

ENGLISH NATURE SSSI NOTIFICATION POLICY STATEMENT

Introduction

1. In 2003 the UK Government published a 'Code of Guidance' entitled *Sites of Special Scientific Interest: Encouraging positive partnerships* in response to changes in procedures associated with the notification, protection and management of Sites of Special Scientific Interest (SSSI) as a result of amendments to the Wildlife and Countryside Act 1981 by the Countryside and Rights of Way ('CRoW') Act 2000.
2. In addition to explaining the revisions to the legislative provisions for protecting SSSIs, the *Code of Guidance* sets out Government policy with respect to updating the procedures for notifying SSSIs, emphasises the importance attached to these sites, recognises the importance of positive partnerships and requests that information about SSSIs to be more accessible and available.
3. This SSSI Notification Policy Statement is issued to inform and demonstrate clarity of English Nature's SSSI notification policy. This statement covers sections 28 and 28A-C of the Wildlife and Countryside Act 1981, as amended*, and sets out clear standards and procedures which English Nature staff will follow. It describes the procedures we use in notifying new SSSIs, varying, amending and enlarging existing sites. It will be used by English Nature staff in conjunction with guidance on enforcement procedures issued in 2004 and guidance on the removal of an SSSI notification.

Legislation

4. The legislation relating to the notification, protection and management of SSSIs is found primarily in sections 28–32 of the Wildlife and Countryside Act 1981, as amended. In summary, with respect to the notification of sites, where English Nature is of the opinion that an area of land is of special interest by reason of its wildlife or geology, English Nature has a duty to notify that fact.
5. The notification must specify the flora, fauna or geological or physiographical features by reason of which the land is of special interest, and any operations appearing to the Council of English Nature to be likely to damage that flora or fauna or those features, together with a statement about the management of the land. In addition, the legislation also specifies to whom the notification must be made, allows for the making of representations and objections to the notification and imposes a duty on English Nature to consider these before deciding whether or not to confirm the notification (with or without modification).
6. Although the legislation protecting SSSIs has been strengthened, Government policy and English Nature practice remains based on positive partnerships, as outlined within the Code of Guidance. We will always strive to agree the positive management of SSSIs with owners and managers, and seek to resolve differences in a way that looks for jointly acceptable solutions. The enforcement provisions of the legislation will be used only where this approach fails. English Nature's rationale for enforcing the legislation can be found in our *Enforcement Policy Statement* published in 2004.

* Section 75 and Schedule 9 to the Countryside and Rights of Way Act 2000 amended the Wildlife and Countryside Act 1981.

Special interest

7. The duty to notify SSSIs arises when English Nature is of the opinion that an area of land is of special interest by reason of its flora, fauna or geological or physiographical features. This opinion is based on the exercise of specialist judgement which is informed by scientific guidelines. The *Guidelines for selection of biological SSSIs* (Nature Conservancy Council, 1989) inform decisions made about wildlife (biological) sites, and the *Geological Conservation Review* (GCR) (Joint Nature Conservation Committee, 1996) informs decisions made about geological special interest. Both the Guidelines and the GCR assist English Nature staff in the identification of sites that appear to merit notification as SSSIs and are public documents available to all interested parties. In deciding what is special, English Nature seeks to identify the most important areas for the range of habitats and geology, and the diversity of wildlife occurring naturally in England.
8. We keep the total number and extent of SSSIs under review and our judgement of what is special is informed by improvements in knowledge and understanding of the status and distribution of geology, habitats, and associated animals and plants. Increasing knowledge and the collection of data and information also enables the SSSI Selection Guidelines to be kept up to date. The GCR and the Guidelines are central to decisions on special interest. However, what is or is not special is ultimately an exercise of specialist judgement; unusual circumstances might arise which are considered to make a site special but which are not covered by the Guidelines. In those cases we will set out the scientific justification for that judgement.

