

HRA Screening Duties for Riverine SACs

Version no	3.0
Date of last update/review	December 2022
Responsibility of	Subject Lead for EIA & HRA Procedures
07/12/2022 – New version based on updated advice from NRW (advice updated on 18 October 2022) .	

Key legislation and policy

Legislation	<ul style="list-style-type: none"> • Conservation of Habitats and Species Regulations 2017 • Conservation of Habitats and Species Regulations 2010 (Regulation 73 applicable to Wales)
National policy and guidance	<ul style="list-style-type: none"> • Technical Advice Note 5: Nature Conservation and Planning
Judgements	<ul style="list-style-type: none"> • The Dutch Nitrogen Cases (Joined Cases C-293/17 and C-294/17) • People over Wind (C-323/17) • The Compton Case (Compton Parish Council and others v Guildford Borough Council and another [2019] EWHC 3242 (Admin)) • The Wyatt Case (R (Brook Avenue RAD) v Fareham BC)
Other guidance	<ul style="list-style-type: none"> • Advice to planning authorities for planning applications affecting phosphorus sensitive river Special Areas of Conservation (NRW) • Biodiversity Chapter of the England ITM – Detailed advice on HRA to be read alongside this chapter. • ‘Habitats regulations assessments: protecting a European site’ – joint guidance from NRW & Defra on the HRA process for competent authorities. • Welsh Government Circular 008/2018 – Planning requirement in respect of the use of private sewerage in new development, incorporating septic tanks and small sewage treatment plants (July 2018)

Introduction

1. Natural Resources Wales (NRW) has published the results of the compliance assessment of [Welsh Riverine SACs against Phosphorus targets](#).
2. NRW has a duty to monitoring compliance with Common Standards Monitoring (CSM) targets. In Wales, Riverine SACs have conservation objectives and also have Water Framework Directive (WFD) targets. In line with WFD, NRW applies the most stringent targets (either SAC conservations objective or WDF targets).
3. NRW has set new phosphate standards for the riverine SACs following the revised Common Standards Monitoring guidance updated in 2016 by the Joint Nature Conservation Committee (JNCC).
4. NRW's advice in relation to this issue is now a 'live' document on [NRW's website](#). Inspectors should ensure they are referring to the live version. The advice includes considerations for the **relevant authorities which conduct Appropriate Assessments** under the terms of the Conservation of Habitats and Species Regulations 2017 (as amended) ['the Habitats Regulations']. This advice applies to the planning decision maker, i.e. the appointed Inspector or the Welsh Ministers (on Report cases) when acting as Competent Authority under the terms of the Habitats Regulations.
5. NRW and Defra have also produced joint guidance on the HRA process for competent authorities in both Wales and England, which provides a helpful overview of the steps required in undertaking HRA and is recommended as initial reading:

<https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>.

Consequences for the work of PEDW

6. Inspectors will need to be aware that additional consideration is required in all cases where the projects considered **could lead to increased amounts of phosphorous entering a riverine SAC catchment**.
7. Any development within a **Riverine SAC catchment** that might increase the amount of phosphate discharged into the SAC must be screened through a HRA screening process to determine whether they are likely to have a significant effect on the site's qualifying features.

Type of Development

8. Sections 5, 11 and 12 of NRW's advice lists the types of developments they consider can be screened out as not likely to have a significant effect.

All other developments need to be assessed on a case by case basis, bearing in mind the potential for some developments to discharge phosphates into waterbodies through a direct link (for examples agricultural buildings storing fertilizer).

Site Location

9. The following Local Planning Authorities have riverine SAC catchments within their area:

Table 1 – Affected LPAs
Blaenau Gwent
Brecon Beacons NPA
Carmarthenshire
Ceredigion
Conwy
Denbighshire
Flintshire
Gwynedd
Monmouthshire
Pembrokeshire Coast NPA
Pembrokeshire
Powys
Snowdonia NPA
Torfaen
Wrexham

10. The mapping data which shows riverine SAC catchments is now available on [DataMap Wales](#), and is searchable by postcode. **Note that when you open the map browser to check a site, the colours shown on the layers are NOT the relevant thing to check.** If the site falls within one of the catchment areas shown by a black line then the proposal must be screened.
11. If the site is within catchment, or it is not clear if it falls within catchment, the Inspector should consider the type of development and whether they need to request information from the parties to inform their HRA screening.

