

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

Public Guidance

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Section 1 Introduction and Summary

- 1 The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006 came into force on 10 October 2006. Natural England is the regulator. Our contact details are below. The Regulations implement (in part) the 1985 European Community Directive 337 which require a formal procedure to assess the potential environmental impact of certain changes to land use before agricultural works are allowed to proceed.
- 2 This guidance is for owners, tenants and land managers who will need to consider these Regulations. It has been updated as part of Natural England's regular review of external guidance. Part of the text has been amended to clarify some matters since the Regulations have been in force.
- 3 In case of uncertainty, the text of the Regulations takes precedence over this guidance. If in any doubt, you should contact Natural England for further advice.
- 4 Natural England is keen to receive feedback on the guidance. In particular, we are interested to hear views on whether it is readily understandable and comprehensive, and how it could be improved.
- 5 A further document containing Frequently Asked Questions has been produced to help clarify points covered in this guidance.

How to contact Natural England

By Post:

Environmental Impact Assessment (Agriculture)
Natural England
First Floor, Temple Quay House
2 The Square, Bristol
BS1 6EB

EIA Helpline: 0800 028 2140 Fax: 0845 601 3438

Email: eia.England@naturalengland.org.uk

Website: www.naturalengland.org.uk/ourwork/regulation/eia/default.aspx

Purpose of the Regulations

- 6 The Regulations protect uncultivated land and semi-natural areas from being damaged by agricultural works which increase the agricultural productivity of the land. The Regulations apply in England.
- 7 The Regulations also guard against possible negative environmental effects from the physical restructuring of rural land holdings, such as changes to field boundaries.

The type of work which is covered

- 8 The Regulations apply to two types of work, or projects:
 - i) **Uncultivated land projects** – these are projects which increase the productivity for agriculture of uncultivated land or semi-natural areas. For these projects, the types of land covered will either:
 - not have been cultivated (physically or chemically) in the last 15 years as defined in paragraphs 32, 33 and 34; and/or
 - be a semi-natural area.

These types of project include any work which has the effect of increasing the productivity of land for agriculture through physical or chemical means.

The following list is not exhaustive but gives some examples of work which may be covered. If in doubt, consult your Natural England EIA adviser:

- applying increased levels of fertiliser or soil improvers;
- sowing seed;
- physically cultivating the soil by, for example, ploughing, tine harrowing, rotovating;
- draining land;
- clearing existing vegetation either physically or using herbicides.

Projects are covered even if they increase the productivity for agriculture of the land to below the norm.

ii) **Restructuring projects** – these are projects which physically restructure rural land holdings and include:

- the addition or removal of field boundaries;
- re-contouring of land through addition, removal or redistribution of earth or other material.

- 9 Both types of project are exempt from the Regulations if they are already covered by certain other legislation (e.g. relating to town and country planning, forestry and certain work on common land). See paragraph 49 for more detail.

Project thresholds

- 10 Thresholds apply to both types of projects and are different depending on whether they are within or outside a sensitive area. For the purposes of the Regulations, a sensitive area is an Area of Outstanding Natural Beauty, the Broads, a National Park or a Scheduled Monument.
- 11 Uncultivated land projects will be covered by the Regulations if the uncultivated land or semi-natural area directly affected by the project is two hectares or more in area. This threshold may sometimes be removed (see paragraph 16);
- 12 It would be unacceptable to misuse the threshold to undertake bit-by-bit intensification of uncultivated land or a semi-natural area larger than two hectares by claiming that work in excess of the threshold is made up of two or more sub-threshold projects.
- 13 Such work would be viewed by Natural England as a single project which needs consideration and may need consent, even if a land owner, tenant or land manager conducts it gradually over a protracted time (e.g. several seasons or years), or if it involves different types of work aimed at increasing the productivity of the land (e.g. ploughing in one area, and increased use of fertiliser or drainage in another).
- 14 Restructuring projects will normally only be covered if they involve changes to four kilometres or more of field boundaries; movements of 10,000 m³ or more of earth or other material; or otherwise restructure an area of 100 hectares or more;
- 15 Where a restructuring project is within a sensitive area, it is subject to stricter thresholds of 2 km or more of field boundaries; 5,000 m³ or more of earth or other material, or otherwise restructuring an area of 50 hectares or more;

Screening notices

- 16 **In some instances Natural England may consider that a project which falls below one or more of the EIA thresholds will none the less have a significant effect on the environment and should therefore be subject to EIA. In such cases Natural England have the power to issue a screening notice that removes one or more of the thresholds and requires a screening application to be made.**

- 17 However, Natural England may only issue a screening notice if:
- (i) it reasonably believes that a project below the relevant threshold **is likely to be carried out** on an area of land; and
 - (ii) such a project (possibly in conjunction with other projects) **is likely to have a significant effect** on the environment.
- 18 For example, an uncultivated land project would not normally need a screening decision from Natural England if it covered an area of less than two hectares. Where criteria (i) and (ii) above are satisfied, a screening notice could be served. The threshold would be removed and an application for a screening decision would need to be made by the landowner, tenant or land manager.
- 19 The screening notice must be given in writing to every owner and occupier of the land, explaining:
- (i) the area of land and types of project to which it applies;
 - (ii) the reasons for issuing it;
 - (iii) the process for appealing against it.

