EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL IMPACT ASSESSMENT (AGRICULTURE) (ENGLAND) (NO.2) REGULATIONS 2006

2006 No. 2522

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Regulations implement the EIA Directive and the Habitats Directive in that they—

- replace the existing EIA Regulations applying to projects for the use of uncultivated land and semi-natural areas for intensive agricultural purposes; and
- introduce new rules applying to projects for the restructuring of rural land holdings.

2.2 The Regulations require an assessment of whether such projects, above certain thresholds, are likely to have significant effects on the environment. If so, an environmental impact assessment and public consultation must take place before a final consent decision is made.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Department deeply regrets that it has had to break the 21-day rule in relation to the coming into force of regulation 38(c) of these Regulations, and apologises to the Committee.

3.2 Regulation 38(c) revokes what were meant to be the only Regulations on this subject, the Environmental Impact Assessment (Agriculture) (England) Regulations 2006 (S.I. 2006/2362) before those Regulations come into force.

3.3 In order to correct a minor but persistent validation error in the S.I. template, a final draft of those Regulations was cut out and pasted into a fresh copy of the template. The new version validated correctly, but the cut-and-paste process had introduced an unexpected error into the instrument, mis-numbering all the paragraphs in Schedules 3 to 5. This was noticed after the instrument was made, and it was considered an error that was so obvious and minor that it could justifiably be corrected before the instrument was laid. Unfortunately, the

correction of that minor error introduced a surprising and yet more serious error into the instrument, with regulation 1 becoming regulation 2, etc, leading to consequential errors in the Regulations and a mis-match with the table of contents, explanatory note and accompanying documents. Most regrettably of all, that further re-numbering error was not noticed until after the instrument had been laid and printed. The Department considers that it has no alternative but to revoke and re-make S.I. 2006/2362. The breach of the 21-day rule was necessary in order to revoke that instrument before it came into force. The Department will be taking up certain concerns relating to the S.I. Template with the Stationery Office.

3.4 The other provisions of these Regulations come into force later than was intended, in order to avoid any breach the 21-day rule in relation to the substance of the instrument.

3.5 Regulation 38(a) revokes the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (England) Regulations 2001 (S.I. 2001/3966, amended by S.I. 2005/1430), which were reported for defective drafting by the Joint Committee in its 17th Report of the 2001–2002 Session.

4. Legislative Background

4.1 The Regulations transpose Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended by Council Directive 97/11/EC and Directive 2003/35/EC) ("the EIA Directive").

4.2 They also transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (as last amended by the Act of Accession of the new Member States) ("the Habitats Directive") to the extent that the projects under consideration might have a significant effect on sites designated under that Directive.

4.3 The EIA Directive is implemented in the UK through a range of legislation dealing with land-use matters, including legislation relating to town and country planning, transport, afforestation and deforestation, land drainage and water management projects. The Habitats Directive is primarily implemented by the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716, as amended).

4.4 These Regulations implement the EIA Directive in respect of the projects listed in Annex II (1)(a) and (b)—

- projects for the restructuring of rural land holdings ("restructuring projects"); and
- projects for the use of uncultivated land and semi-natural areas for intensive agricultural purposes ("uncultivated land projects").

4.5 Regulations in relation to uncultivated land projects were brought into force in England in February 2002 (see S.I. 2001/3966, amended by S.I. 2005/1430)

("the 2001 Regulations"). Similar Regulations were brought into force in Scotland, Wales and Northern Ireland at around the same time.

4.6 The 2001 Regulations were amended in 2005 to reflect the changes to the EIA Directive made by Directive 2003/35/EC on public participation.

4.7 These Regulations stem from a review of the 2001 Regulations (as amended), the need to legislate in respect of restructuring projects, and a public consultation on those issues. They revoke the 2001 Regulations.

4.8 A Transposition Note for the Regulations is attached at Annex 1.

5. Extent

5.1 These Regulations apply to England only. The Devolved Administrations are responsible for implementing the EIA Directive in their respective territories.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The purpose of the EIA Directive is to ensure that the environmental effects of a very broad range of development projects are considered before the projects are allowed to go ahead, and ensures that the consent procedure is open to public participation.

7.2 The Regulations are necessary because the town and country planning system does not consider any change in the use of land to agricultural use. Thus some projects were not subject to the assessment process required by the EIA Directive under its original transposition. The European Commission brought this point to the attention of the UK authorities in the late 1990s in relation to uncultivated land projects, and the 2001 Regulations were brought in to remedy the position.

7.3 The 2001 Regulations were prayed against and debated in the House of Commons in 2002 (see Hansard, House of Commons Debates, Volume 379, columns 482–503). During the debate, the Minister (Elliott Morley) made a commitment to review those Regulations once they had bedded-in.

7.4 The review was delayed until the outcomes of the reform to the common agricultural policy in 2003 and 2004 became clearer. The European Commission also made further representations in 2003 on the lack of legislation in respect of restructuring projects.

Consultation

7.5 The 2005 review of the 2001 Regulations recognised the need to bring in appropriate legislation on restructuring projects. After the review was completed, Defra engaged in a consultation with the public, industry and stakeholders on the policy in the Regulations. This includes a public consultation which was launched in August 2005. A copy can be found on Defra's website at this address—

http://www.defra.gov.uk/farm/environment/land-use/eia.

7.6 A summary of the responses to the consultation can be found on the same page.

The effect of the Regulations

7.7 The 2001 Regulations met one of the Department's objectives of protecting the countryside and natural resources. They were an effective partner to the more targeted regimes protecting sites of special scientific interest and specific species of animals and plants. The new Regulations are intended to continue to protect important natural resources and features of the landscape while meeting the Department's aims of reducing administrative burdens on farmers and producing better regulation.

7.8 The Regulations are similar in effect to the 2001 Regulations, which farmers and land managers are familiar with. But the following changes (some of which are outlined in more detail below) are significant—

- Natural England is the new regulator
- restructuring projects are now part of the regime
- the meaning of "uncultivated land" has been clarified
- 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
- "reinstatement notices" are now "remediation notices"
- powers to issue stop notices have been re-drawn
- appeals against decisions and notices lie to the Secretary of State
- prosecutions can now be brought within six months of the discovery (instead of the commission) of an offence, as long as they are brought within 2 years
- in prosecutions, there is a presumption that land is "uncultivated land" unless the defendant raises an issue that land is not uncultivated land, in which case the prosecution must prove that the land is uncultivated land beyond reasonable doubt
- the Single Payment Scheme's cross-compliance rules are updated to reflect the changes.

7.9 In essence, the Regulations contain a two-stage consent process. First, if a farmer or land manager wishes to carry out a project of a scale equal to or above the threshold, he must apply to Natural England for a screening decision. Natural England will decide whether the project is likely to have significant effects on the environment. If the project is not likely to have significant effects, it can go ahead.

