

Explanatory Memorandum to The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Group, and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017.

Jane Hutt
Leader of the House
20 April 2017

Part One – Explanatory Memorandum

1. Description

The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017, “the 2017 EIA Regulations” transpose international obligations as implemented via the recently amended 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 will revoke and replace the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, “the 2007 EIA Regulations”.

The 2017 EIA Regulations 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 2017 EIA Regulations seek to protect farmland habitat sites and historically important land from damaging agricultural activity, as well as preserving Wales’ natural resources.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

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 changes will not alter how the EIA regime in agriculture currently operates in Wales.

The EIA Regulations will be made under Section 2(2) of the European Communities Act 1972 via the negative procedure. The 2017 EIA Regulations must come into force by the 16 May 2017 in accordance with the transposition deadline set by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. Failure to meet the above deadline risks infraction proceedings being commenced by the European Commission.

3. Legislative background

Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment was amended by Directive 2014/52/EU and the changes made must be transposed by Member States by 16 May 2017.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to:

(a) the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment by virtue of the European Communities (Designation) (No. 2) Order 2001 ; and

(b) the conservation of natural habitats and of wild flora and fauna by the European Communities (Designation) Order 2002.

Relying on the above powers, the EIA Directive to date has been implemented in Wales for the purposes of agricultural improvement projects on uncultivated or semi-natural land by the 2007 EIA Regulations.

The primary objective of the EIA Regulations is to protect sites with significant ecological and/or historic value from agricultural development work, preserving Wales' biodiversity and historic landscape for future generations to come. These sites can be important from a recreational point of view, promoting a healthier and more resilient Wales. The 2017 EIA Regulations transpose international and European obligations, supporting Wales' role as globally responsible in protecting the environment.

4. Purpose & intended effect of the legislation

The EIA screening process within the 2017 EIA Regulations 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.

The 2017 EIA Regulations will be applied proportionately in Wales and will not act as a barrier to farming.

Since the introduction of the EIA regime in 2002, the Welsh Government considered 937 screening applications and requested the preparation of an Environmental Statement in 65 cases (7%) when it was deemed that the impact on the environment would be significant. The Welsh Government has also considered a high number of enforcement cases (602) during the same period. In instances of non-compliance, the Welsh Ministers have the power to serve enforcement Stop and Remediation Notices. Notices are only issued on sites of significance, in the national interest and with potential for remediation.

Since the EIA regime has been operating, 41 Stop Notices and 50 Remediation notices have been issued. (See details in

Table 1)

Table 1: Number of Screening and Enforcement Cases between 2002 and March 2017.

Year	Screenings	ES Requested	Tip-Offs	Stop Notices	Remediations	Miscellaneous
2002	1	1	9			
2003	18	5	72	11	11	
2004	43	12	66	6	4	
2005	92	7	40	5	1	
2006	83	1	27	1	2	
2007	58	1	38			
2008	54	2	28	1		
2009	51	2	24	1	1	
2010	73	6	48	2	5	
2011	60	6	37		3	
2012	52	4	22	1	4	
2013	77	2	36	3	4	
2014	108	9	48	2	6	3
2015	91	3	46	5	5	12
2016	57	4	51	3	4	13
2017	19		10			2
Total	937	65	602	41	50	30

Source: Welsh Government (March 2017).

Current Arrangement

The EIA regime operates in Wales to protect the semi natural and uncultivated land, which is home to many rare species of flora and fauna in their natural habitats. It applies to land considered uncultivated/semi natural. EIA screening is required if:

- the farmer or land manager assesses the ground and it contains less than 25% of improved agricultural species (for example perennial ryegrass and clover) and;
- The works are for agricultural intensification purposes e.g. improving the productivity of the land ;

- Land managers must complete a Screening application form for a decision from the Welsh Government- before the proposed project can proceed.

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

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 legislative framework. The land is then assessed and a decision is provided within 35 days. The Welsh Government publishes a public register which contains all screening applications and the outcome of the process.

The EIA regime also permits third parties to report work undertaken on what they feel is semi natural or uncultivated land, and which it is thought has not got the necessary screening decision. Where restructuring activity of this nature is found to have occurred, the Welsh Ministers can serve a Stop Notice and/or a Remediation Notice on the person responsible for the work, which must be adhered to in order to allow the ground to revert back to its natural state.

