

The Environmental Impact Assessment (Uncultivated land and Semi-Natural Areas) (Wales) Regulations 2002

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1. The Environmental Impact Assessment (Uncultivated land and Semi-Natural Areas) (Wales) Regulations 2002 will apply to projects for changing the use of uncultivated land and semi-natural areas where that change will result in the land or area being brought into intensive agricultural use-. These Regulations implement obligations contained in Council Directive 85/337/ on the assessment of the effects of certain public and private projects on the environment not previously implemented. They also introduce into domestic legislation requirements under Council Directive 1992/43/ on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive") for dealing with such projects.
2. The Environmental Impact Assessment Directive (the "EIA Directive") established a procedure for considering the potential environmental effects of land use change. This procedure already applies in relation to planning applications, forestry projects and land drainage improvement works. These Regulations are required to give full effect to the Directive by extending the EIA procedure to projects for the use of uncultivated land and semi-natural areas for intensive agricultural purposes.
3. Under these Regulations the following procedure will apply to such projects.

Application for a screening decision

4. Any person wishing to carry out a project for the use of uncultivated land and semi-natural areas for intensive agricultural purposes must apply for a screening decision. (Regulation 4 prevents any project from being undertaken unless a screening decision is obtained first.)
5. The procedural requirements in respect of screening decisions are set out in regulation 5.
6. The screening decision must be reached in accordance with the selection criteria set out in Schedule 1 to the Regulations. The screening decision determines whether the project is one which is likely to have significant effects on the environment (which will include a project likely to have a significant effect on a European site within the meaning of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) ("the Habitats Regulations").
7. A project, which has been so determined, is defined in the Regulations as a "relevant project"...

Application for a scoping opinion

8. This stage of the procedure is optional. Under Regulation 7 any person wishing to proceed with a relevant project, i.e. a project which is likely to have a significant effect on the environment, may apply to the National Assembly for a scoping opinion. Regulation 6 provides that no person may carry out a relevant project without first obtaining the consent of the National Assembly. An environmental statement must accompany any application for consent and a scoping opinion is the opinion from the National Assembly as to the information which will be required as part of the environmental statement.

Application for consent

9. Regulations 9 and 10 contain the procedural requirements for the application for consent. The application is required to include the environmental statement which is defined as a statement which includes the information in Part II of Schedule 2 to these Regulations and such of the information in Part I of Schedule 2 as is reasonably required to assess the environmental effects of the project.

10. Regulation 11 contains provisions for notifying other States which are parties to the Agreement on the European Economic Area ("the EEA") of projects likely to have environmental effects on those States and for giving them the opportunity to make representations in respect of such projects. It also contains provisions for consideration of the effects of projects in other EEA States which are notified to the National Assembly as being likely to have environmental effects on Wales.

11. Regulation 12 specifies how decisions under these Regulations are to be made in respect of projects partly located in Wales and partly in England.

12. Regulation 13 prescribes how the National Assembly should decide whether to grant consent for a project. It requires the National Assembly to take into account all of the information and representations provided in accordance with these Regulations.

13. Under regulation 13(3) the National Assembly may not grant consent for a project which would involve doing anything which would be unlawful under regulations 39, 41 or 43 of the Habitats Regulations (which implement Articles 12, 13, 15 and 16 of the Habitats Directive) Regulation 39 creates various offences designed to protect wild animals of a European protected species, including their capture, kill or damage or the destruction of the breeding site or resting place of such a species. Regulation 41 prohibits certain methods of taking or killing of animals. Regulation 43 creates various offences designed to protect wild plants of a European species.

14. Paragraphs (4) to (9) of regulation 13 implement the requirements to be met before consent can be granted for a project which is likely to have a significant effect on a European site (either alone or in combination with other projects). Although the same information and representations need to be taken into account, insofar as they may be relevant, as with any other project, there are specific tests to be met. These specific tests implement Article 6(3) of the Habitats Directive and the provisions in these Regulations are similar to those in the Habitats Regulations which apply to other consent regimes.

