

Department for Environment, Food and Rural Affairs

Habitats Directive

Guidance on competent authority coordination under the Habitats Regulations

July 2012

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Introduction

1. The Habitats Directive¹ requires competent authorities to decide whether or not a plan or project can proceed having undertaken the following “appropriate assessment requirements” to:

- Determine whether a plan or project may have a significant effect on a European site²
- If required, undertake an appropriate assessment of the plan or project
- Decide whether there may be an adverse effect on the integrity of the European site in light of the appropriate assessment

2. Sometimes more than one competent authority may need to undertake an appropriate assessment of a plan or project or determine if one is required. In such circumstances, it may be appropriate for competent authorities to coordinate their roles. This can help simplify the assessment process and reduce its time and costs for both the applicant and the competent authorities involved.

3. This document provides advice to competent authorities on how and when they should undertake such coordination to fulfil their responsibilities under the Directive. The Government believes that competent authorities will be able to fulfil their duties more efficiently and effectively if they follow this advice. Competent authorities are required to have regard to the guidance in paragraphs 5 to 7 of this document. This document applies to England and UK offshore waters (except in relation to functions exercised within devolved competence).

4. There are two situations when competent authorities can coordinate their appropriate assessment requirements:

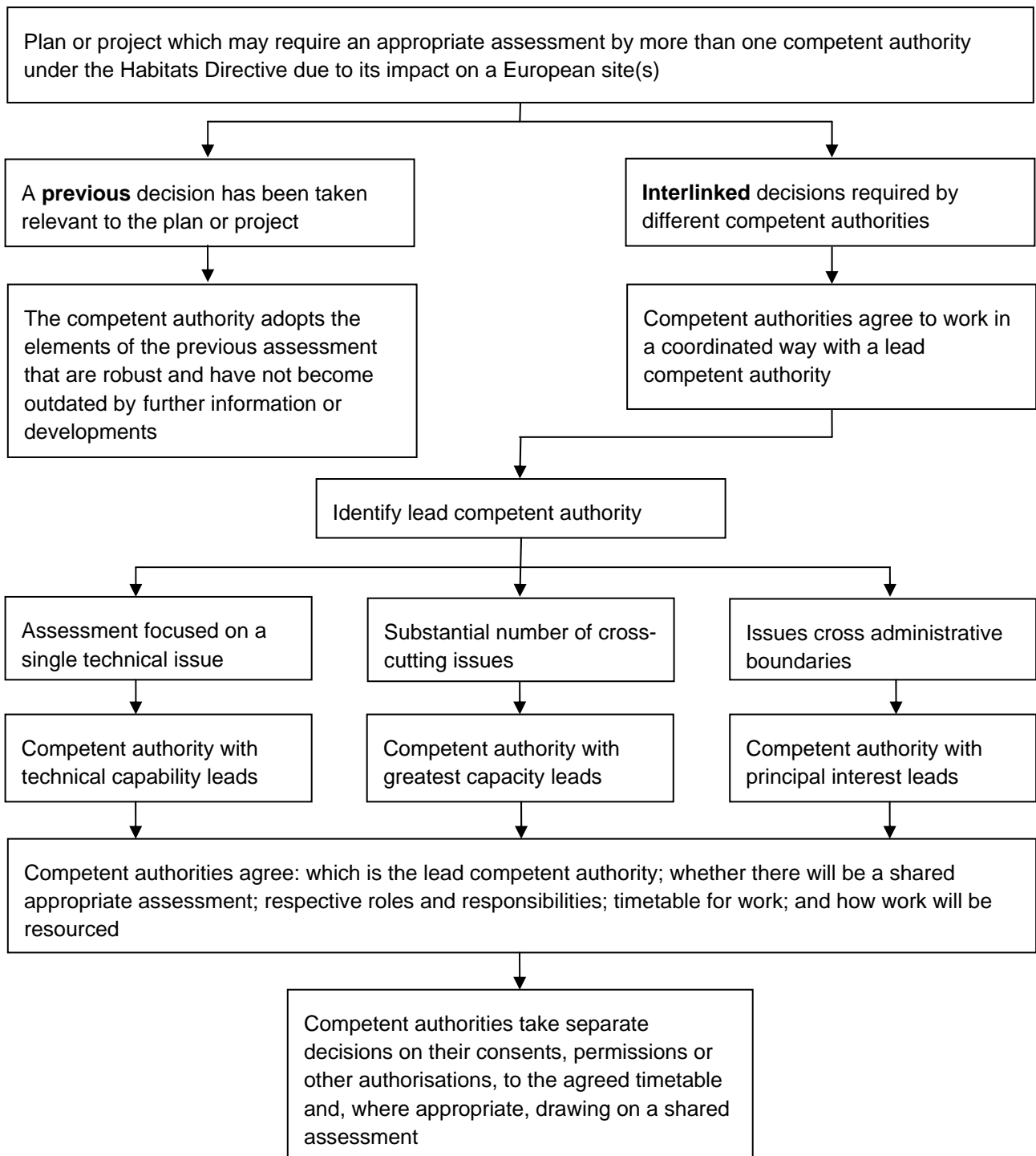
- Where **previous** decisions have been taken in relation to the appropriate assessment requirements for a plan or project, competent authorities should adopt the parts of the earlier assessment that are robust and have not become outdated by further information or developments. The competent authority may still need to undertake additional work to ensure its own assessment and decisions are robust.

