

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



Frequently Asked Questions

Q1. When did the EIA (Agriculture) Regulations come into force?

A1. The Regulations came into force on 10th October 2006, replacing the EIA (Uncultivated Land and Semi-Natural Areas) Regulations 2001.

Q2. Was there any public consultation on the new Regulations?

A2. Yes. Following a 2005 review of the 2001 Regulations, Defra engaged in a consultation with the public, industry and stakeholders on the policy in the Regulations. The public consultation was launched in August 2005 and closed on 14th November 2005.

Q3. What are the major differences between the 2001 EIA Regulations (as amended) and the 2006 EIA Regulations?

A3. The current Regulations are similar in effect to the [Environmental Impact Assessment \(Uncultivated Land and Semi-Natural Areas\) \(England\) Regulations 2001](#). However the following changes are significant:

- Natural England is the new regulator;
- The meaning of 'uncultivated land and semi-natural areas' has changed;
- The meaning of 'for intensive agricultural purposes' has been clarified;
- Projects only require assessment if they are above certain size thresholds (unless the use of thresholds has been removed by a 'screening notice' applying to an area of land);
- Restructuring projects are now part of the Regulations;
- The Regulations are now part of Cross Compliance under the Single Payment Scheme. As such, breaches may result in reductions of Single Payment. However, the rural restructuring aspects of the Regulations are not part of Cross Compliance.

Q4. What types of work are covered by the EIA (Agriculture) Regulations?

A4. The Regulations cover two different types of project:

- Projects that increase the productivity for agriculture of uncultivated land, or semi-natural areas. The types of work covered will include any work aimed at increasing the productivity of land for agriculture. E.g. it may include increased levels of fertiliser or soil improvers; sowing seed; physically cultivating the soil (by ploughing, tine harrowing, rotavating, etc.); draining land; or clearing existing vegetation either physically or using herbicides. Projects will be caught even if they increase the productivity for agriculture of such land to below the norm.
- Projects that physically restructure rural land holdings. This includes (i) the addition or removal of field boundaries; and (ii) recontouring the land through addition, removal or redistribution of earth or other material.

Q5. What types of land do the EIA (Agriculture) Regulations protect?

A5. The Regulations protect uncultivated land or semi-natural areas (UL/SNA) from being damaged by agricultural work.

Land is considered to be **uncultivated land** if it has not been subject to physical or chemical cultivation in the last 15 years. Cultivation includes:

- Physical cultivation. For instance, agricultural soil disrupting activities such as ploughing; sub-surface harrowing; discing; tining etc.; and
- Chemical cultivation. For instance, chemical enhancement of the soil through the addition of organic or inorganic fertilisers and soil improvers.

Semi-natural areas are defined largely by the plants and wildlife they support. Often they will not have been subject to active cultivation for many years. However, they may in the last 15 years have been subject to (i) low levels of physical cultivation (e.g. chain harrowing may have caused some disturbance of soil, but there will not normally have been any sub-surface cultivation such as ploughing, discing or heavy harrowing); or (ii) low levels of chemical cultivation (e.g. to replace nutrients lost through hay-cutting or water-leaching, as often happens in the traditional management of semi-natural meadows and wetland).

The types of land considered to be semi-natural are fully described at Annex 1 of the Guidance Notes, but in summary they are:

- species-rich hay meadow (upland or lowland);
- unimproved grassland (including calcareous, acid and neutral grassland);
- coastal and floodplain grazing marsh;
- scrub consisting of self-seeded wild shrubs and trees;
- fen, marsh and swamp;
- dwarf shrub heath (i.e. moorland and heathland);
- peat bogs;
- bracken;
- land above the tree-line (i.e. usually over 600m above sea-level);
- standing water and canals.

Q6. What thresholds apply to the new Regulations?

A6. The introduction of thresholds reduces the administrative burden imposed on land managers. Many projects that were formerly subject to the EIA Regulations were found to be unlikely to have significant effects on the environment, and many of those projects have been excluded by the thresholds. The introduction of thresholds has also brought the Regulations into line with other EIA regimes in the UK and EU. The following thresholds apply:

Projects on **uncultivated land and/or semi-natural areas (UL/SNA)** will normally only be caught by the Regulations if the UL/SNA directly affected is two hectares or more in area.

Most **restructuring projects** will normally only be caught by the Regulations if they involve changes to 4 km or more of field boundaries; movements of 10,000m³ or more of earth or rock; or otherwise restructure an area of 100 ha or more.

Restructuring projects in **sensitive areas** (National Parks, Areas of Outstanding Natural Beauty, Scheduled Ancient Monuments, the Broads) are subject to lower thresholds of 2km or more; 5,000m³ or more; or 50ha or more respectively.

