The Moorland Association

Submission to Defra's consultation on Habitats Regulations Assessment guidance

Introduction for members
Members can read our submitted response below.

Habitats Regulations Assessments are an important safeguard for protected sites. The MA supports strong protection for those sites and is not seeking to weaken the legal tests that protect them.

However, members' experience is that the HRA can sometimes be applied inconsistently, repetitively or without enough regard to practical upland management. This can affect necessary conservation work, wildfire-risk reduction, habitat management, peatland restoration and management for qualifying species.

The MA response asks Defra to make the guidance clearer, more practical and more proportionate, so that HRA decisions remain focused on the specific proposal, the specific protected site, the relevant protected feature and the relevant conservation objective.

In particular, the response asks for clearer guidance on re-using existing assessments, distinguishing real from hypothetical risks, assessing site integrity, taking account of mitigation, recognising where active moorland management may support conservation objectives, considering the risks of delay or non-management, and using worked upland examples to help competent authorities and applicants apply the rules consistently.

1. Would you like your response to be confidential?
No

2. What is your name?
Free text.

3. What is your email address?
Free text.

4. Please tell us who you are responding as, selecting from the following: please tick as many as relevant.

Other non-governmental organisation

4(a). Additional information if required.

The Moorland Association is a representative body for owners and managers of moorland in England and Wales. Its members include land managers and rural businesses affected by Habitats Regulations Assessment guidance, particularly where protected upland sites, moorland management, wildfire risk, habitat management, species management and consents or licences are involved. The Association is responding in that representative capacity.

MA members are responsible for managing over one million acres of moorland in England and Wales, including a substantial proportion of upland heather habitat. The Association advocates for

moorland conservation and supports members in implementing land-management practices for the benefit of wildlife, the environment and the local economy. This gives the Association direct practical experience of how HRA guidance affects protected upland sites, rural businesses and day-to-day land management.

The Moorland Association welcomes the opportunity to respond and supports effective protection for protected sites. We recognise that the HRA is an important safeguard when it is applied lawfully, proportionately and with clear evidence.

MA members are not only applicants or regulated parties; they are also active land managers whose decisions can be important for habitat condition, wildfire resilience, species management, peatland restoration and the maintenance or restoration of protected-site features.

The Association's central concern is that HRA should remain proposal-specific, site-specific and objective-specific. It should assess whether the particular plan or project could affect the relevant habitats site in view of its conservation objectives. It should not become a general policy judgement on whether a particular moorland management practice is favoured or disfavoured.

In upland landscapes, decisions often involve choosing between ecological risks, rather than choosing between risk and no risk. The final guidance should therefore help competent authorities consider both the effects of allowing management and the ecological consequences of refusing, delaying or restricting necessary management.

5. If responding on behalf of an organisation, please provide the name of the organisation you are responding for. If you are responding for more than one organisation, please say how many organisations you represent and their category, as set out in the previous question.
The Moorland Association

6. If you are a business, how would you identify based on your number of employees?
Not applicable

7. If you are a Small and Micro Business — qualified as 1–49 employees — are you able to provide any information on impacts, including on additional costs, from the proposed guidance?
Not applicable

Please provide further information to support your response and attach supplemental evidence if you wish.

The Moorland Association is responding as a representative body, not as a business in its own right. Many of its members are rural businesses or land-management enterprises that may be affected by HRA guidance, and where relevant the Association comments on those impacts in its wider response.

8. If you are a Medium-sized business — 50–249 employees — are you able to provide any information on impacts, including on additional costs, from the proposed guidance?
Not applicable

Please provide further information to support your response and attach supplemental evidence if you wish.

The Moorland Association is responding as a representative body, not as a medium-sized business in its own right. Some MA members may be rural businesses or land-management enterprises that experience cost, delay or operational impacts from HRA processes. Those impacts are addressed in the Association's wider response rather than as evidence about the MA's own business size.

9. Do you foresee impacts to business from the proposed guidance being different between regions across the UK?
Yes

Please provide further information to support your response and attach supplemental evidence if you wish.

The practical impact of the guidance is likely to vary between regions because HRA issues arise most acutely where businesses operate on or near protected sites, or where particular sectors are heavily dependent on consents, licences, permits or agreements affected by the HRA process.

For MA members, the main regional impacts are likely to arise in upland areas of England and Wales where moorland businesses manage land within or near SACs, SPAs, Ramsar sites or SSSIs that overlap with habitats sites. In those areas, HRA guidance can directly affect the speed, cost and practicality of routine and conservation-related land management, including vegetation management, wildfire-risk management, peatland restoration, grazing, predator control, bracken control, track maintenance and species management.

The impact will therefore not be evenly distributed across the UK economy. It will be felt more strongly by rural land-management businesses operating in protected landscapes and by sectors where management decisions are time-sensitive, seasonal, and dependent on prompt regulatory decisions. Clearer guidance on proportionality, re-use of existing HRAs, real rather than hypothetical risks, and relevant evidence should therefore have particular benefit in those areas.

10. Please select the geographical coverage of your organisation or the area that your response relates to from the following: please tick as many as are relevant.
England and Wales

Section 1 — Principles to follow in the HRA process

11. How helpful are these principles in setting out the overall approach and expectations for how Habitats Regulations Assessments should be undertaken?
Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes the clearer emphasis on constructive working, proportionality, use of conservation objectives, site-specific judgement, early engagement, use of the best objective and scientific information, and only asking applicants for information that is relevant and necessary. These are important improvements and should help reduce unnecessary delay and duplication.

However, the principles would be more effective if they expressly required competent authorities to assess the consequences of refusing, delaying or restricting management, as well as the effects of allowing it. In upland habitats, the practical question is often not whether management creates any ecological risk, but which course of action best protects the site over time. Delaying vegetation management, wildfire-risk reduction, bracken control, grazing changes, predator control or restoration work may itself increase risk to protected habitats and species.

The guidance should therefore make clear that the HRA is not a general review of whether a land-management practice is favoured in policy terms. It should remain a proposal-specific, site-specific and objective-specific assessment of whether the plan or project could affect the protected site's conservation objectives. Competent authorities should identify the site, feature, conservation objective and credible pathway for harm, and should avoid relying on vague or hypothetical concerns.

We suggest adding a further principle:

"Competent authorities should consider the ecological consequences of action and inaction, including whether refusing, delaying or restricting a proposal could increase risks to the conservation objectives of the habitats site, for example through increased wildfire risk, vegetation deterioration, scrub or bracken encroachment, loss of suitable habitat structure, or delay to restoration."

12. Do these principles strike the right balance between supporting users in complying with legal requirements and encouraging an efficient approach to decision-making?
Somewhat

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association supports the attempt to balance legal compliance with more efficient decision-making. In particular, we welcome the emphasis on constructive working with applicants, site-specific judgement, use of conservation objectives, proportionality, early identification of evidence gaps, and asking only for information that is relevant and necessary. Those principles should help reduce delay and unnecessary evidential burden.

However, the balance is not yet fully achieved. The principles should give clearer direction that efficiency is not merely an administrative objective; in some land-management cases it is also environmentally important. On moorland, time-sensitive management may be needed to reduce wildfire risk, maintain suitable vegetation structure for protected birds, control bracken or scrub, support peatland restoration, or avoid deterioration of habitats. Delay, refusal or uncertainty can itself create ecological risk.

This is particularly important where urgent action may be needed to reduce or respond to wildfire risk, because delay in the HRA process may itself increase the likelihood or severity of harm to the habitats site.

