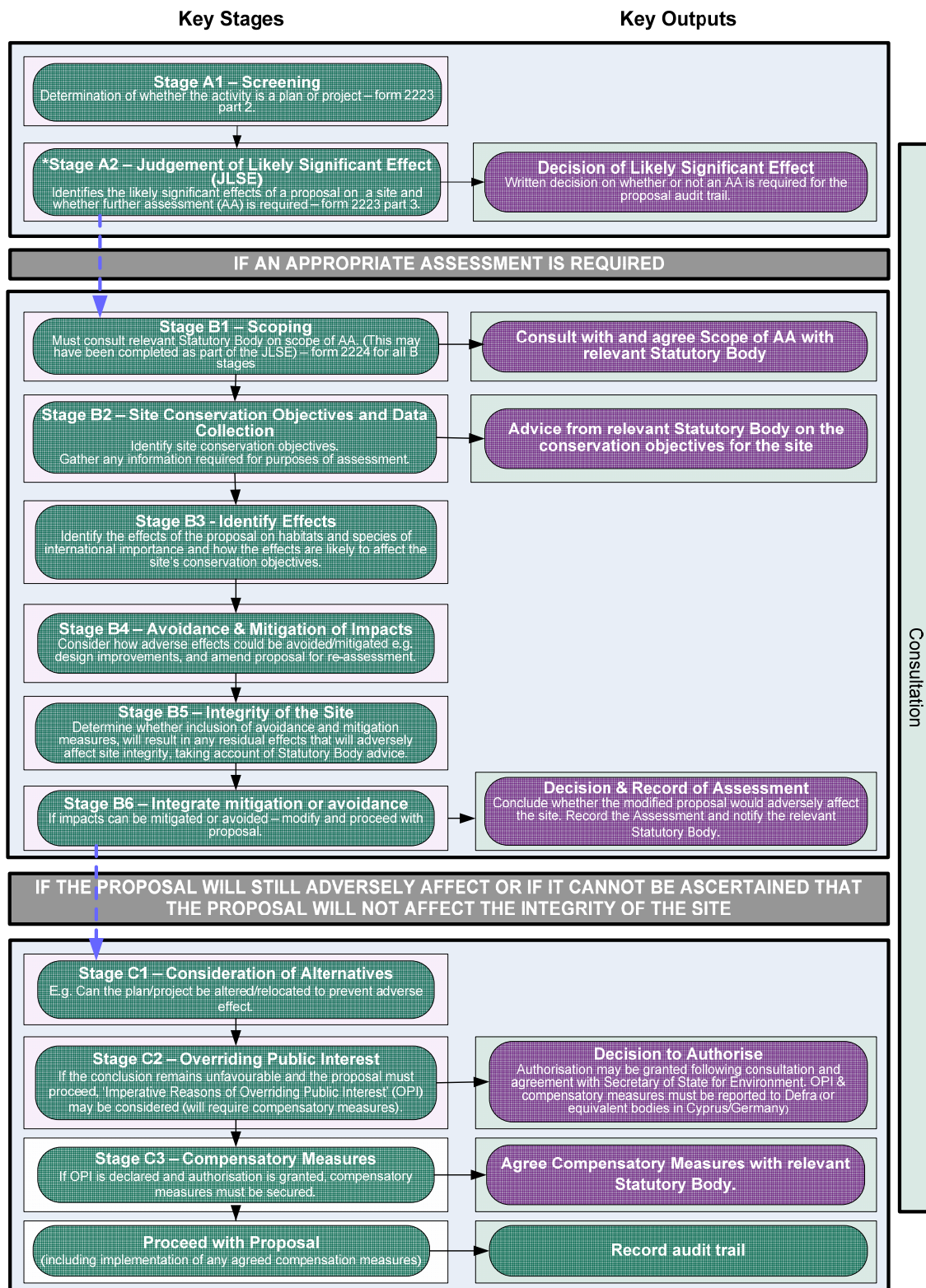
This HRA Guidance for MOD will be updated as good practice and MOD case studies emerge. To assist with the development of this guidance booklet please email any suggestions/feedback to sustainable.development@de.mod.uk.

5.1 INTRODUCTION

What is Habitats Regulations Assessment (HRA)?

- 5.1.2 “Habitats Regulations Assessment” (HRA) refers to an iterative series of assessments, including Judgement of Likely Significant Effect (JLSE) and Appropriate Assessment (AA), that may be required under the EC ‘Habitats’ Directive (92/43/EEC) and the UK ‘Habitats’ Regulations (see Box 5.1) for any plan or project that could affect certain internationally important site for nature conservation. A list of the types and descriptions of these internationally important sites is given in 5.1.7.
- 5.1.3 The phases of assessment is summarised in Figure 5.1 and the outline details of undertaking each stage is given in Chapter 5.2. A list of the wide variety of further guidance is available in Chapter 5.3.
- 5.1.4 HRA differs from SEA and EIA in that it only considers the effects of the proposal on the nature conservation objectives and features for which the site was designated, not all environmental consequences. EIAs are usually produced to accompany town and country planning or other licensing applications by the Applicant, but HRAs are produced by the decision-making or competent authority (see 5.1.23 for further information).
- 5.1.5 The legislation does not specify how an HRA should be undertaken, but it should be appropriate and sufficient. For some plans or projects, a simple and brief assessment may be appropriate. Other plans and projects may require comprehensive scientific investigation before a conclusion can be reached.
- 5.1.6 The requirement for undertaking HRA for MOD plans and projects is a statutory requirement (outlined in Box 5.1 and Figure 5.1). Failure to comply with the procedures for assessing plans and projects under the Habitats Regulations can result in refusal of planning permission, a potentially unlimited fine, Public Inquiry or Judicial Review.