Q7. Does the two hectare threshold apply to each field to be cultivated, or to the project as a whole?

A7. The two hectare threshold refers to the total area of uncultivated land or semi-natural area affected by one or more project. For instance, the cultivation of two separate fields that are both one hectare in size would constitute a single project amounting to two hectares in total and would therefore require permission even if it is carried out gradually over a protracted time or if it involves different types of work aimed at increasing the productivity of the land (e.g. ploughing in one area, increased use of fertiliser in another).

Q8. What projects are NOT covered by the Regulations?

A8. The Regulations avoid regulatory overlap so projects that are already covered by certain other legislation are exempt from the EIA (Agriculture) Regulations (e.g. Town and Country Planning; Forestry and Land Drainage EIA Regulations; certain restructuring works on Common Land (e.g. fencing where Commons permission is needed); and Hedgerow Regulations).

For **restructuring projects**, the following would not be covered:

- Projects in residential areas and gardens;
- Maintenance work on existing structures, such as repairing walls, replacing fences, or clearing blocked/clogged ditches;
- Any work already covered by EIA legislation applying to Forestry, Town and Country Planning, Land Drainage Improvement Works and Water Resources;
- Removal of hedgerows (already covered by the Hedgerows Regulations 1997);
- Any work constituting the erection of any building or fence, or the construction of any other work for which consent is required under Section 194 of the Law and Property Act 1925.

Q9. What is the definition of ‘agriculture’?

A9. Agriculture is defined in s.109(3) of the Agriculture Act 1947, as follows:

‘Agriculture’ includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where the use is ancillary to the farming of land for other agricultural purposes, and ‘agricultural’ shall be construed accordingly.

Q10. What if a land manager is unsure, or unable to prove, when land was last cultivated?

A10. The presumption is that land is uncultivated unless the land manager can prove that it has been cultivated within the last 15 years. Evidence may take the form of:

- witness evidence;
- statements from previous owners;
- farm records;
- subsidy records;

- photographic evidence etc.

Where a land manager is unable to produce evidence of this nature to prove the date of last cultivation, they should submit a screening application to Natural England before proceeding.

Q11. Is the landowner considered to be a suitable 'witness' to prove past management? For instance, is a statement from the landowner alone deemed adequate evidence to demonstrate that a field has been cultivated within the last 15 years?

A11. No, references to witness evidence refer to third party evidence only. As such, it would not be acceptable for a landowner to cultivate land for which they are unable to produce appropriate documentary evidence (if challenged) on the basis of their own declaration.

Q12. If land has not been physically cultivated in the last 15 years, but has been subject to annual applications of fertiliser and farmyard manure, would a screening application need to be submitted?

A12. No, provided that the land owner could provide suitable evidence (if challenged) that the land has been subject to chemical cultivation, including the levels involved, AND has ensured that the land is not a semi-natural area.

Q13. Land has not been ploughed in the last 15 years and has only received one application of fertiliser in that time - is this land exempt from the Regulations?

A13. Yes, provided that the landowner could provide suitable evidence (if challenged) that the land has been subject to chemical cultivation, including the levels involved, AND has ensured that the land is not a semi-natural area.

Q14. How do the EIA (Agriculture) Regulations relate to the RPA definition of 'Permanent Pasture'?

A14. The RPA define permanent pasture as 'land used to grow grasses or other herbaceous forage either naturally (self-seeded) or through cultivation (sown), which has **not been included in the crop rotation for five years or more**'.

Paragraph 27 in Section B of the RPA Cross Compliance Handbook states that permanent pasture may be ploughed up for another agricultural purpose, provided that the requirements of the EIA Regulations are complied with.

As such, the [Guidance on the EIA \(Agriculture\) \(England\) \(No. 2\) Regulations 2006](#) should be consulted when considering carrying out a relevant project on land designated as permanent pasture. Where the permanent pasture is uncultivated land or a semi-natural area, a screening application will need to be submitted to Natural England before proceeding.

Q15. I have a grass field that is ridge and furrow but which is intensively managed and receives regular applications of fertiliser etc. Is this cultivated land under the definition and hence not subject to EIA? Do I need to seek consent under any other legislation or scheme conditions?

A15. Whilst your land will be outside the scope of the EIA Regulations, if you have an Entry Level Stewardship (ELS) agreement, you should be aware that the Scheme rules require you to enter any obvious historic features (e.g. ridge

and furrow) on your Farm Environment Record (FER) and protect them. Please see Section 5.6 of the ELS Handbook, which can be viewed at:

<http://defraweb/erdp/schemes/els/handbook/chapter5.htm>

Q16. Is land coming out of an ESA/CSS agreement exempt from the EIA Regulations?