This is not to suggest that statutory decision periods should be ignored, or that land managers have no responsibility to submit notices, applications or supporting evidence in good time. They plainly do. However, where statutory decision periods exist, the guidance should help competent authorities and applicants use those periods efficiently. That means identifying evidence gaps early,

avoiding unnecessary repetition, re-using relevant existing assessment material, and limiting further information requests to matters genuinely needed to decide the HRA question. In time-sensitive land-management cases, lawful process and timely process should not be treated as competing objectives.

This is particularly important for wildfire risk, where the harm to a habitats site may be severe even though the exact timing and location of an event cannot be predicted. The guidance should help competent authorities distinguish between speculative risks and credible, evidence-based preventative management needs.

The guidance should therefore make clearer that competent authorities must make balanced, evidence-based decisions which consider both the risks of permitting a proposal and the risks of preventing or delaying necessary management. The HRA process should remain precautionary, but it should not become a mechanism for requiring disproportionate evidence, revisiting settled issues unnecessarily, or treating hypothetical risks as if they were real.

We suggest adding wording along these lines:

"Efficient decision-making should include timely resolution of conservation-management and land-management proposals where delay may itself affect the conservation objectives of a habitats site. Competent authorities should consider the ecological consequences of refusing, delaying or restricting management, as well as the consequences of allowing it."

Section 2 — Re-using an existing HRA

13. How helpful is the detail in this section on when an existing HRA can and cannot be used?
Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes the clearer statement that competent authorities should consider whether an existing HRA already covers the plan or project, and whether a new HRA is necessary. This is particularly important for land-management proposals where the same site, feature, conservation objective, activity and mitigation may have been considered before.

Before starting a fresh HRA, the competent authority should first identify what has triggered it. Is there a new plan or project? Is a new consent, licence, renewal or authorisation being considered? Has the activity, site condition, conservation objective, evidence base, mitigation, case law or in-combination context materially changed? If not, and previous assessment material remains robust and up to date, the process should not default to a repeated HRA simply because the matter is being reconsidered administratively.

In moorland cases, unnecessary repetition can cause delay, cost and uncertainty, particularly where decisions are seasonal or time-sensitive. Existing HRAs, previous consents, management agreements,

licence decisions, monitoring evidence and previous assessments should be used wherever they remain relevant, robust and up to date.

However, the guidance should go further. It should make clear that where a previous HRA, consent or assessment has already considered the same or materially similar management activity, the competent authority should identify precisely what has changed before requiring a new HRA or further evidence. The relevant change might be a change in the proposal, site condition, conservation objectives, scientific evidence, mitigation, case law or cumulative context. Without such a change, repeating the HRA risks becoming process for its own sake.

The same principle should apply where a competent authority proposes to depart from a previous HRA, consent or assessment for a materially similar activity. If the proposal, site condition, conservation objectives and evidence base remain materially the same, the authority should explain the reason for any different conclusion. That explanation should identify whether the change arises from new evidence, a change in site condition, a change in conservation objectives, new case law, policy change, cumulative context, or a changed interpretation of the legal test. Applicants should not be left to infer that an activity previously accepted is no longer acceptable without a clear reasoned explanation.

Equally, re-use of previous HRA material should not mean uncritical repetition of earlier assumptions or conclusions. There is a risk that cautious reasoning can become self-reinforcing if previous assessments are treated as inherently correct, rather than reviewed against the particular proposal, current site evidence, conservation objectives, mitigation and legal test. The guidance should therefore make clear that previous HRA material should be used as relevant evidence, not as a substitute for a fresh and reasoned competent-authority judgement. Where an authority relies on previous reasoning, it should be satisfied that the earlier assumptions remain applicable and should identify any respects in which the current proposal, evidence or site condition requires a different view. This is particularly important where earlier decisions may have been shaped by precautionary assumptions, incomplete evidence or generic concerns about an activity type.

We suggest adding wording along these lines:

“Where a previous HRA or equivalent assessment exists for the same or materially similar plan or project, the competent authority should first identify whether there has been any material change in the proposal, the affected feature, the site’s conservation objectives or condition, the evidence base, relevant case law, mitigation or in-combination context. A new HRA, different conclusion, or new information request should be limited to those matters that have materially changed, were not adequately addressed previously, or must be reconsidered because of a clearly identified change in evidence, site condition, conservation objectives, case law, policy or interpretation.”

14. Will this section give support to users in avoiding unnecessary repetition of work related to HRAs?
Somewhat

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes the clearer direction that existing HRAs and evidence should be re-used where possible. This should help reduce unnecessary repetition, especially where a competent authority is considering the same or materially similar land-management activity on the same site, affecting the same protected features and conservation objectives.

However, the guidance would give stronger practical support if it required competent authorities to explain why previous HRA material is not being used before asking an applicant to repeat surveys, commission further reports or re-run an assessment. In moorland cases, repeated assessment can create real cost, delay and uncertainty, particularly where management is seasonal or needed to address time-sensitive risks such as wildfire, bracken or scrub encroachment, vegetation condition, peatland restoration or habitat suitability for qualifying bird species.

The section should also make clear that previous HRAs, consents, licence decisions, management agreements, monitoring data and site-specific evidence should not be disregarded simply because they were produced for a different regulatory route. The relevant question should be whether the earlier evidence remains robust, relevant and up to date for the decision now being made.

This should include previous assessment material produced under connected regulatory regimes, such as SSSI consent or assent, burning licences, agri-environment agreements or other land-management permissions, where that material remains relevant to the HRA question.

The guidance should also explain when a competent authority may adopt or rely on a previous HRA or assessment prepared by another competent authority. This may be appropriate where the proposal, site, protected feature, conservation objective, evidence base and mitigation are materially the same, and the authority has reviewed the previous assessment and is satisfied that it remains robust and up to date. The authority should still record its own conclusion, but should not be required to repeat the whole assessment simply because the earlier HRA was prepared for a different decision-maker.

We suggest adding:

“Before requiring repeated HRA work, competent authorities should identify what previous HRA, consent, licence, agreement, monitoring or site-specific evidence already exists, explain whether it remains relevant and up to date, and limit any further information request to matters that have materially changed or were not adequately addressed previously.”

Section 3 — Checking for likely significant effects on a habitats site

15. How helpful is the detail in this section on determining whether a plan or project could have a significant effect on a protected site?
Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes the clearer direction that existing HRAs and evidence should be re-used where possible. This should help reduce unnecessary repetition, especially where a

competent authority is considering the same or materially similar land-management activity on the same site, affecting the same protected features and conservation objectives.

However, the guidance would give stronger practical support if it required competent authorities to explain why previous HRA material is not being used before asking an applicant to repeat surveys, commission further reports or re-run an assessment. In moorland cases, repeated assessment can create real cost, delay and uncertainty, particularly where management is seasonal or needed to address time-sensitive risks such as wildfire, bracken or scrub encroachment, vegetation condition, peatland restoration or habitat suitability for qualifying bird species.

The section should also make clear that previous HRAs, consents, licence decisions, management agreements, monitoring data and site-specific evidence should not be disregarded simply because they were produced for a different regulatory route. The relevant question should be whether the earlier evidence remains robust, relevant and up to date for the decision now being made.

This should include previous assessment material produced under connected regulatory regimes, such as SSSI consent or assent, burning licences, agri-environment agreements or other land-management permissions, where that material remains relevant to the HRA question.

The guidance should also explain when a competent authority may adopt or rely on a previous HRA or assessment prepared by another competent authority. This may be appropriate where the proposal, site, protected feature, conservation objective, evidence base and mitigation are materially the same, and the authority has reviewed the previous assessment and is satisfied that it remains robust and up to date. The authority should still record its own conclusion, but should not be required to repeat the whole assessment simply because the earlier HRA was prepared for a different decision-maker.

