

Sites of Special Scientific Interest: Encouraging positive partnerships

Code of guidance

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Preface

Sites of Special Scientific Interest (SSSIs) conserve and protect the best of our wildlife, geological and physiographical heritage for the benefit of present and future generations. It is therefore vitally important to ensure that the legislative framework supporting them is sufficiently robust and flexible to facilitate their long term future, and well understood by interested parties.

This Code refers to the provisions contained in sections 28 –32 of Part II of the Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000, for the notification and protection of Sites of Special Scientific Interest (SSSIs). Revisions to the 1981 Act apply in England and Wales: this guidance applies only in England. *It should not however be regarded as a definitive statement of the law. The law is contained in the relevant legislation, and the Code is for guidance only.*

The Government's aim, in radically revising this part of the 1981 Act, has been to emphasise the importance of positive management of SSSIs. It recognises the need to develop further, the constructive relationship between landowners and managers and the officers of the conservation agencies in England and Wales – English Nature and the Countryside Council for Wales. But the revisions also

- improve the procedures for notifying sites of national nature conservation and earth heritage importance as SSSIs, and emphasise the importance we attach to such sites;
- provide better protection for SSSIs from operations that damage, or are likely to damage, the special interest, and to secure sympathetic management, by both public and private landowners, which contributes to the conservation of the special features on individual SSSIs.

Where problems occur, it is often a result of not appreciating the effects of activities, or through neglect or mismanagement. The legislative amendments sought to ensure that support and advice to land managers from the conservation agencies sustains the efforts of individual managers, providing good value for money, and delivering conservation benefits.

Through conservation we can help to determine the kind of future we want for ourselves and for our children. It should be important to all of us. We have developed a wide variety of measures to conserve wildlife and natural features of the environment, many of which depend on land management practices for their survival. But how we protect and manage SSSIs – our most important habitats and earth science sites – will be key tests of sustainable development, and will make a major contribution to the Government's biodiversity objectives.

Throughout, this Code emphasises the significance of SSSIs and the importance of making sure they are properly protected and conserved; and securing (where practicable and appropriate) their restoration and enhancement. It endorses the value of constructive dialogue, listening carefully to a range of views; the importance of support both through advice and, where appropriate, through financial assistance; and the expectation that information about SSSIs will be freely available. It also draws specific attention to the need for public bodies to be fully accountable in the actions they take, both on and in respect of, SSSIs.

English Nature is the Government's statutory advisor on nature conservation in England. This guidance relates to its powers and duties under the 1981 Act as amended, concerning identifying, protecting and managing SSSIs. English Nature aims to work for wildlife in partnership with others, advising, regulating, enabling and encouraging. **The Secretary of State for Environment, Food and Rural Affairs has prepared this Code to assist English Nature in the exercise of its powers with regard to SSSIs, and in its functions in regulating activities on SSSIs.**

The advice and guidance is also directed towards other public bodies, including Government Departments and public utilities that exercise functions in relation to SSSIs. **Guidance in the Code constitutes advice to them on the manner in which they should exercise their legal responsibilities in relation to SSSIs.**

The Code will also be of interest to and contains guidance for those affected by the exercise of functions, including in particular owners and occupiers of SSSIs. Through its direct relationship with owners and occupiers, **English Nature is also providing further, more detailed, information on the arrangements which now apply.**

The Code also refers to other publications concerning SSSIs, which are mentioned at appropriate places in the text, including *Guidelines on Management Agreement Payments and other related matters*, and *Planning Policy Guidance Note 9 on Nature Conservation*.

The Code of Guidance for Sites of Special Scientific Interest published in 1982 (ISBN 0 11 751653 8) is hereby revoked as respects England.

A SUMMARY OF THE MAIN POINTS

Identifying new SSSIs

The Code provides a **statement of purpose** for SSSIs by acknowledging that the sites in the SSSI series should include all of our most valuable nature conservation and earth heritage sites, selected on the basis of well-established and publicly available scientific criteria. It also acknowledges the advantage in maintaining **common standards** for the identification of new sites.

English Nature should use the **experience of its Council** members in decisions on confirmation of SSSIs. Members should consider all cases with unresolved objections, using independent sources of scientific advice where necessary. Where there are no objections, English Nature should publicise the appropriate levels of delegation of functions, and the processes it will follow.

English Nature should produce guidelines for deciding when a notification is to be removed, consulting the public and interested parties before adoption. **The Secretary of State expects removal of notification to occur only exceptionally.**

Management

Management of SSSIs should reflect the general principles of sustainable development set out in the Government's strategy. **English Nature should develop mutually supportive and constructive relationships with land managers and with public bodies, to secure positive management. By January 2006** every owner and/or occupier should have **a short but clear statement of the proposed management requirements for the SSSI**, providing the basis for future discussions/decisions.

Management schemes will provide owners/occupiers with a more detailed statement of measures required for positive management of the land. Not all sites will need one, but there will be a presumption that all SSSIs with more complex management and/or ownership issues will have such a scheme, or will have other arrangements in place which define the management needed.

Action to secure positive management

Management notices should be used in exceptional circumstances where dialogue and negotiation fail to secure positive management. Extensive discussions should include the offer of a management agreement covering costs of the work, as well as advice and guidance.

Rights of appeal arise in relation to applications for **consent for potentially damaging operations**, where consent is refused or given subject to conditions, or no decision is made. In many cases it may be possible to resolve matters without a formal appeal (through mediation or informal dispute resolution). Where it withdraws or modifies an **existing consent**, English Nature should explain its reasons clearly. If

a notice to this effect is affirmed following an appeal, English Nature should offer the owner/occupier a management agreement where this is needed to secure appropriate management of the land. It must make a payment under an agreement if an owner/occupier suffers loss as a consequence.

Acquisition of Land and Powers of Entry

Powers of compulsory purchase are likely to be used only rarely, where this is essential to maintain the special interest. English Nature must show it has explored all other options and that these are inappropriate or have failed, and a Compulsory Purchase Order may be the only way to secure the special interest. With regard to powers of entry to land in exercising its powers and duties in relation to SSSIs, English Nature will give **notice of entry** (except where it believes an offence is being committed). The Secretary of State does not expect English Nature to use the powers unless it has taken all other reasonable steps to secure entry by agreement.

Public bodies (including planning authorities)

Local authorities should include policies **for the protection and, where appropriate, enhancement of SSSIs** in their Local Plans.

Every public body should **take full account of its duty** (to take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of the special features on an SSSI) whenever actions may affect SSSIs. In issuing consents on or affecting the special interests of SSSIs, public bodies must have full regard to the duty and **consult English Nature** before issuing any consent that may affect the special interest. Where they carry out works themselves they will be expected **to minimise and make good any damage** caused, where practicable.

English Nature should liaise with individual utilities/undertakers, advising on general operations regularly undertaken, and if appropriate indicating **assent in advance**. **Memoranda of Understanding** will identify constructive working methods, and ensure appropriate management of sites for which public bodies are directly responsible. Public bodies should adopt the highest standards in relation to SSSIs they own, to secure positive management in accordance with an agreed programme of management.

Offences

English Nature should maintain positive relationships with owners and occupiers of SSSIs, in order to minimise instances of deliberate damage. But it should also develop and publicise a strategy for enforcement, clarifying the circumstances in which it will expect to take action and describing the steps it will take.

The Public Interest in SSSIs

English Nature will publicise notification of SSSIs in local newspapers. It should also make **information readily available** in a variety of formats on the extent and location of SSSIs, and the reasons why they are considered special. It should report regularly to the Secretary of State on progress on improving the condition of SSSIs.

Where **recreational activities** take place on SSSIs, English Nature should liaise with managers to ensure that these can continue in ways that are compatible with the conservation interest. It should agree Memoranda of Understanding with bodies representing users. It should also acknowledge the value of sites to local communities, increasing understanding and awareness of conservation importance, and take account of the cultural/archaeological/industrial heritage on individual sites. It should also liaise closely with English Heritage on the management of sites with features of archaeological or historical importance.

Code of Guidance

The purpose of SSSIs

Statutory
References to
Wildlife and
Countryside Act
1981 (as amended
by Countryside
and Rights of Way
Act 2000) unless
otherwise
specified

1. The purpose of SSSIs is to safeguard, for present and future generations, the diversity and geographic range of habitats, species, and geological and physiographical features, including the full range of natural and semi-natural ecosystems and of important geological and physiographical phenomena throughout England. **The sites included within the series of SSSIs are intended collectively to comprise the full range of natural and semi-natural habitats and the most important geological and physiographical sites. The SSSI series should therefore include all of our most valuable nature conservation and earth heritage sites, selected on the basis of well-established and publicly available scientific criteria.** (See paragraph 14 for a further explanation of these). *Annex A sets out, in simple terms, legislative developments relating to SSSIs since their first establishment in 1949.*

2. SSSIs will be exceptionally valuable because of the animals (including birds and insects etc), plants or fungi found in them, or because of the nature of the rock forms, including minerals and fossils, or features on the land. All SSSIs will be considered important at the national level, but some are recognised as being internationally important. All Special Protection Areas (SPAs) under the EC Birds Directive, Ramsar sites under the Ramsar Convention on Wetlands of International Importance, or candidate Special Areas of Conservation (SACs) under the EC Habitats Directive, are first notified and protected as SSSIs. SPAs and SACs will form part of the European-wide *Natura 2000* series of sites. Specific regulations (the Conservation (Natural Habitats &c.) Regulations 1994) apply to *Natura 2000* sites. **English Nature is required by regulation 3(2) of those Regulations to exercise its functions under sections 28-38 of the 1981 Act so as to secure compliance with the requirements of the Habitats Directive. All public bodies are required by regulation 3(4) to exercise their functions having regard to the requirements of the Habitats Directive where those requirements may be affected.**

SI 1994 No 2716

3. The notification, effective management and conservation of SSSIs is also one of the core elements of achieving targets, set out in the individual species and habitats action plans published as part of the UK Biodiversity Action Plan (BAP), for all relevant species and habitats. The UK Biodiversity Action Plan was published by HMSO in January 1994. Information on the BAP and on the species and habitat action plans can be found at www.ukbap.org.uk. SSSIs will make a positive contribution to the achievement of BAP targets where particular BAP species or habitats are notified features of interest. In addition, SSSIs will be managed sympathetically for non-notified BAP species on a site, wherever this can

be accommodated within the management needed to maintain the SSSI's special interest. But this is not to say that BAP habitats outside of SSSIs are of no importance for wildlife, particularly for wide-ranging species.

