



Guidance on the EIA (Agriculture) (England) (No. 2) Regulations 2006

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1. Introduction and Summary

1. The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006 came into force on 10 October 2006. The Regulations are run by Natural England (contact details on page 12).
2. This is guidance for farmers and other land managers who may be affected. It has an initial two-page summary followed by more detailed advice.
3. Natural England is keen to receive feedback on the guidance. For instance, we are interested to hear views on whether it is readily understandable and comprehensive, and how it could be improved.

What are the Regulations for?

4. The Regulations protect uncultivated land and semi-natural areas (UL/SNA) from being damaged by agricultural work. They also guard against possible negative environmental effects from the restructuring of rural land holdings.

What types of work are covered?

5. The Regulations apply to two different types of *project*:
 - *projects which increase the productivity for agriculture of uncultivated land or semi-natural areas.*
 - the types of land covered will either (i) not have been cultivated (physically or chemically) in the last 15 years; or (ii) be a semi-natural area as defined in Annex 1.
 - the types of work (or “projects”) covered will include any work aimed at increasing the productivity of land for agriculture. For instance, it may include increased levels of fertiliser or soil improvers; sowing seed; physically cultivating soil (e.g. by ploughing, tine harrowing, rotavating); draining land; or clearing existing vegetation either physically or using herbicides.
 - *projects which physically restructure rural land holdings.* This includes (i) addition or removal of field boundaries; and (ii) recontouring of land through addition, removal or redistribution of earth or other material.
6. Projects are exempt from the Regulations if they are already covered by certain other legislation (e.g. relating to town and country planning, forestry and certain work on common land).
7. Normally, the rules only apply to projects over a certain size. For instance:

- projects on *uncultivated land* and/or *semi-natural areas* will normally only be caught if the UL/SNA directly affected by the project is two hectares or more in area;
- most restructuring projects will normally only be caught if they involve changes to four kilometres or more of field boundaries; movements of 10,000 cubic metres or more of earth or rock; or otherwise restructure an area of 100 hectares or more;
- restructuring projects in *sensitive areas* (National Parks, the Broads, Areas of Outstanding Natural Beauty and Scheduled Ancient Monuments) are subject to lower thresholds of 2km or more, 5000 m³ or more, and 50 hectares or more respectively.

What happens if projects are covered by the Regulations?

8. Projects which equal or exceed the thresholds may not proceed without permission from Natural England.
9. The process of applying for permission is:
 - a person wishing to undertake a project must make a *screening application* to Natural England;
 - Natural England has 35 days to assess the application and inform the applicant of its *screening decision*;
 - if the project is unlikely to have a *significant effect on the environment*, it will be allowed to proceed. However, if Natural England consider it is likely to have a *significant effect*, it may not proceed without *consent*;
 - if *consent* is required (and if the applicant still wants to do the project), the applicant must produce an *environmental statement*, and make an application to Natural England;
 - Natural England will check the application and consult the public and others;
 - Natural England will make a *consent decision* on whether or not the project may proceed.

What might happen if the Regulations are breached?

10. People who breach the Regulations risk prosecution and may be required to reinstate land to its previous condition.
11. The Regulations, as they apply to uncultivated land and semi-natural areas, are part of “Cross Compliance” under the Single Payment Scheme, so breaches may result in reductions of Single Payment. The Regulations, as they apply to restructuring projects, are not part of Cross Compliance.

2. Step-by-step guidance

12. This section gives a more detailed step-by-step guide on how to find out if planned work is covered by the Regulations, and what happens if it is. If having read the guidance you are uncertain, you can contact Natural England for advice.

STEP 1: Is the proposed work subject to the Regulations?

13. The Regulations apply to two different types of project: (i) *projects which increase the productivity for agriculture of uncultivated land and/or semi-natural areas*; and (ii) *projects which restructure rural land holdings*. These terms are explained below.

