



A consultation on the proposed scope and application of Natural England's SSSI byelaw-making powers

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1. Introduction

- 1.1 [Natural England](#) is the government's adviser for the natural environment in England, helping to protect England's nature and landscapes for people to enjoy and for the services they provide. It is an executive non-departmental public body sponsored by the Department for Environment, Food & Rural Affairs ('Defra').
- 1.2 This consultation paper concerns Natural England's proposed approach to considering the use of its existing 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).
- 1.3 These 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 and are specially protected by law in order to conserve their wildlife or geology.
- 1.4 The ongoing protection and conservation of SSSIs, as core areas of ecological networks and resilient landscapes and seas, is central to furthering the ambitions set out in Government's [25 Year Environment Plan](#), [England's Biodiversity Strategy](#) ('biodiversity 2020') and Natural England's [Conservation Strategy](#).

2. What's the purpose of this consultation?

- 2.1 Natural England is inviting views on its proposed approach to considering the use of its SSSI byelaw-making powers.
- 2.2 As part of its ongoing work to deliver better and proportionate regulation to benefit the natural environment and to further support our collaborative approach of working with stakeholders to secure better environmental outcomes, 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.

- 2.3 Enabling the consideration of SSSI byelaws as a conservation measure will maximize the flexibility Natural England has to protect the special wildlife of these special and important places, working in partnership with their owners, occupiers and managers.
- 2.4 In discharging its duty to take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of SSSIs¹, Natural England considers that SSSI byelaws can, in certain circumstances, be a valuable and more proportionate tool which can be used flexibly to help to protect the special wildlife and geological features of SSSIs from inadvertent damage or deterioration.
- 2.5 Natural England believes that SSSI byelaws have the potential to support and back up the positive voluntary work of many landowners, site managers and local partnerships to protect and conserve SSSIs. They can help to promote the sustainable use and enjoyment of ecologically sensitive SSSIs by the general public.
- 2.6 Government's [SSSI Code of Guidance](#) (2003) first advocated the use of SSSI byelaws as a legitimate tool for site protection. This guidance also committed to a prior external consultation with stakeholders over a model set of SSSI byelaws.
- 2.7 To help us develop an approach to making use of SSSI byelaws where appropriate, Natural England is inviting views on three aspects of its proposed approach to exercising its byelaw-making powers, specifically,
- A set of proposed Operational Principles which would guide Natural England's approach to considering when and how it may 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
 - 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.
- 2.8 Please read this document in conjunction with these three accompanying documents.
- 2.9 You can find out how and when to comment in section 9 below.

3. Background to SSSI Byelaws

- 3.1 Byelaws are locally-made laws established to tackle local issues. They are commonplace in our towns and cities, the seaside and other public open spaces and are widely applied by the local authorities and the wide range of public

¹ Section 28G of the 1981 Wildlife and Countryside Act (as amended)

bodies empowered to make them. They are primarily made to deter, and where necessary to regulate, undesirable public behaviour.

- 3.2 Natural England has a long-standing statutory power to make byelaws for the protection of its nature reserves. This discretionary power is given in section 20 of the 1949 National Parks and Access to the Countryside Act ('the 1949 Act'). In 2000, the 1981 Wildlife and Countryside Act was amended by the Countryside and Rights of Way Act. One of the amendments was the introduction of section 28R, which extended these existing byelaw-making powers for the protection of SSSIs in England.
- 3.3 At that time, Defra considered these new powers to make SSSI byelaws to be an important and valuable tool which Natural England can use flexibly to address problems arising from damaging activities. Defra recommended that a set of Model SSSI Byelaws for use in these circumstances should first be developed and subject to wide consultation.
- 3.4 The Secretary of State expects Natural England to seek the views of those with an interest in the land before making any SSSI byelaws.
- 3.5 Where owners and occupiers of the land affected by a SSSI byelaw express strong opposition, the Secretary of State expects Natural England to examine their concerns sensitively, and to proceed only where there are no other practicable solutions that would protect the special interest of that site.
- 3.6 The Secretary of State also has the power to hold an inquiry, if appropriate, to hear any objections to a SSSI byelaw.

What can SSSI byelaws be used for?