We suggest adding:

"Before requiring repeated HRA work, competent authorities should identify what previous HRA, consent, licence, agreement, monitoring or site-specific evidence already exists, explain whether it remains relevant and up to date, and limit any further information request to matters that have materially changed or were not adequately addressed previously."

16. How helpful is the detail in this section on how a real, as opposed to hypothetical, risk should be identified and evidenced?
Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association strongly welcomes the distinction between real and hypothetical risks. This is one of the most important practical improvements in the draft guidance. In our members' experience, HRA concerns can sometimes be expressed at too general a level, without clearly identifying whether there is a credible pathway from the specific proposal to an effect on a specific protected feature or conservation objective.

The guidance should make clear that a real risk must be evidenced by reference to the particular site, feature, conservation objective, activity, timing, scale, method and location. It should not be enough to list generic risks associated with a broad category of land management. For example, a concern that vegetation management "may affect blanket bog" or "may disturb protected birds" should be supported by an explanation of how the proposed work, in that place and at that time, could undermine the relevant conservation objective.

Where a competent authority identifies a risk, it should test that risk against the actual site evidence before treating it as real or material. For example, if a concern depends on a particular vegetation type, species, hydrological condition or habitat response, the authority should explain how that concern applies to the site being assessed, having regard to available survey information, monitoring data, NVC or habitat evidence and the condition of the affected area. Generic risks should not be carried forward where the site-specific evidence shows that the pathway is absent, immaterial or unlikely.

This matters particularly in upland management. Decisions about burning, cutting, grazing, bracken control, predator control, track maintenance, peatland restoration and wildfire-risk reduction are often highly site-specific. A risk may be real in one location but hypothetical in another. Conversely, delay or non-management may itself create real risks, for example through increased fuel load, wildfire risk, scrub or bracken encroachment, habitat deterioration, or loss of suitable habitat structure for qualifying birds.

We suggest adding:

"A real risk should be identified by reference to a credible impact pathway between the particular proposal and the relevant habitats site's qualifying feature and conservation objective. Competent authorities should distinguish between generic concerns about an activity type and evidence that the specific proposal could undermine the site's conservation objectives. Where relevant, they should also consider whether delay, refusal or non-management would create or increase a real risk to those objectives."

The guidance should also encourage competent authorities to explain briefly why a suggested risk is being treated as real, and why any dismissed risk is considered hypothetical. This would improve transparency, reduce disagreement and help applicants provide relevant evidence rather than unnecessary or speculative material.

Section 4 — Checking for in-combination effects with other plans and projects

17. How helpful is the detail in this section on how in-combination effects should be considered?

Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes clearer guidance on in-combination effects, particularly if it helps competent authorities avoid open-ended or speculative searches for every possible plan or project that might affect the same site.

In-combination assessment is important, but it must remain proportionate and relevant to the specific proposal, site, qualifying feature and conservation objective being assessed. In moorland cases, there is a risk that in-combination assessment can become a broad catch-all exercise, adding cost and delay without improving environmental protection.

The guidance should make clear that competent authorities should focus on plans and projects that are sufficiently certain, relevant, and capable of contributing to the same effect pathway. It should not be necessary to consider remote, hypothetical or unrelated activities simply because they occur somewhere within or near the same protected site.

For moorland management, this matters because routine or conservation-related activities may be seasonal and time-sensitive. The assessment should ask whether the specific proposal, together with other relevant and sufficiently certain plans or projects, could undermine the site's conservation objectives. It should not become a general audit of all land-management activity across a landscape.

We suggest adding:

"When considering in-combination effects, competent authorities should identify the specific effect pathway, the relevant qualifying feature and conservation objective, and the other plans or projects that are sufficiently certain and relevant to that same pathway. Plans or projects should not be included merely because they affect the same broad site or landscape if they do not contribute to the same potential effect on the relevant conservation objective."

18. Should this section include further detail on what should be considered an in-combination effect?
Yes

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

Further detail would be helpful because in-combination assessment can otherwise become open-ended. The question should be whether another plan or project is real enough, close enough and relevant enough to add to the same potential effect being assessed. It should not be enough that another activity takes place somewhere on the same protected site or in the same landscape.

For moorland management, this distinction matters. A competent authority should not have to audit every burning, cutting, grazing, restoration, bracken-control, predator-control, access or track-maintenance activity unless those activities could genuinely combine with the proposal through the same route of effect.

The guidance should also make clear that beneficial or risk-reducing management should be properly taken into account. In some cases, the combined effect of management may be to reduce risk to a site, for example by reducing wildfire fuel load, maintaining suitable habitat structure for qualifying birds, controlling bracken or scrub, or supporting restoration.

Where a competent authority considers that in-combination effects would be greater than the sum of the individual effects, it should explain the ecological basis for that conclusion. The assessment should identify how the effects would interact, why that interaction would increase risk to the

relevant qualifying feature or conservation objective, and why the combined effect is more than a simple aggregation of separate activities.

We suggest adding:

"For the purposes of in-combination assessment, other plans or projects should be included where they are sufficiently certain, relevant to the same habitats site, and capable of contributing to the same potential effect pathway on the same qualifying feature or conservation objective. Competent authorities should not include remote, hypothetical or unrelated activities merely because they occur within the same broad landscape. Where relevant, authorities should also recognise that other management activity may reduce, rather than increase, risk to the conservation objectives of the site."

Section 5 — How to use screening criteria

19. How helpful is this section at setting out the purpose of the screening criteria?
Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes clearer guidance on the purpose of screening criteria, particularly where it helps competent authorities decide early whether a proposal can be screened out without unnecessary escalation to appropriate assessment.

However, the guidance should make clearer that screening criteria are not simply a procedural checklist. They should help competent authorities answer the legal question in a disciplined way: whether the particular plan or project is likely to have a significant effect on the relevant habitats site, alone or in combination, in view of the site's conservation objectives.

The guidance should also make clear how it is using the term "screening". In the HRA context, screening should be understood as shorthand for the likely significant effect stage, not as a separate applicant-led process for deciding whether HRA applies at all. The responsibility for deciding whether the Habitats Regulations are engaged, and whether a plan or project can be excluded from further assessment at the likely significant effect stage, rests with the competent authority.

Where competent authorities regularly deal with recurring categories of land-management proposal, the guidance should state that they should develop and use transparent screening criteria or indicative thresholds where this can be done consistently with site-specific judgement. These should help applicants and decision-makers understand what information is needed, what issues are likely to matter, and when a proposal is likely to be screened out or taken forward to appropriate assessment. Such criteria should support consistency and proportionality, while preserving the need for site-specific judgement.

For moorland management, this distinction is important. Screening criteria should require the competent authority to identify the specific habitats site, qualifying feature, conservation objective and credible pathway for harm. A general concern about a type of activity, such as burning, cutting, grazing, bracken control, predator control, track maintenance or restoration work, should not be

enough unless the authority can explain how the specific proposal could undermine the relevant conservation objective.

The guidance should also make clear that screening criteria should help avoid unnecessary assessment where the likely effect is too minor, remote or hypothetical to create a credible risk of significant effect. Conversely, where a real risk remains, the proposal should proceed to appropriate assessment and be considered properly, including any relevant mitigation.

We suggest adding:

"Screening criteria are intended to help competent authorities apply the likely significant effect test in a clear, proportionate and evidence-based way. Screening is not a substitute for the competent authority's responsibility to decide whether the Habitats Regulations are engaged and whether further assessment is required. Where recurring categories of decision arise, competent authorities should use transparent screening criteria or indicative thresholds to support consistency, while retaining site-specific judgement. Screening criteria should be used to identify the relevant habitats site, qualifying feature, conservation objective and credible impact pathway, and to distinguish real risks from hypothetical or generic concerns. They should not be applied as a general policy test of whether a category of activity is favoured or disfavoured."