4. Identifying an SSSI is not the end of the process. As recent experience shows, good management and a fruitful partnership between English Nature and the land manager needs to be maintained. Over the longer term, this is essential in protecting the features for which the site has been selected and ensuring they are in 'favourable condition'. (This is explained in **the box at paragraph 33 below**). Agreeing on best practice in the management of the land, at an early stage, will be particularly important.

5. It is the Government's objective to secure strong protection for the nature conservation interest for which SSSIs are notified, and to ensure that there are effective partnerships with owners and occupiers, so that these sites are appropriately and positively managed. **The Government will continue to discuss with English Nature the best way of achieving this.**

English Nature

Section 73 of the
Countryside and
Rights of Way Act
2000

6. English Nature – previously known as the Nature Conservancy Council (England) – was established in 1990 as the successor in England to the Nature Conservancy Council. Its Council has a membership of up to 14 people, responsible for exercising the functions given to it in law. Council members and senior staff work closely together to decide the overall strategy and policies that shape the day-to-day programmes of the organisation. The Secretary of State appoints the Chairman and members of the Council, who are selected to provide a wide range of experience and expertise, including biological and earth sciences, farming, land management, local government and the law. Regular Council meetings are open to members of the public. **The Secretary of State expects English Nature to use, fully and wherever appropriate, the experience of its Council members and staff in decisions on notification and management of SSSIs, securing the positive management of sites and resolving any difficulties or disagreements with landowners and managers, or with public bodies.**

7. While the Council members retain overall responsibility for overseeing the carrying out of functions, English Nature delivers its obligations through staff based at its headquarters (in Peterborough) and in Area teams covering the whole of England. Area team addresses are listed in *Annex D*. Conservation officers within the teams are each responsible for a number of SSSIs, and for securing favourable condition through positive partnership with those who own or work the land. **They should have access to high standards of training and development and sources of expertise and information concerning the appropriate**

management of SSSIs. Some of this expertise will come from English Nature's own scientific and land management advisers, and some will be provided by external specialists.

Section 28G

8. English Nature, as a public body, is under a duty to further the conservation and enhancement of the features that make an SSSI of special interest. Notification of SSSIs is on the basis of scientific criteria alone. **The Government believes that the management of SSSIs should reflect the general principles of sustainable development as set out in its strategy, A Better Quality of Life, published in 1999. In considering decisions particularly about the management of land within or affecting SSSIs, English Nature has to assess how the delivery of nature conservation objectives can be achieved. Wherever appropriate, it should also take account of its duty, under s.37 of the Countryside Act 1968, to have due regard to the needs of agriculture and forestry and to the economic and social interests of rural areas.**

Section 37 of the
Countryside Act
1968

Working in partnership

9. While English Nature's staff can be expected to demonstrate a broad range of scientific, economic and practical expertise, the knowledge of those who own or work on the land is also invaluable. The development of voluntary partnerships over the last twenty years has been successful in ensuring that the majority of sites are well protected and positively managed. **English Nature's staff, particularly area team officers, should continue to develop a mutually supportive and constructive relationship with land managers, and with public agencies, recreational organisations and other bodies whose activities may affect SSSIs, to secure the positive management of these sites.**

10. Area team officers will have an important role in providing advice and technical expertise, but will expect to become involved in day to day management only where this is absolutely necessary, to secure essential improvement in the condition of the site. They should recognise and respect the knowledge and expertise of individual owners and managers. They should also seek to engage, wherever practicable, with local people. They should be encouraged to establish constructive dialogue and productive partnerships, preferably through face-to-face discussion. They should establish similar relationships with public bodies, either as owners of SSSIs or where exercising functions within or affecting these sites.

11. Constructive dialogue and partnership should be the preferred approach. As a last resort however, if it cannot secure appropriate management of an SSSI by these means and the site's nature conservation value is declining, English Nature will need to consider using its powers to halt any damaging operations and/or to secure appropriate conservation management. This should take account, as far as possible, of other forms of land management being carried out in the surrounding area.

12. **As part of this constructive dialogue, the Secretary of State expects English Nature to ensure that its information for owners and occupiers of SSSIs is up to date and reviewed from time to time. This should contain additional explanations about how the new legislation affects them, and set out the service standards that will apply in English Nature’s dealings with owners and occupiers.**

This should be provided to individual owners and occupiers in a form which is easy to understand, but should also be made available on request or by access to the Internet.

Identifying and notifying SSSIs

Identifying new SSSIs

Section 28

13. English Nature is under a statutory duty to notify land which in its opinion is of special interest, by reason of its fauna or flora, or geological or physiographical features. It should identify land that is of special interest on the basis of a sound understanding of the extent and distribution of wildlife and natural features in England. It should work with other public bodies and conservation organisations to co-ordinate and develop appropriate survey and information management systems, and have regard where necessary to independent scientific expertise.

14. **The Secretary of State believes that there will continue to be advantages in maintaining common standards for the identification of nationally important wildlife and earth science areas,** and therefore supports the *‘Guidelines for the Selection of SSSIs’*, published by the Joint Nature Conservation Committee (JNCC) (see Annex A). Guidelines on the selection of biological SSSIs were first published in 1989 and re-published with minor revisions in 1998: separate chapters were also published on non-vascular plants (1992), bogs (1994) and inter-tidal marine habitats and saline lagoons (1996). The Guidelines fully explain the general principles that support the assessment and selection of sites, and enable the identification of the most important areas for the range of natural and semi-natural habitats and diversity of wildlife occurring in Great Britain. They are an important standard, to be maintained by periodic review and updating, using biological and geological expertise wherever it exists.

Consulting on notification

Section 28(1) and (2)

15. **English Nature must notify all of the owners and occupiers of the land, including any holders of common rights, where it considers an area to be of special interest.** This will usually follow informal discussions, including discussions about management. It must also notify the planning authority or authorities, the Secretary of State, and the Environment Agency (under s8 of the Environment Act 1995).

English Nature sends copies of new 'notifications' to a wide range of public bodies and other organisations with an interest in SSSIs. It is also required to advertise the notification in a local paper, so that local people know about land in their area that is special. English Nature should ensure that people can inspect details of notifications at area team offices and, if they wish, comment on them. In any advertisement of a new SSSI it must be clear that the notification is made solely on scientific grounds and carries with it no additional public rights, including rights of access.

Section 28(4)

16. A notification to owners and occupiers should include

- a description of why the land is of special interest, including the animals (including insects, birds, fish, reptiles etc), plants, or geological forms or physiographical features which make it special,
- a list of operations likely to damage the special interest, on which English Nature must be consulted before they can be carried out: this should be a site-specific list which is easy to understand and which relates directly to the special features, and
- a statement of English Nature's views about the management of the land (including any views it may have about the conservation and enhancement of the special features). **The Secretary of State expects this to be a simple statement of the way in which the land needs to be managed in order to maintain its special interest. It is particularly important because it provides an initial outline on which to base future discussions and decisions on management of the SSSI.**

Paragraph 2 of
Schedule 11 to
the 2000 Act

Paragraph 6 of
Schedule 11 to
the Countryside
and Rights of Way
Act 2000

17. English Nature has already given notification of significant numbers of SSSIs under the provisions in the 1981 Act. Schedule 11 to the 2000 Act provides that existing notifications shall have effect as if notified under the new provisions (but English Nature is not required to publicise these notifications in a local newspaper). Notification in these cases may not have included a statement of views about management. English Nature is now required formally to issue such a statement, for every SSSI, over the next three years. Owners and occupiers will receive a copy and will have three months in which to comment. English Nature may then revise and/or confirm the statement. **The Secretary of State expects English Nature to enter into discussions wherever necessary, with owners and occupiers, so as to produce a short and clear statement of the management requirements for the site. By the end of January 2006 every owner and occupier on an SSSI should have such a statement.**

Objections to notification

Section 28(3)
and (5)

18. Owners and occupiers have three months in which they can make representations about a notification, including English Nature's views on management. Other people may also submit views (for example, in response to the newspaper advertisement). Where there are objections (including objections as a result of local advertisement), officers may seek to resolve these by further discussions, making clear the reasons why the site is of special interest, and clarifying the list of operations likely to cause damage. They should be prepared to discuss and explain the statement of views about management. It should not be necessary however for owners and occupiers to incur significant costs in pursuing objections (there is no provision for reimbursing such costs).

19. English Nature must decide within nine months of the notification whether to confirm it, with or without modifications, or it will lapse. It must base the decision on a full and careful assessment of the scientific evidence. **The Secretary of State believes the members of English Nature's Council have an important role to play in all cases where objections have not been resolved. They should consider the arguments directly, drawing where necessary on sources of scientific advice within and outside of English Nature.** Owners and occupiers will be able to attend Council meetings at which notifications are discussed. English Nature will be expected to explain why it has decided to confirm any notification in the face of unresolved objections. However, in cases where there are no unresolved objections, it is for English Nature to determine and publicise how it will take decisions.

Local land charges

Section 28 (9)
and 28Q

20. Notification of an SSSI is a local land charge. This enables the notification to be brought to the attention of potential new owners where an interest in land may change hands. However, owners who dispose of any of their interest in an SSSI must also give details of the new ownership or occupancy to English Nature, so that it can set up a new relationship with the new owner. **The Secretary of State expects English Nature to ensure that at all times, owners and occupiers of SSSIs know which area team office to contact, and the name of the officer dealing with the site. Local authorities will also find this information helpful.**

Varying a notification

Sections 28A,
28B and 28C

21. Scientific evidence may come to light following confirmation which suggests to English Nature that it needs to vary the notification. It now has powers to amend the list of features that make the site of 'special' interest; the list of operations likely to damage the special interest (the OLD list); or the statement of its views on management. Where it decides to vary any of these, it must serve notice on the owners and occupiers of the land affected by the variation, and publish a notice in the local newspaper. It must allow the same opportunity for objections or representations to be made and considered before any changes are approved by the Council of English Nature, and the variation of the notification confirmed. It also has powers to vary the area of land covered by a notification, following the same procedures, or to vary in combination the area of land and the notification of the SSSI as respects the special interest features, the OLD list and the statement of views about management.

