

**A Guide to the EIA (Agriculture)
Regulations (Northern Ireland) 2007**

The Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007, and following amendment, are administered by the Department of Agriculture and Rural Development (DARD). In this Guide, they will be referred to simply as 'the Regulations'.

This guide to the Regulations is intended to help farmers and other land managers who may be affected. The summary guidance provided in sections 1 and 2 (pages 3 to 7) should answer most of your questions. The fuller explanation in sections 3 and 4 may be helpful in more complex circumstances.

If you still have questions after reading this guide, please contact DARD Countryside Management Branch for advice, as follows:

Agri-environment Scheme Management Branch
Lindesay Hall
Loughry Campus
Cookstown
County Tyrone
BT80 9AA
Telephone: (028) 8676 8310
Email: viki.bell@dardni.gov.uk

1. Introduction

1.1 What are the Regulations for?

The Regulations seek to protect environmentally important agricultural land and preserve the landscape for future generations.

They also allow Northern Ireland to comply with the terms of EU Directive 85/337/EEC ('the EIA Directive').

Put simply, the Regulations mean that you must gain DARD's consent before you carry out certain kinds of work on your farm.

This Guide sets out the type of proposed works that require DARD's consent, and the procedures you should follow to secure that consent.

1.2 Am I affected?

The Regulations may affect you if you plan to improve any uncultivated land or semi-natural area on your farm, or to change the physical structure of your farm.

The diagram on the following pages will help you decide if the work you plan to carry out might need DARD's consent before you begin.

If you are in any doubt you should contact DARD Countryside Management Branch for advice.

What do you need to do?

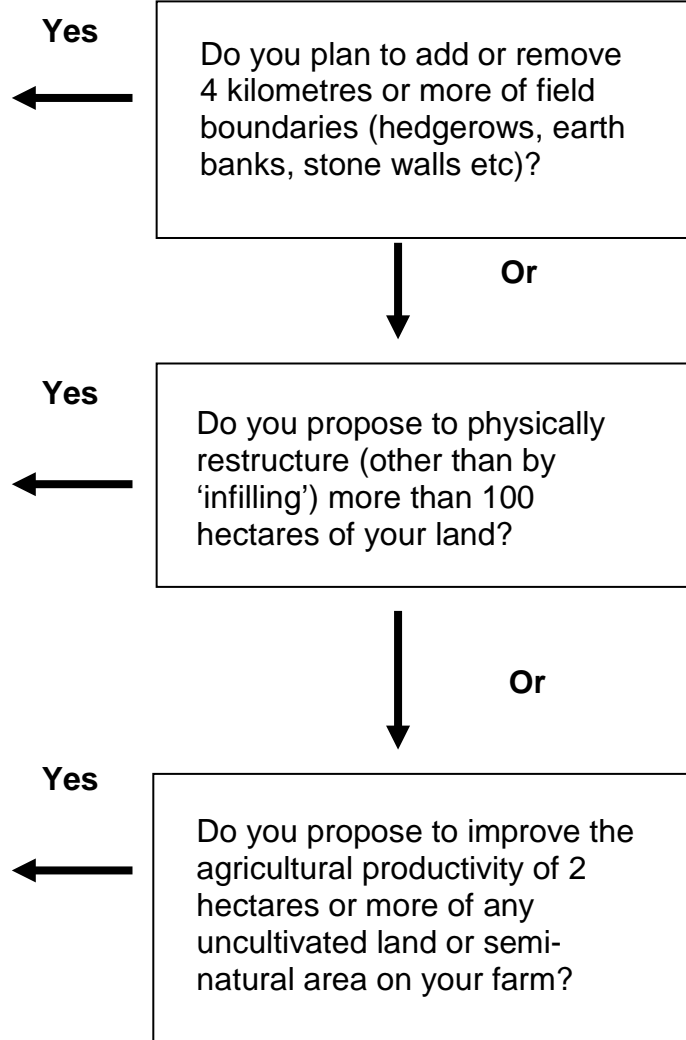
What work do you propose to do?

