

Habitat Regulations Assessment (HRA): West of England Joint Spatial Plan (JSP) Revised Scoping Paper

1). Introduction

1.1 This paper has been produced by the four unitary authorities (UAs) which make up the West of England (WoE) sub-region. Its purpose is to outline the stages for undertaking a Habitat Regulations Assessment for the Joint Spatial Plan.

The West of England

1.2 The West of England (WoE) covers the four unitary authorities (UAs) of Bath and North East Somerset, Bristol, North Somerset and South Gloucestershire. The WoE thrives on its natural environment and excellent quality of life and has a growing national and international profile.

1.3 The outstanding environment of the sub-region makes a substantial contribution to quality of life and is a key driver for why people want to live, work and visit the area. The high quality environment additionally makes a significant contribution to the economic success of the area.

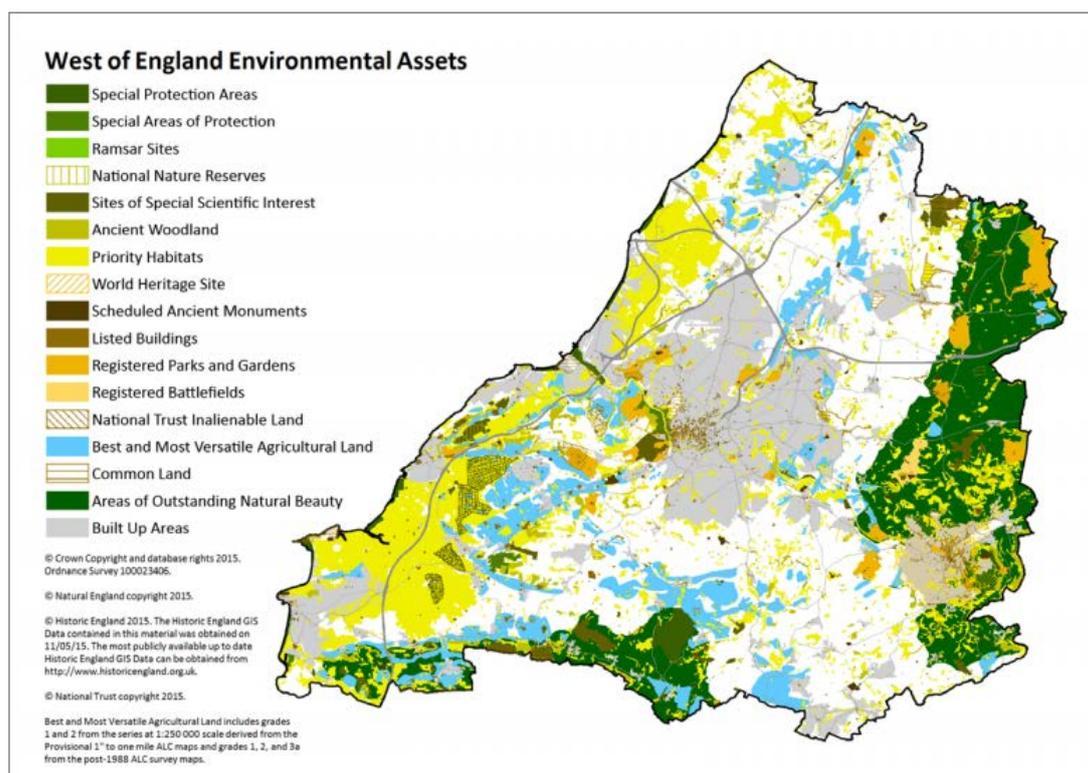


Figure 1

Joint Spatial Plan

1.4 The JSP will plan to meet the needs arising from both the Bristol and the Bath housing market areas to 2036. The Bath SHMA has been updated to provide consistent information to 2036. The wider Bristol SHMA has been updated and now takes account of the representations received to the Issues and Options consultation. The Objectively Assessed need (OAN) for the wider Bristol HMA was at that time defined as

85,000 the OAN for both housing market areas is now 97,800, with a housing need of up to 102,200. A Topic paper on the Housing Target sets out the approach and evidence to formulating the housing target.

