

Number: WG30159



Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation – summary of response

# **Review of the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007**

April 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

## **Introduction:**

### **Purpose of Consultation**

The consultation, published on the 27 October 2016 and closed on 5 January 2017, sought the views on the proposed changes to the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007 (the EIA Regulations).

The EIA Regulations transpose international obligations as implemented via Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (the EIA Directive). They ensure any projects likely to impact on the environment are adequately assessed before they commence. The EIA screening process evaluates the impact of proposed agricultural improvement works on the environment and the wider Welsh landscape. The EIA Regulations seek to protect farmland habitat sites and historically important land from damaging agricultural activity, as well as preserving Wales' precious natural resources. The objectives of the EIA Regulations contribute towards a number of goals specified within the Well-being of Future Generations (Wales) Act 2015, in particular creating a healthier, more resilient and globally responsible Wales.

The consultation on the review of the existing EIA Regulations proposed a number of changes to the regulatory framework, partly to streamline and strengthen the regulations, and partly to transpose mandatory requirements introduced by Directive 2014/52/EU which amended the EIA Directive.

The Welsh Ministers are under an obligation to transpose the mandatory aspects of the updated EIA Directive while the UK remains a member of the European Union. These amendments and the additional proposed changes are not expected to alter how the EIA regime in agriculture currently operates in Wales.

### **Consultation Period and Distribution**

The Welsh Government conducted pre-consultation workshops with key stakeholders, including representatives of the farming unions and environmental bodies in the spring on 2016. These events were facilitated by ADAS and the outcome of pre-consultation exercise helped the Welsh Government to finalise its consultation proposals. The 12 week public consultation on the review of the EIA Regulations opened on 27 October 2016. The document was available on the Welsh Government's website and was also distributed widely amongst interested parties and stakeholders via e-mail.

Seven responses were received during the consultation period. All of these have been considered and analysed to provide the Welsh Government's formal response.

## Summary of Responses

List of respondents:

National Farmers Union (NFU) Cymru

Farmers Union Wales (FUW)

National Trust

Natural Resources Wales (NRW)

National Parks Wales

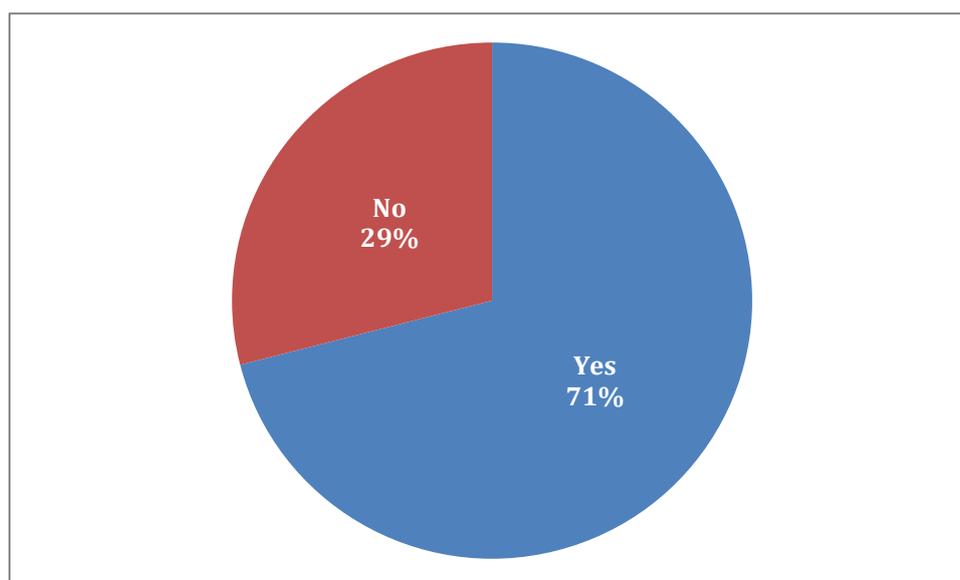
Dyfed Archaeological Trust

RSPB

The consultation posed 14 questions in total. Overall, the responses to the proposals were positive and supportive, although there were a few concerns expressed by stakeholders. These have been taken into full consideration in developing the Welsh Government's response and decision regarding the revision of the EIA Regulations.

### Question 1

**Do you agree with the proposal to add a definition of a semi-natural land to the EIA regulations? If not please state why.**



71% of respondents agreed with the proposal. 29% expressed a need for further clarification as to what defines 'semi-natural land' and 'an agricultural project' to avoid confusion amongst farmers and other stakeholders. There was a concern the term "semi-natural" could be confused with "semi-improved" and one of the respondents stated the concept of "25% sown species" required more definition, which may be better being included in guidance rather than the regulations.

One respondent perceived the proposal to be overly restrictive, which could lead to land of important environmental value and habitat for birds and other Biodiversity Action Plan species being excluded from the regulations.

## **Response**

The Welsh Government accepts the general need for clarification of terminology and will add the definition of semi-natural land to the revised Regulations. This will not only provide more clarity but will help ensure the Regulations are implemented consistently and robustly.

The 25% threshold rule determining semi-natural status and applied in Wales was developed by ecology and agriculture specialists from the Department for Environment, Food and Rural Affairs Rural Development Service, in consultation with statutory agencies. The definition has remained unchanged in Wales since 2002 when the EIA Regulations were first introduced. This definition has also been used in the sustainable land management scheme Glastir, as well as a number of preceding schemes.

