

Number: WG30159



Llywodraeth Cymru
Welsh Government

Welsh Government Consultation Document

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

Date of issue: 27 October 2016
Responses by: 5 January 2017

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

Overview	<p>The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007 (SI 2007/2933) provide environmental protection from agricultural improvement work carried out on semi-natural and uncultivated land in Wales.</p> <p>This consultation seeks your views on proposed changes to the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007 to implement the amended European Directive 2011/92/EU on Environmental Impact Assessment.</p>
How to respond	<p>Please submit your responses to the questions posed by 5 January 2017, in either of the following ways:</p> <p>By Email: EIAResponses@wales.gsi.gov.uk</p> <p>By post: Legislation Development Team, Welsh Government, Spa Road East, Llandrindod Wells, Powys LD1 5HA</p> <p>When responding please state whether you are responding as an individual or are representing the views of an organisation.</p> <p>If responding on behalf of a larger organisation, please make clear who the organisation represents and, if applicable, how the views of members was collected.</p>
Further information and related documents	<p>Large print, Braille and alternative language versions of this document are available on request.</p>
Contact details	<p>For further information:</p> <p>Ryan Davies Legislation Development Team Agriculture – Sustainability and Development Division Welsh Government Spa Road East Llandrindod Wells Powys LD7 1PU</p> <p>01597 828303</p>

Data Protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

1. Introduction

- 1.1. The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007¹ (“the EIA Regulations”) form an essential aspect of protecting farmland habitat sites from damaging agricultural activity, hence preserving Wales’ precious natural resources. The objectives of the EIA Regulations contribute towards achieving a number of goals specified by the Well-being of Future Generations (Wales) Act 2015, in particular creating a healthier, more resilient and globally responsible Wales.
- 1.2. Agricultural areas which have not been intensively managed for a period of time can become important semi-natural habitat sites, supporting diverse plant and animal species which are often unique and irreplaceable in the context of Wales’ natural assets. These habitats are not only important for biodiversity but also provide opportunities for recreational purposes and can educate the younger generations about the value of our environment.
- 1.3. Traditional methods of farming have been diminishing over a number of years and agricultural intensification has seen a dramatic increase creating a rapid decline in the wildlife that is associated with our farmed environment. Hedge laying, rotational and diverse cropping, seasonal grazing and leaving winter stubble and field margins are just some of the farming methods that have become less common in recent years, despite having many benefits for wildlife, the environment and food production.
- 1.4. Farmers are extremely important in helping to look after our countryside and wildlife. Managed sensitively, farmland can support a range of environmentally important flora and fauna. As our natural habitats become fragmented, well-managed farmland can provide a vital link between environmentally important sites, helping wildlife to move about freely and access a giant patchwork of natural spaces.
- 1.5. The EIA Regulations transpose international obligations in terms of ensuring that any projects which are likely to have an impact on the environment are adequately assessed before they start. The sites which fall under the remit of the EIA Regulations are important in the wider context of protecting biodiversity across the UK and Europe and promote Wales’ place as globally responsible. Pioneering primary legislation such as the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016 signify a country which is proactive and at the forefront of environmental protection, aiming to assure a clean, healthy and sustainable Wales.
- 1.6. The primary objective of the EIA Regulations is to protect significant habitat sites and land that has important environmental value. The EIA Regulations can also apply to land with archaeological or cultural

¹ The Regulations transpose Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”).

value, as these sites form an integral part of the wider Welsh historic environment and landscape.