SSSI selection

9. English Nature's **Area Teams** are initially responsible for identifying and proposing sites to be considered for notification as SSSIs, however in some cases, particularly those concerning geological sites, the national specialists assume this responsibility. It is usual practice for English Nature's national specialists to advise on the application of the Guidelines on a particular site. The case concerning each site is then presented to English Nature's Executive Committee who decide whether or not the site is of special interest. Sites presented to the Committee take into account habitat and species representation within the SSSI series nationally and within the Area of Search (AOS)[†], issues of improved knowledge and data quality, potential impacts from other land uses, and in prioritising cases, resources within English Nature. Sites selected for consideration will have been visited recently by an Area Team officer. In some cases, where we are aware of the possible presence of the special interest, we may need to obtain permission for access to undertake surveys to establish the extent of the interest[‡]. Where impacts are imminent and there is a threat to the integrity of a site identified as potentially of special interest there is an emergency procedure which can be used to bring a case forward for consideration.

[†] Areas of Search (AOS) are a practical framework for the selection of sites within the national range of variation in habitats and species assemblages resulting from differences in environmental factors – climate, topography, geology, soils and land-use. Within each AOS, a minimum aim will be to represent all the different habitats and species that are present by at least one – and preferably the best – example or population. In practice, administrative areas i.e. counties or vice-counties, have been adopted as the AOS for SSSI selection.

[‡] In cases where access permission is refused then we may wish to invoke powers granted under section 51 of the Wildlife and Countryside Act 1981 (as amended by section 80 of the Countryside and Rights of Way Act 2000) which allows access by English Nature to survey the site.

10. The **Executive Committee** is made up of the five English Nature directors and is chaired by the Chief Executive. One of the Committee's roles is to consider the case for the notification of SSSIs and approve the site for consultation with owners, occupiers and interested parties. In assessing the notification documents relating to each site the Committee will examine the scientific interest of the site, its context within the AOS and comparison with any other sites with the same interest features, the way the interest(s) on the site meets the SSSI Guidelines, the management required to maintain the special interest, the list of operations requiring English Nature's consent and the present condition of the site.

SSSI notification procedure

Prior to official notification of the site

11. Before the notification documents are presented to the Executive Committee, all known owners, occupiers and those interested in the potential designation will have been contacted and made aware of the proposal to notify the site and invited to discuss informally any concerns they may have. Any concerns relating to the notification of the site arising at this time will be drawn to the attention of the Committee. The Executive Committee may approve the site for notification, amend certain documents (the citation, statement of views about the management of the site or the list of operations requiring English Nature's consent), defer a decision to notify by returning the site to the Area Team for further consideration, or reject the notification of a site.

Notification of an SSSI – Public consultation – making objections and representations

12. In notifying these sites for their scientific interest English Nature is aware of the impact that notification may have on owners and occupiers and considers whether it is justified and that it is proportionate and in the public interest to provide a legislative mechanism to protect the special interest. Following the approval of a site for notification the Area Team sends all owners, occupiers, local authorities and interested parties the notification documents together with a covering letter and the *Sites of Special Scientific Interest (SSSIs) - England's special wildlife and geological sites* leaflet which explains the notification process and also provides additional information about these sites and their management. The purpose of this consultation is to inform owners and occupiers and other interested parties of the notification and to provide them with information on the scientific interest of the site, English Nature's views about the management required to maintain this interest, the extent of the site boundary and to set out the management requirements that are needed to maintain the site in favourable condition. The consultation also provides the opportunity to make objections and representations to English Nature concerning the notification.
13. The notification documents include information about the legislation under which the notification is being made, describes the special interest of the site and why it is of national importance (citation), a map of the site, the management of the special interest, and a list of operations which may damage the special interest features of the site and need English Nature's consent. They also include details of how representations and objections may be made and the closing date for responses. A second document, known as the Supporting Information, available on request from the Area Team, presents the information and data used to assess the importance of the

site, how it meets the SSSI Guidelines, the current condition of the site, and a map showing the site divided into management units.