Other Information

If you can answer 'Yes' to any of the questions on the right, you need to ask DARD for a 'screening decision' before you begin.

DARD will then decide if your plans represent a 'significant project' or not.

If DARD believes that the work you plan to carry out would be a 'significant project', you will have to apply for consent and submit an 'environmental statement' before approval can be given...



Note: if your land is considered to be 'environmentally valuable' (an ASSI, AONB or a European site, for example) the 'threshold' is 2kilometres. See page 6 for details.

Note: if your land is considered to be 'environmentally valuable' (an ASSI, AONB or a European site, for example) the 'threshold' is 50 hectares. See page 6 for details.

Note: 'uncultivated land' and 'semi-natural area' are defined on pages 20 and 21.

...An 'environmental statement' will include a description of your project, an outline of the alternatives and the main reasons for your choice of proposal, as well as a description of the likely significant effects on the environment if the work you propose was to be carried out.

An application for consent, including the environmental statement, will be made public.

↓
And if none of the above apply...
↓

Your plans do not need DARD consent under these Regulations (but see the notes on the right).

Note: In most circumstances you should be able to proceed with your plans, unless a screening notice has previously been issued by DARD.

However, you should note that if you plan to carry out work in an ASSI, or a European site, DOE NIEA consent will be needed.

Also, the removal of any field boundary, the infilling of any open sheugh or ditch, or the improvement of any semi-natural habitat, shelterbelt or historic monument without prior written permission from DARD is a breach of the Cross Compliance conditions attached to your Single Farm Payment and other support schemes.

2.3 Are all projects affected?

Normally, the Regulations only require DARD consent for work that affects an area of land over a certain size (the 'threshold'). Below this size, work can proceed without DARD's consent, unless the land is 'environmentally valuable'. ('Environmentally valuable' land is defined in section 2.4 below.)

Where you propose to carry out any operation to increase the agricultural productivity of more than two hectares of uncultivated land or a semi-natural area, you will need DARD's consent. (The terms 'uncultivated land' and 'semi-natural area' are defined in sections 3.3 and 3.4 below.)

Where you propose to physically restructure 100 hectares or more of land (50 hectares or more if any of the land is environmentally valuable), you will need DARD's consent.

Where you propose to physically restructure your farm by removing four kilometres or more of field boundaries (two kilometres or more if the land is considered environmentally valuable) you will need DARD's consent.

Where you propose to physically restructure your farm by adding, removing or redistributing earth or other material over 0.5 hectares of your land ('infilling'), you will need DARD's consent.

2.4 What is 'environmentally valuable' land?

Land is considered to be environmentally valuable if it lies within

- an Area of Outstanding Natural Beauty (AONB)
- a Scheduled Ancient Monument
- a Special Area of Conservation (SAC)
- a Special Protected Area (SPA)
- an Area of Special Scientific Interest (ASSI)

You will need consent from the Department of the Environment's Northern Ireland Environment Agency (NIEA) before carrying out any work that might have an effect on land in any of these areas. NIEA can be contacted on 02890 569520, or by emailing Paul.Byrne@doeni.gov.uk.

DARD will contact NIEA if it is made aware of any proposal to carry out work on environmentally valuable land.

2.5 How do I get consent?

If you propose to carry out a project which meets any of the conditions set out in section 2.3, you may not proceed without consent from DARD.

To apply for consent, you must make a screening application to DARD, giving details of the work you propose to carry out. Application forms can be requested from:

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or downloaded from <http://www.dardni.gov.uk/eia-word-form.doc>

DARD will assess your application and inform you of our screening decision within 35 days.

If your proposal is considered unlikely to have a significant effect on the environment, you will be free to proceed.

If your proposed project is considered likely to have a significant effect, work may not proceed without our consent.

If consent is needed, you must make a further application to DARD which includes an 'environmental statement'.

DARD will check your application, including the environmental statement, and consult the public and others if necessary. We will then make a consent decision on whether or not the project may proceed.