Each screening notice has a maximum duration of 5 years before lapsing. Where appropriate Natural England will limit the duration to a shorter time. During this time work cannot be carried out without a screening decision from Natural England.

EIA & Sites of Special Scientific Interest (SSSI)

- 20 Projects on SSSIs fall within the provisions of the Wildlife & Countryside Act 1981 (as amended). This means that owner/occupiers of SSSIs are required to give Natural England written notice of any operations likely to damage the special interest of the SSSI. These are listed in the document 'Operations Requiring Natural England's Consent' or 'Operations Likely to Damage' which forms part of the SSSI notification. Landowners, tenants or land managers must obtain Natural England's written consent before starting the project.
- 21 Where land which falls under the EIA Regulations is entirely within an SSSI then Natural England will consider removing the need for the party concerned to apply for a screening decision. This is intended to reduce regulatory burden on farmers, land managers and owners.

EIA and the Historic Environment

- 22 Natural England must take account of Historic Environment features when screening projects and we will usually consult other bodies such as English Heritage and the County Archaeologist for relevant information to help us reach our decision. Where the Regulations apply (ie the work is an uncultivated land and/or restructuring project or a screening notice has been applied), and where screening shows that a project is likely to significantly impact on Historic Environment features, an Environmental Statement will be required. Our consent decision will be made with advice from appropriate consultation bodies. Where a Scheduled Monument is present, English Heritage - who is responsible for the legislation which protects them - will always be consulted at each stage of the EIA process. A separate consent may be needed from English Heritage before the work can proceed.

What you must do if projects are covered by the Regulations

- 23 Projects which equal or exceed one or more thresholds or which are subject to a screening notice may not proceed without being considered for consent by Natural England.
- 24 The process of applying for consent is:
- a person wishing to undertake a project must make a **screening application** to Natural England (see page 1 for contact details);
 - Natural England has 35 calendar days, from receipt of an application, to assess and inform the applicant of its **screening decision**;
 - if the project is unlikely to have a **significant effect on the environment**, it will be allowed to proceed. However, if Natural England considers it is likely to have a significant effect, it may

- not proceed without consent;
- if consent is required (and if the applicant still wants to carry out the project), the applicant must produce an **Environmental Statement (ES)**, and make an application to Natural England;
- In this case, the applicant may write to Natural England for a **scoping opinion** which would describe what the ES should contain;
- Natural England will check the application and consult the public and others;
- Natural England will make a consent decision on whether or not the project may proceed;
- There are rights of appeal throughout the process which are explained in Section 3.

Breaches of the Regulations

- 25 People who breach the Regulations risk prosecution and may be required to reinstate land to its previous condition and are liable on summary conviction to a fine not exceeding £5,000 (level 5 on the standard scale).
- 26 The Regulations, as they apply to uncultivated land and semi-natural areas, form part of Cross Compliance which applies to farmers, tenants and land managers who receive payments under the Single Payment Scheme and for those holding certain Environmental Stewardship agreements. A breach in the Regulations is a breach of cross compliance and may result in reduction in Single Payment or other financial penalty. The Regulations, as they apply to restructuring projects, are not part of Cross Compliance.
- 27 If you are unsure whether the work you are planning falls within the Regulations, you are advised to contact Natural England for informal advice before making an application. See section 3 for more guidance on breaches.

Section 2 Step-by-step guidance

- 28 This section gives a more detailed step-by-step guide on how to find out if the proposed work is covered by the Regulations, and what happens if it is.
- 29 Flowchart 1 outlines the process for uncultivated land projects and Flowchart 2 describes the process for restructuring projects. For land which is also a Site of Special Scientific Interest (SSSI) or within an agri-environment scheme agreement it would be advisable to contact Natural England's EIA Helpline.

Step 1 - Checking if the project is covered by the Regulations: *Does the project meet the thresholds?*

Step 2 - Making a screening application: *Is the project to increase the productivity of the land for agriculture, or to restructure a rural land-holding?*