Removing a notification

Section 28D

22. English Nature may remove the notification from an SSSI, or any part of an SSSI, if the features making the area special are no longer of special scientific interest, or are no longer present. **The Secretary of State recommends that English Nature produces guidelines that it will use to determine whether to remove a notification, and that it consults the public and interested parties before adopting such guidelines.**

23. Where English Nature decides to use its power to remove a notification, the procedures are the same as those for notifying land, including opportunities for representations to be made and considered. Throughout consideration of any such proposal, the land will continue to be protected as an SSSI until English Nature has confirmed removal of the notification.

24. **The Secretary of State expects the power to be used only in exceptional circumstances.** It will normally be a matter of concern both to the owner or occupier of land, and generally, that the land has lost the features which made it special. English Nature must be satisfied that notification is no longer appropriate because the special interest has been irreversibly lost, and cannot be recovered by any reasonable or practicable means. There may be circumstances where, exceptionally, development has been permitted, or permanent damage has occurred, or through natural processes and ecological changes, or in the light of new knowledge, the special interest has been irreversibly lost within the notified area. In these circumstances, maintaining such sites in the list of SSSIs will undermine the integrity of the system, which aims to identify, protect and support sites of scientific importance.

Managing SSSIs

25. **The Secretary of State lays the greatest store in ensuring that SSSIs are appropriately and positively managed. Lack of appropriate management is widely recognised as the commonest cause of deterioration in the special interest. Positive management is most likely to be secured with the active co-operation of land managers.**

26. **The Department for Environment, Food and Rural Affairs (Defra) has set itself the target of ensuring that, by 2010, 95% of SSSIs by area should be in ‘favourable or unfavourable but recovering condition’.** English Nature includes, within its annual report to the Secretary of State, information on the condition of SSSIs. In assessing this, it uses common standards of monitoring agreed at UK level by the JNCC. Under these standards, English Nature will assess the condition of every feature of interest on notified SSSIs at least once every six years. These assessments provide essential information that can be used to decide whether the special features are being properly sustained, or if management changes are necessary.

Section 133(d) of the Environmental Protection Act 1990

Management agreements

27. English Nature may assist with the costs of carrying out conservation management through payments under voluntary management agreements with owners and occupiers of SSSIs, or of other land, where this will secure the conservation of the special features of an SSSI. The circumstances in which they may offer agreements are more fully explained in the *Guidelines on Management Agreement Payments and Other Related Matters* (February 2001)¹.

28. Treating SSSIs as ‘isolated pockets’ of special interest may not address all of the issues that affect them. English Nature now has legal powers to enter into voluntary management agreements on land that is not notified as SSSI but where this will help sustain the special interest on an SSSI.

Discussions on management with owners and occupiers of SSSIs should therefore address activities both on an SSSI, and on their adjoining land. English Nature should also consider the need to negotiate agreements with owners and occupiers of other land where their activities affect SSSIs. Where agricultural use of land has an effect on the special interest, English Nature should consider the management of both SSSI and non-SSSI land within an individual holding on a whole-farm basis. On wetlands, agreements may address issues across the hydrological unit as a whole.

Section 15 Countryside Act 1968 and s16 National Parks and Access to the Countryside Act 1949

¹ Copies are available from Defra publications, Admail 6000, London SW1A 2XX (email defra@iforcegroup.com)

Management Terms

Management Scheme – is a scheme, prepared by English Nature under s28J, describing how best to conserve, and/or restore, the special features of an SSSI. This will be drawn up in discussion with the owners or occupiers. The aim is for all owners and occupiers of the land to be aware of the preferred methods of managing the land to conserve or restore the special features (flora, fauna, geology or physiography) for which the site was notified.

Management Agreement – made under s15 of the Countryside Act 1968 or s16 of the National Parks and Access to the Countryside Act 1949. It is an agreement between the owner/occupier and English Nature as to the management of the land, including the carrying out of work, and can now cover the same things as a management scheme, as well.

Management Notice – section 28K gives English Nature power to issue a management notice, if it has been unable to conclude, on reasonable terms, arrangements for implementing a management scheme, and if the special features for which the land was notified are being inadequately conserved. The notice requires the owner or occupier to carry out specific works within a specified time or allows English Nature to enter the land and carry out work itself. The person who receives the notice has a right of appeal to the Secretary of State.

Section 28J (13)

Management Schemes

Section 28J

29. It should be possible to reach voluntary agreement on the management of the majority of SSSIs: it is therefore desirable for English Nature to enter into detailed discussions about the management of all SSSIs at the earliest opportunity.

Section 28J(1) and (2)

30. In some cases however, and particularly where it is not possible to reach a voluntary agreement on management, English Nature may seek agreement on a management scheme. (An owner or occupier may also decide to ask that a scheme be prepared; but in these cases it is more likely that it will be possible to reach a voluntary agreement on management). A management scheme is a statement which sets out, clearly and at the appropriate level of detail, the measures necessary for conserving or, where practicable, restoring the features of the land which make it an SSSI. A scheme may cover the whole of an SSSI, or part of it (such as units in individual occupation). On an SSSI made up of geological and biological features, for example, English Nature may prepare separate management schemes for each.

31. The Secretary of State expects English Nature to undertake preliminary discussions with all of the owners and occupiers of land to be covered by a scheme. It should draw on appropriate sources of local knowledge and expertise, as well as using the knowledge and experience of its own staff. The scheme should have regard to traditional land management practices on the site, and the extent to which they have contributed to its special interest. Only where there are particular ecological circumstances that would justify this, and with the agreement of the land manager, should it seek to achieve a condition that has never existed on the land. Where there are several schemes relating to land, English Nature must make sure that the relationship between each of them is clear, and that they are complementary.

Section 28J(3),
(7)-(12)

32. The legislation requires English Nature to serve formal notice of a scheme, and allow owners and occupiers three months in which to make representations, if necessary. Within 9 months, it must confirm the scheme or withdraw it (it may also subsequently cancel or withdraw a scheme). In confirming the scheme it can adopt agreed variations, but may not make the scheme more onerous – for example by including additional management requirements on which the land manager has not been able to comment. It can subsequently cancel or vary a scheme, but in proposing variations it must follow the same consultation procedures.

33. **The management scheme will provide owners and occupiers of SSSIs with a detailed statement which clearly sets out the measures required for positive management of that land.** It should add detail to the basic statement of views on management provided with the notification of the SSSI, and ensure that all parties are aware of the recommended management necessary to maintain the special features. **It should be a valuable means of making sure that SSSIs are in 'favourable condition'.** A scheme may be helpful in specifying potentially damaging activities (including those undertaken on a regular basis) for which a specific application for consent is not needed (see paragraph 37 below), and may provide the basis for a management agreement including payments for agreed activities. It is therefore an extremely helpful tool. English Nature will be expected to consider carefully any comments, suggestions or representations that owners and occupiers may make in the course of developing a scheme.

Favourable condition

SSSIs are notified because of specific biological or geological features. When these features are being managed in a way that maintains their nature conservation value, then they are said to be in 'favourable condition'. It is a Government target that 95% of SSSIs should be in favourable or unfavourable but recovering condition by 2010.

34. The Secretary of State does not expect that management schemes will be necessary for every site, as many sites already have satisfactory management. Some sites do not require specific management measures. There is however a presumption that all SSSIs with more complex management and/or ownership issues would benefit from preparation of a scheme. Where it is not possible to secure the owner's agreement to implement the terms of a management scheme, with appropriate financial assistance, it may be necessary to issue a management notice (see paragraph 61).

Sources of advice and alternative funding

35. Constructive relationships built on direct personal contact, sound exchange of advice, and positive incentives, will deliver most benefits for wildlife and natural features and remain crucial to the successful delivery of the system. English Nature should ensure that staff working on SSSIs have sufficient familiarity with other sources of advice and financial support to direct SSSI owners and occupiers to those services where appropriate.

36. Defra operates agri-environment schemes under the umbrella of the England Rural Development Programme (details can be found at <http://www.defra.gov.uk/erdp/erdphome.htm>). These provide incentives for a wide range of measures to deliver environmental benefits, including conservation of landscape, and historical features as well as biodiversity. Landowners and managers of agricultural land are encouraged to consider whether the agri-environment schemes offer land management opportunities consistent with the needs of SSSIs under their management. Their English Nature conservation officer will be able to advise on what would be accepted as beneficial on the SSSI.

Environmental Land Management Schemes (ELMS)

There are many ELMS schemes available, which include:

Countryside Stewardship Scheme (CSS)

Countryside Stewardship is operated by Defra and is available throughout England. It aims to protect, enhance, restore and re-create targeted landscapes, their wildlife habitats and historical features, and to improve opportunities for public access.

Environmentally Sensitive Area Scheme (ESA)

ESAs are areas of particularly high landscape, wildlife or historic value, the protection of which requires appropriate farming practices. The Defra-run schemes offer payments to farmers to adopt agricultural practices that will safeguard and enhance the rural environment and improve public access. In 2001 there were 22 ESAs in England covering some 10% of agricultural land.

Wildlife Enhancement Scheme (WES)

English Nature's WES schemes offer money for the maintenance and enhancement of the wildlife interest within SSSIs. Payments are calculated in accordance with the '*Guidelines on Management Agreement Payments*'.

Woodland Grant Scheme (WGS)

The Woodland Grant Scheme, run by the Forestry Commission, pays grants to help with the creation of new woodlands and to encourage the good management and regeneration of existing woodlands. Grants are paid as part of a contract under which beneficiaries agree to look after the woodlands and carry out approved work. Further details on the WGS are available at the Forestry Commission web site at www.forestry.gov.uk

Farm Woodland Premium Scheme (FWPS), run by Defra, encourages farmers to convert productive agricultural land to woodland by providing annual incentives in the form of payments for 10 or 15 years to abate farming income foregone FWPS payments. FWPS payments are in addition to the full range of establishment grants available under the Forestry Commission's WGS. The scheme's objectives are to enhance the environment through the planting of farm woodlands, in particular, to improve the landscape, provide new habitats and increase biodiversity. In doing this, land managers should be encouraged to realise the productive potential of woodland as a sustainable land use.