PEDW Approach

12. For new appeals received from 05 February 2021, the PET will undertake initial identification of appeals where the development seems capable of increasing phosphate levels and is located within one of the identified LPAs (Table 1) and within the Riverine Catchments.
13. If the project falls within one of the categories that NRW consider to be unlikely to cause a significant effect, the PET will record their findings for the Inspector's attention but take no further action. Please note that as the responsibility for HRA lies with the planning decision maker, Inspectors will need to satisfy themselves as to whether the development needs HRA Screening, based on all the available evidence.
14. If the project has the potential to cause significant effects, the PET will ask the Case Team to issue standard letters to the appellant and LPA to provide additional information to allow the Inspector to conduct an Appropriate Assessment.



Letter to Parties RE
HRA on Riverine SAC

- [Letter for general developments](#)



Letter to parties RE
HRA on Riverine SAC

- [Letter for agricultural developments](#)

15. In all the cases where the planning decision maker is identified as the competent authority to carry out an **Appropriate Assessment** for a project that has the **potential to generate wastewater** and that require assessment through the Habitats Regulations Assessment (HRA) process, **NRW must be consulted on the Appropriate Assessment**. A standard letter for this is available in iShare.



Template letter for
consulting on AA - O

- [Letter to consult NRW at Appropriate Assessment stage](#)

16. In its role as the Statutory Nature Conservation Body (SNCB) for Wales, NRW must be consulted by the competent authority during an appropriate assessment. **NRW have requested that, where possible, Inspectors highlight the matters the AA is likely to focus on. In phosphate cases this is likely to be or include the impact of the development/proposed method of foul drainage on the integrity of the SAC.** The Inspector must for the purposes of the appropriate assessment have regard to any representations made by the SNCB within such reasonable time as the Inspector may specify. The Inspector should refer to the Joint Guidance for competent authorities from NRW & Defra - 'Habitats regulations assessments: protecting a European site' to establish if any other SNCB falls to be consulted. It is our policy not to consult NRW on the completed AA.

The HRA Process: Screening

17. It is important to refer to the detailed advice regarding the HRA process given in the England ITM chapter on Biodiversity and the joint advice from NRW and DEFRA when undertaking Screening; caselaw has established that measures intended to avoid or reduce the harmful effects of a plan or project on SACs cannot be considered at the screening stage for likely significant effect. Such measures may include planning conditions.

Information required to conduct an Appropriate Assessment

18. If a proposal cannot be 'screened out' the Inspector would have to undertake an Appropriate Assessment if they were minded to allow the proposal, or if they are preparing a report to inform a ministerial decision (as the minister may take a different view to the Inspector). To inform an Appropriate Assessment NRW's advice provides detailed guidance for the following topics:

Domestic Extensions (Section 7)

NRW are of the view that such proposals can normally be screened out. However, it is not clear what the rationale would be for screening a proposal out where the decision maker is aware that the extension will lead to an increase in the number of occupants. Inspectors should consult the NRW guidance and satisfy themselves of the approach they adopt based on the evidence before them

Development proposals involving connection to public wastewater treatment works (Section 8)

The Inspector may need to check whether the relevant environmental permit has been reviewed against the revised conservation objectives for water quality and whether there is capacity for additional wastewater under revised permit limits. The detailed advice lists other things the decision maker should seek.

Advice on whether chemical pre-treatment be used to enable connection to a public sewer where phosphorus constraints apply (Section 9)

This approach can have adverse effects. The views of the water company should be sought.