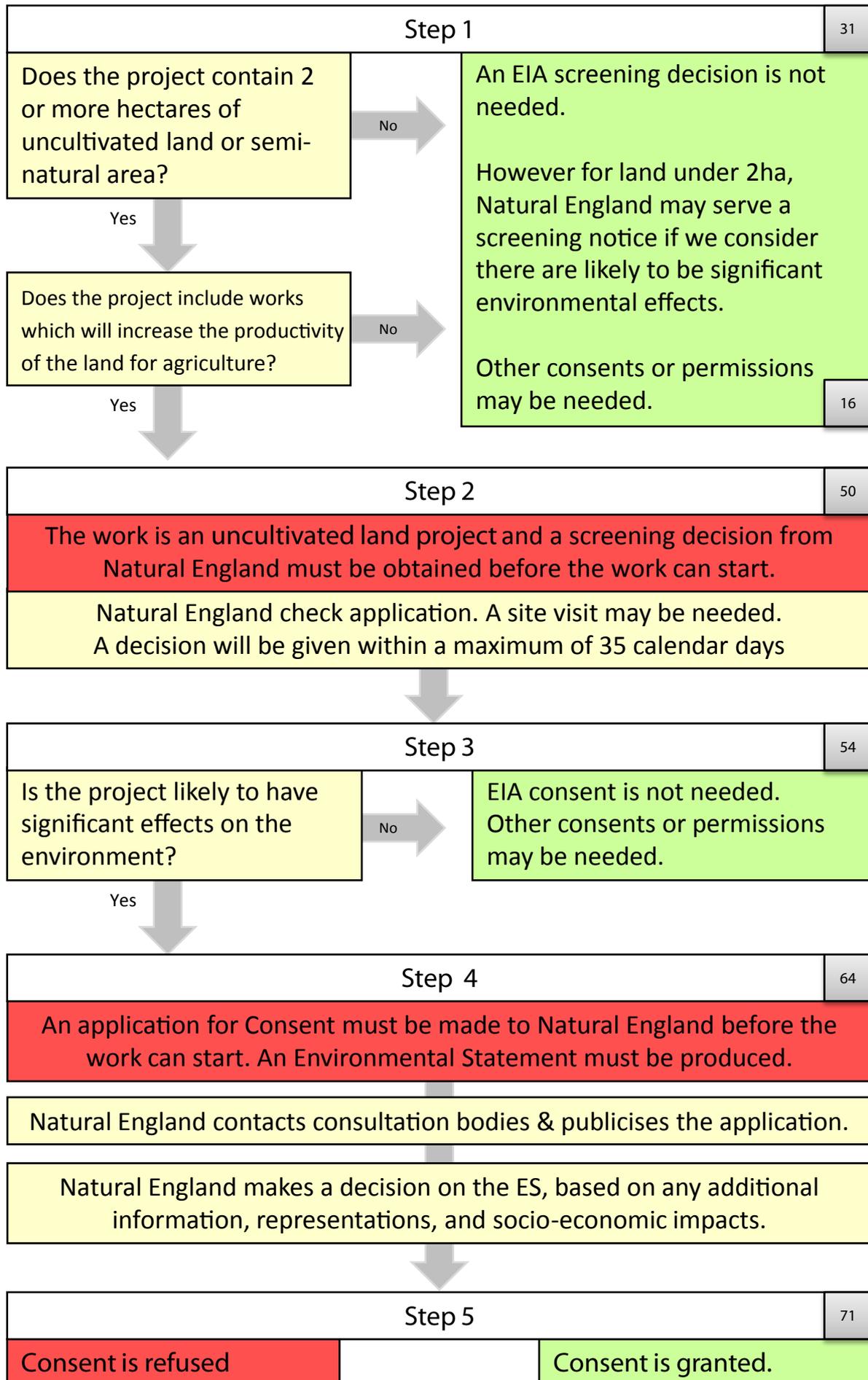
Step 3 - The screening decision from Natural England: *If Natural England decides the project is likely to have significant effects go to next step*

Step 4 - Making a consent application: *An Environmental Statement will be required. You can request a free scoping opinion to help you prepare the Statement.*