7.10 Secondly, if a project is likely to have significant effects on the environment, the applicant must submit an environmental statement assessing the effects of the project on the environment and the application must be subject to public consultation (which, if necessary, must extend to other EEA States). Following the consultation there is a final consent decision.

Further details of some changes

7.11 Natural England, the new agency comprising English Nature, the Countryside Agency and Defra's Rural Development Service ("RDS"), will be the regulator. Natural England will take over the role of administering the regime from RDS, which administered the 2001 Regulations.

7.12 Restructuring projects are a new aspect of the regime. The Department takes the view that restructuring projects include physical operations which give a significantly different physical structure to the arrangement of one or more agricultural land holding, and include—

- the removal or addition of substantial lengths of field boundaries such as hedges, hedge-banks, walls, fences, and ditches; and
- the re-contouring of rural land, for instance by moving large quantities of earth and rock.

7.13 The Regulations avoid overlap with similar regulatory regimes by specifically excluding work which is covered by other regimes: forestry projects, development under the planning system, land drainage and water management projects, removal of hedgerows and work on common land.

7.14 Uncultivated land projects are subject to two clarifications—

- The definition of "uncultivated land" has been changed to mean land which has not been cultivated in the last 15 years, in order to make the Regulations easier to understand and apply; this is intended to reduce the number of wasted applications. Cultivation operations include any agricultural activity which physically affects the land, such as ploughing, harrowing, slot seeding, adding chemical fertilisers and adding slurry or manure. Cultivation does not include operations such as cutting grass, which does not affect the land itself.
- The meaning of "for intensive agricultural purposes" is given as "to increase the productivity for agriculture". This is wider than the interpretation given to the phrase "for intensive agricultural purposes" in the case of Alford v.

Defra [2005] EWHC 808 (Admin), which did not enable the UK to meet the aims of the EIA Directive.

7.15 The introduction of thresholds before projects are caught by the Regulations reduces the administrative burden imposed on land managers. Many projects which were formerly subject to the regime were found to be unlikely to have significant effects on the environment, and those projects should be excluded by the thresholds. The introduction of thresholds also bring the Regulations into line with other EIA regimes in the UK. The following thresholds apply—

- uncultivated land project 2 (2) hectares
- restructuring affecting an area of land 100 (50) hectares
- restructuring affecting boundaries 4 (2) kilometres
- restructuring involving a volume of earth 10,000 (5,000) cubic metres

(The figures in brackets apply in sensitive areas: National Parks, areas of outstanding natural beauty, the Broads, scheduled monuments)

7.16 Natural England may use screening notices to remove the application of thresholds from relatively modest areas of land: 20 hectares for uncultivated land projects, 150 hectares for restructuring projects. This enables the UK to meet the requirement of the EIA Directive to avoid cumulative significant effects on the environment caused by several projects and to ensure that smaller projects which are still likely to have significant effects are caught. Screening notices can only be applied in limited circumstances, requiring an assessment of the facts and risks in each case.

7.17 The extension of the time limit for prosecutions reflects the difficulty in discovering breaches of the Regulations and the need to gather expert evidence before bringing charges. Such an extension is now normal for environmental offences. The reversed burden of proof on the question of whether land is uncultivated land has been introduced because question usually turns on facts known to the land manager, who will be in the best position to raise an issue that the land is in fact uncultivated land.

Cross Compliance

7.18 Farmers in the Single Payment Scheme are required to comply with certain aspects of the Regulations as part of ‘cross compliance’. Under that scheme, the payment of a full farm subsidy is dependent on adherence to certain laws and rules – the cross compliance conditions. Compliance with the 2001 Regulations was part of GAEC 5 (Good Agricultural and Environmental Condition 5) in the cross compliance handbook. A breach of the 2006 Regulations by beginning or carrying out an uncultivated land project, or by breaching a stop or remediation notice, could mean that the farmer’s payments are reduced or withheld. But a person who begins or carries out a restructuring project will not be in breach of cross compliance (for the time being). The Regulations amend the relevant Regulations to make appropriate changes – essentially, the cross compliance condition is unchanged (but takes on board the introduction of thresholds, etc).

Guidance

7.19 Farmers and land managers will be provided with a summary of the effect of the rules and full guidance will be available to farmers wishing to make applications under the Regulations. Farmers will also be given guidance on the effects of the changes to cross compliance.

8. Impact

8.1 A Regulatory Impact Assessment has been prepared for this instrument and is attached at Annex 2.

8.2 Copies of the RIA are available from: Environmental Land Management Division, Defra, Ergon House (Area 5B), Horseferry Road, London SW1P 2AL (or from http://www.defra.gov.uk/farm/environment/land-use/eia).

9. Contact

9.1 Tom Coles (Environmental Land Management Division, Defra, Ergon House (Area 5B), Horseferry Road, London SW1P 2AL) with any queries regarding the instrument. Tel: 020 7238 5484 or e-mail: tom.coles@defra.gsi.gov.uk.

Annex 1

TRANSPOSITION NOTE

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

Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC and Directive 2003/35/EC			
Article	**Purpose**	**Implementation**	**Comment**
2(1)	To require certain projects likely to have significant effects on the environment to be made subject to an environmental impact assessment (EIA) before consent for them is given.	Part 2 Part 3	The Regulations apply to England only. The devolved administrations will put in place their own Regulations. Part 2 makes it a requirement that projects within the Regulations which might have significant effects on the environment are screened to assess whether they are likely to have significant effects on the environment. Part 3 makes it a requirement that an environmental impact assessment is prepared before consent is given for a project which is likely to have significant effects on the environment.
2(3)	To allow Member States to exempt specific projects in whole or in part from the provisions of the Directive in exceptional circumstances.	Regulation 3(3), (4) & (5)	This power is exercisable by the Secretary of State only. Regulation 3(3), (4) and (5) require him to comply with Article 2(3) and the Habitats Directive.
3	States what an environmental impact assessment must contain	Regulation 2(1) & Schedule 3	Regulation 2(1) contains a definition of “environmental statement” which refers to Schedule 3.