- 3.7 Section 28R of the 1981 Wildlife and Countryside Act (as amended) provides that Natural England may make byelaws for the protection of a site of special scientific interest. It applies subsections (2) and (3) of section 20, and sections 106 and 107, of the 1949 Act (reading references there to 'nature reserves' as references to 'sites of special scientific interest'). This means that a SSSI byelaw;
 - a. may provide for prohibiting or restricting the entry into, or movement within SSSIs of persons, vehicles , boats and animals;
 - b. may prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description in a SSSI, the taking, destruction or disturbance of eggs of any such creature, the taking of, or interference with, vegetation of any description in a SSSI, or the doing of anything therein which will interfere with the soil or damage any object in the SSSI;
 - c. may prohibit or restrict the shooting of birds of any description within such area surrounding or adjoining a SSSI (whether the area be of land or of sea) as appears to Natural England requisite for the protection of the [SSSI];

- d. may contain provisions prohibiting the depositing of rubbish and the leaving of litter in a SSSI;
- e. may prohibit or restrict, or provide for prohibiting or restricting, the lighting of fires in a SSSI, or the doing of anything likely to cause a fire in a SSSI;
- f. may provide for the issue, on such terms and subject to such conditions as may be specified in the byelaws, of permits authorising entry into a SSSI or the doing of anything therein which would otherwise be unlawful, whether under the byelaws or otherwise;
- g. may be made so as to relate either to the whole or to any part of the SSSI or, in the case of byelaws made under paragraph (c) of this subsection, of any such surrounding or adjoining area as is mentioned in that paragraph, and may make different provisions for different parts thereof.

What can SSSI byelaws not be used for?

- 3.8 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.
- 3.9 To minimise any regulatory burden and avoid unnecessary regulatory duplication, Natural England also proposes that SSSI byelaws will not apply to those already in possession of a consent, assent, permission or licence given by Natural England or given by another statutory authority following prior consultation with Natural England.

How many SSSI byelaws has Natural England already made?

- 3.10 There are no SSSI byelaws currently in force. There are currently no live proposals to recommend to the Secretary of State that a SSSI byelaw is made. Any future proposals will be advertised on GOV.UK.
- 3.12 A number of National Nature Reserve Byelaws previously made by Natural England or its predecessor bodies are currently in force.

4. An overview of the proposed SSSI byelaw-making process

- 4.1 A case for any SSSI byelaw would be generated by a Natural England local Area Team in response to issues that may be undermining the protection of specific SSSIs. The team would be required to identify the persistent or continuing activity that is undermining or hindering the achievement of the site's conservation objectives and provide evidence that some or all of the special nature conservation features were or could be adversely affected by that activity.

- 4.2 In addition, the team would need to demonstrate that other informal or formal measures to address the issue have either been exhausted or are not feasible, and show that a thorough informal consultation with local stakeholders has been undertaken, with comments and concerns taken on board. The team will also have considered, and planned for, the prospect of enforcing the byelaw should it be approved.
- 4.3 At various stages of this process, this case would be subject to internal review and require the support of the Area Team Manager and the appropriate Chief Operating Officer. A draft proposal would also be submitted to Defra for their provisional approval.
- 4.4 Should Defra's provisional approval be given, Natural England's Board would be asked to further consider the proposal and make a formal recommendation to the Secretary of State for the Environment, Food & Rural Affairs that a SSSI byelaw is made. The decision to approve the making of a SSSI byelaw then rests with the Secretary of State.
- 4.5 Should a proposal to make a SSSI byelaw be approved by the Secretary of State, Natural England would make that byelaw by following the formal statutory procedures laid out in sections 235-238 of the 1972 Local Government Act and which is applicable to all byelaw-making bodies. These procedures include advertising the proposed byelaws, placing them on deposit and inviting representations from interested parties.
- 4.6 Following the statutory consultation period, the Secretary of State must formally confirm any SSSI byelaw that is made.
- 4.7 Once confirmed, SSSI byelaws may be amended by Natural England, though not without further ministerial approval. Where a SSSI byelaw is no longer considered necessary, it would be revoked.

5. Why does NE want to improve its ability to use byelaws to protect SSSIs?

- 5.1 Natural England considers that SSSI byelaws can, in certain circumstances, be a valuable and proportionate tool which can be used flexibly to help protect the special wildlife and geological features of SSSIs from inadvertent damage or deterioration.
- 5.2 Byelaws are a formal measure that are most suited to regulate ongoing activities and modify public behaviour in situations where a SSSI is being significantly affected by activities which are being carried out repeatedly or by a large number of people.
- 5.3 On some SSSIs, activities persistently undertaken by the general public are currently a reason for their unfavourable condition or pose a threat to their currently favourable state (see Natural England's IPENS Public Access and Disturbance [Theme Plan](#)). Such activities can include the use of off-road vehicles, lighting of fires, collection of fossils or geological specimens, the

undertaking of recreational activities, foraging for wild plants and the digging for bait. These activities typically take place without the permission of the SSSI land owner.

- 5.4 The Theme Plan advocated that the use of SSSI byelaws could, in certain circumstances, help to facilitate more sustainable public use and enjoyment of sensitive Protected Sites at levels which are more compatible with their special nature conservation qualities.
- 5.5 Natural England believes that SSSI byelaws can potentially help to deter damaging activity occurring in the first place, reducing the risk of further regulatory action being required after damage has been done. They can be a catalyst for local engagement with local managers and local communities, resolving issues of shared concern on protected sites and increasing the confidence of SSSI managers to implement the necessary conservation management of their sites.
- 5.6 Whilst it wishes to improve its capability to consider its byelaw-making powers, Natural England expects that the making of SSSI byelaws will be limited.