1.5 The JSP will provide the framework to deliver up to 105,000¹ net additional new homes between 2016 and 2036 of which, around 32,200 (30%) should be affordable homes.

1.6 The housing target supports the planned job growth of 82,500 jobs for the period 2016-2036 (or 125,900 jobs between the period from 2010-2036).

Relationship of the Joint Spatial Plan to Local Plans

1.7 The JSP will, in due course, carry significant weight and be used to inform key planning decisions. Whilst it will not replace existing local plans, in due course it will be a material consideration in decision making. In the meantime, existing local plans will continue to deliver existing Core Strategy targets. Local plan reviews will need to respond to the new strategic context. The JSP will eventually (when adopted) provide the new higher level strategic planning framework for the four authorities to 2036.

1.8 Given the early stage that the JSP is at, and in the spirit of early engagement on options, the JSP will not carry significant weight at this time which would be premature.

1.9 The Housing and Planning Act 2016 has a new route for planning permission for housing led development called 'planning permission in principle' or PIP. A PIP may be granted for housing-led development either on application to the local planning authority (or Secretary of State in some instances), or through qualifying documents. The JSP is not expected to be a qualifying document for establishing planning permission in principle. The JSP Spatial Strategy will identify strategic development locations which will be brought forward as allocations through the local plan process.

1 Opinion Research Services (2016) West of England Housing Target: The basis for the Housing Requirement in the Joint Spatial Plan.

2). Habitat Regulations Assessment

2.1 European Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna (known as the 'Habitats Directive') implemented in Britain by the Habitat Regulations 2010, provides legal protection for a range of habitats and species identified as being of European importance.

2.2 Article 2 of the Directive requires the maintenance or restoration of these habitats and species, in a favourable condition, and is achieved through the establishment and maintenance of protected areas referred to as Natura 2000 sites. These are comprised of Special Areas of Conservation (SAC) designated under European Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Fauna and Flora ('the Habitats Directive 1992'), implemented in Britain by the Conservation (Natural Habitats & c) Regulations 2010 ('the Habitat Regulations'); and Special Protection Areas (SPA) designated under EC Directive 79/409 on the Conservation of Wild Birds ('the Birds Directive') and Ramsar site under the Ramsar Convention on the Conservation of Wetlands of Importance.

2.3 Sites designated as wetlands of international importance under the Ramsar Convention are subject to the same provisions as Natura 2000 sites.

2.4 Article 6(3) of the Directive requires any 'plan or project' likely to have a significant effect on a Natura 2000 site be subject to 'appropriate assessment'. This means an assessment of the impacts of the plan/project on the site. As 'plans', the Regulations require local authorities to carry out an 'appropriate assessment' ('Habitat Regulations Assessment' or HRA) of local development documents before being adopted with the purpose being to assess the impacts of a 'land-use plan' against the conservation objectives of Natura 2000 Sites.

2.5 The phrase 'land-use plan' has been deemed by the European Court to include Development Plan Documents. Accordingly, as a land-use plan, the Joint Spatial Plan (JSP) must be subject to Assessment under Regulation 61 of the Habitat Regulations 2010.

What is the process for carrying out an HRA?

2.6 Article 6(3) of the Habitats Directive requires an 'appropriate assessment' to be undertaken when a plan or development project is likely to have a significant effect upon a European site.

2.7 Article 6(4) also requires that where an appropriate assessment has been carried out and results in a negative assessment, i.e. any proposed avoidance or mitigation are unable to reduce the potential significant impacts, or if uncertainty remains over the significant effects, the proposal can only be granted if:

- there are no alternative solutions; and
- there are no imperative reasons of overriding public interest (IROPI) for the development; and
- compensatory measures have been secured.

