

INTERIM ADVICE NOTE 141/11

Assessment of Implications (of Highways and/or Roads Projects) on European Sites (Including Appropriate Assessment) and the Planning Act 2008

Summary

This IAN introduces changes to existing advice on the assessment of highways and/or roads projects (AIES), for Nationally Significant Infrastructure Projects as defined by the Planning Act 2008.

Instructions for Use

This IAN provides supplementary guidance and should be read in conjunction with DMRB Volume 11 SECTION 4 Part 1. Further information of relevance to this IAN is also contained within 'IAN 133/10 Environmental Assessment and the Planning Act 2008' and 'IAN 134/10 Operational Guidance for Highways Applications to Infrastructure Planning Commission'.

Table of Contents

1.	Introduction.....	3
1.1	Background	3
1.2	Outline	3
1.3	Relationship.....	3
1.4	Equality Impact Assessment.....	3
1.5	Implementation.....	4
1.6	Structure of Advice	4
2.	Legislative Context	5
2.1	Legislative Basis.....	5
2.2	Guidance	5
3.	Assessment of the Implications on European Sites Guidance for NSIPs.....	7
3.1	Scope of changes to HD 44/09: Assessment of Implications on European Sites	
3.2	Responsibility for Assessment of Implications on European Sites (and Appropriate Assessment).....	7
3.3	Pre-application Stage - Reporting Requirements.....	8
3.4	Pre-application Stage – Consultation Requirements	8
3.5	Application Stage - Reporting Requirements	8
3.6	Application Stage - Consultation Requirements.....	9
4.	Withdrawal Conditions.....	10
5.	Contacts	11
6.	Glossary	12
7.	Bibliography.....	13
	Annex A Risk Assessment	14
	Annex B: IAN 141/11 Assessment of Implications (of Highways and/or Roads Projects) on European Sites (Including Appropriate Assessment) and the Planning Act 2008 in English DBFO schemes.	

1. Introduction

1.1 Background

This Interim Advice Note (IAN) provides advice that supplements guidance contained within the Design Manual for Roads and Bridges (DMRB) Volume 11 SECTION 4 Part 1 (hereafter referred to as HD 44/09), with respect to the assessment of the implications of highway construction or improvement projects on 'European Sites' where such sites are designated for their nature conservation interest. The whole process is referred to as the Assessment of Implications on European Sites (AIES) also known as Habitats Regulations Assessment (HRA). AIES includes consideration of the possible requirements for Appropriate Assessment (AA).

The Planning Act 2008 (PA08) sets the framework for a new development consent regime in England and Wales for projects that are considered to be Nationally Significant Infrastructure Projects (NSIPs). There is a need to clarify how these legislative changes affect AIES guidance and procedures, with regard to NSIPs.

It is also recognised that HD 44/09 is currently based on the Conservation (Natural Habitats, &c.) Regulations (as amended). These Regulations have been consolidated and updated by the Conservation of Habitats and Species Regulations 2010, hereafter referred to as the Habitats Regulations.

1.2 Outline

The aim of this IAN is to explain changes in the established approach, set out in HD 44/09, to be used for assessment of the implications of NSIPs on European Sites. Specifically it:

- Explains how to use the existing AIES guidance (HD 44/09) in the context of the PA08; and
- Outlines the specific AIES procedures required for NSIPs in particular in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, here after referred to as APFP.

This IAN does not aim to duplicate guidance that is provided elsewhere in terms of background information on PA08 or the general approach to be taken to AIES as specified in HD 44/09.

1.3 Relationship

This IAN provides supplementary advice to HD 44/09.

In addition this IAN should be read in conjunction with further guidance on the PA08. This includes definitions and procedural advice within IAN 134/10 Operational Guidance for Highways Applications to Infrastructure Planning Commission and guidance on the Environmental Assessment of NSIPs within IAN 134/10 Environmental Assessment and the Planning Act 2008.

