

Review of the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007

Consultation response form

Q1. Do you agree with the proposal to add a definition of semi-natural land to the EIA regulations? If not, please state why.

We agree with this proposal as defining semi-natural provides clarity. It may also be helpful to clarify whether the 25% or less applies to the entire unit/area subject to scoping or to the sward in any one place.

Q2. Do you agree with the proposal to amend the definition of uncultivated land projects to 'Project on Semi Natural and/or Uncultivated Land'? If not, please state why.

We agree with this proposal to make legal the definition of 'Semi-Natural and/or Uncultivated land' within the statutory instrument implementing the EIA Regulations. However, there may be confusion over the meaning of the word 'cultivation', which some people interpret as only including 'arable', and it may be better to refer to agricultural improvement or agricultural intensification.

Q3. The Welsh Government currently operates a no threshold policy under the EIA regime. Do you agree with this policy?

We agree with this policy because, as the evidence presented shows, the majority of the projects considered by screening and enforcement cases are between 2-5 hectares. Many important ecosystems on semi-natural and uncultivated land in Wales, e.g. grasslands and heathlands, are small and fragmented so even setting a low threshold could potentially result in the loss of not only

Q4. Do you agree with the proposal to allow the Welsh Ministers to request applicants to provide information on mitigating measures at screening stage for larger scale projects, if deemed necessary?

We agree with this proposal.
In order to ensure that the terminology is clear and widely understood by the industry, we suggest WG provides a definition of what constitutes a 'large scale project' and clarifies under what circumstances information on mitigation measures would be 'deemed necessary', e.g. the scale/type/location of the project.

Q5. Do you agree with the proposal to enable the Welsh Ministers to grant a screening approval to only part of the project and/or attach specific conditions to the screening decisions?

We agree with this proposal.
NRW welcomes the opportunity to continue to provide WG with Specialist support, particularly at the screening stage of projects and where projects are located on/near designated sites, and to advise on any specific conditions to be attached to screening decisions.

Q6. Please provide any comments you wish to make in relation to this new mandatory requirement.

We agree with this mandatory requirement for applicants to include information provided by WG under the scoping process in the ES. We are particularly pleased that this information, which will clarify key environmental issues, is to remain free of charge to the applicant.

Q7. Please provide any comments you wish to make in relation to the new mandatory requirement of using a competent expert for producing an ES?

Guidance to applicants on what qualifications and standards constitute 'sufficient expertise' to produce an ES would help those who are seeking competent experts. For example, Chartered Ecologist/Environmentalists (MCIEEM), Chartered Scientist (CSci), BSBI Field Identification Skills Certification (FISC) level 5.

Q8. What is your view on the proposal to consult the public on ES online only?

There is a risk that some interested parties may not have access to internet and would therefore be unable to view the ES online.

Q9. Where consent is given following the consideration of an ES, the 2014 EIA Directive places a requirement on the Welsh Ministers to monitor the effect of the project, thus putting additional responsibility on to the Managing Authority.

Monitoring projects is essential to ensure they address the principles of Sustainable Management of Natural Resources. However, we believe there could be a need to monitor projects other than the 2 examples given, particularly where specific and detailed remediation is required and where the principle of 'adaptive management' is relevant. NRW shares detailed habitat and species data and provides specialist support to WG. We have expertise in NVC mapping of sites, which may be

The Welsh Government proposes to visit the site in question to ensure that the project has been completed as outlined in the ES. If required, the Welsh Government would put in place a monitoring programme which could last several years. However, this is likely will only apply to complex and large scale projects, such as restructuring projects or new drainage schemes.

Do you agree with this approach? Please provide details of any alternative proposals.

We would expect a monitoring programme to be in place for a project that is on or adjacent to a protected site (SSSI, SAC, SPA), regardless of the scale and complexity of the project.

Q10. Do you agree with the proposal to provide the Welsh Ministers with the power to amend, extend or terminate Remediation Notices?

We agree with this proposal where it helps to ensure that the land management regime is the best fit for the land in question and results in the required outcome. We recognize that in order to achieve sustainable management of natural resources management regimes may sometimes need to be more flexible and adapted to meet the overall goal of protecting the ecosystem. This addresses the principle of 'adaptive management'

Q11. Are you content with the proposal to streamline appeal procedures in the EIA Regulations?

