



Llywodraeth Cymru
Welsh Government

PUBLICATION

Habitats regulations assessments: protecting a European site

How a competent authority must decide if a plan or project proposal that affects a European site can go ahead.

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From: **Department for Environment, Food & Rural Affairs**, Welsh Government, **Natural England**, and **Natural Resources Wales**

Applies to: England and Wales

This guide applies to European sites in England and Wales and their inshore waters (within 12 nautical miles of the coast).

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A European site is protected by the Conservation of Habitats and Species Regulations 2017 as amended (known as the Habitats Regulations).

As a competent authority, you must carry out an assessment under the Habitats Regulations, known as a habitats regulations assessment (HRA), to test if a plan or project proposal could significantly harm the designated features of a European site.

From the assessment's outcome, you can decide whether to approve a project or adopt a plan ("a proposal"). This includes a proposal you will carry out yourself.

Use this guide to follow the HRA process.

A competent authority is:

- a **public body** that decides to give a licence, permit, consent or other permission for work to happen, adopt a plan or carry out work for itself, such as a local planning authority
- a statutory undertaker carrying out its work, like a water company or an energy provider
- a minister or department of government, for example that makes national policy or decides an appeal against another competent authority's decision
- anyone holding public office, such as a planning inspector, ombudsman or commissioner

If you're a developer or a proposer planning an activity that might affect a European site, you can read this guide to understand what a competent authority should do to assess your proposal. You should also read the guide on what **information proposers need to provide to competent authorities for an HRA**.

European sites

The following European sites are protected by the Habitats Regulations and any proposals that could affect them will require an HRA:

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- **Special Areas of Conservation**
- **Special Protection Areas** (SPAs)

Any proposals affecting the following sites would also require an HRA because these are protected by government policy:

- proposed SACs
- potential SPAs
- **Ramsar sites** - wetlands of international importance (both listed and proposed)
- areas secured as sites compensating for damage to a European site

Before you start an HRA

Before you start an HRA, there are several factors you should consider.

Decide if the proposal is a plan or project

You should decide whether the proposal is a plan, a project or neither. Any proposal that might have an impact on a European site is likely to be a plan or project.

If you're sure that the proposal is not a plan or a project, you do not need to carry out an HRA. You must still consider your general [duty to protect, conserve and restore European sites] before you make a decision or carry out your own work.

You should give the terms 'plan' and 'project' a very broad meaning to cover a wide range of activities.

When a proposal is a plan

A plan sets out where future activities or developments should take place within a certain area. This can include any changes that are proposed to an existing plan.

Examples of plans include:

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- local plans and local development plans
- neighbourhood plans
- national policy statements
- marine spatial plans
- funding plans
- flood and coastal erosion risk management plans
- river basin management plans

When a proposal is a project

A project can be any activity or a number of activities that either needs a new or renewed permission from a competent authority before it goes ahead, or that a competent authority proposes to carry out itself. It can also include proposals to change an existing project.

Examples of projects include:

- building or installing transport schemes, housing, retail and industrial developments, wind farms, tidal energy schemes, and extraction of minerals, water or timber
- licensing, permitting or regulating an activity, for example, applications for planning permission, licences, consents or permits issued under byelaws and other legislation, and activities under permitted development rights
- your own statutory activities, such as maintaining highways and flood defences, repairing underground cables or keeping powerlines clear

Check if a proposal might affect a European site

You only need to carry out an HRA if the proposal might affect a European site. The effect of your proposal may depend on its location. It could be:

- on the site
- near the site
- some distance away, for example by causing air, water or noise pollution or affecting a feeding area used by one of the site's designated species

You can locate a European site using [Magic map](#)

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You can check if there's an impact risk zone (IRZ) around a protected site. This will help you assess if a proposal might affect a site. See the [IRZ data on Magic map](#).

Make decision making quicker

To make it quicker to decide if a proposal can go ahead, you can:

- help the proposer with the process, for example, keep delays to a minimum and tell them about timings for decisions
- tell the proposer as soon as possible if there are problems with their proposal, such as missing information
- keep duplication to a minimum, for example, you may be able to use information from the HRAs of previous similar decisions if they're still relevant and up to date
- agree that the proposer can provide information for the HRA alongside other assessments, such as an environmental impact assessment or strategic environmental assessment

Be strategic

Take a strategic approach by dealing with proposals that all have similar risks or impacts in the same way.