1.4 Equality Impact Assessment

This IAN provides guidance on the assessment of the potential impacts of roads. It does not provide guidance or advice that would result in an actual or likely impact or significant change upon any service, requirement or project that would have a consequence for different groups of people. It is therefore concluded that an Equality Impact Assessment is not necessary.

1.5 Implementation

This IAN should be used forthwith on highways and/or roads projects that are defined as NSIPs under Section 22 of the Planning Act 2008. That is, except where procurement of works has reached a stage at which, in the opinion of the Overseeing Organisation, its use would result in significant additional expense or which would delay progress and there is sufficient objective evidence to demonstrate that the requirements of the Habitats Regulations have been satisfied. This must include evidence that any relevant Statutory Environmental Body (SEB) has been consulted and that regard has been taken of any representations. In addition it will be necessary to ensure that the Infrastructure Planning Commission (IPC) are satisfied with the sufficiency of any information within the application. Further advice on application of this guidance should be obtained from the relevant Overseeing Organisation.

1.6 Structure of Advice

CHAPTER 2 sets out the legislative context for AIES in terms of the PA08. CHAPTER 3 provides guidance on the AIES process for NSIPs, including the main principles and guidance. CHAPTER 4 indicates the conditions under which the advice will be withdrawn. CHAPTER 5 provides information on where technical enquiries or comments on the content of this advice should be directed. CHAPTER 6 serves as a glossary to this guidance. CHAPTER 7 provides a bibliography which is commended to users for consideration.

2. Legislative Context

2.1 Legislative Basis

The provisions of the Conservation of Habitats and Species Regulations 2010, continue to require Competent Authorities "...before deciding to undertake, or give any consent, permission or other authorisation..." to undertake an AA "...of the implications for the site's conservation objectives...", where a project:

- "is likely to have a significant effect on a European Site or European offshore marine 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".

However, with regard to the PA08 they additionally provide for the Competent Authority to make any development consent order that they grant subject to requirements or conditions under Section 120 of PA08.

The APFP, include within the Application Form a requirement for a report on European Sites and the provisions of the Habitats Regulations.

2.2 Guidance

The IPC have supplemented the PA08 (including the APFP) with Guidance Notes that indicate their expectations of Promoters. The pre-application phase guidance promotes, with regard to the Habitats Regulations:

- "early" and "considerable consultation with statutory environmental bodies";
- "Submission of material to the IPC, on whether the project is or is not considered likely to have a significant effect on a European site".

The preparation of application guidance promotes:

- "full representations and supporting material ... in a report to be submitted with the application";
- Submission of "sufficient information within the application to enable ... an appropriate assessment under the Habitats Regulations".

The guidance is clear that the absence of such information will be sufficient for the IPC to refuse an application.

The Department of Communities and Local Government (DCLG) have also published a series of guidance notes that indicate DCLG's expectations. The pre-application guidance promotes:

- Consultation with the statutory bodies with technical information;
- Consultation periods of at least 28 days.

The application form guidance promotes:

- Submission by the applicant of a report that identifies any European Sites or Ramsar Sites, with sufficient information to enable the Competent Authority to undertake an appropriate assessment;
- Submission of a plan, with accompanying information, relating to sites or features of nature conservation interest including habitats and species.

The guidance on associated development indicates that:

- The IPC is the “Competent Authority” and they are responsible for ensuring the provisions of Council Directive 92/43/EEC are met;
- Where applications include ‘associated development’ that the IPC will need to include these within their considerations under the Directive;
- Where applications require appropriate assessments that consideration is also given to whether any associated developments require appropriate assessments;
- Associated development includes mitigation measures to prevent or address environmental nuisance, creation of compensatory habitats and nature conservation and habitat creation.

3. Assessment of the Implications on European Sites Guidance for NSIPs

3.1 Scope of changes to HD 44/09: Assessment of Implications on European Sites

The general aims and objectives that underpin AIES remain unchanged by PA08 and the principles within HD 44/09 should be adhered to. There are however a number of important differences that are considered below.

