

## **EXECUTIVE NOTE**

### **The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 (“the Regulations”) SSI/2006/582**

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative resolution procedure.

#### **Policy Objectives**

The purpose of the instrument is to transpose the requirements of two EU Directives in relation to certain types of project. The Directives are the EU Environmental Impact Assessment Directive (Council Directive 85/337/EEC, as amended) and the EU Habitats Directive (Council Directive 92/43/EEC, as amended). The Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002 (“the 2002 Regulations”) provided what are now tried and tested procedures applying EIA procedures to certain projects involving the use of uncultivated land and semi-natural areas for intensive agricultural purposes. The 2002 Regulations had to be amended to implement the amendments to Council Directive 85/337/EEC. The Regulations revoke the 2002 Regulations and re-enact them with necessary amendments to apply as in the 2002 Regulations to projects on uncultivated land and semi-natural areas but also to certain projects for the restructuring of rural land holdings on agricultural land which will now also be subject to the EIA procedures.. The Regulations will contribute to protecting and enhancing the rural environment by guarding against possible negative environmental effects of two types of physical operations.

#### **Consultation**

A full public consultation was carried out and responses were particularly requested from bodies representing land and environmental interests. In addition, meetings were held with the relevant bodies to discuss content and detail of the proposals.

#### **Financial Effects**

The Instrument will have a minimal effect on the Scottish Executive as any work associated with projects caught by the rules will be carried out by existing SEERAD staff who are already familiar with these procedures. Potentially any farming business or land management concern intending to carry out a relevant project which may give rise to environmentally significant effects may be affected. However, because of the screening process and the level of the thresholds being applied, the potential level of burden is considered to be low. A Regulatory Impact Assessment is attached for information.

Scottish Executive Environment and Rural Affairs Department  
November 2006.

## REGULATORY IMPACT ASSESSMENT

### Title

The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 SSI/2006/582 - hereafter referred to as “the Regulations”.

### Purpose and intended effect of measure

### Objectives

The Regulations will transpose the requirements of the EU EIA Directive (Council Directive 85/337/EEC, as amended) in relation to two types of project. They are part of the Government’s effort to protect and enhance the rural environment by guarding against possible negative environmental effects of two types of projects.

The Regulations will merge with and replace existing EIA rules which apply to projects for the use of uncultivated land and semi-natural areas for intensive agricultural purposes (The Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002) and introduce additional EIA provisions applying to such projects and also to projects for the restructuring of rural land holdings.

The UK agreed to introduce the restructuring rules following European Commission infraction pressure. Similar Regulations have been introduced in England. Wales and Northern Ireland will introduce regulations in due course.

The objective is to transpose the restructuring aspect of the EIA Directive in a way that:

- ensures we meet the requirements of the Directive, but avoids going beyond its minimum requirements unless there is a compelling reason to do so;
- ensures that implementation complements, and does not hinder, wider Government objectives on the protection of natural resources and the promotion of sustainable development as it regards agriculture and the rural economy;
- takes full account of regulatory good practice, for instance implementation should be proportionate, consistent, targeted, transparent and accountable;
- to safeguard areas which may be environmentally significant, by providing a mechanism to evaluate the environmental impacts of projects for the restructuring of rural land holdings.

The procedures set out in the Regulations are based on legal requirements with penalties for non-compliance but SEERAD will seek wherever possible to apply them in co-operation with the land managers. If a project raises environmental concerns, SEERAD technical staff will provide as much advice and assistance as possible and seek to agree with the farmer or land manager concerned a way forward which takes account of business needs as well as environmental factors.

The main aim is to protect land which has a particular environmental or cultural heritage value or importance. The procedures involving environmental statements only apply where a proposed operation or project would be likely to have significant effects on the environment. Completion and early submission of an application form to SEERAD detailing work

proposals before commencing work will enable an early decision to be made on whether the project needs to be modified or can proceed as proposed.

## **Operation of Scheme**

A case by case approach will continue for all projects for the conversion of uncultivated land and semi-natural areas and will also be used for large scale restructuring projects within defined sensitive areas. Thresholds will apply for large scale restructuring projects outside defined sensitive areas. These are as follows:-

Where a large scale restructuring project cumulatively involves –

More than 200 hectares of land; the movement of more than 5,000 cubic metres of earth or rock; or, the construction or addition of more than 1km of vehicle track.

The removal of 0.5 km of hedges or dry-stane dyke or the removal or addition of 6 km of other boundary features (e.g. fencing walls, ditches or drainage channels).

