



Byelaws for Sites of Special Scientific Interest (SSSIs) in England

**A summary of the response to a
public consultation held between
27 June 2018 and 22 August 2018**

June 2020

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Introduction

Between 27 June – 22 August 2018 Natural England publically invited views on its proposed approach to considering the use of its existing SSSI byelaw-making powers provided by Section 28R of the 1981 Wildlife and Countryside Act (as amended by the Countryside and Rights of Way Act 2000).

These existing byelaw-making powers are to be used specifically for the protection of Sites of Special Scientific Interest ('SSSIs') in England. Sites of Special Scientific Interest (SSSIs) are notified by Natural England as part of its statutory functions as places specially protected by law in order to conserve their nationally important habitats, species and geology features. SSSIs are chosen in accordance with these published [Selection Guidelines](#).

As part of its ongoing work to deliver better and proportionate regulation to benefit the natural environment, Natural England is seeking to improve its capability to exercise its existing SSSI byelaw-making powers, where this might be considered an appropriate and necessary action. This will maximize the flexibility Natural England has to protect the special wildlife of these special and important places.

This report summarises the responses received to the consultation and sets out Natural England's proposed course of action.

1. Background

To help to develop an approach to making greater use of SSSI byelaws where appropriate, Natural England consulted on;

- a set of proposed Operational Principles which would guide Natural England's approach to considering when and how it might recommend to the Secretary of State that a SSSI byelaw is made
- a set of Model SSSI byelaws which would provide a standard format and content for any individual SSSI byelaws, and,
- a call for views as to how, should a SSSI byelaw be made, Natural England can help people become aware of it and comply with it in order to ensure the byelaw is effective and helps to protect the SSSI.

How the consultation was run

The consultation ran from 22 June 2018 to 27 August 2018 and produced 78 individual responses to Natural England. The consultation can be found here at <https://consult.defra.gov.uk/natural-england/byelaws-for-sssis/>

Before and during the consultation period Natural England contacted and alerted representative bodies from a range of relevant sectors, many of whom then promoted the consultation to their members and/or responded on behalf of members.

The consultation was also widely promoted online, for example on the [ENDS Report](#) and the [Chartered Institute of Ecology and Environmental Management](#) websites and via Natural England's social media account.

2. Summary

The proposal on how Natural England might use its SSSI byelaw-making powers attracted a total of 78 responses during the consultation; 49 responses from national or local organisations (see list at Annex 1) and 29 from individuals.

Generally, there was widespread support (from 85% of all respondents) for the overall objective to use SSSI byelaws for the specific purpose of protecting vulnerable SSSIs.

Nearly 94% of respondents expressed general support for the draft Operational Principles and 87% were generally supportive of the scope of the proposed Model SSSI Byelaws. Very helpfully, a number of respondents qualified their support with more specific comments on how the Operational Principles could be further improved and how the scope and nature of the draft Model SSSI Byelaws could be further improved by identifying omissions, areas that would benefit from clarification and opportunities for improvement.

A number of respondents emphasised the need for, and the benefits of, consulting with a

wide range of both local and national stakeholders and user groups over any individual SSSI byelaw proposals.

A number of respondents highlighted the need to ensure that SSSI byelaws, if made, can be effective and be properly enforced to achieve their purpose.

We received a total of 37 specific responses to Question 3. There was an overwhelmingly positive response to this call for ideas and evidence about how Natural England could encourage compliance with a byelaw. Ideas and suggestions ranged from the traditional (using signage on a site, engaging with the local community) to the more novel (use of QR codes and mobile phone alerts).

3. Analysis of the responses

The consultation posed three questions:

3.1 Question 1. *Do you agree with the proposed Operational Principles in Annex 1? If not, please tell us how these could be improved, and why.*

This related to ten guiding principles which aim to inform the consideration of when and how NE would recommend to the Secretary of State that a SSSI byelaw is necessary. These principles would be published on GOV.UK.

These proposed principles sought to take into account Natural England's general purpose set out in the Natural Environment and Rural Communities Act 2006, and to align with Natural England's previously-published Compliance and Enforcement Position. The development of these proposed principles had been informed by the approaches published by other byelaw-making public bodies, such as [the Marine Management Organisation](#), to ensure there is general consistency of approach amongst public bodies in England on the use of byelaws.