14. Notification of the SSSI takes effect from the day that the notification documents are received and from the date that the notification letter and documents are sent out there is a statutory requirement of three months for the consultation to take place. However, we normally allow four months for the receipt of responses. All of those consulted have a legal right to make representations or objections to the notification which the Council of English Nature will consider.
15. At the time that the site is being notified the local Land Charge section of the appropriate District or local authority is also informed of the notification with a request to register the site as a Local Land Charge. An advertisement will also be placed in at least one local newspaper announcing the notification of the site and providing contact details. In addition, notices (together with a map of the site) will also be placed at prominent location(s) on the site (particularly where we are uncertain of the site tenure). The number of notices placed on the site will depend on the size of the site. We welcome contact and comments in response to both of these sources and are pleased to receive objections or representations both in favour of or opposing the notification.
16. Following receipt of responses, Area Team staff will endeavour to resolve any concerns or objections raised within the consultation period before consideration by Council for a decision on confirmation. Where no response is received we consider that those consulted have no objection or representation to make.

SSSI confirmation procedure

17. One of the key functions of the **Council of English Nature** is to consider SSSI notifications. Council will base their decision on the scientific rationale for the notification of the site, they will consider any unresolved objections and representations and will also be informed of all other matters relevant to the notification. Council is required to consider whether or not to confirm the notification under Section 28(5) of the Wildlife and Countryside Act 1981 (as amended by CRow). This means that where a notification of an SSSI has been given, the Council may within the period of nine months, beginning with the date on which the notification was served, give notice to those consulted either a) confirming the notification (with or without modifications), or b) withdrawing the notification. Failure to do either means that following expiry of the nine month period the notification will cease to have effect.
18. Meetings of Council to confirm SSSI notifications are held in open session and objectors, or their representatives, who wish to make presentations in person and listen to the discussion by Council on the determination of the site will be invited to the meeting. In confirming an SSSI Council has powers only to confirm the boundary of the site as notified, or make modifications that reduce it; they may not further extend the area or make any additions to the list of features for which the site is of special interest (the citation) or the list of operations requiring English Nature's consent that have not previously been the subject of consultation.
19. In preparation for Council to consider the confirmation of an SSSI a report is prepared by officers. This summarises the special interest of the site, how it meets the requirements of the SSSI Guidelines, addresses the substance of any representations and objections and makes recommendations concerning the notification of the site.

Copies of the key correspondence relating to the objections are also included. Invited objectors who wish to attend the Council meeting in person will be sent a copy of the report.

20. At the meeting, following presentations by English Nature officers and any objectors, Council discusses the notification and may either confirm the SSSI as notified, confirm the notification with modifications (eg the boundary, the citation, statement about the management of the site or the list of operations requiring consent), defer a decision pending resolution of any issues raised by Council and allow subsequent confirmation of the notification by delegated authority, or withdraw the notification. Council may decide in view of the scientific evidence provided by consultees that the SSSI should not be confirmed. In cases where there are no (or no unresolved) objections confirmation of the site will be by the Chair of English Nature or in some cases by the Director, Protected Areas, under delegated authority from Council.

Post confirmation

21. Once Council has made a decision to confirm the notification, or following a decision made by delegated authority after the Council meeting, the Area Team staff will inform all those consulted over the notification that the SSSI is confirmed together with anyone who has come to English Nature's attention through the consultation. This information will also include any changes or amended documents affecting the site including the boundary confirmed by Council. The Local Land Charge office is also informed of the confirmation of the notification with a request to register a charge against the land which is the subject of the notification. In cases where Council is of the opinion that the site is not of sufficient quality to confirm as an SSSI, all consultees will be notified of the formal withdrawal of the notification.