- 1.7. Environmental Impact Assessment (EIA) is a process by which information is collected and consulted upon, in a systematic way, to inform an assessment of the likely significant environmental effects arising from proposed agricultural improvement works. The EIA evaluation considers, (a) the impact of proposed agricultural improvement projects (e.g. plough and reseed) on semi-natural and/or uncultivated land and, (b) restructuring of rural holdings, through a screening process operated by the Welsh Government.
- 1.8. This screening process provides for agricultural projects that do not significantly affect the environment or landscape to be completed, whilst, at the same time, ensuring protection for land with special environmental, historic or cultural importance.
- 1.9. Since the introduction of the EIA regime in 2002, the Welsh Government has considered over 911 screening applications and in 93% of these cases, permission was granted for the proposed work. In instances of non-compliance with the EIA Regulations, the Welsh Ministers have the power to serve enforcement Stop and Remediation Notices. In addition, failure to apply for EIA screening is a breach under Cross Compliance requirements and can result in the application of a financial penalty.
- 1.10. The EIA Regulations assessed approximately 10,000 hectares (ha) of agricultural land, meaning around 700 ha annually since 2002. Not all of this land was habitat, of archaeological interest, or supported species of high conservation significance. However, approximately 1,000 ha (over 64 sites) were *likely to have a significant environmental effect*.
- 1.11. In the same period, the Welsh Government considered 583 enforcement cases in total. Enforcement Notices were only issued on sites of significance, in the national interest and with potential for remediation. Proportionate application means Stop Notices were served on less than 7% and Remediation Notices on less than 8% of the cases investigated.
- 1.12. Across screening applications and enforcement cases, nearly 90 cases (approximately 270 ha) investigated were of nationally important significance. Many of these nationally important areas averaged 3ha in size and were fragmented across a number of sites. This underlines the potential loss of habitat if uncontrolled small scale agricultural intensification projects take place. The EIA Regulations play a key role in controlling this, working closely with farmers, land owners/managers and conservation bodies.
- 1.13. The EIA screening process is applied across the European Union under the requirements of the EIA Directive. The EIA Directive was amended by Directive 2014/52/EU (“the 2014 Directive”) in 2014 in

order to enhance biodiversity protection, strengthen the screening process, improve coherence and synergies between environmental legislation and streamline existing requirements ².

2. Implications of the EU referendum

2.1. The outcome of referendum held on 23 June was that the UK should leave the European Union. Importantly before, and during the negotiations, the UK continues to participate in EU activities, the EU institutions, and abides by EU law. Therefore until the completion of the negotiations the Welsh Ministers are obliged to make legislation to transpose the requirements of the 2014 EIA Directive.

3. The Need for Change

3.1. The EIA regime we operate in agriculture in Wales helps to provide the required protection to semi-natural habitats and protected species.

3.2. The EIA regime is well-established in agriculture in Wales. However ongoing review is necessary to ensure that the current EIA Regulations are adequate in achieving the Welsh Government's wider environmental objectives. Experience with the enforcement of the EIA regime and recent case law highlighted areas where the EIA Regulations could be made more robust in protecting the environment, and, at the same time, streamline existing procedures.

3.3. This consultation looks to build on the existing system and does not intend making fundamental changes to the well-established and well-known agricultural EIA regime. The proposed changes outlined in this document are in line with the Welsh Government's Working Smarter³ agenda. The proposals intend to improve the level of environmental protection across Wales, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term, corresponding with our wider objectives.

3.4. The European Commission requires all Member States to have transposed the new requirements of the EIA Directive by 16th May 2017. Mandatory and optional requirements are explored in greater detail within this document.

4. Our Current Situation

4.1. The EIA Regulations protect semi natural and uncultivated land within Wales, which is home to many rare species of flora and fauna in their natural habitats.

4.2. The process works like this:

² The European Commission has produced an unofficial consolidated EIA Directive which is available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0052&from=EN>

³ <http://gov.wales/topics/environmentcountryside/farmingandcountryside/farming/working-smarter/?lang=en>