A16. Land coming out from agri-environment schemes will be treated in the same way as any other land if the project will increase its productivity for agriculture. For the purposes of the Regulations, Natural England will not consider land under habitat creation or restoration options under agri-environment schemes to be semi natural for at least 15 years after the last cultivation (excluding the low levels of cultivation mentioned under semi natural areas).

Q17. Does the cultivation of set-aside land require permission?

A17. Set-aside land is treated in the same way as all other land, i.e. in all cases, the landowner should determine whether the proposed cultivation would fall within the scope of the EIA (Agriculture) Regulations, and whether it would be necessary to submit a screening application to Natural England before proceeding.

With regard to how such cultivation would affect an SPS claim, all queries should be directed to the RPA on 0845 603 7777.

Q18. If I plough a field of permanent pasture, what information should I enter on next year's Single Payment Scheme (SPS) claim?

A18. Queries that relate specifically to the SPS should be directed to RPA on 0845 603 7777.

Q19. Is consent required for turf stripping?

A19. Turf stripping normally requires consent under the Town and Country Planning Regulations. Any landowner considering turf stripping should therefore consult with the Local Planning Authority (LPA) in the first instance. Only where the LPA has advised it is outside the planning regulations will a landowner need to consider the relevance of the EIA (Agriculture) Regulations to their project.

Q20. Would the establishment of wild bird/game cover be considered cultivation?

A20. The establishment of game cover usually involves cultivation of the soil prior to sowing a crop. Disrupting the soil (e.g. ploughing, discing, rotavating, direct drilling, etc.) or applying chemicals (e.g. non-selective herbicides) in order to grow seeds would increase its productivity for 'agriculture', regardless of whether the seeds sown are for game cover or an agricultural crop. 'Seed growing' is within the definition of 'agriculture' and, once cultivated, the field could be used for game cover or for something else. If game cover is sown without disrupting the soil, then this may not be considered cultivation. However, each case will need to be examined individually and, if in doubt, seek further advice.

Q21. What should a landowner do if their proposed project is covered by the EIA (Agriculture) Regulations?

A21. Projects that fall under the Regulations must NOT proceed without permission from Natural England. To apply for permission, landowners must first

submit a screening application to Natural England. Natural England then has 35 days to assess the application and reach a screening decision.

If the project is unlikely to have a significant effect on the environment, it will be allowed to proceed. However, if it is likely to have a significant effect, it may not proceed without consent.

In cases where consent is required, the applicant must produce an environmental statement, and make an application to Natural England (at their own expense). Natural England will then consider the application, and consult with the public and others. Natural England will then make a consent decision on whether the project may proceed.

Q22. What details should be included in an Environmental Statement?

A22. The information required by an Environmental Statement is laid out in Schedule 3 of the EIA (Agriculture) Regulations 2006. The Regulations can be accessed through the Office of Public Sector Information (OPSI) website at:

www.opsi.gov.uk/si/si2006/20062522.htm

Q23. How much would completing an application for consent and the preparation of an Environmental Statement cost?

A23. Natural England are unable to offer a standard cost for the preparation of an Environmental Statement since each statement represents the evaluation of an individual project and relates to a specific area of land. Due to the inevitable variations in content involved, it is impossible to provide a standardised costing for the preparation of any particular statement.

As part of any scoping opinion request, Natural England must consult the applicant and any of the relevant consultation bodies before providing its opinion. In doing so, consultation bodies may make a reasonable charge to the applicant for providing information, to reflect the cost of making the information available.

Q24. What might happen if the Regulations are breached?

A24. Any person who begins, or carries out, an uncultivated land project or a restructuring project in breach of the Regulations is guilty of an offence and:

(i) is liable on summary conviction to a fine not exceeding £5,000 (level 5 on the standard scale);

(ii) may be required to reinstate land to its previous condition;

(ii) for uncultivated land and semi-natural areas, the Regulations are part of 'Cross Compliance' under the Single Payment Scheme (SPS), so breaches could result in reductions of Single Payment.

Q25. How could the ploughing of uncultivated land or semi-natural areas affect my SPS claim?

A25. Breaches of the EIA (Agriculture) Regulations could result in a reduction in Single Payment. Queries relating to SPS and Cross Compliance should always be directed to the RPA Cross Compliance helpline on 0845 345 1302.

Q26. I want to plant Christmas trees on a field of grassland. Would the EIA (Agriculture) Regulations apply to this project?

A26. No. The planting of Christmas trees is not considered to be an agricultural activity so the Regulations would not apply.