A significant majority of respondents welcomed and supported, in principle, the transparency and application of such principles to guide Natural England's use of its byelaw-making powers as a further means of protecting SSSIs. A number of responses from other regulators (for example, the Police, and Inshore Fisheries and Conservation Authorities) strongly welcomed Natural England's approach, highlighting that this was potentially a useful and valuable additional contribution to tackling and deterring wildlife crime and one which offered new opportunities for joint and partnership working with them over the protection of individual SSSIs. Most respondents felt that the proposed approach set out in the Principles was reasonable, suitably targeted and proportionate in line with good regulatory practice.

A few respondents highlighted the importance of byelaws being underpinned by the statutory requirements placed upon Natural England and suggested that Principle 1, whilst citing a site's conservation objectives and Natural England's current operational strategy, should helpfully reassert this by more direct reference to Natural England's statutory duty towards SSSIs (as referred to by the Consultation Document at paragraph 2.4).

A number of respondents suggested that, should any individual SSSI byelaws be consulted

over, there should be further commitment given to the inclusion of national or regional bodies or organisations with interests in the specified features of a SSSI, in addition to local stakeholders.

A number of respondents welcomed Natural England's commitment in Principle 9 that SSSI byelaws would not normally interfere with the exercise by of the lawful use of public rights of way and open access land, but sought further clarification as whether this principle would also apply in respect of section 193 of the Law of Property Act 1925 lawful rights for air and exercise, and access rights to commons under the Commons Act 1899.

A few respondents suggested that Natural England could be clearer regarding its commitment to the review of any byelaws it makes (principle 10) and that we could usefully extend the scope of measures that we would seek to avoid unnecessary duplication with (principle 7). One respondent suggested that Principle 3 did not adequately explain the level of evidence that will be required to trigger a byelaw. Another respondent suggested that Principle 8, in referring to Natural England's general purpose, should recognise the full range of obligations that form part of its general purpose as set out at Section 2 of the Natural Environment and Rural Communities Act 2006.

Those respondents who didn't generally support the principles identified a number of concerns. Some felt that the approach represented an unwelcome increase in Natural England's regulatory powers and were concerned that SSSI byelaws would impose yet another set of rules and 'over-regulation'. In particular, concern was expressed that owners and occupiers of SSSI land would be unfairly restricted in carrying out legitimate management and other activity should a byelaw come into force on their SSSI land. Some respondents were generally sceptical in principle about the value of the approach, querying the likely effectiveness of using SSSI byelaws and suggesting that Natural England's capability to effectively resource their enforcement would be too significantly limited.

One respondent pointed out that their responses to previous consultations had highlighted the possible causes and impacts of disturbance, in particular, is an area of active debate and that further investigation is needed to clarify the course of action required before the need for applicable byelaws has been demonstrated.

A number of respondents suggested that the Operational Principles should make it clear that the starting point should be no byelaws and that only the most relevant byelaw should be selected. Additional 'catch-all' byelaws should not be included 'as standard' and the least restrictive option to address the underlying effects on the SSSI should be adopted. They also recommended that Natural England seeks the early advice and input of its own England's access and recreation specialists where SSSI byelaws were being proposed that might curtail these activities.

One respondent felt that there was some inconsistency and conflict that needed to be addressed between the draft operational principles and its statutory duties, its Compliance and Enforcement Position and elements of the Regulator's Code. It suggested that Natural England's main purpose is not specifically qualified by any requirement to balance the aim of ensuring '*that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development*' against other interests. The same respondent also considered that the draft principles 3

and 4 seemed to introduce significant hurdles to immediate enforcement action by requiring NE to adopt a voluntary approach first, and only to resort to a regulatory measure, with byelaws as a last resort, where voluntary measures have been shown to have failed or shown to be likely to fail. This approach, and the requirement in principle 5 to 'carry out an early and thorough consultation with relevant landowners, land occupiers, local communities and other stakeholders', would also, it was suggested, significantly delay immediate enforcement action. In addition, it argued that the approach suggested by principles 3 and 4 as to the choice of intervention does not appear to allow for any risk-based approach to choosing the most appropriate type of intervention in the terms set out in the Regulator's Code.

3.2 Question 2. Do you agree with the scope of the Model SSSI Byelaws in Annex 2? If not, please tell us how these could be improved, and why.

