

Habitats Regulations Appraisal (HRA) Advice Sheet

Screening general policies and applying simple
mitigation measures

Habitats Regulations Appraisal (HRA)
Advice sheet No. 2 (Version 1)

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Background to Habitats Regulations Appraisal (HRA) and existing guidance

1. [The Conservation \(Natural Habitats, &c.\) Regulations 1994](#), as amended (the Regulations) require all Planning Authorities in Scotland to undertake a Habitats Regulations Appraisal (HRA) of a development plan before that plan can be adopted or submitted to Scottish Ministers. Procedural guidance on the application of the Regulations to the development planning system in Scotland is provided in Appendix 1 to Planning Circular 1/2009¹.
2. Practical guidance on how to undertake an HRA is also available and is contained in '[Guidance for plan-making bodies in Scotland](#)' published by Scottish Natural Heritage (SNH) initially in 2010 and updated in 2012. The SNH guidance aims to help plan-making bodies within Scotland and applies widely across a range of sectors.
3. This advice sheet is intended to complement the SNH guidance by offering more detailed practical advice on:
 - screening general policies and general criteria based policies within development plans, and the circumstances in which these policies may give rise to a likely significant effect on a European site;
 - the use of simple mitigation measures such as specific policy caveats;
 - when and how to use general European site protection policies or criteria in development plans.

This is the second in a series of Scottish Government HRA advice sheets for Planning Authorities, all of which can be viewed online at www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/enviro-assessment/a-a

Screening development plans

General policies & general criteria based policies

4. The purpose of screening is to identify those elements of a development plan where a likely significant effect on a European site cannot be ruled out. In this way the Screening procedure aims to ensure any subsequent Appropriate Assessment is focused on the elements of the plan likely to have a significant effect on a European site, either alone or in combination. Advice on the interpretation of 'likely significant effect' is contained in the SNH guidance.
5. All policies, including general policies, must be 'screened' for their potential effects on European sites (see stage 5 of the SNH guidance). The first step is to identify 'general policy statements', including general 'criteria-based' policies. Another step is to identify other general policies, such as those that address a particular topic. These policies may be screened out (stage 5 steps 1 and 3 of the SNH guidance refer) unless there is a real and identifiable implication for one or more specific European site(s). Impacts are more likely to arise from general policies where:

Useful guidance:

[Habitats Regulations Appraisal of plans: Guidance for plan-making bodies in Scotland](#)
(Stage 5 & Appendix B)

¹ Planning Circular 1/2009: Development Planning: Appendix 1 – The Habitats Regulations
<http://www.scotland.gov.uk/Publications/2010/09/03095123/0>

- a) it is providing for a magnitude of change within an area (the whole plan area or a part of it), to the extent that there would be a likely significant effect on a European site, wherever it was located in that area; or
 - b) an aspect of the general policy clearly has an implication for a specific European site. For example, the likely location(s) of the proposed change could be constrained by existing infrastructure or spatial distributions. This could, by default, steer activities to location(s) that have a link or connection to the qualifying interests of a particular European site.
6. However, if the general policy is supplemented by a more detailed policy or proposal, that allows the authority to deal with the specific and identifiable risk, then the general policy can be screened out. Instead, the more detailed policy or proposal should be screened in for further assessment.

Case Study A: General criteria based policies

Planning Authority X had an overarching policy supporting development on brownfield sites. It included a planning caveat that this is acceptable, subject to risk assessment and investigation of suitability for the proposed development. However, it was noted during discussions with SNH that this broad policy could result in the development of a known large brownfield industrial site that was located adjacent to an SPA. The SPA contained features that could be affected by development on the site.

The plan also contained a further, location-specific policy relating to the brownfield site. This location-specific policy set out the criteria against which proposals for the site's development had to be assessed.

Outcome

In the HRA of the plan, the overarching policy was screened out as it was considered a general policy under Steps 1-3 of the SNH Guidance. The location specific policy was carried forward to the Appropriate Assessment.

