

**Case:** 201101682, Scottish Natural Heritage  
**Sector:** Scottish Government and devolved administration  
**Subject:** policy/administration  
**Outcome:** some upheld, no recommendations

### Summary

Mr C complained about Scottish Natural Heritage's (SNH) handling of an application for funding and a license to disturb a protected species on moorland. SNH were a partner in the moorland development project, which aimed to increase the numbers of red grouse on the moor, allowing grouse shooting whilst conserving the local hen harrier population. Hen harriers are a protected species and, as such, the moor is designated as a Special Protection Area (SPA).

Mr C complained that SNH inappropriately granted funding and licenses to the project without ensuring that a Habitat Regulation Appraisal (HRA) was carried out. He considered that this would result in disturbance to the hen harriers, contrary to the European Union Habitats Directive, which states that significant disturbance to protected species must be avoided.

We accepted SNH's position that an HRA was not required for the project as a whole, as the project had no statutory basis. However, certain activities proposed as part of the project required a license to disturb the protected hen harriers. As such, an Appropriate Assessment (formal assessment of the impacts of a plan or project in a protected or conservation area) was required under the HRA process before the license could be approved.

SNH told us that consideration was given to the impact that the project would have on the hen harriers before the license was issued. However, they failed to document this in a formal Appropriate Assessment. This was completed after Mr C complained.

Although we were satisfied that the decision to issue the license was not unreasonable or contrary to regulations or legislation, we did not consider it enough just to consider the potential impact on a protected species. Given SNH's position as a partner in the project, we took the view that they should

have been able to demonstrate that the potential impact was properly considered through completion of the Appropriate Assessment.

With regard to the potential disturbance to the local hen harrier population, we did not find that the Habitats Regulations prohibited activities that may disturb. Rather, consent can be given if it can be shown that the integrity of the protected site will be maintained following Appropriate Assessment and consideration of the impact on the site. One of the project's aims was to establish whether certain activities would have a detrimental impact on the hen harrier population. As such, the extent of any impact could not be known until the experiment was carried out. Based on the evidence we saw, we were satisfied that SNH had a process of monitoring in place to record the impact on the hen harriers. We also found that they reached their conclusion that the integrity of the protected site would be maintained after assessing appropriate factors and with reference to existing scientific research.