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Our Ref BDU 4/29

**Public Consultation on Introduction of New Environmental Impact Assessment
(Agriculture) Regulations (Northern Ireland) 2006**

Dear Maureen

Thank you for the opportunity to respond to this consultation proposal. The attached response incorporates the views of Built Heritage, Water Management and Natural Heritage within EHS as well as Environmental Policy Division of DoE.

EHS recognises the background to this revision of the EIA Regulations 2001, especially in the light of the Public Participation Directive 2003/35/EC. However we are surprised at the relatively large area thresholds proposed given the small size of most Northern Ireland land holdings. With the importance of many uncultivated lands and semi-natural areas to both the natural and historic environment, the EIA Regs play an important role in their sustainable management and preservation for future generations.

It is vital that clear concise guidance is made available to all farmers/landowners raising awareness of the whole suite of environmental regulation and protective measures and we would offer our expertise to assist DARD in this.

Much of our work within EHS is of a statutory nature which places an onus on landowners to ensure they do not cause environmental damage. We would therefore wish to work closely with DARD to ensure that the EIA (Agriculture) Regulations do indeed contribute to the protection of our heritage. Please do not hesitate to get in touch if you require any further information or clarification.

Yours sincerely

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Public Consultation on Introduction of New Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2006

Detailed Response from Environment and Heritage Service

General Comments

1. The Water Framework Directive requires that all water-bodies (rivers, lakes, estuaries, coastal and groundwaters) achieve 'good status' by 2015. Good status relates not only to water quality, but also to the ecological and hydro-morphological conditions of water-bodies. As such it is vital that water-bodies are managed within the rural environment as part of a whole catchment approach and this needs incorporating into the EIA Regs.
2. Under Article 6 (3) & (4) of the Habitats Directive 92/43/EEC, EHS require to see a copy of an Article 6 assessment for any works on or near a European site likely to impact on the conservation objectives of the site. EHS CDP is content to provide guidance and assistance on the development of the Article 6 assessment.
3. All projects (regardless of scale) to be undertaken within a designated site (ASSI and Natura 2000) must receive written permission from EHS before any works are commenced. The application to undertake the works must come from the registered landowner. All landowners with ASSIs have been notified of their legal responsibility to contact EHS before works commence.
4. EHS is concerned that these proposals, if not properly explained, may lead landowners to think that if their project is under the set thresholds, they can automatically carry out the work. Significant damage, to both the natural and historic environment, could occur if the proposed thresholds are adopted as specified.
5. EHS considers the proposals are not in conformity with the EIA Directive (85/337/EEC). Its purpose is to ensure that the environmental effects (both natural and historic) of a very wide range of projects are fully considered before the projects may take place. The EC EIA guidance documents should be carefully considered in interpretation of the document terminology.
6. There is a lack of clarity in the definition of phrases and words within the document. Without proper clarification there could be significant problems with interpretation and implementation of the proposed regulations.
7. We would draw DARD's attention to the requirements of other EC Directives (eg Water Framework Directive), Northern Ireland Environmental legislation and policies, including the Northern Ireland Biodiversity Strategy and the Northern Ireland Sustainable Development Strategy.
8. As Single Farm Payment Cross-Compliance reinforces the EIA Regs, EHS presumes that DARD intends to put mechanisms in place to ensure that no

damage takes place to features, habitats and species protected under Cross-Compliance. We would have expected more specific guidance on the relationship between these measures to be within this document.