Making changes to existing SSSIs

22. The provisions introduced by the CROW Act affecting existing SSSIs were as follows:
 - a) the variation of a notification (section 28A);
 - b) the notification of additional land (section 28B); and
 - c) the enlargement of an SSSI (section 28C).
23. **Variation** allows English Nature to make changes to the citation, statement of views about the management of the site or the list of operations requiring English Nature's consent, but cannot make any changes to the extent or boundary of the site. For example, if an SSSI, originally notified for its woodland interest, was subsequently found to have a population of great crested newts that English Nature considered to be of special scientific interest, we would seek to add the newt interest to the citation (and possibly any necessary changes to the views about management and list of operations requiring consent) under this part of the legislation.
24. Inclusion of **additional land** means that any land adjacent to an existing SSSI (with the same interest as that SSSI) can be considered for addition to the original SSSI. We have taken adjacent as meaning 'very close to' but not necessarily adjoining; for example, adjacent land on the opposite side of the road to an existing SSSI. This may also involve more than one area of land with the same interest feature(s). The land identified for adding to an SSSI may also have a supporting function i.e. be required to enable/ensure that the special interest of the SSSI or the favourable condition of that interest is conserved or sustained.

25. Although **enlargement** of an SSSI appears to be very similar to the power of adding land, the difference is that in addition to allowing the site to be enlarged it also allows for new interests (which in the opinion of English Nature are of special interest) to be included within the citation (together with any necessary changes to the statement about management and the list of operations requiring consent that may be required) for the enlarged SSSI.
26. The procedures for all these actions are similar to those for the notification of new SSSIs. Providing that the Executive Committee has approved the amendments to the SSSI the consultation and confirmation procedure is undertaken in the same way and for the same duration as for new sites. The only difference in the procedure is that for the addition of land only the new owners and occupiers are consulted; this is to ensure that owners and occupiers of the existing SSSI are not unnecessarily contacted with documents which do not relate to their land. Changes to SSSIs by variation and enlargement, to include additional features beyond those for which the existing SSSIs are considered special, affect owners and occupiers in the original and enlarged areas, and as such all owners and occupiers within the site are notified.

Working with owners and occupiers

27. Once we have made contact with owners and occupiers through the notification process, it is our aim to develop a good working rapport to establish positive management of the site in the best way possible. This includes using the two notification documents, *Views about Management* and the *List of Operations Requiring English Nature's Consent* as a basis for the management of the site. In support of this we may negotiate an agreement with owners and occupiers to achieve the desired outcomes. This is a legal agreement (which may be accompanied by payment) to secure the appropriate management of the land. In some cases these agreements may include other land outside the SSSI boundary.
28. The leaflet *Sites of Special Scientific Interest (SSSIs) - England's special wildlife and geological sites* gives more information about managing SSSIs and English Nature's role, together with the responsibilities of those managing sites and the obligations of public bodies. We will also send to all owners and occupiers of land within SSSIs our quarterly magazine *Sitelines*. This is designed to keep those who own and manage land for the benefit of wildlife in touch with each other and up to date with issues which affect them, together with developing and promoting management techniques and good practice initiatives.

Other information

29. This document sets out our SSSI Notification policy statement. It is not intended to be a detailed guide to the law (please refer to the relevant legislation and get legal advice if necessary). There are details of the Wildlife and Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000 on Her Majesty's Stationery Office website at www.legislation.hmso.gov.uk
30. We have also signed up to the Cabinet Office and Local Government Association's Enforcement Concordat. This is a voluntary non-statutory code of practice which sets out what businesses and other organisations we regulate can expect in relation to our work. The Concordat is on the Cabinet Office website at www.cabinet-office.gov.uk
31. More details on the work of English Nature, including the notification of SSSIs, are available on our website www.english-nature.org.uk or from our Enquiries Service,

English Nature, Northminster House, Peterborough, PE1 1UA. We have a formal comments and complaints procedure which we use to deal with an enquiry, suggestion or complaint we receive about the way in which we have dealt with a notification case or any other area of our work. Details of these procedures are also on our website.

English Nature
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