Summary

In the absence of the location-specific policy, it may have been reasonable to focus the appraisal on the general policy, and potentially add a Natura specific criterion to it (see paragraphs 7 – 8 below). Such a criterion could have stated that a development proposal at the specific location should ensure there are no adverse effects on the integrity of [the case specific] the SPA. This case study demonstrates why Planning Authorities should consider the plan as a whole, in order to identify which policies and proposals form the most appropriate point of reference for the HRA.

Case Study B: General policies

Planning Authority Y included a general policy in its Local Development Plan (LDP) that stated proposals for waste management infrastructure should meet a range of general criteria, including location within or adjacent to existing waste sites. In many cases it would have been feasible to screen out this policy in accordance with Screening Step 1 in the SNH Guidance.

However, the Planning Authority was aware that one of the existing waste sites to which this policy could apply was located close to a river, upstream from a SPA with species susceptible to changes in water quality. As a result, the policy was screened in for further assessment.

Continued below...

Simple mitigation measures

The appropriate assessment: Using policy caveats and restrictions as mitigation

7. In circumstances where a general policy has been screened as requiring further assessment, simple mitigation measures may be used (where applicable) early in the Appropriate Assessment stage, to very quickly demonstrate no adverse effect on the integrity of any European site. When used in this way, policy caveats can be viewed as part of the iterative plan making process and offer a straightforward means of addressing specific issues. Case Study B (above & below) is one example of a situation where use of a simple policy caveat may be appropriate.

Useful guidance:

Habitats Regulations Appraisal of plans:
Guidance for plan-making bodies in Scotland
(Stage 9)

Case Study B: General policies continued....

Outcome

Having identified potential impacts on an SPA, and having discussed them with SNH, agreement was reached to add a specific **policy caveat** to the general policy on waste management infrastructure. The caveat identified the development site from which effects could arise, and the SPA which had the potential to be impacted:

*“Any development at **Site A** must not have an adverse effect on the integrity of [the case specific] **SPA**”.*

In some cases it may be possible to be more specific about the nature of the possible impact on a particular interest feature, for example;

*“Development at **Site A** must not have an adverse effect, in particular on the [interest feature] of [the case specific] **SPA** in terms of [nature of impact]”*

Summary

General policies setting out criteria for assessing development proposals can usually be screened out at Step 1, as outlined in the SNH Guidance. Where general policies could apply to potential development sites known to be in proximity to Natura sites and have a clear link or pathway between them, and cover the types of activity that could have adverse effects on the interests for which the sites were designated, an additional caveat may be appropriate.

8. As a general rule, policy caveats, restrictions or 'qualifications' should be:

- a) Included in the plan and not just in the HRA record or a supporting document;
- b) Included in the policy wording where policies are distinguishable from the other text, or in the text of the plan where policies are not distinguished from other text;
- c) Specific to the case, issue or proposal and/or the particular European site(s);
- d) Related to the qualifying interests and/or the site potentially affected, and to the HRA and its findings, which must be available and accessible;
- e) Explicit about the meaning and implications for decision-making, such as clearly indicating "*Planning permission will be granted only where it can be ascertained that the proposal would not have an adverse effect on the integrity of [the case specific] European site*";
- f) Short and 'tightly' worded; the HRA record can provide the context, explanation and purpose of the qualification.

Case Study C: Tailored caveats

A general policy for peat extraction was included within a LDP. The HRA identified this as being likely to have significant effects on Natura qualifying interests, as there were a number of peatland SACs in the plan area. The Planning Authority added a caveat that *development proposals would only be approved where the Planning Authority has ascertained that they would not have an adverse effect on the integrity of both wetland and peatland European sites*. In accordance with the principles set out in a) to f) above, the caveat is both explicit as to meaning, specific to the issue, and tightly worded.

Summary

The HRA should be used to fine tune general policies and any required caveats. Policy caveats should be clear where any further assessments are required, as well as definitively ensuring that the integrity of any relevant sites would not be adversely affected.