20. How helpful is the detail in this section on what criteria must be met for a plan or project to be screened out?
Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes clearer guidance on the criteria for screening out plans or projects, especially where it helps competent authorities avoid unnecessary appropriate assessments where there is no credible risk of a significant effect.

However, the guidance should make clearer that screening out should be possible where, on the basis of objective information, the competent authority can identify that there is no credible pathway by which the specific proposal could undermine the relevant conservation objective, either alone or in combination. The test should not be applied by reference to generic assumptions about an activity type.

For moorland management, this is particularly important. Activities such as cutting, burning, grazing changes, bracken control, predator control, track maintenance, peatland restoration and wildfire-risk reduction can have very different effects depending on location, timing, scale, method, vegetation condition, hydrology, species use and existing controls. A proposal should not fail screening simply because the activity is taking place on or near a protected site. The question should be whether the specific proposal creates a real risk of significant effect on the relevant feature and conservation objective.

The guidance should also make clear that where a proposal is designed to maintain or improve the conservation condition of the site, or to reduce risks such as wildfire, scrub encroachment, bracken

spread or loss of habitat structure, those facts are relevant to the screening analysis insofar as they help define the proposal and its likely effects.

We suggest adding:

"A plan or project may be screened out where, on the basis of objective information, the competent authority can exclude a credible risk of significant effect on the relevant habitats site, alone or in combination. In applying this test, the authority should identify the site, qualifying feature, conservation objective and impact pathway. Generic concerns about a category of activity should not prevent screening out unless they are capable of applying to the specific proposal in a way that could undermine the site's conservation objectives."

Section 6 — Assessing the potential effect of a plan or project on the integrity of a site

21. How helpful is the detail in this section on the definition of site integrity?
Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes the clarification that site integrity should be assessed by reference to the site's protected features and conservation objectives, and that effects may include ecological function, hydrology, physical conditions, species-supporting resources, and restoration potential.

The guidance should also distinguish clearly between the likely significant effect test at screening and the adverse-effect-on-site-integrity test at appropriate assessment. Once a proposal reaches appropriate assessment, the question should not simply be repeated as whether the activity is "significant" in the abstract. The competent authority should explain whether the proposal, taking account of its design and any secured avoidance or mitigation measures, would undermine the integrity of the site in view of the relevant conservation objectives.

This is important because "site integrity" can otherwise be applied too broadly or too vaguely. The test should not become a general assessment of all environmental effects, nor a broad policy judgement about a land-management practice. It should remain focused on whether the specific proposal would undermine the conservation objectives of the relevant habitats site.

MA members are concerned that "site integrity" can sometimes be interpreted too defensively, as if any localised or temporary effect within a large protected site must be treated as affecting the integrity of the site as a whole. That is particularly problematic on extensive upland sites, which may contain varied habitats, roads, forestry blocks, modified land, existing infrastructure and areas with different ecological functions. A competent authority should not assume that a small or localised effect has site-wide implications without explaining the ecological pathway by which that effect would undermine the relevant conservation objective.

For moorland management, the guidance should make clear that site integrity must be assessed in a practical, site-specific way. The competent authority should identify the feature said to be affected, the conservation objective engaged, the pathway of effect, the scale and duration of the predicted

effect, and whether that effect would undermine the site's ability to maintain or restore the relevant feature.

MA members are also concerned that the concept of "magnitude" is not always applied consistently in HRA. The final guidance should explain how competent authorities should assess the scale, intensity, extent, severity, duration, frequency, reversibility and permanence of an effect in upland land-management cases. It would be particularly helpful to include worked upland examples showing effects above and below the threshold at which magnitude becomes relevant to site integrity. Those examples should distinguish between localised, temporary, minor or reversible effects, and effects of a scale, severity, longevity or ecological importance that could genuinely undermine the conservation objective for the affected feature.

The guidance should also give practical examples of effects that are trivial, de minimis, minor or immaterial in the context of the site-integrity test. Where conservation objectives or supplementary advice refer to "trivial loss" or similar concepts, competent authorities and applicants need to understand how that is to be applied in practice. This is particularly important on very large upland sites, where a small, localised or temporary effect should not automatically be treated as affecting site integrity without an explanation of its ecological significance for the relevant feature and conservation objective.

The final guidance should use terms such as "trivial", "minor", "negligible", "de minimis" and "immaterial" consistently, and should explain how they relate to the legal tests of likely significant effect and adverse effect on site integrity. These terms should not be used loosely or interchangeably without explaining their relevance to the particular stage of the HRA. In particular, the guidance should explain how competent authorities should assess small, localised, temporary or reversible effects by reference to scale, duration, reversibility, feature sensitivity, ecological function and the conservation objective affected.

At this stage, the evidence relied upon should be specific enough to the site, the protected feature, the conservation objective and the particular proposal. Generic evidence about an activity type may help identify issues to consider, but it should not be treated as sufficient by itself to conclude that site integrity would be adversely affected. Nor should generic concerns be used to require further evidence unless the competent authority can explain why they apply to the particular site and proposal.

The guidance should also be clearer that, at appropriate assessment, secured avoidance and mitigation measures must be taken into account when assessing whether the proposal would adversely affect site integrity. In MA members' experience, this is not always well understood in practice. A proposal may be treated as harmful in the abstract, without proper consideration of whether changes to timing, method, location, scale, buffers, conditions, monitoring or adaptive measures would avoid or reduce the risk so that adverse effects on site integrity can be ruled out. The assessment should consider the proposal as it would actually be authorised and controlled, not only an unmitigated version of the activity.

The guidance should also recognise that land-management proposals may support site integrity, not merely threaten it. For example, vegetation management, wildfire-risk reduction, bracken or scrub control, grazing management, predator control or restoration work may help maintain habitat structure, reduce risk of severe wildfire, support qualifying bird species or assist restoration objectives. The assessment should consider those effects alongside any potential adverse effects.

We suggest adding:

"In applying the site integrity test, competent authorities should explain how the specific proposal would affect the relevant qualifying feature and conservation objective, including the magnitude, scale, location, timing, duration, frequency, severity, reversibility, permanence and likelihood of the effect. Where an effect is localised, the authority should explain whether and how it would undermine the integrity of the site in view of the affected feature's ecological function and the site's conservation objectives. The assessment should distinguish between effects that genuinely undermine site integrity and effects that are minor, temporary, reversible, beneficial, or capable of being avoided or reduced through secured avoidance or mitigation measures that are clear, enforceable and capable of being delivered. Where relevant, the authority should also consider whether refusal, delay or non-management could itself undermine site integrity."

22. How helpful is the detail in this section on the role of conservation objectives?
Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes the emphasis on conservation objectives because they are the proper anchor for HRA decision-making. An HRA should not be a general environmental assessment or a broad policy judgement about a land-management activity. It should assess whether the specific plan or project could affect the relevant protected feature in view of the site's conservation objectives.

This is particularly important for moorland management. Activities such as burning, cutting, grazing, bracken control, predator control, track maintenance, peatland restoration and wildfire-risk management may have different implications depending on the specific conservation objective engaged. In some cases, carefully planned management may support the objective, for example by maintaining suitable vegetation structure for qualifying birds, reducing wildfire risk, controlling bracken or scrub, or supporting restoration.

This is particularly relevant for SPA bird features. Where a qualifying species depends on short or structurally varied vegetation for nesting, feeding or other habitat requirements, the competent authority should assess whether the proposed management helps to provide or maintain that habitat. Burning, cutting or grazing should not be assessed only as isolated operations capable of causing harm; the assessment should also consider their role, where supported by evidence, in maintaining or restoring the habitat conditions required by the qualifying feature.