Hill Farming Allowance Scheme (HFA)

The Hill Farming Allowance Scheme offers area payments to farmers using eligible land for sheep breeding and suckler-cow beef production in English Less Favoured Areas. Its aims are to

- contribute to the maintenance of the social fabric in upland communities through support for continued agricultural land use, and
- help to preserve the farmed upland environment by ensuring that land in less favoured areas is managed sustainably.

Applications for consent for operations

Applications for consent for operations likely to damage the special interest

Section 28E

37. English Nature's discussions with land managers concerning SSSIs will include clarification of the operations and activities most likely to put those features at risk. The notification papers will have included a list of these operations, which may include operations constituting development (see paragraphs 48 - 53). Where owners or occupiers wish to carry out operations that are listed in the notification as likely to damage the site, they must give English Nature written notice of the proposals. English Nature may grant consent, give consent subject to conditions, or refuse consent. Where the notice includes sufficient details, a decision must be made within 4 months, otherwise, English Nature may ask for more information. It should be able to decide applications quickly if there has been prior discussion. It is important that the notice fully describes the nature, timing and location of the operation, as these often have a bearing on whether the operation is damaging, and may help shape the conditions English Nature may attach.

38. Owners and occupiers are encouraged to discuss their proposals fully with English Nature in advance of any formal application for consent. This may include discussion on how to carry out regular operations. English Nature may then indicate that consent would be likely to be granted, on a formal application, or suggest ways in which the operation may be made acceptable. If English Nature refuses consent, or attaches conditions, it must say why it is doing so, explaining clearly and fully the reasons for the decision, including how the proposed works would damage the special interest, and advise of the right to appeal.

Section 28E(7) and (8)

Withdrawal or modification of existing consents

Section 28F

39. English Nature may have issued a written consent in the past, agreeing that activities could proceed on SSSIs. It may however subsequently discover the activity is causing unacceptable harm to the special interest, or is not sustaining the interest. **In these circumstances, the Secretary of State expects English Nature to enter into discussions with owners and occupiers to see if an agreement can be reached regarding changes in the management of the land. In some circumstances, English Nature may wish to re-negotiate any management agreement that may be in place.**

Section 28E(6), 28F(1)(c) and (d)

40. Where it cannot reach agreement and the features on the land remain in unfavourable condition, English Nature may give notice that it is withdrawing or modifying a consent. This may refer to a specific written consent issued at some time in the past, either by them, or by predecessor

organisations, such as the Nature Conservancy Council. The person served with a notice withdrawing or modifying a consent may appeal against it to the Secretary of State. The appeal procedure will be similar to that for appeals against refusal of consent: and the Secretary of State, after considering the case from both parties, may confirm the notice or may quash (refuse to confirm) it.

41. Where English Nature withdraws or modifies an existing consent, it must provide a statement explaining why it is withdrawing or modifying the consent. **This should indicate, clearly, the reasons for its action and the conservation benefits that it expects to achieve.** English Nature should offer a management agreement to the relevant owners and occupiers, where such an agreement is needed in order to secure more appropriate management of the land. It must offer an agreement, including a payment (in accordance with the *Guidelines on Management Agreement Payments and Other Related Matters*)² if the owner or occupier suffers loss as a consequence. This would occur where the withdrawal or modification results in net additional costs.

Appeals against refusal, or modification, or withdrawal, of consent

42. If any person is refused consent under the new provisions, which came into force on 30 January 2001, or has consent granted subject to conditions, he or she can appeal to the Secretary of State. English Nature must provide guidance on how and when a formal appeal might be made when it issues its decision: but it should also provide such detail in advance, since an owner or occupier may also appeal if English Nature fails to issue a decision within four months of receiving the notice. In addition he or she may appeal against English Nature's use of its powers to modify or revoke consents that it has previously issued.

43. **In many cases involving both applications for consent, or withdrawals of consent, it may be possible to resolve matters without a formal appeal, and the Secretary of State welcomes English Nature's proposal to develop suitable means of alternative dispute resolution.** This includes the use of independent mediators and experts, so that wherever possible disagreements can be sorted out without incurring unreasonable costs. Where such alternative procedures are available and if both parties agree, they may extend the period for lodging an appeal so that further discussions may take place.

Section 28F(3)

² Copies are available from Defra publications, Admail 6000, London SW1A 2XX (email defra@iforcegroup.com)

Section 28F(3) 44. If an owner or occupier decides to pursue a formal appeal, he/she must give notice to the Secretary of State within 2 months of the original decision (or a longer period where they agree this in writing with English Nature). The grounds of appeal should be clearly stated and should relate to the reasons given by English Nature for its decision.

Section 28F(4) 45. **For many appeals, it will be possible for the issues to be considered effectively by an exchange of written representations.** However an appellant may ask to put his or her case in person. The Secretary of State may in any case decide that it is necessary to arrange a local inquiry or hold a hearing so that the case can be examined fully. The Secretary of State will appoint an Inspector from the Planning Inspectorate to hear the case, and may also appoint an assessor to consider technical evidence. The arrangements for inquiries and hearings will be publicised but part of the proceedings may be held in private if it is considered necessary.

Section 28F(5) and (10) 46. The Secretary of State, in determining the appeal, may uphold English Nature's decision or may modify it, or may require English Nature to grant consent. The Secretary of State also has the power to award costs if any party has acted unreasonably.

47. All the matters and procedures associated with appeals against English Nature's refusal, modification or withdrawal of a consent will be set out in impending appeal Regulations³. A Guide to appeals against decisions made by English Nature about the management of SSSIs will accompany these Regulations and set out the detailed procedures involved to assist any person wishing to make an appeal⁴.

Planning control and SSSIs

48. Advice on planning and nature conservation is set out in full in Planning Policy Guidance Note 9 (PPG9). This will be revised to take account of the new and enhanced provisions of the 2000 Act.

The Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418)

49. Where the exercise of permitted development rights on an SSSI would constitute an operation listed in the notification as likely to damage the special interest, the owner or occupier must make an application to English Nature for consent as outlined above (subject to one exception, see paragraph 55 below). If English Nature refuses consent, or attaches conditions, the owner or occupier may appeal to the Secretary of State (as described above.)

³ Regulations, intended to be called "The Wildlife and Countryside (Sites of Special Scientific Interest) (Appeals) (England) Regulations 2003", will be made and published shortly. Copies will be available electronically on the HMSO website (www.hmso.gov.uk) and defra website (www.defra.gov.uk) or in printed form from the Stationery Office (telephone 0870 600 522).

⁴ Copies will be available from the defra website (www.defra.gsi.gov.uk) and local English Nature offices (*Annex D* provides contact details).

Town and Country
Planning Act 1990

50. Where English Nature refuses consent for an operation which benefits from permitted development rights, it is open to an owner or occupier to submit a planning application to the local planning authority as an alternative to appealing to the Secretary of State. An operation likely to cause damage which has been granted planning permission on an application under Part III of the Town and Country Planning Act 1990 may go ahead, since under s28P, such a grant of planning permission is a reasonable excuse for carrying out the operation without English Nature's consent. Indeed, there is nothing in the first instance to prevent an owner or occupier submitting a full planning application to the local planning authority, where intending to carry out an operation likely to damage the special interest which benefits from permitted development rights on an SSSI, as an alternative to applying to English Nature for consent. However this may be an unnecessarily complicated route, since the local planning authority must, in such circumstances, consult English Nature.

Section 28I

SI 1995 No. 419

51. Where owners or occupiers decide to apply for planning permission to carry out an operation that constitutes development on, or affecting an SSSI, the Secretary of State strongly advises that they take the opportunity to discuss the proposals with English Nature before making a formal application. In any event, local planning authorities are required in the exercise of their functions to follow the consultation procedures in s28I. The Town and Country Planning (General Development Procedure) Order 1995 (GDPO) also requires the local planning authority to consult English Nature before granting permission for development of land in an SSSI, or adjacent to an SSSI and likely to affect it. The authority must tell English Nature if it intends to grant permission against English Nature's advice, so that English Nature can consider whether to ask the First Secretary of State, Office of the Deputy Prime Minister to call in the application. The Government is aware that the timetable for consultation procedures in the 2000 Act does not align with that specified in the GDPO, and is considering appropriate action.

SI 1994 No. 2716

52. As set out in PPG9, **local authorities should include policies for the protection and enhancement of SSSIs in their area, in their Local Plans**, and take full account of SSSIs in the exercise of their statutory duties. Where an SSSI is also an international site special procedures apply, as set out in the Conservation (Natural Habitats &c.) Regulations 1994. The local planning authority and/or English Nature will advise in such cases.

53. Where there is a valid planning consent for development on an SSSI, the works may proceed without further notification to English Nature (although where protected species are present a licence may also be needed). Where they attach conditions to any permission affecting an SSSI, in the interests of protecting the features that make the site special, local planning authorities should ensure they are met in full, and maximise the use of legally binding agreements.

Environmental Impact Assessment

SI 1999 No. 293
Town and Country
Planning
(Environmental
Impact
Assessment)
(England and
Wales)
Regulations 1999

54. The 1999 Environmental Impact Assessment (EIA) Regulations require assessments to be made for certain types of project before they can be given development consent. Projects fall under two lists: Schedule 1 where EIA is required in all cases and Schedule 2, where EIA is required if there are likely to be significant effects on the environment. Thresholds and criteria are applied to Schedule 2 projects that exclude smaller projects from the need to be screened for EIA. SSSIs, however, are designated as 'sensitive areas' under the Regulations and all Schedule 2 development in or partially in an SSSI must be screened for the need for EIA. This also extends to any consultation area around an SSSI, where this has been notified to the local planning authority under article 10(u)(ii) of the GDPO 1995. Further guidance can be found in DETR Circular 02/99, paragraphs 36-40.

The Town and
Country Planning
(General
Development
Procedure) Order
1995 (SI 1995
No. 419)

Other consents

Sections 28G and
28I

55. Owners or occupiers will continue to be able to undertake operations on an SSSI where they have a consent or authorisation issued by a public body that has followed the procedures set out in s28I of the Act – for example, a water abstraction licence. **However, in issuing the consent or authorisation the Secretary of State expects the public body to have full regard to its duty to take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of the special features on an SSSI, and it must consult English Nature before issuing any permission, authorisation or consent which may affect an SSSI.** This is covered in more detail in paragraphs 74 – 83 below.