The proposed scope of SSSI byelaws have been based on, and adapted from, Defra's Model Byelaws for Local Nature Reserves (which remain unaffected by this consultation and should continue to be used by local authorities for this purpose). The draft Model SSSI byelaws have been tailored to recognise the greater statutory protection afforded to SSSIs as regards their special interest features, and the different circumstances in which SSSI byelaws would be used.

Overall, respondents felt the proposed scope and nature set out in the draft Model SSSI Byelaws was reasonable and would provide a suitable basic framework for any SSSI byelaws that may be proposed by Natural England in future. There was broad agreement amongst the respondents that the proposed model SSSI byelaws would cover the wide range of activities that might foreseeably take place on SSSI land so as to cater for the full range of situations that might arise in the future.

A number of respondents made suggestions about how they could be improved. The wording of draft byelaws 2.10 – 2.14 attracted advice as to how to make the SSSI byelaws relating to the access of a site by dogs better aligned with other legislative provisions and recommended best practice guidance.

The inclusion of SSSI byelaws allowing the prospect of regulating shooting and the use of firearms also attracted comment from a number of respondents. One respondent suggested that these elements should be removed from the byelaws as they must be, by definition, activities that, if carried out, would already be unlawful and subject to existing legislative provision. The same respondent pointed out that consents arising from notices of intent that were submitted under the Wildlife and Countryside Act prior to the amendments to the SSSI legislation brought in by the Countryside and Rights of Way Act 2000 were missing from byelaw 5d, and that the subject of financial compensation (applicable in circumstances where the exercise of any right vested in a person is prevented by a byelaw coming in to operation) had also been omitted.

A general concern raised by a number of respondents was the risk that all of the draft byelaws in the consultation document could potentially form part of issued byelaws and recommended that it could be made clearer that only those specific byelaws necessary for the individual site would be applied.

3.3 Question 3. What additional practical measures do you think Natural England could develop or consider that could help people comply with any byelaws designed to ensure the special features of England's SSSIs are protected?

A number of respondents addressed this question. Below is a summary of the suggestions received about the methods they could potentially be used to help people comply with any Byelaws that may be made in the future;

Use of signage to help people comply with the byelaws	Add QR Codes on to signs
	Use symbols and pictures alongside plain English advice
	Don't use "please" on signs
	Avoid wording that has a wide interpretation (e.g. 'close control' and 'at heel')
	Work closely with local managers and/or partnerships (where they exist) to ensure appropriate signage is maintained
	Display information at local community and transport hubs e.g. libraries, public notice boards, local train stations
	Develop a nationally-recognised signage system for SSSIs
	Include practical advice on recommended routes and/or alternative areas

Use of digital/social media to help people comply with the byelaws	Use of QR codes on signs
	Proximity marketing messages - receipt of a mobile phone message at access points and/or on entry to a site
	'Pop-up' information on mapping services eg Ordnance Survey
	Make details and scope of any byelaws available on the MAGIC
	Have MAGIC or Gov.uk links at the top of a Google search of the SSSI site name
	Facebook pages for each site
	Articles on partner agency websites
	Use of Twitter

Use of other media to help people comply with the byelaws	Use articles in local newspapers (not just notices/entries in the legal columns) and flyers in local shops
	Publish regular (annual) reminders about the byelaws

Partner/ Stakeholder engagement to help people	Work with local user groups to get tone of messages right
	Establish Friends of/local community groups to foster shared ownership
	Local programmes of education about SSSIs, why a site has been designated as such and the benefits of protecting it. Target any key user groups e.g. regular dog walkers, ramblers

comply with the byelaws	Use Local Access Forums to disseminate new byelaw info to organisations such as the Ramblers and Open Spaces Society
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4. Summary of Natural England's response

4.1 In light of the responses received, a number of amendments have been made to the draft operational principles document. We have;

