



Consultation Response Form

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

General Comments

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

The RSPB welcomes the opportunity to comment on this consultation paper. We work for a healthy environment rich in birds and other wildlife. As a charity with over one million members, we are the largest wildlife conservation organisation in Europe. Within Northern Ireland (NI) we have 11,000 members and represent a broad cross section of society.

Agriculture is one of the RSPB's key priorities because farmland bird populations have plummeted in the past 30 years. The RSPB has a team working on agriculture across the UK, we own a number of farms and 23,000 hectares of our nature reserves are farmed in some way. The RSPB wants to see sustainable farming that provides safe, healthy, affordable food; protects and enhances the environment and its wildlife; supports diverse and attractive landscapes and contributes to a thriving rural economy.

We have considerable experience and expertise in environmental assessment both at project and strategic levels of decision-making. We are actively involved in the Environmental Impact Assessment (EIA) process at all levels from the national and international debate on legislation and policy down to practical casework in the UK. We believe that EIA is a vital tool for integrating environmental considerations into land use decision-making.

Chapter 1 – The EIA Directive

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

As a principle, we do not accept that the introduction of thresholds to decide which projects are formally screened will ensure that adequate numbers of projects having 'likely significant effects on the environment' are captured by the EIA Regulations. **We therefore oppose the use of thresholds to determine which projects should be formally screened.**

In particular, **we do not feel that the area of a site is a suitable indicator of its environmental value.** The use of area thresholds sends out the message that small sites are not important, when in fact even 4ha is a relatively large area of semi-natural habitat in a small-field mosaic landscape such as ours. NI has lost huge amounts of semi-natural land since the last war, making even small remnants vital for maintaining populations of priority species. Farmland birds rely very heavily on semi-natural areas for feeding and nesting.

The European Commission's (EC) five year report on EIA (2002) recommended that those Member States (MS) using a system with fixed mandatory thresholds should *'make certain it ensures that all projects that might have significant effects are subject to an appropriate screening process. In this exercise, the Commission expects that they will particularly consider projects planned in or near sensitive areas, and the possible cumulation of projects'*. The RSPB do not accept that screening notices provide the necessary safeguards to protect land under the area thresholds, particularly in relation to cumulative effects. For the reasons detailed below, we think that projects likely to have significant environmental effects will fail to be captured by either the thresholds or the screening notices.

The use of thresholds to decide which projects should be screened could also encourage 'salami slicing' (splitting an initial project into a number of separate projects which do not exceed a threshold individually but cumulatively). The EC's report (2002) urged MS to identify and remedy any shortcomings in their legislation that could allow salami slicing. The risk of farmers carrying out their projects in stages, to avoid exceeding the area thresholds, has not been addressed in the consultation paper.

Finally, although the consultation paper talks of the use of 'sophisticated' thresholds, it is not clear to us how the proposed thresholds are 'sophisticated' in that they appear only to take account of size of area affected and whether or not it is classed as 'sensitive'. Without further information about the nature of these thresholds, we would argue these are not 'sophisticated' thresholds.

In summary, we believe that thresholds should not be used to decide whether a project should undergo screening, and all projects for agricultural intensification of uncultivated land and semi-natural areas (UL&SNA) should be screened by DARD.

Please give your views on the proposed new screening procedures.

We believe that **the use of screening notices will be ineffective in capturing projects that fall outside of the thresholds** but that are still likely to have significant environmental effects. They are also unsuitable as the means by which cumulative effects will be addressed.

By their very nature, most of the projects expected to be captured by screening notices will be small projects in sparsely populated areas and some may take place on fields hidden from public view. In the majority of cases, how can the Government be expected to 'become aware' of these projects, unless they receive a tip-off from the public? We acknowledge that DOE must be informed of any damaging activity due to take place on an Area of Special Scientific Interest (ASSI), which provides them with an opportunity to issue a screening notice. However, the requirements for them to be informed of activities taking place outside an ASSI are different, being limited to activities likely to damage the special interest of the ASSI where these are either being carried out by a public body, or require the consent of a public body. An activity outside a boundary could still significantly and adversely affect a site (e.g. ploughing up UL&SNA adjacent to a designated river could lead to siltation of that river). It is even more difficult to see how Government would 'become aware' of a project having an impact on non-statutory sites through existing formal mechanisms.