Development proposals involving private sewage treatment systems (Section 10)

NRW's detailed advice reinforces that when drawing up sewerage proposals for any development, the first presumption must always be to provide a system of foul drainage discharging into a public sewer, in accordance with PPW and WG Circular 008/2018.

Whether additional wastewater can be discharged to existing private sewage treatment systems (Section 11)

NRW sets criteria for developments which are unlikely to lead to a significant effect.

Compost toilets (Section 12)

Compost toilets that are well designed and maintained and which separate urine and sanitary waste from solids are seen by NRW as unlikely to increase phosphate discharge. A proposal that does not separate solids and liquids should be considered a cesspool and collection by a registered waste carrier will be necessary.

Use of phosphorus reduction technology in private sewage treatment systems (Section 13)

NRW's stance appears to be that there are risks to this approach in small private treatment systems; please refer to the detailed advice for the things and Inspector will need to consider.

How to consider the disposal of sludge from private wastewater treatment systems in a Habitats Regulations Assessment (Section 14)

NRW state that decision makers should be able to conclude that disposal of sludge from new, private sewage treatment systems is unlikely to have a significant effect on a river SAC due to the regulatory framework in place.

Sealed cesspits are not a sustainable drainage solution. WG Circular 008/2018 refers, and NRW indicates that decision makers should carry out an Appropriate Assessment for any proposals involving use of sealed cesspits as a likely significant effect cannot be ruled out.

Inspectors should read the relevant section of NRW's guidance in full to satisfy themselves they have considered all relevant aspects of the case before them.

Avoidance and Mitigation Measures (Section 15)

19. NRW draw attention to the 'People over Wind' , reminding decision makers that such measures **cannot** be considered when screening for likely significant effect.

20. At Appropriate Assessment when considering avoidance and mitigation measures, decision makers should seek information demonstrating those measures are guaranteed, effective, reliable, timely and will be maintained for the lifetime of the development:

- detailing how the measure(s) would avoid or reduce adverse effects on the SAC (considering the predicted duration of the effects)
- demonstrating how the measure(s) would achieve nutrient neutrality
- confirming how the measure(s) will be implemented, and by whom
- detailing how the measure will be maintained and who will be responsible for maintenance.
- showing how the measure will be monitored to ensure it is effective.
- Confirming the measures can be legally enforced.

Advice for Local Development Plans (Section 16 & 17)

21. See NRW's advice to LPAs. Any LDPs submitted for examination after October 2022 will presumably have grappled with this issue during plan preparation. The Inspector may wish to review the submitted HRA and if Appropriate Assessment was necessary, ensure they are satisfied with NRW's response as the SNCB.

Permitted Development

22. Any development proposal within the catchment of a failing riverine SAC which benefits from permitted development rights under article 3 of the GPDO 1995 and involves increasing the amount or concentration of wastewater discharge should be subject to Habitats Regulations Prior Approval, as detailed in [TAN 5: Nature Conservation & Planning](#) (paragraphs 5.3.8 – 5.3.10 and Annex 5). This has the potential to affect any cases where questions of PD rights or lawfulness arise, most likely Enforcement, Lawful Development Certificates and cases where reference is made to PD-based fallback positions.

Enforcement

23. Ground (c) appeals, Inspectors will need to satisfy themselves as to whether developments that would be lawful subject to prior approval as detailed above did benefit from such prior approval.
24. Ground (a) appeals, the planning decision maker should undertake HRA screening and appropriate assessment as necessary.

Further Reading

Biodiversity Chapter of the England ITM, the detailed advice on HRA will be relevant in Wales also.

<https://horizonweb.planninginspectorate.gov.uk/otcs/cs.exe?func=ll&objId=22423242&objAction=download&viewType=1>

Joint Guidance for competent authorities from NRW & Defra - 'Habitats regulations assessments: protecting a European site'.

<https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

[Welsh Government Circular 008/2018 -](#)

<https://gov.wales/sites/default/files/publications/2019-05/planning-requirements-for-private-sewerage-in-new-development-wgc-0082018.pdf>