2.6 What if I go ahead regardless?

You may be prosecuted if you fail to follow the procedures outlined in section 2.5, and may have to carry out work to return the land to its previous condition.

Any payments you receive from DARD support schemes including agri-environment schemes and the Single Farm Payment scheme may be affected if you breach the terms of the Regulations.

3. Detailed guidance

This section gives more detailed guidance on how to find out if the work you plan to carry out is covered by the Regulations, and what happens if it is.

If having read the guidance you are uncertain, you should contact DARD for advice by writing, telephoning or e-mailing:

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3.1 Is your proposal affected by the Regulations?

The Regulations apply to two different types of project.

- Projects which increase the productivity for agriculture of uncultivated land or semi-natural areas.
- Projects which physically restructure rural landholdings.

3.2 Projects on uncultivated land and/or semi-natural areas

Proposals to increase the agricultural productivity of uncultivated land or semi-natural areas will usually require consent from DARD only if the uncultivated land or semi-natural area concerned is two hectares or more in area.

Where a screening notice has previously been issued by DARD, any proposal to increase the agricultural productivity of uncultivated land or semi-natural areas will require consent.

Typically, projects likely to fall into this category might include:

- physically cultivating soil (for example, by ploughing, tine harrowing, or rotavating);
- increased levels of organic or inorganic fertiliser or soil improvers;
- sowing seed;
- draining land;

- clearing existing vegetation either physically or using herbicides.

3.3 Is the land uncultivated?

Land is considered to be uncultivated land if it has not been subject to physical or chemical cultivation in the last 15 years.

Cultivation would include agricultural soil-disrupting activities such as ploughing, sub-surface harrowing, discing, or tining, as well as chemical enhancement of soil through the addition of organic or inorganic fertilisers and soil improvers.

Cultivation would not include practices which do not directly affect the soil. Mowing grass, chain harrowing or clearing scrub or other vegetation would not in themselves be considered as cultivation of land.

If you are uncertain whether your land could be described as uncultivated, you should contact DARD for advice by writing, telephoning or e-mailing:

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3.4 Is the land a semi-natural area?

Most semi-natural areas will be considered as uncultivated land. However, even if a semi-natural area has been subject to low levels of cultivation (for example, some semi-natural hay meadows and wetland may have been subject to low levels of farmyard manure) DARD consent may still be needed before work can begin.

The types of land considered to be semi-natural are

- Species-rich hay meadow (upland and lowland);
- Semi-natural grassland (including calcareous, acid and neutral grassland);
- Coastal and floodplain grazing marsh;
- Scrub consisting of self seeded wild shrubs and trees;
- Fen, marsh and swamp;

- Dwarf shrub heath (for example moorland and heathland);
- Broad-leaved, mixed and yew woodland;
- Peat bogs;
- Bracken;
- Land above the tree-line (usually over 600 metres above sea-level); and
- Standing water and canals.

These land types are more fully described at Annex 1.

Semi-natural areas will not normally have had any form of chemical cultivation in the past 15 years, other than the addition of low levels of lime or organic or inorganic fertilisers, or incidental nutrient addition through flood management.

Semi-natural areas may have been subject to very low levels of physical cultivation (eg chain harrowing may have caused some disturbance of soil) in the last 15 years, but will not have been subject to sub-surface physical cultivation (such as ploughing, discing, heavy harrowing) during this time.

Land under habitat creation or restoration options in agri-environment schemes (such as the Countryside Management Scheme) will not be defined as semi-natural land for at least 15 years after the last cultivation (excluding the low levels of cultivation mentioned in the preceding paragraph).

Where you are uncertain whether your land could be described as semi-natural, you should contact DARD for advice by writing, telephoning or emailing

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3.5 Projects for the restructuring of rural land-holdings

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 re-contouring of rural land, for instance by moving large quantities of earth and rock.

Normally, restructuring projects will only require consent if they involve changes to four kilometres or more of field boundaries, or otherwise restructure an area of 100 hectares or more.