Projects on uncultivated land and/or semi-natural areas

14. *Projects which increase the productivity for agriculture of uncultivated land and/or semi-natural areas* will normally only be caught if the uncultivated land or semi-natural area involved is two hectares or more in area. The only exceptions to the threshold would be if the threshold had been disapplied with regard to a particular area of land (see guidance on *screening notices* at paragraph 47).
15. It would not be acceptable to misuse the threshold to undertake bit-by-bit intensification of uncultivated land or a semi-natural area larger than two hectares without the necessary permission - i.e. by claiming that work in excess of the threshold is made up of two or more sub-threshold projects. Such work is likely to be viewed by Natural England as a single project which needs permission, even if a land manager conducts it gradually over a protracted time (e.g. several seasons or years), or if it involves different types of work aimed at increasing the productivity of the land (e.g. ploughing in one area, and increased use of fertiliser or drainage in another).
16. The types of work included in this type of project include any physical operation taking place on uncultivated land or a semi-natural area designed (wholly or partly) to increase the agricultural productivity of the land. For instance, it may include physically cultivating soil (e.g. by ploughing, tine harrowing, rotavating); increased levels of organic or inorganic fertiliser or soil improvers; sowing seed; draining land; or clearing existing vegetation either physically or using herbicides. Projects will be caught even if they increase the productivity for agriculture of such land to below the norm.
17. Land is considered to be “uncultivated land” if it has not been subject to physical or chemical cultivation in the last 15 years. For instance:
- cultivation would include (i) agricultural soil disrupting activities such as ploughing, sub-surface harrowing, discing, tining etc; and (ii) chemical enhancement of soil, for instance through the addition of organic or inorganic fertilisers and soil improvers.

- cultivation would not include practices which do not directly affect the soil (e.g. mowing grass, chain harrowing or clearing scrub or other vegetation would not in themselves qualify as cultivation of land).
18. There is a presumption that land is *uncultivated land* unless the land manager can provide evidence that the land has been cultivated in the last 15 years. This might be done through witness evidence, statements from previous owners, farm records, subsidy records, photographic evidence etc.
19. Most *semi-natural areas* will qualify as *uncultivated land*. However, some semi-natural areas may have been subject to low levels of cultivation (e.g. some semi-natural hay meadows and wetland may have been subject to low levels of farmyard manure). The types of land considered to be semi-natural are described at Annex 1. In summary they are:
- Species-rich hay meadow (upland and lowland)
 - Dwarf shrub heath (i.e. moorland and heathland)
 - Unimproved grassland (including calcareous, acid and neutral grassland)
 - Peat bogs
 - Coastal and floodplain grazing marsh
 - Bracken
 - Scrub consisting of self seeded wild shrubs and trees
 - Land above the tree-line i.e. usually over 600 metres above sea-level
 - Fen, marsh and swamp
 - Standing water and canals
20. Semi natural areas are defined largely by the plants and wildlife they support (Annex 1 gives more detail). Often they will not have been subject to active cultivation for many years. However, they may in the last 15 years have been subject to:
- low levels of physical cultivation (e.g. chain harrowing may have caused some disturbance of soil, but there will not normally have been any sub-surface cultivation such as ploughing, discing or heavy harrowing);
 - low levels of chemical cultivation (e.g. to replace nutrients lost through hay-cutting or water leaching, as often happens in the traditional management of semi-natural meadows and wetland).
21. For the purposes of the Regulations, Natural England will not consider land under habitat creation or restoration options under agri-environment schemes to be semi-natural for at least 15 years after the last cultivation (excluding the low levels of cultivation mentioned in the preceding paragraph).

22. Where land managers are uncertain whether their land qualifies as *semi-natural*, they should contact Natural England for advice.

Projects for the restructuring of rural land holdings

23. *Projects for the restructuring of rural land holdings* are physical operations which give a significantly different physical structure to the arrangement of one or more agricultural land holdings. They include:

- the removal or addition of substantial lengths of field boundaries such as hedge-banks, walls, fences, ditches or tracks;
- the recontouring of rural land, for instance by moving large quantities of earth and rock.

24. Normally, restructuring projects will only be caught if they involve changes to four kilometres or more of field boundaries; movements of 10,000 cubic metres or more of earth or rock; or otherwise restructure an area of 100 hectares or more. The only exceptions to these thresholds are:

- restructuring projects where any part of the project takes place in a National Park, the Broads, Area of Outstanding Natural Beauty or Scheduled Ancient Monument. Such projects are considered to be taking place in *sensitive areas*, and they are subject to lower thresholds of 2km, 5,000 cubic metres and 50 hectares respectively;
- cases where a *screening notice* has been issued by Natural England (see paragraph 47).

25. It would not be acceptable to conduct large projects bit-by-bit without permission – i.e. to conduct two or more sub-threshold projects which cumulatively exceed the thresholds. Similar principles to those outlined in paragraph 15 above apply.