4(2) & Annex II (1)(a) and (b)	To require Member States to determine whether each project to which the Directive applies should be made subject to an EIA.	Part 1 & Schedule 1	The Regulations implement the Directive only in respect of the projects in Annex II, paragraphs (1)(a) and (b): • projects for the restructuring of rural land holdings; and • projects for the use of uncultivated land and semi-natural areas for intensive agricultural purposes. Part 1 requires projects of an extent equal to or exceeding the applicable thresholds in Schedule 1 to be subject to case-by-case examination. Where a screening notice has been served in relation to land, all projects must be subject to a case-by-case examination.
4(3) & Annex III	To require specific criteria to be taken into account in determining whether an EIA is required.	Regulations 5, 6 & 8 & Schedules 1 & 2	The thresholds in regulation 5 and Schedule 1 were determined in accordance with Annex III. Annex III is essentially replicated in Schedule 2. The assessments under regulations 6 and 8 of whether projects are likely to have significant effects on the environment require consideration of all the factors in Schedule 2.
4(4)	To require the determination under Article 4(2) to be made available to the public.	Regulation 8(4)(b)	The outcome of a screening decision must be placed in a register available to the public.
5(1) & (3) & Annex IV	To ensure that the person undertaking a project supplies relevant information as part of the EIA.	Regulation 2(1) & Schedule 3	Regulation 2(1) contains a definition of "environmental statement" which refers to Schedule 3. Annex IV is essentially replicated in Schedule 3.
5(2)	To require the competent authority to give, if requested, an opinion on the information to be supplied as part of the EIA and to consult environmental bodies	Regulation 10	Regulation 10 makes provision on scoping opinions, if requested.

	before doing so.		
5(4)	To ensure that any authorities holding relevant information make this available to the applicant for consent.	Regulation 11	Regulation 11 requires consultation bodies to supply information, if requested.
6(1), (2) & (3)	To require Member States to consult environmental bodies and the public on applications for consent and EIAs and to determine detailed arrangements in respect of this.	Regulation 12(3) & 13(2) & (3)	Regulation 12(3), (4) and (5) meet the consultation requirements. Regulation 13(2) and (3) make similar arrangements in relation to any additional environmental information supplied by the applicant.
7	To allow other Member States whose environments are likely to be significantly affected by a project to have their representations considered.	Regulations 14 & 15	This provision is extended to States which are parties to the Agreement on the European Economic Area.
8	To require the competent authority to take into account the environmental statement, the results of consultations and other information provided to it in deciding whether to grant consent.	Regulation 16	Regulation 16 provides that the environmental statement, any additional environmental information and all representations are taken into account before a consent decision is made.
9	To require the public and any affected Member States to be informed of the decision whether to grant or refuse consent.	Regulation 19	Regulation 19 sets out the steps which must be taken after a consent decision has been made.
10a	To ensure that all persons having a sufficient interest or whose rights are affected have access to	Regulation 35	Regulation 35 permits persons aggrieved by a decision to apply to the High Court for an order quashing the decision.

	a review procedure		
12	To require all measures necessary to comply with the Directive to be taken within 3 years of its notification. (In relation to the 1997 Directive, by 14th March 1999 and in relation to the 2003 Directive, by 25th June 2005)	Regulation 1	Regulations on the use of uncultivated land and semi natural areas for intensive agricultural purposes (insofar a the planning system does not deal with such projects) were originally implemented on 1 February 2002, and were amended to reflect the changes made by the 2003 Directive from 25th June 2005. These Regulations update those provisions. These regulations implement the Directive in respect of projects for the restructuring of rural land holdings (insofar a the planning system does not deal with such projects) for the first time.

Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna, as last amended by the Act concerning the conditions of accession of the new Member States			
Article	**Purpose**	**Implementation**	**Comment**
General	The main objective of this Directive is to require Member States to designate sites where habitats or species require protection, to introduce conservation measures in respect of those sites and to take other measures to protect certain species of flora and fauna.	The main provisions of the Directive have been implemented by the Conservation (Natural Habitats, &c.) Regulations (S.I. 1994/2716, as last amended by S.I. 2000/192) ("the 1994 Regulations")	The Regulations implement the requirements of the Directive in respect of any project they cover which might have a significant effect on a site designated in accordance with the Directive.
6(2)	To require Member States to take appropriate steps to avoid the deterioration of natural habitats and habitats of certain species designated under the Directive.	Regulations 17(1)	Regulation 17(1) ensures that the competent authority cannot grant consent for a project which would breach the relevant provisions of the 1994 Regulations in relation to species and their habitats.
6(3) and (4)	(a) To require a project likely to have a significant effect on a site designated or proposed to be designated under the Directive to be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives and to agree to the project only after having ascertained that it will not adversely affect the integrity of	Parts 2 & 3 generally Regulations 3(4), 8 (2), 17(3) & 21 and Schedule 4(1)	The Regulations apply only to projects. The requirements of the environmental impact assessment regime for information to be included as part of an environmental statement together with the requirements for consultation and for giving the public an opportunity to make representations in respect of a project are also intended to meet the information gathering and consultation requirements under the Habitats Directive. Regulation 3(4) secures compliance with the Directive even if the Secretary of State directs that a project is exempt from

	the site.		Parts 2 to 4 of the Regulations. Regulation 8(2) requires that the effect of a project on a European site are considered at the screening stage. Regulation 17(3) requires an assessment of the effects on European sites at the consent stage, and limits the situation where consent can be granted if the project might adversely affect the integrity of a site. Regulation 21 and Schedule 4 requires a reassessment of a decision under the Regulations where land is designated as a European site after a project has commenced.
6(4)	To require certain conditions to be met for the grant of consent notwithstanding a negative assessment of the implications for the protected site.	Regulation 3(4) & 17(4)–(6)	Regulation 3(4) secures compliance with the Directive even if the Secretary of State directs that a project is exempt from Parts 2 to 4 of the Regulations. Regulation 17(4) to (6) make appropriate provision where a project is being considered at the consent stage.

Annex 2

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

Final Regulatory Impact Assessment

Contents

Final Regulatory Impact Assessment

1. Title of Proposal

1. The Environmental Impact Assessment (Agriculture) (England) Regulations 2006 – hereafter referred to as "the Regulations" or the "EIA Agriculture Regulations".

2. Purpose and intended effect of measure

Objectives

2. The Regulations will transpose two requirements of the EU EIA Directive. They will be part of the Government's effort to protect and enhance the rural environment by guarding against possible negative environmental effects of two types of physical operation (or "project").

3. The Regulations will:

   - replace existing EIA rules[1] which apply to *projects for the use of uncultivated land and semi-natural areas* ("UL/SNA") *for intensive agricultural purposes*. Defra made a commitment to Parliament in 2002 to review the rules once they had bedded-in;
   - introduce new EIA rules applying to *projects for the restructuring of rural land holdings*. The UK agreed to introduce these rules following European Commission infraction pressure.

Summary of the Regulations

4. The Regulations will apply in England only. Scotland, Wales and Northern Ireland will introduce similar legislation in due course.

5. The Regulations will restrict the ability of farmers and rural land managers to carry out relevant projects on land they own or rent. They will apply to:

   - *projects which increase the productivity for agriculture of uncultivated land and/or semi-natural areas.* Land covered will either (i) not have been cultivated (physically or chemically) in the last 15 years; and/or (ii) support a rich variety of self-seeded wild plants and associated wildlife. Activities covered will include the addition of soil improvers, increased levels of fertiliser, sowing seed, or physically disrupting soil (e.g. by ploughing, tine harrowing or rotavating) to make it more productive.

[1] The Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (England) Regulations 2001.

- *projects which physically restructure rural land holdings*. This includes (i) addition or removal of field boundaries; and (ii) recontouring of land through addition, removal or redistribution of earth or other material.