However, any restructuring project which affects environmentally valuable land, as defined in section 2.4 above, will need consent from DARD if the project involves changes to two kilometres or more of field boundaries, or otherwise restructures an area of 50 hectares or more.

Land is considered to be environmentally valuable if it lies within

- an Area of Outstanding Natural Beauty (AONB)
- a Scheduled Ancient Monument
- a Special Area of Conservation (SAC)
- a Special Protected Area (SPA)
- an Area of Special Scientific Interest (ASSI)

You will need consent from the Department of the Environment's Northern Ireland Environment Agency (NIEA) before carrying out any work that might have an effect on land in these any of these areas. NIEA can be contacted on 02890 569520, or by emailing Paul.Byrne@doeni.gov.uk.

DARD will contact NIEA if it is made aware of any proposal to carry out work on environmentally valuable land.

Any restructuring project affecting land in respect of which a screening notice has previously been issued by DARD will also need consent.

3.6 Are all restructuring projects affected by the Regulations?

Certain kinds of restructuring project are not considered to be projects for the restructuring of rural land-holdings:

- 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, Planning, Land Drainage Improvement Works and Water Resources. This includes anything classed as development under Planning legislation;
- the restoration of hedgerows as part of an agri-environment scheme agreement.

3.7 Making a screening application

If you need to secure DARD consent to

- to carry out any operation to increase the agricultural productivity of more than two hectares of semi-natural or uncultivated land;
- to physically restructure 100 hectares or more of land (50 hectares or more if any of the land is environmentally sensitive);
- to physically restructure your farm by removing four kilometres or more of field boundaries (two kilometres or more if the land is considered environmentally valuable); or
- to physically restructure your farm by adding, removing or redistributing earth or other material over 0.5 hectares or more of your land

you must make a screening application. DARD can advise you on the type and extent of information required, which may save time later.

Screening application forms, available from:

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or downloaded from <http://www.dardni.gov.uk/eia-word-form.doc>

will ask for:

- 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.

Completed screening application forms should be sent to DARD at the following address.

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3.8 The screening decision

When DARD receives your screening application, it will confirm that it is in order and inform you in writing (or by email if you prefer) that it has received the application. DARD may ask you for more information if this is needed to assess your proposals.

DARD will assess your application and inform you of our screening decision within 35 days. 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 an environmental statement.

In order to reach its screening decision, DARD may need to 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.

DARD will inform you in writing (or by e-mail if you prefer) of the screening decision, together with the reasoning behind the decision.

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.

3.9 Making an application for consent

If DARD decides a project is likely to have significant effects on the environment, work must not proceed. Instead, you will need to submit an 'environmental statement'. Before doing this, we advise you to speak to DARD to discuss your application.

If you decide to submit an environmental statement, you may ask DARD for a scoping opinion, which DARD will supply within 35 days. Scoping opinions advise what information your application and environmental statement should contain. Scoping opinions are only guides (DARD may need to ask for more information later) but may save you time and money in the preparation of an environmental statement.

The environmental statement is the central part of your application for consent. This must be prepared by you, or someone acting on your behalf. The precise content of the environmental statement will usually need to include at least:

- a description of the location, design and size of your project;
- details of any planned action to avoid, reduce or remedy significant adverse effects;
- information needed to identify and assess the main environmental effects of the project;
- an outline of the alternatives you have considered and the reasons for your choice;
- a non-technical summary of the information mentioned in the point above;
- other information which is needed to assess the environmental effects of the project.

When you have completed the environmental statement, you should submit it to DARD.

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DARD will examine the environmental statement to see whether it provides all the necessary information, and we may ask for more information from you if it does not.

DARD will also:

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

3.5 The consent decision

DARD'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 factors (eg economic, social or environmental factors.)

When DARD has made its decision, we will:

- inform you and any consultation bodies of our 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 our decision by publishing a notice in a newspaper circulating in the local area;

- make available for public inspection various details of the decision, including the decision itself, the reasons behind it, any 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.