However, afforestation and/or deforestation projects could fall within the scope of the EIA (Forestry) Regulations, which are administered by the Forestry Commission. You should therefore contact your local Conservancy office, details of which are available from the Forestry Commission website at:

www.forestry.gov.uk

Q27. I believe that a landowner has ploughed up land in breach of the EIA (Agriculture) Regulations. What should I do?

A27. Contact Natural England as soon as possible. This can be done by using any of the contact details shown at the bottom of this document.

It is important that Natural England is able to respond quickly when notified of an alleged breach of the regulations so as to take appropriate action. In order to allow Natural England to respond quickly, provision of the following details when making a complaint are extremely useful:

- Map reference and/or address of land;
- Nature of the work taking place and the date it was first noticed/started;
- Name, address and telephone number of the landowner;
- Where known, past management information of site (i.e. date of last cultivation, landscape or habitat type, etc.);
- Any other relevant information (e.g. impact on archaeological or historic features, public rights of way, designated areas etc.).

The EIA Unit may request that you highlight the actual area in which the suspected project is taking place on a map, which they will provide, to ensure a prompt and effective response to the complaint.

Q28. If I complain to Natural England of a landowner's breach of the Regulations, could the landowner learn of my identity?

A28. The identity of complainants will not normally be disclosed to requests made under the Freedom of Information Act 2000.

Q29. Paragraph 34 of the Guidance on the Regulations states that Natural England must make a copy of all screening decisions available on a public register. What information will this include?

A29. The EIA (Agriculture) Regulations stipulate that Natural England must enter screening decisions into a register, to which the public must have access at all reasonable times. In order to comply with this legal requirement, Natural England will publish the following information concerning each screening decision it has reached:

- EIA reference identifier;
- Date application received;
- Project location;
- Ordnance Survey (OS) field reference(s);
- Landscape type(s);

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Head Office
1 East Parade
Sheffield S1 2ET

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- Details of proposed works;
- Area within field(s) to be brought into use;
- Screening decision;
- Date applicant advised of screening decision.

Please note that your information will be stored and processed in accordance with the Data Protection Act 1998. Moreover, we will respect personal privacy, whilst complying with access to information requests to the extent necessary to enable Natural England to comply with its statutory obligations under the Environmental Information Regulations 2004, and the Freedom of Information Act 2000.

Q30. How do I contact Natural England in relation to the EIA (Agriculture) Regulations?

A30. The EIA Unit can be contacted at:

EIA Unit	T 0800 028 2140
Natural England	E eia.england@naturalengland.org.uk
First Floor, Temple Quay House	W www.naturalengland.org.uk/ourwork/regulation/eia
2 The Square	
Bristol, BS1 6EB	

COMMON NON-EIA RELATED QUERIES

Q1. I want to dispose of waste on the farm or send it elsewhere. Do I need to speak to the EIA Unit?

A1. No. You need to contact the Environment Agency (EA) who administer the agricultural waste regulations. For general guidance and exemption packs, please contact the dedicated agricultural waste help-line on **0845 603 3113**.

Q2. My neighbour has ragwort growing on his land and it is affecting my horses and livestock. Can you help?

A2. No. All complaints and queries concerning injurious weeds should be directed to the dedicated Weeds Helpline of Natural England on **0117 959 8622**.

Q3. I am being affected by runoff from a farmer's field. Who should I contact to rectify this?

A3. Off-site damage following erosion may involve enforcement action and legal proceedings if the problem is causing a statutory nuisance and reasonable steps have not been taken to prevent the nuisance continuing. The complaint would need to be directed to the relevant Local Authority who are responsible for enforcing any possible abatement notice to the landowner.

Where the runoff affects a public road, the Highways Agency should also be informed immediately on **08457 504030**. The Highways Agency have powers under the Highways Act 1980 to serve notices on the landowner requiring them to take action to prevent soil from being washed onto the road and enabling the Courts to impose a fine if they do not comply.

Where the runoff affects a ditch, landowners are required to maintain ditches and there is recourse under the Land Drainage Act 1991, via an Agricultural Land Tribunal (ALT), to ensure ditches are managed appropriately. ALTs are serviced by Defra.

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Head Office
1 East Parade
Sheffield S1 2ET

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Where soil is deposited into watercourses, the Environment Agency should be informed immediately on **08708 506506** as an offence is likely to have been committed. Runoff into watercourses can carry soluble nutrients, pesticides and recently applied animal manures thereby damage the ecology of watercourses, ponds, lakes etc.

In addition, farmers whose land is registered for Single Payment Scheme (SPS), are required as part of the Good Agricultural and Environmental Condition (GAEC) element of Cross Compliance to meet basic standards in order to receive their subsidy payment in full. Failure to comply with GAEC is a Cross Compliance issue and could result in a reduction in Single Payment.