26. The following types of restructuring project are not caught by the Regulations:

- projects in residential areas and gardens;
- maintenance work on existing structures, such as repairing walls, replacing fences, or clearing blocked/clogged ditches;
- any work which is already covered by other EIA legislation applying to Forestry, Town and Country Planning, Land Drainage Improvement Works and Water Resources. This includes anything classed as “development” under Town and Country Planning legislation.
- the removal of hedgerows (such removals are already covered by the Hedgerows Regulations 1997);

- any work constituting the erection of any building or fence, or the construction of any other work for which consent is required under section 194 of the Law of Property Act 1925.

Step 2: Making a screening application

27. *Projects* which equal or exceed the appropriate threshold may not proceed without permission from Natural England. To request permission you would have to make a *screening application*.
28. We advise that anyone planning to make a *screening application* should contact Natural England for advice. This may reduce the chance that an application may be made unnecessarily, for instance if a project is not caught by the Regulations. Alternatively, Natural England will be able to advise on the type and extent of information required, which may save time later.
29. Screening application forms will be available from Natural England (contact details on page 12). The form will ask for information such as:
- a plan identifying the land affected;
 - details of the land and its past management;
 - a brief description of the nature, extent and purpose of the project and its possible effects on the environment;
 - any other information the applicant may wish to include, for example the management history of the land and the reasons for the project.
30. Completed screening application forms should be sent to Natural England.

Step 3: Screening decision

31. When Natural England receives a *screening application*, it will check the application is in order and inform the applicant in writing (or by email) that it has received the application. Natural England may ask the applicant for more information if it considers this is needed to assess the project.
32. Natural England will have 35 days from the date it receives the application (or further information if required) to make its *screening decision*. The decision will be either:
- that the project may proceed; or
 - that the project is likely to have *significant effects on the environment*, and it may not proceed without *consent* (see Step 4 below).
33. In making its screening decision, Natural England may conduct site visits and consult interested people or organisations. It will take account of factors including:

- the nature of the project – e.g. its size and any cumulative effects with other projects in the local area;
 - the location of the project – e.g. the existing land use and the environmental sensitivity of land affected by the project;
 - the likelihood, magnitude, complexity, duration, frequency and reversibility of impacts.
34. Once it has made its decision, Natural England must inform the applicant in writing (by email if appropriate) of the screening decision, together with the reasoning behind the decision. Natural England must also make a copy of the decision available on a public register and inform consultation bodies.
35. In cases where a screening decision allows a project to proceed, the project must begin within three years of receiving the screening decision. After three years the screening decision will cease to have effect.
36. An EIA screening decision does not replace or affect any other statutory or agri-environment scheme requirements which may constrain operations on the land. For example, if you have an agri-environment scheme agreement (e.g. Entry Level Stewardship) the scheme rules require you to enter any obvious historic features (e.g. ridge and furrow) on your Farm Environment Record (FER) and protect them. You may therefore wish to check whether the land is subject to any such constraints before applying for a screening decision.

Step 4: Making an application for consent

37. If Natural England decides a project is likely to have significant effects on the environment, the applicant will need to decide whether to make an application for consent. Before doing this, we advise that you speak to Natural England to discuss your application.
38. If you decide to make an application, you may ask Natural England for a *scoping opinion*, which Natural England will supply within 5 weeks. Scoping opinions advise what information your application and *environmental statement* should contain. Scoping opinions are only guides (e.g. they would not stop Natural England asking for more information) but we advise that you ask for them because they might save you time and money.
39. The central part of any application for consent is an *environmental statement*. This must be prepared by the applicant, or someone acting on their behalf. The precise content of the environmental statement will vary according to the case (e.g. as outlined by a scoping opinion). It would include:
- information such as (a) a description of the location, design and size of the project; (b) details of planned action to avoid, reduce or remedy significant adverse effects; (c) information needed to

identify and assess the main environmental effects of the project; and (d) an outline of alternatives considered by the applicant and reasons for his/her choice;

- a non-technical summary of the information mentioned in the bullet point above;
- other information which is reasonably required to assess the environmental effects of the project.

40. When the applicant has completed the *application for consent*, it should be submitted to Natural England.

41. Natural England will examine the application and the *environmental statement* to see whether it covers all the required information (and request further information from the applicant if it does not).