6. Normally, the Regulations will only apply to projects over a certain size. For instance:
   - projects on *uncultivated land* and/or *semi-natural areas* will normally only be caught if the land concerned exceeds two hectares in area;
   - restructuring projects will normally only be caught if they involve changes to more than four kilometres of field boundaries; movements of more than 10,000 cubic metres of earth or rock; or otherwise restructure an area in excess of 100 hectares;
   - restructuring projects in *sensitive areas* (i.e. National Parks, the Broads, Areas of Outstanding Natural Beauty or Scheduled Ancient Monuments) are subject to lower thresholds of 50% of the values for other land.

7. The Regulations avoid overlap with similar regulatory regimes by specifically excluding work which is covered by other regimes: forestry projects, development under the planning system, land drainage and water management projects, removal of hedgerows and work on common land.

8. Relevant projects which exceed the thresholds may not proceed without permission from Natural England. The process of applying for permission is:
   - a person wishing to undertake a relevant project must make a *screening application* to Natural England;
   - Natural England must assess the application and inform the applicant of its *screening decision*;
   - if the project is unlikely to have a *significant effect on the environment*, it will be allowed to proceed. However, if Natural England consider it is likely to have a *significant effect*, it may not proceed without *development consent*;
   - if *development consent* is required (and if the applicant still wants to do the project), the applicant must produce an *environmental statement*, and make an application to Natural England;
   - when Natural England is satisfied (e.g. with the quality of the environmental statement) it will consult the public and others;
   - Natural England will make a *development consent decision* on whether or not the project may proceed. The decision will involve weighing likely environmental impacts against other (e.g. environmental, economic and social) factors.

9. People who breach the Regulations risk prosecution and/or being required to take remedial action – e.g. by reinstating land to its previous condition.

10. The Regulations, as they relate to UL/SNA projects, will continue to be subject to "cross compliance" under the Single Payment Scheme. Thus breaches may result in deductions in farm subsidies. We do not plan to extend cross

compliance to apply to those aspects of the Regulations relating to restructuring projects.

Rationale for Government Intervention

11. The rationale for Government intervention is twofold:
    - the Regulations will contribute to the Government's environment objectives in England by addressing potential risks posed by the types of project covered by the Regulations. Risk assessments are at Annex A (page 21 below);
    - as an EU member state, the UK is required to implement the EU Environmental Impact Assessment (EIA) Directive (85/337/EEC as amended).

3. Consultation

Within Government

12. In developing the Regulations, we consulted the Department for Communities and Local Government, the Natural England Confederation (i.e. the Rural Development Service, the Countryside Agency and English Nature), English Heritage and the Devolved Administrations of Scotland, Wales and Northern Ireland.

Public Consultation

13. We conducted a public consultation from August to November 2005. We received 53 responses from a variety of stakeholders, including farmers, local authorities and environmental interests.

Impact of public consultation views

14. Views received from stakeholders during the public consultation helped us shape the new Regulations, both in confirming assumptions and recommendations we made in the consultation paper, and in suggesting alternative approaches. Examples of where consultees had a particular influence are:
    - in the consultation paper, we sought views on threshold options for UL/SNA projects varying from 4 ha to 30 ha. Environmental interests made compelling arguments in favour of smaller thresholds, to offer a greater degree of protection to UL/SNA, which often occurs in relatively small patches. As a result, we opted for a 2 ha threshold.
    - land manager interests were strongly in favour of a simplified test for identifying uncultivated land (the previous test had been difficult for them to apply). They were also strongly against lower thresholds for restructuring projects, which they thought might have negative economic impacts on their businesses and lead to an unwarranted increase in "red-tape". We will adopt the simplified new test for uncultivated land. We will also ensure that

thresholds provide environmental protection against large scale restructuring, whilst avoiding disproportionate new burdens on businesses.

4. Options

15. Early in policy development we rejected "do nothing" options. Such options would involve not implementing the EIA Directive with regard to UL/SNA and restructuring projects, which is what the UK had done since 1985 when the Directive came into force. However, following European Commission infraction pressure (in 2001 and 2004 respectively for UL/SNA and restructuring projects), and in line with legal advice, such a policy is no longer considered viable.

16. Our options for shaping the Regulations were limited by the EIA Directive, which prescribes what must happen once a project has been found likely to have *significant effects on the environment*. However, we had some leeway in deciding:

    (i) the **scope** of the rules – i.e. what do we mean by *projects for the restructuring of rural land holdings* and *projects for the use of UL/SNA for intensive agricultural purposes*?

    (ii) whether to use **thresholds** to excuse smaller projects we consider unlikely to have *significant effects on the environment* – and, if so, at what level to set them. Nearly all other EIA legislation in the EU uses thresholds, and the way they are set largely determines how much regulatory burden the rules will place on the businesses they affect;

    (iii) how we enforce the rules.

Options for Rural Restructuring projects

17. The Directive does not define what it means by *projects for the restructuring of rural land holdings*. It is likely that the Directive intended to apply EIA procedures to large-scale restructuring e.g. of farms or rural landscapes. This view is supported by the way that other EU member states implement EIA rural restructuring rules. For instance, Ireland applies its rules to projects involving land parcels over 100 hectares; the Netherlands over 500 hectares; and Belgium over 1,000 hectares.

18. We define *projects for the restructuring of rural land holdings* as physical operations which give a significantly different physical structure to the arrangement of one or more rural land holding. They include:

    - the removal or addition of substantial lengths of field boundaries such as hedges, hedge-banks, walls, fences, ditches or tracks;
    - the recontouring of rural land, for instance by moving large quantities of earth and rock.

19. The rules will not apply to work already covered by the planning system; other EIA legislation; the Hedgerows Regulations 1997; maintenance work on existing structures; or work on rural land such as residential areas and gardens.

20. In the public consultation, there was general agreement with the types of project that would be caught by restructuring rules.

21. The main options for how many restructuring projects will be caught by the Regulations depends on how we set **thresholds** below which projects will not be caught by the rules.

22. Early in policy development, various options were considered. They ranged from large thresholds similar to those used by some other EU countries, to very low thresholds (e.g. at the scale of small single fields or lower) which could catch many routine farming activities. Ministers asked for options to be developed which would:

    (i) ensure that the new rules caught large restructuring projects of a type likely to affect several medium sized fields or greater;

    (ii) avoid catching smaller scale changes which are part of routine farming activities.

23. Ministers also asked for the inclusion of a safeguard provision (***screening notices***) which would allow the regulator, Natural England, to disapply thresholds at specific sites if necessary. The purpose would be:

    - to allow targeted protection of smaller sites in specific circumstances, to guard against the chance that many sub-threshold projects might individually or cumulatively have *significant effects on the environment*…
    - …whilst avoiding low "blanket" thresholds, which could place a disproportionate burden on large numbers of land managers and catch many projects unlikely to have *significant effects on the environment*.