Projects exceeding the thresholds may not require a full environmental assessment. The screening process will determine which projects require more careful assessment.

Key tests of an EIA application will be –

Is the proposal on agricultural land

Is the proposal part of a large scale restructuring project (not a single action)

Does the proposal pose a significant environmental risk

## **Risk Assessment**

A potential risk exists of significant damage to environmentally sensitive land through developments without environmental effects being considered first. In addition, non-implementation or failure to implement EU obligations properly may be expected to lead to infraction proceedings being brought against us at the European Court of Justice which could in turn lead to a significant fine being imposed. As noted above, following infraction pressure, the UK has agreed to transpose the restructuring aspect of the EIA Directive.

Many areas of environmentally sensitive land are already protected under EC and National legislation, e.g. SAC's, SPA's, SSSI's, etc. However not all potentially sensitive areas are so protected. In any event, Environmental Assessment will provide an up front mechanism for assessing the potential effect and identify significance before damage occurs.

## **Options for Implementation**

The UK has already given assurances that it will implement the provision by Regulation.

## **Issues of Equity or Fairness**

The Regulations would apply equally to all those proposing projects on uncultivated land or for the restructuring of rural land holdings. It is expected that generally, relevant projects are more likely to be proposed by large businesses.

## **Benefits**

### **Identifying the Benefits**

The main benefit would be to environmentally significant land, which was not already protected by an environmental agreement. The measures would help to safeguard Scotland's natural and cultural heritage, biodiversity, wildlife and landscape.

The benefits of EIA are hard to quantify but better designed projects with less negative environmental impact; more structured public participation and better decision making not only offer benefits to the developer, competent authority and public but are likely to smooth the formal decision making process. Measures intended to reduce the impact of a development on the environment are likely to be cheaper and more effective if considered at the design stage.

### **Quantify and Value Benefits**

A light touch but regulatory approach can be expected to help ensure that the likely environmental impacts of proposed projects are fully considered before work on them may start. The number of projects is difficult to predict with accuracy. It will depend on the nature of a particular project, the expected impacts to which it might give rise, and the meaning to be given to significant effects on the environment. To date, 8 formal screening requests have been processed in Scotland since 2002 for projects to convert uncultivated land to intensive agriculture with none requiring full environmental assessment. We would hope this low trend continues for the combined regulations allowing for managers to modify their proposals at an early stage to ensure compliance.

### **Compliance Costs for Business**

#### **Businesses Affected**

Potentially, any farming business or land management concern intending to convert uncultivated land for intensive agricultural purposes or restructure land holdings on agricultural land which may give rise to environmentally significant effects will be affected. The overall impact should be minimal except where significant effect is indicated.

In reality, the number of businesses affected is likely to be small given our experience with the uncultivated land or semi-natural areas Regulations. There are already a number of regulatory controls, voluntary schemes and incentives in place to conserve and help some of the most fragile and/or important sites.

#### **Compliance Costs for a Typical Business**

Indicative costs are as follows:

Implementation costs - might include the cost of preparing an application form (say two hours, depending on the level of detail required). In a few cases there may be follow-up costs in a short field trip with technical staff to discuss proposals.

In the event of a full environmental assessment being required costs would normally include employing a consultant to complete an Environmental Assessment where there is a risk of significant effect (assuming the farmer does not have the technical expertise to complete a Statement to a reasonable standard). Depending on the project, the cost of producing a Statement may vary between £500 - £800 for a small scale project with relatively straightforward significant impacts and around £10,000-£15,000 for a complex or large scale

project with a number of inter relating impacts. It would not be necessary for a consultant to be employed for each and every project as it would be expected that the developer would be able to complete an Environmental Statement for small, straight forward projects using relevant data supplied by authorities.

### **Impact on Small Business**

An Environmental Statement required under the proposed regulations may represent a significant part of a farmer's development costs if significant environmental effect is suspected, these will be monitored and reviewed.

### **Other Costs**

Resource implications for the competent authority and statutory consultees have to date been shown to be minimal. It is not expected that this will change.

### **Monitoring and Review**

We would aim to review the Regulations within three years of coming into force and report to Scottish Ministers on their effectiveness, suggesting amendments and improvements where necessary.

### **Summary and Recommendations**

Costs as a result of these Regulations are considered to be reasonable and appropriate with regard to implementing Directive 85/337/EEC as amended by Directive 97/11/EC and Directive 2003/35. The Scottish Executive's approach has been to implement the Directive with the minimum burden on businesses and public authorities.

SEERAD  
November 2006.