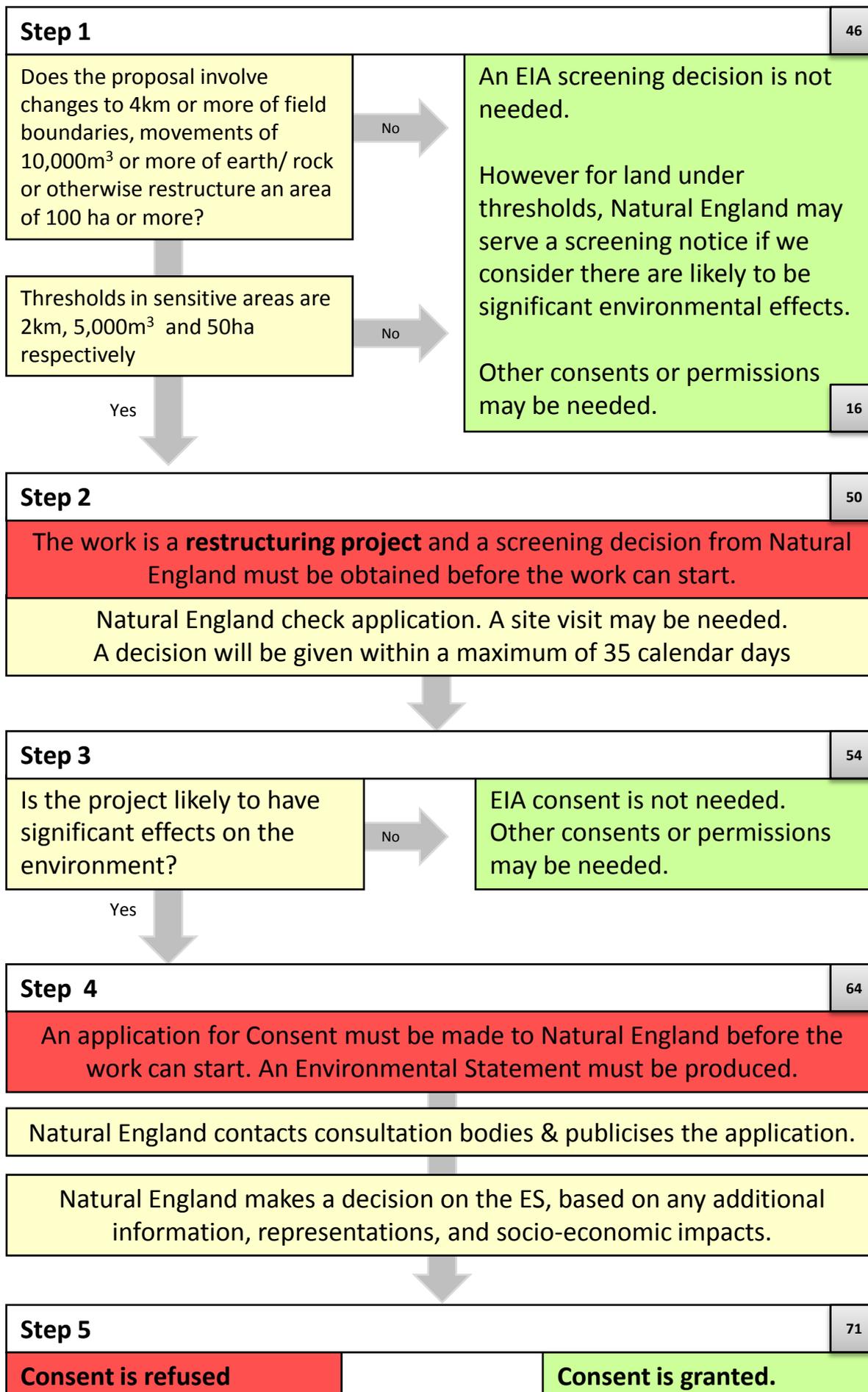
Step 5 - The consent decision from Natural England: *Consent may be granted or refused.*

If having read the guidance you are still uncertain, you should contact Natural England's EIA Helpline for further advice.

Flowchart 1: Considering an uncultivated land project



Flowchart 2: Considering a restructuring project



Step 1 Checking if the project is covered by the Regulations

- 30 The Regulations apply to two types of project which are explained in section 1 of this guidance. They are:
- (i) uncultivated land projects;
 - (ii) restructuring projects.

(i) Uncultivated land projects

31 These projects increase the productivity for agriculture of uncultivated land or semi-natural areas (see definition of uncultivated land at paragraph 33). Projects will normally only be covered if the uncultivated land or semi-natural area involved has an area of two hectares or more. The only exception would be if the threshold had been dis-applied with regard to a particular area of land by a Screening Notice (see guidance at paragraph 16).

- 32 The types of work included in an uncultivated land project are any physical operation or chemical application on uncultivated land or a semi-natural area which increase (wholly or partly) the agricultural productivity of the land. For instance, they may include **but are not restricted to**:
- (i) physically cultivating soil for agriculture by ploughing, tine harrowing, sub-surface harrowing, discing and rotovating;
 - (ii) chemical enhancement of the soil through the addition of increased levels of organic and/or inorganic fertilisers or soil improvers;
 - (iii) sowing seed;
 - (iv) draining land;
 - (v) clearing existing vegetation either physically or using herbicides.

The regulations will apply to such projects even if they increase the productivity for agriculture of such land to below the norm.

- 33 Land is considered to be uncultivated if it has not been subject to physical or chemical cultivation in the last 15 years. Cultivated land is that which has been cultivated by physical or chemical means.

There is a presumption that land is uncultivated land unless the responsible person can provide evidence that the land has been cultivated in the last 15 years. This might be done through witness evidence, statements from previous owners, tenants or other land managers, farm records, subsidy records, photographic evidence etc.

- 34 Cultivation does not include practices which do not directly affect the soil. However if the scale or extent of these practices is sufficiently great, or if they would form part of a broader project to increase agricultural productivity then they are likely to be covered by the Regulations. It would not be acceptable to undertake works separately which are all part of the same project to increase the productivity of the land.