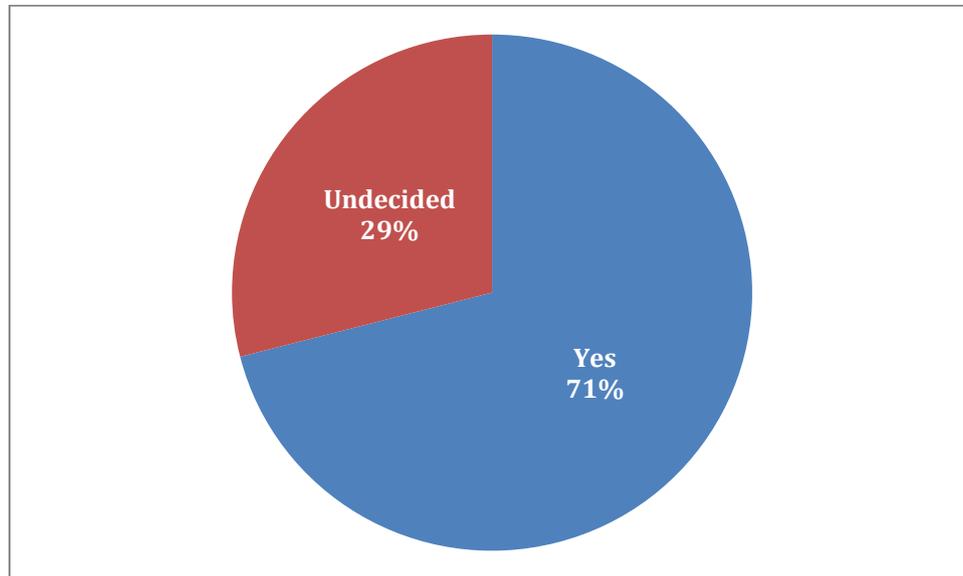
The Welsh Government will also update the EIA guidance and will aim to provide additional clarification on the application of the EIA agricultural regime in future publications and on the government's website.

In Wales, the EIA Directive is implemented through various statutory systems affecting planning and development, land drainage, forestry, water extraction, etc. The EIA Regulations apply in the agricultural context and affect land which is considered semi-natural and uncultivated, as stipulated by the Regulations. These types of land may include acid grassland, neutral grassland and hay meadow, calcareous grassland, bracken, scrub, etc. The purpose of the EIA screening process is to establish whether a proposed activity is likely to have a significant impact on such types of land and the wider environment.

The significance of these types of habitats is measured in accordance with the list of priority habitats identified by Section 7 of the Environment (Wales) Act 2016. The Welsh Government's objective is to protect uncultivated and semi-natural areas with national importance and prevent the loss of habitat which would impact significantly on biodiversity in the wider context of Wales' environment from damaging agricultural activities. Not all projects proposed on semi-natural land would fall under the remit of the EIA Regulations and some may be subject to other statutory regimes, such as Cross Compliance requirements, depending on the proposed project

## Question 2

**Do you agree with the proposal to amend the definition of uncultivated land projects to 'Project on Semi-Natural and/or Uncultivated Land'? If not, please state why.**



71% of the respondents agreed with the proposal which, in their view, better reflects the nature of the land which falls within the scope of the EIA regulations. The remaining 29% expressed concerns over the lack of clarity in the definition of terms. A respondent raised a concern related to farmers whose five-year Glastir contracts will be coming to conclusion. Under the new proposed definition they would need to consider the EIA screening process before applying lime or fertilizer, or propose other work on their land. Some consultees queried whether liming would be considered as an agricultural project as it is not done on an annual basis.

There is apparently considerable confusion amongst land owners as to when an EIA is required. It was suggested RPW online should include a map / layer which identified semi-natural land in Wales in order to clear up any confusion.

### **Response**

As the majority of the consultees supported the proposal, the Welsh Government will implement this small change to provide more clarity in the revised Regulations. The term “uncultivated land project” has presented some confusion and, at times, stakeholders may have understood it as land which has never been under agricultural management. Most habitats in Wales have been subject to some degree of human intervention and are consequently “semi-natural”, rather than “uncultivated”.

The EIA Regulations apply to projects which increase the agricultural productivity of uncultivated/semi-natural areas and projects which restructure

rural holdings. Routine operations such as maintenance work or repair of existing structures are exempt from the requirements of the Regulations. Liming which is applied regularly, such as every two to three years, as part of the routine management of the land would not require EIA screening.

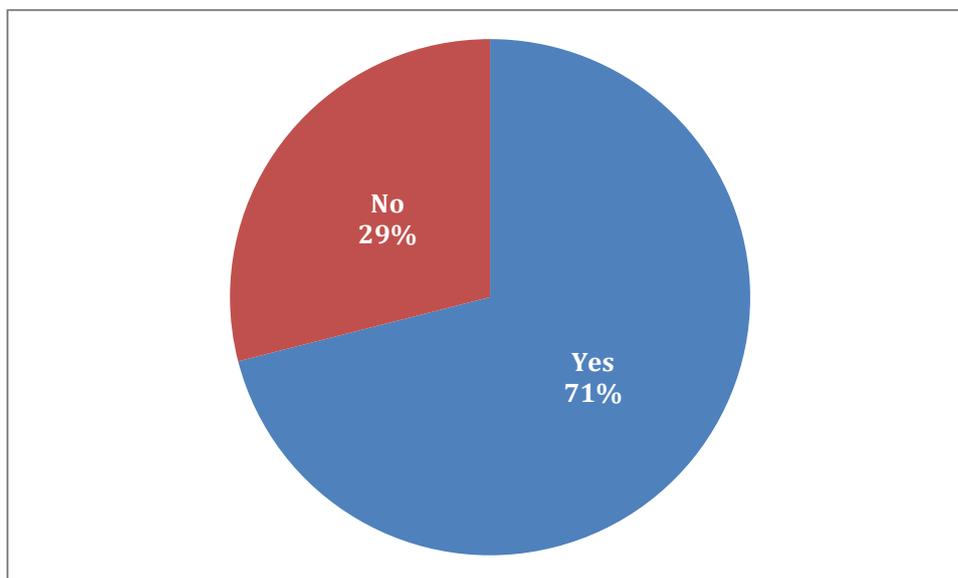
However, liming can profoundly alter the pH of the land and hence can change the species composition of the site and also improve the capability of the land. If a land owner or manager proposes to apply lime to semi-natural land, for example newly acquired land, they are advised to seek a screening decision from the Welsh Government, especially if this activity marks the beginning of a larger project.

Semi-natural areas across Wales are not designated areas and cannot be mapped definitely because environmental conditions change over time and sites can revert back to a semi-natural state relatively quickly. Mapping all semi-natural areas would not only be difficult from a practical point of view, it could also suggest a more restrictive approach to the application of the EIA Regulations. Although the regulations require the assessment of agricultural projects proposed on semi-natural and/or uncultivated land, they do not present a barrier to agricultural improvement. In the majority of cases, projects proposed on semi-natural sites are allowed to progress. Since 2002 the Welsh Government considered 924 applications and provided a positive decision in 93% of cases. The screening process is straightforward, free and decisions are delivered within 35 days of the application. The screening decision lasts for 3 years.