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.

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.

The amended EIA Directive sets a mandatory obligation on applicants to employ a competent expert to prepare an Environmental Statement (ES). Regulation 11 of the 2017 EIA Regulations stipulates applications for consent must include an environmental statement as well as setting out the contents of the statement (see also Schedule 3) which must be prepared by someone who has sufficient expertise in the relevant field of the project concerned (“a competent expert”).

The scoping provision in the EIA Directive has been amended 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

and is incorporated in the 2017 EIA Regulations. Scoping within the new Regulations 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.

Changes to the EIA Regulations

The 2017 EIA Regulations provide additional clarity on key terminology in order to increase understating and remove ambiguity. In particular, a definition of semi-natural land has been added to the Regulations. Up until now, the definition was only available in guidance, although it has been consistently applied since 2002 and is widely used in sustainable land management schemes, such as Glastir. This change will ensure consistency across policy applications and strengthen the new regulations.

The 2017 EIA Regulations amend the definition of “uncultivated land project” to “project on uncultivated or semi natural land”. This amendment was necessary because the term “uncultivated land project” has presented some confusion in the past and it may have been understood 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”.

To provide more flexibility and to streamline processes, the revised Regulations provide the Welsh Ministers with the power to amend, terminate and extend statutory Remediation Notices and allow conditions to be added to Screening Decisions or grant the decision only for part of the project.

Under the 2017 EIA Regulations, applicants (land owners and managers) can appeal against Stop and Remediation Notices and against screening and consent decisions. The 2017 EIA Regulations harmonise the appeal processes and streamline the provisions by removing duplication and outlining a single applicable procedure. This change aims to make the process easier to understand and follow, removing any ambiguity for appellants.

5. Consultation

Please see Section 9.

6. REGULATORY IMPACT ASSESSMENT

6.1 Summary of changes and the objectives of the EIA Regulations

Summary of changes

The 2017 EIA Regulations introduce mandatory elements of Directive 2014/52/EU which amends the EIA Directive in respect of the agriculture EIA regime as well as making other changes in order to streamline the regulatory requirements:

Amendments	
Definition	
1	Add a definition of a semi-natural land
2	Rename the definition of 'uncultivated land projects' to 'Project on Semi-Natural and/or Uncultivated Land'
Thresholds	
3	Maintain a no threshold policy
Screening	
4	Request applicants to provide information on mitigating measures at screening stage for larger scale projects
5	Enable the Welsh Ministers to grant a screening approval to only part of the project and/or attach specific conditions to the screening decisions
Scoping	
6	Amended the scoping process and introduced a mandatory requirement for applicants to base their ES on the scoping opinion if one has been sought
Environment Statement (ES)	
7	Require that an ES must be prepared by competent persons
9	Monitor the effect post EIA
Enforcement Notices	
10	Provide the Welsh Ministers with the power to amend, extend or terminate Remediation Notices
Appeals Procedures	
11	Streamline and standardise the appeal procedures
12	set the appeal period at 28 days

Objectives of the Regulations

The objectives of the 2017 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 primary objective of the 2017 EIA Regulations is to protect sites with significant ecological and/or historic value from agricultural development work, preserving Wales' biodiversity and historic landscape for future generations to come. These sites can be important from a recreational point of view, promoting a healthier and more resilient Wales. The 2017 EIA Regulations transpose international and European obligations, supporting Wales' role as globally responsible in protecting the environment.

6.2 Summary of Policy Options:

Option 1: Current EIA (Agriculture) Regulations.

This is the baseline policy scenario to maintain the current provisions in the EIA (Agriculture) (Wales) Regulations 2007. In the baseline scenario, the growth of the EIA applications over the next 10 years (2017-2026) will also be taken into account. It is also important to note that the baseline policy scenario maintains all the benefits since the EIA regime was introduced in 2002, although only the incremental benefits of other policy option(s) relative to baseline will be reported.

Option 2: Revised EIA (Agriculture) Regulations to incorporate changes in EIA Directive 2014 and changes proposed by the Welsh Government.

It is envisaged that most of the changes will have implications (extra costs or savings) for the administrative costs to both agricultural businesses and government while the potential environmental benefits are hard to quantify.