Using over-arching European site protection policies or criteria in development plans

- **Should Planning Authorities use over-arching protection policies or criteria?**

9. It is not sufficient to rely alone on an over-arching and/or general European site protection policy (often located towards the beginning of a plan) to resolve any potential effects on European site(s). Such policies cannot be used as a substitute for properly assessing the potential effects of a plan, to the extent possible based on the precision of that plan. There is no benefit in including a general European site protection policy that merely reiterates the law. This would not relate clearly to the specific plan area; and it is unlikely to add value.

10. Should authorities choose to include an over-arching and/or general European site protection policy, and another policy or proposal in the plan provides a location specific change likely to have a significant effect on one or more identifiable European sites, the internal conflict or tension between the general protection policy and the specific proposal would have to be resolved through the HRA. In this way authorities can avoid a situation where it does not become apparent until the time of the specific planning application that the proposal cannot be implemented in that form, because of adverse effects on a European site.

Case Study D: Overarching protection policies

A development plan containing an overarching European site protection policy also contained a policy directing minerals development to an area of search which overlapped with a European site. The HRA highlighted this as a potential conflict.

Outcome

The authority discussed different options available for resolving that conflict: One approach would be to add a policy caveat. Another approach would be for the authority to seek an alternative location for development which avoids these sensitivities altogether. A third option may have been to limit the area / output of, or location of development within the European site to provide assurance that adverse effects on integrity will not arise; and to build this into a more detailed policy caveat.

- **Should Planning Authorities include a European site protection criterion as part of a general environment protection policy?**

11. If authorities *choose* to include an over-arching, general protection policy which comprehensively lists the general criteria / tests / standards that will apply to all proposals (for example in relation to biodiversity, landscape and natural and cultural heritage), the authority may wish for completeness sake to include a specific criterion relating to effects on European sites, where proposals may affect such sites. If the plan indicates these over-arching criteria based policies are applicable to all proposals, this could save repetition, as it would be applied alongside other more detailed policies. However, general policies which are partially location-specific and likely to have an identifiable significant effect on a specific European site should still be appraised for more direct mitigation (such as a tailored caveat) as described above.

Case Study E: Example of overarching policy caveats

A development plan included an overarching policy for 'sustainable development' to be read alongside all other policies. The policy stated that development will be acceptable where it does not adversely affect the historic and natural environment. The HRA assessor considered the policy could be strengthened and a range of more robust options were therefore discussed:

(a) including a more specific criterion that sets out overarching requirements for development: e.g. *"ensuring there would be no adverse effect on the integrity of a European site."*

(b) explicitly confirming that *"proposals likely to have a significant effect on a European site will only be approved if it can be ascertained, by means of an Appropriate Assessment, that the integrity of the European site will not be adversely affected."*

- **Should authorities add a European site protection criterion to every general criteria based policy in a development plan?**

12. No. There is no need to add a European site protection criterion to every criteria based policy. Policies that list the criteria / tests / standards that plan-making bodies will apply to specific types or sectors of development or change, should generally only include a criterion relating to effects on European sites, where the proposals are of a nature, scale or location likely to significantly affect such sites. See paragraphs 4 – 6 above.

- **Is there a recommended form of wording for European site protection criteria?**

13. Where a criterion is added to resolve potential conflict or to protect European sites, it should be worded in such a way that it is clear that the change *"will not have an adverse effect on the integrity of any [or the case-specific] European site."*

Conclusion

- 14.** It is not necessary or always possible to identify all potential effects of a policy, in order to conclude there are likely to be significant effects on a European site. If one or more likely significant effects are identified, the policy or proposal should be screened in for Appropriate Assessment. However, consideration can be given as to whether it is possible to incorporate into the plan any straightforward mitigation measures, in accordance with Stage 6 of the SNH Guidance to rule out likely significant effects on any European site.
- 15.** In addition, guidance in this advice sheet and in Stage 9 of the SNH guidance demonstrate how simple mitigation measures may also be applied within the Appropriate Assessment to very quickly demonstrate 'no adverse effect on the integrity of any European site'. It is likely to be more efficient and effective to use policy caveats as mitigation measures at the earliest stage possible, rather than to attempt to gather information to undertake a detailed appraisal of a general or strategic proposal, the detailed implementation of which may not be known.