Figure 5.1: Key Stages of HRA



*See Figure 5.2 for process map of "Judgement of Likely significance"

Additional footnote on Stage A2:

Recent case law has effectively removed the difference between JLSE and AA such that Stage A2 can incorporate all the processes covered by Stage B (see Dilly Lane Ruling Box 5.3)

Why undertake HRA?

- 5.1.6 The requirement for undertaking HRA for MOD plans and projects is driven by a statutory requirement which is outlined in Box 5.1. MOD policy underlines the need for HRA (see JSP 362 Volume 2, Leaflet 7 – Natural Environment (Conservation)). As discussed previously, this statutory requirement applies to certain internationally important sites for nature conservation.
- 5.1.7 These sites are selected and designated on scientific criteria to protect certain species, habitats and physical features. Responsibility for site selection and the protection of the sites falls to the relevant government department for England, Scotland, Wales or Northern Ireland, and their statutory advisers, the national nature conservation agencies. Sites are protected as soon as their international importance is recognised by notification as ‘possible’, ‘proposed’ or ‘candidate’ sites. To check whether a plan or project may affect any internationally important site, please consult DE Environmental Advisers. The mapping resources such as DE’s GEODE and MAGIC may not show internationally important sites that are still under consultation (e.g. proposed or candidate sites).

Special Protection Areas (SPAs)

- SPAs are classified under the EC Birds Directive to ensure the survival and reproduction of certain wild bird species that are in danger of extinction, vulnerable to habitat change, rare, or otherwise requiring attention; and for the protection of important habitats for regularly occurring migratory species.

Special Areas of Conservation (SACs)

- SACs are designated under the EC Habitats Directive to protect habitat types that are in danger of disappearance, have a small natural range, or are highly characteristic of the region; and to protect species that are endangered, vulnerable, rare, or endemic and requiring particular attention. In the UK, sites (or parts of sites) below high water (out to 12 nautical miles) are also called European Marine Sites. The offshore marine Conservation Regulations 2007 apply the Directive from 12-200 nautical miles.

Wetlands of International Importance (Ramsar Sites)

- Wetlands of International Importance are designated under the Ramsar Convention (1971) to protect biological and physical features of wetlands, with special attention given to waterfowl habitats. Ramsar sites often overlap with SACs and SPAs and UK planning policy determines that they should be accorded the same importance when developments are proposed.

Note: SACs and SPAs are collectively known as Natura 2000 sites. SPAs, SACs Ramsar Sites, are automatically designated under UK law as Sites of Scientific Interest (SSSI)¹ due to their importance and European designations.

¹ Sites of Special Scientific Interest (SSSIs) are notified under section 28 of the Wildlife and Countryside Act 1981 (as amended). The Countryside and Rights of Way Act 2000 strengthened SSSI protection in England and Wales and placed a legal duty on public bodies such as MOD to protect, manage and where possible enhance the special features of SSSIs. If a site only carries a SSSI designation and is not designated under European legislation then a HRA will not be required. For further information relating to this situation please refer to the Practitioner Guide on Designated Sites.

Box 5.1. Statutory Requirements for HRA within MOD**The EC 'Habitats' Directive**

European Community (EC) Directive on the Conservation of Natural Habitats and Wild Fauna and Flora (92/43/EEC).

Provides for the designation and protection of SACs and the protection of SPAs.

- Interpreted in England, Scotland and Wales by: *The Habitats Regulations - Statutory Instrument 1994 No. 2716 The Conservation (Natural Habitats &c.) Regulations 1994* (as amended).
- Interpreted in Northern Ireland by: *Statutory Rule 1995 No. 380 The Conservation (Nature, Habitats etc) Regulations 1995* (as amended).
- Scottish and Welsh equivalents (as amended)

The EC Wild Birds Directive

EC Directive on the Conservation of Wild Birds (79/409/EEC).

Provides for the designation and protection of SPAs.

- Interpreted in England and Wales by *The Wildlife and Countryside Act 1981* (as amended).
- Interpreted in Scotland by the *Wildlife and Countryside Act 1981* (as amended) and the *Nature Conservation (Scotland) Act 2004*.
- Interpreted in Northern Ireland by the *Wildlife (NI) Order 1985*.

Ramsar Sites

Sites designated under the Ramsar Convention on Wetlands of International Importance are protected by UK SSSI legislation and under planning policy (Planning Policy Statement (PPS) 9 and Scottish equivalent), which mandates the treatment of Ramsar sites in the same manner as sites protected under the Birds and Habitats Directives.

**Box 5.2: Further Advice and Guidance**

For further advice on the requirement for HRA contact:

Policy:

DE Estate Property Directorate, Sustainable Development Team

Contact: D Prop Sus Dev 1b - 9355 85113 or sustainable.development@de.mod.uk

Implementation:

DE Environmental Advisory Services

Contact: Natural Environment Team: naturalenvironmentmailbox@de.mod.uk - 94325 4820 or stuart.otway@de.mod.uk



5.1.11 MOD currently owns land on, and/or has direct management responsibility for 128 SPAs, SACs (also known as Natura 2000 sites) or Ramsar Sites in the UK. In addition, there are a number of SPAs, SACs and Ramsar sites adjacent to or close to MOD sites, or where MOD has licence to train, or may be affected by MOD activities. The Sustainability Appraisal checklist process (see also Section 3, Theme J) should identify whether the proposed plan or project could have any effect on a SPA, SAC or Ramsar site, but if there is any doubt, then an MOD Environmental Adviser should be consulted.