- clarified Principle 1 by adding a clearer reference to Natural England's specific duty given in section 28G of the 1981 Wildlife and Countryside Act (as amended) to further the conservation and enhancement of its features of special scientific interest, and by reflecting Natural England's latest [aims and objectives](#).
- clarified Principle 2 that our approach to using SSSI byelaws will follow the general principles set out in our published Compliance and Enforcement Position.
- expanded Principle 7 with a reference to other legal restrictions in recognition that there may be other regulatory measures already in force (such as Public Space Protection Orders and land covenants for example) that SSSI byelaws would not want to conflict with if they were already addressing the same problematic activity.
- clarified the wording of Principle 8 to recognise that whilst Natural England has a general statutory purpose and broad remit, it also has a very specific duty towards SSSIs that will require it to take the necessary action (such as using SSSI byelaws) where it has to, albeit after careful consideration of its wider general purpose.
- clarified Principle 9 to refer to 'the lawful use of public rights of way and access', recognising that section 20(2) of the 1949 Act is limited to public rights of way and that a byelaw should not interfere with the exercise of any rights vested in a person without an entitlement to financial compensation.
- amended Principle 10 to give a clearer commitment to affirming, modifying or revoking SSSI byelaws as necessary and following stakeholder consultation and further approval from the Secretary of State.

4.2 In light of the responses received, a number of amendments have been made to the draft Model SSSI byelaws document. We have:

- clarified the terms 'dog', 'features of special scientific interest' and 'public rights of way' in Section 1 ready for further application to the byelaws listed in Section 3.
- brought forward the section on exemptions from Section 5 to Section 2 to make it more immediately clear on first reading the SSSI byelaws as to who they would not apply to.
- clarified in 2(a)(i) that the term 'occupier' includes commoners and holders of sporting rights

- extended 2(b) to also exempt from SSSI byelaws those statutory bodies undertaking their functions in an emergency situation
- expanded 2(c) to also exempt from SSSI byelaws the full range of emergency services
- expanded 2(d)(i) to also exempt from SSSI byelaws persons who may hold a right, given prior to 1 February 2001, to carry out an operation specified in the notification of a SSSI in the circumstances specified in subsection 28(6)(c) of the Wildlife and Countryside Act 1981
- further clarified that in drafting SSSI byelaws only the most appropriate byelaw(s) from the byelaw menu 3.1 – 3.48 would be selected to address the underlying problem/threats to the SSSI(s). Those that were not specifically applicable would be excluded.
- amended and re-numbered a number of the individual byelaws themselves in Section 3 (see numbering in the revised SSSI Model Byelaws document); we have;
 - added to various byelaws the term ‘that is or is part of a feature of special scientific interest’ in order to be more specific about the things that should be protected by a SSSI byelaw
 - added ‘recklessly’ (in relation to causing damage and disturbance) to byelaws 3.5, 3.6 and 3.7.
 - added ‘defacing’ (in relation to rocks and geological specimens) to byelaw 3.7
 - amended the term ‘close control’ to ‘effective control’ (in relation to dog walking) in byelaws 3.14 and 3.15 to align with the terminology already used in the Countryside Code and retained the definition of this
 - qualified byelaw 3.16 (in relation to horse riding) by adding ‘outside of the width of a public bridleway, restricted byway or byway open to all traffic’ unless that is, the byelaw relates to part of a site that is a ‘section 193 Common’ where horse riding by the public is permissible anywhere on such a common.
 - included dogs in byelaw 3.20 (in relation to entering water)
 - clarified byelaw 3.28 to exempt pedal cycling on bridleways, restricted byways and byways open to all traffic and/or surfaced routes
 - removed the reference to ‘public paved road’ from byelaw 3.34 (in relation to use of firearms) because a public place is not defined as or limited to a “public paved road”
 - added a new byelaw (3.36) to reflect that SSSI byelaws can, if required, specifically cover the shooting of birds of any description within areas of land or water surrounding or adjoining a SSSI if this is required to protect the SSSI
 - clarified byelaw 3.40 in relation to the closure of gates
 - replaced the term ‘general prohibitions’ with ‘other activities’ to avoid any misinterpretation that the byelaws listed under this heading would always be a mandatory prohibition in SSSI byelaws
- The proposed Section 4 (‘interference with duly authorized officer’) has been amended to be more specific to SSSIs and to reflect the broad nature of the activities likely to being

undertaken on them by Natural England officers.

- The proposed Explanatory Note has been improved to ensure more summary information about the SSSI byelaws is provided.

