

Date 6 November 2012



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Dear Ms Shepherd

Access to information request – RFI 1731

I have been asked to respond to your recent questions to Martin Findlow on the Habitats Regulations and to Craig Hurd in relation to Walshaw Moor Estate notice and heather burning. For reference I have included the conversation on the subject below in an addendum. Your requests have been considered under Environmental Information Regulations 2004

The following statement tries to answer your four questions on the Habitats Regulations process:

The Conservation of Species and Natural Habitats Regulations 2010 (as amended) transpose the EC Habitats Directive into national law and provide that there should be Appropriate Assessment of new plans or projects in Article 6.3 of the Directive. This provision is catered for in Article 21 of the domestic Regulations which require Natural England (*it being the competent authority*) to consider or review plans or projects applied for or granted, affecting a European site (*Natura 2000, SAC and/or SPA*), and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected.

In order to assess whether a plan or project “may affect the site and/or if it is directly connected with or necessary to management for nature conservation” a notice must provide sufficient detail to determine whether an Appropriate Assessment is needed.

The initial test, in effect, seeks to ascertain whether the proposal is required to maintain, protect or enhance the site or its notified features.

If it is found that the plan or project is **not** required to maintain, protect or enhance the site or its notified features it must be further assessed under Article 21 by carrying out an Appropriate Assessment before consent may be issued. After that assessment Natural England can then consent the plan or project only after having ascertained that it will not adversely affect the integrity of the European site. Therefore, a notice and consent that permits burning and draining of blanket bog on a European site would only be issued without carrying out a an Appropriate Assessment if it **can** be seen to be directly connected with or necessary to management for nature conservation *or*, the proposal does not affect a European site, in which case the regulations are not applicable. An example of this might be a burning and draining that is part of an intervention project, necessary as part of an agreed restoration plan.

You can find details of Natura 2000 (N2K) and SAC/SPAs on Natural England’s website.
<http://www.naturalengland.org.uk/search/default.aspx>

With regard to your specific question on Walshaw Moor, the consent to burn and maintain certain drainage was assessed as having the potential to affect the site and that these operations were

not directly connected with or necessary to management for nature conservation. Therefore, an Appropriate Assessment was undertaken. This assessment concluded that the new management arrangements, by introducing specific controls as part of agreed restoration programme, made it possible to ascertain that they would not adversely affect the integrity of the European site. The Appropriate Assessment/HRA has been included.

On the specific question relating to habitat mapping, the consent requires areas to be mapped in accordance with the details of the consent, a copy of which we have previously provided. The map will identify areas which are either dry heath, active or degraded blanket bog to which a burning rotation will be applied. These areas will be a mixture of what you term peat bogs or wet heathland habitats. There will be a longer rotation on active blanket bog of 20-25 years and these areas will be mapped. Areas dominated by cotton-grass or *Molinia* and any areas where heather is not dominant (50% cover or less) will not be burnt. These again will include peat bog or wet heathland habitats. The habitat map is to be completed by 31 December 2013.

I hope this clarifies your questions. As you may appreciate we are dealing with a significant number of enquires so I apologise for the delayed response.

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If you have any queries about this letter, please contact me. As you may be aware, under the legislation should you have any concerns with the service you have received in relation to your requests and wish to make a complaint or request a review of our decision, please contact me and I'll arrange for a colleague to conduct an internal review. Under Regulation 11(2) this needs to be done no later than 40 working days after the date of this letter.

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Yours sincerely

Tom Keatley
Yorkshire & Humber South & West Team Leader
Enc 1 Appropriate Assessment

Addendum

Walshaw Moor Estate notice and heather burning Comms

IN 11th October . Habitat Regulations

- 1) Your sentence "Where a SSSI notice may affect a European site and **is not directly connected with or necessary to management for nature conservation**, Natural England must carry out an appropriate assessment of the implications for the site in the light of its conservation objectives."

I don't understand how to interpret the phrase "is not directly connected with or necessary to management for nature conservation".

For example, does an SSSI notice that consents to burning and draining blanket bog on a European site count this activity/consent as "not directly connected with or necessary to management for nature conservation"?

If so, does this mean there is no need for NE to carry out an HRA for burning & draining the blanket bog, before it issues such a Notice & Consent?

Conversely, if a notice and consent that permits burning and draining on blanket bog within a European site does count this activity as directly connected with or necessary to management for nature conservation, does this mean that Natural England must carry out an HRA for these activities before issuing the consent?

