

Consultation Response Form

for DARD's Public Consultation on the introduction of new Environmental Impact Assessment (Agriculture) Regulations

- Please use this form to respond to the questions listed in the consultation paper.
- Answer only the questions you wish to answer – leave the other spaces blank. Additional comments may be added at the end of the form.
- Please return by post or email **no later than Monday 4 September 2006.**

General Comments

Please give some details of your/your organisation's interest in this consultation.

Council for Nature Conservation and the Countryside (CNCC) is the Statutory Advisory Council tasked with providing independent advice on matters affecting Nature Conservation and the Countryside in Northern Ireland. DARD's proposals in this consultation fall for consideration by the Council within that remit.

Please see attached 'General Observations' paper which is also copied to Environment and Heritage Service as matters raised therein require consideration by that Agency as well as by DARD.

Chapter 1 – The EIA Directive

Please give your views on the proposed new way of setting thresholds under the EIA (Agriculture) Regulations.

The intention to apply thresholds which allow for 'nature' and 'location' as well as size is good. However questions arise as to farmer/landowner ability to understand/conclude on the status of relevant sites and indeed of DARD's ability to evaluate those projects which fall below the size threshold but which involve particular 'nature' and 'location' factors.

Please give your views on the proposed new screening procedures.

The principle of 'screening notices' is welcome. However, regarding paragraph 24 (first bullet point) it will be vital to cater for sites where only a small part involves particularly important habitat or species. The test should not simply be proportionality in scale terms but rather the uniqueness/value of the small sub-area of environmental resource.

In what type of case do you feel screening notices should be used?

The Biodiversity agenda as proposed by the Biodiversity Group involving 'at risk' habitat and/or species should be given attention when considering the need for screening notices. BAPs and SAPs would be particularly relevant.

What would you consider to be an appropriate enforcement sanction for someone who ignores a screening notice? Should it be lower than, or higher than, the level of fines for other offences under the regulations? How would you justify this?

Since (as per paragraph 24 – second bullet point), the farmer/landowner would have been made fully aware of the rationale for the screening notice and the consequences of a breach, a higher level fine would be justified. In such cases, deliberate disregard and contempt could be construed.

Chapter 2 – New EIA rules on projects for the restructuring of rural land holdings

Please give your views on what is included in and excluded from restructuring projects.

Presumably the purpose of 'restructuring' is not limited to agriculture which should allow for most projects to be liable to planning law, e.g., new golf courses or to general EIA Regulation. Thus DARD's interest would be mainly confined to 'agriculture purpose' works involving some overlap with the UL&SNA provisions. However, DARD could become involved with non-agriculture project assessment, e.g. tourist or recreation projects. It could be argued that if this part of the EIA Directive is to be catered for by DARD, then it should be limited to projects for agriculture purposes. Otherwise 'constituent parts' approach is ok, as are types of projects 'in' or out'.

Would it be reasonable to exclude beneficial restructuring projects taking place under Environmental Stewardship from the new rules?

If 'Environmental Stewardship' means RDP in Northern Ireland terms, the answer is 'yes'. These regulations should not deter/add bureaucracy to such environmentally beneficial projects. Regarding paragraph 39 (final bullet point), perhaps technically OK to state. However, the test must be 'intention' of the Directive which must surely be to counter adverse impact. In 1985 there would have been few, if any, projects aimed at environmental enhancement.

Are the proposed new rules proportionate to the problems/risks they are designed to address?

Some feeling of imbalance in absence of clarity as to circumstances which might bring the Regs in to play. Many farms already 'restructured' with damage already done. This part of proposed regulations will overlap with farms on which UL&SNA exist. Paragraph 32 makes a case for limited present day risk, so it is taken that proposed inclusion of 'restructuring' is to reduce risk of infraction rather than to tackle proven environmental damage risk. This thought underlies an absence of real enthusiasm for the inclusion in the Regs of a separate 'restructuring' provision.

Please give your views on the level at which thresholds should be set. Do you prefer one of the threshold options set out in Chapter 2?