4.3 Having carefully considered a number of the general issues raised by some respondents regarding the model byelaws, we have also;

- committed to producing a bespoke 'byelaw compliance and enforcement plan' to accompany any SSSI byelaw proposal that might be made to the Secretary of State; this would consider and set out the resources needed and the practical steps to be taken by either Natural England or other relevant parties (or both) to (a) encourage people to comply with the byelaws and (b) to enforce the byelaws where necessary. This measure will provide further confidence that, should SSSI byelaws be approved, the necessary resources would be in place to support the practical application of the byelaws and to ensure they will be effective.
- further clarified that persons who already have a written consent, assent or permission given by or advised upon by Natural England which allows them to carry out or permit the operations included in the SSSI byelaws will be exempt from the requirements of those SSSI byelaws
- decided to retain the byelaw relating to firearms (3.34). This is because we consider shooting is a right linked to land ownership, occupation or permission, so that the only people who can lawfully shoot on an SSSI are its owners, occupiers or rights-holders. Section 2 of the model SSSI byelaws removes these people out of the scope of the byelaws. Similarly we consider byelaw 3.34 is not inconsistent with the Firearms Act 1968, which makes it an offence to enter onto land as a trespasser with a firearm without reasonable excuse. Instead, the model SSSI byelaw represents a further refinement of the 1968 Act because it covers people who might enter an SSSI without trespassing, for instance while on a public path.
- re-affirmed that Natural England's approach to considering the use of its SSSI byelaw-making powers would be overseen by its published Compliance and Enforcement Position. We do not consider these operational principles to be inconsistent with NE's Compliance and Enforcement Position. Where there is doubt, the Position will take precedence over these specific operational principles relating to byelaws.
- committed to the inclusion of national or regional bodies and organisations, with interests in either the specified features of a SSSI or the activities that would be regulated by the byelaws, when consulting over SSSI byelaw proposals. This would be in addition to local stakeholders.

4.4 Measures that can support compliance with a byelaw

We will as a matter of course publish information about any SSSI byelaws that might be made in a

wide variety of ways. This will range from on-site signage, notices in local newspapers and publications to information published on [MAGiC](#) (the Multi-Agency Geographic Information System) and on Natural England's pages on [GOV.UK](#).

To complement these measures, we will further explore other new ways in which we may be able to practically encourage compliance with our byelaws. The suggestions and ideas provided by respondents to this consultation will be a very useful starting point. These methods would be set out by a byelaw compliance and enforcement plan that would be applicable for the duration of that byelaw.

5. Next steps

Natural England is very grateful to all those who took the time and trouble to respond to the consultation.

Natural England has now published revised versions of its Model SSSI Byelaws and Operational Principles that include the changes identified above. These will be published for future reference on GOV.UK.

Any specific SSSI byelaws that may be proposed by Natural England in the future will be based on these operational principles and model byelaws, and will be subject to separate public consultations. If approved by the Secretary of State, such proposals would be subject to a separate and formal statutory consultation before being confirmed.

Annex 1. List of organisations responding to the consultation

Amberley Parish Council
Amphibian and Reptile Conservation
Association of Local Government Archaeological Officers
British Association for Shooting and Conservation
Bembridge Angling Club
British Caving Association
British Horse Society
British Mountaineering Council
Chalgrave Parish Council
Country Land and Business Association
Countryside Alliance
Council for the Protection of Rural England (Leicestershire)
Cumbria GeoConservation
Cycling UK
Dengie Hundred Wildfowling Club
Denham Parish Council
Eastern Inshore Fisheries & Conservation Authority
EDF Energy
EuCAN Community Interest Company
Forestry England South Forest District
Holme-next-the-Sea Parish Council
Hunton Parish Council
Joint Council of Wildfowling Clubs
Lake District National Park Authority
Lincolnshire Wildlife Trust
Littlehampton Town Council
National Association of Local Councils
National Farmers Union
National Gamekeepers' Organisation
New Forest Association / Friends of the New Forest
New Forest National Park Authority
North West Inshore Fisheries and Conservation Authority
North Yorkshire Local Access Forum
Northumberland Inshore Fisheries & Conservation Authority
Open Spaces Society
Police - Cheshire
Police - West Yorkshire
Royal Society for the Protection of Birds
South Coast Angling Club
Surrey Wildlife Trust
The Kennel Club
Thornborough Parish Council
Thyme Consultants Ltd for and on behalf of Association of UK Wildfowling Clubs

Warwickshire Wildlife Trust
Westfield Parish Council
Westwell Parish Council
Withyham Parish Council
Woodhouse Parish Council & King George's Field Charity