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Alone or in combination

1. Introduction

- 1.1 The Conservation (Natural Habitats, & c.) Regulations 1994 (the Regulations) require competent authorities to make an appropriate assessment of 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 (for nature conservation). This test appears in regulations 20, 24, 48 and 60 and is therefore implicit in many other regulations. It is derived from the obligations of Article 6(3) of the EC Habitats Directive (the Directive).
- 1.2 Neither the Directive nor the Regulations provide a definition of alone or in combination. The phrase has yet to be considered by the courts.
- 1.3 The European Commission produced guidance on the provisions of Article 6 in April 2000, which together with experience gained from casework, has been used to inform the interpretations contained in this guidance note.

2. Application

- 2.1 The purpose of the tests in the Directive and Regulations is to ensure that the integrity of a European site **is not** adversely affected by a plan or project. It is therefore logical that when applying the test of likely significance *either alone or in combination with other plans or projects*, “alone or in combination” should be treated as “alone and/or in combination”. Where the plan or project;
- alone is likely to have a significant effect;
 - alone is not likely to have a significant effect but in combination with other plans or projects is likely to have a significant effect;
 - an appropriate assessment will be required.
- 2.2 Although the reference to *alone or in combination* is restricted to the likely significance test, having ascertained the need for an appropriate assessment it would be illogical and inconsistent with the purposes of the tests in the Directive and the Regulations, not to consider the appropriate assessment in the same context. The appropriate assessment of the implications of the plan or project for the site should be made alone or in combination with other plans or projects.
- 2.3 The Regulations limit the scope of the *in combination* test to “other plans or projects”. These should include:
- approved but as yet uncompleted plans or projects;
 - permitted ongoing activities such as discharge consents or abstraction licences, and
 - plans and projects for which an application has been made and which are currently under consideration but not yet approved by competent authorities.
- Any consideration of the effects of the plan or project currently on the table, in combination with other plans or projects, may involve consideration of its effects in combination with any of

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

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

- 2.4 Whilst the “in combination” test is restricted to other plans or projects, in considering whether a plan or project either alone or in combination is likely to have a significant effect it is necessary to consider the influences on the site which have affected and are continuing to affect the condition of each European interest feature on the site. These influences constitute what is often referred to as the “*cumulative effect*”. The current condition of the interest features may be a reflection of the cumulative effect on them. However, any assessment of their condition must be separated from the cumulative effect on them as there may be a time-lag between the influences exerting themselves and any effect on the site becoming manifest. It should be noted that a plan or project may be likely to have a significant effect on a site or result in the integrity of the site being adversely affected even though the interest features on it remain in favourable condition.
- 2.5 Where judgements are being made for the purposes of a review of consents under Regulation 50, it may be appropriate to assess the contribution of a consent as a proportion of the total influences on the site for the purposes of prioritising the review of that consent. If the majority of the influences on a site arise from sources other than the consented activity it may not be a priority for review. This approach is **not** appropriate however for the purpose of assessing the effects of a consent under Regulation 48 or 50. The effects must be assessed either alone or in combination with other plans or projects and not as a proportion of the total influences on the site.
- 2.6 The term *cumulative effect* is not found in the Directive nor in the Regulations. However, it is commonly used to include all of the plans or projects referred to in 2.3 above together with:
- completed plans or projects
 - activities for which no consent was given or required
 - natural processes (by natural mechanisms and at a natural rate)
- 2.7 Whilst the Directive and the Regulations require a precautionary approach, it is necessary to base any judgements on the impact of plans or projects on information which reasonably indicates likely cause and effect.
- 2.8 Where a feature for which the site has been selected as being of European importance is already in unfavourable condition or critical thresholds are being exceeded (or is subject to cumulative effects which will lead to either of these being the case), any additional plan or project which, either alone or in combination, adds to these

levels is likely to have a significant effect on the European Site.

2.9 Equally there may be the possibility that plans or projects may be considered so trivial or inconsequential as not to be significant either alone or in combination with other plans or projects. (Please see HRGN3 on “likely significant effect”). An example of this would be a discharge consent for a few cubic metres of treated sewage many miles upstream of a European site.