56. If there is any doubt about whether a land manager can carry out activities authorised by an existing consent without further need to consult English Nature, it would be wise to discuss the matter with English Nature's area team.

Other activities

57. Occasionally land may be used by other persons. Where this is with the consent of the owner or occupier, and if it is an operation listed in the notification as likely to damage the SSSI, the owner or occupier is responsible for obtaining consent from English Nature. Where use is without consent, and damage is likely to occur, or where the lawful exercise of rights of access appears to be causing damage, owners or occupiers should discuss with the area team officer of English Nature how to address the problems arising. In addressing issues associated with recreational use, English Nature should consider consultation with user organisations to devise workable solutions: Voluntary Codes of Practice may be particularly helpful.

Section 34 of the
Road Traffic Act
1988

58. In cases where activities take place without the consent of the owner/occupier, they may not only be a trespass but also a criminal offence (for example under the Road Traffic Act 1974, as amended, in relation to the use of vehicles off-road). It is also now a specific offence for any person intentionally or recklessly to damage or destroy the special interest of a SSSI, or to disturb fauna for which the site was notified, provided he or she knew that what was damaged, disturbed or destroyed lay within the SSSI. English Nature should be able to advise how best to bring this to the attention of those using the land, and may be able to help constructively with suggestions for alternative locations for activities etc.

Section 20 of the
National Parks and
Access to the
Countryside Act
1949, and
Section 28R

59. English Nature's powers to make byelaws under s20 of the 1949 Act in relation to nature reserves have also been extended, so that it has the power to make byelaws for the protection of SSSIs. Byelaws may be effective in tackling situations, controlling activities and modifying behaviour which may be causing minor amounts of damage, but which, when carried out repeatedly or by a large number of people, will cause actual damage to the special interest feature of an SSSI. Byelaws may be made for the protection of all or part of an SSSI. **The Secretary of State considers that powers to make byelaws are an important and valuable tool, which English Nature can use flexibly to address problems arising from damaging activities. Defra will draw up Model Byelaws for use in these circumstances, following wide consultation.**

60. Byelaws should not be used to interfere with the exercise by any person of a right vested by virtue of ownership, lease or occupation of the land. Nor should they interfere with the use of public rights of way or with the activities of statutory undertakers. The Secretary of State expects English Nature to seek the views of those with an interest in the land before making byelaws. Where owners and occupiers of the land express strong opposition, the Secretary of State expects English Nature to examine their concerns sensitively, and to proceed only where there are no other practicable solutions that would protect the special interest. The Secretary of State has the power to hold an inquiry, if appropriate, to hear objections. Section 20(3) of the 1949 Act also provides for the payment of compensation where the position of someone with an agreement with the owner of the land is affected.

Action in Exceptional Cases

Management Notices

Section 28K

61. Where SSSIs are in poor condition, the reason is often simply neglect. The management notice provides a new means by which English Nature can take action to bring about management that supports the conservation interest.

Section 28K(2)
and (4)

62. A management notice is a notice requiring particular works to be carried out on the land. The works must be those operations or actions that it is reasonable to require to ensure the land is managed in accordance with a management scheme. English Nature may serve a management notice on an owner or occupier of land only where it has issued a management scheme that is not being fully implemented, and as a result the features of special interest are not being adequately maintained or restored. In addition, English Nature may not serve a management notice unless it is satisfied that it is unable to conclude, on reasonable terms, an agreement with the owner or occupier of the land as to the management of the land in accordance with the scheme.

Section 28K(1)
and (2)

63. The Secretary of State expects that, wherever costs would be incurred, English Nature will have calculated the costs to the owner or occupier of undertaking the work and offered a management agreement that would meet those costs, on terms appearing to be reasonable.

64. The Secretary of State also expects that management notices will be used only in exceptional circumstances, where dialogue and negotiation fail to secure management that maintains the special interests of the site. They would be preceded by extensive discussions, including discussions on a management agreement, and accompanied by advice and guidance. They would comprise only those actions that are reasonable and necessary to maintain the special interest features.

Section 28L

65. Any persons served with a management notice may appeal against the requirements of the notice to the Secretary of State. Such appeals are separate from issues related to the financial terms of any management agreement offered, which are subject to the procedures set out in the *Guidelines on Management Agreement Payments and Other Related Matters*⁵. But they may address the terms of a management scheme: for example, if the terms of the notice seek to require actions listed in the management scheme, and the owner or occupier disagrees with the proposed action. The person served with the notice may also appeal on the grounds that some other owner or occupier of the land should carry out the work or pay part of the costs.

66. Appeal Regulations will set out the detailed procedures that apply⁶. A Guide to appeals against decisions made by English Nature about the management of SSSIs will accompany these Regulations and set out the detailed procedures involved to assist any person wishing to make an appeal⁷. After considering an appeal the Secretary of State may confirm the

⁵ Copies are available from Defra publications, Admail 6000, London SW1A 2XX (email defra@iforcegroup.com)

⁶ Regulations, intended to be called "The Wildlife and Countryside (Sites of Special Scientific Interest) (Appeals) (England) Regulations 2003", will be made and published shortly. Copies will be available electronically on the HMSO website (www.hmso.gov.uk) and defra website (www.defra.gov.uk) or in printed form from the Stationery Office (telephone 0870 600 522).

notice, vary it or quash it, and also has the power to award costs, where any party is considered to have acted unreasonably. In determining the appeal the Secretary of State will have regard, (as will English Nature, in issuing the notice) both to the duty in s28G of the 1981 Act to take reasonable steps to further the conservation and enhancement of the features by reason of which the site is of special interest, and the duty in s37 of the Countryside Act 1968 to have due regard to the needs of agriculture and forestry and to the economic and social interests of rural areas.

Section 28L(1),
28P(8) and 28K(7)

67. Once a person has appealed, a management notice will not come into effect until the appeal is determined. But if the Secretary of State confirms or varies the notice it will be an offence not to give effect to it and to carry out the work. It would also be an offence if the person served with the management notice takes no action as a result of it, or does not fully comply with it. In such cases, English Nature may enter the land and carry out the work, and may charge the owner or occupier any costs incurred in carrying out the work (for example, through the use of contractors). Where it does so, the amount that it recovers should exclude any amount that it has offered to the land manager to carry out the work under a management agreement.

Schedule 11
Countryside and
Rights of Way
Act 2000

68. Paragraph 8 of Schedule 11 to the 2000 Act provides that, in general, notices of intent to carry out works, and consents which English Nature had given under the 1981 Act before 30 January 2001, shall have effect as if given under the new Section 28E. However, special provisions in paragraph 9 of Schedule 11 apply where a notice of intent to carry out work was given more than four months before 30 January 2001, and the works are not in accordance with a management agreement; or have not been given written consent by English Nature; or are not the subject of an agreement between English Nature and the owner/occupier to disapply the condition of four months' notice under old Section 28(6)(c) of the 1981 Act. In these circumstances, provided the operation concerned was not the subject of a notice of intent under a Nature Conservation Order (NCO) applying to the land before 30 January 2001 (in which case different expiry periods may apply) there is no prohibition on carrying out the operations specified in the notice of intent.

69. However, English Nature has powers in these circumstances to issue a 'stop notice' to owners or occupiers. The operations specified in the stop notice may not be carried out unless English Nature has given its consent or the works are carried out in accordance with a management agreement, management scheme or management notice. There is a right of appeal to the Secretary of State against a stop notice, but the notice remains in force until the appeal is determined. Appeal Regulations will set

⁷ Copies will be available from the defra website (www.defra.gov.uk) and local English Nature offices (*Annex D* provides contact details).

out the detailed procedures that apply⁸. A Guide to appeals against decisions made by English Nature about management of SSSIs will accompany these Regulations and set out the detailed procedures involved to assist any person wishing to make an appeal⁹. English Nature is required to make a payment in accordance with the *Guidelines on Management Agreement Payments and Other Related Matters*¹⁰ to any owner or occupier who suffers loss as a result of a stop notice. If the notified works have not begun before 30 January 2004, they cannot be undertaken without a further application for consent being made and approved.

Acquisition of land, including Compulsory Purchase

70. English Nature may acquire land by agreement and may provide grants for other bodies to acquire land, or interests in land, where this is the best way to maintain or, where possible, enhance the special interests. This may be useful where it is difficult or unreasonably expensive for private owners to retain and manage the land. It may include purchase and leaseback arrangements, where these would more effectively deliver conservation management, and purchase of tenancies or grazing rights.

Section 15A
Countryside Act
1968; sections
28N and 67 of
the 1981 Act

71. The Countryside and Rights of Way Act amended the 1981 Act to provide enhanced powers for English Nature to acquire land compulsorily. English Nature may use these powers where it is satisfied that it cannot conclude a management agreement for an SSSI on reasonable terms, or where it is satisfied the terms of an existing agreement have been breached in such a way that the features on the land are not being conserved or managed satisfactorily. It may use its powers in relation to land within an SSSI, or land outside an SSSI if activities on that land are affecting the SSSI. The powers of compulsory acquisition include the ability to purchase an interest held in Crown land, with the consent of the appropriate authority.

72. While Parliament has provided this power to help ensure that SSSIs are properly conserved, the Secretary of State expects that it will be used rarely. English Nature should first demonstrate that it has explored all other options to secure positive management, including offering to purchase land voluntarily, and that these are inappropriate or have clearly failed. **There may nevertheless be circumstances in which compulsory purchase of land may prove to be the only means of securing conservation of the special interest.**

⁸ Regulations, intended to be called "The Wildlife and Countryside (Sites of Special Scientific Interest) (Appeals) (England) Regulations 2003", will be made and published shortly. Copies will be available electronically on the HMSO website (www.hmso.gov.uk) and defra website (www.defra.gov.uk) or in printed form from the Stationery Office (telephone 0870 600 522).

⁹ Copies will be available from the defra website (www.defra.gov.uk) and local English Nature offices (*Annex D* provides contact details).