42. Natural England will:

- send a copy of the application to appropriate consultation bodies, giving them six weeks to make representations; and
- consult the public by publishing details in a newspaper circulating in the local area. This will alert the public to the fact that an application has been made, say where copies of the application can be viewed or obtained, and invite representations within six weeks of the notice being published.

Step 5: Consent decision

43. Natural England's decision on whether to grant consent will take account of information from the applicant and the views of consultation bodies and members of the public. It will also take account of whether the negative environmental effects of a project are outweighed by other (e.g. economic, social or environmental) factors.

44. When Natural England has made its decision, it must::

- inform the applicant and any consultation bodies of its decision; the full reasons and considerations on which it was based; and any representations made by the public in respect of the application;
- inform the public of its decision by publishing a notice in a newspaper circulating in the local area;
- make available for public inspection various details of the decision. This includes the decision itself, the reasons behind it, measures required to reduce adverse impacts of the project, a summary of representations received from the public, and information on how the decision could be challenged.

45. In cases where Natural England grants consent, the project must be started within one year, and completed within three years.

3. Implementation, enforcement and appeals

46. The Regulations give Natural England various implementation and enforcement powers. They also establish a process by which certain decisions made under the Regulations may be appealed against. This section summarises the main points.

Screening notices

47. Screening notices can be used by Natural England to disapply thresholds from a particular area of land. For instance, normally uncultivated land projects would only need screening permission if they concerned an area of two hectares or more – but a screening notice could remove the threshold and require that projects on any area of uncultivated land need permission.

48. Natural England may only issue a screening notice if (i) it considers that a project below the relevant threshold is likely to be carried out on an area of land; and (ii) such a project (possibly in conjunction with other projects) would be likely to have a *significant effect on the environment*. The notice must be given in writing to every owner and occupier of the land, explaining (i) the area of land and types of project to which it applies; (ii) the reasons for issuing it; and (iii) the process for appealing against it. Each screening notice will have a maximum duration of 5 years.

Stop notices and remediation notices

49. Stop notices can be served if Natural England considers that a person has begun a project without the necessary permission (i.e. a positive screening decision or consent decision where required). The notices order work to stop, usually pending an investigation by Natural England of the possible breach of the Regulations. They take immediate effect once they are served. It is an offence to contravene a stop notice.

50. Remediation notices can be served if Natural England considers that a relevant project has been carried out without the necessary permission. Remediation notices may require that land is reinstated to its previous condition – or that some other action must be taken to return the land to good environmental condition. It is an offence to contravene a remediation notice. Failure to abide by the terms of such a notice may result in Natural England carrying out the work itself and charging the person concerned for costs incurred.

Offences

51. The Regulations create a number of prosecutable offences. It is an offence to:

- carry out a relevant project without the necessary permission (i.e. a positive screening decision or consent decision where required);

- carry out any activity in contravention of a consent decision;
- try to procure a particular decision on an application made under the Regulations by knowingly or recklessly supplying false or misleading information, or withholding information, with intent to deceive;
- contravene a *stop notice*, a *remediation notice*, or a *screening notice* issued in accordance with the Regulations.

Cross compliance

52. The Regulations, as they apply to projects for the use of uncultivated land and semi-natural areas, are part of “Cross Compliance” under the Single Payment Scheme. Breaches of these rules may result in reductions of Single Payment. The rural restructuring aspects of the Regulations *are not* part of “Cross Compliance”. Further information on Cross Compliance is available at <http://www.crosscompliance.org.uk/> and on the Rural Payment Agency’s technical helpline (0845 345 1302).

Appeals

53. The Regulations enable people to appeal against notices issued, and decisions made, by Natural England.

54. A person may appeal against a screening notice, stop notice or remediation notice on certain grounds. The appeal must reach the Secretary of State for Environment, Food and Rural Affairs within 28 days of the relevant notice being served by Natural England.

55. An applicant may appeal against a screening decision or a consent decision. The appeal must reach the Secretary of State within three months of the date the person was notified of the decision.

56. The procedure by which such appeals will be determined is set out in regulations 31 – 35 of the EIA Agriculture Regulations.