- 35 The term 'semi-natural area' is not defined in the EIA Regulations. However, such areas will be mainly self-seeded or self-propagated vegetation which is naturally characteristic of the area. Natural England will determine whether land is a semi-natural area primarily by reference to the plants it supports but will also consider a number of other factors, including the natural conditions of the area, the soil type and the degree of cultivation.

- 36 For the purposes of the Regulations, Natural England uses the Biodiversity Broad Habitat Classification¹ devised by the Joint Nature Conservation Committee in 2000 as a guide to different broad habitat types which may be semi-natural areas.

- 37 Semi-natural areas that may be covered by the EIA Regulations are summarised in the following table but this is not an exhaustive list. Natural England will determine whether land is a semi-natural area based on a number of factors (see paragraph 35). Where land managers are uncertain whether their land qualifies as semi-natural they should contact Natural England for advice.

Semi-natural Area	Definition
Bracken	Areas with a continuous canopy of bracken at the height of the growing season. Does not include areas with scattered patches of bracken <0.25 ha, in the habitat where the bracken is growing.
Lowland heathland	Dry and wet heath habitats. Dwarf shrubs include heather, heath species, crowberry and dwarf gorse.
Upland dwarf shrub heath and moorland	Dry heather moorland and wet heath, blanket bog, raised mires, upland fens, swamps and limestone pavements. Dwarf shrubs include heather, heath species, crowberry and dwarf gorse.
Montane habitats	Vegetation above the tree line. (ie over 600 m above sea-level)
Inland rock	Naturally and artificially exposed rock > 0.25 ha, such as inland cliffs, caves, scree, limestone pavements and mineral spoil or waste tips.
Fens, Mires and Swamps	Wetlands on groundwater-fed permanently or periodically waterlogged peats or mineral soils. Includes fens, valley mires, lowland raised mires, ponds and reedbeds, purple moor grass and rush pastures including Culm grassland (the last is also acidic grassland).
Coastal & floodplain grazing marsh	Long term grassland within river or coastal floodplains with wet or waterlogged soils in spring, and seasonal 'splash' conditions. The land may have received annual or periodic addition of organic manures or low levels of organic fertiliser.
Lowland species-rich hay meadows	Habitat dominated by grasses and herbs on a range of soils and pH. Includes enclosed dry hay meadows and flood meadows. Land that may have received annual or periodically added organic manures or low levels of inorganic fertilisers is also included.
Upland species-rich hay meadows	Characterised by vegetation dominated by grasses and herbs on a range of soils and pH. Includes enclosed dry hay meadows. Land that may have received annual or periodically added organic manures or low levels of inorganic fertilisers is also included.
Unimproved acid grassland	Grassland on very dry acid soils in the lowlands or damp acidic grasslands on gleys or shallow peats elsewhere. Includes all moorland where heather has been grazed out, and Calaminarian (heavy metal rich) grasslands.
Unimproved neutral grassland	Grasses and herbs on a range of neutral soils. All types are considered semi-natural, except semi-improved grasslands (NVC type MG6) which have been modified by the addition of inorganic fertiliser in the last 15 years.
Unimproved calcareous grassland	Grassland with characteristic lime-loving species found on well drained soils rich in chalk, limestone or other bases.
Scrub	Self-seeded wild shrubs and trees - usually less than 5 metres in height. The woody species form a canopy cover of greater than 30% and have a patch size greater than 0.25ha. Juniper scrub is included.
Certain coastal habitats	Maritime cliffs and slopes, saltmarsh, sand-dunes & associated habitats and vegetated shingle.
Standing water and canals	Includes natural lakes, meres and pools, as well as man-made waters such as reservoirs, canals, ponds and gravel pits including open water zone and water fringe vegetation. Ditches with open water for at least the majority of the year are also included.

Notes

- 1 There are three BAP habitat types that could occur on 'uncultivated' land which is not semi-natural because of its vegetation, but which does have significant biodiversity interest. These are: traditional orchards; wood pasture / parkland, and coastal and floodplain grazing marsh. These types may be considered by Natural England to be semi-natural for the purposes of the Regulations.
- 2 All 'Arable and Horticulture' and 'Built-up areas and gardens' are excluded from the semi-natural habitat definitions.
- 3 Broadleaved, mixed and yew woodlands are covered by the EIA (Forestry) Regulations.
- 4 This list is not exhaustive.

¹ Jackson D.L., (2000), Guidance on the interpretation of the Biodiversity Broad Habitat Classification (terrestrial and freshwater types): Definitions and the relationship with other classifications, JNCC Report 307.