¹⁰ Copies are available from Defra publications, Admail 6000, London SW1A 2XX (email defra@iforcegroup.com)

The obligations of public bodies

Section 28G

73. The new legislation imposes a duty on “public bodies” in exercising their statutory functions to take reasonable steps, consistent with the proper exercise of those functions, to further the conservation and enhancement of the special features on an SSSI. “Public bodies”, referred to in the Act as *section 28G authorities*, are defined very broadly, but specifically include the Secretary of State, Government Departments and agencies, local authorities and statutory undertakers (whether in the public sector, or a privatised utility), and other officers appointed by the Crown. The duty applies wherever public bodies are exercising their functions. It covers every stage from the formulation of plans to the carrying out of operations. **The Secretary of State expects that all public bodies will take full account of their responsibilities under this duty whenever their actions may affect SSSIs. English Nature will ensure it has provided public bodies with notifications regarding all SSSIs so that they can make their own fully informed assessments.**

Operations carried out by public bodies

Section 28H
Section 28H(1)
– (3)

74. Where public bodies nevertheless propose carrying out operations in the exercise of their functions that are likely to damage the special interest of an SSSI, they must give English Nature written notice. This applies equally to works that are outside an SSSI, but likely to affect it. English Nature will indicate within 28 days whether or not it assents to the operations (either with or without conditions, which may include the need to obtain a licence if there is an impact on protected species). If it does not comment within 28 days it should be assumed that English Nature has declined its assent. **The Secretary of State expects public bodies to consider fully the impact of proposed activities. English Nature will respond to consultations promptly and give public bodies clear advice as to the impact of their proposals and any steps that might mitigate them.**

Section 28H (4)
and (5)

75. Where English Nature refuses assent, or where the public body considers that any conditions that English Nature proposes are not acceptable, the public body may nevertheless decide that it has to proceed with the works. If so it must give English Nature not less than 28 days notice of the start of the operation, explaining how it has taken into account any advice which English Nature may have given. **All public bodies, in deciding to act contrary to English Nature’s advice, should clearly demonstrate how they have weighed the balance between differing interests, including the special interest of the SSSIs.** They should also demonstrate how they have taken into account alternative methods of carrying out the operations in order to minimise impact. English Nature may, in exceptional cases and where it remains seriously concerned about the significance of the damage, consider what alternative options are available to it, including references to the Secretary

of State. This might ultimately include application for judicial review of the body's decision to proceed.

Section 28H(6)

76. Public bodies are in any case legally obliged, in carrying out any operations, to cause as little damage as is reasonably practicable, and to restore the site to its former condition, where this is practicable, if the operations do cause damage.

77. The Secretary of State expects public bodies to apply strict tests when carrying out functions within or affecting SSSIs. In all cases they should seek to ensure that adverse effects are exceptional. They are encouraged to consult English Nature at the earliest opportunity over proposals on or affecting SSSIs, and to take full account of English Nature's assessment of potential impact.

S28E

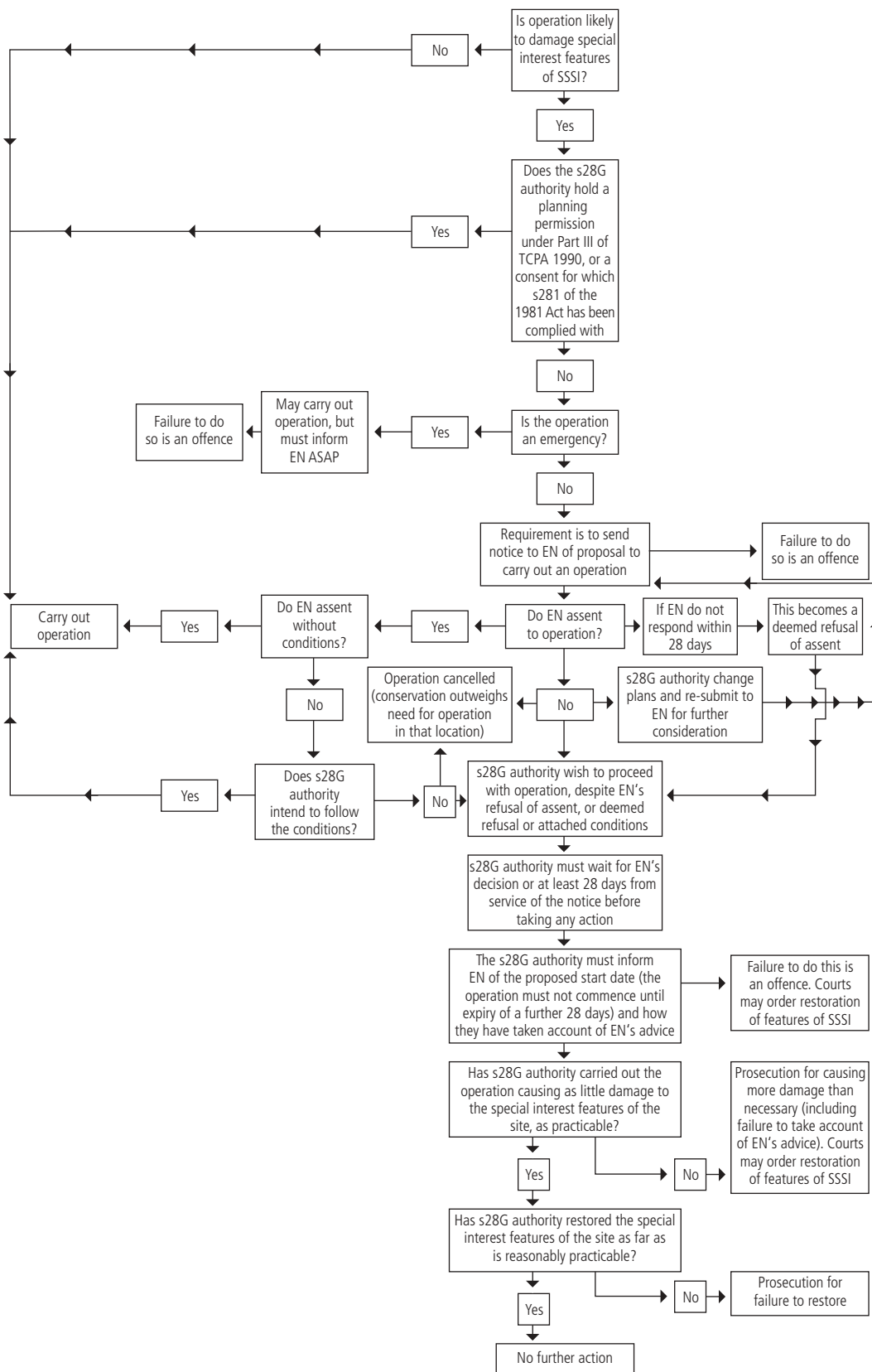
78. Where a public body is an owner or occupier of an SSSI and is seeking to carry out operations which are not primarily related to its statutory functions (for example where a statutory undertaker is carrying out agricultural activities on land which it owns) it will be covered by the provisions applying to owners and occupiers of land. This includes the need to apply for consent for operations likely to damage the special interest, and to respond to management notices. **Public bodies will be expected to adopt the highest standards in relation to SSSIs that they own, in order to secure positive management of the SSSI in accordance with an agreed management scheme.**

Section 28H(6)
and section
28P(4)(b)

79. Utilities and others may have rights to enter land in particular circumstances. They may also need to deal with emergencies where it would be impracticable to follow the normal procedure. Where land is notified as SSSI they should take immediate steps to tell English Nature about works they are undertaking, or have undertaken (preferably within 24 hours of entering the land) and should make sure that the work causes no damage, or as little damage to the special features as is reasonably practicable. Public bodies will be expected at all times to have full regard to their duties, to further the conservation and enhancement of SSSIs, and to ensure that essential operations on SSSIs are carried out so as to minimise any adverse effect on the special interest.

80. In relation to the Government estate, Government Departments, their agencies, and non-Departmental Public Bodies have agreed a Biodiversity Checklist. Amongst other things, this encourages them to consider making Departmental statements of commitment, especially to conserve SSSIs on the estate, and to develop management regimes that maintain or enhance its biodiversity. **English Nature will be encouraged to work proactively with Departments to identify appropriate management regimes.**

Section 28H – Authority carrying out operations



Consents granted by public bodies (s28I)

Section 28I

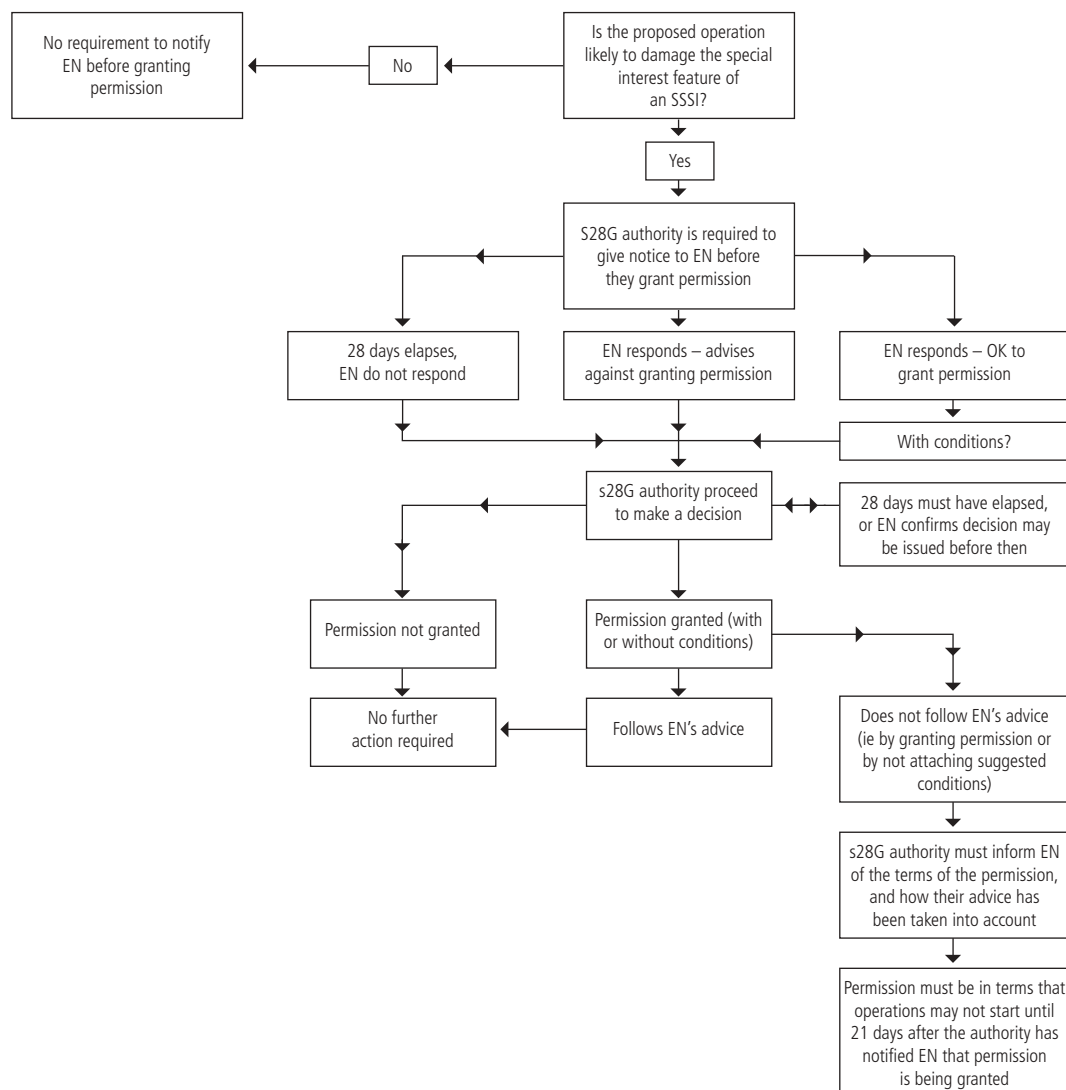
81. A public body which has powers to grant permissions, including authorisations or consents, for other parties to carry out operations (whether on or outside of an SSSI) must, where these are likely to damage the special interest features of an SSSI, give English Nature not less than 28 days notice in writing before granting a permission. (If English Nature has not responded within 28 days it may be assumed that it has no comments to make.) If, having received and considered English Nature's views it nevertheless intends to grant permission against this advice, it must notify English Nature and the permission must be deferred for 21 days before operations may commence. We are aware the timetable for consultation in s28I is inconsistent with a number of statutory review periods for consulting and issuing consents. Whilst we aim to harmonise procedures in due course, the procedures in s28I now take precedence where the special interest features of an SSSI are likely to be damaged.