The Welsh Government advises farmers to apply for a screening decision when they plan to improve land which was previously mapped as habitat under a sustainable land management agreement, such as a Glastir contract. A previous sustainable land management agreement may indicate the land in question falls within the remit of the EIA Regulations.

### Question 3

**The Welsh Government currently operates a no threshold policy under the EIA regime. Do you agree with this policy?**



71% of the respondents agreed with the proposal as all land has the potential to be environmentally significant, regardless of size of land parcel and its location. The majority of the projects considered by screening and enforcement cases are between 2-5 hectares. Many important ecosystems on semi-natural and uncultivated land in Wales, e.g. grasslands and heathlands, are small and fragmented so even setting a low threshold could potentially result in the loss of not only important local habitat, but also a significant proportion of important ecological sites in the wider context of Wales's biodiversity.

However, 29% of the consultees suggested thresholds for smaller areas, i.e. <0.1ha. In their view, this would reduce bureaucracy and help farmers to manage their land more efficiently.

One response queried the different policy approach applied in agriculture and forestry, in terms of the implementation of the EIA Directive and minimum thresholds.

One of the stakeholders commented on the relationship between the EIA Regime and the Cross Compliance requirements. The EIA Regulations form part of Cross Compliance and, in the opinion of the respondent, this introduces an element of "double jeopardy" not faced by any other sector. The application of a no threshold policy actually heightens the risk of breach. The respondent also believed all important sites in Wales have designated status and "are protected independently of the EIA regime".

## Response

The proposal to keep the no minimum threshold in the EIA Agriculture regime was seen as positive by the majority of consultees and the Welsh Government will continue to apply this policy. The EIA Regulations provide statutory protection from agricultural works for habitats and land with cultural importance that are not designated sites (e.g. SSSI). Designated sites occupy less than 20% of Wales. Land which is not designated can still carry very high environmental value. As such, the EIA Regulations play an important role in protecting the biodiversity and historical landscape of Wales. The no threshold policy will ensure the necessary protection to significant habitat sites and land with important historic value across Wales.

The EIA Directive is implemented via different regulatory regimes affecting distinct policy areas such as planning, land drainage, forestry, etc. Although policy applications may differ across the different areas, all regimes follow the main principle of the Directive, which is to provide an adequate environmental assessment of all, large and small scale, projects before they can commence. It would not be appropriate to introduce minimum thresholds for agricultural projects, given the size and potential impact of the majority of cases considered under the EIA Regulations. The implementation of the EIA Forestry regulations is based on a markedly different regime with different policy considerations.

Failure to apply for screening on uncultivated or semi-natural land before improvement work is carried out constitutes a breach of the EIA Regulations and may also result in a breach of Cross Compliance requirements in respect of the Welsh Government's prescribed standards consistent with keeping land in Good Agricultural and Environmental Condition.

The Cross Compliance regime is a European regulatory requirement setting standards that farmers have to meet in order to receive Common Agricultural Policy (CAP) payments. There are two elements to Cross Compliance;

- Statutory Management Requirements (SMRs); and
- Standards for keeping land in 'Good Agricultural and Environmental Condition' (GAEC).

These are European Union obligations covering environment, climate change and GAEC, public health, animal health and welfare, and plant health.

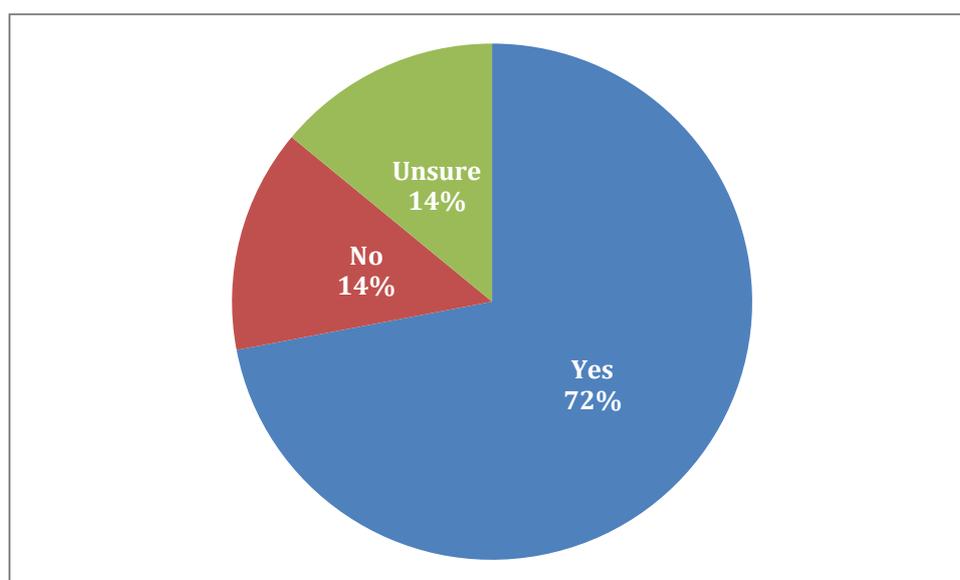
Failure to meet any of the Cross Compliance standards could result in a financial penalty being imposed on a farmer's Direct Payments including the Basic Payment Scheme (BPS). Receiving EU payments, including BPS, is an option open to all farmers who can demonstrate they meet the eligibility criteria. It is not a mandatory scheme and adherence to the relevant scheme rules and legislative requirements are a condition of receiving BPS. The current cross compliance requirement under GAEC 6 to respect the EIA Agriculture regime is a restatement of the existing law. However, it operates in this context for the purpose of ensuring the Welsh Ministers comply with their obligations in respect of setting a standard that ensures the maintenance

of soil and organic matter as a standard consistent with keeping land, which has benefitted from BPS funds, in good environmental and agricultural condition. Failure to follow the EIA regime may constitute a breach of cross compliance and result in a financial penalty to the farmer concerned. That is entirely distinct from each and every farmer having to adhere to the EIA regime and face the possible sanctions for breach of the Regulations, which, rather than imposing financial penalties, are concerned with preventing significant effects on the environment by virtue of unlawful agricultural projects on uncultivated and/or semi-natural land.