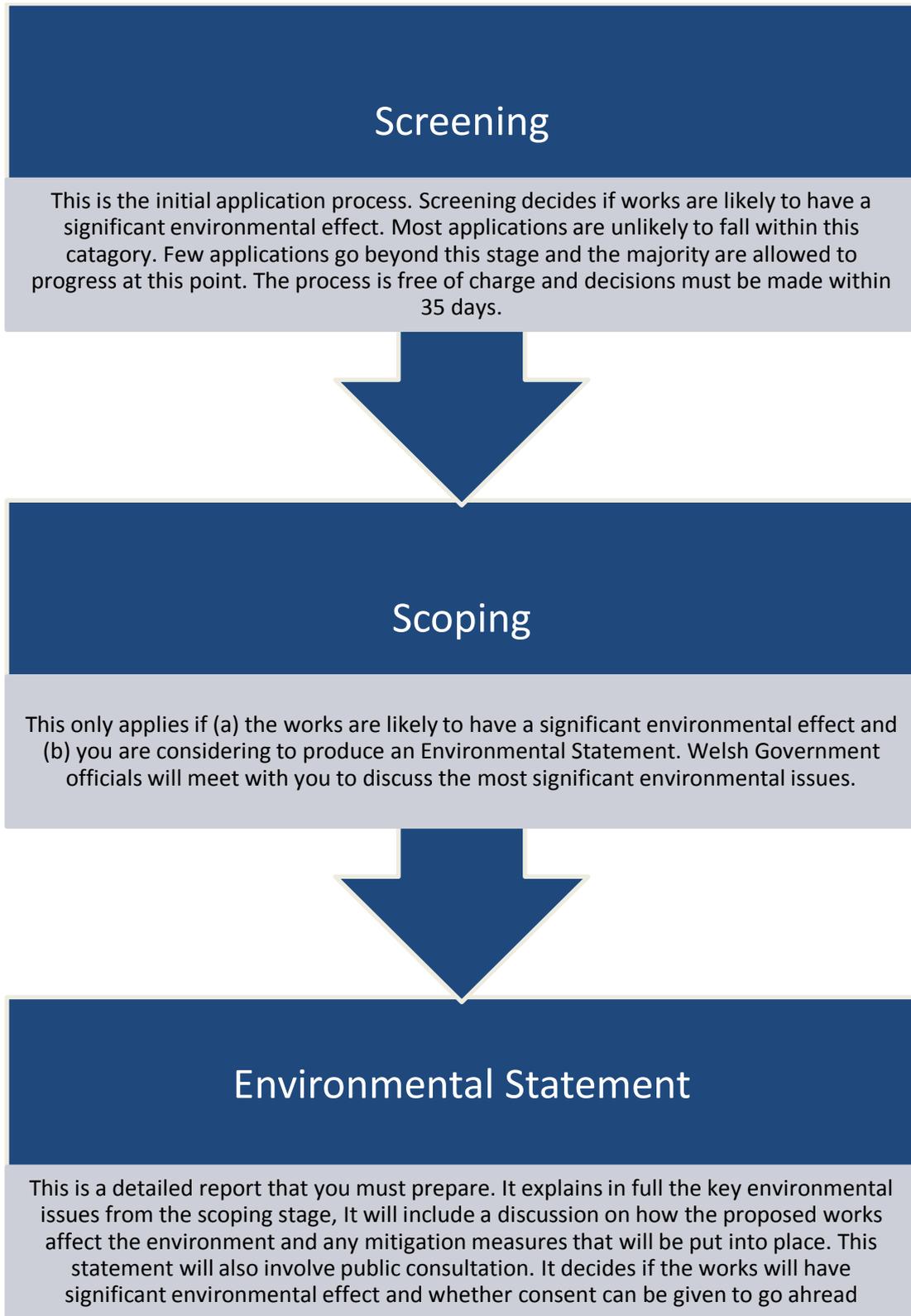
- If the ground contains less than 25% of improved agricultural species (for example perennial ryegrass and clover) and;
- The proposed works are for intensive agricultural purposes (e.g. plough and reseed) then;
- Land managers must complete a Screening application form in order to obtain the necessary Screening decision from the Welsh Government before they proceed.

4.3. Proposed large-scale restructuring works also require a screening decision. However, this applies to any type of land, not just semi-natural / uncultivated land.