6.3 Costs and Benefits

In the study examining the costs and benefits of the EIA Directive (Oosterhuis, 2007)¹, it was stated that EIA entails costs as well as benefits, both private and public.

A risk by not having the regulation in place would be that the European Commission may consider imposing infraction proceedings on the Welsh Government. The cost to this would be a one of fine of €10,306,000 to the UK as a member state. This may also mean the Commission applies a daily rate to which the UK is non compliant, which could be up to €700,000 per day, however this is more likely to be imposed should the Welsh Government be taken to court for further non compliance.

The study assessed a range of costs associated with EIA, which include: the direct costs involved in preparing the EIA, possible delays in the project's progress, and the costs for the competent authorities, e.g. to process the information, check its quality, and use it in decision making, as well as other costs due to e.g. legal procedures that would not have occurred if there had been no EIA procedure.

The same study also reviewed the evidence on the benefits of EIA, which include environmental and other benefits. The primary benefits were: the improvements in environmental quality (as well as avoided damage to health, nature etc.) that may occur if the EIA has led to a more 'environmentally friendly' decision than would have been taken in its absence. Other benefits may include, for instance, a smooth and streamlined permitting process, with less resistance due to better stakeholder involvement and information

¹ Oosterhuis, Frans (2007). Costs and benefits of the EIA Directive. Final report for DG Environment under specific agreement no. 07010401/2006/447175/FRA/G1.

disclosure (avoiding legal procedures), and improvements in project design due to the emergence (in an early stage) of alternatives that would not have been considered otherwise. The public involvement and participation in decision making procedures relating to projects with potentially significant environmental impacts was also mentioned as one of the benefits of EIA. In the survey of literature within the study, they did not encounter any studies trying to estimate the environmental benefits of EIA in terms of the (quantified or monetised) environmental improvement (or prevention of environmental damage) that can be attributed to the EIA procedure. However, it was pointed out in the study that there is a widespread consensus that EIA can contribute to significant environmental benefits, even if these cannot be quantified or monetised.

The EU review of the effectiveness EIA regulations in 2009 concluded that:

- Benefits of EIA outweighed costs;
- EIA added small proportion to project costs but environmental implications taken into account in project and approval decision-making;
- EIA improved project design and decision-making;
- EIA offered better information disclosure, more public involvement and more transparency.
- EIA also contributed to greater social acceptance of decisions.

In the GHK study to collect information and data to support the Impact Assessment of the EIA Directive (GHK, 2010) ², a survey of literature and case studies indicated that environmental benefits of EIAs include:

- The prevention of negative environmental impacts
- The identification of appropriate measures to mitigate impacts through the design of the scheme
- Raising the profile of the environment in the decision-making process when determining development consent
- Enabling of detailed modelling and evaluation of impacts
- Deciphering the cost and benefits through different measures by option development
- Simplifying the process of environmental assessment and reducing the administrative burden of having to deal with different authorities for

² GHK (2010). Collection of information and data to support the Impact Assessment study of the review of the EIA Directive – Final Report.

different aspects of the development application.

- Some national authorities surveyed have also stressed that EIA can avoid future costs, such as the costs of significant environmental impacts and the costs of legal procedures (including administrative costs) to repair environmental damages.

The same study also indicated that all Member States believe that there are significant environmental benefits from the EIA Directive (GHK, 2010). These benefits relate to:

- *Resource savings: the EIA process facilitates a better integration of environmental concerns into the design of projects, saving public and private resources in terms of both money and time (e.g. reduces the likelihood of projects having to appeal against rejection on the grounds of environmental impacts). The costs of undertaking an EIA are seen as 'negligible' in comparison with the potentially high costs of unanticipated environmental issues or liabilities which may arise at a later stage.*
- *Better project design: the EIA process facilitates a more structured consideration of environmental concerns and project design is improved early on from inputs both by environmental consultants and through public participation, resulting in reduced environmental impacts through modification*
- *Increased public acceptance of development projects: the EIA process formalises public participation, allowing the public to contribute to the design of the project.*

Similarly, in the impact assessment of the EIA Directive (2012), the environmental and wider impacts/benefits were also assessed in a qualitative way due to lack of data and methodological issues. When environmental considerations are taken into account early in the project development and when prevention measures are given priority over end-of-pipe solutions, environmental benefits may translate into additional cost savings, although these are difficult to quantify due to methodological limitations.