The document states that guidance will specify that screening notices should only be used where there is sufficient evidence to suggest that significant effects may be likely on all or a large proportion of a particular site. We do not agree that the guidance should limit the use of screening notices where only sites would be affected. The guidance should allow screening notices to be used when there are likely to be impacts on species, or on the wider environment (e.g. water quality).

The low level of awareness amongst land managers about the current EIA Regulations is a further concern. Existing mechanisms could be used to improve awareness. We welcome the inclusion of the EIA Regulations under the Good Agricultural and Environmental Conditions element of Cross Compliance and urge DARD to use them as a mechanism to communicate the requirements of the Regulation. Unless the launch of the Agricultural EIA Regulations is accompanied by an adequate awareness raising campaign, we feel there is potential for them to cause more confusion than the regulations they would replace.

Finally, it appears that the reliance on screening notices may mean the proposed new system imposes a greater administrative burden (to organisations and individuals outside of DARD) than the current system.

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

Screening notices will only be needed if a system of pre-screening thresholds is introduced, which the RSPB opposes for the reasons stated in the previous responses. However, should a system of thresholds and screening notices be introduced, screening notices should be used whenever DARD become aware that a project may take place on land which can be classified as UL&SNA, if they consider that significant environmental effects could result. The precautionary principle must be applied in making a decision to issue a notice and this requirement should be included in the accompanying guidance.

The RSPB fully support the principle of ensuring that screening notices are joined up with other environmental policy and that the process is accountable.

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?

We do not have a view on this issue.

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.

We do not have any views on the specific inclusion and exclusion lists presented in paragraphs 27 and 28. However, efforts to ensure that the new EIA rules do not deter beneficial re-structuring would be welcomed.

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

Firstly, we assume that DARD means the Countryside Management Scheme (CMS) in the above question. Requirements for EIA for beneficial projects under CMS would have the effect of discouraging landowners from undertaking these projects. Given the environmental protection intentions of the EIA Directive, it seems reasonable to exclude such projects.

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

Yes. However, as stated in response to a previous question, we do not believe thresholds should be used in the EIA Regulations to decide which projects should be formally screened. If thresholds must be introduced, we believe they should only apply to land not identified as a 'sensitive area', so that all projects in sensitive areas

are formally screened.

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?

Notwithstanding our views expressed in response to the above questions, we believe it is imperative that all projects taking place in 'sensitive areas' be screened for EIA. The areas we propose to be classified as sensitive represent our best wildlife assets and it is therefore vital that all such proposed projects are screened when determining whether they are likely to have significant environmental effects, to take account of individual variation in project nature and site features.

The document cites Ireland as an example of a MS that applies a high threshold (100 ha) to its EIA restructuring regulations. However, we would like to point out that the EC has recently referred Ireland to the European Court of Justice for the failure of Irish UL&SNA legislation to take account of sensitive sites and cumulative effects. We therefore do not see Ireland as an appropriate example of acceptable practice in applying thresholds to meet the requirements of the EIA Directive.

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

We do not believe a system of thresholds and screening notices should be introduced, therefore we do not have views on how they should work. We believe the resources that would be needed for such a system would be better directed towards raising awareness of the regulations among land managers and helping them to meet the new requirements.

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

The following must be included as sensitive areas: Internationally designated sites such as Special Protection Areas, Special Areas of Conservation, ASSIs, AONBs and any proposed National Parks.

Land in close proximity to one of the above sites, such that activities within it could cause significant indirect effects to these sites, should also be classed as sensitive. For example, ploughing and fertilising a small field adjacent to a river which is designated as an ASSI could have significant adverse effects on that river due to siltation and run-off, so the project should be treated as if it was located in a sensitive area.

Land supporting Annex 1 species (Birds Directive) and Annex II and IV species (Habitats Directive) must be classed as sensitive, as together with site designation, the EIA Regulations will help give them the necessary protection. Sites of Local Nature Conservation Interest and lands supporting NI Biodiversity Strategy priority habitats and species should also be come under this category.

Despite an RSPB led project to create targeting maps, there is currently no central database of land supporting BAP priority habitats and species. Therefore, although in most cases their biodiversity value merits their inclusion as 'sensitive', it is difficult to see how farmers could be expected to know whether their land is relevant. This supports our view that DARD staff should have a much greater involvement in the screening decision than is proposed in the consultation paper (i.e. that pre-screening thresholds should not be introduced). It also supports the need for greater resources to be directed towards mapping of non-statutory sites.