As it is likely that projects caught by the regulations will relate to farm units then regard should be had to the average size of Northern Ireland farms in setting thresholds. Preference therefore for amended paragraph 39. Lower option at 40 Ha and 15 Ha respectively. Lower option in paragraph 40 is preferred.

Please give your views on how screening notices should work in relation to restructuring projects.

Nothing to add to relevant Chapter 1 comment.

What should be included as sensitive areas? How would you justify their inclusion?

OK in principle to differentiate as proposed. However, works as envisaged would already be covered as 'notifiable operations' in terrestrial ASSIs. Sites of Local Conservation Interest (SLNCIs) and Local Nature Reserves (LNRs) should be included. AONBs/NPs OK for inclusion.

Do you agree with the split between linear-based and area-based projects?

Could be argued that this is over-refinement as most relevant projects will have potential to impact both area and linear features.

Do the proposed new rural restructuring rules meet the rules of good practice summarised in Annex 1?

In general, they seem consistent with the listed rules of good practice.

Are the new rules straightforward enough for land managers to comply with? Could they be made more straightforward?

By their nature, these Regs are not amenable to simple application. As proposed they can be operable by 'aware and compliant' land managers. However, there is a constituency of land managers who variously have neither awareness, ability nor willingness to understand and comply with them no matter how straightforward.

Please comment on how the new rules will relate to other legislation, e.g. planning and other EIA rules?

As indicated above, the proposal to include for 'restructuring' brings a new dimension to question of consistency/demarcation which does not serve to clarify where a particular project might fall for consideration.

Chapter 3 – Review of the EIA (Uncultivated Land and Semi-Natural Areas) Regulations

Do you agree with the revised risk assessment? Why?

Allowing for increasing A-E scheme cover, more ASSIs being designated and to some extent SFP cross compliance.

It would be reasonable to view 2006 risk as lesser than 2001 risk estimate. However, even without grant aid, reclamation works involving UL&SNA do occur mainly where smaller extensively farmed holdings are purchased for amalgamation with larger already intensively farmed holdings. This can also occur when farms are bought by business persons for hobby/life style purposes. Risk may be lower but it still exists. In assessing risk, regard must be had to the increasing importance of the already reduced UL and SNA resource.

What are your views on the performance of the existing Regulations?

Clearly problems have emerged – the figure of 43.33 Ha saved can mislead as an unknown amount of UL&SNA has been lost by projects having proceeded undetected or reported and stopped after some damage. The fact that only one prosecution (unsuccessful) took place over three years is evidence of the difficulty in administering EIA Regs dealing with relatively small scale projects. The failure to address the stone extraction problem on farmland on east side of Mourne supports this conclusion. Obviously the process of administering the Regs needs serious attention; otherwise the proposed changes to the Regs per se will not improve their performance.

Chapter 4 – Proposed Changes to the EIA (Uncultivated Land and Semi-Natural Areas) rules

Please give your views on the definitions of uncultivated land, semi-natural areas and intensive agricultural purposes.

The definitions of UL&SNA will be of little relevance if the QB Divisional Court ruling is not overturned. The new 'court imposed' test of what constitutes intensive agriculture in this context will be very difficult to pass and potentially very demanding in resource terms.

Are the proposed amendments to the EIA and UL&SNA rules proportionate to the problems/risks they are designed to address?

On balance the answer is 'yes'. The concern however is the Department's ability to effectively administer complicated Regs and deliver protection to the targeted environmental resource.

Please give your views on the proposed changes to the enforcement mechanisms.

Proposals in paragraphs 84-86 are supported.

Are the proposed changes to the Regulations sufficient to address possible effects on the Agri-Environment Schemes?

The point is understood and care should be taken to avoid the Regs becoming a deterrent to uptake of the AE schemes. The exemption of AE scheme field margins and buffer strips is on balance a reasonable approach.

What are your views on the levels at which area thresholds should be set?

It can be argued that the introduction of thresholds is a retrograde step. However, if screening notices can be applied effectively this change may be OK. In view of the scale of areas of UL&SNA in Northern Ireland, we would argue for 'low' thresholds (paragraph 83).