You and the proposer should consider working with:

- other competent authorities in the area
- the relevant Statutory Nature Conservation Body (SNCB)
- other specialist groups or organisations in the area

Coordinate with other competent authorities

When there's more than one competent authority carrying out an HRA for the same proposal, you should work together on the assessment. For example, a mineral extraction proposal may need the permission from the local authority and the Environment Agency or Natural Resources Wales.

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Agree a lead competent authority where responsibilities overlap

Where a proposal overlaps with other competent authorities' areas of responsibility, you should agree who is the lead competent authority.

For each proposal, decide which authority should lead, based on who has the:

- best technical expertise - when a technical issue is the most important factor in assessing the impact of the proposal
- main interest in cross-boundary cases
- capacity to manage where there are many complex and cross-boundary issues

The lead competent authority will need to:

- act as the single point of contact for the HRA
- make sure each competent authority understands their role and responsibility
- agree a decision timetable
- make sure all SNCBs are consulted and appoint a lead body where there are split responsibilities
- share existing evidence and identify evidence gaps
- prepare the HRA on behalf of the other competent authorities
- coordinate consultations and any recommendations
- set up a memorandum of understanding between all parties - for complex cases

Use the HRA of another competent authority

You can use an HRA previously carried out by another competent authority for the same proposal if:

- there's no new information or evidence that may lead to a different conclusion
- the assessments already done are relevant, thorough and correct
- the conclusions are rigorous and robust
- there's no new case law that changes the way an HRA should be carried out

or interpreted

If you decide to use a previous HRA's evidence and conclusions, you should still make sure your final decision will have no negative effect on the European site. The final decision is your responsibility.

You should not assess any part of a proposal that another competent authority has a role to assess. The relevant competent authority will do their own assessment.

When you make your decision on whether a proposal can go ahead or not, you should record that you've used all or part of an HRA carried out by another authority.

Who to consult when carrying out an HRA

You must consult the relevant SNCB at the appropriate assessment stage of the HRA process, but you can ask for advice at any stage in the process. You must consider the advice you get and include it in your HRA, if relevant. If you disagree with the advice, you should record it in your assessment and explain why.

Consult:

- **Natural England** in England or English inshore waters
- **Natural Resources Wales** in Wales or Welsh inshore waters

If a European site overlaps with other countries of the UK or with offshore waters, you must also consult:

- **Scottish Natural Heritage** in Scotland or Scottish inshore waters
- **Department of Agriculture, Environment and Rural Affairs** in Northern Ireland or Northern Irish inshore waters
- the **Joint Nature Conservation Committee** (JNCC) beyond 12 nautical miles from the shore

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Follow HRA principles

If the proposal is a plan or project that could affect a European site, you will need to:

- understand the conservation objectives for the relevant European site affected - these describe the ecological reasons for its protection - you can find these on the designated sites databases for [England](#) or [Wales](#)
- use these databases to find out about existing threats or pressures on the site - this can include the effects of any unregulated activities or the effects of permissions given in the past
- consider all possible effects of the proposal, at every phase, on the designated features of the site - include impacts that are direct and indirect, temporary and permanent
- consider possible combined effects on the site with other plans and projects
- make judgements based on the facts of the individual situation and the ecological condition of the site's features
- use the best available objective and scientific information to make confident decisions
- work with the proposer to find a way to allow projects or adopt plans while still protecting sites, if possible
- ask for information from the proposer that's proportionate, for example only ask for the information or evidence you need to meet the regulations
- consider the advice you get from the relevant SNCB
- keep a detailed written record of the HRA and give clear reasons and evidence for your decisions
- make sure your assessment is thorough and complete with clear and precise conclusions

You should also:

- agree with the proposer, at the start, what evidence they need to provide, for example, agreeing [evidence plans](#)
- talk to relevant experts or specialists as early as possible
- decide whether you should consult the public on your assessment

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How to carry out an HRA

The process can have up to 3 stages. You may not need to complete all stages, depending on what you decide at each stage. The stages are:

1. Screening - to check if the proposal is likely to have a significant effect on the site's conservation objectives. If not, you do not need to go through the appropriate assessment or derogation stages.
2. Appropriate assessment - to assess the likely significant effects of the proposal in more detail and identify ways to avoid or minimise any effects.
3. Derogation - to consider if proposals that would have an adverse effect on a European site qualify for an exemption.

