



The Moorland Association

Members' Briefing Note: Moorland Management Restrictions and the Requirement for a Habitats Regulations Assessment (HRA)

MA members have been requesting clarification on when Natural England (NE) must undertake a Habitats Regulations Assessment (HRA). Particularly in relation to when it is imposing new or more restrictive moorland management requirements, such as heather-cutting conditions, on designated sites.

1. Are SSSI consents and HRAs the same thing?

No, they are different.

- Management of an SSSI is governed primarily by the Wildlife and Countryside Act 1981.
- In contrast, an HRA arises under the Conservation of Habitats and Species Regulations 2017.
- SSSI consent alone does not remove or replace the HRA requirement.

The relevant legal test is not whether the land is an SSSI, but whether:

- the land is an SPA, SAC or Ramsar site, or
- is functionally linked to such a site, and
- the authority is approving or imposing a 'plan or project' that may have a likely significant effect.

2. When must Natural England carry out an HRA?

Natural England must carry out (or ensure the carrying out of) an HRA where:

1. The moor is designated as:
 - a Special Protection Area (SPA) (eg for hen harrier, golden plover or merlin), or
 - a Special Area of Conservation (SAC) (eg blanket bog), or
 - is functionally linked to an SPA

and

2. NE is:
 - approving a new Moorland Habitat Plan, or
 - imposing materially new or stricter management prescriptions (eg no-cut areas, percentage of heather thresholds, blanket cutting prohibitions).

A revised Stewardship agreement or Moorland Habitat Plan meaningfully constrains land management it can constitute a 'plan or project' for HRA purposes.

3. Does blanket bog restoration override bird features?

No. Where a site is designated for both habitat and bird features, NE must:

- assess impacts on all qualifying features,
- avoid prioritising blanket bog objectives at the expense of SPA bird interest, and
- rely on objective evidence, not policy preference.

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A management regime that:

- substantially reduces heather availability,
- alters vegetation structure over large areas,
- or limits predator control or grouse productivity,

may have implications for SPA bird populations, and those effects must be assessed.

Failure to do so risks:

- a legally defective HRA, or
- unlawfully proceeding without an HRA at all.

4. Do 'Voluntary' schemes avoid the need for an HRA?

No. While NE sometimes argues that agri-environment schemes are voluntary, this position is increasingly weak where:

- agreements replace existing schemes.
- participation is economically compelled (eg loss of BPS).
- prescriptions are rigid, site-specific, and enforceable.

Courts have recognised that agri-environment schemes can amount to plans or projects where they determine long-term land use on protected sites.

5. Key implications for MA Members

If NE is:

- tightening land management restrictions (eg heather cutting)
- using standardised or lawyer-drafted wording
- removing field officer discretion
- and doing so without a transparent HRA covering bird features

then there is a strong basis for concern.

At a minimum, MA members are entitled to ask:

- whether an HRA has been undertaken and request a copy,
- which site features were assessed, and
- what evidence underpins the conclusion that the other interests (eg birds) will not be adversely affected.

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