9. There is a lack of clarity and procedural transparency in relation to the auditing and monitoring of projects (Article 3 of the Public Participation Directive 2003/35/EC should be properly taken into account).
10. Cumulative impact is a major issue, both for habitats and landscapes, and has not been adequately addressed in this document. There are a number of potential loopholes which could be abused once this legislation is implemented, especially if cumulative impacts are not carefully monitored.
11. EHS Built Heritage sees the countryside as a historic environment mainly shaped by man over many centuries. Work, even if below the proposed thresholds, that would cause damage to the condition of historic landscapes such as those associated with large estates or now rare field patterns should not be permitted.
12. Too much emphasis appears to be placed on the person wishing to undertake works to decide for themselves whether or not an EIA is required during Steps 1 and 2 of Annex 3. We suggest this is addressed through awareness training and better information provision.
13. There is a need for DARD (as the competent authority for these EIA Regs) to give consideration to agree, with stakeholders and the public, to a strong formal scoping process. This should streamline decision-making and the integration of environmental, social and economic objectives within the EIA process.
14. As an aim of the EIA Directive is to ensure that the authority giving primary consent for a project to proceed makes its decision in the full knowledge of any significant effects on the environment, the competent authority (ie DARD in this case) should be required to consult key stakeholders and the public to determine whether or not there is a need for an EIA to be carried out.
15. There should also be a mechanism for those other than the applicant to question the EIA determination, as there is for the applicant.
16. EHS suggests that DARD enables the annotation of landowners' farm maps to show the location of any heritage assets, designated sites, landscape features, etc. We can supply updated information regularly to DARD GIS managers as required for this purpose, and would expect that this would be available to a landowner through his local DARD office.

Detailed comment from EHS on specific sections:

P 8 Para 13 The phrase ‘Annex II lists over 100 types of projects which are considered less likely to have significant effects on the environment’ is misleading as it does not use the same terminology as the EIA Directive (85/337/EEC).

P 8 Para 16 An EIA must also take account of population, architectural and archaeological heritage issues. In addition an EIA must take account of secondary, cumulative, short, medium and long term, temporary and permanent positive and negative effects. The EIA must also take account of interrelationships between these various factors.

NB An EIA should be carried before a proposed activity is commenced.

P 9 Para 17 Guidance is available that defines significant effects on the environment, especially for Natura 2000 sites. DARD could usefully consider how the European Commission interprets significance. EHS would be willing to assist.

P 9 Para 19 DARD appears to accept that it is the competent authority to determine if an activity is likely to require an EIA. However in Annex 3 this responsibility seems to be shifted onto the person wishing to do the project. What guidance will be provided to assist in making this judgement and will this be the same as DARD would apply under Step 4 of Annex 3?

Note that Annex 1 of the EIA Directive requires an EIA even if there are disadvantages in carrying it out.

Note also: Under Article 6 (3) & (4) of the Habitats Directive 92/43/EEC, EHS require to see a copy of an Article 6 assessment for any works on or near a European site likely to impact on the conservation objectives of the site. EHS Conservation, Designations and Protection (CDP) is content to provide guidance and assistance on the development of the Article 6 assessment. Written approval for the plan or project must have been obtained from EHS CDP before commencement of any works.

P 10 Para 23 Could a more readily publicly understood term be used than ‘screening notice’?

We would query how DARD intends to inform itself of proposed projects, so that it can then consider whether a ‘screening notice’ is appropriate, especially if these are under the threshold.

Screening notices cannot be applied retrospectively (para 24) but may apply ‘if potentially significant cumulative effects ... become obvious, a number of screening notices might be issued’. Surely the notices ‘must’ be issued, rather than ‘might’, if there are significant effects? EHS would query how DARD would decide when ‘obvious’ would be reached – what threshold and criteria would be used to make this judgement? Will these be available and the outcomes open to scrutiny? How will it be decided who is penalised?

P 10 Para 24 The concept of screening notices could be a useful tool, but it must take account of the small size of many of our important sites, especially historic monuments (on average 0.25ha or less). EHS would welcome further discussion with DARD on this issue.

How does the ‘targeted and proportionate’ approach equate with the use of the ‘precautionary principle’. EHS is concerned that this is also not compliant with the ethos of the Northern Ireland Biodiversity Strategy.

Joined-up with other environmental policy: at present agri-environment schemes are voluntary and apply to the whole farm. As such it may be unrealistic to suggest that entry to these schemes is an answer for land with a screening notice issued.

Forward looking: if an adverse project is carried out without DARD’s awareness, and a screening notice cannot be issued, what penalties will be imposed (eg fines and ground restitution) – especially in relation to environmental damage and cross-compliance?

