

**EXPLANATORY MEMORANDUM TO THE  
ENVIRONMENTAL IMPACT ASSESSMENT (UNCULTIVATED LAND AND  
SEMI-NATURAL AREAS) (ENGLAND) (AMENDMENT) REGULATIONS 2005**

**2005 No. 1430**

**1.** 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Description**

2.1 These Regulations amend the Environmental Impact Assessment (Uncultivated Land and Semi Natural Areas) (England) Regulations 2001 (S.I. 2001/3966) (“the 2001 Regulations”) to bring them into line with recent European legislation – the Directive 2003/35/EC (“the Public Participation Directive”). The changes improve public participation in the process of carrying out Environmental Impact Assessment (“EIA”) on projects for the use of uncultivated land and semi natural areas for intensive agricultural purposes.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 Regulation 7(a) corrects a drafting defect reported by the JCSI in its 17th report for the 2001/02 session.

**4. Legislative Background**

4.1 The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (“the Århus Convention”) was adopted by the European Commission, among others, on 25th June 1998.

4.2 The Public Participation Directive, providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, was introduced to bring Community legislation into line with the public participation provisions of the Århus Convention.

4.3 Article 3 of the Public Participation Directive amends Directive 85/337/EEC, as amended by Council Directive 97/11/EC on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”). The EIA Directive is implemented in the UK through a range of Regulations relating to land-use matters such as town and country planning, transport, afforestation and deforestation, land drainage, etc.

4.4 The 2001 Regulations implement the EIA Directive in relation to projects for the use of uncultivated land and semi-natural areas for intensive agricultural purposes. This type of project is listed in Annex II(1)(b) to the EIA Directive as a category of project that might have significant effects on the environment.

4.5 This Statutory Instrument amends the 2001 Regulations to bring them into line with the amendments made to the EIA Directive by the Public Participation Directive.

4.6 The Public Participation Directive was cleared as being not legally important by the relevant Commons committee (4th April 2001) and was sifted and cleared by the relevant Lords committee (27th March 2001, 30th July 2001).

4.7 A Transposition Note is attached at Annex 1.

## **5. Extent**

5.1 These Regulations, because they amend the 2001 Regulations, apply to England only.

## **6. European Convention on Human Rights**

6.1 Not applicable.

## **7. Policy background**

7.1 The purpose of the EIA Directive is to ensure that the environmental effects of a very broad range of development projects are considered before the projects are allowed to go ahead. It does this by requiring EU countries to pass laws to ensure that certain types of 'projects' which may have 'significant effects on the environment' are made subject to an assessment process before they are allowed to proceed.

7.2 The 2001 Regulations affect anyone planning to carry out certain types of farming activity on uncultivated land and/or semi-natural areas for intensive agricultural purposes. Land likely to be subject to an environmental impact assessment includes unimproved grassland, heath, moorland, scrubland and wetlands. Relevant works might include ploughing, cultivation, spreading soil or manure, drainage, reclamation, and the application of fertilisers or pesticides.

7.3 Farmers in the Single Payment Scheme are required to comply with the 2001 Regulations as part of 'cross compliance' (a scheme under which the payment of a full farm subsidy is dependent on adherence to certain laws and rules). The Regulations are included in 'GAEC 5' from the list of Good Agricultural and Environmental Condition standards set out in cross compliance. A breach of the 2001 Regulations could mean that the farmer's payments are reduced or withheld.

7.4 Since their introduction, over 500 screening applications have been made under the 2001 Regulations. However, nobody has conducted an EIA or made an application for consent (i.e. the stage at which the changes being made to bring the Regulations into line with the Public Participation Directive would apply). This state of affairs looks set to continue, and is thought to be due to the cost of carrying out an EIA.

7.5 The amendments set out in these Regulations are technical and minor because they relate mainly to the provision of information by the Secretary of State at the EIA and consent stage. In practice these stages are not reached. Based on the nature of the amendments, and the point made in paragraph 7.3 above, consultation with stakeholders was considered unnecessary. However this instrument will be made available on the Defra website.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

9.1 Robert Wells at the Department for Environment, Food and Rural Affairs with any queries regarding the instrument. Tel: 020 7238 6005 or e-mail: [robert.wells@defra.gsi.gov.uk](mailto:robert.wells@defra.gsi.gov.uk).

## TRANSPOSITION NOTE

Article 3 of the Public Participation Directive (Directive 2003/35/EC) amends **Council Directive 85/337/EEC as amended by Council Directive 97/11/EC – The Environmental Impact Assessment (EIA) Directive**

**The Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England) Regulations 2001 (SI 2001/3966) need to be brought in line with the amended EIA Directive.**

### **Background**

The new EC Public Participation Directive (2003/35/EC) arises from EU adoption of the UNECE Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters.

Article 3 of the Public Participation Directive amends the EIA Directive. The EIA Directive is applied through a range of EIA Regulations relating to land-use matters such as town and country planning, transport, afforestation and deforestation, land drainage, etc.

The Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England) Regulations 2001 (SI 2001/3966) apply the EIA process to projects for the use of uncultivated land and semi-natural areas for intensive agricultural purposes. This type of project is listed in Annex II(1)(b) of the EIA Directive as a category of project that might have significant effects on the environment.

<b>Amended Article</b>	<b>Objective</b>	<b>Implementation</b>
2.3	Removes the discretion afforded to Member States to decide whether information gathered under another form of assessment should be made available to the public.	Regulation 4 requires the Secretary of State, in exercising her power to direct that a project be exempt from assessment, to consider whether another form of assessment would be appropriate and to provide information relating to such assessment to the public.
6.2(b)	Requires the Member State to inform the public that another Member State may be affected by the project.	Regulation 6(c) requires the Secretary of State to publish a notice stating that another Member State, and the public concerned in that member state that may be affected by the project will be consulted.

Amended Article	Objective	Implementation
		Regulation 6(c) also requires that the public must be informed, where relevant, that Article 7 of the EIA Directive applies. Article 7 deals with projects which may affect other Member States and the procedures for public participation and consultation with the other Member State for those projects.
6.2(d)	Requires the public to be informed of “the nature of possible decisions or, where there is one, the draft decision”.	Regulation 6(c) requires the notice to state that, if consent is granted, it shall be subject to the conditions specified in regulation 13(11) and any other conditions the Secretary of State thinks fit. The Secretary of State has the power to impose other conditions under regulation 13(10).
6.3	Requires the Member State to publish the information set out in article 6.2	Regulations 6(a) and 7(b) require the Secretary of State to publish the notice of a consent application on an appropriate website, as well as in a newspaper circulating in the locality of the relevant land.
7.2 and 7.3	Requires Member States to send to an affected Member State the information referred to in Articles 6(2) and (3).	Regulation 8(a) requires the Secretary of State to provide “further information she considers relevant to the application”.
9.1	Requires the competent authorities, once a decision has been taken, to make available to the public the main reasons and considerations on which the decision is based, “including information about the public participation process”.	Regulation 9(a) requires the Secretary of State to provide all the information required by this amendment.
9.2, second sub-	This requires Member States, where they have received	Regulation 8(b) fulfils this requirement by requiring the Secretary of State to take appropriate steps to bring the information

<b>Amended Article</b>	<b>Objective</b>	<b>Implementation</b>
paragraph	information relating to consent decisions in other EEA states, to provide the public with the information related to those consent decisions.	to the public's attention.
10a	This requires Member States to make available practical information on access to administrative and judicial review procedures.	Regulation 9(c) requires the decision statement to contain information regarding the right to challenge the decision and the procedures for doing so.

<b>Additional notes</b>
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Regulation 4 updates the reference to the Environmental Information Regulations to those introduced in 2004. This includes a new regulation 8(4) which treats consultation bodies which are not public authorities to which the EIRs apply in the same way as public authorities, for the purposes of regulation 8(3).
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Regulation 6 corrects the drafting defect reported by the Joint Committee on Statutory Instruments in its 17 <sup>th</sup> report of 2001-02. This concerns statements which do not contain the necessary information to constitute an environmental statement.
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