All these sites represent the most valuable biodiversity assets in NI and we strongly recommend their inclusion on that basis. Decisions about whether a site is classed as sensitive must be made in the context of the precautionary principle, such that full evidence of the use of a site by a particular species is not required in order for the site to be classified as sensitive. This decision should also take account of seasonal variations in the presence of species.

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

We presume this question relates to the setting of thresholds. Since we do not support the introduction of thresholds, we do not have a view on the differentiation between linear-based and area-based projects.

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

The RSPB do not believe that the spirit of the EIA Directive is properly reflected in these proposals. In particular, we feel that the use of area thresholds to decide which projects for agricultural intensification should be subject to formal screening, will allow projects likely to have significant effects on the environment to proceed without being formally screened for EIA. Equally, screening notices may well increase the overall administrative burden.

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

We do not have a view on this issue.

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

We believe that if a system of EIA is introduced that ensures all relevant agricultural projects likely to have significant effects on the environment have to undergo full EIA, this will complement the existing EIA regimes in other sectors. Such a system must ensure that potentially damaging projects do not take place without a rigorous assessment of their likely environmental effects, alternatives and mitigation options. This information must be used when a decision is made on whether consent can be granted for such a project. The system must be supported by awareness raising to ensure land managers are aware of their responsibilities, and to encourage them to consider alternative methods of land use, such as the more sensitive style of farming encouraged by CMS.

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

Do you agree with the revised risk assessment? Why?

One of the main drivers to intensify UL&SNA has been removed following CAP reform. However, there are new threats to UL&SNA from agricultural practices such as the cultivation of energy crops that attract direct financial incentives.

The revised risk assessment is correct in that there have been a number of major developments since 2001 and many of these will be beneficial to the environment. However, it is also possible that the changes could have unintended and unforeseen consequences, with new drivers potentially presenting new threats to UL&SNA. Decoupling provides farmers with much greater flexibility and therefore the opportunity to restructure their operations. Whilst we hope that they will take this opportunity to capitalise on the natural assets of their farm, through high quality CMS agreements, it is too early to predict what choices farmers will make.

There is increasing pressure to source energy from renewable sources including energy crops. As this market expands it could provide a lucrative income for farmers

who may be tempted to include areas not previously cultivated. Short rotation is a particular case in point in NI, and may be considered for areas not previously suitable for profitable cultivation.

We therefore feel that it is premature to revise the risk assessment at this time. Any such changes should await the results of the Countryside Survey 2006/7 and the results of the CAP 'health check' which will analyse the impact of CAP reforms.

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

We believe that the Regulations have encouraged some land managers to consider alternatives to intensifying their UL&SNA, and to factor the biodiversity value of such land into their farming decisions. However, evidence from elsewhere in the UK suggests that the level of awareness about the Regulations amongst land managers is still too low. Given the huge 32% loss in species rich grassland recorded during the 1990's, the RSPB believes that despite the anticipated reduction in threats to precious remnant habitats like this, it is far too early to relax the current EIA Regulations. Though unnecessary applications have been made, the (hard to measure) deterrent factor is important, and an unambiguous message must be consistently sent out to ensure clarity in the farming community, at this early stage of the EIA Regulation.

Evidence has not been presented in the document on the number of applications that are made independently by a farmer, those made after a farmer seeks advice from a statutory body or regulator and those made as a result of the farmer or regulator being prompted by a third party. Had it been collated, such evidence would indicate whether the functioning of the current rules is as efficient as it could be.

The consultation paper notes that the performance of the Regulations has been hindered because the land they try to protect has not been mapped. Given the long-term benefits to both farmers and the regulator in having such information available, we suggest serious consideration be given to providing the resources for mapping to be undertaken.

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.

RSPB notes with interest the points raised by the recent judgement that found against Defra's view of the meaning of the term 'agricultural intensification'. Given the importance of this definition in deciding which projects are relevant to the regulations, DARD need confidence in their interpretation of this term in order to achieve protection of valuable UL&SNA through these regulations.

Uncultivated and semi-natural land represents a finite and diminishing resource. For BAP habitats such as 'lowland calcareous grassland' and 'purple moor-grass and rush pastures', agricultural intensification remains a real threat. Such resources will become increasingly important as climate change adds additional stress to these habitats. Therefore, we believe that it is crucial that such areas are afforded protection through a robust EIA Regulation and the CMS, that provides a financial reward for preservation and ongoing management.