- 38 Whilst each case will be looked at individually, generally Natural England considers that the presence of a priority BAP habitat on land which is a semi-natural area and which falls within thresholds or where a screening notice has been used, would mean that a consent decision from us would be needed. We will usually interpret a detrimental impact from an EIA project on a priority BAP habitat which is a semi-natural area as being one likely to have significant effects on the environment.
- 39 Further guidance showing the relationship between semi-natural areas, biodiversity broad habitats and priority Biodiversity Action Plan (BAP) habitats, and the link between priority BAP habitats and National Vegetation Classification communities can be supplied on request.
- 40 Some semi-natural areas may have been subject to low levels of cultivation in order to maintain their semi-natural features. For example, some semi-natural hay meadows receive low levels of farmyard manure in order to replace nutrients lost in the annual hay cut.
- 41 Low level cultivation means:
- physical cultivation such as chain harrowing which may have caused some disturbance of the soil, but without any sub-surface cultivation resulting from activities such as ploughing, discing or heavy harrowing;
 - chemical cultivation which does not significantly alter the chemical status of the soil. For example, where nutrients lost through hay-cutting or water leaching are replaced by farmyard manure, as often happens in the traditional management of semi-natural hay meadows.
- 42 This low level cultivation **does not alter** the status of a semi natural area. If you are in doubt, please contact Natural England for specific advice.
- 43 Land which has been subject to an agri-environment agreement aimed at actively reverting or re-creating it to a semi-natural state – for example, where former arable land has been managed through HLS to restore it to wildflower-rich downland – will not be considered as semi-natural under the EIA Regulations until at least 15 years after the last cultivation. To avoid any doubt, the low-levels of cultivation often required under an agri-environment agreement may not count as ‘cultivation’ for the purposes of the Regulations. This is because low level cultivation is often necessary for the continued management of the semi-natural area.
- 44 Where an agri-environment scheme option includes management to maintain or restore land which is a semi-natural area at the start of the agreement, then Natural England considers that this management represents a low-level of cultivation (see above) and the land will remain ‘uncultivated’ for the purposes of the Regulations. Natural England will consider using information contained in the Farm Environment Plan (FEP) as a basis for making an assessment of the semi-natural status of the relevant land.
- It should be noted that where reversion to grassland has been carried out under an agri-environment agreement for the purposes of conserving a Scheduled Monument, and has been so for a period of six years or more, then Scheduled Monument Consent would be required from English Heritage to undertake tillage.
- 45 Where land owners, tenants or land managers are uncertain if their land qualifies as semi-natural, they should contact Natural England for advice.
- (ii) Restructuring projects**
- 46 These projects are physical operations which give a significantly different physical structure to the arrangement of one or more agricultural land holdings. They include:
- the removal or addition of substantial lengths of field boundaries such as hedge-banks, walls, fences, ditches or tracks;
 - the re-contouring of rural land, for instance by moving large quantities of earth or other material.
- 47 Normally, restructuring projects will only be covered if they involve changes to four kilometres or more of field boundaries; movements of 10,000 cubic metres or more of earth or other material in relation to land; or otherwise restructure an area of 100 hectares or more. The only exceptions to these thresholds are:

- where any part of the project takes place in a sensitive area ie an Area of Outstanding Natural Beauty, a National Park, The Broads or Scheduled Monument. Such projects are subject to lower thresholds of two km, 5,000 cubic metres and 50 hectares respectively;
 - if the threshold had been removed with regard to a particular area of land by a screening notice (see guidance at paragraph 16).
- 48 It would be unacceptable to conduct large projects piecemeal without permission (i.e. to conduct two or more sub-threshold projects which cumulatively exceed the thresholds). See the section above on project thresholds.
- 49 The following types of restructuring project are not covered by the EIA Regulations:
- projects in residential areas and gardens;
 - maintenance work on existing structures, such as repairing walls, replacing fences, or clearing blocked/clogged ditches;
 - any project which is classed as development, including permitted development, is covered by the Town and Country Planning (EIA) (England & Wales) 1999 Regulations. See table.
 - any work already covered by other EIA legislation. See table.
 - the removal of hedgerows is covered by the Hedgerows Regulations 1997;
 - any work constituting the erection of any building or fence, or the construction of any other work for which consent is required under section 38, Part 3 of the Commons Act 2006.

Type of work	Regulation	Regulator
Development including permitted development	The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999	Local Planning authorities: District/ Borough/ County Councils; Metropolitan/ unitary authorities/ National Park Authorities
Forestry works ie afforestation, deforestation, forest roads and quarries	The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999	Forestry Commission
Land drainage improvement	The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999	Environment Agency
Water resources	The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003	Environment Agency
Removal of hedgerows	Hedgerow regulations 1997	Local Planning authorities

Step 2 Making a screening application

- 50 Projects which equal or exceed the appropriate threshold may not proceed without permission from Natural England. To request permission, a screening application must be made.
- 51 Anyone planning to make a screening application can contact Natural England for informal advice either on the EIA Helpline on 0800 028 2140, by email or by writing to the address at the end of this guidance. This may reduce the chance of an unnecessary application being made, for instance, if a project is not covered by the Regulations. Alternatively, Natural England will be able to advise on the type and extent of information required, which may save time later on.
- 52 Screening application forms are available on Natural England's website, by contacting the EIA Helpline or by writing to the address at the start of this guidance. The following information is needed to complete the form:
- details of each field including size and a brief assessment of the land type;
 - a description of the nature, extent and purpose of the project and its possible effects on the environment;

- details of the past and current management on the land including for example the date it was last cultivated and type of fertiliser, farmyard manure, soil improvers and pesticides applied with rates;
- a plan identifying the land affected;
- any other information the applicant may wish to include, which may be relevant to the decision.