4.4. Completing the Screening application notifies the Welsh Government a farmer or land manager is seeking to carry out work which may be covered by the EIA Regulations. The land is then assessed and a decision provided within 35 days. The Welsh Government publishes a public register which contains all screening applications and the outcome of the process at:

<http://gov.wales/topics/environmentcountryside/consmanagement/conservationbiodiversity/eiahome/publicregister/?lang=en>

4.5. The diagram from the current EIA guidance packs below illustrates how the EIA process operates:



4.6. As stated previously, the EIA Regulations are applied proportionately in Wales. Out of all the screening applications considered to date, the Welsh Government only requested the preparation of an Environmental Statement (“ES”) in approximately 7% of cases and only when it was deemed the impact on the environment would be significant.

5. Why are we Proposing Change?

5.1. On the 14 May 2014, the 2014 EIA Directive came into force following a review of the EIA regime undertaken by the European Commission. In the context of Better Regulation, the EIA Directive has been identified as a potential instrument for simplification. At the same time, the amended Directive 2011/92/EU aims to strengthen the quality of the EIA procedure and enhance coherence and synergies with other EU legislation and policies, as well as those policies and strategies developed by individual Member States.

5.2. The Welsh Government wishes to follow the direction given by the European Commission in terms of streamlining existing procedures and enhancing the protection of farmland habitat sites. The consultation provides an opportunity for the Welsh Government to consider changes in order to clarify existing provisions, reflect ongoing environmental and socio-economic changes and challenges and align our EIA Regulations with the principles of Working Smarter by introducing more flexibility into the regime.

5.3. Over the last decade, environmental issues such as resource efficiency and sustainability, biodiversity protection and climate change have become increasingly important in developing and shaping Government policies. It is therefore important the Welsh Government plays its part to develop an EIA procedure which supports these aspirations and positively impacts on the environment and biodiversity in Wales, whilst also supporting a productive agricultural industry.

5.4. This consultation informs consultees of the mandatory elements of the 2014 EIA Directive as well as seeking views on how the Welsh Government is proposing to implement the EIA regime in the future. The outcome of this consultation will help the Welsh Government to develop final proposals and introduce changes in the form of a statutory instrument.

6. Purpose of consultation

6.1. This consultation paper sets out the Welsh Government's proposals for transposing the provisions of the 2014 EIA Directive in respect of the agriculture EIA regime as well as making other changes to the EIA Regulations. The consultation below sets out our proposals on the following areas:

- Definitions;
- Thresholds;
- Screening decisions;
- Scoping opinions;
- Environmental Statements and Competent Experts;
- Enforcement Notices;
- Appeals procedures.

6.2. There are other areas where there is no substantive choice in how transposition can be achieved (for example, the selection criteria used to determine if a project falls within EIA) and so have not been included in this consultation paper.

7. Definitions

7.1. In order to ensure the EIA Regulations are fit for purpose and widely understood by the industry, terminology needs to be clear and concise. It will also be essential where possible to simulate the definitions used in other policy areas' EIA Regulations. This is in line with the outcomes from the Working Smarter report.

7.2. Ensuring the use of consistent terminology across all relevant policy areas will make adherence to the legislation simpler and less ambiguous.

Semi-Natural land

7.3. Regulations which implement the domestic application of the EIA Directive for agricultural projects proposed on semi-natural and/or uncultivated land have been in force in Wales since 2002. The key provisions and definitions within the legislation have remained essentially unchanged since then.

7.4. The EIA Regulations apply to land classed as semi-natural or uncultivated. The EIA Directive does not provide a definition of semi-natural / uncultivated land but permits Member States to specify a definition which is most appropriate and applicable in their territories. It is important to recognise that areas of semi-natural land either have been, or are, subject to some degree of human intervention through farming practices. The European Commission document *Interpretation of definitions of certain project categories of annex I and II of the EIA Directive* (Section 2.3)⁴ acknowledges this. It also acknowledges

⁴ http://ec.europa.eu/environment/eia/pdf/cover_2015_en.pdf

“...the term ‘semi-natural’ is likely to be applicable to large parts of the country area, though the extent of management may vary.” Most habitats in Wales have been subject to some degree of human intervention and are consequently ‘semi-natural’, rather than ‘uncultivated’.