In summary, the most important benefit of the EIA screening process is that it allows the likely significant environmental effects of a project to be identified and to be avoided, remedied or minimised at an early stage. It can help to avoid, minimise or compensate for environmental damage at a small cost and at an early stage although the benefits may not be easily quantified. More importantly, securing the environmental benefits or avoiding negative impacts will depend on the effective implementation of mitigation measures identified. It is therefore not straightforward to attribute these benefits (and/or avoided costs) to the EIA process.

Costs and benefits associated with Option 1.

The projection for the number of cases and the area assessed are shown in Table , which suggests the projected number of cases for screening and enforcement is 1,472 representing an average number of 147 cases per year for the next 10 years.

Table 2: Projections on Number of Cases (screening and enforcement) and the area assessed for year 2017-2026.

Year	Projected Number of Cases	Projected Area Assessed(ha)
2017	157	2,428
2018	139	2,136
2019	141	2,012
2020	140	1,717
2021	154	2,298
2022	120	1,560
2023	158	3,591
2024	155	5,125
2025	135	1,759
Total	1,427	24,543

Source: Welsh Government (2017).

In the last 15 years (2002-2016) since EIA regime was introduced, 1,510 cases were considered representing an average annual number of cases at around 100. It is estimated that the average resourcing for case officers (since 2002) has been a full time equivalent (FTE) of about three staff years annually (source: Welsh Government). If applying this ratio 100:3 to the next 10 years, the projected number of cases at 147 per year would need 4.4 FTE (rounded to five people).

If assuming the pay levels are at three levels (2 officers at EO, 2 officers at HEO and 1 officer at G7 pay levels) using the pay scales data for National Assembly for Wales³ from April 2017, the projected staff costs to deal with the screening and enforcement are estimated between £140-£190k per year, with an average annual figure for £160k.

There is no immediate cost to businesses to comply with the EIA Regulations. The screening application remains a no cost service. However where a farming business appeals against a decision made by the Welsh Government, they may endure costs for any legal representation. As a guide a standard cost for a Solicitor would be approximately £200 per hour.

³ Available at: <http://www.assembly.wales/en/gethome/working/recruitment/Pages/pay-scales.aspx>

This is also replicated by the Welsh Government as legal representation is required to defend the reasons for applying a remediation and/or stop notice on to a land project. A hearing can typically cost the Welsh Government circa £12,000.

In terms of the benefits, the Welsh Government has dealt with 1510 cases (application and enforcement combined) since the regulations came into force in 2002 up to the end of 2016. Within the 1510 cases, 918 screening applications to agriculturally improved land (24,456ha, an equivalent to the total area of National Nature Reserves (NNRs) in Wales) were assessed and 592 cases of alleged regulation breaches (12,883 ha) were investigated. The Welsh Government also requested Environmental Statements on 65 screening application cases (1,052ha), which is an equivalent of 7% of total cases assessed, where land was highly significant on habitat and / or species and / or archaeological grounds. This reflected the proportionate nature of screening assessment.

The statistics suggest that EIA (Agriculture) has a crucial role in preventing loss of semi-natural land, improving resilience of semi-natural land and preventing further loss and fragmentation of semi-natural habitats in Wales. Less than 20% of Wales is designated as Sites of Special Scientific Interest (SSSI) or Special Areas of Conservation (SAC). As such, the EIA Regulations play an important role in biodiversity protection on the remaining 80% of Welsh farmland, as well as fulfilling Natural Environment and Rural Communities Act 2006 (the “NERC Act”) obligations. The Regulations are a key tool to assist the Welsh Government in meeting the ambitions and aspirations of the Wellbeing and Future Generations Act and The Environment. Evidence also suggests that habitats are protected by using a very small staff resource.

Habitat loss (or threat to loss) is shown to be dominantly lowland (<300m) and occur in multiple very small scale events (74% of all EIA cases lie below 300m, on ‘lowland’ enclosed farmland).