2.8 The regulations make reference to 'competent authorities'. These include relevant public bodies, government ministers, statutory undertakers etc. who are able to carry out the 'appropriate assessment' of impacts in relation to the Habitats Regulations. Regulation 65 sets out the necessary stages that apply where more than one competent authority is involved in decision making. In this case, the competent authority is the four West of England unitary authorities.

3). Preparing the Joint Spatial Plan

3.1 The Joint Spatial Plan (JSP) has a clearly defined role which is to set out how the much needed new homes and employment land will be sustainably accommodated and what infrastructure is required to support this. Based on the JSP, more detailed land use policies will be set out in the local plans for the four Unitary Authorities (UAs).

3.2 The JSP will be prepared through a number of stages – these (and the timetable associated with them) are set out in Table 1 below, including reference to the relevant stages in the Town and Country Planning (Local Planning) Regulations 2012.

When	Stage	Time	Stage of HRA
November 2015 to January 2016	Issues and Options (Reg 18)	12 week consultation	Initial scoping exercise
Autumn/ Winter 2016	Towards the Emerging Spatial Strategy (Reg 18)	6 week consultation	Update on progress and process for HRA. Full screening exercise cannot be undertaken until policies and broad locations for development have been decided.
Summer 2017	Publication Plan (Reg 19/20)	6 week consultation	Full HRA
Spring 2018	Submit to Secretary of State	TBC	N/A
Mid 2018	Examination in Public (EiP)	TBC	N/A

Table 1

3.3 With this in mind, the purpose of this paper is to update the process for undertaking, a full Habitat Regulations Assessment in support of the Joint Spatial Plan, in line with up to date guidance. In doing so, it is intended that it will ensure the approach to the HRA process and the information on European sites to be considered is appropriate. The full HRA Report for the Joint Spatial Plan will be published alongside the Publication Plan in 2017.

3.4 Once the JSP is adopted, it will be for the four UAs (in consultation with Natural England) to decide what additional work is necessary to ensure that their Local Plans meet the requirements of the Conservation of Habitats and Species Regulations 2010.

4). The HRA Process

4.1 In line with up to date guidance, the JSP will be subject to a four stage process. This is a slight change from the three stage process previously used, which was adopted to assess the majority of the four UA's individual Local Plan documents.

4.2 Table 2 below sets out the four stages

Habitat Regulation Assessment – Stage	Purpose
1. Screening	Process for identifying impacts of a plan or project on a European site, either individually or in combination, and consideration of whether likely effects will be significant.
2. Appropriate Assessment	Consideration of impacts on integrity of the site, either individually or in combination with other plans and projects, having regard to the site's structure, function and conservation objectives. Where adverse impacts are identified, assess mitigation options to identify impacts on the integrity of the site. This stage should involve consultation. If mitigation options do not result in avoidance of adverse effects permission can only be granted if the remaining 2 stages are followed.
3. Assessment of alternative solutions	Review and examine alternatives to achieve objectives; would these alternative solutions avoid or have less adverse effects on the European sites?
4. Assessment of any 'imperative reasons of overriding public interest' (IROPI)	Where no suitable alternative solution exists and adverse impacts still remain then assess whether the development is necessary for IROPI. If so then identify potential compensatory measures to maintain integrity and coherence of the protected site.

Table 2 – HRA process guide

Stage 1 - Screening

4.3 EC Directive 92/43/EEC requires that a screening assessment is undertaken by the competent authority, and should consider the following matters:

- assessment of the project including its objectives; and
- assessment of relevant plans, policies and projects; and
- assessment of relevant European sites that could potentially be affected – including their specific characteristics and conservation objectives

4.4 A screening assessment, both alone and in combination, with other identified plans and projects will identify if any significant environmental affects will result affecting the site and conclude whether significant affects are likely or not.

4.5 When undertaking this assessment a precautionary approach is required, to decision making and assessment. This means that when the likelihood of significant affects cannot be ruled out on the evidence

available, then it must be assumed that a risk of significant affects may exist. These will then need to be addressed through either changes to the scheme, avoidance or through securing mitigation measures.