5.1.12 The UK Government and devolved Country Administrations have legal obligations to protect SPAs, SACs and Ramsar Sites under European legislation (the Habitats and Birds Directives) and commitments under international nature conservation conventions (the Ramsar, Bern, Bonn and Rio Biodiversity Conventions). The relevant

government departments, local planning authorities and national nature conservation agencies must take these obligations into account when considering applications for planning permission or applications for other consents or authorisations.

When should an HRA be undertaken and on what activities?

- 5.1.13 Plans and projects that are directly related to the conservation management of a site do not require assessment.
- 5.1.14 HRA needs to be undertaken for any plan or project which, either alone or in combination, could significantly effect affect the special features of a SPA, SAC or Ramsar site. Effects could arise from MOD proposals for estate development or rationalisation, changes in or intensification of training patterns, or the type of vehicles being used, and/or changes to land management regimes e.g. public access levels or grazing patterns.
- 5.1.15 There are specific trigger questions within the Sustainability Appraisal process (see Section 3 Appendix E Theme J and Appendix 3B Evaluation of the Requirements for Statutory Assessments, Consents and Licenses form) to highlight whether there is any likelihood of effects on a SPA, SAC or Ramsar site that must be considered. If the potential for significant effects is raised during this process or at any other stage in the life of the plan or project, Stage A or the 'Judgement of Likely Significant Effects' should be initiated. If significant effects are considered likely, this will then have to be followed by a full Appropriate Assessment (AA). Recent case law has effectively removed the split between JLSE and AA stages such that Stage A2 can incorporate all the processes covered by Stage B (see Dilly Lane Ruling Box 5.3)
- 5.1.16 Project Managers and IPTs should be aware that the requirement to initiate Stage A may arise at any of the following points:
- Before any application for planning permission is submitted;
 - Where no planning permission or other authorisation is required, before the MOD decides to undertake the plan or project;
 - Before MOD gives consent, permission or other authorisation for a plan or project; and
 - Before MOD reviews the decision to undertake a plan or project or reviews consents, permissions or other authorisations for plans or projects that are incomplete
- 5.1.17 The list below also details the other circumstances where the need to undertake HRA may arise.

Plans

- 5.1.18 HRA may be required for MOD plans that are not directly connected with or necessary to the [conservation] management of a European site (if said plan is likely to have a significant effect on the European site). Current legal advice is that HRA **is** required for integrated rural management plans which form the MOD's mechanism for managing steady state activities where these relate to Natura 2000 or Ramsar sites.

Permitted Development

- 5.1.19 Activities that would normally be considered Permitted Development are still subject to HRA and existing consents or rights should be reviewed when a new nature conservation site is identified or designated. Further information is given in the DE Practitioner Guidance – Designated Sites.

Distant, Indirect and Temporary Effects

- 5.1.20 Likely significant effects may occur even if the plan or project is some distance away from the SPA, SAC or Ramsar site and may be direct or indirect, temporary or permanent. Direct effects include habitat destruction and disturbance but distant effects may include pollution carried by air or water. Construction of a new barracks near a site

may cause temporary direct effects during erection, but longer-term indirect effects may be caused from intensified backdoor training by the extra personnel.

'Alone or in Combination Effects'

- 5.1.21 A single MOD plan or project may not itself have a significant effect on a SPA, SAC or Ramsar site, but may do so in combination with other plans and projects, which may include non-MOD proposals.

Who is responsible for undertaking HRA?

- 5.1.22 It is the IPT Leader or Project Manager's responsibility to identify the potential that their plan or project (usually through the SA process) could have detrimental effects on an internationally important site and that further action is required with respect to HRA. If following this initial indication, there needs to be further investigation, one of MOD's registered Competent Individuals must be contacted to assist the IPT with completing the stages of the HRA process. A copy of the current Register of Competent Individuals can be found in Appendix 5C.
- 5.1.23 The MOD is termed a "Competent Authority", under the UK Habitats Regulations. This means that MOD can make the judgements as to whether its plans or projects are likely to have significant effects on SPAs, SACs or Ramsar sites, with advice from the Statutory Bodies, and, where necessary, carry out HRA. The MOD has created a list of competent individuals who are appropriately qualified and experienced to assist the IPT in complying with this requirement, and only these competent individuals may sign-off any decision on JLSE or AA.
- 5.1.24 As a Competent Authority, MOD must maintain a record of all decisions made on projects and activities across the MOD Estate. An example template for recording such decisions is included in Appendix 5B. All completed decision sheets should be copied to the DE Environmental Advisory Services (EAS) on naturalenvironmentmailbox@de.mod.uk and stuart.otway@de.mod.uk.
- 5.1.25 MOD's decision-making role as a Competent Authority cannot be transferred to a private partner or contracted out. Technical consideration in support of a HRA can be undertaken by the Partner/Consultants following the initial decision on the significance of the effects but the content and approach of the Technical Consideration must be guided, reviewed and approved by a Competent Individual within MOD.
- 5.1.26 New surveys or scientific investigations may be required, depending on the nature of the plan or project and available information. Surveys may need to be done at certain times of year (e.g. breeding, flowering, over wintering or migrating seasons), which may not fall neatly into planning timeframes, and any survey requirements should be identified at an early stage. The HRA decision is made on the best available scientific information as to whether or not there will be adverse effects.
- 5.1.27 Substantial survey data may be available directly from or via the MOD Conservation Groups, the membership of which will usually include representatives of the statutory nature conservation bodies (SNCBs), local planning authorities, non-governmental organisations and experts in the special features of the designated site. MOD Conservation Group members can be contacted via DE Environmental Advisory Services Natural Environment Team or the Conservation Group Chair (usually the site commandant, range officer or environmental protection officer).