Consult an ecologist or the relevant SNCB to help you make decisions, if you're unsure.

Take a precautionary approach to decisions

You must take a precautionary approach with your decisions at each stage of the HRA process.

For example, if you cannot rule out:

- the risk of a proposal having a significant effect on the conservation objectives of a European site at stage 1: screening, you must carry out an appropriate assessment
- all reasonable scientific doubt of an adverse effect on a site's integrity at stage 2: appropriate assessment, you must refuse the proposal unless an exemption (stage 3: derogation) is justified

1. Screening

This step is a simple assessment to check or screen if a proposal:

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- is directly connected with or necessary for the conservation management of a European site
- risks having a significant effect on a European site on its own or in combination with other proposals

You should consider the proposal's integral design features or characteristics, such as its layout, timing and location to inform your screening decision. These may mean that any risk to a European site is avoided and you do not need to do an appropriate assessment.

At this stage, you should not consider any mitigation measures included by the proposer for the purpose of avoiding or minimising risk to a European site. These mitigation measures need to be considered at the appropriate assessment stage.

1.1 Conservation management proposals

You must first check if the whole proposal is for the conservation management of the habitats or species for which the European site has been designated. If it is, you do not need to carry out an appropriate assessment.

You must continue screening the proposal if it contains:

- conservation management that could negatively affect a different feature or a different European site
- non-conservation management activities, such as development, commercial operations or recreational events

1.2 Assess the likely significant effect

You must check if the proposal could have a significant effect on a European site that could affect its conservation objectives.

You should check if there's a risk or possibility of a significant effect based on the evidence. You should only consider real, not hypothetical risk.

You can find the conservation objectives for European sites on land and inshore in:

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- England on Natural England's [designated sites database](#)
- Wales on Natural Resources Wales' [designated sites database](#).

You should consider:

- the area over which the proposed activity would take place
- any overlaps or interaction with the protected features of a site in a direct or indirect way
- the effect of any essential parts of the proposal, such as its location, timing or design

If you cannot rule out the risk of the proposal having a significant effect, you will need to do an appropriate assessment.

1.2.1 Check for combined effects

Your proposal alone may have an effect on a European site that's not significant. You must check if this effect could combine with any other proposal planned or underway and affects the same site, that on its own also does not have a significant effect. If - in combination - your proposal could have a significant effect on the European site, you will need to do an appropriate assessment.

Check for proposals being dealt with by other competent authorities, such as:

- applications for a new permission
- applications to change an existing permission
- granted permissions that have not begun or been completed
- granted permissions that need renewing
- plans that have been drafted but not yet adopted

A proposal, alone or in combination with other proposals, could cause a significant effect on a European site if there's:

- a reduction in the amount or quality of designated habitats or the habitats that support designated species
- a limit to the potential for restoring designated habitats in the future
- a significant disturbance to the designated species
- disruption to the natural processes that support the site's designated

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features

- only reduction or offset measures in place

If there's no likely significant effect on the site, either alone or in combination, then you do not need to carry out an appropriate assessment.

You should record your screening decision and your reasons for it.

2. Appropriate assessment

You must carry out an appropriate assessment if you:

- decide there's a risk of a likely significant effect on a European site
- do not have enough evidence to rule out a risk

The assessment should be:

- more detailed and thorough than the screening check
- appropriate for the nature and complexity of the proposal and allow you to carry out the integrity test

Your appropriate assessment should:

- assess the likely significant effects of a proposal on the integrity of the site and its conservation objectives
- consider ways to avoid or reduce (mitigate) any potential for an 'adverse effect on the integrity of the site'

Test the integrity of the site

Your appropriate assessment must show whether an adverse effect on the integrity of the site from the proposal can be ruled out or not.