24. These decisions took account of the relatively low level of risk thought to be posed by restructuring projects, and the counter risks that harsh restructuring rules might have disproportionately negative effects on the rural environment and businesses (see risk assessment at Annex A).

25. Ministers also took account of advice from Defra's Ministerial Challenge Panel on Regulation (which champions good regulatory practice in Defra), which recommended that it would be proportionate to introduce high thresholds, similar to those used by other EU countries.

26. In late 2005, we consulted on three threshold options for each of the two broad categories of restructuring project – *area/volume based projects* (e.g. recontouring of land) and *linear feature based projects* (e.g. removal/addition of field boundaries). We also proposed lower thresholds for *sensitive areas* (e.g. National Parks and areas of Outstanding Natural Beauty), to reflect the fact that projects undertaken in such areas would be more likely to have significant effects on the environment.

27. The shaded options highlight the threshold options chosen by Ministers to be contained within the EIA Agriculture Regulations.

Area/volume Based Thresholds

Option	**Non-Sensitive Area**		**Sensitive Area**	
1. Zero Thresholds	All projects to go through case by case screening			
2. Lower Thresholds	50 Ha	2000m^3	20 Ha	1000m^3
3. Middle Thresholds	100 Ha	5000m^3	50 Ha	2000m^3
4. Higher Thresholds	200 Ha	10000m^3	100 Ha	5000m^3

Linear-feature Based Thresholds

Option	Non-Sensitive Area	Sensitive Area
1. Zero Thresholds	All projects to go through case by case screening	
2. Lower Thresholds	2 km	1km
3. Middle Thresholds	4km	2km
4. Higher Thresholds	6km	3km

Options for uncultivated land and semi-natural areas (UL/SNA) projects

28. In reviewing the current *EIA (Uncultivated Land and Semi-Natural Areas) (England) Regulations 2001*, we looked at the performance of the regulations. The main points were:

- the regulations performed a useful role in protecting threatened UL/SNA, particularly small areas, which were not already protected by other measures such as environmental designations. Since they were introduced, the UL/SNA rules had saved perhaps a few hundred hectares of UL/SNA per year. A table with data on performance is at Annex A para 4.
- the regulations affected relatively small numbers of farmers. For instance, about 500 screening applications were made in the first three years of the regulations' existence.
- the regulations were not user-friendly. In particular, they used an ecological test to identify *uncultivated land* (i.e. land with less than 25-30% of listed *species indicative of cultivation*). It could be very difficult for farmers to apply

this test – leading to uncertainty and encouraging unnecessary applications (about 50% of applications were outside the scope of the rules).

- the EIA rules (as currently framed) may inadvertently deter farmers from joining agri-environment schemes. The schemes often use seed mixes which mean land is classed as *uncultivated* almost as soon as it is sown. Thus a farmer who thinks he is entering a voluntary scheme may find he faces the uncertainty of making an EIA application if he wanted to return the land to production when the scheme ends.
- in 2001, Defra had decided to introduce tough rules with no thresholds to address what was thought to be a high risk posed by agriculture to UL/SNA following large scale losses in the 20th Century. Reviewing the EIA rules made us reconsider the thresholds question because:
  - (i) our assessment of the risk to UL/SNA is now lower than the 2001 estimate (e.g. following reform of the EU Common Agricultural Policy, the introduction of "cross compliance" and the Single Payment Scheme, and expanded agri-environment schemes);
  - (ii) the lack of thresholds has produced unnecessary administrative burden for farmers and the regulator. For instance, only 10% of projects caught by the regulations turned out to be likely to have significant effects on the environment (some of these projects concerned small areas of land);
  - (iii) nearly all other EIA laws in the UK have (relatively small) thresholds, and other EU countries often use larger thresholds, so there was a question of consistency.
- enforcement mechanisms were working largely successfully, however some minor improvements could be made, such as extending the time in which the regulator may start prosecutions for breaches of the Regulations.

29. Our options for changing the EIA UL/SNA rules fell into two main categories, namely:
    - whether, and how, to introduce a more farmer-friendly test for UL/SNA projects;
    - whether to introduce thresholds for UL/SNA projects, and if so what size they should be.

Uncultivated land test

30. In the public consultation, we proposed dropping the complex ecological test for *uncultivated land*, and replacing it with a more farmer-friendly "time since last cultivation" test. The new test would depend on whether land had been cultivated in the recent past (we suggested 15 or 20 years).

31. In the consultation there was widespread approval for new "time since last cultivation" test. There was general agreement that the suggested 15/20 year cut-off point was sensible. Some stakeholders favoured 10 years. The Natural England Confederation favoured 15 years; and the National Farmers Union preferred 20 years.

32. Having considered consultation responses, we consider:

- that *cultivation* should include (i) physical soil disrupting activities such as ploughing, harrowing etc; and (ii) chemical enhancement of soil such as the addition of fertilisers. *Cultivation* does not include operations such as cutting grass, which does not affect the land itself;
- that 15 years since last cultivation is an appropriate cut-off point between land being considered *cultivated* and *uncultivated*. For instance, the balance of views and evidence suggests that 15 years is the period after which land begins to become interesting in terms of biodiversity. Also, this time period would limit any disincentive to enter agri-environment schemes. A 15 year test will ensure that relevant newly planted agri-environment scheme land (e.g. field margins and habitat creation) do not get caught by EIA until after 15 years – like any other land. Also, 15 years falls in the middle of the second term of a higher level environmental stewardship agreement, and at the end of three terms of entry level stewardship.

33. The only drawback with this approach is that it would be difficult for Natural England to enforce the rules if it had to prove (in criminal cases beyond reasonable doubt) that land is *uncultivated land*. This is because nearly all information on cultivation is kept by the farmer or land manager. Therefore, we are applying a "reversed burden of proof". There would be a presumption that the land is *uncultivated land*, unless the farmer or land manager can provide evidence that the land has been cultivated in the last 15 years (e.g. by witness evidence, farm records, subsidy records, photographic evidence etc). If the farmer raises such evidence, and Natural England (NE) disagree, NE would have to prove beyond reasonable doubt that the land is *uncultivated land* (e.g. using expert evidence, etc).

34. The majority of semi-natural areas will be caught by the test for uncultivated land. But there are certain types of semi-natural area which are not caught by the test, so the criteria for semi-natural areas should include the following categories of land:

- Bracken
- Species-rich hay meadow
- Fen, marsh and swamp
- Bog
- Montane habitats
- Semi-natural scrub
- Dwarf shrub heath
- Wet grassland in coastal and river floodplains
- Unimproved grassland (including calcareous, acid and neutral grassland)
- Standing water and canals

35. This list has been drawn-up by an expert working group. It has been designed to reflect the most common and most easily identifiable semi-natural habitats. We will give clear guidance to farmers on how to identify this land.