Supporting the agricultural industry is a key priority of the Welsh Government. At the same time, the Welsh Ministers have the responsibility to ensure Wales' natural assets and resources are protected and preserved for future generations.

#### Question 4

**Do you agree with the proposal to allow the Welsh Ministers to request applicants to provide information on mitigating measures at screening stage for larger scale projects, if deemed necessary?**



72% of respondents agreed with the proposals, stating larger scale projects require greater attention, as they are likely to have a bigger impact on the environment. However, one of the respondents requested the definition of a "larger scaled project." Without clarification farmers may be "caught" with a "large scale project" and then be required to put in place mitigation measures at the screening stage, which would be unacceptable.

One of the respondents rejected the proposal.

14% of the respondents were uncertain in their answer. There was a suggestion to have a default position of requiring an Environmental Statement

(ES) every time there was an uncertainty over screening. One of the responses recommended all proposals should be considered with equal rigour due to the fact that projects deemed to be small scale have the potential to be extremely damaging. One of the consultees felt the proposal is contradictory to the Welsh Government's no minimum threshold policy considered under Question 3.

## **Response**

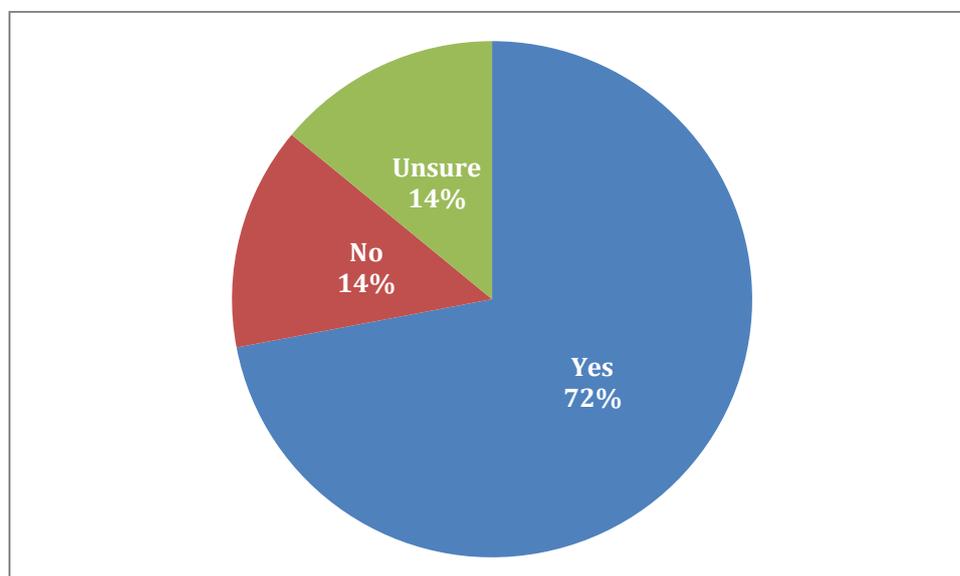
The majority of respondents were happy with regard to mitigating measures being introduced at screening stage for large scale projects. Understandably, stakeholders queried what would constitute a large scale project.

The Welsh Government's aim is to apply the EIA Regulations proportionately, and would only request additional mitigation measures at screening stage under exceptional circumstances. The Welsh Government accepts the impact of small scale projects could be large, and vice versa. For this reason, it is not planned to define when the Welsh Ministers would rely on such a provision in the revised Regulations. Rather, this will be regarded as an operational matter, applied fairly and considered on a case by case basis.

The Welsh Ministers would only request an ES if it is essential to consider the full impact of a proposed project on a site which is deemed significant from an ecological and/or historical point of view. The cost of the ES could be high, depending on the scale and complexity of the works. The cost needs to be covered by the applicant. The Welsh Government believes the default "positive screening" position, as suggested by one of the respondents, would put unnecessary and unjustifiable financial burden on applicants. For this reason, this proposal is rejected by the Welsh Government.

## Question 5

**Do you agree with the proposal to enable the Welsh Ministers to grant a screening approval to only part of the project and/or attach specific conditions to the screening decisions?**



The majority, 72% of respondents agreed with the proposal, 14% disagreed and there was one respondent with no answer. The need for greater clarity and more guidance on the application of the EIA regime was expressed by several respondents.

One perception was that an EIA application should be approved, if following negotiations with the Welsh Government, specific conditions were attached to the application which resulted in an overall increase in the environmental status of the farmland.

One respondent was concerned this would increase the risk of damage to important semi-natural habitat sites in Wales. In their opinion, all details of a whole project and its implications should be fully considered and understood by the Welsh Government before partial or conditional approval is made, otherwise the process and the objectives of the EIA regulations will be undermined.

## Response

The Welsh Government welcomes the wide support for this proposal which has the scope to streamline the screening process and could potentially reduce the number of cases where the Welsh Ministers would need to request an ES. It is believed the new proposal would reduce administrative burden and would also help apply the regulatory requirements in a proportionate manner.

The Welsh Government would like to reassure stakeholders that the new provisions will not impact on the integrity and strength of the EIA regime. The EIA screening evaluation follows rigorous established procedures which examine the immediate and wider impact of proposed projects. There will be no change in the way projects are assessed following the introduction of the new EIA Regulations to ensure the continuity of a high quality and consistent service.

## **Question 6**

### **Please provide any comments you wish to make in relation to this new mandatory requirement**

This question provided an opportunity to raise some important and interesting comments. One respondent noted the Welsh Government only requested an ES in 7% of all considered cases and queried whether these were absolutely necessary in the first place. One response declared this proposal was not particularly relevant to farming, and that “if a threshold of 50ha and above was introduced for ES consideration, this would be more than adequate to safeguard the environment.”

Another respondent requested more information and guidance on terminology such as 'large' and “significant” projects.