P 11 Para 25 EHS is uncertain as to what this might mean in reality. We would have expected that the criteria of the EIA Directive (Annex III) would be used.

Question 1.1 Thresholds should be related to Annex III of the EIA Directive. They should not be set so high that projects which damage the environment or landscape directly or indirectly are allowed to proceed. Consideration must be given to the wider impact of projects and how these can be managed to minimise environmental risks.

Question 1.2 We would hope that the proposed new screening notices would capture those semi-natural areas of substantive biodiversity and heritage value that fall under the set threshold.

Detailed criteria for cumulative impacts should be considered.

Question 1.3 Screening notices should be use where lands hold significant heritage, biodiversity or landscape value regardless of the scale of the site.

Question 1.4 Enforcement should be the same as or higher. This would be justified as the action would be deliberate and premeditated.

P 13 Para 27 Does DARD consider that ‘rural landholding’ includes the properties on it? There is no other reference in this document that might relate to changes to buildings, and to which planning permission might not apply because of ‘permitted development rights’?

P 13 Para 28/29 Does DARD have a size definition for the water-bodies referred to here? EHS would expect that *projects for the restructuring of rural land holdings* would include the infilling of small loughs in a semi-natural area such as grazed moorland, as these are very significant when taking a landscape or ecosystem perspective.

More specific definitions and thresholds are needed for all the types of work to be included and excluded, and also when these can become additive.
What exactly is the definition of *recontouring of agricultural land* and again what threshold would apply?

P 13 Para 28/29 There is nothing about the quality or methods of the ‘improvement’ works and it is important that any so-called ‘improvements’ are not carried out in any way detrimental to quality.

A clear definition of ‘non-agricultural land’ is required. Excluding areas such as gardens may impact on the countryside as such areas can contribute significantly to landscape – e.g. trees and boundary hedges.

P 14 Para 32 There is ambiguity here; 1st bullet reads as though existing EIA Regs, including uncultivated lands and semi-natural areas, are being retained, which we would welcome, but this consultation is surely reviewing and changing these?

There is a potential for conflict here that needs careful resolution. For example beneficial works, such as the consolidation of 2 holdings under an environmentally aware manager, might be deterred. However, it cannot be assumed that restructuring would generally be beneficial to the environment, but that each proposal must be judged on its own likely overall impact which may be positive or negative.

There must also be a means of determining the relative impacts of different effects of an action eg biodiversity with creation of a new water body may be detrimental in another ‘environmental’ aspect such as historic landscape pattern.

We would query the last sentence in 2nd bullet; surely the EC has argued that Single Farm Payment (which replaced the old subsidy systems) is not considered as subsidy but a payment to farmers for continuing to manage their land holding in a manner that aims to be beneficial to the environment, landscape and heritage whilst freeing them to take advantage of market opportunities. Cross-compliance rules are there to highlight the legal obligations and penalties.

It is not appropriate to assume that voluntary schemes will automatically lower risks that should be identified through the EIA process, nor can it be assumed that these schemes will minimise environmental damage.

P 15 Para 33 No evidence is provided on which to base the conclusion.

P 15 Para 34 Cumulative impacts and thresholds need to be carefully considered. The need for a full EIA needs to be defined; with exact guidance for issues such as ‘certain minimal amount of information’ and ‘exemptions – other forms of assessments’.

P 15 Para 35 EC Screening Guidance would assist in applying thresholds. The Public Participation Directive also sets the need for consultation and must also be considered.

P 16 Para 38 EHS considers that all semi-natural habitats (both land and water) should be considered as sensitive including locally important sites. Such sites act as stepping stones and wildlife corridors that assist with the ecological functioning of Northern Ireland's wide range of biodiversity. As well as the broader Areas of Outstanding Natural Beauty, account should be taken of Landscape Character Areas which form the backbone of the character of rural areas.