A full definition of NSIPs is contained within IAN 134/10, including particular considerations relating to improvement of highways, where such projects are likely to have a significant effect on the environment. In this, consideration is given to the sensitivity of geographical areas, including:

- Areas classified or protected under Member States' legislation;
- Areas designated by Member States pursuant to Council Directive 79/409/EEC on the conservation of wild birds; and
- Areas designated pursuant to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

AIES and specifically the Screening requirements may be seen as contributing to this consideration, in particular where it is concluded that there are likely significant effects or where sufficient uncertainty remains (recognising the application of the precautionary principle). It should be noted that AIES includes consideration of additional areas as indicated in HD44/09.

The general principles of undertaking an examination of Habitats Regulations requirements for projects remain the same. However project teams should implement the procedural changes in the AIES process that are necessary to satisfy the IPC.

3.2 Responsibility for Assessment of Implications on European Sites (and Appropriate Assessment)

While the Highways Agency's role as the 'Project Proponent' (now referred to as promoter) is maintained, it is important for project teams to recognise that for NSIPs the Highways Agency no longer advises on or exercises any function of a Competent Authority as defined in the Habitats Regulations. In addition to those roles indicated in HD 44/09, it should be noted that the 'Competent Authority' is taken to be:

- **In England:** the Infrastructure Planning Commission (IPC) for highways and/or roads projects considered to be NSIPs and requiring development consent under the PA08.

Should the National Policy Statement in relation to road transport not be formally designated, the IPC will make a recommendation to the Secretary of State who will continue to act as the Competent Authority in the interim.

Project teams should implement the procedural changes in the AIES process that are necessary to satisfy the IPC.

It is noted however that PA08 and the associated Regulations do not specify the scope of AIES. They do however indicate that promoters or applicants are responsible for providing sufficient information.

3.3 Pre-application Stage - Reporting Requirements

The general principles of reporting indicated in HD 44/09 remain the same, however while PA08 and the associated Regulations do not specify the form of any reporting during this stage the associated guidance does indicate that HRA screening and scoping should be an early consideration. Sufficient reporting of AIES within the Statement of Community Consultation (SOCC) should be undertaken to, in particular, inform consultation with relevant statutory and other (non-statutory) bodies.

HD 44/09 provides an established approach that has been agreed with Natural England for reporting Habitats Regulations considerations. A draft of the screening matrix from HD 44/09 is considered to present sufficient information, collected during the initial stages of this process, to inform consultation. Once the formal opinion of the relevant statutory bodies has been obtained the screening matrix can be finalised and the fully reasoned representations can be reported within the Consultation Report.

3.4 Pre-application Stage – Consultation Requirements

The general principles of consultation indicated in HD 44/09 remain the same, however further consideration should be given to the possible role and form of consultation in particular with other (non-statutory) bodies with technical information.

The IPC cannot provide an opinion as to whether any particular NSIP may be likely to have a significant effect on a European Site except as part of the formal determination of an application for development consent. It is however important to submit information to the IPC regarding the likelihood of significant effects at an early stage during the pre-application process. This provides an opportunity to identify and address any issues or knowledge gaps prior to the IPC's formal determination of the application for development consent.

Consultees should be given at least 28 days to respond to any formal consultation.

3.5 Application Stage - Reporting Requirements

The APFP and guidance contain specific reporting requirements. Promoters need to provide a report:

- identifying any European Site that may need consideration under the Habitats Regulations, or any Ramsar site, where such sites may be affected by the proposed development. This information must be sufficient to enable a formal assessment of whether there is a likely significant effect; and
- where required, provide sufficient information to enable the IPC to make an AA of the implications for those sites.

HD 44/09 provides for information on HRAs to be reported in the form of a Screening Matrix and where necessary a Statement to Inform the Appropriate Assessment (SIAA). These general principles remain unchanged, however it is recommended that:

- where Significant Effects are considered unlikely the Screening Matrix should be submitted together with a completed Finding of No Significant Effects Report Matrix, as part of a Habitats Regulations Report (HRR) that presents fully reasoned representations.