5.2 HRA METHODS AND APPROACH WITHIN MOD

- 5.2.1 This chapter provides guidance on the Stages that need to be followed in the HRA process. As discussed in paragraphs 5.1.21-22 the process of the working through should be undertaken with the assistance of, and must be signed off by a MOD Competent Individual (see Appendix 5C).

Screening (A1)

- 5.2.2 Screening, using Form 2223 (Appendix A), establishes whether the given activity is a plan or project and thus determines whether HRA is required. For advice on screening contact a MOD Competent Individual.

Judgement of Likely Significant Effect (JLSE) (Stage A2)

- 5.2.3 Judgement of Likely Significant Effect under the Habitats Regulations is the first stage in consideration of the plan or projects. The decision-making process is illustrated in the flow diagram in Figure 5.2.
- 5.2.4 When judging if a plan or project is likely to have significant effect, the following points should be considered:
- the qualifying interest and conservation objectives of the SPA, SAC, Ramsar Site or offshore site²;
 - all aspects of the proposal, alone and in combination with other proposals;
 - avoidance and mitigation measures built into the proposal;
 - identification of any residual likely significant effect of the proposal on the SPA, SAC or Ramsar Site for which an HRA will be required.
- 5.2.5 In accordance with the 'precautionary principle', where it is uncertain whether or not a plan or project is likely to have a significant effect, an AA will be required. The relevant statutory nature conservation body should be consulted at the earliest opportunity and an audit trail must be recorded of all relevant correspondence and decisions. Templates for recording Judgements of Likely Significant Effect & Appropriate Assessment are given in MOD Forms 2223 and 2224.

Consultation

- 5.2.6 Consultation should begin at the earliest opportunity. The formal MOD policy for liaison relating to SPA, SACs and Ramsar Sites can be found in:
- The Memorandum of Understanding on the Habitats and Birds Directives between the Ministry of Defence and DCLG, SG, WAG & NIE.
 - The Declarations of Intent between the Ministry of Defence and the relevant statutory nature conservation bodies for England, Scotland, Wales and Northern Ireland.
 - Consultation with relevant statutory bodies for Cyprus and Germany as detailed within their respective Regulations.

² Candidate SACs are considered in the same terms as fully designated sites.

Box 5.3. Dilly Lane Ruling**Background**

The Thames Basin Heaths SPA was designated in 2005 for nightjar, woodlark and Dartford warbler because it is regularly used by 1% or more of the Great Britain population of these species of wild birds. It covers some 8,400ha and is made up of a number of component SSSIs, and the impacts of housing development within 5km of the SPA has been an issue of contention for some time.

The facts

Outline and then detailed planning permission had been applied for to construct 170 houses in a greenfield site off Dilly Lane, Hartley Wintney, and to undertake associated works in the form of improvements to a footpath and the creation of recreational green spaces known as “suitable alternative natural green spaces” (SANGs). The site in question lies approximately 1.5km from the edge of Hazeley Heath, which forms part of the SPA. It was proposed that the SANGs would avoid any net effect of an increased local population on the SPA by providing alternative recreational space for new residents and existing residents.

The legal challenge was on the basis that the assessment of whether a plan or project was likely to have a significant effect on the SPA must be assessed with any mitigation measures (in this case, the “SANGs”) disregarded. i.e. any proposed mitigation cannot be considered until later on in the assessment process once a negative judgment of likely significant effect (screening stage) has been made.

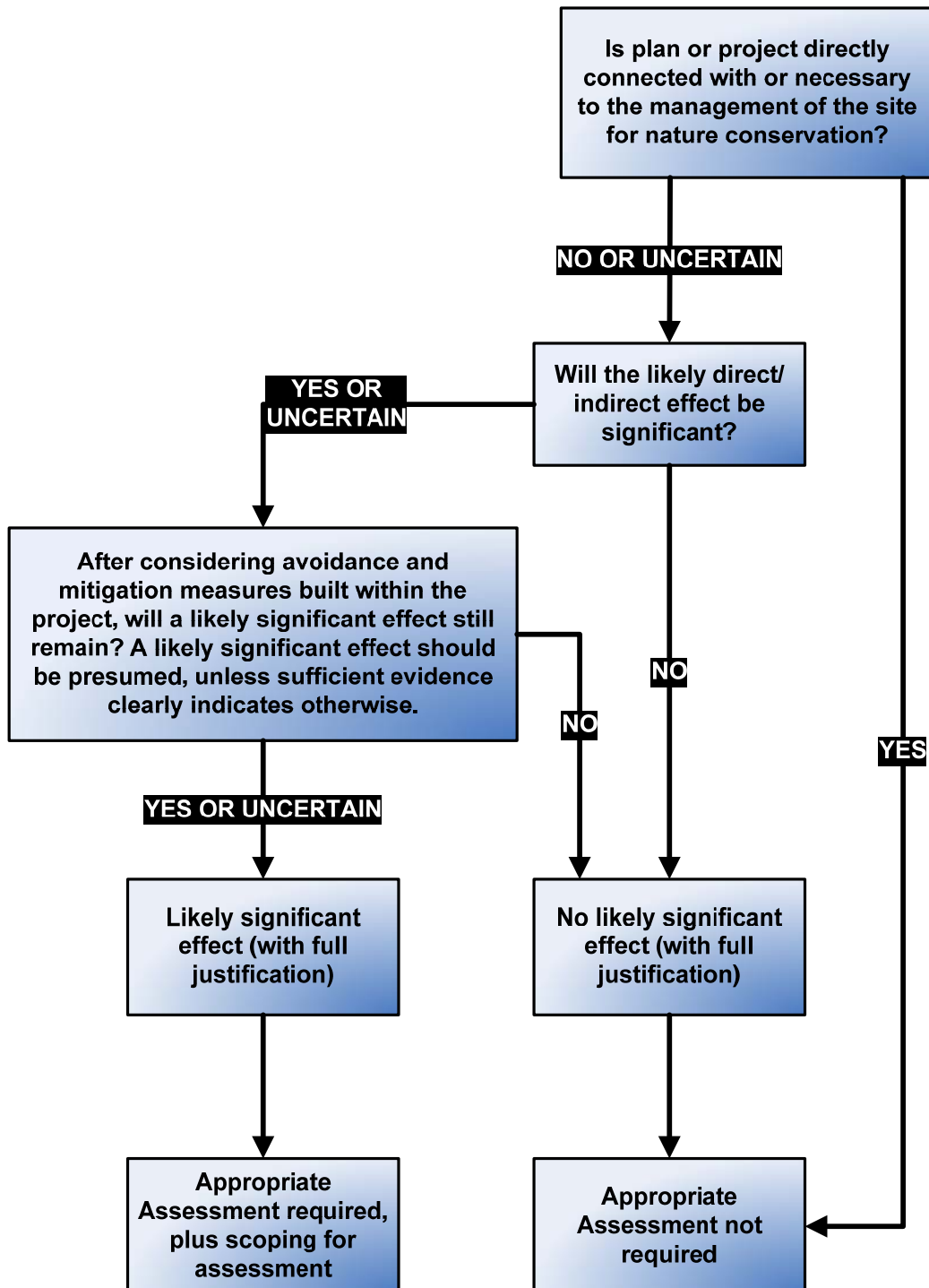
Amongst other things, the judge held that there is no absolute legal rule that mitigation measures should be disregarded in assessing the question of whether the project was likely to have significant effects on the SPA, and if certain features are incorporated into a project, there were no sensible reasons why they should be ignored at the initial assessment stage (JSLE) simply because they are directed at combating the likely effect of the project on the Natura 2000 site.