The integrity of the site will be adversely affected if a proposal could, for example:

- destroy, damage or significantly change all or part of a designated habitat

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- significantly disturb the population of a designated species, for example, its breeding birds or hibernating bats
- harm the site's ecological connectivity with the wider landscape, for example, harm a woodland that helps to support the designated species from a nearby European site
- harm the site's ecological function, or its ability to survive damage, and reduce its ability to support a designated species
- change the site's physical environment, for example, by changing the chemical makeup of its soil, increasing the risk of pollution or changing the site's hydrology
- restrict access to resources outside the site that are important to a designated species, for example, food sources or breeding grounds
- prevent or disrupt restoration work, or the potential for future restoration, if it undermines the site's conservation objectives

You must be able to rule out all reasonable scientific doubt that the proposal would not have an adverse effect on the integrity of the site before you can allow the proposal to go ahead.

How to assess effects on site integrity

To carry out the assessment and apply the integrity test, you should consider:

- the ecological requirements, conservation objectives and the current conservation status (if known) of the site's designated features that might be affected by the proposal
- each potential effect on the European site, including the risk of combined effects with other proposals, and how they might impact on the site's conservation objectives
- the scale, extent, timing, duration, reversibility and likelihood of the potential effects
- how certain you are of the effects occurring
- mitigation measures that have been proposed or conditions you can attach to avoid or limit the effects
- how confident you can be that mitigation measures will be effective over the whole lifetime of the proposal - for example, the effects of construction, operation and decommissioning

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You must consult the relevant SNCB and you should send them a copy of your draft appropriate assessment. You must consider the advice you get back. You should only disagree with the advice if you have a good reason.

You should keep a record of your final appropriate assessment, particularly if you're not following the SNCB's advice. You may need it as evidence if, for example, there's an appeal or freedom of information request.

If you're a local planning authority in England making a decision on planning applications, you should read the guide about [appropriate assessments and legal implications on neighbourhood plans and permissions in principle](#).

Consider mitigation measures

As part of your appropriate assessment, you should consider any mitigation measures that have been included as part of the proposal to remove or reduce potential adverse effects.

You or the proposer can get advice on mitigation measures from the relevant SNCB or an ecological adviser.

You should assess what difference the mitigation measures would make to the effects of the proposal on the site. You must be sure that the mitigation will be effective. To do this, your assessment will need to show:

- how the measures would be implemented and monitored, and how long for
- how you would enforce the measures if you had to
- how certain you are that the measures would work to avoid or reduce effects on the site
- how long it will take for the measures to take effect
- the level of success you expect, or what changes you'd make if monitoring shows the measures may fail

You must make sure that any necessary mitigation measures are put in place now and not wait for adverse effects to happen first.

Attach conditions

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If mitigation measures are needed to avoid adverse effects, you should attach conditions or take other necessary steps to make sure the measures are carried out.

You can make conditions flexible. For example, you could remove conditions if it's clear from monitoring that the risk of negative effects is lower than first thought. You should consult the relevant SNCB to make sure the new conditions are still effective.

You should be sure you can enforce the conditions if you need to, and that the proposer is capable of fulfilling them.

Design or method conditions

You can attach conditions to the design features or methods of a proposal to avoid damaging sensitive habitats.

For example, for construction work near a watercourse, you could include the condition of creating a bund to stop sediment or pollution getting into the watercourse.

Timing conditions

You can attach timing conditions to avoid work taking place during sensitive times of year or day.

For example, to avoid disturbing:

- birds, seals and bats during their breeding season
- birds on land or at sea when they're resting or feeding during the winter months

Monitoring conditions

You can attach monitoring conditions to check whether the mitigation measures are working as expected. You can use monitoring as an early warning to identify the risk of any new potential impacts.

Monitoring conditions should clearly state what action the proposer will need to take to make sure adverse effects do not occur if either the:

- impacts are likely to be greater than expected
- mitigation might not be working as expected

Example of appropriate mitigation and conditions

An appropriate assessment of a proposed industrial development shows that lights and traffic from construction work could disturb a significant number of birds on a nearby European site designated for breeding birds.

You can attach conditions to the proposal so that it passes the integrity test. For example, to make sure that a proposer:

- installs temporary visual and acoustic screens around the construction work
- times the work to start and finish outside the birds' breeding season
- monitors the site to confirm whether the mitigation is successful
- adds extra measures if the original measures do not work as expected

Decide if the proposal passes or fails the integrity test

A proposal will pass the integrity test if your appropriate assessment can show that there is no reasonable scientific doubt that the proposal will not have an adverse effect on the integrity of the site.