82. Wherever it is consulted on an application or proposal, English Nature is expected to consider very carefully the effect on the features for which the site is notified and to recommend ways of carrying out the operation that would minimise any negative effects. **English Nature is encouraged to liaise with individual utilities and undertakers, so that it can advise in advance on the carrying out of general operations which the utilities will regularly expect to give consent for (under s28I) or to undertake themselves (under s28H) and may where appropriate indicate its assent in advance. English Nature should also consider whether such agreements should be subject to wider consultation.**

83. There will be public bodies that need to enter into regular contact with English Nature because of the scale of their landholdings or the frequency with which they may issue consents that can affect SSSIs. **In these cases, the Secretary of State encourages discussion and agreement on Memoranda of Understanding between English Nature and individual public bodies. Memoranda can help identify constructive working methods and foster closer relationships, and ensure appropriate management of wildlife and natural features on those sites for which public bodies are directly responsible.**

Section 28I – Authority granting permission to carry out operations

Note: permission includes any authorisation, consent or any other type of permission.



International sites

84. Different considerations apply to sites of international significance, in particular SACs, SPAs and Ramsar sites (see paragraph 2). Although such sites will be SSSIs the different considerations set out in the Conservation (Natural Habitats &c.) Regulations (the Habitats Regulations) will apply. (The Ramsar Policy Statement issued by DETR in May 2000 indicated that as a matter of policy, Ramsar sites in England would also be afforded the same protection as SACs and SPAs.)

SI 1994 No 2716

Regs 48 – 53 of
the Conservation
(Natural
Habitats, &c.)
Regulations 1994

85. Where a public body is asked to consider any activity or development requiring its consent which is likely to have a significant effect on these sites, it must assess whether the project will adversely affect the 'integrity' of that site as measured by its 'conservation objectives'. English Nature has produced Guidance Notes on the Habitats Regulations, which will help a public body in making assessments but in each case it should nevertheless seek English Nature's views. It must assess whether a project is likely to significantly harm the site's ecological structure and function, across its whole area, or the habitats and species that make it internationally important. It must also consider the likely effects of the project not just in isolation, but also in combination with other projects that may affect the site.

86. If it is not able to satisfy itself that the 'integrity' of the site will not be harmed, the public body must consider all reasonable alternatives, including modifications to the proposed scheme, before taking any decision to allow it. Where such considerations cannot reduce the effect to a level that does not affect the site's integrity, a decision to allow the scheme may only be taken for imperative reasons of over-riding public interest, where there is no alternative. There is no time limit to these considerations. Importantly, where such a decision is taken, measures must be put in place to compensate for the damage caused to the site network.

87. The need to consider plans and projects in this way extends beyond new applications to those consents already given but not actioned or completed. Public bodies must review such extant consents as soon as reasonably possible. Where extant permissions are affected, the Government has indicated that it would consider reimbursing the public body where the consequent costs were high and the action was the minimum necessary.

Section 28P

Offences and penalties

Section 28P
(1) – (5)

88. The penalties for damaging SSSIs, which are a nationally important part of our natural heritage, have been revised. Where, without reasonable excuse, an owner or occupier carries out operations listed on the SSSI notification as likely to damage the special interest without notifying English Nature; or having given notice, proceeds with works where English Nature has refused consent or has not given written consent; or fails to comply with conditions on a consent, he or she may be liable to a fine not exceeding £20,000 in the Magistrate's Court, or to an unlimited fine in the Crown Court. A public body which fails to notify English Nature before carrying out damaging works (including damage to an SSSI as a result of operations outside of its boundaries) also commits an offence and may be subject to the same penalty.

89. It would be a reasonable excuse under the Act if the owner, occupier, or public body, were able to show that the works were carried out under a valid planning permission; or under a consent issued by a public body following the requirements of the Act; or under the terms of a management agreement, or in accordance with a management scheme; or that they were necessary as an emergency measure. **English Nature is encouraged to liaise with other bodies that may reach voluntary agreements on activities on SSSIs (for example under land management schemes) and particularly to ensure there is no misunderstanding about the activities that may proceed.**

Section 28P(6)

90. It is a specific offence, subject to the same maximum penalties, for any person intentionally or recklessly to damage or destroy a special interest feature of a SSSI, or to disturb fauna for which the site was notified, provided he or she knew that what was damaged, disturbed or destroyed lay within the SSSI. It should also be noted that, within SSSIs, just as outside them, under the species provisions of the 1981 Act anyone carrying out works which result in the killing or taking of a wild bird or taking an egg, killing or taking any wild animal or picking, uprooting or destroying a protected wild plant may be liable to imprisonment for a term not exceeding six months, or a fine not exceeding £5,000, or both.

Section 1, 9
and 13

Section 28R

91. English Nature may make byelaws for the protection of all or part of an SSSI and an offence on summary conviction may carry a fine of up to level 2 on the standard scale (currently £500) (see paragraphs 59 and 60).

Section 31

92. Where either a person or a public body is found guilty of an offence of damaging an SSSI (including damage caused to the SSSI by activities taking place outside of the site) the Courts may make an order requiring the restoration of the land to its former condition.

Section 28P(8)

93. Persons served with a management notice must comply with the terms of the notice and carry out the work; if they do not they will be liable to prosecution, and subject to a fine not exceeding the statutory maximum (currently £5,000) or on indictment an unlimited fine.

Section 28Q(4)

94. Any owner of land within an SSSI who fails, without reasonable excuse, to notify English Nature on disposing of any of their interest in the land, or upon becoming aware that there is an additional or different occupier on the land, may be liable upon conviction in a Magistrate's Court to a fine of up to level 1 (currently £200).

Section 28P(10)

95. Proceedings for offences in relation to SSSIs may only be taken by English Nature, unless the Director of Public Prosecutions consents otherwise. **The Secretary of State expects English Nature to maintain positive relationships with owners and occupiers of SSSIs; as a result, instances of deliberate damage should be minimised, as should the need to pursue criminal prosecution and penalties.**

Where damage is occurring which is caused by persons other than owners and occupiers, English Nature should liaise closely with the landowner, and with other parties as appropriate, to negotiate and agree positive solutions, including the provision of resources for monitoring and enforcement. It will need to consider whether and how, in determining different courses of action, the conservation interest might best be served.

96. Nevertheless, in cases where people appear deliberately to ignore the protection given to nationally important sites, it is necessary and appropriate for English Nature to take enforcement action, where this is possible, and to ensure that it provides appropriate publicity for the lessons learnt from cases successfully prosecuted. In such cases and wherever practicable English Nature will be expected to press for the Courts to make an order, where a person is convicted of an offence, requiring that the land should be restored to its former condition.

97. The Secretary of State expects English Nature to develop and publicise a strategy for enforcement, including action to address issues relating to use of land by persons other than owners and occupiers. The strategy should clarify the circumstances in which it will expect to take action, and describe the steps it will take.

Powers of entry to land

Section 51 and
28K(7)(a)

98. Whilst the Secretary of State expects English Nature to proceed through consultation and negotiation with owners and occupiers of special sites, in order to give proper effect to its duties in relation to the provisions in the legislation, it also has powers of entry onto land (excluding Crown Land) at any reasonable time, for a range of different purposes.

99. These include to assess whether the land should be notified as an SSSI; to prepare a scheme for the management of the land that would conserve its special features; to assess the condition of the features on the site; and to ascertain whether an offence has been committed. It has no power to enter dwellings, although officers may enter structures on land where these are associated with features of interest, and they may also enter land to serve notices, including notification/confirmation of an SSSI. English Nature officials authorised to exercise rights of entry may take equipment or materials with them (for example, to take samples or photographs) and may use vehicles (including boats) to get onto the site. On departure they must leave the land as effectively secured against unauthorised entry as they found it. It is an offence intentionally to obstruct anyone legally exercising these powers of entry.

100. Other than where it believes damaging works are already taking place, English Nature is not expected to use these powers to enter land unless it has taken all other reasonable steps to secure

entry by agreement. English Nature should not enter land unless it has good reason for doing so, and has explained these reasons fully to the owners and occupiers of the land. English Nature will also need to give occupiers due notice (not less than 24 hours), although it will not have to do so where it believes an offence has been or is being committed. Those persons entering land will have formal written authorisation to do so, which they will produce if asked. They will be expected to enter the land with care, causing the minimum of disturbance, and to leave it appropriately secured against unauthorised entry. However, should its officials cause any damage in exercising the powers of entry, English Nature will be liable to pay compensation.