The EIA process has also been effective over the years, the EIA team has

- engaged with 1,494 land holdings in Wales (equivalent to 7% of mainstream farmers in Wales). The majority of these would have been contacted, visited on farm and works discussed with them. In many cases, signposted to other bodies takes place.
- Issued Remediation Notices in 50 cases of environmental damage (615ha). This is equivalent to 8% of total enforcement cases.
- EIA (Agriculture) has been directly involved protecting 89 Phase 2 grassland sites, with an average case size of 3.2ha, totalling 269ha and dealt with 4-8 Phase 2 grasslands under threat annually from 2003 – 2016.

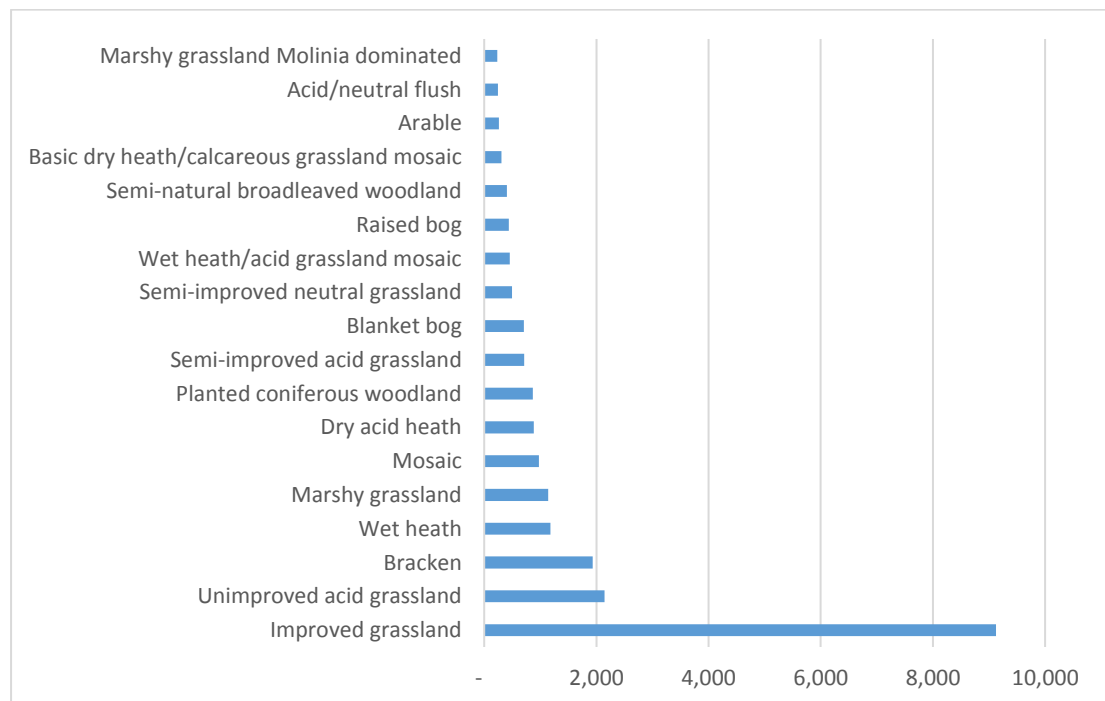
- As a result, 100 screening applications to have withdrawn or amended their applications following a site visit, which demonstrates the benefit of personal contact
- 21% of all cases were less than 2ha, 48% of all cases were less than 5ha and 74% of all cases were less than 10ha, which suggests that the small scale of habitat loss in Wales.
- 37% of all EIA cases were within 500m of an existing SSSI / SAC.
- 88% of all sites assessed fall outside existing statutory designations (e.g. SSSI, SAC, SPA).

Without EIA (Agriculture) Regulations, it is likely all the above land would have been improved, with no environmental assessment of any kind and caused damage to the environment.

In terms of the habitats protected,

Figure 1 shows the habitats involved in the screening applications from 2002 to 2016 (accounting for at least 1% of the assessed area of the application), in which improved grassland accounted for nearly 40% with a total area of over 9,000ha.

Figure 1. Protected Habitats of applications between 2002-2016.



Source: Welsh Government (2017).

There were less than 10 re-offenders following EIA engagement, which suggests that the outreach and engagement have been effective with the farming community, conservation and historic environment bodies.

In terms of reasons for EIA applications, land improvements post agricultural land sales and shifts in ownerships within families have been the key reasons and pose the biggest threats to habitat loss.