Natural England's Contact Details

Freephone helpline: 0800 028 2140

E-mail address: eia.england@naturalengland.org.uk

Website: www.naturalengland.org.uk/ourwork/regulation/eia

Write to:

EIA Unit
Natural England
First Floor
Temple Quay House
2 The Square
Bristol
BS1 6EB

Annex 1: TYPES OF LAND CONSIDERED TO BE SEMI-NATURAL AREAS

Semi-natural habitats

Calcareous grassland	The habitat is found on well drained soils rich in chalk, limestone or other bases, usually with a pH>6. Characteristic is the presence of lime-loving plants not found in other habitats.
Acid grassland	Found on very dry acid soils in the lowlands or damp acidic grasses on gleys or shallow peats elsewhere, usually with a pH < 5.5, Characteristic is the presence of acid-tolerant plants not found in other habitats. This includes all moorland that has been heavily grazed to the exclusion of the heather cover.
Bracken	Areas with a continuous canopy cover of bracken at the height of the growing season. It does not include areas with scattered patches of bracken <0.25 ha, which should be recorded in the habitat type in which the bracken is growing.
Dwarf shrub heath	The habitat is characterised by >25% cover of dwarf shrubs, including heather (ling), heath, or dwarf gorse. This includes all moorland and lowland heathland.
Fen, marsh and swamp	This habitat is found on groundwater fed permanently or periodically waterlogged peats or mineral soils. Fens occur on peats, where rainfall, groundwater and run-off maintain waterlogged conditions for most of the year. Swamps are characterised by tall stands of emergent vegetation (standing in water for part of the year) – this includes reedbeds. Marshes refer to fen meadows and rush pasture, which have the appearance of species-rich grassland but will be waterlogged at least for the winter period.
Bog	Peat forming vegetation associated with Sphagnum (bog) mosses.
Montane habitats	Vegetation above the tree line. (ie usually over 600 metres above sea-level)
Inland rock	Naturally and artificially exposed rock > 0.25 ha, such as inland cliffs, caves, screes and pavements as well as waste tips.
Neutral grassland	Characterised by vegetation dominated by grasses and herbs on a range of soils (usually pH of 4.5-6.5). It includes enclosed dry hay meadows and pastures in the uplands and lowlands. All neutral grassland types are considered semi-natural, except the semi-improved grassland types (corresponding to National Vegetation Classification type MG6) which have been modified by the addition of inorganic fertiliser in the last 15 years.
Broad-leaved, mixed and yew	Woodland above a certain threshold is considered under the EIA (Forestry) Regulations. Other areas of semi-natural scrub (having colonised naturally) are included as semi-natural areas. Contact

woodland	Natural England if in doubt.
Standing water and canals	This includes natural systems such as lakes, meres and pools, as well as man-made waters such as reservoirs, canals, ponds and gravel pits. It includes the open water zone (which may contain submerged, free-floating or floating-leaved vegetation) and water fringe vegetation. Ditches with open water for at least the majority of the year are also included in this habitat type.
Species-rich upland or lowland hay meadow	Characterised by vegetation dominated by grasses and herbs on a range of soils usually with a pH of 4.5-6.5. It includes enclosed dry hay meadows that have been managed with the annual or periodic addition of organic manures or low levels of inorganic fertilisers in both the uplands and lowlands,
Coastal and Floodplain Grazing Marsh	Long term grassland within river or coastal floodplains (consult the Environment Agency Flood Map at http://www.environment-agency.gov.uk/subjects/flood/) which has not had physical cultivation of the soil in the last 15 years and which has wet or waterlogged soils in spring. Standing water or 'splash' conditions are likely for prolonged periods between 1 st March and 31 st May. The land may have been managed with annual or periodic addition of organic manures or low levels of organic fertiliser.

Descriptions are based on Jackson D. L. 2000. Guidance on the Interpretation of the Broad Habitat Classification. Peterborough, JNCC Report 307. Further details, including the link with other classifications is given in this report, which can be found on the JNCC website www.jncc.co.uk

Where farmers or land managers are uncertain whether their land qualifies as *semi-natural* they should contact Natural England for advice.

Full definitions are given in Annex 3 and further tables to show relationship with other classification systems is given on the JNCC website: <http://www.jncc.gov.uk/page-2433>

All 'Arable and Horticulture' and 'Built-up areas and gardens' are excluded from the semi-natural habitat definitions.

Broadleaved, mixed and yew woodlands are covered by the EIA (Forestry) Regulations. Boundary and linear features are covered by the Hedgerow Regulations and the rural restructuring elements of these EIA (Agriculture) Regulations.