The wider public interest in SSSIs

101. SSSIs represent our finest wildlife habitats and geological sites and there is widespread public interest in safeguarding and managing them, now and for the future. Some sites are already owned and managed by voluntary conservation organisations. English Nature's Reserves Enhancement Scheme has successfully supported positive management action on such sites, involving volunteers and increasing public understanding.

102. The majority of SSSIs, however, are in private ownership, and individual owners and occupiers have been and will continue to be responsible for maintaining the conservation interest. While notification as an SSSI carries with it no requirement whatsoever to provide or to increase public access, where such land falls within mountain, moor, heath or down or is registered common land, it may be subject to a statutory right of access under the Countryside and Rights of Way Act 2000. The Countryside Agency and English Nature signed a concordat in July 2000 – *Nature Conservation and Access land: an agreement between English Nature and the Countryside Agency* – which set out how the two agencies will work together to improve access while safeguarding the nature conservation interest. **The Secretary of State commends the concordat. English Nature has had considerable experience in managing National Nature Reserves, in a way that encourages and supports access, and it should make this experience available to other bodies, including the Countryside Agency, and to individual landowners and managers.**

103. Increasing public interest in sustaining these important sites has led to requests for more information to be made available, including information on the features of interest and their condition. This could in turn stimulate further support for measures that will help ensure their continued protection and sustainable management. **English Nature should consult representative organisations about the most appropriate ways of making information more readily available, in a variety of formats. This could include information on the extent**

and location of SSSIs and (where this is not likely to lead to threats to rare or endangered species) the reasons why they are considered special. It should have full regard to issues of security and privacy.

Any information on SSSIs should avoid any suggestion that notification by itself carries with it any rights of public access.

104. English Nature should provide information on the current condition of features of interest on SSSIs in a way that helps identify trends and priorities for action. **English Nature will be expected, in particular, to report regularly to the Secretary of State on the extent to which it is contributing to the achievement of targets in relation to improving the condition of SSSIs, and the degree to which it is increasing the information available, both to the general public and to owners and occupiers of SSSIs.** *The Guidelines on Management Agreement Payments and Other Related Matters*¹¹ also indicate that English Nature will provide key information about standard management agreements, and may publish summary information on new agreements.

105. SSSIs are capable of accommodating many activities that do not conflict with the special features on them. There will be SSSIs that are already used for recreational purposes. This may, for example, include rivers and canals with a variety of recreational users, such as boating or fishing. **English Nature should liaise with owners, managers and representative bodies to ensure that a range of recreational and other activities can continue in ways that are compatible with the conservation interest.** It will be encouraged to pursue Memoranda of Understanding with representative bodies, and to develop individual management plans, particularly for heavily used sites. It should ensure that the importance of sites, for example as a recreational resource and as part of the nation's wildlife or geological heritage, is properly recognised, and that appropriate management is in place.

106. Close liaison between English Nature, local councils and other interested organisations and individuals, including full consultation on proposed action, can help resolve any problems that may arise. **English Nature should acknowledge and publicise the value of sites to local communities and seek to increase understanding and awareness of their conservation importance.** English Nature will also need to take account, where appropriate, of the cultural, archaeological or industrial heritage on individual sites, and to work with other public and private bodies, and individuals, towards a 'sustainable' approach which protects all of the valued public interests on a particular site.

¹¹ Copies are available from Defra publications, Admail 6000, London SW1A 2XX (email defra@iforcegroup.com)

Annex A: Legislative background

The National Parks and Access to the Countryside Act 1949 established a number of key concepts in connection with the preservation of flora, fauna or geological or physiographical features of special interest. It gave to the Nature Conservancy (NC) express powers to enter into agreements with every owner, lessee or occupier of any land to be managed as a nature reserve. It also gave it authority to acquire land compulsorily, to be managed as a nature reserve, and provided powers to make byelaws on nature reserves; and it charged the NC with the duty to inform local planning authorities of areas of special scientific interest.

The first of these areas of special scientific interest – generally referred to as Sites of Special Scientific Interest (SSSIs) – were therefore notified in the 1950s, but only to local planning authorities. The Countryside Act 1968 introduced powers for the NC to enter into management agreements with owners, lessees or occupiers of such land, and the Nature Conservancy Council (NCC) was set up in 1973: but it was not until the 1980s that significant legislative changes were made. These reflected and reinforced increasing dialogue between owners and occupiers and the NCC about the management of key sites in the conservation interest.

The changes introduced in the Wildlife and Countryside Act 1981 were primarily in response to changing land management practices in agricultural and forestry sectors which largely fell outside planning control, and were at odds with the conservation of semi-natural habitats and species. The Act took forward the concept of special sites, but provided greater protection through notification to all owners and occupiers of the special features of these sites. (Administrative arrangements helped inform a wide range of statutory bodies, utilities and other interested parties.) It placed a requirement on managers of these sites to notify the NCC before carrying out a range of specified management operations. This helped create a direct relationship between the land manager and the conservation agency. More than 4000 SSSIs were notified in England, using these powers.

Environmental
Protection Act
1990

The NCC was reorganised in 1991 and separate country councils established – the Countryside Council for Wales, the Nature Conservancy Council for England, and Scottish Natural Heritage – and a Joint Committee established to co-ordinate and deliver functions for Great Britain as a whole, and internationally. The Joint Nature Conservation Committee – JNCC – retains responsibility for the Guidelines for the selection of SSSIs, produced and published by the NCC in 1989.

Amendments to the 1981 Act in the Countryside and Rights of Way Act 2000, described above, build on and improve the powers of the country councils in England and Wales.

Annex B: Glossary of Statutory references

The provisions relating to protection of SSSIs are set out in the Wildlife and Countryside Act 1981. This was amended by the Countryside and Rights of Way Act 2000 which inserted new sections 28, 28A-28R into the 1981 Act, and amended others.

Section 28 clarifies the procedures for **notifying SSSIs**, improving the information made available to land managers (particularly about the way in which the features might best be managed) and to the public.

Sections 28A-C set out procedures for **variation** of boundaries and /or protected features of SSSIs.

Section 28D sets out procedures for **denotification** of SSSIs where the special interest has been lost.

Section 28E: substantially strengthens the powers of the conservation agencies – to **refuse consent** for damaging activities (and to withdraw consents already given); **Section 28F** gives rights of appeal.

Sections 28G-I place duties on **public bodies** to further the conservation and enhancement of SSSIs, both in carrying out operations and in exercising decision-making functions.

Section 28 J provides a structured approach to discussions about management, including the preparation and confirmation of management schemes.

Section 28K allows the conservation agencies to serve management **notices requiring action to be taken**, e.g. to combat neglect; and **s28L** gives rights of appeal against a notice.

Section 28M sets out circumstances where payments may be made: a payment **must** be made where English Nature withdraw or modify a consent and the owner or occupier of the land suffers loss. English Nature **may** also make a payment to any owner or occupier of land where a management scheme under s28J is in force.

Section 28N allows English Nature to **purchase land compulsorily** (as a last resort, where that is the only way to secure the future of a site.)

Section 28P increases penalties where SSSIs are deliberately damaged. Fines of up to £20,000 in the magistrate's court and unlimited fines in the crown court; a new offence of damage by persons who are not owners/occupiers of the land; and a parallel increase in fines for damage to Limestone Pavements.

Section 28Q requires the owner of an SSSI to inform the conservation agency on disposal of any interest in the land or change of occupation.

Section 28R extends power to make **byelaws** on all SSSIs to prevent damage by third parties.

Section 31 enables the court to order restoration of an SSSI where a person or public body has been convicted of damage or destruction under section 28P.

Section 51 provides powers of entry for giving proper effect to the provisions in s28-28R.

Schedule 11 to the Countryside and Rights of Way Act 2000 sets out the transitional provisions to ensure that all existing SSSIs, notified under the 1981 Act, are taken forward into the new provisions.

Section 16 National Parks and Access to the Countryside Act 1949 allows English Nature to enter agreements with owners, lessees and occupiers of any land to secure its management as a nature reserve.

Section 15 of the Countryside Act 1968 allows English Nature to enter management agreements with owners, lessees and occupiers of any land for the purpose of conserving the flora, fauna or geological or physiographical features of an SSSI.

The Conservation (Natural Habitats &c.) Regulations 1994 (SI 1994/2716) – European sites are defined in regulation 10 of the Habitats Regulations, and include Special Areas of Conservation (SACs), candidate Special Areas of Conservation (cSACs) and Special Protection Areas (SPAs).

Annex C: Abbreviations

1949 Act – National Parks and Access to the Countryside Act 1949

1968 Act – Countryside Act 1968

1981 Act – Wildlife and Countryside Act 1981

2000 Act – Countryside and Rights of Way Act 2000

CSS – Countryside Stewardship Scheme

Defra – Department for Environment, Food and Rural Affairs

DETR – Department of Environment, Transport and the Regions (whose functions are now shared by Defra, the Office of the Deputy Prime Minister and Department for Transport)

EC Birds Directive – European Commission Council Directive on the Conservation of Wild Birds, 79/409/EEC

EC Habitats Directive – European Commission Council Directive on the Conservation of Natura Habitats and of Wild Flora and Fauna, 92/43/EEC

EIA – Environmental Impact Assessment

EIA Regulations 1999 – The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations (SI 1999 No 293)

ELMS – Environmental Land Management Schemes

ESA – Environmentally Sensitive Area Scheme

GPDO – The Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418)

GDPO – The Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419)

HFA – Hill Farming Allowance scheme

JNCC – Joint Nature Conservation Committee

NC – Nature Conservancy

NCC – Nature Conservancy Council

NCO – Nature Conservation Order

OLD – Operations Likely to Damage

PPG9 – Planning Policy Guidance note 9

SAC – Special Area of Conservation (Habitats Directive)

SPA – Special Protection Area (Birds Directive)

Secretary of State – Unless otherwise indicated, references to the Secretary of State are to the Secretary of State for Environment Food and Rural Affairs

SSSI – Site of Special Scientific Interest

WES – Wildlife Enhancement Scheme

WGS – Woodland Grant Scheme

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