We are not convinced of the merits of separating the definition of uncultivated land and semi-natural areas. Ideally, the decision on whether areas merit an EIA should be based on a species based assessment. As this will provide the most accurate and reliable judge of the value of the area. There is a danger that the use of a 15-20 year threshold might encourage farmers to cultivate areas they would otherwise not do, to avoid falling foul of the rules. In order to reduce the likelihood of such an effect the regulations should highlight the value of retaining such areas, for example through entry to agri-environment schemes.

In order to protect these areas the definition of cultivation should include both physical disruption and chemical improvement, as both will have a negative impact on these areas. Equally, if an area has been shown to be cultivated in some way it may still support semi-natural communities and should therefore still be subject to a species-based test.

We do not agree that the 15-20 year cultivation threshold should be used to assess the importance of semi-natural areas. This must be based on a species based test. Given the limited area of uncultivated and semi-natural land that is important for its biodiversity, any loss of these areas would have a significant impact on the environment. As such, it is critical that there is a robust system of assessment in place to protect these areas.

We do not agree that the 25% coverage of species indicative of cultivation should be lowered. We understand that this assessment has been made on anecdotal evidence rather than a full statistical assessment.

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

The figures detailed show that a significant proportion of smaller sites which were screened were found to require an EIA we therefore feel that it is proportionate to the problem to ensure that a system is in place to identify threats to these small yet significant areas.

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

We do not have a view on this issue.

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

We do not consider that the Regulations will have a serious effect on agri-environment schemes, provided that CMS field margins, field corners and buffer strips are exempt from the revised EIA rules as proposed in the consultation paper. However field scale habitat creation projects paid by the taxpayer through the CMS should involve a long-term commitment, since the ecological value of sites being returned to a semi-natural state may be low for a number of years. If a farmer intends to return land to agricultural intensification within a few years of starting such a project, this represents poor value for money for the taxpayer. We do not consider that the new EIA regulations will discourage farmers from engaging in these habitat creation projects under CMS as the scheme is specifically designed to support the ongoing maintenance of such areas.

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

As stated in our response to question 1.1, **we oppose the use of thresholds in deciding whether a project needs to be screened for EIA.** Therefore we do not have a view on the level at which area thresholds should be set.

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

As stated, **we oppose the use of thresholds in deciding whether a project needs to be screened for EIA and the use of screening notices in capturing relevant projects below the area thresholds.** We believe that all projects for the agricultural intensification of UL&SNA should be screened by DARD. Therefore, we do not have any views on how screening notices should work.

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

We do not believe that the spirit of the EIA Directive is properly reflected in these proposals, and in fact, they seem to undermine the Directive's purpose. In particular, we feel that the use of thresholds to decide which projects for agricultural intensification should be subject to formal screening, will allow projects likely to have significant effects on the environment proceed without being formally screened for EIA.

We also feel that the new system as proposed will be less 'user friendly' than the current system, since the criteria that farmers need to use in deciding whether to obtain a screening decision will be more complex. The system of screening notices may well increase the overall administrative burden.

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

No, we do not think the rules will be more straightforward for land managers. This will particularly be the case if the definition of 'sensitive areas' is broadened to include sites supporting BAP priority habitats and species, which we believe is essential to ensure the Regulation delivers an acceptable standard of environmental protection. More of the responsibility for determining whether a project needs screening would be transferred to the land manager under the proposals, with specialist DARD staff having less involvement.

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

We do not have views on this issue.

Any other comments:

The precautionary principle is a fundamental pillar of EU environmental law, including the EIA Directive. The Directive states, "Whereas, pursuant to Article 130r (2) of the Treaty, **Community policy on the environment is based on the precautionary principle** and on the principle that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay".

Failure to apply the precautionary principle to Agriculture EIA decision-making contravenes the spirit of the EIA Directive and EU environmental legislation more generally. It also puts rare and declining biodiversity features at unnecessary risk, at a time when the UK and NI Government is committed through international agreement to halting biodiversity loss. We urge DARD to use the revision of the EIA Regulations as an opportunity to rectify this anomaly.

We also ask that DARD use the review of the UL&SNA regulations to ensure that the

new EIA regime conforms to EIA best practice, particularly with regards to screening. For example, we suggest DARD should start providing more detailed reasons for each screening decision, regardless of whether that decision is positive or negative. These reasons should be made publicly available.