This means that any mitigation measures already proposed for a PP, can be considered as part of the judgment of likely significant effect to determine whether a detailed assessment is needed. This does not necessarily remove the need for a detailed assessment which will still be dependent on the conclusion of the JSLE, and the views of the statutory body must still be taken into account.



Figure 5.2:

A step-by-step approach to determining whether a significant effect is likely on a Natura 2000 site



Appropriate Assessment (AA) (Stage B)

- 5.2.8 If an AA is required, its scope should be determined by the Judgement of Likely Significant Effects, with guidance taken from MOD environmental advisors.
- 5.2.9 The key steps in an AA are outlined in Figure 5.1 and consist of distinct stages ranging from data collection, assessment of effects, avoidance and mitigation measures, and the evaluation of the residual effects on the integrity of the site. These stages should be co-ordinated and authorised by the MOD Competent Individual, although the data collection and assessment work can be undertaken by a MOD contractor or partner. In almost all cases the HRA process can identify restrictions, modifications or mitigation works to avoid or reduce negative effects to a level at which there will be no adverse effect on the integrity of the SPA, SAC or Ramsar site.
- 5.2.10 An audit trail must be recorded of all relevant correspondence and decisions during the HRA process. A template for recording the findings of the AA and evaluation of the effects on the integrity of the site is given in Appendix 5B / MOD Form 2224.

Imperative Reasons of Over-Riding Public Interest and Compensation (Stage C)

- 5.2.11 Under certain circumstances it is possible to proceed with a plan or project (PP) despite a negative assessment of the implications for the site. To do this, three requirements must be met:
- i. There are no alternative solutions
 - ii. There are imperative reasons of over-riding public interest (UK policy is that defence need constitutes an IROPI)
 - iii. Any necessary compensatory measures are taken to ensure the overall coherence of Natura 2000
- 5.2.12 If it can be demonstrated in an auditable fashion that there are no reasonable alternative solutions, the competent authority will consider whether there are imperative reasons of overriding public interest that require the project to proceed. Under planned revision of the Memorandum of Understanding, this decision may be delegated to a Director level committee. An audit trail must be recorded and the Secretary of State for the Environment, National Assembly of Wales, Scottish Government or Northern Ireland notified, as appropriate. The Secretary of State for Defra is responsible for reporting all derogations to the European Commission.
- 5.2.13 If it is decided that a plan or project must go ahead for imperative reasons of overriding public interest, compensation for its effects must be agreed and secured and an audit trail recorded of all correspondence and decisions. Compensation may include recreation or restoration of comparable habitat at a new or existing site, and may occur in another country if necessary. If sufficient compensation cannot be identified, the plan or project cannot proceed. For further information please refer to the Practitioner Guide on Designated Sites.

CONTACTS AND FURTHER INFORMATION

REFERENCES

International and National Nature Conservation Legislation:

- European Commission (1979) *Community Directive on the Conservation of Wild Birds (79/409/EEC)* [The 'Birds' Directive].
- European Commission (1992) *Community Directive on the Conservation Natural Habitats and of Wild Fauna and Flora (92/43/EEC)* [The 'Habitats' Directive].
- HMSO (1994) *The Conservation (Natural Habitats, &c.) Regulations*. HMSO, London. [The 'Habitats' Regulations].
- HMSO (1995) *The Conservation (Natural Habitats, &c.) Regulations (Northern Ireland)*. HMSO, London. [The 'Habitats' Regulations NI].
- EC Guidance document on Article 6(4) (January 2007)
- EC Guidance document on the Assessment of Plans and Projects significantly affecting Natura 2000 sites (November 2001)
- EC Guidance document: Managing Natura 2000 sites (2000)
- Interpretation Manual of European Union Habitats - EUR27

