



Office of the
Deputy Prime Minister

Creating sustainable communities

Lisette Simcock
PICA - Planning International
Compensation and Assessment
Division
Office of the Deputy Prime Minister
Zone 3/J4
Eland House,
Bressenden Place
London, SW1E 5DU
Divisional Enquiries: 0207 944 4922
Web Site: www.odpm.gov.uk

09 March 2006

To County Councils in England
District Councils in England
Unitary Authorities in England
London Borough Councils
Greater London Authority
Regional Planning Bodies
Council of the Isles of Scilly
The Town Clerk, The
City of London
National Park Officer, National Park Authorities
in England
The Chief Planning Officer,
The Broads Authority

Dear All,

The Application of Appropriate Assessment under Article 6(3) and (4) of the Habitats Directive 92/43/EEC to Development Plans in the Transitional period between now and when the amending Regulations come into force

Introduction

On 20 October 2005, the European Court of Justice (ECJ) ruled that the United Kingdom had failed to transpose the provisions of Article 6 (3) and (4) of the Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (Habitats Directive) into UK Law in case C-06-/04 (Commission v United Kingdom). The Court found that, as a result of the failure to make land-use plans¹ subject to Appropriate Assessment (AA) of their implications for European Sites², Article 6(3) and (4) of the Habitats Directive has not been transposed completely.

The necessary amendments will now be made to the UK Conservation (Habitats &c) Regulations, 1994. Public consultation on these is due to commence in early April. The aim is to bring the amending Regulations into force on 1 September 2006 (please see Annex 1 for the timetable of the amending Regulations). The judgement supersedes previous national guidance and legislation on AA.

¹ Land-use plans are synonymous with Development Plans or plans and refer to Regional Spatial Strategies (RSSs), transitional plans, Development Plan Documents (DPDs) and Supplementary Planning Documents (SPDs)

² European Sites consist of Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and sites on draft lists for protection as outlined in Regulation 10 of the Habitats Regulations 1994

What is an Appropriate Assessment?

The purpose of an AA is to assess the impacts of a land-use plan against the conservation objectives of a European Site and to ascertain whether it would adversely affect the integrity of that site. Where significant negative effects are identified, alternative options should be examined to avoid any potential damaging effects. AA applies to Regional Spatial Strategies (RSSs)³, transitional plans⁴, Development Plan Documents (DPDs) and Supplementary Planning Documents (SPDs). The scope of the AA will depend on the location, size and significance of the proposed plan or project.

Who is responsible for carrying out an Appropriate Assessment?

It is the responsibility of the Regional Planning Body (RPB) and Local Planning Authority (LPA) to assess whether an AA is necessary and to carry out the AA in the preparation of a RSS, DPD or SPD where it is required.

In the case of London, the Greater London Authority will need to consider whether an AA needs to be carried out to a new Spatial Development Strategy (SDS), or to any alterations to the existing SDS under section 341(1) of the Greater London Authority Act 1999.

Where a RPB or LPA decide not to carry out an AA, the decision-making process should be clearly documented by evidence. We recommend that the evidence should be made easy to follow without the need for research or reconstruction of an audit trail.

Application of Appropriate Assessment to Land-Use Plans

To satisfy the requirements of Article 6 (3), the application of AA should be undertaken before the publication of revisions to an RSS, the adoption of an LDD by an LPA, or the approval of an LDD under the Secretary of State's default or intervention powers.

It will be best practice for the AA be undertaken during the preparation of the land-use plan.

In the case of RSSs, best practice will be to scope out whether an AA is required at the Sustainability Appraisal (SA) Scoping Stage and to undertake the AA alongside the development of options prior to the formal consultation at the regulation 12⁵ stage of its preparation. However, in exceptional circumstances, an AA can be applied at the Examination in Public if the Panel consider it necessary⁶.

For LDDs similarly, best practice will be to scope out whether an AA is required at the Sustainability Appraisal (SA) Scoping Stage and to undertake the AA alongside the development of options prior to the formal consultation which occurs at the Regulation 26⁷

³ Regional Spatial Strategies include the Mayor's Spatial Development Strategy for London.

⁴ Old style plans that are being adopted under Town and Country Planning (Transitional Arrangements) (England) Regulations 2004

⁵ Regulation 12 of the Town and Country Planning (Regional Planning) (England) Regulations 2004 SI No. 2203

⁶ Counsel Advice in relation to the East of England Plan, 23 January 2006

⁷ Regulation 26 of the Town and Country Planning (Local Development) (England) Regulations 2004 SI No. 2204

stage for DPDs and Regulation 17⁸ for SPDs. However, in exceptional circumstances, AA can also be applied at the Examination of DPDs if the Inspector considers it necessary.

EC guidance is available on the principles of AA and methodologies. The main documents include '*Managing Natura 2000 Sites: The provisions of Article 6 of the 'Habitats' Directive 92/42/CEE 2000*'⁹ and '*Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6 (3) and (4) of the Habitats Directive 92/43/EEC, 2001*'¹⁰. These are attached. Guidance on a fully-streamlined approach to undertaking AA as part of the plan-making process within SA is currently being developed. It is due for publication in June.

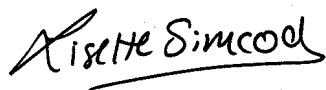
Transitional Arrangements: Land-Use Plans adopted before the amending Regulations come into force

RPBs and LPAs should form a view on whether their emerging land-use plans that will be adopted before the amending Regulations come into force are likely to have a significant effect on a European Site and if so whether it is reasonably practicable to carry out an AA on them. Each plan will need to be considered on a case by case basis. It is strongly encouraged that AA is applied from the date of the ruling where possible. If RPBs and LPAs decide that it is not reasonably practicable to apply AA to land-use plans that are adopted before the amending Regulations come into force, they should justify their decision with evidence.

Transitional Arrangements: Land-Use Plans adopted after the amending Regulations come into force

The amending Regulations will not have a transitional provision to cover land-use plans in the course of preparation when they come into force proposed for 1 September 2006. AA will be required for all land-use plans that RPBs or LPAs consider likely to have a significant effect on a European Site from this date. RPBs and LPAs are strongly advised to take appropriate action now to prepare for this requirement.

Yours faithfully,



Lisette Simcock

Divisional Manager
Plans, International, Compensation and Assessment Branch, ODPM

⁸ Regulation 17 of the above Regulations

⁹ http://europa.eu.int/comm/environment/nature/nature_conservation/eu_nature_legislation/specific_articles/art6/pdf/art6_en.pdf

¹⁰ http://europa.eu.int/comm/environment/nature/nature_conservation/eu_nature_legislation/specific_articles/art6/pdf/natura_2000_assess_en.pdf