4.6 If no potential significant affects are identified, the process ends at this stage.

Stage 2 – Appropriate Assessment

4.7 Regulation 61 of the Habitat Regulations stipulates that the ‘appropriate assessment’ process should consider ‘the implications for the site in view of that site's conservation objectives’. As such, the HRA needs to understand the reasons for the European sites’ designation (i.e. the particular species and habitats present); the condition of each site *vis-a-vis* their conservation objectives; the factors which might adversely impact on the qualifying features; and determine whether or not the impact is likely to be significant.

4.8 A profile of each of the affected sites will need to be drawn up based on up to date information. This information will include the reasons for their designation (the qualifying features and species) as well as the factors likely to have the greatest deleterious effects on each site. This work will be undertaken once options for development are better defined.

4.9 If it is decided that the JSP would be likely to result in significant adverse impacts on a European site, an appropriate assessment will be undertaken. The Regulations do not define ‘significant impacts’, so an informed decision will be made on this issue. In order to decide whether an appropriate assessment is required, a variety of information will be considered. This could include:

- a detailed description of the European site, identifying any/all features potentially affected, highlighting the site’s conservation objectives;
- a detailed description of the proposed development(s), processes, construction, phases, methods of work etc;
- details of alternatives considered, along with any mitigation measures proposed to reduce, remove or manage impacts;
- provision of necessary data, evidence and reports – including interpretation of that information to aid decision making;
- appraisal of any other plans or projects likely to have a significant effect, either individually or in combination with the proposed development;
- appraisal of whether there is potential for the scheme to require two or more appropriate assessments by different competent authorities.

4.10 It may also need to be informed by specific new studies and analyses, partly because the evidence base informing the HRA for previous Local Plan documents (e.g. Core Strategies) was derived from the Regional Spatial Strategy process and is now out-of-date; partly because of the ability to assess some of the potential indirect effects of the allocations on European Sites, such as increased traffic, changes in air quality or increased recreational use, will require independent technical analysis. An essential aspect to the Habitat Regulations Assessment of the JSP will be the imperative to work closely and cooperatively with Natural England in order to ensure that any impacts on the ‘in-scope’ European Sites and any requisite mitigation or alternatives stands up to public scrutiny.

4.11 Natural England has also produced Site Improvement Plans for European Sites, which sets out their understanding of the pressures on and condition of European designated sites and potential mitigation measures that might be introduced. This information will be of some material significance in supporting and informing the HRA for the Joint Spatial Plan.

4.12 More information regarding the Improvement Programme for England's Natura 2000 sites (IPENS)/LIFE Natura 2000 (LifeN2K) and the Site Improvement Plans (SIP) are also available (<https://www.gov.uk/government/publications/improvement-programme-for-englands-natura-2000-sites-ipens>) and may be used to inform this part of the process.

4.13 When considering whether a plan or project will adversely affect the integrity of the European site, regard will be had to the manner in which the JSP is to be delivered, i.e. through the UA's Local Plans.

Stage 3 – Alternative Solutions

4.14 At this stage the assessment will, if necessary, include consideration of alternatives, including how mitigation measures may help to reduce or avoid these affects. The opportunities for alternatives will vary depending upon the location and scale of development proposed, and as such, alternative solutions could include proposals of a different scale, location, phasing, a different scheme or no scheme at all.

4.15 Where it has been demonstrated there are no alternative solutions with lesser effects, the project can still be carried out if 'imperative reasons of overriding public interest' apply.

4.16 It is important to note that the detailed policies required to deliver the strategic growth proposed through the JSP will be delivered through UA's Local Plans.

Stage 4 – Considerations of overriding public interest

4.17 If it is agreed that there are no alternative solutions, and the plan must be progressed for imperative reasons of overriding public interest (IROPI) then it can still do so.

4.18 Where a location hosts a priority natural habitat type or a priority species, the reasons for justifying the scheme must relate to either:

- reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- any other reasons which the competent authority, having due regard to the opinion of the European Commission, consider to be imperative reasons of overriding public interest.