Planning Policy

- Department of Communities and Local Government (2005) *Planning Policy Statement 9: Biodiversity and Geological Conservation* [PPS 9].
- Department of Communities and Local Government (2006) *Planning for Biodiversity and Geological Conservation: A Guide to Good Practice*. (This Guide accompanies PPS 9 and Circular (ODPM 6/05 and DEFRA 1/05) Biodiversity and Geological Conservation: *Statutory Obligations and Their Impact Within The Planning System*).
- Welsh Office (1996) *Technical Advice Note 5: Nature Conservation and Planning and Planning and Nature Conservation* [TAN 5].
- Scottish Executive (2000) *Nature Conservation: Implementation in Scotland of EC Directives on the conservation of Natural Habitats and of Wild Flora and Fauna and the Conservation of Wild Birds* (revised guidance updating Scottish Office Circular 6/1995 (Habitats and Birds Directives)).
- Planning Services (NI): 1997: Planning Policy Statement 2 - *Planning and Nature Conservation*.

MOD Policy

- The Memorandum of Understanding on the Habitats and Birds Directives between the Ministry of Defence and DCLG, SG, WAG & NIE
- Declarations of Intent between the Ministry of Defence, Natural England, Scottish Natural Heritage and Countryside Council for Wales.
- JSP 362: *The Defence Lands Handbook: Volume 3 Chapter 3 leaflet 7: Natural Environment (Conservation)*.
- DE Practitioner Guidance – Designated Sites
- Protected Species Guidance

The following contacts are available for further advice during the HRA process:

INTERNAL CONTACTS

Advice on Habitats Regulations and MOD Policy

Defence Estates - Property Directorate, Sustainable Development Team

Sus Dev 1b – 9355 85133 or sustainable.development@de.mod.uk

Advice on the Application and Completion of HRA

Defence Estates - Environmental Advisory Services, Natural Environment Team

Head of Natural Environment Team 94325 4820 or email address: stuart.otway@de.mod.uk

EXTERNAL CONTACTS

National Nature Conservation Agencies

- Natural England. For local offices, contact your DE Estates Adviser, visit www.naturalengland.org.uk or telephone 01733 455000.
- Scottish Natural Heritage. For local offices, contact your DE Estates Adviser, visit www.snh.org.uk or telephone 01463 725000.
- Countryside Council for Wales. For local offices, contact your DE Estates Adviser, visit www.ccw.gov.uk or telephone 01248 385500.
- Northern Ireland Environment Agency For local offices, contact your DE Estates Adviser, visit www.ni-environment.gov.uk, telephone (028) 9056 9515 or email cdp@doeni.go.uk.

APPENDICES



MOD Form 2223

Consideration of Plan/Project (PP) and/or

Judgement of Likely Significant Effect (JLSE)

Copies of all completed and authorised JLSE forms should be submitted to:

Post: Natural Environment Team
 Defence Estates Environmental Advisory Services
 Building 21, Westdown Camp
 Tilshead, Salisbury,
 Wiltshire, SP3 4RS
 Email: stuart.otway@de.mod.uk

This JLSE Decision Form should be completed in conjunction with guidance provided in Section 5 of the Sustainability and Environmental Appraisal Tools (SEAT) Handbook for the MOD Estate, and the DE Practitioner Guidance – Designated Sites. For an explanation of the terms used see the Practitioner Guidance.

Title of Plan / Project : [Insert name of PP]

Name of Natura 2000 site(s) : [Insert name(s) of Natura 2000 site]

Competent Authority(ies):

Regulation 52 states that a competent authority is not required to assess the implications of a plan or project which would be more appropriately assessed by another competent authority. Decision regarding which will act as lead should be agreed. This form should only be used if MOD is the lead responsible authority (regard must be given to the views of the other competent authorities involved).

[Insert details of any other competent authorities involved]

Consents, permissions and authorisations:

[Insert details of any other relevant consents, etc associated with this plan/project]

Part 1 – Details of the Project

Full details of the plan / project should be referenced and presented in the Annexes. This section should provide summary details.

References:

A. [Insert references]

B. [Insert references]

Annexes:

1. [Insert annexes]

2. [Insert annexes]

1. In summary, what are the plan / project proposals?

[Provide summary of PP, including location, magnitude, duration of effect].

Part 2 – Consideration of Project under Regulation 48(1)

Full details of the plan / project should be presented in the Annexes. This section should provide summary details.

2. This is a record of the consideration undertaken by [Name of TLB], on behalf of the Ministry of Defence in respect of the above plan / project, in accordance with the EC Habitats Directive (92/43/EEC) and transposing regulations, to determine whether the PP is directly connected with or necessary to the [conservation] management of the site.

3. Select as appropriate has been consulted on [insert date]. The conclusions of this consideration are in accordance with their advice and recommendations.

| | |
|---|---------------------------------|
| MOD DECISION | |
| Is the PP directly connected with or necessary to the [conservation] management of the site concerned? (select as appropriate). If answer is NO then proceed to Part 3. Select decision | |
| MOD ENVIRONMENTAL ADVISER AUTHORISATION (COMPETENT INDIVIDUAL): | |
| Authorised by: | Date: Contact: |

Part 3 – Judgement of Likely Significant Effect (JLSE)

Full details of the plan / project should be presented in the Annexes. This section should provide summary details.

4. This is a record of the Judgement of Likely Significant Effect (JLSE), undertaken by [Insert name of TLB], on behalf of the Ministry of Defence in respect of the above plan / project, in accordance with the EC Habitats Directive (92/43/EEC) and UK Habitats Regulations (SI 94/2716) [or Scottish / NI equivalents? Or see para 2 above].