We would also stress that all historic monuments listed on the NI Sites and Monument Record, all sites in the Register of Parks, Garden and Demesnes of Special Historic Interest and Areas of Significant Archaeological Interest should also be regarded as sensitive areas. The importance of these sites has been recognised in DoE Planning Policy (PPS 6) and agri-environment schemes. The historic environment is a finite and non-renewable resource, which cannot be replaced once damaged or removed.

We would wish to work with DARD to agree a definition of *sensitive areas*, as this is of major importance to EHS in terms of our remit to conserve, protect and enhance our landscape and our built and natural environment. Several 'sensitive' areas are defined in Northern Ireland legislation including sites associated with the Habitats Directive. DARD might also find it difficult to use a definition at variance with that it uses for agri-environment schemes.

P 16 Para 39 In the context of NI landholdings, even the low threshold is too high. The current average holding is 36ha with 42% less than 20ha. The proposed lowest threshold is 20ha in a *sensitive area*. In other words, it would be possible to completely restructure over half of an average farm before the EIA threshold was reached and in 42% of all farms the whole farm could be restructured without an EIA.

We consider that all *sensitive areas* require an EIA irrespective of size and that this would comply with the EIA Directive.

P 16 Para 40 Again, as in Para 39, the thresholds suggested are too high. It is important to remember that the use of EU monies requires that projects supported do not have a negative effect on the environment, especially Natura 2000 sites.

P 17 Para 41 At first sight, it appears good idea to give higher threshold for a beneficial project, but much depends on how 'beneficial' is determined. But, as noted in comment on Para 32, someone must assess the balance of impacts; eg is adding a new track across semi-natural grassland (perhaps in a highly visible or fragile area) beneficial or detrimental? The current wording seems to imply new and more is beneficial but this may not be the case.

P 17 Para 42 Stop notices should be issued if work is in breach of the rules whether or not it is over the threshold.

P 17 Para 43 Exemptions are permissible under EIA Directive but require notification to the EU as a form of endorsement (Clarification of the application of Article 2(3) of the EIA Directive ISBN-92-79-01036-0). However, there may still be implications for historic landscape character from these exemptions. EHS would ask that DARD fully consider impacts on historic/cultural landscapes.

Question 2.1 Recontouring should include reference to ridges and hollows and we would also wish to see inclusion of wetland habitats (eg fens, reed beds, saltmarsh) in relation to in-filling or excavation of water-bodies.

Question 2.2 The new rules can only be proportionate if they protect areas of substantive biodiversity, heritage or landscape value, irrespective of area or scale.

Question 2.3 Restructuring projects have the potential to cause significant change to both the natural and historic landscape. In particular, large projects (but under 200ha, and even under the lower 20ha threshold) could have a major impact on the contextual setting of monuments in the landscape. We would also be very concerned that there was any opportunity for removal of field boundaries (except the post and wire type) without proper consideration of landscape, habitat and historic impacts. The entire character of NI's rural landscape is very much defined by its field sizes, field boundaries and hedgerows and traditional buildings: any radical alteration to this should only follow very close public scrutiny of the proposals.

Question 2.6 Information regarding *sensitive areas* must be made readily available to landowners.

Question 2.9 A landowner intending to carry out a restructuring project should be obliged to check if there are any archaeological, heritage or biodiversity features within or adjacent to the area. He must then take account of these and consult with DARD, even if the project is below the threshold limits.

There should be a straight-forward summary of the EIA Regs on DARD website, etc with leaflets available in local offices.

Question 2.10 It is essential that DARD carefully checks conformity of these proposed Regs with all EC Directives, as well as with NI legislation such as other EIA Regs and NI government policies such as Sustainable Development Strategy.

P 20 Para 54 Note that the EIA Regs are intended to assist Member States meet the target of halting biodiversity loss.

P 20 Para 56 Through GIS DARD can have access to EHS information regarding *sensitive sites*.

P 22 Para 56 EHS would query why DARD has not already taken action to address the difficulty farmers have felt in identifying uncultivated land and semi-natural areas on their holdings. If almost half of NI farmers have or soon will have joined agri-environment schemes, then these farmers should already know their land classifications.