Intensive agricultural purposes

36. We also had some leeway over how to define the term (*projects for the use of UL/SNA…*) *for intensive agricultural purposes*, which the Directive does not define. We prefer to define the term broadly, to catch any project which *intensifies* the agricultural productivity of UL/SNA. This is because:

    1. we want the rules to protect UL/SNA, and it is *intensification* which puts it at risk;
    2. if we tried to distinguish between *intensive* and *non-intensive* projects (and only caught the former), a person could easily get round the rules by using *non-intensive* techniques until land no longer qualified as UL/SNA, then proceed with full intensification;
    3. a split between *intensive* and *non-intensive* would inevitably be unclear, causing legal uncertainty for land managers and the regulator. It would also be contradictory (e.g. it would make little sense to stop damage by *intensive* techniques, but allow it by *non-intensive* techniques);
    4. a series of European Court rulings have ruled in favour of broad interpretations of the EIA Directive, in pursuit of the Directive's aim of

protecting the environment. Thus a broad definition is probably necessary to implement the Directive properly.

37. There was considerable support in the public consultation, particularly from environmental interests, for a broad and enforceable interpretation of "for intensive agricultural purposes".

Thresholds

38. The threshold question is at the heart of where we strike the balance between:
    a) protecting UL/SNA, much of which exists in small patches; and
    b) keeping the rules proportionate, cost effective, consistent with similar legislation, and minimising red tape.

39. In the public consultation, we sought views on the following threshold options. As with the restructuring rules, it was proposed that thresholds would be supported by:
    - screening notices – whereby thresholds could be disapplied in certain circumstances;
    - sensitive areas – whereby lower thresholds would be applied to certain areas, to reflect their environmental significance.

Option	Threshold	Threshold for sensitive areas
1. Case-by-case assessment	All projects go through case by case screening	
2. Low option	4 ha	2 ha
3. Low-medium	10 ha	5 ha
4. Medium-high	30 ha	10 ha

40. Some consultees rejected a thresholds-based system for UL/SNA. This was essentially because (i) much UL/SNA exists in small patches; and (ii) they considered that the loss of any amount of UL/SNA should be considered a *significant effect on the environment*. Other environmental interest groups felt low threshold options were appropriate. Land managers favoured larger thresholds (e.g. 5 ha or more), pointing to the large thresholds used by other Member States to support their case. Some consultees felt there should be lower thresholds for *sensitive areas*, but others thought this would complicate the rules.

41. In light of consultation responses, Defra will introduce a threshold for UL/SNA projects. We feel this will (i) make the rules more consistent with similar EIA rules in the UK; (ii) make the rules more proportionate in light of the changed risk assessment; and (iii) reduce regulatory burdens on farmers.

42. As regards the level at which thresholds should be set, Defra considers that a **2 hectare threshold** is appropriate. This is lower than the threshold options we consulted on – and it reflects strong representations from environmental interests on the potential value particularly of relatively small areas of semi-natural land.

5. Benefits and Costs

Rural restructuring projects

43. It is difficult to give an accurate forecast of the likely costs and benefits of the new rural restructuring rules because we do not have detailed figures on the extent to which *projects for the restructuring of rural land holdings* occur in England each year. In the past, in the absence of legislation relating to such projects, there has been no reason to gather such data (there is data on specific types of *restructuring* e.g hedgerow removal, but hedgerow removal is already covered by existing legislation and will be exempt from the new restructuring rules to avoid duplicating legislation).

44. There was major rural restructuring throughout the 20th Century as intensive agriculture expanded, and new farm machinery made restructuring more achievable and more desirable. Largely speaking, such restructuring declined significantly after the 1980s. Nowadays, restructuring still occurs – e.g. as a result of farms expanding, or splitting into smaller units, or work done under agri-environment schemes. To the extent that modern restructuring happens, it could have either positive or negative effects on the environment depending on the nature of the work.

Benefits

45. The main benefits of the new restructuring rules are that they will provide a safeguard against:

(i) the possibility that restructuring projects over the thresholds (which are not already caught by existing measures) may have significant negative effects on the environment;

(ii) the possibility that a sub-threshold project, or many sub-threshold projects cumulatively, may have significant negative effects on the environment (in which case Natural England could issue *screening notices* to remove the threshold and require EIA screening).

46. The extent to which these benefits become real rather than theoretical depends on (i) how many land managers want to undertake such projects during the lifetime of the restructuring rules; and (ii) the effects such projects might have. These are unknown quantities, although we expect few such projects to occur in the near future, particularly as the new restructuring rules may well deter such projects.

47. In assessing likely benefits, we should not "double-count" benefits already provided by various measures already in place to deal with specific types of *restructuring* which government has addressed in the past. They include:

- the Hedgerows Regulations 1997, which already give a high degree of protection to *important* hedgerows – and other EIA legislation (e.g. relating to the planning system, deforestation and land drainage), which guards against other types of negative effect. Work already caught by such other legislation will be exempt from the restructuring rules;
- "cross compliance" under the Single Payment Scheme, which guards against removals of lengths of stone walls over 10 metres long;
- agri-environment schemes which conserve and restore dry stone walls and hedges.

Costs

48. The new restructuring rules will impose a **new regulatory burden on some land managers** – but because of the thresholds being applied the level of burden is considered to be low. For instance:

- for the vast majority of land managers, there will be very little new burden (i.e. we expect very few to wish to undertake projects caught by the rules);
- for those few land managers who may wish to undertake projects caught by the rules, there will be new burdens. The EIA process is relative inexpensive at the screening stage (i.e. it might take say 3-8 hours to read guidance and make an application, then wait a maximum of 35 days for a screening decision). Costs would rise if Natural England required the land manager to produce an environmental statement – and the land manager wished to do so. Often the land manager would need to hire a qualified consultant to do this – for a cost of say £2-5k. The land manager may have to wait some months for a decision (e.g. while a public consultation is carried out). Our experience from running the UL/SNA rules is that very few people choose to produce environmental statements if they fail to get through screening (after more than 500 UL/SNA applications, no one has yet produced an environmental statement);

- we expect any new burden on land managers to be offset (or more than offset) by the introduction of thresholds into the UL/SNA rules, as discussed below;
- the new rules have the potential to affect land value – i.e. uncertainty over whether certain types of restructuring would be allowed, or the likelihood that it will not be allowed may reduce the market value of some land. They also have potential to limit land managers' ability to restructure their businesses to adapt to changing market demands. The relatively high thresholds being applied (and the targeted use of *screening notices*) are likely to minimise any unnecessary negative economic effect – and ensure that where there are negative economic effects, it is because significant negative environmental effects would be likely were such projects to go ahead.
- the new rules have the potential to deter some beneficial restructuring projects from proceeding (e.g. they could make such projects more difficult or costly to undertake due to administrative burdens). We expect this potential negative effect to be minimised by the relatively large thresholds. In rare cases where beneficial projects are caught by the rules, Natural England (which could well be the sponsor of such projects) will strive to minimise any deterrent effect.