53 Completed screening application forms should be returned to Natural England at the address at the start of this guidance.

Step 3 The screening decision from Natural England

54 When Natural England receives a screening application, it will check the application is in order and inform the applicant in writing (or by email) that it has received the application. To fully assess the project, Natural England may ask the applicant for more information if necessary.

55 Natural England has 35 calendar days from the date it receives the application (or further information if required) to make its screening decision. The decision will be either:

- that the project may proceed; or
- that the project is likely to have significant effects on the environment, and it may not proceed without consent (see Step 4 below).

56 In making its decision, Natural England may make a site visit and consult interested people or organisations. It will take account of the following factors:

- the nature of the project, its size and any cumulative effects with other projects in the local area;
- the location of the project, the existing land use and the environmental sensitivity of land affected by the project;
- the likelihood, magnitude, complexity, duration, frequency and reversibility of impacts.

57 As part of its screening decision, Natural England makes an initial assessment of likely impacts using some or all of the following sources of information. We will ensure our decision is based on accurate information and may decide to check this by for example visiting the site where the project is to take place:

- soil type;
- agricultural land classification;
- sensitive areas i.e. a National Park, the Broads an Area of Outstanding National Beauty (AONB) or a scheduled monument;
- statutory protected nature conservation designations ie Sites of Special Scientific Interest (SSSI); Local Nature Reserves (LNR); Natura 2000 sites ie Special Areas of Conservation (SAC); Ramsar sites and Special Protection Areas (SPA);
- non-statutory protected site such as a Site of Importance for Nature Conservation (SINC), often referred to as a County Wildlife site or Local Wildlife Site;
- recognised priority Biodiversity Action Plan habitats for example through consulting the national inventory of semi-natural grassland;
- features of the historic environment, such as ridge & furrow;
- agri-environment schemes on the land such as Entry Level or Higher Level Stewardship;
- any other relevant information necessary for Natural England to take a screening decision.

58 Consultation with relevant bodies will be made to help make our decision. English Heritage will usually be consulted in each case. Others (see below) may be consulted on a discretionary basis to gather information about possible impacts on the Historic Environment:

- Historic Environment Records centre;
- County Archaeological Unit.

59 Once Natural England's decision is made, we must inform the applicant in writing or by email of the screening decision, together with the reasons for the decision. Natural England also makes a copy of the decision available on a public register on our website and informs the bodies it consulted.

- 60 In cases where the proposals fall under the Regulations and the screening decision allows a project to proceed, the project must begin within three years of receiving the screening decision. After three years the screening decision will cease to have effect.
- 61 An EIA screening decision does not replace or affect any other statutory requirements which may constrain operations on the land.

EIA and Agri-environment scheme agreements

- 62 If the land is entered into the Environmental Stewardship Scheme (also some Countryside Stewardship and Environmentally Sensitive Areas Schemes until 2014) you will need to ensure that your proposed project does not compromise any of the terms of the agreement. For example, Entry level Environmental Stewardship rules require you to enter any obvious historic features (e.g. ridge and furrow) on your Farm Environment Record (FER) and protect them. You may therefore wish to check whether the land is subject to any such constraints before applying for a screening decision.
- 63 You may need to apply for a derogation or amendment to the agreement. Please contact your Natural England Stewardship adviser, call us on **0300 060 0011** or visit our website at: <http://www.naturalengland.org.uk/ourwork/farming/funding/es/default.aspx>

Step 4 Making a consent application

- 64 If Natural England decides a project is likely to have significant effects on the environment, the applicant will need to decide whether to make an application for consent. Before doing this, we strongly advise that you speak to Natural England to discuss your application.
- 65 The central part of any application for consent is an **Environmental Statement (ES)**. This must be prepared by the applicant, or someone acting on their behalf. The precise content of the ES will vary case by case.
- 66 The Environmental Statement is likely to include:
- the location, design and size of the project including an outline of alternatives considered by the applicant and reasons for his/her choice;
 - the aspects of the environment likely to be significantly affected including biodiversity, historic environment and landscape;
 - likely significant effects on the environment including direct effects and any indirect, secondary, cumulative, short, medium, and long-term, permanent and temporary, positive and negative effects of the project;
 - measures to prevent, reduce and where possible offset any significant adverse effects on the environment;
 - any social or economic impacts which might result from a consent or refusal; and also
 - a non-technical summary;
 - any other information which is reasonably required to assess the environmental effects of the project.
- 67 Natural England will on request supply a **Scoping Opinion** to the applicant within five weeks. Scoping opinions advise what information the consent application and Environmental Statement should contain. Scoping opinions are only guides and would not stop Natural England asking for more information but they are recommended as they might save time and money in the long run.
- 68 When the applicant has completed the consent application, it should be submitted to Natural England.
- 69 Natural England will examine the application and the Environmental Statement to see whether all the required information is covered. We may request further information from the applicant if it does not.