5. Screening

5.1 The first stage, screening for HRA, will determine if planning policy and guidance documents are likely to have a significant effect on the conservation objectives of the Natura 2000 sites. This will determine whether stages 2 and 3 of the HRA are required. In considering whether the plan policy, guidance or site is likely to have a significant effect on a Natura 2000 site, it should be noted that a site may be located either within or outside the area covered by the plan as significant effects may be incurred in cases where the area of the plan is some distance away.

Identifying likely significant effects (LSEs)

5.2 When considering the LSEs of a policy, it is recognised that some policy ‘types’ cannot affect any European sites. Different guidance documents suggest various classification and referencing systems to help identify those policies that can be safely screened out to ensure the HRA focuses on the policies with any potential to result in LSEs.

5.3 Table 3 below summarises the characteristics of policies that can usually be screened out.

Policy type	Commentary
General statements of policy	The EC recognises that plans or plan components that are general statements of policy or political aspirations cannot have significant effects.
General design/ design criteria	A general ‘criteria-based’ policy expresses the tests or expectations of the plan-making body when it comes to consider particular proposals, or relate to design or other qualitative criteria which do not themselves lead to development (e.g. controls on building design).
External plan/ projects	Plans or projects that are proposed by other plans and are referred to in the plan being assessed for completeness.
Environmental protection policies	Policies designed to protect the natural or built environment will not usually have significant or adverse effects.

Table 3

*European Commission (2000). Managing Natura 2000 sites: the provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC April 2000 at 4.3.2

5.4 This assessment of likely significant effects will be undertaken at the publication stage.

Identification of relevant sites

5.5 Following consideration of the approach taken to HRA for previous Local Plan (development plan) documents in the West of England, e.g. Joint Waste Core Strategy and the Bristol City and South Gloucestershire Core Strategies, a list of Natura 2000 sites within the West of England and up to 15km from the boundary, as shown in Figure 2 (below), have been identified. The radius of 15km was chosen following engagement with Natural England. It also accords with the HRA screening processes carried out on the Local Plan documents (listed above). This creates an initial list of 14 sites which will then be considered as part of the screening process. These sites are:

- Avon Gorge Woodlands Special Areas of Conservation (SAC);
- Bath & Bradford-on-Avon Bats Special Areas of Conservation (SAC);

- Chew Valley Special Protection Areas (SPA);
- Mells Valley Special Areas of Conservation (SAC);
- Mendip Limestone Grasslands Special Areas of Conservation (SAC);
- Mendip Woodlands Special Areas of Conservation (SAC);
- North Somerset and Mendip Bats Special Areas of Conservation (SAC);
- Rodborough Common Special Areas of Conservation (SAC);
- Rodborough Common Special Areas of Conservation (SAC);
- River Usk / Afon Wysg Special Areas of Conservation (SAC);
- River Wye / Afon Gwy Special Areas of Conservation (SAC);
- Severn Estuary Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar site;
- Somerset Levels and Moors Special Protection Areas (SPA) and Ramsar;
- Wye Valley & Forest of Dean Bat Sites Special Areas of Conservation (SAC); and
- Wye Valley Woodlands Special Areas of Conservation (SAC).