One of the consultees emphasised the EIA Directive would allow scoping to be mandatory. In their opinion, “the Welsh Government should demonstrate leadership in the protection of Wales's environment by ensuring that scoping is a mandatory part of the EIA process”.

## **Response**

The scoping provision in the EIA Directive has been amended the scoping provision with the introduction of a mandatory requirement for applicants to base their ES on the scoping opinion, if one has been sought. The purpose of this change is to provide more certainty for the applicant when preparing their ES as well as helping them to understand the key environmental issues the statement needs to focus on.

The Welsh Government regards this as a positive change which will be introduced in the revised Regulations. However, it is important to maintain the flexibility of the EIA Regulations and so scoping will continue to be a voluntary option, meaning the new requirement will not apply in cases where the applicant decides not to request a scoping opinion.

The suggestion to only request ES for projects above a certain size would go against the policy aspirations of the Welsh Government. The average size of a Welsh farm is approximately 46.41 ha<sup>1</sup> and the average size of a project

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<sup>1</sup> Welsh Government: Farming Facts and Figures  
<http://gov.wales/docs/statistics/2016/160628-farming-facts-figures-2016-en.pdf>

considered under the EIA Regulations is 16.4 ha. Approximately half the projects considered under EIA agriculture between 2002 and 2016 were less than 5 ha. These included a high number of environmentally important sites. The suggested 50 ha would be above the average farm size in Wales and well above the average size of EIA agriculture projects.

An ES would only be requested if the impact is identified as significant at screening stage. There is an established procedure which is followed each time a screening application is evaluated. Statutory consultees such as NRW and other relevant local and/or environmental bodies are involved in the process to ensure all aspects of the proposed project are fully considered before a decision is taken. To date, 93% of applications considered have been granted permission. There was strong evidence on the significance of the sites affected in the remaining 7% of cases which justified the request of an ES.

### **Question 7**

**Please provide any comments you wish to make in relation to the new mandatory requirement of using a competent expert for producing an ES?**

This question generated a number of varied responses and queries. One of the consultees felt any person with sufficient relevant experience in land management should be able to produce the expert advice required for the ES, a farmer, forester or an experienced person working in the countryside. For this reason, possessing qualifications in order to assess EIA applications sensibly would be unnecessary.

It was suggested the Welsh Government could prepare suitable website templates to advise and guide the applicant on evidence gathering required for the ES procedure. Local Authority templates for Design and Access Statement were used as a suitable example.

A concern was raised relating to the cost associated with employing specialist expertise which can appear disproportionate to the scale of projects proposed under the EIA Regulations.

Other respondents were in favour of the proposal but questioned how the specialist would be defined and whether there would be any criteria set in terms of qualifications or membership of a professional body such as the Chartered Institute of Ecology and Environmental Management (CIEEM). One of the responses specifically queried how the requirement would be applied in practice and how the Welsh Ministers would monitor whether the new statutory requirement has been fulfilled. The respondent also highlighted the need for supportive guidance on this aspect of the regulatory requirements. Similarly, expertise would be needed at all stages of the EIA process, such as screening and scoping, and these would need to be set as statutory requirements in the new regulations.

The same response highlighted statutory agencies (including Natural Resources Wales) are currently chronically understaffed and under-funded which affects their abilities to fulfil their statutory roles, including under the EIA Regulations.

## **Response**

The Welsh Government will introduce this mandatory change which was also supported by the majority of the respondents. The intention is to add a generic provision to the new Regulations and provide more detailed explanation regarding the qualified expert requirement in guidance. The Welsh Government agrees more definition and guidance will be needed to ensure the provision is applied adequately. The EIA Regulations already provide detailed requirements related to an ES; however, advice and help will be available from the Welsh Government's EIA team and consideration will be given to the need of having an ES template published online.

Semi-natural sites have varied interests, which may be botanical, zoological, historical or a combination of these. The expertise needed would be determined by the specific ecological and/or archaeological features found on the site in question. Although land managers and farmers may have sufficient experience and knowledge of the particular land, they may not possess the varied expert knowledge required to complete an ES. The purpose of the new requirement is to ensure all ES prepared under the EIA requirements are consistently of a high professional standard and have fully considered all potential impacts.

The EIA screening process is delivered by a specialist team with the necessary qualifications and experience within the Welsh Government. The same scientific methodology is applied consistently to all cases considered throughout the different stages of the EIA procedure. The new requirement to use a competent expert for the preparation of an ES will further strengthen the regime and its delivery in Wales. The Welsh Government agrees membership of professional bodies and relevant qualifications would be regarded as having sufficient expertise. More detail related to this requirement will be provided in guidance.

There would be a cost related to the new requirement. It will be up to applicants to decide whether the cost of the ES would be justifiable within the context of the proposed project. It is important to note the whole EIA process is free of charge, which includes the initial assessment of the land, and if needed, a full ecological survey, completed by qualified experts. There is no administrative charge linked to the application and applicants are not requested to commission their own surveys before submitting their application. In addition, scoping is offered for free which can assist greatly in identifying the expertise needed for the preparation of the ES.

It is not within the remit of the current consultation to consider and comment on the point raised in connection with the resources of statutory organisations.

## **Question 8**

### **What is your view on the proposal to consult the public on ES online only?**

The respondents were divided on this question and 50% agreed with the proposal while 50% disagreed. The main concerns raised included lack of access to online resources in remote areas of Wales and potential discrimination against those who rely on printed material rather than the Internet.

A number of respondents questioned the need to consult with the public at all as members of the public may not have sufficient knowledge and expertise to provide a substantial contribution. This could result in “serious delays, misinterpretations and unnecessary costs for applicants”, stated one.

One of the responses stated guidance should be provided on when a project, in the agricultural context, is deemed to be a “significant project”. The respondent underlined the EU Directive is written for major projects such as road building and nuclear power stations and, as such, agricultural projects are insignificant by comparison. The same respondent suggested the public consultation period currently set at 70 days should be reduced. The EIA Directive only requires 30 days as the minimum consultation period.