This means you can carry out, allow or adopt the proposal - after assessing any other factors that you need to consider - such as noise pollution, landscape damage or flood risk.

If the proposal fails the integrity test because you cannot rule out an adverse effect on site integrity, you must reject the proposal in its current form. This means permission is not granted. The work cannot go ahead or the plan cannot be adopted unless it can pass 3 legal tests and be granted an exception, known as a 'derogation'.

3. Derogations: allow exceptions

In certain circumstances, you can allow a proposal that's failed the integrity test to go ahead. This is known as a derogation.

You should tell the proposer as soon as possible if you'll consider a derogation on a proposal that's failed the integrity test. It must pass all 3 legal tests for a derogation to be granted.

Derogations: 3 legal tests

To decide if the proposal qualifies for a derogation, you must apply the 3 legal tests in the following order:

1. There are no feasible alternative solutions that would be less damaging or avoid damage to the site.
2. The proposal needs to be carried out for imperative reasons of overriding public interest.
3. The necessary compensatory measures can be secured.

You should make sure that you record all your findings, including a failed test.

3.1 Test 1: Consider alternative solutions

To allow a derogation you must decide that there's no alternative solution that would be less damaging to the site.

You should work with the proposer and consider whether any alternative solutions are available. This might include considering whether the proposal could:

- happen at a different location
- use different routes across a site
- change its scale, size, design, method or timing

Alternatives must be suitable

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Alternatives need to meet the original objectives of the proposal.

An alternative solution is acceptable if it:

- achieves the same overall objective as the original proposal
- is financially, legally and technically feasible
- is less damaging to the European site and does not have an adverse effect on the integrity of this or any other European site

Examples of alternatives that may not meet the original objective include a proposal that:

- offers nuclear instead of offshore wind energy
- provides rail instead of road transportation
- protects fewer homes from flooding or needs people to relocate
- imports freight in a different way instead of increasing port capacity

The proposer should provide you with information about alternatives, or the lack of them. You will need to judge if there are any acceptable alternatives.

If there are, or appear to be, one or more alternative solutions, you cannot grant the original proposal a derogation and you must reject it. There's no need to do test 2 or test 3.

If there are no alternative solutions, the proposal passes test 1 and you can move to test 2.

3.2 Test 2: Consider imperative reasons of overriding public interest

If there are no feasible alternative solutions, you must next be able to show that there are imperative reasons of overriding public interest why the proposal must go ahead. These must justify the proposal, despite the damage it will or could cause to the European site.

You must decide if the proposal is:

- imperative - it's essential that it proceeds for public interest reasons
- in the public interest - it has benefits for the public, not just benefits for

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private interests

- overriding - the public interest outweighs the harm, or risk of harm, to the integrity of the European site that's predicted by the appropriate assessment

National strategic plans, policy statements and major projects are more likely to have a high level of public interest and be able to show they are imperative and overriding. Plans or projects that only provide short-term or very localised benefits are less likely to be able to show imperative reasons of overriding public interest.

3.2.1 Consider Special areas of conservation with priority habitats or species and when you must get an opinion

Some of the designated habitats and species of SACs are considered to be a special priority for conservation. Examples of SAC priority habitats and species in England or Wales include:

- limestone pavements
- active blanket and raised bogs
- some coastal dunes
- yew woodland
- western rustwort - a rare liverwort

If priority features are present at a site, they will be listed on the site's conservation objectives. You can find these on the designated sites databases for [England](#) or [Wales](#).

If your appropriate assessment has shown that the proposal has failed the integrity test on a SAC and a priority habitat or species would be affected, you can only normally consider the following reasons of public interest:

- human health
- public safety
- important environmental benefits

However, If you're considering other reasons of overriding public interest, such as social or economic benefits, you must get the opinion of the relevant national

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government in England or Wales.

Competent authorities in England should first **consult the Department for Environment, Food and Rural Affairs**. Add 'FAO Secretary of State: IROPI opinion request: protected European sites policy' to the subject field if you use email.

Competent authorities in Wales should contact the Welsh Government:

Biodiversity Policy Team
Land Nature and Forestry Division
Welsh Government
Rhodfa Padarn
Aberystwyth
SY23 3UR

Email: bio.diversity@gov.wales add 'FAO Welsh Ministers: IROPI opinion request' to the subject field of your email.