- where Significant Effects are considered likely or where there is sufficient uncertainty then the HRR should additionally include the information contained in the SIAA outline from HD 44/09;
- additionally, specific consideration of the Imperative Reasons of Over-riding Public Interest (IROPI) and of any proposed Compensatory Measures will be required in the SIAA.

The Habitats Regulations Report should provide sufficient information to allow the IPC to determine whether significant effects are likely, and to undertake an Appropriate Assessment. It should be noted that the IPC can refuse an application for a DCO on the basis that insufficient information to enable a determination for Appropriate Assessment, or to undertake an Appropriate Assessment has been provided.

3.6 Application Stage - Consultation Requirements

Sufficient consultation needs to be undertaken with relevant statutory environmental bodies and others on the contents and conclusions of the Habitats Regulations Report. This information should be included within the HRR.

4. Withdrawal Conditions

This IAN will be withdrawn when current advice in DMRB Volume 11 SECTION 4 Part 1 is updated and published.

Interim Advice

5. Contacts

All technical enquiries or comments on this Advice should be sent as appropriate to:

Stuart Wilson
Senior Ecological Advisor

Postal address: Highways Agency
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6HA

E-mail: Stuart.Wilson@highways.gsi.gov.uk
Tel: +44 (0) 117 3728833 or GTN: 1371 8833

or

Sheena Crombie
Senior Ecological Advisor

Postal address: Highways Agency
Piccadilly Gate
Store Street
Manchester
M1 2WD

E-mail: Sheena.Crombie@highways.gsi.gov.uk
Tel: +44 (0) 161 9305804 or GTN: 4315 5804

6. Glossary

The following definitions and abbreviations have been used throughout this advice.

AA – Appropriate Assessment.

AIES – Assessment of the Implications on European Sites.

APFP – Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

DMRB – Design Manual for Roads & Bridges.

IPC – Infrastructure Planning Commission.

PA08 – Planning Act 2008.

NSIP – Nationally Significant Infrastructure Project.

7. Bibliography

Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora. *Official Journal* L206, 22/07/1992.

Department for Communities and Local Government (2009). Guidance on associated development. Applications to the Infrastructure Planning Commission. ISBN: 978 1 4098 1839 7.

Department for Communities and Local Government (2009). Planning Act 2008. Guidance on pre-application consultation. ISBN: 978 1 4098 1837 3.

Department for Communities and Local Government (2009). Planning Act 2008: Nationally significant infrastructure projects. Application form guidance. ISBN: 978 1 4098 1841 0.

Highways Agency (2010). IAN 133/10. Environmental Assessment and the Planning Act 2008.

Highways Agency (2010). IAN 134/10. Operational Guidance for Highways Applications to Infrastructure Planning Commission.

Infrastructure Planning Commission (2009). IPC Guidance Note 2 on Preparation of Application Documents under S37 of the Planning Act 2008.

Infrastructure Planning Commission (2010). IPC Guidance Note 1 on Pre-application Stages (Chapter 2 of the Planning Act 2008) Revision 1.

Planning Act 2008.

Statutory Instrument 2009 No 2264. The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

Statutory Instrument 2009 No. 2438. The Conservation (Natural Habitats, &c.) (Amendment) (No. 2) Regulations 2009.

Annex A Risk Assessment

This Guidance presents guidance and standards for the Assessment of Implications on European Sites. It **does not** provide guidance or advice on any elements of construction design or management, nor does it refer to or imply consideration of, or responsibility for, any aspect of health and safety for a project.

Interim Advice

Annex B: IAN 141/11 Assessment of Implications (of Highways and/or Roads Projects) on European Sites (Including Appropriate Assessment) and the Planning Act 2008 in English DBFO schemes.

When used on the M25 DBFO Scheme, this IAN is to be amended as follows:

Para No.	Description
2.2	Delete "Promoters" and insert "promoters"

When used on other English DBFO Schemes, this IAN is to be amended as follows:

Para No.	Description
2.2	Delete "Promoters" and insert "promoters"
1.5	Delete heading and paragraph and insert "Not used"