3. Implementation

3.1 Competent authorities in considering a plan or project *alone or in combination* require a good overview of plans and projects likely to affect the site, including:

- those requiring approval or consent from other competent authorities;
- similar and different types of plans and projects, even where their effects may be different, for example some resulting in disturbance and some in loss of habitat;
- those that alone may be insignificant;
- the state of completion of the plans and projects.

3.2 When dealing with the in combination effects of plans or projects, the following should be considerations which will influence any assessment:

- (a) each case must be assessed on its merits, either alone or in combination, looking at the cumulative effect on the site at the time the case is being considered;
- (b) completed plans or projects, insofar as they form part of the cumulative effect, will be considered in that they have affected and may continue to affect the condition of the interest features on the site. Commission guidance states that “it is important that some account is still taken of such plans and projects in the assessment, if they have a continuing effect on the site and point to a pattern of continuing loss of integrity”;
- (c) the cumulative effect on the site should be assessed relative to the conservation objective for the site and the favourable condition table which is attached to the conservation objective for the European interest features on the site;
- (d) a point will be reached, if adequate information exists to make a judgement, where in view of the conservation objective for the site and the cumulative effect on it, it will be clear that any additional effect is likely to be significant;
- (e) depending on the cumulative effect on the site, the conservation objective and the nature of the application (including scale, duration, method and timing) it may be possible to conclude that there is not likely to be a significant effect;
- (f) in permitting a plan or project, a competent authority is not setting a precedent creating a presumption in favour of future unproposed developments. Each case must be treated on its merits at the time it arises for consideration;
- (g) the strategic approach recommended at paragraph 3.6 should assist in dealing with applications affecting these sites.

3.3 Where detailed information is not available at this stage, a judgement must be reached on likely significant effect on the information that is available. The precautionary approach would be that where there is uncertainty the conclusion should determine a likely significant effect, unless available information clearly indicates otherwise, and consider the detailed analysis as part of the

appropriate assessment.

3.4 In view of their role as a statutory consultees, the country agencies are well placed to form an overview of plans and projects being dealt with by several competent authorities and may be able to provide guidance on how best to progress a cooperative approach between competent authorities in determining a case. At some sites the number of competent authorities involved are so numerous that the establishment of a comprehensive communication network is necessary. In the case of European marine sites the management group may provide a means by which an overview may be maintained and information communicated.

3.5 It would be sensible for competent authorities to discuss proposed plans and projects with the country agencies at the earliest opportunity so that measures may be introduced to avoid the potential for any significant effects or any potential adverse effect on the integrity of the site.

3.6 At a number of large and complex sites where many competent authorities are involved, a strategic and pro-active approach is desirable. The benefit of establishing such an approach is that it can provide a focus for communications and a framework within which to identify the category of plans and projects with the potential to affect the site and their location. The product of this approach should be a clear working document for the reference of competent authorities in exercising their functions.

3.7 At the Humber SPA a number of competent authorities were proposing to authorise or undertake plans or projects adjacent to the site which, if undertaken simultaneously, would have resulted in considerable disturbance to the species of European importance and an adverse effect on the integrity of the site. The competent authorities together agreed to a timetabling of the plans and projects and were able to reduce the disturbance so as to avoid the adverse effect.

3.8 Finally, Regulation 52 does not require a competent authority to assess any implications of a plan or project which would be more appropriately assessed by another. The Secretary of State may issue guidance to competent authorities for the purposes of regulations 48 to 51, as to the circumstances in which an authority may or should adopt the reasoning or conclusions of another competent authority in determining likely significant effect or adverse effect where a plan or project

- is undertaken by more than one competent authority, or
- requires the consent, permission or other authorisation of more than one competent authority, or
- is undertaken by one or more competent authority and requires the consent, permission or other authorisation of one or more other competent authorities.

If in doubt seek advice from the relevant country agency specialist.

The text of this guidance note was developed by English Nature for the Government’s inter-departmental steering group on the Habitats Directive and approved by it. It is the fourth in a series of guidelines which has been developed for staff in the country agencies but may be useful for other competent authorities, and developers and promoters of projects to help their understanding of the key principles used in the decision making process. Further guidance notes are planned in the series will cover appropriate assessments; adverse effect on integrity and the consideration of permitted developments affecting European sites.