If the proposal has imperative reasons of overriding public interest, it passes test 2 and you can move to test 3.

If the proposal does not have imperative reasons of overriding public interest, you cannot grant a derogation and there's no need to do test 3. You must refuse the proposal.

3.3 Test 3: Secure compensatory measures

If there are no feasible alternative solutions and you have shown that there are imperative reasons of overriding public interest, you need to make sure that compensatory measures will be taken. These measures will need to fully offset the damage which will or could be caused to the site.

You should work with the proposer and the relevant SNCB to identify, design and secure suitable compensatory measures. The proposer will be expected to pay for the compensatory measures.

The compensatory measures themselves must not have a negative effect on the

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national network of European sites as a whole, despite the negative effects of the proposal on an individual European site.

Compensatory measures can include creating or restoring the same or very similar habitat on areas of little or no conservation value:

- within the same site - if it exists
- at a suitable location outside the site

If the area providing compensatory measures is not within the European site, it should become designated as part of the European site. Until that happens, it's **protected by government planning policy**.

How to decide on compensatory measures

You must be confident that the measures will fully compensate for the negative effects of the proposal. You do not need to consider more compensation than is needed.

You should consider:

- how technically feasible and effective the measures will be - based on scientific evidence and previous examples
- how financially viable the measures are - the proposer must have enough funds to cover costs
- how the compensation would be carried out, including how it'll be managed and monitored over the time that's needed, and how it's been secured
- distance from the affected site - compensation closer to the site is generally preferred, unless measures further away will benefit the network of European sites as a whole
- how long the compensatory measures will take to reach the required quality and amount of habitat

Check compensatory measures are done

You should make sure the compensatory measures will go ahead as agreed and will remain in place all the time they're needed, which in most cases will be indefinitely. You should include these measures in the conditions attached to

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your permission. You must put in place all the necessary legal, technical, financial and monitoring arrangements.

Compensatory measures should usually be in place and effective before the negative effect on a site is allowed to occur.

Example of appropriate compensation measures

An application to expand a port will destroy a portion of mudflat. The mudflat is part of a European site designated for feeding birds. You grant permission because you decide there are:

- no alternatives that are less damaging
- imperative reasons of overriding public interest for the proposal to go ahead

To compensate, the proposer must create replacement feeding habitat for the displaced birds before:

- the expansion can go ahead
- any existing habitat is damaged

Give permission under a derogation

If the proposal passes all 3 tests, you can allow it to go ahead under an HRA derogation.

Before you give your permission for a project, carry out a project yourself or adopt a plan, you must notify the Secretary of State for the relevant UK government department or Welsh Government. You should send them:

- a summary of the proposal
- details about the European sites affected
- your HRA that shows how you reached your decision that the proposal will or could have an adverse effect on the integrity of the sites
- evidence to show that there are no alternative solutions
- evidence to show that there are imperative reasons of overriding public interest for the proposal to go ahead

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- details of the compensatory measures and evidence to show that they will work
- advice you received from the SNCB and other stakeholders, and how you considered it

You should use the [HRA derogation notice form](#) to submit this information.

What you get back

You should get a response within 21 calendar days. If you do not get a response within 21 days you can carry out, approve or adopt the proposal.

If the government is not satisfied that the proposal has met one or more of the 3 tests, it may tell you to reject or delay approval. This may be because it's not clear how the proposer will carry out compensatory measures.

Review existing plans and projects if European sites change

Sometimes an existing plan or project that you've previously approved or adopted could affect land, or an area of the sea, that:

- becomes a new European site
- is included in an extension to an existing European site
- supports additional habitat types or species that have been added to an existing European site

The Secretary of State for the Department for Environment, Food and Rural Affairs or Welsh Ministers designate or amend European sites.

The relevant SNCB will publish proposals for consultation before a decision is made to create or change a European site.

Any change means you'll need to review the decisions you made about proposals at the European site. You'll need to carry out a new HRA to see if there are any new negative effects on the site's integrity.

Work that has already taken place is not affected.

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This review is important where you've previously approved a proposal, but work has either not started or has not finished, such as a large scale mineral extraction scheme.

You can contact the relevant SNCB on reviewing existing proposals.

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