15. Regulation 13(5) and (7) prohibit the grant of consent for a project which would adversely affect the integrity of a European site unless there are no alternative solutions and the project must be carried out for imperative reasons of overriding public interest. Where the site hosts a priority natural habitat type or a priority species the reason of overriding public interest must be either

- reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or

- other reasons which in the opinion of the European Commission are in the case of the site concerned imperative reasons of overriding public interest.

16. Where the National Assembly, relying on the above, grants consent notwithstanding a negative assessment of the implications for the site it must ensure that any necessary compensatory measures are taken to ensure the overall coherence of Natura 2000 i.e. the European network of special areas of conservation and special protection areas under the Wild Birds Directive, provided for in Article 3(1) of the Habitats Directive.

17. Regulation 13(11) specifies mandatory conditions to which the consents are required to be subject to ensure that consents are implemented and that further consent is required for works which are materially different from those permitted.

18. Regulation 13(12) contains procedural requirements to be complied with in granting or refusing consent.

19. Regulation 13(13) reproduces the provisions in the Wildlife and Countryside Act 1981 which apply where a competent authority intends to grant consent for any project which consists of an operation likely to damage a site of special scientific interest against the advice of the Countryside Council for Wales.

20. Review of Decisions where site subsequently becomes a European site

Regulation 14 and Schedule 3 implement article 6(2) of the Habitats Directive by ensuring that any decisions taken in accordance with these Regulations before the designation of a European site which would permit a project to be carried out which would adversely affect the integrity of the site are reviewed and revoked or modified as necessary.

Appeals

21. An applicant for a screening decision or for consent for a relevant project (or a person interested in a project subject to a revocation or modification under the review provisions contained in Schedule 3) may appeal against an adverse decision to the National Assembly. An appellant is entitled to be heard by a person appointed by the National Assembly for the purpose which hearing may take the form of a local

inquiry if the National Assembly so decides. The general appeal provisions are contained in regulation 15 and Schedule 4 and the procedures for determination by written representations and by hearing or local inquiry are contained in regulations 16 and 17 respectively.

22. Persons aggrieved by decisions allowing projects to take place may apply to the High Court for a review of those decisions within 6 weeks of the publication of the decisions (regulation 18).

Offences

23. Persons who carry on projects without first obtaining either a negative screening decision or consent for the project, or who act in breach of conditions imposed on a consent, commit an offence under these Regulations. It is also an offence under these Regulations to make false or misleading statements in order to obtain a particular decision.

Stop notices

24. If the National Assembly wishes to ensure that unauthorised activities are stopped with immediate effect, it can serve a stop notice on the person carrying out the activities or on any person with an interest in the land upon which the activities are taking place. Non-compliance with the stop notice is an offence (regulation 23).

Reinstatement

25. Regulation 24 contains a power for the National Assembly to serve a notice requiring a person it believes to be responsible for committing an offence to reinstate the land to its former condition. An appeal against a reinstatement notice lies to the Magistrates Court. Failure to comply with the requirements of a reinstatement notice is also an offence.

Enforcement powers

26. Regulation 25 contains powers of entry in connection with carrying out the functions of the National Assembly under these Regulations and includes the power to inspect and take copies of records. Powers are also provided to enter land for the purpose of carrying out works of reinstatement following non-compliance with a reinstatement notice.

The EIA Directive

27. These Regulations are based extensively on the EIA Directive. The EIA Directive established the need for consent and set out the basic procedure to be followed when dealing with an application for consent. Detailed implementation of the EIA Directive was left to member states subject to all mandatory requirements of the Directive being incorporated into the implementing legislation.

28. Thus in relation to all projects for which the EIA Directive requires an environmental impact assessment to be undertaken implementing legislation must be introduced. Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes are specifically mentioned in paragraph 1(b) of Annex II to the Directive as being subject to the EIA procedure.

29. The EIA Directive also specifies the environmental information required as part of this assessment. This is set out in paragraph 2 of article 5, which has been replicated in full in part II of Schedule 2 to these Regulations.

Office of the Counsel General