7.5. In Wales, the definition used to determine whether land is subject to the provisions of the EIA Regulations relates to the presence of cultivated agricultural species on any specific site. According to the EIA Guidance issued by the Welsh Government in 2008;

“Land is considered uncultivated or semi-natural if it contains less than 25% improved agricultural species which are indicative of cultivation (for example ryegrass and/or white clover).”

7.6. The above definition applies to all improved agricultural species, not only the indicative species given as examples in the guidance (ryegrass and white clover). The definition was developed by ecology and agriculture specialists, in consultation with statutory agencies. It has been used in the Glastir agri-environment scheme, as well as a number of preceding sustainable land management schemes.

7.7. The definition of uncultivated / semi-natural land is currently included in guidance only. We propose to make this a legal definition within the statutory instrument implementing the EIA Regulations. This will allow more clarity and robustness of the definition.

Proposal:

The Welsh Government proposes adding a definition of semi-natural land, which reflects the terminology of the EIA guidance and Glastir agri-environment scheme, to the EIA Regulations.

Uncultivated land project:

7.8. The concept of uncultivated land can cause confusion in Wales for the simple fact that most land will have had a level of human intervention and will have been farmed at some point.

7.9. However, land which has not been farmed intensively for a number of years can revert to what is considered to be a semi-natural, or uncultivated state, provided it meets the definition outlined in the previous section.

7.10. If a project which aims to increase the agricultural productivity of the land is proposed on such an area, the provisions of the EIA Regulations apply and that area must be subjected to a screening application.

7.11. The EIA Regulations currently contain the following definition;

“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”.

Although the definition is accurate and the Welsh Government does not propose changing it, more clarity is needed in terms of what the definition applies to.

Proposal:

To provide clarity and avoid ambiguity, the Welsh Government proposes renaming the definition to ‘*Project on Semi Natural and/or Uncultivated Land*’.

Question 1

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

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.

8. Thresholds

8.1. The EIA Directive gives Member States the option to set minimum thresholds for land improvement projects, provided they are at an appropriate level and not to the detriment of the local environment.

8.2. Historically, the Welsh Government has not set a threshold within the EIA regime (except for rural restructuring). The average size of a Welsh farm is approximately 46.41 ha⁵ and the average size of a project considered under the EIA Regulations is 16.4 ha.

8.3. To date, the Welsh Government has considered 1474 screening and enforcement cases. Out of these, 312 were under 2 ha. The majority of the projects considered fell between 2 and 5 ha (406 in total). The statistical data highlights that setting a threshold for the EIA agriculture regime, even if it is specified at a relatively low level, could undermine Wales’ natural environment and biodiversity policy as many projects undertaken would still be smaller than the threshold set to trigger the requirements of the legislation.

8.4. In deciding how to define significance and where to set thresholds, the Welsh Government also needs to consider recent rulings of the European Court of Justice (Case C-392/96: The Commission v Ireland). These demonstrate that whilst Member States may set thresholds as they see fit, they have to adhere to the following rules:

⁵ Welsh Government: Farming Facts and Figures
<http://gov.wales/docs/statistics/2016/160628-farming-facts-figures-2016-en.pdf>

- *thresholds must not be set so high the general body of projects below the thresholds are likely to have significant effects on the environment;*
- *thresholds should not stop us applying EIA in cases where significant effects on the environment are likely;*
- *thresholds must guard against the possibility that many small projects may cumulatively cause significant effects on the environment;*
- *thresholds must take account of the 'size' of a project, its 'location' and the 'nature of the project';*
- *thresholds must guard against a person getting round the threshold by conducting a large project bit-by-bit.⁶*

8.5. In the Welsh Government's view, setting thresholds under the EIA regime in agriculture would be contradictory to farming practices in Wales where many small family farms continue to exist. Setting thresholds could cause some *significant* projects to fall outside the scope of the legislation, impacting negatively on Wales' environment and inhibiting the Welsh Government's ability to achieve the objectives of the EIA Regulations. Therefore, the Welsh Government intends to maintain the status quo and retain a 'no threshold' approach to the policy.

