



Smart Growth UK Response to DEFRA Consultation on Habitats Regulations Assessments

18 May 2026

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?

1 – very unhelpful

The sentence "These updates form part of the Government's wider ambition to improve the effectiveness of the planning system, support timely decision-making and enable sustainable development and growth" suggest that the principal purpose of the regulations is to stimulate building development and that "maintaining strong environmental protections" is a secondary purpose. This may, of course, be your intention, but it undermines faith in governance to state it so baldly.

There is a legal requirement to avoid adverse effects on site integrity, so "working constructively to find a way etc." suggests an intention to undermine this.

The principle about "making judgements based on the facts etc." needs also to reflect mobility beyond site boundaries and the impacts deterioration of features will have on wider ecosystems, as well as their restoration potential.

The precautionary principle has long been central to both UK and European law and needs to be restated unequivocally for many reasons, including the proposed reset with Europe.

We are very concerned at the omission of long established, important principles, apparently under pressure from the Treasury's long, destructive and unsuccessful campaign to stimulate unsustainable building. The proposal to remove the principle of considering all effects at every phase is a clear political and economic attempt to undermine the environmental effectiveness of the Regulations.

The attempt to restrict the information that authorities seek from applicants is a clear political attempt to restrict the effectiveness of the Regulations, rather than improve their efficiency or operation. It could seriously undermine their operation - is this the intention?

We are also concerned about widening the use of derogations, a clear intention to undermine the Regulations. They should only be used in exceptional circumstances.

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

No

Regulators do not need to be told to "work constructively" with applicants as they do this already. It's a blatant attempt to weaken protection of nature.

Avoidance of harm should be the starting point and the precautionary principle should militate against making judgements based on individual situations and ecological conditions". Scientific knowledge about nature is universal, not individual.

Limiting information requests to "relevant and proportionate" is a clear attempt to intimidate regulators and to invite at least the possibility of legal challenge. As DEFRA is likely to be on the wrong end of some of these, it could work out costly for the Department, other authorities and nature.

Once again, it needs to be made clear that derogation is a last resort.

Section 2 – Making use of an existing HRA

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

2 – somewhat unhelpful

Clear guidance is needed on the precautionary principle here as conditions can change and cumulative impacts can cause impacts. Use of previous assessments needs to be done with great care and attention to changes which inevitably happen, including in investigative techniques and scientific knowledge. Where there has been a material change, including in the development proposed, there must be full new assessment. All relevant information must be obtained (not "should").

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

Yes

Ecological conditions of sites change in response to human activities, climate change and wide-area and cumulative effects. It would be very easy to accept the pressure to downplay changing conditions and to open up legal challenges even when there are clear concerns.

The reference to "users" suggests the only important people here are developers. In truth, we are all users of the land and that's true of the other species that use the land.

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?

5 – very helpful

The proposed wording would undermine existing laws and create ambiguity.

"Likely" is a weasel word as is the contrast between "real" and "hypotehtical" risks. Uncertainty is inevitable in screening but scientific experience should be the basis of this, not the creation of routes to undermine regulation or to open legal challenges. When does a real risk get rated hypothetical?

Presumably in the offices of the developer's consultants.

The guidance needs to make clear the importance of considering timing and duration of impacts as well as their location. Why should evidence plans be "voluntary, non-legally binding agreements"? This is a clear attempt to undermine the Regulations.

The Regulations need to make clear that there should be little or no scope to accept additional impacts where sites are in unfavourable condition.

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

1 – very unhelpful

Identification of significant risks could be undermined by the demand for "real, not hypothetical" risks and this would undermine the precautionary principle. Guesswork by intimidated regulators is no substitute for robust scientific evidence. Assessments should cover timing, duration and frequency of impacts as well as spatial issues, combined issues and cumulative issues.

The precautionary principle needs to be given great emphasis here.

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?

1 – very unhelpful

The draft attempts to undermine both the precautionary principle and comprehensive assessment.

Why is it proposed to limit competent authorities' listing of the cumulative pressures on sites? This could cause problems later in developments when additional pressures are observed later in large projects.

It suggests an intention to undermine the Regulations rather than to improve them. Assessment of combination effects is central to the precautionary principle.

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

Yes

It is vital to understand the full range of cumulative effects on a site and suggesting regulators stop looking once one is identified is unacceptable.

Multiple small or apparently insignificant effects can undermine sites' ecological and environmental protection.

Section 5 – How to use screening criteria

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

1 – very unhelpful

There is a clear intention to undermine the Regulations here and to open assessments to hostile legal challenges.

The suggestion that assessments may not need more detailed information or surveys is a plain attempt to intimidate regulators from obtaining the information they need. Regulators must certainly be required to record their reasoning and evidence, including occasions where weakened guidance leads them to judge that vital information has not been, is not or will not be, obtained,

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

1 – very unhelpful

Once again, it is vital that regulators must be able to obtain the information, including surveys and models, required to judge whether projects may be screened out.

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?

3 – neither helpful nor unhelpful

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

3 – neither helpful nor unhelpful

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?

1 – very unhelpful

The section lacks clarity and precision.

What is "an appropriate timescale" for returning sites to the level of ecological functionality they used to enjoy? What exactly is a "temporary effect"? How long might they last? What happens if climate change or other factors exacerbates them? Where is the need to employ the precautionary principle?

As ever, introducing such uncertainties opens routes for legal challenges only likely to benefit lawyers.

Section 8 – Considering reasonable scientific doubt

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

1 – very unhelpful

Once again, the precautionary principle is at risk.

There is vagueness around when reasonable worst-case scenarios need assessment, why there should be no need for "no risk" even of major damage.

Why should information only be "likely" to be needed where ill-effects are substantial?

As you yourselves know, there is intense resource pressure on regulatory bodies and the Regulations should avoid let-out clauses. Worst-case scenarios are a central necessity.

A particular area where the resource shoe may pinch concerns scientific doubt, an area statutory nature conservation bodies exist to provide expertise, especially to bodies without the necessary capacity. Competent bodies must be required to access this expertise where they lack it.

Mitigation and derogation criteria should not be treated as alternatives. Derogation should not be regarded as a reason not to seek the best possible mitigation.

Section 9 – Securing compensatory measures

25 How helpful is the detail in this section on compensatory measures?

2 – somewhat unhelpful

This section needs drafting with care.

There is a need for more precise drafting on:-

- creating new habitat
- extending existing habitat
- enhancing existing site habitats.

Improvements must be additional to routine site maintenance, especially on existing designated sites or where they already achieve Special Area of Conservation level.

Compensatory measures should be of the same habitat type and not already be a feature of the site, and go beyond existing baselines.

Compensatory measures necessitate deadlines for the regulatory controls proposed. This includes establishment dates if site owners are simply to ignore regulatory requirements.

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?

3 – neither helpful nor unhelpful

It could usefully include clearer guidance on how to engage successfully and respectfully.

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 longer overall time

Given the increased likelihood of legal challenges, it is likely to increase.

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 the offshore waters of England, as well as the inshore waters?

Do not know

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

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?

The revisions are shot through with pressure from non-environmental experts at HM Treasury to ease unsustainable developments from the building industry, in the mistaken belief this is likely to secure an increase in house building and economic development.

Any weakening of Regulations based on EU directives, as these are, is likely to seriously impact the Government's stated intention of resetting our relations with Europe.