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. The Habitats Directive is primarily transposed in England under the Conservation of Habitats and Species Regulations 2010 and in the offshore marine area by the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007.

² European sites include: special areas of conservation (SACs), special protection areas (SPAs), sites of Community importance (SCIs), and candidate SACs. As a matter of Government policy, potential SPAs and RAMSAR sites are also treated as European sites.

- Where a number of **interlinked** decisions need to be taken, competent authorities can act more efficiently, reduce demands on the applicant and provide better service by working together. The Government therefore encourages coordinated working between competent authorities in such situations, including the possibility of agreeing a lead competent authority or undertaking a shared appropriate assessment.

Figure 1: Framework for competent authorities to consider when and how to coordinate appropriate assessment requirements under the Habitats Directive



Adopting the assessment, reasoning or conclusions of another competent authority³

5. The Regulations transposing the Habitats Directive enable competent authorities to adopt the reasoning or conclusions of another competent authority as to whether a plan or project is likely to have a significant effect on a European site or will adversely affect the integrity of a European site. They also provide that a competent authority is not required to assess any implications of a plan or project that would be more appropriately assessed by another competent authority.

6. Competent authorities should adopt the reasoning, conclusion or assessment of another competent authority in relation to the appropriate assessment requirements for a plan or project, if they can. This can happen when all or part of the appropriate assessment requirements have already been met by another competent authority. It could also happen if one competent authority is completing all or part of the appropriate assessment requirements on behalf of others. Competent authorities remain responsible for ensuring their decisions are consistent with the Habitats Directive, so must be satisfied:

- No additional material information has emerged, such as new environmental evidence or changes or developments to the plan or project, that means the reasoning, conclusion or assessment they are adopting has become out of date
- The analysis underpinning the reasoning, conclusion or assessment they are adopting is sufficiently rigorous and robust. This condition can be assumed to be met for a plan or project involving the consideration of technical matters if the reasoning, conclusion or assessment was undertaken or made by a competent authority with the necessary technical expertise.

7. Due to these conditions there may be cases where it is not appropriate to adopt the reasoning, conclusions or assessment of another competent authority, or it is only appropriate to adopt some elements of an earlier assessment. In addition, even where the conditions are met, a competent authority may need to undertake additional work to supplement the assessment they have adopted in order to meet the full appropriate assessment requirements.

Coordinated working

8. The Government encourages coordination between competent authorities who need to issue separate consents, permissions or other authorisations which are interlinked. This

³ Paragraphs 5-7 comprise guidance issued by the Secretary of State under Regulation 65(3) of the Conservation of Habitats and Species Regulations 2010 (Habitats Regulations) and Regulation 29(3) of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (Offshore Regulations). Competent Authorities are required to have regard to these paragraphs under Regulation 65(4) of the Habitats Regulations and Regulation 29(4) of the Offshore Regulations.

may simply involve agreeing responsibilities and timescales between the competent authorities. But there are advantages in competent authorities identifying and agreeing that one of them will lead their joint fulfilment of the appropriate assessment requirements.

9. It is for the competent authorities involved to agree to take such an approach. It is good practice to consider the views of the applicant where the applicant asks competent authorities to coordinate their work.

10. The lead competent authority best suited to being the lead authority will vary depending on the plan or project, the permissions being sought and the impacts that need to be assessed. The following advice may help this process:

- Where a single technical issue is more important than any other in assessing the impacts of a plan or project, the competent authority with the required technical expertise could lead
- Where there are a large number of complex cross-cutting issues, the competent authority with greatest capacity to undertake the work could lead
- Where a plan or project cuts across administrative boundaries (e.g. between planning authorities), the competent authority with the principal interest could lead

11. The responsibilities of the lead competent authority will vary depending on the plan or project being assessed but could include some or all of the following:

- Ensuring all relevant competent authorities are identified and understand one another's roles and responsibilities and how their decisions interact
- Acting as a single point of contact for the applicant
- Establishing an agreed timetable for competent authorities to take decisions
- Ensuring all statutory nature conservation bodies are consulted and if necessary a lead statutory nature conservation body is agreed where the proposal falls within the responsibilities of two or more statutory nature conservation bodies
- Ensuring relevant existing evidence is available to all involved parties and, where required, agreeing evidence gaps and commissioning work to ensure they are filled
- Undertaking an appropriate assessment on behalf of some or all competent authorities involved (where this is the case competent authorities should have regard to paragraphs 5 to 7 above)
- Where appropriate, coordinating decisions to allow a plan or project to proceed on the basis of a derogation under article 6(4) of the Habitats Directive (i.e. where there are no alternative solutions, there are imperative reasons of overriding public interest, and compensatory measures have been secured). This could be done in conjunction with the existing requirement for competent authorities to seek and

have regard to the views of all competent authorities or authorities involved in considering a derogation for the plan or project under article 6(4)

12. In all but the simplest of cases it may make sense for the competent authorities to record how lead competent authority arrangements will work, for instance through a memorandum of understanding. In addition to setting out roles and responsibilities, and ways of working, this could also set out how resources will be shared between competent authorities, how disputes between competent authorities will be resolved, and how challenges to any of the decisions taken by the competent authorities will be managed.

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