Another suggestion provided by a respondent related to arrangements for online publicity and information. In their view, this should be consistent across the different EIA regimes so the public and others are able to engage with a consistent online structure. In addition, they recommend that a “central portal of information is provided, establishing a central sign-posting hub for all EIA information”. In the respondent’s view, this would allow the Welsh Government to comply with the requirements of the EIA Directive and the Well-being of Future Generations (Wales) Act 2015.

## **Response**

Given the concerns raised by stakeholders related to potential discrimination and lack of access to online resources by many living in remote areas of Wales, the Welsh Government decided not to introduce this change.

The EIA Directive applies to a diverse range of projects with the common requirement assessing their impact adequately before they are allowed to commence. The Directive provides a framework which allows its principles to be adapted for the different regulatory regimes, including agriculture.

The emphasis is not on the size of the project, although there would be an expected correlation between the size of the development and its environmental impact. EIA agriculture would, by nature, consider smaller scale projects. However, the size of the project would not be the determining factor when the effect on the land is evaluated.

It the view of the Welsh Government, the consultation period, specified as 6 weeks in the EIA Regulations is the adequate timeframe as it allows members of the public sufficient time to consider the proposed ES and provide comments, if they wish to do so. This is only slightly above the minimum required by the EIA Directive.

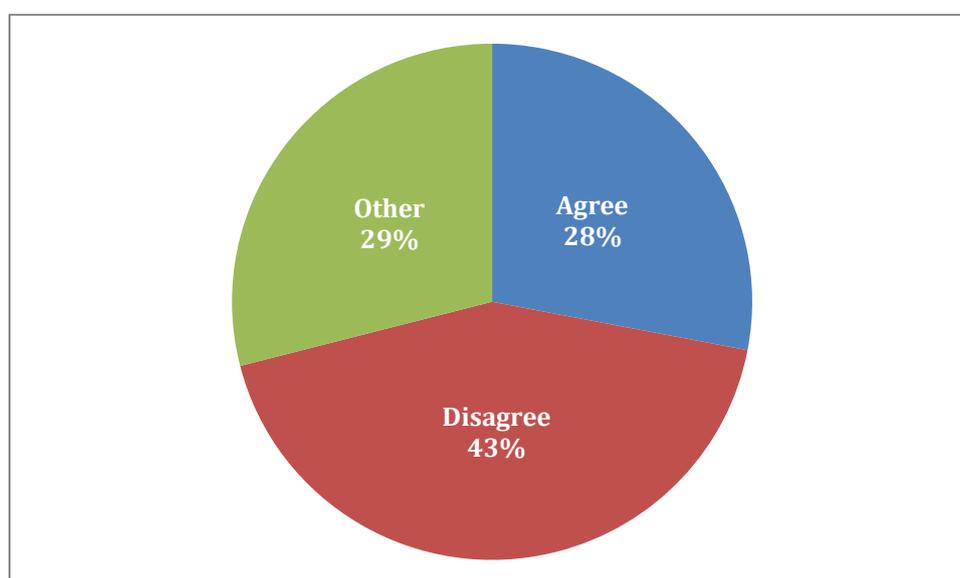
The Welsh Government is in the process of developing improved online resources which would provide more advice and support to farmers and other stakeholders interested in EIA. The objective is to improve policy delivery and provide more support, across all policy areas in accordance with the duties of the Well-being of Future Generations (Wales) Act 2015.

## Question 9

Where consent is given following the consideration of an ES, the 2014 EIA Directive places a requirement on the Welsh Ministers to monitor the effect of the project, thus putting additional responsibility on to the managing Authority.

The Welsh Government proposes to visit the site in question to ensure that the project has been completed as outlined in the ES. If required, the Welsh Government would put in place a monitoring programme which could last several years. However, this is likely to only apply to complex and large scale projects, such as restructuring projects or new drainage schemes.

Do you agree with this approach? Please provide details of any alternative proposals.



28% of the respondents agreed with the approach, 43% disagreed and 29% made no comment.

One of the respondents, although agreeing with the proposal, stated it was not of high relevance to the agricultural community. They felt an area based threshold which concentrated the monitoring on to larger projects was a sensible option. Another consultee requested to have more detail on the types of project that will require monitoring.

A number of replies stated monitoring should not be linked exclusively to complexity and scale of projects. Rather, monitoring regimes should be based on qualitative impact in the short, medium and long term and should be required for all projects likely to have a significant effect on the environment. One of the replies underlined the importance of having a monitoring programme in place for all projects on or adjacent to designated/protected sites. It was also suggested monitoring by a site visit

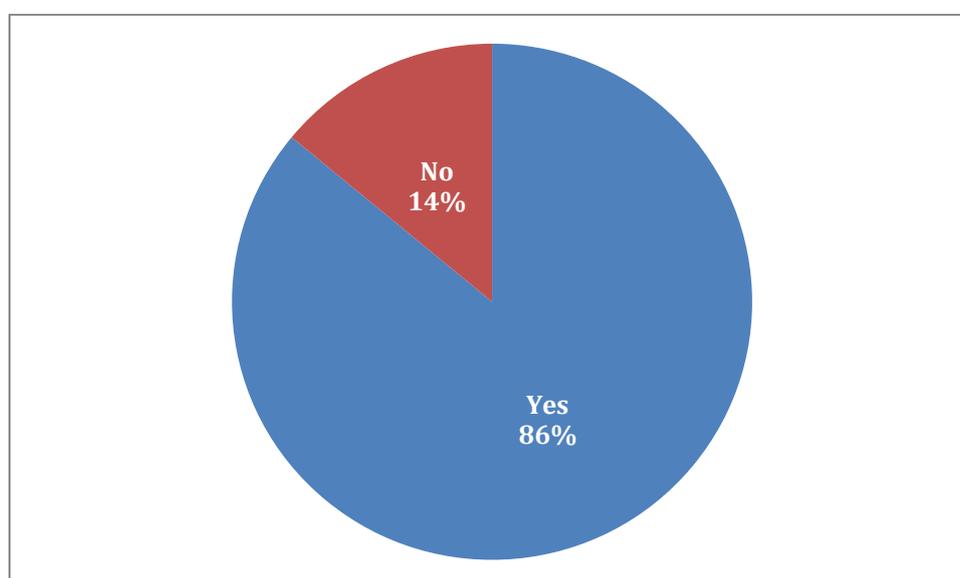
immediately after completion of the project is sensible and longer term monitoring could be done remotely and would not require many resources.