5. Regulation 48 requires that a Competent Authority carries out an Habitats Regulation Assessment before deciding to undertake, or give any consent, permission or other authorisation for a plan or project which is likely to have a significant effect on a European site. JLSE is a screening stage to remove those proposals that will not have a significant detrimental effect on a Natura 2000 site. If the JSLE decision is that there may be likely significant effects, then a further Habitats Regulation Assessment will be required (MOD form 2224).

Preliminary Considerations**6. What International Designations may be affected by this PP?**

[list designated sites under consideration]

Are any other designated sites which may be affected by this PP, or are there any other relevant nature conservation issues? *(not required as part of the Regulation 48 assessment process, but identification of any other biodiversity conservation issues supports MOD's statutory biodiversity obligations)*

7. [detail any other sites / issues]

8. What are the qualifying interest features of the SPA / SAC and their associated conservation objectives?**[Insert Name Of Designated Site]**

- [Insert details of interest features / conservation objectives]

-

[Insert Name Of Designated Site]

- [Insert details of interest features / conservation objectives]

-

[Insert Name Of Designated Site]

- [Insert details of interest features / conservation objectives]

-

Part 4 – Further Consideration

This section should outline any avoidance or mitigation measures that have already been identified, and any remaining residual effects of the project / plan, including consideration of avoidance measures. These should be detailed below, and summarised in the table in Annex 1. Consider (for example) physical habitat loss, physical habitat damage, non-toxic contamination, toxic contamination, noise disturbance, visual disturbance (not exhaustive).

9. [Insert text]

| | |
|--|---|
| MOD DECISION | |
| <p>Have Relevant Statutory Bodies (NE, CCW, SNH, new NIEA body? etc.), and any other bodies, been consulted? Briefly explain why and describe any comments received.</p> | |
| <p>Confirm the final decision regarding the likely significant effect of the plan or project, as proposed, on the interest features of the SAC or SPA (check box as appropriate).</p> <p>Select decision</p> <p>MOD judgement is therefore that the PP, as proposed, Select decision likely to have a significant effect on the site and Appropriate Assessment Select decision needed.</p> | |
| <p>MOD ENVIRONMENTAL ADVISER AUTHORISATION:</p> <p><i>JSLE may be prepared by environmental advisers or consultants, but must be authorised by an MOD competent individual (refer to List of Competent Individuals in the SEAT Handbook for details of those authorised to approve JSLE and AA).</i></p> | |
| <p>Prepared by:</p> <p>Date:</p> <p>Contact no:</p> | <p>Authorised by:</p> <p>Date:</p> <p>Contact no:</p> |
| <p>Signature:</p> | <p>Signature:</p> |

Annex 1 – Summary of Further Consideration of Likely Significant Effects

| SPA / SAC Feature | Favourable Condition Attribute / Conservation Objective / Target | Potential Hazards of the plan or project and likely consequences | Avoidance and Mitigation Measures (if appropriate) | Probability, Magnitude, Likely Duration and Reversibility , including assumptions made, that the hazard will affect the SAC/SPA conservation objective | In Combination Effects (if appropriate) | Conclusion (ie is it unlikely, likely or uncertain there will be a significant effect on the feature |
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MOD Form 2224

Appropriate Assessment (AA)

Copies of all completed Appropriate Assessment forms should be submitted to:

Post: Natural Environment Team
 Defence Estates Operations Environmental Advisory Services
 Building 21,
 Westdown Camp
 Tilshead, Salisbury,
 Wiltshire, SP3 4RS
 Email: stuart.otway@de.mod.uk

This AA Decision Form should be read in conjunction with guidance provided in Section 5 of the Sustainability and Environmental Appraisal Tools (SEAT) Handbook for the MOD Estate, and the DE Practitioner Guidance – Designated Sites. For an explanation of the terms used see Section 7 of the Handbook.

Title of Plan / Project : [Insert name of PP]

Name of Natura 2000 site(s) : [Insert name(s) of Natura 2000 site]

10. This is a record of the assessment, undertaken by [Name of TLB], on behalf of the Ministry of Defence in respect of the above plan / project, in accordance with the EC Habitats Directive (92/43/EEC), UK Habitats Regulations (SI 94/2716) and equivalent in devolved administrations.

11. Regulation 48 requires that a Competent Authority carries out an appropriate assessment before deciding to undertake, or give any consent, permission or other authorisation for a plan or project which is likely to have a significant effect on a European site.

Competent Authority(ies):

Regulation 52 states that a competent authority is not required to assess the implications of a plan or project which would be more appropriately assessed by another competent authority. This form should only be used if MOD is the sole or it has been agreed that MOD will be the lead competent authority (regard must be given to the views of the other competent authorities involved).

[Insert details of competent authorities involved]

Consents, permissions and authorisations:

[Insert details of any other relevant consents, etc associated with this plan/project]

Part 1 – Details of the Project

Full details of the plan / project should be referenced and presented in the Annexes. This section should provide summary details.

References:

C. [Insert references]

D. [Insert references]

Annexes:

3. [Insert annexes]

4. [Insert annexes]

12. In summary, what is the plan / project proposal?

[Provide a summary of project, including location, magnitude, duration of effect]

13. Full details of the proposal are presented in [List Appendices as appropriate].

14. What International Designations are affected by this PP?

[list designated sites under consideration]

15. Are any other designated sites affected by this PP, or are there any other nature conservation issues?

[detail any other sites / issues]

16. What are the qualifying interest features of the SPA / SAC and their associated conservation objectives?**[Insert Name Of Designated Site]**

- [Insert details of interest features / conservation objectives]

•

[Insert Name Of Designated Site]

- [Insert details of interest features / conservation objectives]

•

[Insert Name Of Designated Site]

- [Insert details of interest features / conservation objectives]

•

Part 2 – Technical Consideration

This section should outline any mitigation measures that have been identified, and any remaining residual effects of the project / plan.