49. The new restructuring rules will also impose a **new burden on Natural England (and therefore the taxpayer)**. We estimate that Natural England may have to devote up to two staff years to run the rules. We estimate that this cost will be offset (or more than offset) by the savings in resources that introducing thresholds into the UL/SNA rules will bring for Natural England.

Uncultivated land and semi-natural areas projects

Benefits

50. The main benefit of the UL/SNA rules is that they protect uncultivated land and semi-natural areas (where it is not already protected by other means) from possible significant negative environmental effects caused by inappropriate agricultural intensification.

51. We estimate that since 2002, the UL/SNA rules have protected a few hundred hectares of UL/SNA per year which would otherwise have been damaged or destroyed. This estimate is comprised of:
    - RDS data showing that the rules have directly protected nearly 100 hectares of environmentally valuable UL/SNA per year (i.e. applications were made and significant negative effects were found to be likely, with the result that planned projects did not receive permission). More information at Annex A para 3;
    - the strong likelihood that the existence of the rules has deterred damaging projects which would otherwise have proceeded. It is not possible to measure the extent of this effect – but we estimate it is likely to be in excess of 100 hectares per year.

52. The introduction of two hectare thresholds into the UL/SNA rules (where previously there were zero thresholds) may mean there is less benefit. If such thresholds had existed since 2002, about 5% of the land known to have been saved by the rules (equating to about 12 hectares) would not have been saved (see Annex A para 4). We hope to minimise this reduction in benefit by giving Natural England the power to disapply thresholds in specific cases using screening notices – in particular this may help guard against the possibility that people may cause significant negative effects on the environment by undertaking multiple sub-threshold projects in a local area.

Costs

53. The UL/SNA aspects of the EIA Agriculture Regulations will **impose a regulatory burden on a relatively small number of affected land managers** (perhaps around 100 per year). However, we expect the revised UL/SNA rules to have between 20-40% less burden than the previous UL/SNA rules which they replace. (The level of administrative burden of the previous rules on businesses was recently estimated at about £180k p.a. as a combined total for all affected businesses).

54. We expect this reduction to come from:

- the introduction of a two hectare threshold (below which there is no automatic screening requirement). If such a threshold had existed since 2002, there would have been about 20% (100) fewer applications;
- the more farmer-friendly test for uncultivated land. Under the previous UL/SNA rules about 50% of applications were unnecessary (i.e. they concerned projects not caught by the rules), probably as a result of the complex ecological entry test. We hope the simpler test will reduce the amount of unnecessary applications substantially;
- we plan to produce clear guidance for land managers (i.e. clearer than previous guidance), which we hope will make it easier for land managers to tell whether the rules apply to them and, if so, what to do.

55. The revised UL/SNA rules will also place a **burden on Natural England, and thus the taxpayer**. Main points are:

- the previous UL/SNA rules absorbed about nine staff years from the Rural Development Service (one of the bodies which will make up Natural England).
- we expect the revised UL/SNA rules to produce savings of perhaps 2-4 staff years. We hope these savings will come from (i) the introduction of thresholds, resulting in perhaps 20% fewer applications; and (ii) clearer entry tests resulting in fewer unnecessary applications being made.

6. Equity and Fairness

56. The proposed new EIA (Agriculture) Regulations raise “rural proofing” issues because they apply exclusively to certain areas of the rural landscape and not to urban areas. They operate at the interface between (i) the rights of farmers and

land managers to go about their business on land they own and/or manage; and (ii) the wider public interest of protecting the natural environment through preventing damage to important landscape and habitat.

57. The proposals have no undue effect on particular racial groups, income groups, gender groups, age groups, people with disabilities, or people with particular religious views. Nor do they raise any health issues.

58. The Regulations raise some (relatively minor) public service issues because the main cost of running the Regulations is likely to be administration costs to Natural England, and therefore the exchequer and the taxpayer.

7. Consultation with small businesses: the Small Firms Impact Test

59. Almost all the businesses likely to be affected by the EIA (Agriculture) Regulations will be small businesses – i.e. farmers and other owners/managers of rural land. Representatives of such businesses were consulted in the 2005 public consultation. The existing rules on *uncultivated land and semi-natural areas* were also subject to two rounds of public consultation before they were introduced in early 2002.

60. The 2005 consultation revealed:

- that representatives of the businesses affected broadly welcomed the proposed changes to the existing UL/SNA rules, particularly the proposed introduction of thresholds in place of blanket case-by-case screening, and more user-friendly tests to identify *uncultivated land*.
- that land managers considered that the proposed new rules on rural restructuring projects were unnecessary, and that they would introduce a new tier of red tape. That said, they generally accepted that Defra was proposing measures proportionate to the risks they were designed to address, which would help minimise new burdens on businesses.

8. Competition assessment

61. The EIA (Agriculture) Regulations are unlikely to have any major implications for competition within UK markets. They will operate locally on a relatively small scale and they are expected to affect relatively few businesses.

9. Enforcement and Sanctions

62. Enforcement of the EIA (Agriculture) Regulations will be conducted by the new Natural England agency, which will come into being in October 2006.

63. The Regulations will contain the following enforcement measures:

- **Stop Notices:** which may be used to stop breaches of the Regulations which are imminent or already occurring.
- **Remediation Notices:** which may be used to require a land manager to remedy breaches of the Regulations. For instance, they might require that affected land is reinstated to approximately its condition before the breach occurred.
- **Criminal offences:** The Regulations create a number of prosecutable offences. Natural England may bring prosecutions within 6 months of the *discovery* of the offence, provided that it is within two years of the date the offence was originally committed. It will be an offence to:
  - carry out a relevant project without the necessary permission (i.e. a positive screening decision or development consent decision where required);
  - carry out any activity in contravention of a condition of a screening decision, or development consent;
  - try to procure a particular decision by knowingly or recklessly supplying false or misleading information, or withholding information, with intent to deceive;
  - contravene a *stop notice*, a *remediation notice*, or a *screening notice* issued in accordance with the Regulations.

64. The Regulations, as they relate to UL/SNA projects, will continue to be subject to "**cross compliance**" under the Single Payment Scheme. Thus breaches may result in deductions in farm subsidies. We do not plan to extend cross compliance to apply to those aspects of the Regulations relating to restructuring projects.

10. Implementation and Delivery Plan

65. The Regulations will be implemented by Natural England (NE). The operation of the new rules will be very similar to the previous EIA UL/SNA rules, which were run by the Rural Development Service (RDS), which will be absorbed into NE. Thus, NE will have a high degree of familiarity with the rules. It has dedicated resources to run the rules, and it has the expertise to apply them.

66. The land management community is broadly familiar with the operation of the previous UL/SNA rules. Defra plans to publish user-friendly guidance for land managers, and advertise the new rules in the farming press. In addition, we will issue updated guidance on Single Farm Payment "cross compliance" (due to be published in January 2007), which is likely to be read the large majority of farmers (i.e. all those in receipt of subsidy payments).