## Response

Decisions regarding monitoring will be considered on a case by case basis and will be founded on all relevant factors such as overall short and longer term expected impact, size and complexity of the proposed project. After assessing the responses, the Welsh Government decided to consider this issue as an operational matter and will not be introducing an amendment to the new Regulations.

## Question 10

**Do you agree with the proposal to provide the Welsh Ministers with the power to amend, extend or terminate Remediation Notices?**



86% of respondents agreed with the proposal, and one respondent made no comment. One of the respondents could see merit in having the ability to amend Remediation Notices, however, they requested more information on how this would happen in practice. They suggested land managers should be able to seek an amendment as they would be the first to notice botanical changes resulting from remediation measures.

They were also concerned about costs involved in the amendment of notices. Others agreed with the proposal but highlighted the need for flexible management regimes in order to address the principal of “adaptive management” under the sustainable management of natural resources.

## Response

The Welsh Government welcomes the wide support for this proposal and will introduce this change, which is regarded as a positive step in making the EIA

Regulations more flexible. This will allow climatic and seasonal changes, and the level of the remediation of the land to be fully taken into account. The intention is to work in cooperation with land managers and land owners and to reach an agreement on the remediation measures best suited to the site and agricultural practices on the farm.

### **Question 11**

#### **Are you content with the proposal to streamline appeal procedures in the EIA Regulations?**

All respondents agreed with the proposal in principle. One of the responses underlined the importance of standardising appeal periods across the different regulatory regimes affecting agriculture in order “to avoid confusion and missed deadlines”.

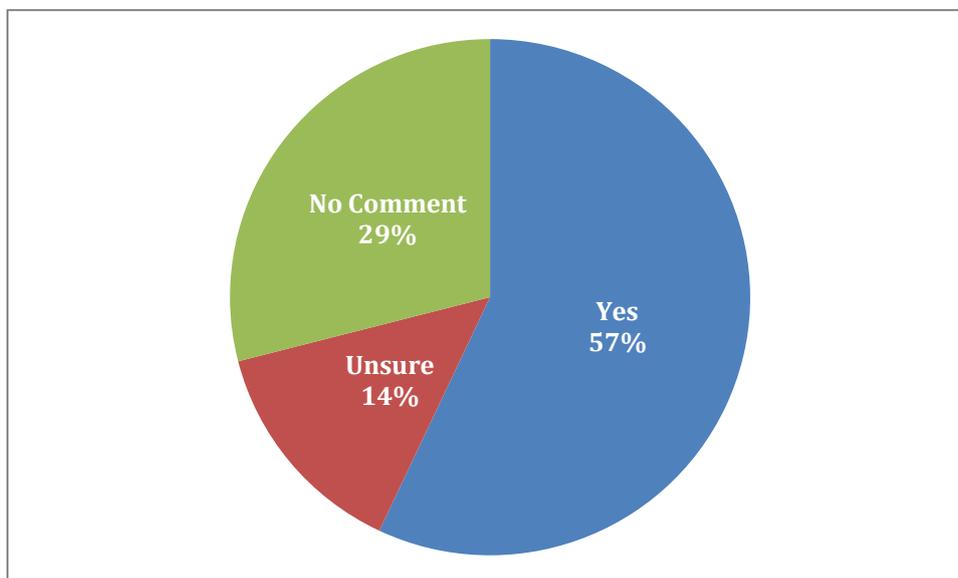
#### **Response**

It is important to make the appeal process easier to understand and follow. The proposed change will not impact on the mechanism and the independence of the process but will allow the streamlining of the statutory requirements by removing any duplication and ambiguity from the Regulations.

The review of appeal mechanisms across the different regulatory regimes is ongoing and forms part of a wider review of justice policy across the organisation. It is not within the scope of this consultation to consider this point further.

## Question 12

**Do you agree with the proposal to set the appeal period at 28 days for all types of appeals?**



Although the majority of the respondents agreed with the proposal, there were mixed responses and specific concerns expressed. One of the consultees questioned the rationale behind choosing 28 days as the time limit for appeals rather than the longer 3 month period currently allowed to appeal against screening and consent decisions. The respondent also highlighted for appeals raised under the Basic Payment Scheme is 60 days. This point was made by another respondent.

### Response

The Welsh Government will introduce this change which will help streamline and standardise the appeal processes under the EIA Regulations.

The Welsh Government acknowledges the reduction in the appeal period for screening and consent decisions is relatively substantial and may cause some concerns. However, the ability of applicants to submit additional evidence following the submission of an appeal will remain as is the case under the current appeal mechanism. As Notices are closely tied to the ecological status of the land and its ability to remediate, which often needs to happen quickly, it would not be appropriate to increase the appeal period above 28 days for these. The reduction of the appeal period for screening and consent decisions will shorten the time during which the status of the land is under dispute and unclear. This will benefit land managers and land owners.

Appeals raised under the BPS follow different arrangements to EIA appeals. The Welsh Government has considered changing the EIA appeal mechanism and utilise the Independent Appeal Panels for such cases. However, the Panel would not have the necessary expertise and technical knowledge to

consider EIA cases. An EIA appeal hearing usually takes a full day of deliberation and is based on the evaluation of complex and extensive information such as ecological reports, soil sample assessments and aerial photography, amongst other sources of evidence. It also often includes a site visit to establish the boundaries of the site and the state of the land. The Appeal Panels are appropriate for establishing whether a breach of regulatory requirements has occurred but it is not equipped to determine the ecological or historical value of land, or consider the pertinence of the remediation measures prescribed by a statutory Notice.

Appeal processes differ across the agriculture department and are operated under various regulatory requirements. The review of justice policy and its application by the Welsh Government forms part of a wider and more complex review which is outside the remit of the EIA review and consultation.

### **Question 13**

#### **Do you have any comments on the current appeal process?**

Most of the respondents elected not to provide any comments under this question. One of the consultees stated it was important to give applicants the choice to follow written or oral procedure in appeals and ensure the full independence of the mechanism as well as the technical knowledge of the person conducting the appeal. There were concerns about the possibility of the Welsh Government charging for appeals in the future. The response underlined the appeal process should attract no additional charges as it can already be costly to appellants to go through the existing process.