Question 3

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

9. Screening

9.1. Screening is a procedure used to determine whether a proposed semi-natural or uncultivated land project is likely to have significant effects on the environment. It should take place at an early stage in the design of the project.

9.2. Currently in Wales, a two stage process is used when considering screening applications. Stage one is an initial desk based assessment using available data such as aerial photography. Where necessary, stage two requires the Welsh Government to work with other relevant bodies such as Natural Resources Wales (NRW), Local Authorities and the Welsh Archaeological Trusts to further develop the response to the screening application. This may include site visits.

9.3. The Welsh Government proposes that Land Owners and Managers describe any mitigation measures that will be put in place for large scale projects which fall under the remit of the EIA Regulations. This

6

<http://curia.europa.eu/juris/showPdf.jsf?text=&docid=44721&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1031102>

requirement would ensure better risk management with readily available records on mitigation measures.

- 9.4. The aim of the Welsh Government is to apply the new proposal proportionately, otherwise this has the potential to increase the cost to applicants. Currently, the screening application is free with the costs borne by the Welsh Government and there is no proposal to change this.
- 9.5. The Welsh Government therefore would only introduce this new requirement for larger scale projects and so the majority of screening applications considered by the EIA agriculture regime would not be caught. Since 2002, the Welsh Government has only dealt with 44 cases which were above 50 ha in size, representing approximately 4% of all screening applications and enforcement cases.
- 9.6. The Welsh Government also proposes requesting applicants to provide details regarding the effect of the project along with any proposed mitigation actions, for example, on large re-structuring projects. It is unlikely that this will alter the existing EIA process and affect small operations and projects.
- 9.7. Screening decisions are delivered once all the necessary evidence has been collated and considered by the Welsh Government. At present, an application is either approved (unlikely to have a significant environmental effect) or an ES is requested (likely to have a significant environmental effect) This process can be made more flexible if the Welsh Ministers were able to attach conditions to the screening decisions or grant approval to only part of the project. This change would streamline the screening process and could potentially reduce the number of cases where the Welsh Ministers would need to request an ES. The change would be in line with the objectives of the amended EIA Directive as it would reduce administrative burden and would also help apply the regulatory requirements in a proportionate manner.

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?

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?

10. Scoping

- 10.1. After receiving a screening decision that a project is a significant project, but before applying for consent, the applicant may ask the Welsh Ministers to provide their opinion on what information should be provided in the ES.
- 10.2. When the Welsh Government receives a written scoping request, checks are undertaken to clarify the details of the project. Once sufficient information on the project has been obtained, the Welsh Government will consult other statutory bodies as appropriate (for example, NRW and Local Authorities). The relevant bodies will be asked to give their opinion on the likely impact of the project and what should be covered within an ES. Currently, this is a fully funded service offered by the Welsh Government and there is no proposal to change that.
- 10.3. The 2014 EIA Directive has amended the scoping process and introduced 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, reducing concern that they may be asked to cover additional topics following submission of their application. The introduction of this mandatory requirement is regarded as a positive change to the EIA Directive.
- 10.4. As scoping will continue to be a voluntary option, the new requirement will not apply in cases where the applicant decides not to request a scoping opinion.
- 10.5. The Welsh Government is committed to supporting applicants where an ES is required and is the reason why scoping is offered at this stage free of charge.
- 10.6. Since 2002, the Welsh Government has requested an ES in approximately 7% of all cases considered. However, no ES has been prepared so far under the EIA Regulations, probably due to the scale of the projects not justifying the costs associated with the preparation of the statement. Projects may also have been amended at screening stage, following discussion with Welsh Government staff. For this reason, the belief is that this small amendment will have no impact in practice and will not significantly affect the way the regime is operated for the vast majority of applicants.

