

Habitat Regulations Assessment

Principles, Process and Responsibilities

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Purpose of the presentation – it is a whirlwind tour of HRA in 20 minutes!



HRA key concepts

- Screening for likely significant effects
- In-combination effects
- Appropriate assessment and site integrity
- Avoidance and mitigation
- Roles and responsibilities of the planning authority, developer, statutory and non statutory consultee – who does what and why?

Objective

- To make the process a little clearer, to dispel some myths and make the whole thing less scary.

What is HRA?



HRA ` Habitats Regulations Assessment' is a process set out within European legislation, transposed into UK law.

It is a requirement directed at all public bodies (competent authorities), and Natural England's role is to help public bodies fully meet their duties.

Natural England is a competent authority too!

Birds Directive (1979) 2009 –SPAs

Habitats Directive 1992 –SACs

**Conservation of Habitats and Species Regulations 2010,
as amended**

HRA is a step by step process

- Necessary for site management
- Likely significant effect (alone or in combination)
- Appropriate assessment
- Adverse affect on site integrity
- Alternative solutions
- Imperative reasons of overriding public interest
- Securing compensation to maintain N2K network

Necessary for site management?



Is the plan or project directly connected with or necessary for site management?

- Management which is necessary for the management of the site for the conservation of its European qualifying features i.e. the reasons for which the SAC/SPA (not the SSSI) was selected
- **All** parts of a plan or project would need to meet this definition to pass the test and be wholly screened out of further assessment

Screening for the likelihood of significant effects



Is the plan or project likely to have a significant effect on the interest features of the site, alone or in combination with other plans and projects?

“Any effect that may reasonably be predicted”

Waddenzee 2004

“The question is simply whether the plan or project concerned is capable of having an effect”

Sweetman 2013 (AG opinion 2012)

- A screening stage, not a detailed assessment stage

Screening for the likelihood of significant effects



Regulation 61(2) states.....

‘a person applying for a consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.’

Are there simple information gaps that can be resolved with the formal submission if additional information to enable the ‘project’ as formally submitted, to be screened out?

The test at this stage is to determine whether the possibility of an effect can be ruled out or avoided, not to investigate whether an adverse effect on site integrity would occur.

Avoiding the likelihood of significant effects



Avoidance measures can be considered during screening of projects
...but care and extra scrutiny required:

- Need to be an integral part of the project
- Needs to address all the LSEs on all European site features
- Needs to be evidence that it will actually work
- Needs to be legally enforceable

TBH - The 'Dilly Lane' case (Hart DC v SoS Communities & Local Government, Luckmore Ltd, Barratt Homes Ltd, Natural England et al 2008) – measures avoided a LSE

Strategic mitigation schemes



- A mechanism by which HRA work is 'frontloaded'
- Enables avoidance and mitigation requirements to be clear to developers upfront
- Strengthens forward planning process
- Reduces costs and uncertainty
- Consistent approach
- Better protection of European site interest
- Cross boundary working
- Proportionate and fair for development

Evidence needs for a strategic approach? (think about previous discussions on avoiding LSE and gathering information on potential impacts)

Appropriate assessment (AA)



- Requirement is to make an assessment *‘of the implications for that site in view of that site’s conservation objectives’*
- Legislation specifies the procedure but not the methodology for carrying AA.
- Case law suggests an AA should be fully *‘recorded and reasoned’* (UK Wightlink 2010), and *‘cannot be regarded as appropriate if it contains gaps and lacks complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed’* (ECJ vs Spain ‘Alto Sil’ 2011)

Site specific factors



- Components of a site's 'integrity' (structure, function, supporting processes) based on its qualifying features
- Scale of impact
- Duration of impact and recovery/reversibility
- Long term impacts, biological-lag and sustainability
- Dynamic systems
- Conflicting feature requirements
- Off-site impacts
- Uncertainty over cause and effect

European terrestrial Site Conservation Objectives



Now available for HRAs via our website

‘To avoid the deterioration of the natural habitats and habitats of qualifying species, or the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving Favourable Conservation Status of each of the qualifying features. (CURRENTLY UNDER REVIEW)

Subject to natural change, to maintain or restore:

- *the **extent** and **distribution** of qualifying habitats and habitats of qualifying species;*
- *the **structure** and **function** of qualifying habitats and habitats of qualifying species;*
- *the **supporting processes** on which qualifying features rely;*
- *the **populations** of qualifying species (individual and assemblages);*
- *the **distribution** of qualifying species within the site. ‘*

Appropriate assessments

Should consider:

- **All European Sites and Qualifying Features likely to be affected**
- **All the elements of a plan or project giving rise to effects**

Should be based on:

- **Best available scientific evidence**
- **Professional judgements**
- **Expert opinion and advice**

And contain:

- **Clearly presented narrative**
- **Clearly reasoned conclusions**

Definition of site integrity



“The coherence of a site’s ecological structure and function across its whole area, that enables it to sustain the habitats, complex of habitats and/or the levels of the populations of species for which the [European] site was classified/designated”

Within the draft Defra guidance on HRA

ODPM Circular 06/2005 Biodiversity & geological conservation – statutory obligations & their impact within the planning system (p9)

Although the Habitats Directive refers to integrity it doesn’t include a definition. This one, which was invented in the UK has ended up being adopted by EC guidance.

Stage 3 - Site Integrity



- Only 3 possible outcomes of the appropriate assessment
 - The plan or project **will not** adversely affect the integrity of the European site
 - The plan or project **will** adversely affect the integrity of the European site
 - It **cannot be ascertained** that the plan or project will not adversely affect the integrity of the European site
- As part of this judgement, consider whether mitigation measures can be implemented to avoid any adverse impact on integrity?
- How will they be secured?

- Measures capable of preventing an adverse effect on site integrity
- Prevent an impact, not compensating for it
- Certainty of implementation
- In place for the lifetime of the impact
- Evidence based
- Enforceable

Precautionary principle

Uncertainty = assume an impact



- Embedded in the Directive/Regulations - makes HRA different to other regulatory regimes
- Tested by numerous cases (European and domestic)
- 'there should be no reasonable scientific doubt' Waddenzee 2004
- There is a difference between having evidence to justify that LSE cannot be ruled out, and having evidence to demonstrate that there is a LSE

Precautionary principle



Based on
science.....
is there a potential
pathway between
possible effects and
N2K receptors?

Roles and Responsibilities



Competent Authority

Any body or individual holding public office (performing a statutory function)

Planning authorities, Natural England, Environment Agency, **Forestry Commission**, MMO, **Harbour Authorities**, Utility Companies, Highways Agency, **Parish Councils**, Government Departments, **Secretary of State**

Others who may input to HRA

- Developers
- Statutory nature conservation bodies
- Nature conservation organisations
- Wider public
- PINS

Sources of further information



- New Government-led HRA guidance for regulators and competent authorities (see Defra website)
- UK and European case law continues to refine our interpretation of the Regulations and Directive
- Guidance from HRA specialists (private and NGO sectors)
- Best practice examples (for both plans and projects)

Natural England's role is adviser and consultee



The HRA process is the responsibility of the competent authority. Natural England will work with the competent authority to help find a solution....

if there is one to be found