### **Response**

The appeal mechanism will not change significantly and will continue to allow appeals to be determined under both written and oral procedures. The existing appeal process has been developed and established in line with the regulatory requirements and the Welsh Ministers' duty under Article 6 of the European Convention on Human Rights - right to a fair trial, enshrined in the Human Rights Act 1998. There are no plans to introduce any charges for EIA appeals and these will continue to be considered at the cost of the Welsh Government. The only cost to applicants would be related the cost of legal representation, if they chose to employ one for the appeal.

## Question 14

**We have asked a number of specific questions with regards to the proposed changes within the EIA Regulations. If you have any related issues which we have not specifically addressed, please use this space to report them.**

The respondents utilised this space to provide additional comments and feedback on the operation of the EIA regime. Some stakeholders highlighted there is still confusion over the EIA requirements and the importance of the Regulations in terms of protecting semi-natural habitat areas in Wales. One of the consultees suggested there should be a layer of semi-natural areas on the RPW interactive map as this would help farmers identify whether they need to apply for EIA screening.

A consultation reply underlined important habitat sites located within Wales are already designated and are protected independently from the EIA regime.

One of the respondents felt the Welsh Government presented farming in a negative light with inaccurate assertions regarding the impact of agricultural intensification and the reduction of traditional farming methods in the consultation document. The respondent argued many farmers regard the EIA regime as burdensome and, in fact, a barrier to many traditional farming practices. The same response highlighted the willingness of the farming community to follow sustainable management practices, evidenced by the popularity of Glastir.

A number of respondents pointed out the potential impact of the EU referendum on environmental legislation such as EIA in the future. One of the consultees queried the future of the EIA Regulations in light of impending challenges related to population growth and food security. In their view, the Welsh Government is under a duty to take a long term view which is compatible with the goals of the Well-being of Future Generations (Wales) Act 2015, such as the aim to make Wales more globally responsible. The implementation of the EIA Directive, which can take land out of agricultural production, is not compatible with the new legislative duties and the longer term goals of agriculture.

The same respondent also expressed their concern the Welsh Government goes above the requirements of the Directive in their implementation of the EIA Regulations.

Another point raised related to the “fully funded” aspect of the implementation of the EIA Regulations, as stated by the Welsh Government. The consultee regarded this claim as misleading as the Welsh Government would not be allowed to charge for a statutory process anyway.

One of the respondents urged the Welsh Government to develop better synergies between the EIA Agriculture and the EIA Planning Regulations. This would enhance policy cooperation and present greater protection to the

environment, in particular when planning development affects agriculture, for example in cases of intensive livestock installation and irrigation projects. The same respondent highlighted the need for better cooperation between EIA Agriculture and application and award process of Sustainable Production Grant Scheme as well.

Another comment related to the protection of non-agriculturally managed features, such as ponds, within cultivated land. The consultee underlined the importance of pond habitats, which are also listed as priority habitats within Schedule 7 of the Environment Act 2016. Ponds can be negatively affected by agricultural activities and the response suggested their incorporation into the EIA regime and EIA guidance.

## **Response**

The aim of the Welsh Government is to provide more clarity in the new Regulations, streamline some of the processes and make the Regulations more robust and easier to understand. The EIA guidance will be updated to assist users with understanding the regulatory requirements. In addition, the Welsh Government's officials are always ready to answer queries over the phone or in person related to the application of the EIA regime.

Mapping semi-natural areas accurately would be a difficult task as land changes quickly. In the Welsh Government's view, creating predictive maps would not only be labour and resource intense, it would hinder the implementation of the EIA Regulations in Wales. The semi-natural status and ecological and/or historical importance of land can only be accurately determined by a site visit using a scientific ecological survey. A predictive map of semi-natural areas could provide misleading and incorrect information but could still be perceived as definitive by land owners and managers.

Most importantly, the EIA regime is essentially a screening process and not a barrier to farming. This is proven by the statistical data collated since the introduction of the Regulations in 2002. The semi-natural status of a site does not automatically mean it cannot be improved and, as stated earlier, the majority (93%) of applications received to date have been approved under the EIA screening process. The Regulations hence do not place a blanket ban on any specific activities and farming methods but evaluate the potential effect of specific agricultural projects on a particular piece of land and the wider environment and only stop activities which would result in a significant impact on these. As such, the EIA regime has the scope to protect nationally important habitat sites and Wales' historical landscape.

The preservation of Wales' natural assets and biodiversity is a key guiding principle of the Environment (Wales) Act 2016 and the Well-being of Future Generations (Wales) Act 2015. Climate change, growing population and food security are major challenges we face and it is imperative to develop a holistic approach to addressing these while ensuring our natural resources are not depleted and lost. The Welsh Government welcomes the success of the Glastir voluntary scheme which provides valuable experience and example of

sustainable land management practices farming in Wales can build on in the future.

The Welsh Government accepts the outcome of the EU referendum but remains under obligation to transpose and implement the EIA Directive while the UK remains a member State of the European Union. The EIA Regulations not only transpose the EIA Directive in Wales, but also ensure compliance with international obligations and fulfil an important aspect of meeting wider objectives under the sustainability goals of the Welsh Government. Any change to the regulatory framework following the UK's official exit from the EU will require further policy consideration and consultation with stakeholders and the Welsh public.

In the Welsh Government's view the EIA regime is implemented in accordance with the requirements of the Directive in Wales.

Not all statutory regimes are operated free of charge and there are many examples where local or central governments charge administrative fees. For example, there are set fees within the planning process and the BPS appeals also charge applicants for each appeal they submit. The cost of screenings and appeals under the EIA Regulations is borne by the Welsh Government and there are no plans at present to change any of the current arrangements.

The Welsh Government agrees better cooperation between the different EIA regimes and grant schemes is crucial to improve the delivery of regulatory requirements and improve the protection of environmental assets in Wales, in line with the objectives of the Natural Resource Management approach. The EIA Regulations have a specific remit and function and the aim is to ensure its balanced implementation which is to the benefit to both agriculture and the environment in Wales.