The guidance should also give clearer practical direction on supporting habitat and supporting resources for qualifying species. In SPA cases, this may include vegetation structure, wet flushes, rushy areas, invertebrate prey, nesting areas, feeding areas or other habitat components that the interest feature depends on. Competent authorities should identify which supporting habitat or resource is relevant to the particular qualifying feature, how the proposal may affect it, and whether that effect would undermine, maintain or support the relevant conservation objective.

The guidance should also recognise that conservation objectives and supplementary advice may contain broad assumptions about habitat condition, supporting habitat, species requirements or management effects. Those documents are important, but they should not remove the need for site-specific judgement. Where an assumption in conservation objectives or supplementary advice is material to the HRA conclusion, the competent authority should test it against the evidence for the particular site, feature and proposal, and should explain how it applies in that case.

The guidance would be stronger if it made clear that competent authorities should identify the relevant conservation objective at the outset and explain how the proposal could undermine, maintain or support that objective. It should not be enough simply to say that a proposal affects a SAC, SPA or habitats site. The assessment should identify the feature, objective and credible pathway of effect.

We suggest adding:

"Competent authorities should identify the relevant conservation objective or objectives at the start of the assessment and explain how the particular proposal could affect them. The assessment should distinguish between effects that may undermine conservation objectives and management actions that may maintain, restore or support those objectives. Where conservation objectives or supplementary advice contain assumptions that are material to the assessment, the authority should explain how those assumptions apply to the particular site, feature and proposal. General concerns about an activity type should not be treated as sufficient without a clear link to the relevant conservation objective."

Section 7 — Checking effects against a site's conservation objectives

23. How helpful is this section on how maintain and restore objectives should be handled when assessing an impact on site integrity?
Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes clearer guidance on how maintain and restore objectives should be handled when assessing site integrity. This is particularly important for upland habitats because many protected sites are not static systems, and management is often needed to maintain or restore the features for which they are designated.

However, the guidance should make clearer that "restore" objectives must not be interpreted only as a reason to resist management. In some cases, active management may be necessary to achieve restoration or to prevent deterioration. For example, vegetation management, wildfire-risk reduction, bracken or scrub control, grazing management, predator control, grip blocking, rewetting or access needed for restoration works may help maintain or restore the relevant feature or supporting habitat.

The assessment should therefore consider whether the proposal would undermine, maintain or support the relevant maintain or restore objective. It should also consider whether refusal, delay or restriction of management could itself prevent or disrupt restoration, increase wildfire risk, allow

bracken or scrub encroachment, worsen vegetation condition, or reduce habitat suitability for qualifying species.

We suggest adding:

"Where a conservation objective is to maintain or restore a feature, competent authorities should assess whether the proposal would undermine, maintain or support that objective. The assessment should recognise that active management may be necessary to achieve restoration or prevent deterioration. Where relevant, authorities should consider whether refusing, delaying or restricting a proposal could itself prevent or disrupt restoration, or increase risk to the conservation objectives of the site."

The guidance should also encourage authorities to distinguish between short-term, controlled, reversible effects of management and long-term effects that genuinely undermine restoration. In dynamic moorland systems, a temporary change in vegetation structure should not automatically be treated as adverse to restoration if the evidence shows that the proposal is part of a coherent route to maintaining or restoring the protected feature.

The guidance should also recognise that restoration is often adaptive. In upland habitats, restoration often has to respond to monitoring, vegetation condition, hydrology, wildfire risk, species use and restoration progress. The guidance should therefore allow competent authorities to consider monitored, reviewable management plans where these provide enough certainty, rather than forcing each similar intervention back to the start of the HRA process.

Any monitoring or review requirements should be proportionate to the risk, the scale of the proposal and the conservation objective engaged. They should not become a default substitute for a clear HRA conclusion where the evidence is already sufficient.

Section 8 — Considering reasonable scientific doubt

24. How helpful is this section in explaining what constitutes reasonable scientific doubt?
Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes the clarification that absolute certainty is not required, and that doubts which are not reasonable should not prevent a competent authority from concluding that there will be no adverse effect on site integrity.

This is important because, in practice, the "reasonable scientific doubt" test can sometimes be applied as if it required the elimination of all uncertainty. That can lead to disproportionate evidence requests, delay and risk-averse decision-making, particularly for seasonal and time-sensitive land-management proposals.

However, the guidance should go further in explaining what makes a doubt "reasonable". A doubt should be grounded in objective scientific evidence, a credible impact pathway, and the relevant conservation objective. It should not be enough to identify a theoretical possibility, a generic

concern about an activity type, or an uncertainty that is immaterial to the protected feature or site integrity.

In particular, reasonable scientific doubt should be based on evidence that is sufficiently specific to the site and proposal. General scientific literature or generic assumptions may be relevant background, but they should not be enough on their own unless the competent authority explains why they apply to the conditions, features and management proposal being assessed.

Where the alleged risk is that a localised effect would undermine the integrity of a much larger site, the competent authority should explain the scientific basis for that conclusion, including the relevant feature, ecological function, pathway, scale and likely duration of the effect.

For moorland management, this distinction is critical. Decisions about vegetation management, wildfire-risk reduction, bracken or scrub control, grazing, predator control, track maintenance and restoration work often involve ecological judgement. The existence of uncertainty should not automatically prevent consent where the competent authority has enough site-specific evidence, secured avoidance or mitigation measures, and enforceable conditions to reach a reasoned conclusion.

The guidance should also make clear that reasonable scientific doubt should be assessed after taking account of any secured avoidance or mitigation measures. Where such measures are specific, enforceable and capable of avoiding the relevant adverse effect, the authority should explain whether any remaining doubt is still reasonable and material to site integrity.

The guidance should also explain when monitoring conditions, trigger thresholds and adaptive management requirements can be relied upon as enforceable measures. In some land-management cases, reasonable scientific doubt may be addressed by requiring monitoring, setting clear thresholds, and specifying what must happen if those thresholds are reached, for example modifying the activity, stopping it, requiring restoration, or preventing repetition of the same proposal. This would be particularly useful for small-scale, innovative or restorative management where the predicted effect is expected to be temporary or beneficial, but the competent authority requires assurance that any unexpected adverse effect can be detected and addressed.

The guidance should explain what is meant in practice by a "legally enforceable framework", including the types of condition, agreement, consent mechanism, review requirement or monitoring obligation that can be relied upon at appropriate assessment.

We suggest adding:

"Reasonable scientific doubt should be distinguished from theoretical, remote or immaterial uncertainty. A doubt should be treated as reasonable where it is supported by objective scientific evidence and relates to a credible pathway by which the specific proposal could adversely affect the integrity of the site in view of its conservation objectives. Competent authorities should explain why any remaining uncertainty is, or is not, material to the integrity test, taking account of any secured avoidance or mitigation measures, monitoring requirements, trigger thresholds or adaptive safeguards. Absolute certainty is not required."

The guidance should also make clear that reasonable scientific doubt can be addressed through proportionate evidence, secured mitigation, timing restrictions, method conditions, monitoring and adaptive measures where those measures are legally enforceable and capable of avoiding adverse effects.

Section 9 — Securing compensatory measures

25. How helpful is the detail in this section on compensatory measures?
Neither helpful nor unhelpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association considers this section neither helpful nor unhelpful for the majority of moorland management cases, because compensatory measures should only arise at the derogation stage, after adverse effects on site integrity cannot be ruled out, there are no alternative solutions, and imperative reasons of overriding public interest have been established.