Costs and benefits associated with Option 2.

All the impacts discussed in this assessment represent incremental costs and benefits with regard to the baseline scenario. Environmental and wider socio-economic impacts have been assessed in a qualitative manner only, due to the lack of relevant quantitative data. Direct administrative costs and benefits have been quantified, where sufficient information was available.

Costs:

Costs to businesses

The costs related to this policy options include costs to the agricultural businesses and costs to the government.

Under the current EIA (Agriculture) regime, the cost of screenings and appeals under the EIA Regulations is borne by the Welsh Government and there are no plans to change any of these arrangements. It is therefore anticipated that any cost increases related to the changes of requirements will be largely borne by the Welsh Government.

In relation to the proposed changes in Policy Option 2, there are a few areas where the costs for agricultural businesses may increase. However, the impact on agricultural businesses are likely to be very small in terms of cost increases.

The change to request applicants to provide information on mitigating measures at screening stage for larger scale projects may increase the costs to agricultural businesses. This may be the standard cost of a qualified professional land agent, who would charge approximately £90 per hour; this would differ across Wales depending on the company used. In some instances mitigation may not always require specialists and any work can be done on farm, this eliminating further cost. However, the scales of projects tend to be small and this only impacts on larger scale projects which are rare in the Welsh context. Although there is not currently a codified definition to what a large scale project is, in general terms to the current top 10% of cases are projects over 20 hectares. This could therefore be considered as the threshold when mitigation measures need to be used. This would limit the effect on business for land improvement works and capture all restructuring projects. Restructuring projects are more likely to be large scale due to the *de minimis* thresholds used. However, the real issue is complexity of works and opportunities available to mitigate. This will vary case by case.

One of the areas related to the requirement that an ES must be prepared by competent persons. This will involve specialist input from a qualified person and the agricultural business will incur fees for this service, again this would usually be carried out by a qualified land agent, who would charge in the region of £90 per hour.. However, given that historically only 7% of the applications were requested ES and none ESs were carried out, the impact of this cost increase is estimated to be very small.

One other change that might lead to cost increases for agricultural businesses is to provide the Welsh Ministers with the power to amend, extend or terminate Remediation Notices. This may increase the costs to businesses in response to the changes to the Remediation Notices. Again, given that only 50 Remediation Notices have been issued in the past 15 years since EIA regime came into force in 2002, the potential impacts on the costs to businesses are expected to be very small.

The appeal period will be shortened to 28 days which may increase the costs to business if seeking legal presentation and gathering/accessing information in a shorter period of time. Similar to the changes to Remediation Notices, the overall scale of impact will be very small. However, on the other hand, the shortened time during which the status of the land is under dispute and unclear may also benefit land managers and land owners from less uncertainties.

In terms of other changes in relation to streamlining appeal procedures, granting partial screening approvals will reduce confusions and ambiguities which will benefit agricultural businesses.

Costs to government

In terms of costs to the government, changes to the definitions etc. will only lead to minimal costs but will reduce confusion and ambiguity and increase clarity and consistency. On balance, the government will benefit from it and reduce costs in the long run.

Changes to introduce a mandatory requirement for applicants to base their ES on the scoping opinion if one has been sought may encourage farmers to seek a scoping opinion for which the cost is borne by the government. This may increase the costs to government slightly.

Streamlining the appeal procedures should remove any duplication and ambiguity from the Regulations, it would save costs to government in the long run although there might be some short-term costs in the transition period. Short term costs would mainly be communicating to the industry the changes which are being made to the regulations. However this would be fairly minimal as much of this could be done electronically.

Benefits:

As with the benefits of EIA regulations generally, the benefits associated with Option 2 cannot be easily quantified. However, the environmental benefits from the EIA (Agriculture) regime will be maintained and enhanced through simplification and better implementation. Wider benefits will also arise from less confusion, duplication and ambiguity; as well as more clarity and consistency.