- 70 Natural England will:
- send a copy of the application to appropriate consultation bodies, giving them six weeks to make representations; and
 - consult the public by publishing details in a newspaper circulating in the local area. This will alert the public to the fact that an application has been made, indicate where copies of the application can be viewed or obtained, and invite representations within six weeks of the notice being published.

Step 5 The consent decision from Natural England

- 71 Natural England's consent decision will take account of information from the applicant and the views of consultation bodies and members of the public. It will also take account of whether the negative environmental effects of a project are outweighed by other factors (e.g. economic, social or environmental).
- 72 When Natural England has made its decision, it must:
- inform the applicant and any consultation bodies of its decision, giving full reasons and considerations on which it was based, and any representations made by the public in respect of the application;
 - inform the public of its decision by publishing a notice in a local area newspaper ;
 - provide details of the decision for public inspection. This includes the actual decision, the reasons behind it, measures required to reduce adverse impacts of the project, a summary of representations received from the public, and information on how the decision could be challenged.
- 73 In cases where Natural England grants consent, the project must be started within one year, and completed within three years. If this does not happen, you must reapply.

Section 3 Enforcement and Appeals

- 74 The Regulations give Natural England various enforcement powers where a breach occurs. They also establish an appeals process. This section summarises the main powers.

Offences

- 75 The Regulations create a number of prosecutable offences. It is an offence to:
- carry out a relevant project without the necessary permission i.e. a positive screening decision under regulation 4 or consent decision (where required) under regulation 9;
 - carry out any activity in contravention of a consent decision;
 - try to procure a particular decision on an application made under the Regulations by knowingly or recklessly supplying false or misleading information, or withholding information, with intent to deceive;
 - contravene a stop notice, a remediation notice, or a screening notice issued in accordance with the Regulations.

Stop notices and remediation notices

- 76 A stop notice can be served if Natural England considers that a landowner, tenant or land manager has begun an uncultivated land project or a restructuring project without either a positive screening decision or consent. The notice is intended to stop all or part of the work immediately so that further investigations into a possible breach of the Regulations can be made and any further environmental damage averted.

- 77 A stop notice does not have a statutory maximum duration. However, Natural England will usually place a time limit on the notice, and where it does so the limit will be in proportion to the severity and complexity of any suspected offence. This limit will not normally be longer than six months. It is an offence to contravene a stop notice.
- 78 Where an uncultivated land project or a restructuring project has been carried out without Natural England's screening decision or consent, then either a remediation notice can be served so that the land is reinstated to its previous condition, or other action must be taken to return the land to good environmental condition.
- 79 It is an offence to contravene a remediation notice. Failure to abide by the terms of the notice may result in Natural England carrying out the work and recovering the costs from the landowner, tenant or land manager.
- 80 Where Natural England believes a breach has occurred then there is an assumption that the land is uncultivated unless the landowner, tenant or land manager implementing the project can provide evidence that it has been cultivated in the last 15 years. This might be done through witness evidence, statements from previous owners, tenants or land managers, farm records, subsidy records and photographic evidence. In any court proceedings the 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.

Cross Compliance

- 81 The Regulations, as they apply to projects for the use of uncultivated land and semi-natural areas, are part of Cross Compliance rules within the Single Payment Scheme. Breaches of these rules may result in a penalty under this scheme. In addition, for certain agri-environment scheme agreements a breach may result in a reduction in payments.
- 82 The rural restructuring aspects of the Regulations are not part of Cross Compliance. Further information on Cross Compliance is available at: <http://www.defra.gov.uk/farming-advice/cross-compliance> and on the Cross Compliance Advice helpline (0845 345 1302).

Appeals

- 83 The Regulations enable people to appeal against notices and decisions made by Natural England.
- 84 A person may appeal against a screening notice, stop notice, reinstatement notice or remediation notice on certain grounds. The appeal must reach the Secretary of State for Environment, Food and Rural Affairs within 28 days of the relevant notice being served by Natural England.
- 85 An applicant may appeal against a screening decision or a consent decision. The appeal must reach the Secretary of State within three months of the date the applicant was notified of the decision.
- 86 The procedure by which such appeals will be determined is set out in regulations 33 to 36 of the EIA Agriculture Regulations. Part 5 of the EIA regulations sets out more detail on Appeals.

The EIA Regulations: <http://www.naturalengland.org.uk/ourwork/regulation/eia/default.aspx>



Natural England is here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.

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