However, the guidance would be more useful if it also gave clearer practical direction on the derogation steps that come before compensation, particularly alternative solutions and imperative reasons of overriding public interest. In land-management cases, IROPI may be relevant only rarely, but the guidance should still explain how competent authorities should approach it where a proposal has a public-safety, wildfire-risk, infrastructure, access or restoration purpose. For example, urgent or planned works, including a firebreak or controlled burning where appropriate, to reduce the risk of severe wildfire affecting a village, infrastructure or a protected site may raise different public-interest considerations from ordinary estate management.

For most routine, restorative or conservation-related moorland management, the more important issues are screening, appropriate assessment, mitigation, proportionality, the use of existing evidence, and distinguishing real from hypothetical risks. Compensation should not become a substitute for a proper assessment of whether adverse effects can be avoided or mitigated.

We welcome the guidance making clear that compensatory measures must protect the overall coherence of the national site network and must be secured through binding, enforceable conditions, delivery milestones, measurable targets, monitoring, management and, where necessary, adaptive measures. The draft guidance also rightly places compensatory measures in Stage 4, after alternatives and IROPI have been considered.

However, the guidance should more clearly distinguish mitigation from compensation. Measures that avoid or reduce harm to the relevant site should be considered at appropriate assessment. Measures that make up for residual harm elsewhere belong only to derogation. This distinction is important for land-management cases, where timing restrictions, spatial buffers, method statements, hydrological safeguards, monitoring and adaptive management may be mitigation, not compensation.

We suggest adding:

“Compensatory measures should not be considered unless the competent authority has first completed the appropriate assessment, concluded that adverse effects on site integrity cannot be ruled out, considered alternative solutions, and identified imperative reasons of overriding public interest. Measures that avoid or reduce adverse effects on the site are mitigation and should be considered at appropriate assessment; measures that make up for residual harm are compensation and belong only to the derogation stage. The guidance should also include practical examples of how

alternative solutions and imperative reasons of overriding public interest should be considered in land-management and public-safety cases, including wildfire-risk reduction where relevant."

Section 10 — Habitats Regulations Assessments: guide for applicants

26. How helpful is this additional guidance at setting out how to engage with the HRA as an applicant?
Somewhat helpful

Please provide any reasoning or evidence to support your response. Where relevant, please suggest alternative wording you consider clearer or more effective, including draft text where possible.

The Moorland Association welcomes a separate applicant-facing guide, because many land managers are not HRA specialists but still need to understand what information they should provide, when they should engage with the competent authority, and how the HRA process should operate.

However, the guide should make clearer that the applicant does not "own" the HRA. The legal assessment belongs to the competent authority. The applicant's role is to provide the information the competent authority reasonably needs to make its decision. That distinction is particularly important for land managers, farmers, moorland owners and rural businesses, who may otherwise be left with the impression that they must produce a legally complete HRA themselves.

Applicant-prepared screening reports, ecological reports or "shadow HRAs" may be helpful where they identify the proposal, relevant site features, conservation objectives, possible pathways of effect, proposed working methods and mitigation. However, they should be treated as information to assist the competent authority, not as a substitute for the competent authority's own legal assessment. The guidance should make clear that applicants should not be expected to produce a full legal HRA where proportionate technical information would be sufficient, particularly where the competent authority or statutory adviser already holds relevant site evidence.

The guide should also give applicants a practical checklist of the information most likely to be useful: the location and scale of the proposal, timing, method, maps, potentially affected habitats or species, existing consents or agreements, previous HRAs, survey or monitoring data, proposed working methods, mitigation, and the consequences of delay or non-management where relevant.

The applicant guide would also be more useful if it included simple worked examples or templates for common land-management proposals. For moorland management, this could include examples for cutting, restoration burning, bracken control, grazing changes, predator control, peatland restoration, track repair and wildfire-risk reduction. These examples should show what proportionate information an applicant should provide, and which judgments remain for the competent authority.

The applicant guide should also make clear that, before reaching a negative HRA conclusion, the competent authority should tell the applicant promptly what concern or evidence gap may prevent a favourable conclusion and give the applicant a reasonable opportunity to respond. Applicants cannot always know at the outset every issue the competent authority or statutory adviser may identify. Where the competent authority considers that there is insufficient evidence, the first step should normally be to identify the gap and ask whether the applicant can provide targeted information,

survey evidence, monitoring data, revised timing, changes to method or location, enforceable conditions or secured mitigation. A proposal should not be treated as having failed HRA where the concern could reasonably have been addressed within the original process.

For moorland management, the guide should also explain that applicants should be encouraged to provide evidence on the conservation purpose and practical need for management, including wildfire-risk reduction, vegetation condition, habitat structure for qualifying birds, bracken or scrub control, grazing, predator control, peatland restoration and adaptive management.

We suggest adding:

"Applicants are not responsible for making the HRA decision. The competent authority is responsible for carrying out the assessment and reaching the legal conclusion. Applicants should provide proportionate, site-specific information to help the competent authority understand the proposal, the relevant site, feature and conservation objective, the likely impact pathways, any design or mitigation measures, and any ecological consequences of delay, refusal or non-management."

Efficiency impacts of the updated HRA guidance

27. What impact do you expect the refreshed guidance to have on the overall time taken to complete an HRA?
Slightly shorter overall time

Please provide any reasoning to support your response.

The Moorland Association expects the refreshed guidance to make the overall time taken to complete an HRA slightly shorter, provided it is applied consistently by competent authorities and statutory advisers.

The main time savings should come from clearer guidance on re-using existing HRAs and evidence, focusing on real rather than hypothetical risks, limiting in-combination assessment to relevant plans or projects, asking applicants only for proportionate and necessary information, and encouraging earlier engagement between applicants, competent authorities and statutory advisers.

For moorland management, those improvements could be particularly valuable because many decisions are seasonal or time-sensitive. Delay can affect the practicality and environmental value of management, including vegetation management, wildfire-risk reduction, bracken or scrub control, grazing changes, peatland restoration, track maintenance and habitat management for qualifying bird species.

However, the reduction in time is likely to be modest unless the guidance is strengthened and applied in practice. The key issue is not only what the guidance says, but whether competent authorities and statutory advisers use it to make timely, reasoned, site-specific decisions. In particular, time savings will depend on authorities identifying the relevant site, feature, conservation objective and credible pathway for harm at the outset; distinguishing real from hypothetical risks; re-using previous assessments where appropriate; and avoiding repeated or disproportionate evidence requests.

Defra should also consider how implementation of the refreshed guidance will be monitored. In particular, it would be useful to review whether competent authorities and statutory advisers are re-using existing HRA material, narrowing evidence requests, distinguishing real from hypothetical risks, and resolving issues earlier in the process. Without some form of implementation review, there is a risk that the revised guidance will improve the written framework but not materially change day-to-day practice.

We suggest adding an implementation expectation:

"Competent authorities should apply this guidance with the aim of resolving HRA issues at the earliest appropriate stage, including by re-using existing evidence where it remains relevant, identifying material evidence gaps promptly, and limiting further information requests to matters necessary to decide whether the proposal could affect the site's conservation objectives."

Amending the HRA guidance to include the offshore

28. Do you agree with the proposal to draft the HRA guidance so that it applies to habitats sites in offshore waters of England, as well as inshore waters?

Do not know

Please provide any reasoning or evidence to support your response.

The Moorland Association's principal remit and experience relate to moorland management in England and Wales, rather than offshore waters. We therefore do not propose to offer a detailed view on how the guidance should apply to offshore habitats sites.

In principle, we support clear, consistent and proportionate HRA guidance across all contexts where the Habitats Regulations apply. However, offshore HRA raises distinct issues, including different competent authorities, evidence bases, sectors, ecological receptors, survey constraints and compensation questions. Those matters are outside the Association's direct expertise.