Question 6

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

11. Environmental Statement

- 11.1. If the Welsh Ministers determine that an agricultural improvement project is a significant project, the applicant must obtain consent from the Welsh Ministers prior to commencing any work.
- 11.2. If an applicant has requested a scoping opinion prior to seeking consent, in order to determine whether consent is given, the Welsh Ministers may require the preparation of an ES where further evidence is needed to support the proposed works.
- 11.3. The purpose of an ES is to describe the potential environmental effects of a project on uncultivated or semi-natural land and/or changes to the structure of rural land holdings. The ES can be thought of as a detailed report into these effects and should provide sufficient information for interested parties to make an informed and objective decision on the impacts of any land based project.
- 11.4. The 2014 EIA Directive introduces a new requirement with respect to those who produce and consider ESs. To comply this requirement:
- the developer must ensure that their ES is prepared by competent experts; and,
 - the Competent Authority must ensure that it has, or has access to, sufficient expertise to examine the ES.
- 11.5. We therefore propose to include a requirement in the EIA Regulations that an ES must be prepared by persons who by virtue of their qualifications or experience have in the opinion of the Welsh Ministers sufficient expertise to ensure the completeness and quality of ESs.
- 11.6. The terminology used in respect of the competent authority is different. It is considered that most decision makers have sufficient expertise within their organisation to examine the ES. They will also have the comments of the statutory consultation bodies, including NRW.
- 11.7. As the Welsh Ministers are the Competent Authority for the purposes of the EIA agriculture regime, we therefore propose including a requirement in the EIA Regulations that the Welsh Ministers ensure they have access to sufficient expertise to examine the ES.
- 11.8. One of the aims of the EIA regime is to ensure that the public are given early and effective opportunities to participate in the decision making process. To achieve this, after submission of the application for development consent, the application and ES are publicised. This provides statutory consultation bodies and the public the opportunity to give their views about the proposed development and the ES. The ES, together with any other information which is relevant to the decision, comments and representations made on it, must be taken into account before deciding whether or not to give consent for the development.

- 11.9. To enhance public participation, the 2014 EIA Directive has amended the publicity and participation requirements. The revised Article 6(2) requires the public to be informed electronically of the application and how to participate in the decision making process, Article 6(5) requires that the relevant information (application and ES) is also available electronically through at least a central portal or easily accessible points of access, and Article 6(7) requires that the public consultation on the ES should last for at least 30 days.
- 11.10. The Welsh Government is not proposing to reduce or extend the current 70 day consultation period as it is seen as a reasonable time period for the consultation. However, it is proposed that all relevant details will be published online only and not printed in a newspaper. The rationale for publishing online only is so that all interested parties can have free access to cases. Printing in newspapers can mean that if an interested party does not read that particular publication, they miss the opportunity to firstly, know about the case, and secondly, make a comment.
- 11.11. 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. Therefore the EIA Regulations will be amended to include a new provision obliging the Welsh Ministers to carry out this duty.
- 11.12. As explained in the previous paragraph, ES are only requested in very few cases and to date, no ES has been prepared under the EIA Regulations. It is expected therefore that the overall impact of the proposed changes outlined above will be minimal.

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?

Question 8

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

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 will 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.

12. Enforcement Notices

- 12.1. Remediation Notices are usually issued for a relatively long period of time, up to 10 years. The length of such notices is based on the time required for nature to recover after damaging agricultural improvement work has taken place, such as ploughing, reseeded with improved species and fertiliser application. The Welsh Government has already put safeguards in place to ensure that Remediation Notices issued by the Welsh Ministers achieve the desired effects. At times, it is necessary to alter the management regime specified by the Notice to meet the required outcomes. This is normally in agreement with the landowner and can help shorten the period of the Notice. In these instances, a new Notice needs to be issued. At times, sites also remediate quicker or slower than the timescale specified in the Notice.
- 12.2. To introduce more flexibility into the process, the Welsh Government is proposing to provide the Welsh Ministers with more flexibility to amend and withdraw Remediation Notices. This new provision would be used proportionately and in cases when a change to the original notice is required to ensure that the land management regime is the best fit for the land in question. The Welsh Ministers would also have the power to withdraw notices early before the expiration date of the Remediation Notice, or extend the period of the Remediation without the need of issuing a new Notice.
- 12.3. Such a change would be beneficial in achieving the overall goal of environmental protection, whilst making existing procedures more flexible and straightforward, also reducing bureaucracy.

