

GUIDANCE FOR ASSESSING PLANNING PROPOSALS THAT HAVE IMPLICATIONS FOR SECTION 42 HABITATS AND SPECIES

The Natural Environment and Rural Communities (NERC) Act (2006) imparts a 'biodiversity duty' on all public authorities in Wales – 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.' The Act continues to state that 'Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.'

In addition, the National Assembly for Wales must '*publish a list of the living organisms and types of habitat which in the Assembly's opinion are of principal importance for the purpose of conserving biodiversity.*' The Assembly must also '*take such steps as appear to the Assembly to be reasonably practicable to further the conservation of the living organisms and types of habitat included in any list published..., or promote the taking by others of such steps.*'

This guidance aims to contribute towards consistency in assessing proposals which affect habitats and species listed for Section 42 of the NERC Act 2006 (herein referred to as 'Section 42 habitats and species').

Vision for Wales' biodiversity

As an important element of our commitment to the United Nations (UN) convention on biological diversity there is an undertaking in Wales to achieve targets for the conservation of Section 42 habitats and species.

Section 42 habitats and species are identified as being of 'principal importance to the purpose of conserving biodiversity' in Wales, and represent those habitats and species in most need of conservation action. Development management plays a pivotal role in preventing loss, enabling recovery and enhancing these habitats and species. Development can result in impacts to Section 42 habitats and species and consequently reduce Wales' ability to achieve its biodiversity targets. Decisions to grant consent for developments that undermine the achievement of biodiversity targets are unsustainable.

Implementing the 'biodiversity duty'

An essential first step is to seek appropriate expert advice. Expert advice can be sought from:

- the Countryside Council for Wales, particularly where other sources of expertise may be rare, e.g. for proposals concerning the marine environment
- the Local Planning Authority Ecologist
- conservation organisations such as the RSPB, the Wildlife Trusts, Plantlife etc
- Local Record Centre
- the Institute of Ecology and Environmental Management
- reputable experts not affiliated to any organisation

Examples of advice include:

- the quality of any already collated environmental information or assessment e.g. an Environmental Impact Assessment (EIA)
- the distribution and abundance of any Section 42 habitat or species which may be affected by the proposal.
- whether targets for any Section 42 habitat or species would be undermined
- alternative ways in which avoidance, minimisation and compensation can be achieved

A mechanism for considering proposals which have implications for the achievement of targets for Section 42 habitats is presented in Annex 1. It is essential that all opportunities to ensure the achievement of targets for priority habitats and species are considered. Adopting such a mechanism contributes towards 'having regard' to the purpose of conserving biodiversity.

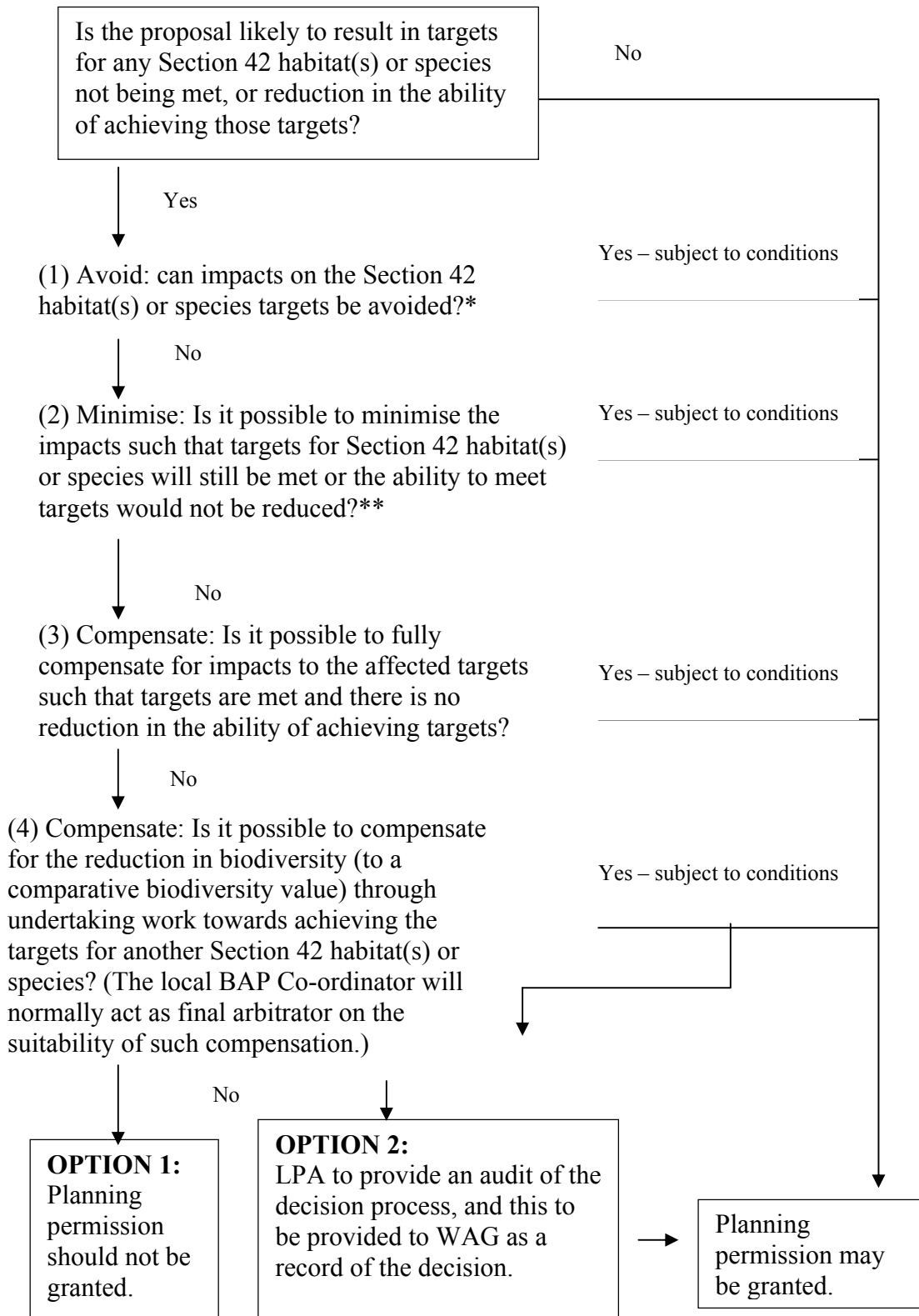
There is a preference for development to proceed through application of avoidance and mitigation that result in no reduction or an overall increase in Wales' ability to meet biodiversity targets. Where such measures are insufficient to avoid undermining the achievements of biodiversity targets, consent may only be granted where suitable compensatory measures are provided. In such circumstances, the local planning authority should document the rationale for the decision to proceed as part of their normal processes.

Authorities may wish to provide evidence of successful case studies to the Wales Biodiversity Partnership, as a record of the good practice.

Note: this guidance will be periodically updated and expanded upon.

February 5th 2009

Annex 1 Consideration of development proposals affecting Section 42 habitats and species.



* For example, through redesign of project, location of project, or timing of project.
 ** For example, through redesign of project, timing of project or practices of project.
 *** For example, through habitat recreation or relocation of species.