- 2) Your paragraph "The competent authority carries out the appropriate assessment and makes a decision on integrity rather than the proponent of the plan or project or Natural England. Regulation 61(2) makes it clear that the applicant has to supply the necessary information for the competent authority to make the assessment. The competent authority can require the proponent to provide sufficient information to inform the assessment."

Is it right that regulation 61(2) doesn't apply to European (Natura 2000) sites that are SACs? I guess you make this point implicitly in highlighted para below, about Natura 2000 sites?

- 3) If the SSSI is also a Natura 2000 site Natural England must follow the procedure set out at Article 6(3) of the Habitats Directive (and Regulations 21/22 of the Conservation of Habitats and Species Regulations 2010).
- 4) What are the requirements for carrying out HRAs on protected sites that aren't European sites (if there are such sites)?

IN 09 August 2012 17:53

I'm going through the documents you sent, plus the ones you referred me to, and one question has jumped out at me so far. I wonder if you could shed some light on it?

Basically, it seems that Natural England's Notice of Proposal and Consent for the Walshaw Moor Estate makes an explicit exemption from the Heather and Grass Burning Code.

It says that mapping the area's habitats, which must be completed by March 2013, must include 'sensitive areas' as identified in the Heather and Grass Burning Code – with the exception that "it shall not be necessary to identify the category described as 'Peat bogs and wet heathland' "

Doesn't this make a mockery of the fact that Natural England's Notice of Proposal and Consent also says:

"Sensitive areas: no burning"

By ruling out any need to identify the sensitive areas category of "peat bogs and wet heathland", Natural England seems to be saying to WME, "You must abide by the law that rules out burning sensitive areas – except if the sensitive area is peat bog or wet heathland. And then the rule doesn't apply."

Is this a fair understanding of what the burning consent amounts to, in relation to the ban on burning 'sensitive areas'? Or have I got the wrong end of the stick?

OUT Wed, 12 Sep 2012 14:03

The Heather and Grass burning code is a voluntary code that outlines best practice. The code itself is not law. It recognises that burning plans agreed with Natural England may vary from the code and where they do these plans take precedence. This reflects that the code is by its nature generic, whereas individual agreements and burning plans will be specific and tailored to local circumstances

The section of the code on sensitive areas relating to peat bog and wet heathland states that these areas should not be burned 'other than in line with a management plan agreed with Natural England'. The consent defines the agreed management operations (grazing, burning and use of vehicles) and so burning of these areas defined in this context does not contradict the code.

Overall the consent establishes agreed limits to the scale of management activity in the place of earlier imprecise consents. Burning activities on the Walshaw Estate will now be subject to specific controls - burning will not be permitted in areas where heather amounts to less than 50% of the vegetation and limits have been set regarding the length of rotations.

IN 12 September 2012 20:44

- the Heather & Grass Burning Code says, "there should be a strong presumption against burning sensitive areas. Doing so may permanently damage the environmental interest of the land and may be unlawful. In special circumstances, the advantages of burning on sensitive areas may outweigh the disadvantages." So, what are the special circumstances on WME that mean that the advantages of burning on sensitive areas that outweigh the disadvantages? And what are the advantages?
- your email says, "burning will not be permitted in areas where heather amounts to less than 50% of the vegetation" – but having exempted peat bogs and wet heathlands from the habitat mapping requirement, how will Natural England know where any prohibited burning areas are, in these habitats?

OUT 11 Oct 2012, at 16:53

By replacing the old open ended and unspecific Consent, the new management arrangements effectively form an agreed management plan with a finite lifespan of 25 years that is consistent with the Heather and Grass Burning Code 2007. In relation to peat bogs and wet heathland, although they are exempt from sensitive area mapping, they will now have specific prescribed burning rotations, in areas of greater than 50% heather cover only, that now limit the amount of burning upon them. Natural England feels that these special circumstances and these new levels of control are a positive advantage over the regime that previously existed.

IN 16 October 2012 14:58

I'm afraid it doesn't really answer my questions, so please could you have another go at answering them?

I asked:

- what are the special circumstances on Walshaw Moor Estate that mean that the advantages of burning on sensitive areas outweigh the disadvantages? And what are the advantages of burning on sensitive areas?
- having exempted peat bogs and wet heathlands from the habitat mapping requirement, how will Natural England know where any prohibited burning areas are, in these habitats?

For example, since peat bogs and wet heathlands are exempt from the sensitive area mapping, how will Natural England know where to prescribe the burning rotations, which are only to take place in areas of greater than 50% heather cover? Where will they get the information from about which areas to burnt.

Your answer sidesteps my specific questions, and instead makes a general remark that the agreed management plan requires prescribed burning rotations in areas of greater than 50% heather cover. I knew this already from reading the management agreement.