Table 2: Summary of Potential Impact of Proposed Changes

	Amendments	Cost to businesses	Cost to government	Environmental and wider impacts
Definition				
1	Add a definition of a semi-natural land	No change (0)	Minimal costs to add the definition to EIA regulations (0)	Less confusion, more clarity and more consistency with other policies (+)
2	Rename the definition of 'uncultivated land projects' to 'Project on Semi-Natural and/or Uncultivated Land'	No change (0)	Minimal costs to rename 'uncultivated land projects' as 'Project on Semi Natural and/or Uncultivated Land' (0)	Less confusion and ambiguity; more clarity (+)
Scoping				
6	Amended the scoping process and introduced a mandatory requirement for applicants to base their ES on the scoping opinion if one has been sought	No change/small savings (-/0)	More scoping decision maybe requested (-)	 (+)
Environmental Statement				
7	Require that an ES must be prepared by competent persons	Small increases in costs (-)	No change or some saving in checking data and information (0/+)	Positive (+)
8	Monitor the effect post EIA	Not implement (not assessed)	Not implement (not assessed)	High (Important to ensure mitigation measures are implemented) (not assessed)
Enforcement notices				
9	Provide the Welsh Ministers with the power to amend, extend or terminate Remediation Notices	Small increase (-)	Small increase (-)	Positive (+)
Appeals Procedures				
10	Streamline and standardise the appeal procedures	No change/less confusion (0/+)	to streamline appeal procedures; small saving (0/+)	Removing any duplication and ambiguity from the Regulations. (+)
11	set the appeal period at 28 days	Small increase if chooses to have legal representation (0/+)	 (0/+)	Shorten the time during which the status of the land is under dispute and unclear. This will benefit land managers and land owners. (+)

6.4 Conclusions:

In conclusion, Option 2 (EIA regulations with proposed changes) will offer more benefits compared to the baseline scenario with a small increases in cost in some areas and small reduction in costs in others. On balance, it will achieve more through better regulation.

7. Sector Impacts

Impact on Local Government

There are no foreseen impacts on Local Government.

Impact on Voluntary Sector

There are no foreseen impacts on the voluntary sector

Impact on Small Businesses:

Small businesses are not expected to be more negatively affected by the proposed changes due to the following reasons:

- By specifying the content of the screening decision and streamlining the process, the proposed changes would ensure that EIA's are carried out only for projects that would have significant environmental effects, avoiding unnecessary administrative burden for small-scale projects;
- Almost all the costs that will incur as a result of proposed changes will be borne by the Welsh Government and therefore will not affect businesses;
- Businesses are most negatively impacted when EIAs are required. For small scale projects and businesses, the cost of preparing an EIA may account for a higher percentage of the total cost of the proposed works/projects compared to larger projects/businesses. However, the data from EIA (agriculture) applications suggests that out of the 1,500+ screening applications received since the introduction of the EIA regime in 2002, no Environmental Statements have been completed. It is not expected that this will change substantively in the future years.

One other area that may increase costs for business is related to the proposed requirement for applicants to provide information on mitigating measures at the screening stage. However, this is only required for larger scale projects.

8. Duties

Equality

No impact on protected groups or children has been identified.

Welsh Language

An impact assessment was carried out for the Welsh Language implications at the consultation stage. No impact on the Welsh Language was identified.

Sustainable Development

The changes in regulations are likely to have a positive impact on the Welsh Government's sustainable development agenda. There is a direct benefit to the outcomes of the Wellbeing of Future Generations Act 2015 and the Environment Act 2016, in that the protection of semi natural land will maintain the biodiversity in Wales which is home to many rare species of flora and fauna in their natural habitats.

9. Consultation

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.

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.

A link to the analysis of the consultation can be found at:

<https://consultations.gov.wales/consultations/review-environmental-impact-assessment-agriculture-wales-regulations-2007>

10. Competition Assessment

Please see Annex A

11. Post Implementation Review

The Welsh Government will monitor the impact of the EIA regulations and will continue to gather data regarding EIA screening applications and enforcement actions in Wales. The Welsh Government will also continue to have a dialogue with key stakeholders, including farming organisations and environmental bodies, in order to collate feedback on the impact of the new legislation and consider future changes to the regulatory regime. Amendment to the policy and legislation may be considered following then UK's exit from the European Union.

A new EIA guidance will be issued once the new regulations come into force. Welsh Government officials will be available to advice individual land managers/landowners and organisations on the application of the EIA regulations in Wales.

Annex A

The competition filter test	
Question	Answer
	yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No