We agree with the proposal to streamline appeal procedures and that the appeals period should be synchronised for all types of appeals. Notices and screening consent decisions are closely tied to the ecological status of the land and its ability to remediate, so reducing the 3 month period for screening or consents appeals down to 28 days is a positive change.

Q12. Do you agree with the proposal to set the appeal period at 28 days for all types of appeals?

We agree with this proposal.

Q13. Do you have any comments on the current appeal process?

We have no comments on the current appeal process.

Q14. We have asked a number of specific questions with regards to the proposed changes within the EIA Regulations. If you have any related issues which we have not specifically addressed, please use this space to report them:

- 1. Town and Country Planning Regulations** - One of the aims of the 2014 Directive is to 'enhance policy coherence and synergies with other EU procedures by coordinating certain environmental assessments'. We feel there is an urgent need for better synergy between the EIA Agriculture Regulations and the Town and Country Planning Regulations to address development projects (including permitted development projects) on uncultivated land, water management projects for agriculture (including irrigation and land drainage), and intensive livestock installations, which are included under 'Agriculture and aquaculture' in the Table in Schedule 2 of the TCP Regulations 2011. We would welcome the opportunity to discuss this further with WG.
- 2. Sustainable Production Grant Scheme** - Similarly, we feel that projects seeking funding under the Sustainable Production Grant Scheme need to be checked for their potential harmful impacts on ecosystem resilience, especially where these projects are located close to sensitive sites, in order to avoid breaches of Section 6 of the Environment (Wales) Act (Biodiversity duty and promotion of "ecosystem resilience"). It is mandatory for all European projects, under the Common Strategic Framework, to integrate cross-cutting themes, including sustainable development, in order to mitigate adverse impacts. It would be helpful if the SPGS guidance made explicit reference to the EIA Agriculture Wales regulations as well as stating that applications must demonstrate that consents, licences and permissions have been granted, where required'
- 3. Ponds and wetland habitat on improved land** – The EC publication 'Interpretation of definitions of project categories of annex 1 and 2 of the EIA Directive', considers the term 'uncultivated land' to include all areas that are not agriculturally managed at the time of assessment. We feel that features, particularly ponds within cultivated land, should be included in the WG guidance document on the EIA Agriculture regulations. Section 7 of the

Environment (Wales) Act 2016 lists Ponds as Priority Habitats of principal importance for the purpose of maintaining and enhancing biodiversity in Wales. In addition to this, European protected species, for example great crested newt and dormouse, require appropriate licenses for projects where they are present.

In Wales, at least 34 Biodiversity Action Plan (BAP) species are associated with ponds, including plants, invertebrates, amphibians, birds and mammals. Pond biodiversity is extensively impacted by agricultural intensification, e.g. drainage and eutrophication.

The Important Areas for Ponds (IAP) concept has been set up to identify, and so help protect, a network of the most important ponds and their biodiversity. A total of 6 IAPs have been identified in Wales where a high concentration of High Quality Ponds occur. These include Isle of Anglesey, NE Wales, Radnorshire & Brecknock, SW Dune Slack Ponds, Pembrokeshire, Glamorgan.

One area where WG could make the regulations more robust would be by including drainage of ponds/wetlands on cultivated land as well as on uncultivated/semi-natural land subject to these regulations. Currently, WG's Guidance on Category 1 projects only includes filling in ditches, and wetlands ponds/wetlands on uncultivated/semi-natural land.

4. WG's Working Smarter Agenda

The intention of the regulation is for mitigation of any significant environmental impact – however whilst other EIA regulatory regimes focus on resolution at full ES others, including the agriculture EIA, look to the screening stage for mitigation of any impact. There may be reasons for the lack of parity of approaches between these Regulations, such as smaller scale and/or shorter time scale projects for agriculture projects. We feel there is an important opportunity for policy coherence and synergy by investigating both approaches to uncover whether they differ in their effectiveness (SMNR and environmental protection outcomes); this may help towards addressing WG's Working Smarter agenda.

Your details

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Your organisation (if applicable):

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Responses to the consultation will be made public in a report on our website.
Would prefer your response to remain anonymous?