How would Natural England enforce SSSI byelaws?

- 5.8 Helping people to comply with a SSSI byelaw would be the primary aim. This would be carried out by Natural England working in conjunction with local landowners, partners, stakeholders and the Police depending on local circumstances.
- 5.9 We would encourage compliance in a variety of different ways suited to local circumstances. We anticipate this might initially include the on-site provision of informal advice, guidance and signage that can draw attention to the presence of the byelaws, the reasons for it and what can or cannot be done. These may be the only actions required. In some circumstances, the provision of more formal advice in the form of letters, written cautions or, as a last resort, prosecutions (civil sanctions are not currently available) may be necessary, additional steps.
- 5.10 The byelaw regime of section 28R of the 1981 Act allows for Natural England to issue permits that can authorise the holder to carry out activities that would otherwise be in breach of a byelaw. Where it is considered practical and appropriate, Natural England will consider the use of byelaw permits that can help with compliance and allow some activities to continue but at a more sustainable level.
- 5.11 Natural England is considering additional practical measures that can help people comply with any SSSI byelaws made in future to ensure the special features of England's SSSIs are protected.

6. The Consultation

Natural England is inviting views on the following;

The proposed Operational Principles

These ten guiding principles 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 aim to take into account Natural England's general purpose set out in the Natural Environment and Rural Communities Act 2006, and follow Natural England's published [Compliance and Enforcement Position](#). The development of these proposed principles have been informed by the approaches published by other byelaw-making public bodies to ensure there is consistency of approach.

Question 1.

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

The proposed Model SSSI Byelaws

The proposed SSSI byelaws are based on, and adapted from, Defra's Model Byelaws for Local Nature Reserves (which remain unaffected by this consultation and would continue to be used by local authorities for this purpose).

It is envisaged that this list of model SSSI byelaws would provide a basic framework for any SSSI byelaws that may be proposed by Natural England in future. They are designed to cover a full and 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.

Specific byelaws would be selected from this list of Model byelaws to target the specific activities and issue(s) affecting the site for which a SSSI byelaw might be required.

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.

Encouraging compliance with a SSSI byelaw

In the event of a SSSI byelaw coming into force in future, Natural England, working in conjunction with a site's stakeholders, will seek to promote compliance with it.

As a minimum, Natural England will publish details about the byelaw on GOV.UK, publish spatial information about the land subject to a SSSI byelaw on MAGIC and place signage on the site subject to the byelaw (in agreement with land owners,

occupiers and managers and using our powers to erect notices and signs on SSSI land provided by section 28S of the 1981 Wildlife and Countryside Act).

Natural England will also place a formal notice in a local newspaper and any other relevant local community publications or newsletters. All land owners, occupiers and managers would be informed directly by letter, as will the relevant Parish Councils and other local community groups known to us.

In addition to these traditional methods, Natural England is however keen to consider new or innovative approaches to making sure site users are aware of and can comply with a SSSI byelaw.

As part of this consultation, we are therefore inviting the submission of ideas and advice that can help to shape our future approach to helping people comply with any SSSI byelaws that may be made in the future.

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?

7. Cost of measures (significant additional costs or burden)

- 7.1 The future exercising of Natural England's existing byelaw-making powers on SSSIs will incur no additional costs on business or public bodies. No impact-assessments would be considered necessary.

8. Equalities

- 8.1 As a public body, Natural England shares the public sector equality duty under the Equality Act 2010 which came into force across Great Britain on 5 April 2011. While developing these proposals we have had regard to the public sector equality duty. When publishing information about any SSSI byelaws which may be made in future, we will place notices in local newspapers and local community publications to help inform sectors of the local public without computer access.

9. How and when to respond

- 9.1 Please send your consultation response by email to Natural England at byelaws@naturalengland.org.uk (or by post to Natural England, Suite D, Unex House, Bourges Boulevard, Peterborough PE1 1NG FAO Mina Patel) no later than **Wednesday 22 August 2018**.

10. Using and sharing your consultation response(s)

- 10.1 In line with Natural England's [Access to Information Statement](#), at the end of the consultation period, copies of the responses and/or the information contained in them may be subject to publication or release to the public on request and/or on our website. If you do not want your response - including your name, contact details and any other personal information – to be publicly available, please explain clearly why you regard the information you have provided as confidential. If we receive a request for release of the information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on Natural England.
- 10.2 Responses received by that date will be analysed and taken into account by Natural England in finalising their proposals. The final proposals will be published on <https://www.gov.uk/government/organisations/natural-england>. We will also summarise all responses and place this summary on our website. This summary will include a list of names of organisations that responded but not the names, addresses or other contact details of individual respondents.

Thank you for reading this consultation and for taking the time to help us with this work.