Please give your views on how screening notices should work in relation the revised EIA/UL&SNA rules.

Do the proposed changes meet the rules of good practice contained in Annex 1?

In general they appear consistent with the listed rules of good practice.

Will the new rules be straightforward for land managers to comply with?

See comments given in similar Question box for Chapter 2.

Do you have comments on how the new rules will relate to other legislation – e.g. the planning system and other EIA rules?

Demarcation can be a problem in certain cases. The stone extraction activity on farms on east Mourne slopes is a case in point. Action not taken/delayed as lack of clarity, i.e. is the activity 'quarrying' and amenable to planning control or for intensification of agriculture and amenable to 2001 EIA Regs?

Any other comments:

Unlikely that the Regs will pre-empt adverse environmental impact in a significant manner. They will however be available as a means to intervene to limit damage and/or to punish in cases where Regs are ignored. The big test is how well will the Regs be advised to **ALL** farmers/landowners so as to maximise understanding of their rationale and their process. This is vital as much depends on promoters of projects knowing how to apply the Regs.

Please return to: eia@dardni.gov.uk or M Emerson, Room 651, Dundonald House, Upper Newtownards Road, Belfast, BT4 3SB
no later than Monday 4 September 2006.

**COUNCIL FOR NATURE CONSERVATION
AND THE COUNTRYSIDE**

GENERAL OBSERVATIONS:

**DARD'S PUBLIC CONSULTATION ON THE INTRODUCTION OF NEW
ENVIRONMENTAL IMPACT ASSESSMENT (AGRICULTURE) REGULATIONS**

1. While the introduction of these Regulations (Regs) will provide some environmental protection and serve to avoid infraction procedures their potential effectiveness must be questionable if the record of the 2001 Regs is taken into account. These Regs might have deterred some projects mostly at lower scale but they did not prevent promoters engaging in projects without regard to the Regs. Forty-one breaches were reported, but it would be reasonable to suppose that many more breaches occurred which were not reported and therefore not dealt with. This points to a fundamental flaw in relation to the compliance monitoring which may not easily be overcome in future and the correction of which would require application of Departmental resources which could perhaps be better employed in dealing with positive environmental activity such as progressing A-E scheme agreements.
2. A further area of concern is the absence of a mapped data base of UL and SNA at an appropriate scale – showing location, type and scale with some indication of the quality of the environmental resource. It would surely be possible using a range of existing mapped data such as the Northern Ireland Soils Survey, aerial photography, and satellite imagery to give a general indication of UL and SNA outwith the obvious moorland, mountain and wetland areas which could then be subjected to ground proofing. Without this intelligence these Regs will serve less as a preventative measure than otherwise might be the case.
3. An obvious difficulty for promoters wishing to proceed in line with the Regs must be the relative cost to benefit ratio of funding an EIA (range £3k to £10k) having regard to the relatively small areas likely to be proposed for works. This can lead to attempted avoidance of the process leading potentially to enforcement procedure which tends to set environmental protection in a bad light. It can readily be argued that a system which would compensate a farmer for the

retention of environmental goods such as those potentially present in UL and SNA land is a preferable approach, although the proposed Regs can serve a parallel purpose if the landowner chooses to damage the environmental asset.

4. To what extent can these Regs be used in circumstances where the project may have indirect (downstream) environmental impacts rather than directly on the site itself? This might apply where a sensitive watercourse was at risk from siltation from reclamation works upstream.

5. It is perhaps reasonable to conclude that the Directive is flawed in that it sets purpose (intensive agriculture purposes) for projects rather than environmental consequences as the initial consideration. This has allowed the courts to intervene and apply a 'land productivity' test to 'intensive agriculture'. Only when this difficult test is passed can consideration be given to 'significant environmental impact'. If the court ruling is not overturned, the potential for the Regs to protect UL&SNA which are already limited, as evidenced by performance of 2001 Regs, will be limited further. In the circumstances the Regs may prevent infraction procedures but not prevent the further loss of UL&SNA.