67. The Regulations will be successful if:

(a) they succeed in stopping a substantial amount of negative effects on the environment which would have occurred in their absence. This may be through measurable direct environmental benefits – i.e. someone asks for

permission to do a damaging project and permission is refused. Or it may be through deterring people from considering damaging projects in the first place (which is much harder to measure because usually the regulator is not aware of this effect);

(b) they are cost effective in that the net environmental benefits of running the Regulations justifies the amount of NE resource allocated to them – i.e. this resource could not reasonably be used in a different way to produce considerably superior results more efficiently;

(c) they are perceived as being implemented fairly and constructively by the responsible majority of the land management community;

(d) they successfully implement relevant requirements of the EU EIA Directive.

11. Post Implementation Review

68. Defra will ask Natural England to monitor the administration and effectiveness of the new rules. Among other things, we will ask Natural England to measure:

- environmental gains (i.e. what benefit are the rules producing);
- cost to the tax payer of regulating and enforcing the regime;
- costs to businesses, covering both the compliance burden and the administrative burden;
- details of enforcement activities;
- land managers' perceptions of the new Regulations.

69. Defra will conduct a review of the Regulations within three years of their entry into force (or sooner if appropriate), and report to Defra Ministers on their effectiveness and their performance against principles of good regulatory practice. The review will check whether the Regulations are delivering value for money, and propose improvements where necessary.

12. Summary and Recommendation

70. We recommend approval of the Environmental Impact Assessment (Agriculture) (England) Regulations 2006. A summary of the main features of the Regulations is at paragraphs 4-10 above.

71. The Regulations will perform a valuable role in:

- protecting valuable uncultivated land and semi-natural areas (UL/SNA) from being damaged or destroyed by inappropriate agricultural intensification (where such land is not already protected by other measures); and
- providing a safeguard against the chance that large-scale restructuring of rural land holdings may result in significant negative effects on the environment (where such land is not already protected by other measures).

72. In designing the Regulations, we have applied principles of better regulation. For instance:

- we have tried to keep the legislation as simple as we can. For example we have (i) introduced more farmer-friendly tests for UL/SNA projects to make those rules more transparent; and (ii) covered both UL/SNA and restructuring projects under a single piece of legislation;
- we have practiced *compensatory simplification* by introducing thresholds into the UL/SNA rules which we hope will offset (or more than offset) the new burden imposed by the new restructuring rules;
- we have tried to make the legislation targeted, proportionate and consistent with similar legislation – e.g. by (i) ensuring that the new restructuring rules catch large-scale projects but do not restrict land managers' ability to conduct routine activities; and (ii) introducing low thresholds into the UL/SNA rules, bringing them broadly into line with most other English EIA legislation.

13. Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Barry Gardiner
13th September 2006
Parliamentary Under-Secretary of State
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Annex A – additional background material

Restructuring of rural land holdings - Risk Assessment

1. The options developed for implementing the restructuring rules were informed by an assessment of the level of risk posed to the environment by restructuring projects. We considered the following factors:

    - historically, activity that could be described as *restructuring of rural land holdings* has been shaping and reshaping the rural environment for thousands of years. This restructuring was one of the major factors that created the rural environment – for instance, widespread restructuring of common land and fields in the 18th and 19th Centuries brought about a landscape which is today much valued for its "English" character. It could be argued that much restructuring in the 20th Century had a negative impact on the semi-natural environment. For instance, the mechanisation of agriculture led to larger fields through the removal of hedgerows or other traditional field boundaries, resulting in a generally negative effect on biodiversity.
    - measures are already in place to deal with certain types of *restructuring*. For instance, existing agri-environment schemes conserve and restore dry stone walls and hedges. The Hedgerow Regulations protect important hedgerows. EIA rules are already in place for afforestation and deforestation, UL/SNA, land drainage etc;
    - reform of the EU Common Agricultural Policy scrapped the production subsidies that had fuelled the expansion of intensive agriculture. There is therefore less incentive to restructure agricultural land holdings. Also, the new subsidies regime requires a higher degree of protection of the environment;
    - the Entry Level strand (ELS) of Defra's new Environmental Stewardship (ES) scheme is expected to cover around 70% of England's farmland by 2009. Scheme options include the maintenance and beneficial management of stone walls and hedges. The Higher Level strand of ES will pay farmers to do more environmentally beneficial work.
    - for the foreseeable future we expect much restructuring in England to be beneficial for the environment.

    - the risk that poorly judged (i.e. overly restrictive) rules might work against Defra's wider policy objectives. For instance:
        (a) they may make it harder for farmers to adapt their businesses to changing economic drivers, and to compete. They might also decrease the market value of some rural land.
        (b) they may deter beneficial restructuring by adding new red tape and uncertainty to such work. This may include work under agri-environment schemes.

2. We felt that the risk posed by current and future restructuring projects was likely to be low when compared to that in the 20th Century. We also expected the level of risk to become lower as CAP reform and Environmental Stewardship increasingly take effect.

Uncultivated land and semi-natural areas – Risk Assessment

3. Based on experience of administering the current UL/SNA Regulations, and the major changes that have taken place in agriculture since 2001, we consider that the risk addressed by the UL/SNA rules is now lower than when they were first implemented. For instance:

- in 2003, CAP reform signalled the end of agricultural production subsidies. The new subsidy is de-coupled from production. We anticipate that this will remove one of the main incentives to intensify the use of uncultivated land;
- in March 2005, Defra launched the Environmental Stewardship (ES) scheme. Under ES, farmers receive funding for maintaining and creating habitats and features to help increase wildlife on their farms. This reduces the threat to UL/SNA in two ways. Firstly, ES will encourage the good management of existing UL&SNA. Secondly, ES is expected to create thousands of hectares of new UL&SNA over the next decade and beyond;
- the 2001 risk assessment overestimated the risk. It was based on estimates of the risk to UL&SNA in the 1990s, but there is evidence to suggest that the situation had changed from the late 1990s onwards.

Data on applications made under the EIA (uncultivated land etc) Regulations from 2002-2005

4. The table below gives an overview of the screening process, and the measurable environmental benefits the Regulations have achieved.

Area of land covered by screening applications (hectares)	Total no. of applications received	No. of applications requiring case-by-case screening	No. of applications found to require EIA	No. of applications that went through EIA	Total area of UL&SNA on which potentially damaging projects have been stopped in each area category (hectares)
Under 0.5	31	21	3	0	**1**
0.5 - 2	70	45	9	0	**11**
2 - 5	131	74	10	0	**30**
5 - 10	117	37	7	0	**48**
10 - 30	107	38	5	0	**85**
30 - 50	20	6	2	0	**78**
Over 50	24	11	0	0	**0**
Totals	**500**	**232**	**36**	**0**	**253**