P 23 Para 59 There are additional actions which could assist with the streamlining of the screening process such as providing farmers and agents with better information.

P 24 Para 60 EHS would query how DARD determined that the land concerned was not significant enough?

P 25 Para 63 Exempting agri-environment scheme holders for just this one scheme option seems to be rather lacking in foresight. The schemes will develop and change over time and there may be further anomalies. It would make more sense that these revised EIA Regs are written to properly take account of positive environmental works that may be undertaken by any landowner (not just those within agri-environment schemes).

P 28 Para 73-79 It is important that a specific and usable definition of uncultivated grassland in environmental terms is agreed with EHS.

P 28 Para 73 Changes to composition should also include use of pesticides and herbicides.

P 29 Para 78 The full range or extent of a habitat should be considered (Environmental Liabilities Directive). This may not always coincide with 15-20 years cultivation test. As this is a test for semi-natural areas, the cultivation test is less relevant here; the species present and in surrounding associated area should be the major determinant.

P 29 Para 79 EHS supports using the test for unimproved grassland in DARD's agri-environment scheme.

P 30 Para 82 Locally sensitive areas and biodiversity priority habitats should be included.

P 30 Para 83 It is important to highlight that land in Northern Ireland is not directly comparable to GB. Our relatively small field and farm size means that many heritage assets and biodiversity resources would fall below the lowest 2ha threshold.

The thresholds used should be the same as in para 39. It is noted in Annex 2 para 11 that it is proposed to use the high thresholds, and we do not agree with the conclusion that this will avoid potential environmental drawbacks. However we wonder if DARD has the capacity to monitor projects if the threshold is anything but high, and have they concerns about having the resources even for the high threshold option?

P 30 Para 84 EHS welcomes the proposed change to make the stop notice immediately effective.

P 31 Para 85 Amending the rules to enable a prosecution to begin within 6 months of an offence being brought to DARD's notice is to be welcomed, as it should enable some deterrent to flouting the rules.

P 32 Flow-chart We suggest that the first step should actually be to contact DARD to find out exactly what the EIA (Agriculture) Regs are and how they should be applied. This would also help DARD in monitoring activities that fall below the thresholds.

Question 4.7 A landowner intending to carry out any change to the landuse of uncultivated and semi-natural areas should be obliged to check if there are any archaeological, heritage or biodiversity features within or adjacent to the area. He must then take account of these and consult with DARD, even if the project is below the threshold limits.

Question 4.8 It is essential that DARD carefully checks conformity of these proposed Regs with all EC Directives, as well as with NI legislation such as other EIA Regs and NI government policies such as Sustainable Development Strategy.

P34 Annex 1 EHS is unclear how the risks are to be assessed. Minimising costs does not form part of the EIA directive.

P 36 (11) For very little cost, it should be possible to include an exemption for beneficial projects if these include a short assessment detailing benefits.

EHS considers these proposals do not provide a high level of protection for the environment.

P 38 (14) The Aarhus Convention should be taken into consideration.

P 40 Annex 3 Steps 1 & 2 restructuring of rural land holdings

Step 1 What training / guidance will farmers receive and who will deliver this? Does DARD have the resources?

Step 2 Refer to Annex 3 of the EIA Directive.

P 41 Steps 1 & 2 uncultivated land and Semi-natural areas

Step 1 EHS considers that the 'norm' approach will have adverse impacts on the environment.

We would query what processes DARD has put in place to measure and monitor cumulative impacts.

P 42 Steps 3-6: for both restructuring and uncultivated land rules

Step 4 Wider consultation may be required under other legislation eg Public Participation Directive.

Step 6 See EC EIA review guidelines.

Also note that Under Article 6 (3) & (4) of the Habitats Directive 92/43/EEC, EHS require to see a copy of an Article 6 assessment for any works on or near a European site likely to impact on the conservation objectives of the site. EHS CDP is content to provide guidance and assistance on the development of the Article 6 assessment. Written approval for the plan or project must have been given by EHS CDP before commencement of any works.