Question 10

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

13. Appeals Procedures

- 13.1. The EIA Regulations currently provide a mechanism for Land Owners/Managers to appeal to the Welsh Ministers against screening and consent decisions and any statutory notices issued under the EIA Regulations, such as Stop and Remediation Notices. The Welsh Ministers have the power to decide appeals or appoint a person to exercise this function on their behalf. The person who can be appointed by the Welsh Ministers is not specified in the EIA Regulations.
- 13.2. At present, the statutory process stipulated by the EIA Regulations is by and large the same for appeals against Stop and Remediation Notices and appeals against screening and consent decisions. However, there are some slight but distinct differences which make the current appeal

procedure more complex. It is the Welsh Government's objective to streamline and harmonise the appeal mechanism for all types of appeals to make the process easier to understand and follow and to introduce increased consistency into the regime. The aim of the Welsh Government is to operate an appeal process which is robust, transparent and cost-effective.

- 13.3. In particular, applicants have 28 days to appeal against Notices following the date of the issue of the Notice, and 3 months to appeal against screening and consent decisions following the date of the decision. To synchronise the process it is proposed that the appeal period will be set at 28 days for all types of appeals, meaning that applicants will have to issue their appeal within 28 days following the receipt of a statutory Notice or a screening/consent decision. 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.
- 13.4. Regarding screening and consent decision, the reduction of the appeal period will shorten the time during which the status of the land is under dispute and unclear. Although the proposed reduction in the appeal period is relatively substantial, the ability of applicants to submit additional evidence following the submission of an appeal will remain as is the case under the current appeal process.
- 13.5. In recent appeal cases, the Welsh Ministers appointed a Planning Inspector to either determine the case on their behalf, or to provide a recommendation to the Welsh Ministers on the relevant case. The Planning Inspectorate (PINS) was selected to handle the EIA appeals because the Inspectorate was deemed as possessing the necessary experience in dealing with appeals and enforcement cases, including handling public inquiries
- 13.6. It is proposed that the power to appoint a suitable person to act on behalf of the Welsh Ministers is retained in any amended EIA Regulations. In the future, this can be a Planning Inspector or a different suitable person, as long as the person fulfils the criteria of being independent from the Welsh Government and possesses the necessary technical expertise for considering appeals under the EIA Regulations.
- 13.7. Under the EIA Regulations, the appointed person can either determine the appeal or provide a recommendation to the Welsh Ministers, only if the appeal is considered by a hearing or a public inquiry. If the appeal follows a written procedure, the appointed person must determine the outcome of the appeal. To be more consistent in the future, it is proposed that the possibility for the appointed person to provide a recommendation to the Welsh Ministers under both scenarios is introduced.
- 13.8. The Welsh Government proposes streamlining the process by aligning the different types of appeals under one procedure. This would remove

duplication from within the legislation and make the process easier to understand and follow, removing any ambiguity for appellants.

13.9. In summary, it is proposed that all appeal processes under the EIA Regulations will adhere to the following:

- Appeals will need to be submitted within a set timescale, specified as 28 days for all appeals;
- The Welsh Ministers may appoint a person to act on their behalf;
- The appointed person can determine the appeal or provide a recommendation to the Welsh Ministers;
- Appeals can be determined via written procedure or by oral hearing/ public inquiry;
- All appeals have to set out the grounds of appeal in accordance with the EIA Regulations.

Question 11

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

Question 12

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

Question 13

Do you have any comments on the current appeal process?

Any Other Comments

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:

**Consultation
Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:
