



Llywodraeth Cymru
Welsh Government

The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 Guidance on Scoping, Environmental Statements and EIA Consent Applications

April 2019

Introduction

These guidelines provide guidance on obtaining scoping advice from Welsh Government in order to apply for formal EIA Consent and provide an Environmental Statement and the procedures that will be applied.

They will be applicable if you have received a written screening response from Welsh Government stating that your project must not go ahead and have decided as a result to apply for formal consent to carry out:

- an agricultural project on semi-natural areas, and/or
- a large scale restructuring project on rural land holdings.

Please use this document in association with the following:

- The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 – General Guidance.

Contact Welsh Government if in any doubt

You can contact the EIA Team on EIA.Unit@gov.wales

Ring the Customer Contact Helpline: 0300 062 5004

By post:

EIA Unit
Welsh Government
Rhodfa Padarn
Aberystwyth
SY23 3UR

Warning

It is illegal to undertake works for which EIA Consent has not been granted. Welsh Government has powers to stop unauthorised operations and undertake re-instatement at the offender's cost. Fines may also be applied by a Court of Law.

Scoping

The Environment Impact Assessment (Agriculture) (Wales) Regulations 2017 require farmers to produce an Environmental Statement in those cases where certain farming operations on semi-natural areas and/or large scale restructuring projects on rural land holdings are likely to have significant environmental effects.

After receiving such a written screening decision, but before applying for consent, you may ask Welsh Government to provide their opinion on what information must be included in an Environmental Statement and what advice may be obtained from statutory bodies.

It is strongly advised that you seek this Scoping Advice from Welsh Government before you start your Environmental Statement.

Dealing with your request for scoping

Once a written scoping request is received Welsh Government will check that sufficient information has been provided in order to give a scoping opinion. If it is considered that more information is required this will be asked for in writing. The additional information required must be submitted within 28 days of the date the original scoping request was made.

Once sufficient information is received Welsh Government will consult other statutory bodies as appropriate.

In most cases, but not exclusively, these will be Natural Resources Wales (NRW), the Welsh Archaeological Trusts, CADW and Local Authorities as well as any other interested organisation for their opinion regarding the likely impact of the proposals and what they consider would need to be in the Environmental Statement.

Scoping meetings

Often the easiest method of establishing what is needed is by a meeting with all concerned parties. If this is asked for within the scoping request Welsh Government will arrange such a meeting, act as Chair (if required) and subsequently provide scoping advice as detailed above.

Scoping advice

Whether or not you request a Scoping Meeting Welsh Government will provide written scoping advice with 35 days of:

- the date the original scoping request was received, or
- where applicable, the date the additional information was received.

This will:

- Describe the **key issues on which attention should be focused**.
- Give advice on the nature of information that is required.
- Explain that you have a right to request environmental information from Welsh Government or statutory bodies such as Natural Resources Wales (NRW). Please note that some organisations outside Welsh Government may charge for this information.
- Provide a list of names and addresses for the statutory bodies from which you may choose to seek information.
- Explain how to obtain environmental information from Welsh Government.
- Advise that even after the EIA Consent application and Environmental Statement have been submitted, Welsh Government still have the right to ask you for information on any particular aspect that was inadvertently missed during the process of giving scoping advice.

Next steps

The scoping procedure will show what information is required and indicate how to obtain it. It may help identify alternatives or find ways to lessen the effects of the project on the environment.

The costs of the project and preparing an Environmental Statement need to be carefully weighed against the potential agricultural benefits of the project and the chances of obtaining EIA consent.

Following discussions it may be possible to modify the project so it is no longer likely to have a significant environmental impact. In this scenario it is possible to submit a fresh screening application for the new project.

Alternatively, the next part of the process is prepare an Environmental Statement and submit an EIA Consent application.

Preparing an Environmental Statement

The purpose of an Environmental Statement is to describe the potential environmental effects of a project on semi-natural land and/or rural land holdings. It is a detailed report into these effects and should provide sufficient information for interested parties to make an informed and objective decision on the project.

Professional Advice

Professional assistance in preparing an Environmental Statement may be beneficial but the costs of such a service could be expensive, so should be considered carefully.

Things to consider:

- The size of the project and its potential effect on the environment.
- Whether or not these effects are easily assessed.
- The level of extra income or other benefits from the project, and
- The cost of employing someone to prepare the statement.

If professional advice is sought a statement by or on behalf of the applicant must be included describing the expertise of the person who prepared the Environmental Statement.

It is the purpose of the Environmental Statement to systematically describe the nature of the project, the reasons for it, its potential effects on the environment and any measures taken to avoid or reduce any potentially damaging effects.

The Environment Impact Assessment (Agriculture) (Wales) Regulations 2017 state what should be included in an Environmental Statement (Appendix 1). The evaluation given to each aspect will vary according to how significantly they are likely to be affected by the project. If scoping has been undertaken this will help identify which aspects require in-depth assessment.

The statement will be made available to the public and should be written as clearly as possible.

Survey data, maps, diagrams and photographs should be provided where they help to clarify a point. It may be best to put these in an Appendix depending on the number.

The report must be factual, objective and unbiased. If assumptions are made or opinions are given these should be made clear together with the justification for them and, if relevant, the qualifications of the person making them.

Where surveys have been undertaken the methodology used should be described and the dates recorded.

It is important to take into account the views of interested persons likely to be affected as well as specialist bodies.

Format of an Environmental Statement

The report should consist of two parts – a main section and a non-technical summary. It should be well structured and cover the following steps:

1. Site and project description.
2. Description of environmental effects.
3. Significance of the impact.
4. Mitigation (measures to reduce environmental effects).
5. Conclusion.

If a scoping exercise was undertaken it is strongly advised that the advice received is used as a basis for the report. It will also guide you regarding the nature of information on plants and animals that needs to be collected and identify what information already exists and ensure that unnecessary work is not undertaken.

1. Site and project description

The report should describe the nature and reasons for the project. Emphasis should be placed on describing these operations that are likely to have a significant effect on the environment e.g. those that are likely to disturb vegetation or wildlife, cause pollution or affect the enjoyment of interested persons. The reasons for the project should also be set out as well as a description of alternatives that were considered.

The physical description of the site should cover the following:

- Location
- Geology
- Soils
- Topography
- Drainage
- Vegetation
- Wildlife
- Landscape appearance
- Features of historic, archaeological or other human importance
- Details of statutory designations
- The existence of nearby properties that could be adversely affected.

The level of detail required on each will vary according to what is required to evaluate the likelihood of there being any significant environmental effects.

Surveys, data recording, presentation of results and comments should be undertaken in a clear, logical and objective manner using suitable data collection techniques and terminology. It should also indicate whether there are designations, features or species of international, national, regional or local importance that will be affected if the project proceeds.

In most cases, changes to the vegetation and the impact on wildlife are going to be the most significant concerns. Remember to be precise and avoid vague statements. For example, it is not sufficient to state that “ground nesting birds will be protected”. It is better to give details of species, why they are considered “significant” and whether the site is important for nesting, shelter, feeding or over-wintering.

In summary in describing the site and project the Environmental Statement should:

- Provide factual description of what is proposed and the reasons why.
- Explain what methods are going to be used e.g. plough and re-seed or spray and surface cultivation.
- Identify those operations that are likely to affect the environment and draw attention to any measures taken to reduce adverse environmental effects.
- Describe why the project is being pursued, making clear the benefits e.g. higher stock numbers or increased winter-feed.
- Explain the alternatives considered and why these were dismissed. Do not forget to consider the “do nothing” option and in so doing explain what impact refusal would have for the farm.
- Include a location plan or map and, if relevant, photographs to identify the land affected. For a small project a site plan may be sufficient. For a major proposal affecting the wider landscape a map of the area will be necessary showing viewpoints and the impact from these locations.
- Describe the physical characteristics of the site. Cover all aspects listed in Appendix 1 to show they were considered but restrict detailed descriptions and analysis to those characteristics where environmental effects are likely to be significant.

2. Description of environmental effects

Essential features of an Environmental Statement are that it should accurately predict and objectively describe the changes that will occur if the project is allowed to go ahead. All significant environmental changes must be accurately described and quantitative data should be provided where this is reasonably practical. Also needing to be considered are whether the effects would be restricted to the site or beyond. For example, an improved field in the middle of moorland will stand out and may adversely affect the semi-natural appearance of the wider landscape.

The impact on each important element (vegetation, flora and fauna etc) needs to be considered separately. For aspects where there are clearly no significant effects it is advisable to demonstrate they have been considered and why they were dismissed. Any losses of plant, animal species or habitats that are considered important in terms of international, UK or local biodiversity objectives must be considered as well as whether the impact is short, medium or long term and whether the effects are permanent or temporary. For example, if a project involves levelling of ground, the ploughing up of heather moorland, and reseeded to improved grassland the ecological and landscape effects will be immediate and permanent. However, effects in terms of noise and dust will be short term and temporary and will cease once reclamation is complete.

In some cases the site may be threatened with change irrespective of whether the project proceeds and this could affect the way the case is determined. For example, if a project is to improve a wet meadow but it is known that this meadow is threatened by major river improvements beyond the control of the applicant then this information could be critical.

Some projects may have significant impacts on people and communities. For example, will the effects of the work be noticeably visible within the landscape or change its appearance from a popular local viewpoint? It is important that the report sets out clearly the true nature of the impacts and how public concerns are being addressed.

Remember

The Environmental Statement will be available for the public to inspect and comment on.

3. Significance of the impacts

Often the most difficult step to undertake when preparing the Environmental Statement is to assess the significance of each anticipated environmental change caused by the project in turn.

For each environmental effect identified the report should:

- Describe its importance, and
- Explain the reasoning behind this judgement.
- Highlight any positive benefits without exaggeration.

Example:

In assessing the impact of the project on wildlife the significance of the effects will need to be judged in the light of international, national and local policies and regulations designed to protect specific types of habitats and species.

- Has the site been designated to safeguard nature conservation?
- Does it contain habitats, plants or species that are afforded protection under wildlife and country regulations or are mentioned in Biodiversity Action Plans (BAPS)?

If the site contains a protected habitat or species then the environmental effects of your project will assume greater significance – more again if it contains one of national or even international importance.

The greater the amount of land take will increase the likelihood of significant environmental impacts. However, location is also important. For example, draining 5 hectares of wet meadow in an area where there are several hundred hectares may not be very significant whereas infilling a pond in an area where there are few natural habitats may be very significant if it breaks a critical wildlife corridor and adversely affects the survival of a protected species.

Welsh Government will be able to advise on which statutory bodies can offer advice on interpreting specific effects during the Scoping phase. However, if a number of environmental effects are identified or there are complex issues then seeking professional expert advice should be considered.

4. Mitigation

Where the proposal has a specific environmental effect consideration will need to be given on whether it can be modified to reduce or compensate for any adverse environmental effects. If measures to mitigate damage are to be included in the report these should be described together with an assessment of the level of mitigation or compensation that will be achieved.

Example:

The intention is to use a herb rich meadow for grass conservation.

Mitigation: (1) Utilising it for hay rather than silage. (2) Delaying cutting until after plants have flowered may mitigate adverse effects on wildflowers and nesting birds.

However, careful thought needs to be given to the precise nature of the effects and whether the proposals will adequately address them. For example, it may be possible to mitigate loss of a pond that is a great-crested newt habitat by excavating a suitable substitute and transferring them to it. In contrast, loss of a 10 hectare field used by lapwings for nesting would not be mitigated by planting a woodland area as this would not provide a suitable habitat for lapwings. However, it could provide other compensating environmental benefits that should be described within the report.

Summary

The Environmental Statement should be sufficiently clear to enable interested parties to make an informed decision.

It should accurately describe:

- The project and reasons for it.
- The site at which it is to be carried out.
- The nature and overall significance of its effects on the environment.
- Measures to be undertaken to minimise adverse environmental effects.

The information needs to be presented in report form and submitted with your EIA Consent application. It will then be circulated to statutory bodies and made public.

It should comprise of two parts – the main report and a non-technical summary. However, it may be more convenient to place much of the technical data – maps, diagrams, photographs, tables of data etc. – in Appendices.

Submitting the EIA Consent Application

The application and Environmental Statement must relate to each other and cover the same land. All information on the environmental effects of your project should be included within the accompanying Statement.

Submit the completed documents to:

EIA Unit
Welsh Government
Rhodfa Padarn
Aberystwyth
SY23 3UR

Alternatively, you can submit the completed documents by email on EIA.Unit@gov.wales

As soon as your application and Environmental Statement are received you will receive a written acknowledgement of receipt. A decision will normally be made within 70 days provided that your Statement adequately covers all relevant issues.

Consultations

The Regulations require Welsh Government to consult interested parties on any Environmental Statement before a decision is made. The parties consulted will vary dependant on the application but will usually include:

- Natural Resources Wales (NRW)
- Welsh Archaeological Trusts
- CADW
- Local Authorities

This is not an exclusive list and other organisations may be consulted dependent on the project being proposed.

If your application is likely to affect land in England then Natural England will also be consulted.

Copies of your application will be sent to the relevant bodies requesting that a response is received within 42 days.

There is also a requirement for interested members of the public to be given the opportunity to express their views. Once the application is received a notice will be published in a local newspaper which:

- a) States that your application has been received.
- b) Gives an address where it can be inspected for a period of 28 days and an address from which further copies may be purchased.
- c) Specifies that those that wish to make any representations about the likely environmental effects of the proposal shall make them in writing to the EIA Unit within 42 days of the publication of the newspaper notice.

Additional Information

If the interested organisations consulted about your proposal find they cannot make a judgement about important environmental effects due to a lack of information, it may be necessary to ask you for further details. Welsh Government will contact you setting out the extra information that is required. Your application will not be able to be assessed until this is provided.

Upon receiving the further information it will be sent out to all the consultees and a further press notice will be published. In these circumstances the Regulations require a further period of 28 days to allow for responses.

It may also be necessary for Welsh Government Technical Staff or for one or more of the agencies to visit your farm to inspect the site and discuss the proposals with you. This will be undertaken by appointment and could include opportunities to discuss ideas for reducing the environmental effects of the project.

The Consent Decision

Once all responses to the consultation have been received – or the time allowed for responding is over – a decision on your application will be made.

Approval

If Welsh Government decides to grant consent for your project to go ahead you will be advised in writing including the reasons for the decision and the considerations on which it is based. Such content will be subject to the following conditions:

- Consent only applies to the specific work covered by the application and the Environmental Statement along with any amendments agreed with Welsh Government. If, at this stage, you wish to amend the project a fresh submission will be required.
- The consent will lapse if the project does not commence within one year of the date on which it was granted.
- Consent will also lapse if the work has not been completed within three years of the date of consent. Any outstanding work may need to be subject to a fresh submission.

In the very unlikely event of your land being subsequently designated as a European Site for Nature Conservation after consent has been granted then the Regulations require the original decision to be reviewed. If, as a result, it is necessary for the decision to be revoked or the consent modified you will be entitled to recoup the costs of any abortive works from Welsh Government.

Refusal

If the proposal is considered to have such significant environmental effects that it is refused then you will be informed in writing. The reasons for refusal will be explained and you will be advised of your rights to appeal.

Informing the Public

In cases of either approval or refusal the public will be informed of the decision. Welsh Government will:

- Publish a notice in a local newspaper, and
- Make available for public inspection a statement containing the content of the decision, the reasons on which it is based and the relevant details of any mitigating actions to be taken.

Appeals

If you are unhappy with the decision made you can appeal within three months of the date shown on the decision letter against either:

- A refusal to give consent to the project, or
- Conditions that have been applied to the consent (in this case it is advisable to delay starting work until the appeal has been determined).

Appendix 1

Information that needs to be included in an Environmental Statement

A description of the project comprising information on the site, design, size and other relevant features of the project, including in particular:

- a) A description of the physical characteristics of the whole project and the land use requirements during the construction, or other implementation and operational phases.
- b) A description of the main characteristics of the production processes, for instance, nature, quantity and the materials used.
- c) An estimate, by type and quantity, of expected residue and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation etc.) resulting from the operation of the proposed project.

A description of the environmental aspects likely to be significantly affected by the proposed project including, in particular, population, fauna, flora, soil, water, air, climactic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

A description of the likely significant effects of the project on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project resulting from:

- The existence of the project.
- The use of natural resources.
- The emission of pollutants, the creation of nuisances and the elimination of waste.

A description of features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment.

A description of the reasonable alternatives studied by the applicant, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the significant effects of the project on the environment.

A non-technical summary of the information provided.

An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

The Environmental Statement must:

- a) Be prepared on behalf of the applicant by persons who have sufficient expertise to ensure the completeness and quality of the statement.
- b) Contain a statement by or on behalf of the applicant describing the expertise of the person who prepared the Environmental Statement.
- c) Where a Scoping opinion has been issued, be based on the most recent scoping opinion issued (so far as the project remains materially the same as the project which was the subject of that opinion), and
- d) Include the information reasonably required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment.