
STATUTORY INSTRUMENTS

2006 No. 2522

AGRICULTURE, ENGLAND

The Environmental Impact Assessment
(Agriculture) (England) (No.2) Regulations 2006

Made - - - - 13th September 2006
Laid before Parliament 15th September 2006
Coming into force in accordance with regulation 1(2)

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to measures relating to—

- (a) the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment(2); and
- (b) the conservation of natural habitats and of wild flora and fauna(3).

He makes the following Regulations under the powers conferred by that section:

PART 1

General provisions

Title, application and commencement

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006 and apply to England only.

(2) Regulation 38(c) comes into force on 30th September 2006 and the remaining provisions come into force on 10th October 2006.

Interpretation

2.—(1) In these Regulations—

(1) 1972 c. 68. The enabling powers of section 2(2) of this Act were extended by the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51).
(2) S.I. 1988/785.
(3) S.I. 1992/2870.

- “agriculture” has the same meaning as in section 109(3) of the Agriculture Act 1947(4);
- “additional environmental information” means any additional information required under regulation 13(1);
- “consent” means consent granted under regulation 16(1);
- “consultation bodies” means—
- (a) the Historic Buildings and Monuments Commission for England (English Heritage)(5);
 - (b) the Environment Agency(6);
 - (c) any other public authority, statutory body or other organisation which Natural England(7) or the Secretary of State considers has any interest in or holds any information which might be relevant to the project;
- “cultivated” means cultivated by physical means (including ploughing and harrowing) or chemical means (including the application of fertilisers);
- “EEA State” means a member State, Norway, Iceland or Liechtenstein;
- “the EIA Directive” means Council Directive 85/337/EEC(8) on the assessment of the effects of certain public and private projects on the environment, as last amended by Directive 2003/35/EC(9);
- “environmental statement” means a statement that includes—
- (d) as much of the information in Part 1 of Schedule 3 as is reasonably required to assess the environmental effects of the project and which the applicant for consent can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, and
 - (e) at least the information referred to in Part 2 of Schedule 3;
- “European site” means a site mentioned in paragraph (a), (b), (d) or (e) of regulation 10(1) of the Habitats Regulations;
- “the Habitats Directive” means Council Directive 92/43/EEC(10) on the conservation of natural habitats and of wild fauna and flora, as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded(11);
- “the Habitats Regulations” means the Conservation (Natural Habitats, &c) Regulations 1994(12);
- “project” means—
- (f) the execution of construction works or other installations or schemes; or
 - (g) other interventions in the natural surroundings and landscape;
- “the relevant land” means the land on which the project is to be (or has been) carried out;
- “restructuring project” means a project for the restructuring of rural land holdings;

(4) 1947 c. 48.

(5) See section 32 of the National Heritage Act 1983 (c. 47).

(6) See section 1(1) of the Environment Act 1995 (c. 25).

(7) See section 1 of the Natural Environment and Rural Communities Act 2006 (c. 16).

(8) O.J. No. L175, 5.7.85, p.40.

(9) O.J. No. L156, 25.6.03, p. 17.

(10) O.J. No. L206, 22.7.1992, p. 7.

(11) O.J. No. L 236, 23.9.2003, p. 667–70. See Annex II: List referred to in Article 20 of the Act of Accession, 16. Environment, C. Nature protection.

(12) S.I. 1994/2716, amended in relation to England by S.I. 1996/525, 1997/3055 and 2000/192; there are other amending instruments but none is relevant.

“screening decision” means a decision made by Natural England under regulation 8(1) or a decision deemed to be made by Natural England under regulation 8(7);

“screening notice” means a notice served under regulation 6(1);

“significant project” means an uncultivated land project or a restructuring project which Natural England has decided under regulation 8(1), or is deemed to have decided under regulation 8(7), is likely to have significant effects on the environment;

“uncultivated land” means land which has not been cultivated in the previous 15 years;

“uncultivated land project” means a project to increase the productivity for agriculture of uncultivated land or a semi-natural area, and includes projects to increase the productivity for agriculture of such land to below the norm.

(2) Other expressions used both in these Regulations and in the EIA Directive or the Habitats Directive have the same meanings in these Regulations as they have in the relevant Directive.

(3) All notifications, applications, notices, representations, requests, approvals and agreements under these Regulations must be made or given in writing.

(4) “Writing” in paragraph (3), except where it applies to notices under regulation 6, 25 and 27, includes an electronic communication within the meaning of the Electronic Communications Act 2000(13), but notifications required to be made by Natural England or by the Secretary of State to any person may only be made by an electronic communication if the intended recipient—

- (a) has himself used that form of electronic communication in communicating with Natural England or the Secretary of State (as the case may be) under any provision in these Regulations, or
- (b) has otherwise represented that that form of electronic communication is a means by which persons can communicate with him.

(5) Subject to regulation 6(6), notices or documents required or authorised to be served, sent or given under these Regulations may be sent by post.

Application of Regulations

3.—(1) These Regulations apply to any restructuring project or uncultivated land project, unless it is exempt under paragraph (2) or (3).

(2) A restructuring project or an uncultivated land project is exempt if it—

- (a) is a project mentioned in regulation 3(2) of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999(14);
- (b) constitutes development to which the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999(15) apply;
- (c) constitutes the carrying out of improvement works by a drainage body within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999(16);
- (d) constitutes a relevant project under regulation 3(2) and (3) of the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003(17);

(13) 2000 c. 7.

(14) S.I. 1999/2228.

(15) S.I. 1999/293, amended by S.I. 2000/2867.

(16) S.I. 1999/1783, amended by section 73(2) of the Countryside and Rights of Way Act 2000 (c. 37) and by S.I. 2005/1399 and 2006/618.

(17) S.I. 2003/164.

(e) constitutes the removal of a hedgerow under regulation 5(1) of the Hedgerows Regulations 1997⁽¹⁸⁾; or

(f) constitutes the erection of any building or fence, or the construction of any other work, for which consent is required under section 194 of the Law of Property Act 1925⁽¹⁹⁾.

(3) A project is exempt under this paragraph to the extent that the Secretary of State, in accordance with Article 2(3) of the EIA Directive, directs that it is to be exempt from regulations 4 to 36 of these Regulations.

(4) In the case of a project which Natural England decides is likely to have a significant effect on a European site (either alone or in combination with other projects), the power to direct that the project is exempt under paragraph (3) is exercisable only to the extent that compliance with the Habitats Directive is secured in relation to the project.

(5) Where the Secretary of State proposes to give a direction under paragraph (3), he must—

(a) consider whether any other kind of assessment of the project would be appropriate; and

(b) take such steps as he considers appropriate to bring to the attention of the public—

(i) the information considered in making the direction and the reasons for doing so, and

(ii) the information obtained from any assessment of the project under sub-paragraph (a).

PART 2

Screening

Requirement for a screening decision

4.—(1) A person must not begin or carry out an uncultivated land project or a restructuring project of an extent which is equal to or exceeds the threshold applicable to it (calculated in accordance with regulation 5) unless he has first obtained a screening decision permitting the project to proceed.

(2) A person must not begin or carry out any uncultivated land project or restructuring project on land to which a relevant screening notice applies unless he has first obtained a screening decision permitting the project to proceed.

(3) In this regulation, “relevant screening notice” means a screening notice which states that it applies to the type of project which is to be carried out.

Thresholds

5.—(1) This regulation provides the method for determining whether the extent of a project is equal to or exceeds the threshold applicable to it.

(2) The threshold for a type of project specified in column 1 of Schedule 1 is set out in column 2 or 3.

(3) Paragraphs (4) and (5) apply where a project consists of only one of the types of project specified in column 1.

(4) Where a project is to be carried out wholly outside a sensitive area, the threshold applicable to it is that specified for that type of project in column 2.

⁽¹⁸⁾ S.I. 1997/1160.

⁽¹⁹⁾ 1925 c. 20; section 194 was amended by the Local Government (Wales) Act 1994 (c. 19), section 66(6) and Schedule 16, paragraph 7(2), the Local Government Act 1972 (c. 70), section 272(1) and Schedule 30, the Local Government Act 1985 (c. 51), section 16 and Schedule 8, paragraph 10(5) and the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 3.

(5) Where a project, or any part of it, is to be carried out in a sensitive area, the threshold applicable to it is that specified for that type of project in column 3.

(6) Where a project is made up of more than one of the types of project specified in column 1—

- (a) each relevant part of the project must be assessed so as to determine the threshold applicable to that part, and
- (b) if any relevant part of the project equals or exceeds the threshold applicable to that part, then the entire project is to be treated as having an extent equal to or exceeding the threshold applicable to it.

(7) In this regulation, “sensitive area” means—

- (a) an area of outstanding natural beauty designated as such by an Order made by the Countryside Agency(20) or Natural England under section 82 of the Countryside and Rights of Way Act 2000(21) and duly confirmed by the Secretary of State under section 83(3) of that Act;
- (b) the Broads(22);
- (c) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949(23); or
- (d) a scheduled monument within the meaning of section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979(24).

Screening notices

6.—(1) Natural England may provide that thresholds do not apply to an area of land by serving a notice under this regulation.

(2) Natural England may only serve a screening notice if—

- (a) it reasonably believes that an uncultivated land project or a restructuring project is likely to be carried out on the land;
- (b) the extent of the project would fall below the threshold applicable to it in the area where it would be carried out; and
- (c) it considers, in accordance with the selection criteria in Schedule 2, that the project would be likely to have significant effects on the environment.

(3) A screening notice cannot—

- (a) apply for more than five years from the date it is served; or
- (b) relate to an area of land which is greater than the area on which Natural England reasonably considers the project is likely to be carried out and in any event—
 - (i) in the case of a notice relating to uncultivated land projects, to an area greater than 20 hectares, or
 - (ii) in the case of a notice relating to restructuring projects, to an area greater than 150 hectares.

(20) See section 1(1) of the National Parks and Access to the Countryside Act 1949 (c. 97) (as substituted by section 130 of, and paragraph 1 of Schedule 8 to, the Environmental Protection Act 1990 (c. 43)) and the Development Commission (Transfer of Functions and Miscellaneous Provisions) Order 1999 (S.I. 1999/416). See also section 1(4) of the Natural Environment and Rural Communities Act 2006 (c. 16), which provides for the dissolution of the Countryside Agency.

(21) 2000 c. 37. Orders designating areas of outstanding natural beauty made before the coming into force of section 82 of the 2000 Act are treated as having been made under section 82 by virtue of paragraph 16 of Schedule 15 to that Act. The Countryside Agency’s function of designating areas of outstanding natural beauty is transferred to Natural England by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 163.

(22) See section 2(3) of the Norfolk and Suffolk Broads Act 1988 (c. 4).

(23) 1949 c. 97. Relevant amendments were made by the Environment Act 1995 (c. 25), Schedule 10, paragraph 2.

(24) 1979 c. 46.

- (4) A screening notice must—
- (a) state whether it applies to—
 - (i) uncultivated land projects,
 - (ii) restructuring projects, or
 - (iii) both such projects;
 - (b) contain the reasons why it is being served;
 - (c) contain details of the land to which it applies and, in the case of a screening notice which applies to both uncultivated land projects and restructuring projects, details of which land is covered by which aspect of the notice;
 - (d) contain the date on which it expires; and
 - (e) explain the procedures for appealing against it.
- (5) A copy of the screening notice must be served on every owner and occupier of the land.
- (6) Section 329 of the Town and Country Planning Act 1990⁽²⁵⁾ (service of notices) applies to the service of copies of screening notices under paragraph (5).

Application for a screening decision

- 7.—(1) An application for a screening decision must—
- (a) be made to Natural England;
 - (b) contain a plan sufficient to identify the relevant land;
 - (c) contain a brief description of the nature, extent and purpose of the project and of its possible effects on the environment;
 - (d) contain any other information or representations as the applicant may wish to provide or make.
- (2) If Natural England considers that it does not have sufficient information to make a screening decision it may ask the applicant to supply any additional information it requires.
- (3) Natural England must notify the applicant of the date on which it received the application for a screening decision.

The screening decision

- 8.—(1) Natural England must, in accordance with paragraph (2) and the selection criteria in Schedule 2, decide whether or not a project is likely to have significant effects on the environment.
- (2) If Natural England decides that a project is likely to have a significant effect on a European site (either alone or in combination with other projects), and the project is not directly connected with or necessary for the management of the site, the project shall be treated as being likely to have significant effects on the environment.
- (3) Before making a screening decision, Natural England may consult any of the consultation bodies.
- (4) After making a screening decision, Natural England must—
- (a) notify the applicant of it, with reasons;
 - (b) enter it in a register, to which the public must have access at all reasonable times; and

⁽²⁵⁾ 1990 c. 8. Section 329 was amended in relation to England by [S.I. 2003/956](#); there are other amending instruments, but none is relevant.

- (c) where it considers that any of the consultation bodies might wish to be informed of the screening decision, notify those bodies of it.
- (5) Natural England must make a screening decision, and notify the applicant of it, within 35 days, or such longer period as may be agreed with the applicant, of either—
 - (a) the date referred to in regulation 7(3); or
 - (b) where applicable, the date Natural England receives any additional information it has requested under regulation 7(2),

whichever is the later.

(6) If Natural England has failed to make or notify a screening decision within the period in paragraph (5), the applicant may notify Natural England that he intends to treat that failure as a decision that the project is a significant project.

(7) Where the applicant has so notified Natural England, Natural England is deemed to have decided on the date of that notification that the project is a significant project.

(8) If, after Natural England has made, or is deemed to have made, a decision that the project is a significant project—

- (a) Natural England receives further information or representations; and
- (b) as a result of that further information or those representations Natural England decides that the project is not a significant project,

Natural England must take all the steps in paragraph (4) in respect of that new decision.

(9) If the project to which a screening decision relates is not begun within a period of three years beginning with the date the screening decision—

- (a) is notified to the applicant; or
- (b) is deemed to have been taken under paragraph (7),

the screening decision ceases to have effect.

PART 3

Consent

Requirement for consent

9. A person must not begin or carry out a significant project unless he has first obtained consent from Natural England.

Scoping opinions

10.—(1) After receiving a screening decision that a project is a significant project, but before applying for consent, the applicant may ask Natural England to provide its opinion on what information should be provided in the environmental statement (“a scoping opinion”).

(2) If the applicant requests a scoping opinion, Natural England must consult the applicant and such of the consultation bodies as it thinks fit before providing its opinion.

(3) If Natural England considers that it does not have sufficient information to provide a scoping opinion, it may ask the applicant to supply any additional information it requires within 28 days of the date on which it received the request for the scoping opinion.

- (4) Natural England must provide the applicant with the scoping opinion within 5 weeks of—
 - (a) the date it received the request for a scoping opinion; or

- (b) where applicable, the date it received the additional information requested under paragraph (3).

Provision of information

- 11.**—(1) This regulation applies if a consultation body—
- (a) is consulted by Natural England under regulation 10(2); or
 - (b) receives a request for information from a person who intends to apply for consent.
- (2) Where this regulation applies, the consultation body must—
- (a) determine whether it has in its possession any information it considers relevant to the preparation of the environmental statement; and
 - (b) subject to paragraphs (3) and (4), make that information available to Natural England or the applicant (as the case may be) within 28 days of the date of the consultation or the request.
- (3) A consultation body may make a reasonable charge to the applicant for providing information under paragraph (2)(b), to reflect the cost of making the information available.
- (4) Paragraph (2)(b) does not require a consultation body to make available to the applicant any information which—
- (a) it may refuse to disclose under regulation 12(1) of the Environmental Information Regulations 2004(26); or
 - (b) it is prevented from disclosing by regulation 13(1) of those Regulations.
- (5) If a consultation body is not a public authority within the meaning of regulation 2(2) of the Environmental Information Regulations 2004, paragraph (4) applies as if it were such a public authority.

The consent application

- 12.**—(1) An application for consent must include an environmental statement and must be made to Natural England.
- (2) The applicant for consent must provide Natural England with as many copies of the application as it reasonably requires.
- (3) After receiving the application for consent, Natural England must comply with paragraphs (4) and (5).
- (4) Natural England must—
- (a) send a copy of the application to any of the consultation bodies it considers appropriate; and
 - (b) inform them that they may make representations within 6 weeks of the date they received the copy of the application.
- (5) In order to ensure that members of the public concerned are given an opportunity to make representations before the application is determined, Natural England must publish on its website and in a newspaper circulating in the locality of the relevant land a notice—
- (a) stating that the application has been made;
 - (b) specifying an address—
 - (i) at which copies of the application can be inspected free of charge, and
 - (ii) where copies of the application may be taken

- at all reasonable hours within 6 weeks of the date the notice is published;
 - (c) stating that representations on the likely environmental effects of the project may be made in writing to Natural England at the address specified under sub-paragraph (b) within 6 weeks of the date the notice is published;
 - (d) stating that, if consent is granted, it will be subject to—
 - (i) the conditions in regulation 18(2), and
 - (ii) any other conditions that Natural England thinks fit; and
 - (e) stating, if relevant, which of the other EEA States, the authorities referred to in Article 6(1) of the EIA Directive, and the public concerned in such EEA States will be consulted on the application.
- (6) Natural England may make a reasonable charge for copies referred to in paragraph (5)(b)(ii).

Additional information

13.—(1) If, after complying with regulation 12(3), Natural England decides that it requires any additional environmental information in order to decide whether to grant, or refuse to grant, consent for a significant project, it must notify the applicant of the information required, and the applicant must provide Natural England with that information.

- (2) Natural England must—
 - (a) send a copy of the additional environmental information to such of the consultation bodies as it thinks fit; and
 - (b) inform them that they may make representations within 28 days of the date they receive it.
- (3) Natural England must publish on its website and in a newspaper circulating in the locality of the relevant land a notice—
 - (a) referring to the application to which the additional environmental information relates and the date the application was made;
 - (b) stating that the additional environmental information has been received;
 - (c) specifying an address—
 - (i) at which copies of the additional environmental information can be inspected free of charge, and
 - (ii) where copies of the additional environmental information may be taken, at all reasonable hours within 6 weeks of the date the notice is published; and
 - (d) stating that representations in relation to the additional environmental information may be made in writing to Natural England at the address in sub-paragraph (c) within 28 days of the date the notice is published.
- (4) Natural England may make a reasonable charge for copies referred to in paragraph (3)(c)(ii).

Procedure where a significant project in England may affect another EEA State

14.—(1) As soon as possible after receiving an application for consent for a significant project, Natural England must consider whether that project is also likely to have significant effects on the environment in another EEA State.

- (2) If Natural England considers that such effects are likely, it must send the information and other material specified in paragraph (3) to—
 - (a) the EEA State which it considers is likely to be affected; and
 - (b) any other EEA State which—

- (i) is likely to be significantly affected by the project in question, and
 - (ii) requests the information and other material.
- (3) The information and other material referred to in paragraph (2) are—
- (a) details of the nature and location of the significant project;
 - (b) any information Natural England has on the impact it is likely to have on that EEA State;
 - (c) an indication of whether Natural England is minded to grant consent for the project, and the nature of any consent that might be granted; and
 - (d) a request that the EEA State should indicate within a reasonable time whether it wishes to participate in the procedure under this Part of these Regulations.
- (4) If the EEA State indicates that it wishes to participate in the procedure under this Part of these Regulations, Natural England must—
- (a) send it a copy of the application for consent, of the environmental statement and of any further information it considers relevant to the application; and
 - (b) provide it with information about the procedure under these Regulations.
- (5) Natural England must also—
- (a) arrange for the information and material in paragraphs (3) and (4) to be made available, in a reasonable time, to the authorities referred to in Article 6(1) of the EIA Directive and the public concerned in the territory of the EEA State; and
 - (b) ensure that those authorities and the public concerned are given an opportunity to provide Natural England with their opinion on the information supplied within a reasonable time before consent for the project is granted.
- (6) In accordance with Article 7(4) of the EIA Directive, Natural England must—
- (a) enter into consultations with the EEA State concerned about, amongst other things, the potential significant effects of the project on the environment of that State and the measures envisaged to reduce or eliminate those effects; and
 - (b) seek to agree with the EEA State a reasonable period of time for those consultations, which must include time for consideration of any opinions received under paragraph (5)(b).

Procedure where a significant project in another EEA State may affect England

15.—(1) If Natural England receives information from another EEA State made available under Article 7(1) and (2) of the EIA Directive (which concern information relating to a project in one EEA State which is likely to have significant effects on the environment of another EEA State) in relation to a significant project in that EEA State, Natural England must—

- (a) arrange for that information to be made available, in a reasonable time, to the consultation bodies and such members of the public which, in its opinion, are likely to be concerned by the project;
 - (b) ensure that the consultation bodies and the members of the public referred to in subparagraph (a) are given an opportunity to forward their opinion on the information provided to the competent authority in the EEA State during any period agreed under paragraph (2)(b).
- (2) In accordance with Article 7(4) of the EIA Directive, Natural England must also—
- (a) enter into consultations with the EEA State concerned about, amongst other things, the potential significant effects of the project on the environment in England and the measures envisaged to reduce or eliminate those effects; and

- (b) seek to agree with the EEA State a reasonable period, before consent for the project is granted, during which any opinions received under paragraph (1)(b) can be forwarded to that EEA State.

(3) If another EEA State has taken a decision to grant or refuse consent and has informed Natural England of that decision in accordance with Article 9(2) of the EIA Directive, Natural England must take such steps as it considers appropriate to bring to the attention of the public any information received from that EEA State in relation to that decision.

The consent decision

16.—(1) Natural England may grant, or refuse to grant, consent for a significant project in accordance with this regulation.

(2) When deciding whether to grant consent for a significant project, Natural England must consider—

- (a) the environmental statement;
- (b) any additional environmental information;
- (c) any representations it receives under—
 - (i) regulation 12(4)(b) and (5)(c),
 - (ii) regulation 13(2)(b) and (3)(d), and
 - (iii) regulation 14(5)(b); and
- (d) any social or economic impacts which might result from a decision to refuse consent for the project.

(3) Natural England must not reach its decision under paragraph (1) until after either—

- (a) the expiry of the period in the notice under regulation 12(5)(c);
- (b) the expiry of the period of 28 days after—
 - (i) the date on which any additional environmental information was sent to the consultation bodies, or
 - (ii) the date notice of the additional environmental information was published under regulation 13(3),

whichever is the later; or

(c) the expiry of any period agreed with another EEA State under regulation 14(6)(b),
whichever is the last to occur.

Additional requirements relating to the Habitats Regulations

17.—(1) Natural England must not grant consent for a project that would involve doing anything which would be unlawful under regulations 39, 41 or 43 of the Habitats Regulations(27) (but that does not include anything for which a licence has been granted under regulation 44 of those Regulations).

(2) Paragraphs (3) to (6) apply when Natural England is deciding whether to grant consent for a project (a “habitats project”) which is likely to have a significant effect on a European site either alone or in combination with other projects.

(3) Unless paragraph (4) applies, Natural England may only grant consent for a habitats project if it has considered the implications of that project for the European site (including an appropriate

(27) *S.I. 1994/2716*; regulations 39, 41, 43 and 44 have been amended, but the amendments do not apply to England.

assessment of the implications in view of that site's conservation objectives) and is satisfied that that project will not adversely affect the integrity of the site.

(4) If Natural England is satisfied that a habitats project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (5), may be of a social or economic nature) and that there is no alternative solution, it may grant consent for that project even though the assessment of its implications for a European site is negative.

(5) If the European site hosts a priority natural habitat type or a priority species, the reasons in paragraph (4) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or
- (b) other reasons which in the opinion of the European Commission are, in the case of the site concerned, imperative reasons of overriding public interest.

(6) If Natural England decides to grant consent for a habitats project in accordance with paragraph (4), it must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 (within the meaning of regulation 2(1) of the Habitats Regulations) is protected.

Conditions of consent

18.—(1) Any consent granted under regulation 16(1) is to be subject to—

- (a) the conditions in paragraph (2); and
- (b) any other conditions Natural England thinks fit.

(2) The conditions required by paragraph (1)(a) are—

- (a) the consent lapses if the project is not commenced (by the carrying out of a material act) within 1 year of the date on which it was granted;
- (b) the consent expires if the project is not completed within 3 years of the date on which it was granted; and
- (c) the consent only authorises the project described in the consent application, subject to any amendments approved by Natural England under paragraph (4).

(3) After the expiry of a consent in accordance with paragraph (2)(b), Natural England may require a further application for consent in accordance with paragraph (5) in respect of any further operations or uses forming part of the project.

(4) Natural England may approve any amendments at the request of an applicant, but any material change in the authorised operations or uses requires a further application for consent in accordance with paragraph (5).

(5) Further applications for consent under paragraphs (3) and (4) may be subject to any requirement of these Regulations that Natural England considers appropriate.

(6) In this regulation, a project is “completed” if all the works permitted by the consent have been carried out and all changes in the use, or the level of use, of the relevant land have been implemented.

Procedure following a consent decision

19. When Natural England has decided to grant or not to grant consent in respect of a significant project it must—

- (a) notify the applicant, any consultation bodies to whom copies of the consent application were sent under regulation 12(4)(a), any EEA State it consulted under regulation 14(6) and any authority or person who forwarded their opinion under regulation 14(5)(b) of—

- (i) its decision,
- (ii) the full reasons and considerations on which the decision is based, and
- (iii) any representations made by the public concerned in respect of the application;
- (b) inform the public of its decision by publishing a notice in a newspaper in the locality in which the relevant land is situated or by any other means it considers reasonable in the circumstances; and
- (c) make available for public inspection a statement containing—
 - (i) the content of the decision,
 - (ii) the full reasons and considerations on which the decision is based,
 - (iii) where relevant, a description of the principal measures that must be taken to avoid, reduce or offset the major adverse effects of the project,
 - (iv) a summary of any representations made by the public concerned in relation to the application, and
 - (v) information regarding the right to challenge the decision and the procedures for doing so.

Transborder projects

20.—(1) In the case of a transborder project where the greater part of the land is situated in England, that project will be subject only to these Regulations, unless an agreement to the contrary has been reached under paragraph (2).

(2) If so requested by the Scottish Ministers or the National Assembly for Wales, Natural England may agree that a transborder project referred to in paragraph (1) will be subject only to the equivalent Regulations applicable to the project in Scotland or Wales as the case may be.

(3) In the case of a transborder project where the greater part of the land is situated in Scotland or Wales, that project will be subject only to the equivalent Regulations applicable to the project in Scotland or Wales as the case may be, unless an agreement to the contrary has been reached under paragraph (4).

(4) If Natural England so requests, and the Scottish Ministers or the National Assembly for Wales as appropriate agree, a transborder project referred to in paragraph (3) will be subject only to these Regulations.

(5) If a transborder project is being considered under these Regulations in accordance with paragraph (1) or (4), Natural England must consult the Scottish Ministers or the National Assembly for Wales as appropriate before—

- (a) making a screening decision under regulation 8;
- (b) providing a scoping opinion under regulation 10; or
- (c) granting or refusing consent under regulation 16.

(6) In this regulation, “transborder project” means a restructuring project or an uncultivated land project where the relevant land is situated either—

- (a) partly in England and partly in Wales, or
- (b) partly in England and partly in Scotland.

Review of decisions and consents

21. Schedule 4 applies if, after the date of—

- (a) a decision that a project is not a significant project, or

(b) a decision to grant consent for a project,
a site becomes a European site and Natural England considers that the carrying out or completion (within the meaning of “completed” in regulation 18(6)) of the project would be likely to have a significant effect on that site and would not be directly connected with or necessary for the management of the site.

PART 4

Enforcement

Offence of carrying out a project without a decision under these Regulations

22.—(1) Any person who begins or carries out an uncultivated land project or a restructuring project in breach of—

- (a) regulation 4, or
- (b) regulation 9,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) In any proceedings under this regulation which relate to an uncultivated land project, any area of land which the prosecution alleges to be uncultivated land shall be assumed to be uncultivated land unless sufficient evidence is adduced to raise an issue that it is not uncultivated land, in which case the prosecution must prove beyond reasonable doubt that the land is uncultivated land.

Offence of carrying out work in contravention of a condition

23. Any person who carries out any activity in contravention of any condition of consent is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offence of procuring a decision by supplying false information

24.—(1) Any person who, for the purpose of procuring a decision on an application made under these Regulations—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular,
- (b) with intent to deceive, uses any document which is false or misleading in a material particular, or
- (c) with intent to deceive, withholds any material information,

is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

Stop notices

25.—(1) If a person has begun an uncultivated land project or a restructuring project in breach of—

- (a) regulation 4, or
- (b) regulation 9,

Natural England may serve a notice (a “stop notice”) prohibiting all or part of the work with immediate effect.

(2) Natural England may serve a stop notice on any person who appears to it to have an interest in the relevant land or to be engaged in any activity prohibited by the notice.

(3) Natural England may withdraw a stop notice (without affecting its power to serve another) at any time by serving notice to that effect on the persons served with a stop notice.

(4) A stop notice ceases to have effect if—

- (a) a notice withdrawing it is served under paragraph (3);
- (b) Natural England, or the Secretary of State on appeal, decides that the prohibited work is not a significant project; or
- (c) Natural England, or the Secretary of State on appeal, grants consent for the prohibited work.

Penalties for contravention of a stop notice

26.—(1) Any person who contravenes a stop notice that has been served on him is guilty of an offence.

(2) An offence under this regulation may be charged by reference to any day or any longer period of time, and a person may be convicted of a second or subsequent offence under this regulation by reference to any period of time following the preceding conviction for such an offence.

(3) References in this regulation to contravening a stop notice mean causing or permitting its contravention.

(4) A person guilty of an offence under this regulation is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to a fine.

Remediation notices

27.—(1) If a person has carried out an uncultivated land project or a restructuring project in breach of—

- (a) regulation 4, or
- (b) regulation 9,

Natural England may serve a notice (“a remediation notice”) on the person who appears to it to be responsible.

(2) A remediation notice may require the person—

- (a) to reinstate, to Natural England’s satisfaction, the relevant land to the condition it was in before the project was commenced, or
- (b) to take such other steps as Natural England thinks fit to return the relevant land to good environmental condition.

(3) A remediation notice must state the period during which the remediation is to be carried out.

(4) Natural England may at any time—

- (a) vary a remediation notice, or
- (b) withdraw a remediation notice (without affecting its power to serve another),

by serving notice to that effect on the person served with the remediation notice.

(5) Any variation of a remediation notice under paragraph (4)(a) has effect from the date of service of the notice varying the remediation notice.

(6) A remediation notice ceases to have effect from the date of service of a notice withdrawing it under paragraph (4)(b).

Penalty for contravening a remediation notice

28. Any person who, without reasonable excuse, fails to comply with any requirement of a remediation notice is guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 5 on the standard scale; and
- (b) if the failure is continued after conviction, to a further fine not exceeding £100 for every day the failure continues.

Time limits for bringing proceedings

29.—(1) Proceedings for any offence under regulation 22 to 24, 26 or 28 may be brought within the period of 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.

(2) But proceedings for an offence may not be commenced more than 2 years after the date on which the offence was committed.

(3) For the purposes of paragraph (1), a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.

(4) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

Powers of entry and default powers

30.—(1) Any person authorised by the Secretary of State or Natural England may, at any reasonable time, enter and inspect any land for the purpose of—

- (a) ascertaining whether regulation 4 or 9 has been breached;
- (b) ascertaining whether an offence under regulation 22 to 24, 26 or 28 has been committed on or in connection with that land;
- (c) serving a screening notice, stop notice or remediation notice in respect of that land; or
- (d) exercising any function under Schedule 4.

(2) Any person authorised by the Secretary of State or Natural England who has reasonable grounds for suspecting that a person has committed an offence under regulation 24, may enter any premises (but not premises used only as a dwelling) which are, or which such person has cause to believe to be, occupied by, or in the possession of, the person believed to be responsible for committing the offence, and may inspect and take copies of any records he has reasonable cause to believe are relevant to the suspected offence.

(3) If any measures required by a remediation notice or by a notice served under paragraph 5 of Schedule 4 have not been taken within the period specified in the notice—

- (a) any person authorised by the Secretary of State or Natural England may, at a reasonable time, enter the land to which the notice relates and take those measures, and
 - (b) recover from the person in default the expenses reasonably incurred by him in doing so.
- (4) A person authorised under paragraph (1) to enter any land may remove—

- (a) samples of soil;

- (b) plant specimens; or
- (c) samples taken from plant specimens,

for the purpose of ascertaining whether an offence has been committed on or in connection with that land.

(5) A person authorised under paragraph (1), (2) or (3) to enter any land or premises must, if requested to do so, produce evidence of his authority to enter the land or premises.

(6) A person authorised under paragraph (1), (2) or (3) to enter any land or premises may take with him such other persons or such equipment as he considers necessary.

(7) Any person in occupation or possession of land or premises entered by a person authorised under paragraph (1), (2) or (3) must give to that person such assistance as the authorised person may reasonably request so as to enable him to exercise any power conferred on him by this regulation.

(8) A person who intentionally obstructs or impedes any person acting in the exercise of the powers conferred by this regulation or who fails without reasonable excuse to comply with a request made under paragraph (7) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 5

Appeals

Appeals against notices

31.—(1) A person may appeal to the Secretary of State in accordance with this regulation against any of the following notices served on him—

- (a) a screening notice;
- (b) a stop notice;
- (c) a remediation notice, or
- (d) a notice under paragraph 5 of Schedule 4,

and any such notice is referred to in this regulation as the “relevant notice”.

(2) An appeal may be brought on any of the following grounds—

- (a) that Natural England did not have power to serve the relevant notice, or to include a particular requirement in it;
- (b) that there has been some material irregularity, defect or error in, or in connection with, the relevant notice; or
- (c) that any of the requirements of the relevant notice are unreasonable.

(3) An appeal against a relevant notice must be brought by notice, which must—

- (a) include a copy of the relevant notice;
- (b) state the grounds of appeal; and
- (c) be served on the Secretary of State within 28 days of the date of service of the relevant notice.

(4) As soon as is reasonably practicable after receiving a notice of appeal, the Secretary of State must send a copy of the notice to Natural England.

(5) Except as otherwise provided by this regulation, the Secretary of State must determine the procedure for deciding the appeal, and that procedure may include provision for site visits.

(6) Appeals under this regulation may be conducted by written representations or by hearing.

(7) On determining the appeal, the Secretary of State—

- (a) may affirm, vary or revoke the relevant notice, and
- (b) must notify the applicant and Natural England of his decision, together with the reasons for it.

(8) Where an appeal is brought against a screening notice or a stop notice (unless the notice is withdrawn by Natural England) all the requirements contained in it have effect until such time as the Secretary of State revokes the notice or varies the requirements.

(9) If the Secretary of State varies the requirements of a screening notice or a stop notice the variations have effect from the date of notification under paragraph (7)(b).

(10) Where an appeal is brought against a remediation notice or a notice served under paragraph 5 of Schedule 4, the notice will be of no effect until it is affirmed or varied on appeal or until the appeal is withdrawn.

(11) The Secretary of State may appoint a person to exercise on his behalf, with or without payment, his function of determining the appeal or any matter involved in the appeal, and Schedule 5 has effect in relation to such an appointment.

Appeals against screening and consent decisions

32.—(1) The persons specified in paragraph (2) may appeal under this regulation to the Secretary of State.

(2) The persons referred to in paragraph (1) are—

- (a) a person who has applied for a screening decision in respect of a project which Natural England has decided is a significant project, or is deemed to have so decided, under regulation 8;
- (b) a person who has applied for consent for a significant project in respect of which consent has been refused or has been granted subject to conditions, other than those specified in regulation 18(2); and
- (c) a person who has been notified of a further decision under paragraph 3 of Schedule 4.

(3) An appeal against a relevant decision must be brought within 3 months of the date the person was notified of the relevant decision.

(4) A notice of appeal must—

- (a) describe the relevant decision;
- (b) state the grounds of appeal; and
- (c) state whether the appellant would like the appeal to be in the form of a hearing or local inquiry or to be disposed of on the basis of written representations.

(5) As soon as is reasonably practicable after receiving a notice of appeal against a relevant decision, the Secretary of State must serve a copy of the notice on Natural England.

(6) Natural England must, within 14 days of the date it receives the copy of the notice of appeal, provide the Secretary of State with sufficient information to identify the interested parties.

(7) The Secretary of State must serve copies of the notice on the interested parties as soon as is reasonably practicable after receiving that information.

(8) A person who is served with a copy of the notice under paragraph (7) may only make representations in respect of the appeal if he notifies the Secretary of State of his wish to do so within 21 days of the date he receives the copy of the notice.

(9) The Secretary of State must decide whether the appeal should be—

- (a) by hearing or local inquiry; or

(b) conducted by written representations,
and the Secretary of State must notify his decision to the participants in the appeal.

(10) On determining the appeal, the Secretary of State may allow or dismiss the appeal, or reverse any part of the relevant decision, and may consider the appeal as if he were making a decision on the matter in question for the first time.

(11) The Secretary of State may appoint a person to exercise on his behalf, with or without payment, his function of determining the appeal or any matter involved in the appeal, and Schedule 5 has effect in relation to such an appointment.

(12) Subsections (2) to (5) of section 250 of the Local Government Act 1972⁽²⁸⁾ (power to direct inquiries) apply in relation to hearings or local inquiries held in accordance with regulation 34 as they apply to local inquiries under that section, but as if the references to the Minister were references to the Secretary of State and with the omission of references to a local authority.

(13) Section 322A of the Town and Country Planning Act 1990⁽²⁹⁾ (orders as to costs: supplementary) applies in relation to a hearing or local inquiry under regulation 34 as it applies to a hearing or local inquiry referred to in that section.

(14) Except as otherwise provided by this regulation or by regulation 33 or 34, the Secretary of State must determine the procedure for deciding the appeal, and that procedure may include provision for site visits.

(15) Any representations, statement or other documents to be submitted to the Secretary of State under regulation 33 or 34 must be accompanied by as many copies as the Secretary of State specifies.

(16) In this regulation, “relevant decision” means—

- (a) a decision referred to in paragraph (2)(a);
- (b) a refusal of consent or a grant of consent subject to conditions referred to in paragraph (2)(b); or
- (c) a notification referred to in paragraph (2)(c).

Determination of appeals by written representations

33.—(1) This regulation applies where an appeal is to be determined by written representations.

(2) Within 6 weeks of receiving notice that the appeal is to be so determined the appellant and Natural England must—

- (a) serve on the Secretary of State any (or any further) representations he or it wishes to rely on in the appeal; or
- (b) notify the Secretary of State that he or it wishes to rely only on the information already provided.

(3) As soon as is practicable after receiving the representations or notification in paragraph (2), the Secretary of State must—

- (a) send copies of any (or any further) representations to the other participants in the appeal; and
- (b) notify the other participants in the appeal of any notification by the appellant or Natural England that he or it does not wish to rely on any further representations.

(4) Any of the participants in the appeal who wishes to make representations must do so within 28 days of the date he or it is notified of the representations or notification under paragraph (3).

⁽²⁸⁾ 1972 c. 70; section 250 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46, the Housing and Planning Act 1986 (c. 63), section 49(2) and Schedule 12, Part 3 and by the Statute Law (Repeals) Act 1989 (c. 43), section 1 and the Schedule, Part 4.

⁽²⁹⁾ 1990 c. 8. Section 332A was inserted by the Planning and Compensation Act 1991 (c. 34), section 30(1).

(5) If the Secretary of State receives any representations under paragraph (4), he must send copies of them to the other participants in the appeal.

(6) The Secretary of State must allow the participants in the appeal a period of at least 14 days to respond to any representations made under paragraphs (2) or (4).

(7) Following the expiry of the period allowed in paragraph (6) the Secretary of State, or the person appointed to determine the appeal, must determine the appeal and notify the decision to the participants in the appeal.

Determination of appeals by hearing or local inquiry

34.—(1) This regulation applies where an appeal is to be determined by hearing or by local inquiry.

(2) Within 6 weeks of receiving notice that the appeal is to be so determined, the appellant and Natural England must serve on the Secretary of State a statement containing full particulars of his or its case and copies of any documents he or it wishes to rely on at the hearing or local inquiry.

(3) After receiving the statements and documents in paragraph (2), the Secretary of State must send copies of them to the other participants in the appeal.

(4) The Secretary of State must—

(a) give the participants in the appeal 6 weeks' notice of the date, time and place fixed for the hearing or local inquiry and the name of the person appointed to conduct the hearing or local inquiry (or, as applicable, to determine the appeal); and

(b) give such notice as he thinks fit to inform the public not less than 21 days before the date fixed for the hearing or local inquiry.

(5) The Secretary of State may vary the time or place for the hearing or local inquiry and must give such notice of the variation as he thinks fit.

(6) If an interested party wishes to be heard at the hearing or local inquiry he must notify the Secretary of State within 28 days of being sent the appellant's and Natural England's statements under paragraph (3).

(7) Where an interested party has so notified the Secretary of State, the Secretary of State may require him to submit a statement containing the particulars of his case and copies of any documents he wishes to refer to (except documents which the appellant or Natural England served under paragraph (2)).

(8) The Secretary of State must send copies of any statements and documents received under paragraph (7) to the appellant and to Natural England.

(9) The Secretary of State may require any person who has provided him with a statement under paragraph (2) or (7) to provide him with any further information he specifies in relation to the statement, and must send a copy of the further information to each of the other participants in the appeal.

(10) Before a hearing or local inquiry takes place the Secretary of State must make all of the documents submitted available for inspection by any person who so requests.

(11) The participants in the appeal are entitled to be heard at a hearing or local inquiry.

(12) Any participant in the appeal who proposes to give evidence at an inquiry by reading a witness statement must send a copy of the witness statement, and a written summary of it, to the Secretary of State not less than 3 weeks before the date fixed for the inquiry, and the Secretary of State must send copies of the witness statement and summary to the other participants in the appeal.

(13) After the conclusion of the hearing or local inquiry, the person appointed to conduct the hearing or local inquiry must, unless he has been appointed to determine the appeal, make a report to the Secretary of State which must include—

- (a) his conclusions; and
- (b) his recommendations or his reasons for not making any recommendations.

(14) If the Secretary of State is minded to disagree with the recommendation made in the report because he—

- (a) differs from the person making the report on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by that person; or
- (b) takes into consideration new evidence or a new matter of fact,

he must not come to a decision without first giving every person who appeared at the hearing or local inquiry an opportunity to make representations within a reasonable time specified by him.

(15) The Secretary of State or the person appointed to determine the appeal must notify the participants in the appeal of his decision, the reasons for it and, where a report has been made in accordance with paragraph (13), a copy of that report.

Application to the court by person aggrieved

35.—(1) A person aggrieved by a decision of Natural England that a project is not a significant project or a decision to grant consent for a significant project may make an application to the High Court for an order quashing the decision.

(2) The High Court may quash the decision if it is satisfied that—

- (a) the decision was not lawfully made; or
- (b) the interests of the person who has applied to the court have been substantially prejudiced by a failure to comply with any other requirement of these Regulations.

(3) Any application to the High Court under this regulation must be made within 6 weeks of the date the decision is entered in the register in accordance with regulation 8(4)(b) or published in accordance with regulation 19(b).

(4) The High Court may by interim order, pending the determination of an application under this regulation, stay the operation of the decision on such terms as it thinks fit.

Interpretation of this Part

36. In this Part—

“interested parties” means—

- (a) such of the consultation bodies as the Secretary of State considers appropriate;
- (b) any person who made representations in respect of a relevant decision (within the meaning of “relevant decision” in regulation 32(16));
- (c) any EEA State consulted under regulation 14(6);
- (d) any authority or person who forwarded their opinion under regulation 14(5)(b);
- (e) any other person who appears to the Secretary of State to have a particular interest in the subject matter of the appeal.

“participants in the appeal” means—

- (f) the appellant;
- (g) Natural England;
- (h) the interested parties;
- (i) in the case of a hearing or local enquiry, any other person permitted to take part by the person appointed to conduct the hearing or local inquiry.

PART 6

Final Provisions

Amendment of the Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005

37. The Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005(**30**) are amended by substituting paragraph 15 of the Schedule with the following—

“**15.**—(1) A farmer must not begin or carry out an uncultivated land project in breach of—

- (a) regulation 4, or
- (b) regulation 9,

of the Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006.

(2) A farmer must not breach a stop notice that has been served on him under regulation 25 of those Regulations.

(3) A farmer must not, without reasonable excuse, fail to comply with any requirement of a remediation notice served on him under regulation 27(1) of those Regulations.

(4) In this paragraph “uncultivated land project” has the meaning given to it in regulation 2(1) of those Regulations.”.

Revocations

38. The following Regulations are revoked—

- (a) the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (England) Regulations 2001(**31**); and
- (b) the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (England) (Amendment) Regulations 2005(**32**);
- (c) the Environmental Impact Assessment (Agriculture) (England) Regulations 2006(**33**).

Transitional provisions

39.—(1) This regulation provides for the treatment of certain notices served under the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (England) Regulations 2001 (“the 2001 Regulations”).

(2) Any stop notice served under regulation 22 of the 2001 Regulations is to be treated as though it was served under regulation 25 of these Regulations, and regulations 26, 29 and 30 of these Regulations apply to any enforcement action taken in respect of a breach of the notice.

(3) Subject to paragraph (4), any reinstatement notice served under regulation 24 of the 2001 Regulations is to be treated as though it was served as a remediation notice under regulation 27 of these Regulations, and regulations 28 to 30 apply to any enforcement action taken in respect of a breach of the notice.

(30) S.I. 2005/3459.

(31) S.I. 2001/3966, amended by S.I. 2005/1430.

(32) S.I. 2005/1430.

(33) S.I. 2006/2362.

(4) Nothing in paragraph (3) affects any appeal under regulation 24(3) of the 2001 Regulations brought before the coming into force of these Regulations.

13th September 2006

Barry Gardiner
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

Status: This is the original version (as it was originally made).

SCHEDULE 1

Regulation 5

Thresholds

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Uncultivated land project	2 hectares	2 hectares
Restructuring project involving the addition or removal of any field boundary (including any wall, fence, bank, ditch or watercourse)	4 kilometres	2 kilometres
Restructuring project which involves an area of land	100 hectares	50 hectares
Restructuring project involving the addition, removal or redistribution of a volume of earth or other material in relation to land	10,000 cubic metres	5,000 cubic metres

SCHEDULE 2

Regulations 6(2)(c) and 8(1)

Selection criteria for a screening notice or a screening decision

1. Characteristics of projects

1. The characteristics of projects, having regard in particular to—
 - (a) the size of the project;
 - (b) the cumulation with other projects;
 - (c) the use of natural resources;
 - (d) the production of waste;
 - (e) pollution and nuisances; and
 - (f) the risk of accidents, having regard in particular to substances or technologies used.

2. Location of Project

2. The environmental sensitivity of geographical areas likely to be affected by projects, having regard in particular to—
 - (g) the existing land use;
 - (h) the relative abundance, quality and regenerative capacity of natural resources in the area; and
 - (i) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;

- (v) areas classified or protected under legislation (including European sites);
- (vi) areas in which the environmental quality standards laid down in any legislation of the Communities have already been exceeded;
- (vii) densely populated areas; and
- (viii) landscapes of historical, cultural or archaeological significance.

3. The potential impact

3. The potential significant effects of projects, in relation to criteria set out under paragraphs 1 and 2, having regard in particular to—

- (j) the extent of the impact (geographical area and size of the affected population);
- (k) the impact on other EEA States;
- (l) the magnitude and complexity of the impact;
- (m) the probability of the impact; and
- (n) the duration, frequency and reversibility of the impact.

SCHEDULE 3

Regulation 2(1)

Information for inclusion in the environmental statements

PART 1

- 1.** A description of the project, including in particular—
 - (a) a description of the physical characteristics of the whole project and the land use requirements during the construction, or other implementation, and operational phases;
 - (b) a description of the main characteristics of the production processes, for instance, nature and quantity and the materials used;
 - (c) an estimate, by type and quantity, of expected residues and emissions (including water, air and soil pollution, noise, vibration, light, heat and radiation) resulting from the operation of the proposed project.
- 2.** An outline of the main alternatives studied by the applicant for consent and an indication of the main reasons for his choice, taking into account the environmental effects.
- 3.** A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
- 4.** A description of the likely significant effects of the project on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project, resulting from—
 - (a) the existence of the project;
 - (b) the use of natural resources; and
 - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant for consent of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.
7. An indication of any difficulties (including technical deficiencies or lack of know-how) encountered by the applicant for consent in compiling the required information.

PART 2

1. A description of the project comprising information on the site, design and size of the project.
2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
3. The data required to identify and assess the main effects which the project is likely to have on the environment.
4. An outline of the main alternatives studied by the applicant for consent and an indication of the main reasons for his choice, taking into account the environmental effects.
5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

SCHEDULE 4

Regulation 21

Review of decisions and consents

1. As soon as is reasonably practicable Natural England must, for the purpose of determining whether the project permitted by the decision or consent will adversely affect the integrity of the site, make an appropriate assessment of the implications of the project for the European site in view of the site's conservation objectives.
2. For the purposes of the assessment, Natural England may—
 - (a) require any person interested in the relevant land to supply it with such information as it reasonably thinks necessary; and
 - (b) if it considers it necessary, consult members of the public.
3. Unless, following the assessment, Natural England is satisfied that the project permitted by the decision or consent will not adversely affect the integrity of the European site, and regulation 17(4) does not apply, Natural England must—
 - (a) in the case of a decision, revoke the decision; and
 - (b) in the case of a consent, either—
 - (i) revoke the consent; or
 - (ii) make such modifications to the consent as appear to it to be necessary to ensure that the project will not adversely affect the integrity of the European site,

and Natural England must notify all persons who appear to it to have an interest in the relevant land of its decision (its “further decision”).

4. Subject to paragraph 5, a further decision does not affect any works that have already been carried out in relation to a decision or consent.

5.—(1) If—

- (a) a project which is subject to a further decision has commenced; and
- (b) it appears to Natural England to be necessary to safeguard the integrity of the European site,

Natural England may by notice require the person responsible for carrying out such works, or any person with an interest in the relevant land, to carry out such works of reinstatement as may be reasonable in the circumstances,

(2) A notice under paragraph (1) must state the period during which the works must be carried out.

(3) Any person who carries out such reinstatement works is entitled, on making a claim in accordance with paragraph 8, to recover from Natural England compensation in respect of any expenses reasonably incurred by him in carrying out those works.

6.—(1) Regulation 32 applies to a further decision made under paragraph 3.

(2) Regulation 31 applies to a notice served under paragraph 5.

7. If, following a further decision, a person has incurred expenditure in carrying out work which is rendered abortive by the further decision or has otherwise sustained loss of damage which is directly attributable to the further decision, he is entitled to be paid compensation on submitting a claim in accordance with paragraph 8.

8. A claim for compensation payable under paragraph 5(3) or 7 must be submitted to Natural England within 6 weeks of the notification of the further decision and must be accompanied by such evidence as Natural England may reasonably require.

9. Any dispute as to the amount of compensation payable under paragraph 5(3) or 7 may be referred to the Lands Tribunal within 6 years of the date of notification of the further decision in respect of which compensation is payable.

10. Nothing in this Schedule affects anything done in pursuance of a decision or consent before the date the site became a European site.

SCHEDULE 5

Regulations 31(11) and 32(11)

Delegation of appellate functions

1. In this Schedule “appointed person” means a person appointed under regulation 31(11) or 32(11) and “appointment” means an appointment under either of those regulations.

2. An appointment must be in writing and—

- (a) may relate to any particular appeal or matter specified in the appointment or to appeals or matters of a specified description;
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of any conditions specified in the appointment; and
- (c) may, by notice given to the appointed person, be revoked at any time by the Secretary of State in respect of any appeal or matter which has not been determined by the appointed person before that time.

3. Subject to the provisions of this Schedule, an appointed person has, in relation to any appeal or matter to which his appointment relates, the same powers and duties as the Secretary of State has under regulation 31(7), or regulation 32(10), (13), (14) and (15), as the case may be.

Status: This is the original version (as it was originally made).

4.—(1) The provisions of this paragraph apply to an appeal under regulation 31 or 32 which falls to be determined by an appointed person and, in the case of an appeal under regulation 32, apply instead of regulation 32(9).

(2) If the appellant or Natural England informs the appointed person that he or it wishes to appear before and be heard by him, the appointed person must give him or it an opportunity to do so.

(3) Even if the appellant or Natural England has not asked to appear and be heard, the appointed person—

(a) may—

(i) in the case of an appeal under regulation 31, hold a hearing in connection with the appeal or matter, and

(ii) in the case of an appeal under regulation 32, hold a hearing or local inquiry in connection with the appeal or matter; and

(b) must, in the case of an appeal under regulation 32, hold a local inquiry in connection with the appeal or matter if the Secretary of State directs.

(4) The appointed person must notify his decision to hold a hearing or a local inquiry (as the case may be) to the appellant, Natural England and to any persons who notified the Secretary of State that they wish to make representations under regulation 32(8).

(5) If an appointed person holds a hearing or local inquiry under this Schedule, the Secretary of State may appoint an assessor to sit with the appointed person and advise him on any matters arising, notwithstanding that the appointed person is to determine the matter or appeal.

(6) Subject to regulation 32(12), the costs of the hearing or local inquiry held under this Schedule must be met by the Secretary of State.

5.—(1) If the appointment of an appointed person is revoked under paragraph 2(c) in respect of any appeal or matter, the Secretary of State must, unless he proposes to determine the matter himself, appoint another person under regulation 31(11) or 32(11) to determine the appeal or matter instead.

(2) If a new appointment is made, the consideration of the appeal or matter, or any local inquiry or other hearing in connection with it, must begin afresh.

(3) Nothing in sub-paragraph (2) requires any person to be given an opportunity to make fresh representations or to modify or withdraw any representations already made.

6.—(1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates is to be treated for all purposes as done or omitted to be done by the Secretary of State.

(2) But sub-paragraph (1) does not apply—

(a) for the purposes of so much of any contract made between the Secretary of State and the appointed person as relates to the exercise of the function; or

(b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive [85/337/EEC](#) (O.J. No. L175, 5.7.85, p.40) on the assessment of the effects of certain public and private projects on the environment (as last amended by Directive [2003/35/EC](#) (O.J. No. L156, 25.6.03, p. 17)) (“the EIA Directive”) in relation to two types of project in paragraph 1 of Annex II to that Directive: projects for the restructuring of rural land holdings, and projects for the use of uncultivated land and semi-natural areas for intensive agricultural purposes.

They also implement Council Directive [1992/43/EEC](#) (O.J. No. L206, 22.7.1992, p. 7) on the conservation of natural habitats and of wild flora and fauna (as last amended by the Act concerning the conditions of accession of the new Member States (O.J. No. L 236, 23.9.2003, p. 667–70. See Annex II: 16. Environment, C. Nature protection.) (“the Habitats Directive”) insofar as those projects affect sites protected by that Directive.

Regulation 3 sets out the types of projects which are excluded from the scope of the Regulations. It also gives the Secretary of State the power to exclude certain projects from the scope of the Regulations in accordance with the EIA and Habitats Directives.

Regulation 4 prohibits any person from beginning or carrying out certain uncultivated land projects or restructuring projects unless that person has obtained a screening decision allowing the project to go ahead. Regulation 5 and Schedule 1 set out how to calculate the appropriate threshold for a project. Regulation 6 sets out provisions relating to the service of “screening notices” which allow Natural England to remove the application thresholds from areas of land.

Regulation 7 sets out what must be included in an application for a screening decision, and allows Natural England to ask for further information. Regulation 8 and Schedule 2 set out the factors to be taken into consideration by Natural England when it makes a screening decision, and the procedures relating to a screening decision. Schedule 2 is based on Annex III to the EIA Directive.

Regulation 9 prohibits a person from beginning or carrying out a project likely to have significant effects on the environment unless he has first obtained consent from Natural England.

Regulation 10 sets out the procedure by which Natural England can give an applicant an opinion on the scope of an environmental statement. Regulation 11 sets out the duties of consultation bodies from whom information is sought in connection with applications and scoping opinions.

Regulation 12 provides that applications for consent must include an environmental statement and sets out consultation procedures relating to the application. Regulation 13 sets out further procedures relating to any further information that is required from the applicant.

Regulations 14 and 15 set out the procedures to be followed where a significant project in England might affect another EEA State, and a significant project in another EEA State might affect England.

Regulations 16 and 17 set out the factors to be taken into consideration when Natural England makes a consent decision, including the situation where a project is likely to affect a European Site, and provide for the timing of consent decisions. Regulation 18 sets out the conditions which must be applied to a consent and Regulation 19 sets out the procedures following the consent decision.

Regulation 20 makes provision on the treatment of transborder projects.

Regulation 21 and Schedule 4 make provision for the situation where, following a decision permitting the commencement of a project, the relevant land becomes a European site.

Status: This is the original version (as it was originally made).

Regulation 22 makes it an offence to begin or carry out a project without obtaining a screening decision or a consent decision (where these are required). Regulation 23 makes it an offence to breach a condition of consent. Regulation 24 makes it an offence to procure a decision by deception or the supply of false or misleading information or documents.

Regulation 25 empowers Natural England to issue stop notices. Regulation 26 makes it an offence to contravene a stop notice.

Regulation 27 empowers Natural England to issue “remediation notices” requiring a person in breach of the Regulations to return his land to the condition it was in before the breach, or to good environmental condition. Regulation 28 makes it an offence to fail to comply with a remediation notice without reasonable excuse.

Regulation 29 allows prosecutions under regulations 22, 23, 24, 26 and 28 to be brought within 6 months of the date sufficient evidence comes to the prosecutor’s knowledge. But prosecutions must be brought within 2 years of the date on which the offence is committed.

Regulation 30 confers powers on persons authorised by the Secretary of State or Natural England to enforce these Regulations. Regulation 30(8) makes it an offence to obstruct an authorised person in the exercise of those powers.

Regulation 31 to 35 and Schedule 5 contain provisions in respect of notices and decisions given under these Regulations. Regulations 37 to 39 contain amending, revoking and transitional provisions.

A Transposition Note has been prepared to illustrate how these Regulations transpose the EIA Directive and the Habitats Directive.

A Regulatory Impact Assessment of the effect that this instrument will have on the costs of business has been prepared and placed in the library of each House of Parliament.

Copies of the Transposition Note and Regulatory Impact Assessment are available from the Environmental Land Management Division, Defra, Ergon House (Area 5B), Horseferry Road, London SW1P 2AL (or from www.defra.gov.uk/farm/environment/land-use/eia).