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

4. Implementation, enforcement and appeals

This section summarises the various implementation and enforcement powers the Regulations give DARD, as well as the process by which decisions made under the Regulations may be appealed.

4.1 Screening notices

Normally, projects that affect areas of land (or lengths of field boundary) below the thresholds set out in section 2.3 will not need consent under the Regulations.

However, DARD may use 'screening notices' to prevent work on areas of land or lengths of field boundary below those thresholds.

For instance, normally uncultivated land and semi-natural areas projects would only need screening consent if they concerned an area of two hectares or more – but a screening notice could override that threshold and require that projects on a smaller area of uncultivated land need consent.

DARD may only issue a screening notice if

- we believe that a project below the relevant threshold is likely to be carried out on an area of land; and that
- such a project (possibly in conjunction with other projects) would be likely to have a significant effect on the environment.

The screening notice must be given in writing to every owner and occupier of the land concerned, explaining

- the area of land and types of project to which the screening notice applies;
- the reasons for issuing the screening notice;
- the process for appealing against the screening notice.

Each screening notice will have a maximum duration of 5 years.

4.2 Stop notices and reinstatement notices

Stop notices can be served if DARD considers that you have started work on a project without the necessary consent (that is, a positive screening decision or a consent decision where needed).

A stop notice will require you to stop work, usually pending an investigation by DARD of a possible breach of the Regulations. A stop notice takes immediate effect once it is served. It is an offence to contravene a stop notice.

Reinstatement notices can be served if DARD considers that work has been carried out without the necessary consent. Reinstatement notices may require that land is reinstated to its previous condition – or that some other action is taken to return the land to good environmental condition.

It is an offence to contravene a reinstatement notice. Failure to abide by the terms of a reinstatement notice may result in DARD carrying out the work itself and charging you for any cost incurred.

4.3 Offences

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

- carry out work without any consent required by the Regulations (that is, a positive screening decision or consent decision, where appropriate);
- 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 reinstatement notice, or a screening notice issued in accordance with the Regulations.

4.4 Cross Compliance

The Regulations, applied to projects which seek to increase the agricultural productivity of uncultivated land or semi-natural areas, are part of 'Cross Compliance' under the Single Payment Scheme. Breaches of these rules may affect your Single Farm Payment and other payments from DARD.

The Regulations, applied to projects which physically restructure rural landholdings, are not part of Cross Compliance.

Further information on Cross Compliance is available at www.dardni.gov.uk or by telephoning the DARD helpline on 028 9052 4999.

4.5 Appeals

The Regulations allow you to appeal against notices issued, and decisions made, by DARD.

You may appeal against a screening decision, stop notice or reinstatement notice on certain grounds. The appeal must reach DARD within three months of the relevant notice being served on the applicant.

Details of the grounds on which you may appeal against a screening notice, stop notice or reinstatement notice, and the procedure by which such appeals will be determined, are set out in regulations 31 to 35 of the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007.

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

Semi-natural habitats

<i>Calcareous grassland</i>	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.
<i>Acid grassland</i>	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.
<i>Bracken</i>	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.
<i>Dwarf shrub heath</i>	The habitat is characterised by >25% cover of dwarf shrubs, including heather (ling), heath, or dwarf gorse. This includes all moorland and lowland heathland.
<i>Fen, marsh and swamp</i>	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.
<i>Bog</i>	Peat forming vegetation associated with Sphagnum (bog) mosses.
<i>Montane habitats</i>	Vegetation above the tree line. (ie usually over 600 metres above sea-level)
<i>Inland rock</i>	Naturally and artificially exposed rock > 0.25 hectares, such as inland cliffs, caves, screes and pavements as well as waste tips.

Neutral grassland	<p>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.</p> <p>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.</p>
Broad-leaved, mixed and yew woodland	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 DARD 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 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.

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

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This guide to the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007, and following amendment, is intended to help farmers and other land managers who may be affected.

It does not take the place of law and is not a definitive interpretation of the Regulations, which can only be given by the courts.