Any extension of the guidance offshore should therefore be developed with organisations and sectors that have direct offshore experience, and should not dilute or delay improvements needed for terrestrial and upland land-management cases.

29. Are there any parts of the HRA process in the offshore which you would like us to focus on in the guidance?

Do not know

Please provide any reasoning or evidence to support your response.

The Moorland Association's experience is principally in relation to terrestrial moorland management in England and Wales, rather than offshore waters. We therefore do not propose to make detailed recommendations on what additional offshore HRA guidance may be needed.

In principle, guidance should be clear, proportionate and practical for all users, including offshore users. However, offshore HRA raises sector-specific and ecological issues that are outside the Association's direct expertise. Those include offshore survey evidence, marine receptors, offshore competent-authority responsibilities, marine plans and projects, offshore wind, compensation, monitoring and adaptive management.

Any further offshore detail should be developed with organisations and sectors that have direct offshore experience. It should not delay the publication of clearer guidance for terrestrial, inshore and land-management cases, where improvements on proportionality, real rather than hypothetical risk, re-use of existing HRAs and timely decision-making are urgently needed.

Further comments on the draft Habitats Regulations Assessment Guidance

30. The full updated draft Habitats Regulations Assessment Guidance can be found in the above fact bank. Are there any aspects of the draft guidance not already covered in the previous questions you would like to comment on?

Please provide any reasoning or evidence to support your response.

The Moorland Association welcomes Defra's aim of making the HRA guidance clear, practical and easier to use. Our members support effective protection for protected sites, but they also need a process that is practical, timely and focused on the legal HRA question.

The Association supports the integrity test and does not seek to reduce the safeguards that protect habitats sites. The Habitats Regulations provide an important legal framework for ensuring that plans and projects affecting protected sites are assessed properly. However, MA members have direct experience of HRA's being applied in ways that can be unnecessarily repetitive, slow, risk-averse and insufficiently adapted to dynamic upland management decisions. In those cases, the problem is not the environmental purpose of the HRA process, but the way the process is applied in practice. The purpose of clearer guidance should be to improve consistency, proportionality, timeliness and practical decision-making, so that the HRA protects habitats sites without unnecessarily obstructing beneficial or necessary land management.

The Moorland Association's concern is therefore not with the HRA process itself, or with the legal tests that protect habitats sites. The concern is that, in the absence of clear worked examples and practical guidance on how those tests should be applied, decision-making has become increasingly risk-averse in practice. Competent authorities and statutory advisers may feel obliged to carry forward generic risks, request repeated evidence, avoid relying on previous assessments, or treat uncertainty as determinative even where the real HRA question is narrower. Clearer guidance should therefore focus less on restating the HRA stages and more on showing, through practical examples, how the tests should be applied correctly, proportionately and consistently in real cases.

The final guidance also needs to be sufficiently explicit to promote consistent application by all competent authorities and statutory advisers. MA members' experience is that interpretation of the Habitats Regulations can vary between regions, authorities and advisers, even where the proposal, conservation objectives and site circumstances are materially similar. That uncertainty is made worse where applicants cannot see or test internal guidance or changing interpretations. Defra's published

guidance should therefore be clear enough to provide a common national framework for decision-making, while still allowing site-specific judgement.

Consistent application will also require training and shared examples for competent authorities and statutory advisers. The final guidance should not only be published, but embedded through common case studies, decision-record examples and adviser training, so that similar proposals are not treated materially differently between regions or advisers without a clear site-specific reason.

Our main concern is that, in some land-management cases, the HRA process can become broader than its legal purpose. It should not operate as a general review of whether a particular moorland practice is favoured or disfavoured, or as a substitute for other regulatory or environmental assessment processes. It should remain focused on whether the specific plan or project could affect a protected feature in view of the relevant conservation objective and a credible impact pathway.

In moorland cases, the competent authority should be able to explain, in plain terms: what site is affected, what feature is at issue, what conservation objective matters, how the proposal could cause harm, whether that risk is real, and what changes, conditions or mitigation would address it.

This is especially important because moorland systems are dynamic. Decisions about vegetation management, burning, cutting, grazing, bracken control, predator control, peatland restoration, track maintenance and wildfire-risk reduction often involve choosing between ecological risks, rather than choosing between risk and no risk. Delay, refusal or uncertainty can itself create environmental risk, including increased fuel load, wildfire risk, scrub or bracken encroachment, peat deterioration, delay to restoration, or loss of suitable habitat structure for qualifying bird species.

Wildfire risk is a particular example of a low-probability but high-consequence risk that needs clearer treatment in the guidance. It should not be dismissed as irrelevant merely because the precise timing, ignition point or weather conditions of a future wildfire cannot be predicted. Where credible site-specific evidence shows that fuel load, vegetation structure, peat condition, access constraints, visitor pressure, drought or climate change could increase the likelihood, severity or ecological consequences of wildfire, competent authorities should be able to consider proportionate preventative management within the HRA process. The question should be whether the proposal, with any necessary controls, better protects the relevant conservation objectives than refusal, delay or non-management.

The final guidance should also address urgent and emergency wildfire-related action. In some circumstances, land managers and competent authorities may need to act quickly to prevent, control or respond to wildfire risk on or near a habitats site. The guidance should explain how HRA duties should be approached where action is time-critical, including how competent authorities should distinguish between emergency response, urgent risk-reduction works, and planned land-management proposals. This should not remove the need to protect habitats site features, but it should give practical guidance on how to make lawful, proportionate and timely decisions where delay could itself increase the risk of serious harm to protected habitats or species.

The guidance should also recognise that emergency action is different from planned management. In the SSSI context, emergency works may sometimes need to proceed before prior consent or assent has been obtained, subject to prompt notification to Natural England and to the land manager or public body taking reasonable steps to minimise damage. The HRA guidance should explain how competent authorities should handle comparable time-critical situations affecting habitats sites. It should set out what should be recorded, who should be notified, what retrospective information

may be needed, and how emergency action should be distinguished from urgent but still plannable risk-reduction works. This would help avoid both unlawful delay in a genuine emergency and inappropriate use of "emergency" language for ordinary planned management.

The final guidance should therefore make explicit that competent authorities should consider the ecological consequences of action and inaction. Where a proposal is intended to maintain or restore a feature, reduce wildfire risk, support qualifying species or prevent deterioration, that purpose and evidence should be considered properly within the HRA process.

Defra should also make clear that competent authorities are not only gatekeepers against harm; they also exercise functions in a framework that includes duties to protect, conserve and restore protected sites. Where a land-management proposal is intended to maintain or restore a protected feature, reduce deterioration risk, or support qualifying species, the HRA process should help authorities assess that proposal lawfully and promptly rather than defaulting to delay or refusal.

The Association also considers that the guidance should be clearer on the conservation-management exclusion, including the question whether a plan or project is directly connected with or necessary to the management of the site. The Moorland Association is concerned that, in practice, activities can be treated differently simply because they are proposed by a private land manager or also have a grouse-moor or estate-management benefit, even where the proposal itself is primarily directed at conserving, maintaining or restoring the protected site or its qualifying features. That risks treating mixed-purpose land management as if any private or operational benefit automatically disqualifies it. The guidance should make clear that the relevant question is not whether the applicant's wider business or land use is solely conservation, but whether the specific plan or project is genuinely directed at the management of the protected site in view of its conservation objectives.

Moorland management may have practical, economic and conservation purposes at the same time. The competent authority should examine the substance, evidence and conservation purpose of the particular proposal, rather than applying a broad assumption based on land use, ownership or incidental benefit to grouse-moor management. Where, for example, an SPA qualifying bird species depends on short or structurally varied vegetation, the HRA should assess whether controlled vegetation management contributes to that habitat requirement, as well as assessing any risk of disturbance, habitat damage or other adverse effect.