17. The technical consideration for this AA is presented at Annex 1. The potential impacts of the PP in the conservation objectives have been considered, along with the potential imposition of mitigating conditions or restrictions on the way the PP is to be carried out.

18. The following mitigation measures have been identified and detailed in full within Annex 2:

- a) [insert summary of any mitigation measures]
- b) [insert summary of any mitigation measures]

19. After mitigation, the likely residual effects of the proposal on the international nature conservation interests for which the site(s) is designated are summarised as follows:

- a) [insert summary of residual impacts (cross reference to technical consideration, etc)]
- b) [insert summary of residual impacts (cross reference to technical consideration, etc)]

| | |
|--|-----------------------|
| MOD DECISION | |
| <p>Confirm the relevant Statutory Conservation Bodies (NE, CCW, SNH, NIEA, etc), and any other bodies, have been consulted. Summarise any comments received, and annex details.</p> | |
| <p>The PP as proposed would [insert summary of impact (e.g. will only have localised/minor/short term negative impacts, minimised by detailed mitigation measures)]</p> <p>MOD judgement is therefore that the PP, as proposed, Select decision adversely affect the integrity of the SAC/SPA.</p> | |
| <p>If the PP will have an adverse effect on the integrity of the site, significant discussions and agreement is required between MOD and Defra or the devolved administrations to consider the following three criteria:</p> <p>There are no alternatives to the proposal? Select decision: Select decision The proposal must proceed for imperative reasons of overriding public interest (IROPI)? Select decision: Select decision Compensatory Measures have been secured? Select decision: Select decision</p> <p>Detail of any discussions about alternatives IROPI and compensation, and final agreement is to be annexed to this document.</p> | |
| MOD ENVIRONMENTAL ADVISER AUTHORISATION: | |
| <i>AA may be prepared by environmental advisers or consultants, but must be authorised by an MOD competent individual (refer to List of Competent Individuals in the SEAT Handbook for details of individuals authorised to approve JSLE and AA)</i> | |
| Prepared by: | Authorised by: |
| Date: | Date: |
| Contact: | Contact: |
| Signature: | Signature: |

Annex 1 – Summary of Technical Consideration

| SPA / SAC Feature | Favourable Condition Attribute / Conservation Objectives / Target | Potential Hazards of the plan or project and likely consequences | Mitigation and avoidance Measures (if appropriate) | Probability, Magnitude, Likely Duration and Reversibility, including assumptions made, that the hazard will affect the SAC/SPA conservation objective | In Combination Effects (if appropriate) | Conclusion (ie will there be an adverse effect on the integrity of the site) |
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Annex 2 – Summary of Avoidance and/or Mitigation Measures

| Avoidance or Mitigation Measures | How will the measure avoid or reduce adverse impacts on the site | How, by whom and when will the measure be secured and implemented | Degree of confidence in likely success | If / how the measures will be monitored, and, should mitigation failure be identified, how that failure will be rectified |
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Appendix 5C: Register of MOD Competent Individuals

List of Suitably Qualified and Competent Individuals for Sign-Off of Judgements of Likely Significant Effect and Appropriate Assessment Decisions

The decision making role of MOD as a Competent Authority under the Habitats Regulations 1994 (as amended), in determining whether a proposal is a) likely to have a significant effect on the integrity of a site, and b) will have an adverse impact on the integrity of a site; must be undertaken by a suitably qualified and competent Environmental Adviser, or any other suitably qualified and competent individual specifically authorised to make such decisions by DE Property Directorate.

Applications for additional inclusions on this list should be made to DE Prop Sus Dev 1b – 9355 85133 Senior Policy Officer (email: sustainable.development@de.mod.uk).

The following individuals are currently registered with ES&P as suitably qualified and competent individuals:

| Name | Post | | Contact Details |
|-------------------|----------------------------------|---|---|
| Stuart Otway | Head of Natural Environment Team | Defence Estates | 01980 674820 (9) 4325 4820 stuart.otway@de.mod.uk |
| Dominic Ash | Natural Environment Advisor | Defence Estates | 01980 674624 (9) 4325 4624 dominic.ash@de.mod.uk |
| Oliver Howells | Natural Environment Advisor | Defence Estates | 01980 674870 (9) 4325 4870 oliver.howells@de.mod.uk |
| Maira Owen | Natural Environment Advisor | Defence Estates | 01748 875068 (9) 4731 5068 maira.owen@de.mod.uk |
| Julie Swain | Natural Environment Advisor | Defence Estates | 01980 674608 (9) 4325 4608 julie.swain@de.mod.uk |
| Nicola Hawkeswood | Natural Environment Advisor | Defence Estates | 01874 613883 (9) 4351 2883 nicola.hawkeswood@de.mod.uk |
| Tim Weaver | SHEF – Dstl | Defence Science and Technology Laboratories | 023 9221 7852 (9) 6803 7852 tjweaver@dstl.gov.uk |

Note: Suitable Qualifications for individuals would include a relevant 2nd Class Honours Degree plus five years appropriate experience, or HNC / HND plus 10 years experience, or Degree standard membership of a relevant professional institution plus relevant experience. Competence in this area is considered to be gained by 5 years or more proven experience in the habitats and species that are being considered within the Habitats Regulations Assessment.

Note: List of MOD Competent Individuals accurate as at March 2009. Contact DE Prop Sus Dev Team (email: sustainable.development@de.mod.uk) for up to date details of Competent Individuals.