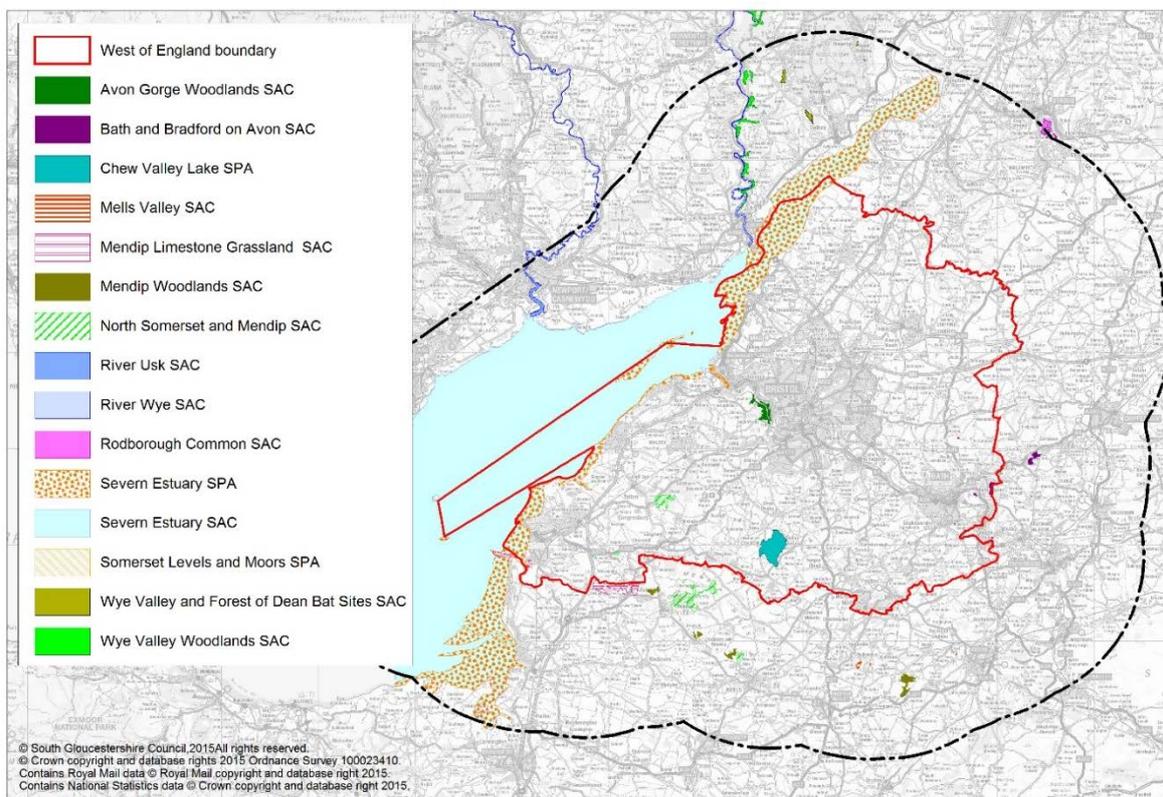


Figure 2

5.6 A summary of each European site, its qualifying criteria, conservation objectives and key sensitivities is set out at Appendix A.

5.7 Once options for development are better defined (through preparing the ‘publication’ draft JSP), some European sites may be ‘screened out’ if, in the context of the site’s Conservation objectives (available to view at <http://publications.naturalengland.org.uk/category/5374002071601152>), it is considered that there are likely to be no significant or in combination effects as a result of the JSP. The findings of this process will be summarised in a table, with the following headings:

Site	Qualifying features	Factors affecting Conservation objectives	Potential impact from JSP	Risk of significant effect (if any)	In combination effects (if any)	Avoidance or mitigation measures (if possible)	Conclusion
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5.8 The result of this may be that some European sites are removed from further consideration, for example because of their distance from any major development identified within the Joint Spatial Plan. Conversely, it may also be that this screening process determines that there is potential for adverse effects from the JSP on particular European sites either alone or in combination with other plans or projects. The screening process will be informed through engagement with Natural England and other relevant prescribed bodies, in line with the requirements of the Duty to Cooperate (DTC).

6. Next steps

6.1 This paper has been produced to accompany the 'Towards the Emerging Spatial Strategy' consultation document, published in November 2016. Its purpose is to set out the new updated processes for undertaking a Habitat Regulations Assessment for the Joint Spatial Plan.

6.2 This paper will be shared with authorities adjoining the West of England and other prescribed bodies, with the aim of ensuring that potential impacts on any European site are flagged up through active, ongoing engagement in line with the Duty to Cooperate and addressed as the Joint Spatial Plan progresses.