We suggest the guidance should state:

"The fact that a proposal is made by a private land manager, or may also have private, commercial, operational or grouse-moor management benefits, does not, by itself, determine whether it is directly connected with or necessary to the management of the site. The competent authority should consider the specific plan or project, its conservation purpose, its relationship to the site's qualifying features and conservation objectives, and whether the proposal itself is genuinely directed at site management."

The final guidance should also stress that the competent authority owns the HRA decision. Applicants and land managers should provide proportionate, relevant and site-specific information, but the legal assessment and conclusion sit with the competent authority. This distinction is important in avoiding unnecessary burdens on applicants and ensuring that decisions are properly reasoned and recorded.

It should also set a clear expectation that competent authorities and statutory advisers will engage constructively before a negative HRA conclusion is reached. Where the competent authority or

statutory adviser identifies a concern, uncertainty or evidence gap that may prevent a favourable conclusion, the applicant should be told what that issue is and given a reasonable opportunity to provide targeted evidence, amend the proposal, propose enforceable conditions or secure mitigation. This would help avoid unnecessary refusals and repeat applications.

In appropriate cases, the guidance should encourage a "minded to conclude adversely" step before a final negative HRA conclusion is reached. Where the competent authority is likely to conclude that likely significant effect cannot be ruled out, or that adverse effect on site integrity cannot be excluded, it should normally identify the specific feature, conservation objective, pathway, evidence gap, mitigation concern or uncertainty driving that provisional conclusion. The applicant should then have a reasonable opportunity to respond with targeted evidence, amendments to timing, scale, method or location, proposed conditions, monitoring, adaptive safeguards or other secured mitigation. This would not weaken the precautionary approach or require repeated negotiation; it would help ensure that adverse conclusions are based on real unresolved issues rather than misunderstandings, missing information or concerns that could have been addressed within the original process.

The guidance should also require competent authorities to identify clearly the status of any advice or assessment material relied upon. Applicants may encounter informal technical advice, draft or "shadow" HRA material, statutory consultation advice under the Habitats Regulations, advice under the SSSI regime, licensing advice, internal advice, and final decision reasoning. These categories should not be blurred. Adviser input may inform the HRA, but it is not a substitute for the competent authority's own conclusion on the legal tests.

The final guidance should also encourage transparency in the HRA record. Subject to necessary redactions for personal data, legally privileged material or genuinely confidential information, applicants should be able to understand the assessment material, advice and reasoning on which the competent authority relies. This is particularly important where draft, informal or internal advice materially influences the HRA conclusion. A transparent record would allow factual or ecological errors to be corrected earlier, improve confidence in the process, and reduce the need for later information requests, appeals or disputes.

It should therefore state that, where a competent authority relies on advice from Natural England, NRW or another statutory nature conservation body, it should record: the status of that advice; the HRA stage to which it relates; whether it is also addressing a separate statutory regime, such as SSSI consent or assent; and how the competent authority has taken it into account in reaching its own decision.

The final guidance should also explain more clearly how the HRA process interacts with other land-management controls, including SSSI consent or assent, burning licences, agri-environment agreements and other regulatory permissions. In moorland cases these regimes often overlap. A single proposal may require consideration under the Habitats Regulations, the SSSI regime, burning rules, scheme agreements or licensing processes. Without clear sequencing and role definition, this can lead to duplication, delay and uncertainty about which authority is making which decision, which legal test is being applied, and whether advice relates to HRA duties, SSSI duties, licensing policy or another regulatory route.

The guidance should encourage competent authorities and statutory advisers to identify at the outset: the relevant legal regimes; the competent authority for each decision; whether an HRA must be completed before another consent or assent is granted; what evidence can be shared across

regimes; and how any HRA conclusions should inform, but not be confused with, separate SSSI, licensing or scheme-agreement decisions.

The guidance should also be clearer on how alternatives should be handled where a competent authority cannot rule out adverse effects on site integrity. In land-management cases, alternatives may include different timing, method, scale, location, access route or management technique. Where alternatives are suggested, the competent authority should explain whether they are practical, available and capable of achieving the same conservation or land-management purpose. Where an alternative is not feasible, for example because of access, terrain, safety, wildfire risk or ecological constraints, that should be recorded rather than left implicit.

It should encourage a more practical approach to evidence. Existing HRAs, previous consents, licence decisions, management agreements, monitoring data, site-condition evidence and previous assessments should be re-used where they remain relevant and up to date. Competent authorities should explain what has materially changed before requiring repeated surveys or assessments.

The guidance should also recognise that some land-management activities are recurring and adaptive rather than one-off projects. Moorland management often involves repeated or responsive interventions over time, such as vegetation management, grazing adjustment, bracken control, predator control, restoration works and wildfire-risk reduction. Where appropriate, competent authorities should be encouraged to use monitored, reviewable, multi-year approaches rather than requiring repeated single-operation HRAs for materially similar management. Such approaches could include clear parameters, agreed methods, monitoring, review points and adaptive measures, while still ensuring that the competent authority can conclude that the relevant conservation objectives will not be undermined.

The guidance should also encourage competent authorities to identify the HRA trigger before requiring further assessment. Where there is no new plan or project, new authorisation, renewal, material change or new decision by a competent authority, and previous assessment material remains robust and up to date, the process should not default to a repeated HRA.

An anonymised upland licensing case illustrates why this matters. A restoration-focused moorland management activity on a protected upland site had previous assessment and consent history, but the later licensing process still raised questions about whether a further HRA was needed, whether previous material should have been re-used, whether the proposal was conservation management, and how the roles of the competent authority and statutory nature conservation body should be distinguished.

This is not raised to revisit the merits of that case, but to illustrate a recurring practical problem. Applicants need to know whether an HRA matter is being decided by the competent authority, advised on informally, addressed through statutory consultation, or considered under a separate SSSI or licensing process. The guidance should require competent authorities to identify existing material, explain what has changed, and record their own conclusions on the relevant HRA tests.

Defra should include at least one worked upland land-management example in the final guidance. Ideally, it should also provide short templates for recurring moorland activities, such as vegetation cutting, controlled burning for conservation or wildfire-risk purposes, bracken control, grazing changes, predator control, peatland restoration, track repair and wildfire-risk reduction.

Any worked examples, checklists or templates should be expressly presented as aids to judgement, not as rigid requirements or safe-harbour rules. A proposal should not be treated as deficient simply

because it does not provide every category of information listed in a template, where that information is irrelevant, unavailable for good reason, already held by the competent authority or statutory adviser, or unnecessary to decide the specific HRA question. Equally, compliance with a template should not replace the competent authority's own site-specific judgement. The guidance should make clear that the information required must depend on the particular proposal, site, protected feature, conservation objective and credible pathway of effect.

Each example should show what the competent authority needs to identify, what information the applicant should provide, how previous HRA or consent material can be used, and how the risks of action and inaction should be considered. The examples should also illustrate what would, and would not, normally amount to a "likely" and "significant" effect in upland land-management contexts, how the magnitude of an effect should be assessed, how trivial, de minimis, minor or immaterial effects should be approached, and how supporting habitat or supporting resources for qualifying species should be identified, without replacing the legal test or removing the need for site-specific judgement.

In summary, the Moorland Association asks Defra to ensure that the final guidance is framed and applied in a way that is proposal-specific, site-specific, evidence-based and practical. For upland land-management cases, the most important improvements are: clearer treatment of real rather than hypothetical risk; better re-use of existing assessment material; clearer separation of competent-authority decisions from adviser input; proper consideration of the ecological consequences of delay or non-management; and worked upland examples that support judgement without becoming rigid templates.