



Ministry of Housing,
Communities &
Local Government

15 January 2019

By email only

The Chief Planning Officer

Habitats Regulations Assessments

In April 2018, in the case *People Over Wind & Sweetman v Coillte Teoranta* ("People over Wind"), the Court of Justice of the European Union clarified that it is not appropriate to take account of mitigation measures when screening plans and projects for their effects on European protected habitats under the Habitats Directive. In practice this means if a likely significant effect is identified at the screening stage of a habitats assessment, an 'Appropriate Assessment' of those effects must be undertaken.

The judgment led to uncertainty for those working on neighbourhood plans and rendered a range of other planning tools inoperable where a case is determined likely to have significant effects on a protected habitats site. This included Local Development Orders and Permission in Principle. In response, we have made consequential changes to relevant regulations through the [Conservation of Habitats and Species and Planning \(Various Amendments\) \(England and Wales\) Regulations 2018](#). These came into force on 28 December 2018. The regulations allow neighbourhood plans and development orders in areas where there could be likely significant effects on a European protected site to be subject to an 'Appropriate Assessment' to demonstrate how impacts will be mitigated, in the same way as would happen for a draft Local Plan or planning application.

We will be updating our guidance in due course to reflect the changes.

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