



The Irish Farmers' Association Submission

to the Public Consultation issued by the
Department of Agriculture Fisheries and Food on the draft
Guidance document for the purpose of implementing the
European Communities (Environmental Impact
Assessment) (Agriculture) Regulations 2011
– SI 456 of 2011

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Introduction

The Irish Farmers' Association (IFA) is a national organisation representing the interests and views of farmers and rural dwellers in Ireland, and the majority of farmers in Ireland are members of the IFA.

The Association is using this public consultation as an opportunity to present proposals which will ensure that the legislation is workable for farmers and removes unnecessary bureaucratic burdens.

The agri-food sector is playing a key role in Ireland's export led economic recovery. This positive growth experienced in 2010 in the sector has continued into 2011, with output growth in primary agriculture and export growth in food and drinks far outpacing the rest of the economy.

However, this growth and the 300,000 jobs that agriculture and the food industry support will only be sustained if the sector remains competitive. To this end, it is essential that this consultation is used as an opportunity to ensure that the implementation of these land improvement regulations do not add further costs, bureaucracy and administrative burden to farmers.

IFA continues to challenge the necessity for measures contained in this legislation. Farmers have a good environmental record and have rejuvenated the countryside by: planting over 10,000km of hedgerows, building over 3,000km of stonewalls, planting over 1 million broadleaf trees, spending over €2 billion to ensure that farm yards achieve the highest environmental standards and in 2010, recycling over 20,000 tonnes of farm plastic.

Summary of Amendments Proposed

1. Necessary Farm Maintenance

IFA proposes that where such activity takes place and is limited to the restoration of lands to their original state, then it should be classified as maintenance and not subject to the consent/threshold process.

IFA proposes that farmers should not be obliged to seek consent from the Department of Agriculture where repair and replacement of existing drainage systems take place.

The proposed extension of drainage activity into the consent process, on non-designated lands, represents a designation by default and forms the basis for a justifiable claim for compensation.

2. Wetlands vs Wetland

IFA proposes that the definition of floodplains, as outlined in the implementation agreement of the Habitats Directive, should replace the existing definition of floodplains proposed in the Guidance document.

3. Re-contouring vs Restructuring

IFA proposes that in situations where farmers are doing a combination of re-contouring and restructuring works on the same parcel of land, then the higher threshold of 5 hectares should apply.

When calculating the threshold area with regard to carrying out re-contouring works, the net area should apply (i.e. the area used for the storage of topsoil or subsoil while work is progressing should be disregarded).

4. Cumulative Period

IFA proposes that where re-generation takes place over a twelve month period, the cumulative period proposed of five-years is considered excessive and such projects should be considered on a year-to-year basis.

5. Significant Negative Effect on the Environment

IFA proposes that the threshold levels should represent the assessment criteria when a farmer applies for screening or consent.

6. Species Rich Grassland

IFA proposes that species-rich grassland should be removed from the definition of ULSNA.

7. Restructuring of Rural Land Holdings

IFA proposes that the areas not covered by the regulations should include the realignment of fields, where the planting of hedgerows elsewhere within the farm offsets the same length of hedgerow removed.

8. Definition of Semi-Natural Areas

IFA proposes the deletion of the link between the definition of semi-natural areas and use of chemical fertilisers.

9. Wetlands – Peatlands

IFA proposes that all non-designated bogs should be removed from the definition of wetlands. In addition, current thresholds should be increased. Compensation should be paid, if additional obligations are now being placed on non-designated bogs.

10. Notifiable Actions in Designated Areas

Under the Agreement between the Government and Farming Organisations on the Review of Implementation of the Habitats Regulations 1997 and its subsequent review, certain actions are not notifiable actions and this position should remain.

The extension of the consent process to all works on non-designated lands represents a designation by default and forms the basis for a justifiable claim for compensation.

11. Duplication by Public Bodies

IFA proposes that an agreement is reached between the relevant Government Departments that a standardised format is agreed for the collection and reporting of details and information.

12. Environmental Impact Statement

The completion of an EIS must be simple, straightforward and cost-effective. To achieve this, a template EIS form should be drafted and included in the annex.

When a farmer is requested to submit an EIS, full use must be made of CMMS data by the Department, in advance of requesting additional information from farmers. The Department of Agriculture should consider other lower cost studies such as ecology studies or mammalian studies in place of costly EISs, where appropriate.

Similar to the SPA process a contribution to help alleviate the cost of completing the environmental report must be put in place.

IFA proposes the removal of the details of the contractor from the screening application, as this information has no function in understanding the environmental impact of the project and it may hinder the farmer from securing the best price to complete the works.

13. Right to Appeal Decision

IFA proposes that an appeals process for farmers is put in place, which allows a farmer to appeal an unsatisfactory decision by the Department. The Chairman of the appeal should be at liberty to make recommendations regarding compensation for yield loss, income loss and property devaluation.

14. Vexatious Objectors Must Not Be Tolerated

IFA proposes that:

- *Serial crank objectors must not be allowed.*
- *Observations must be restricted to State Bodies.*
- *An appropriate fee must accompany any objection.*
- *The objector must be directly impacted by the proposed works.*

15. Farmers Must Not Be Penalised Retrospectively

IFA welcomes the confirmation that farmers who commenced works before the 8th September 2011 will not be penalised, and proposes that this fact should be included in the Guidance document and communicated to Department of Agriculture Inspectors.

16. Timeframe for Delivering Screening and Consent Decisions

IFA proposes that all screening decisions should be made within 4 weeks of the request for screening, and all consent decisions will be made within 2 weeks of the closing date of requests for observations from consultation bodies.

Consent should be deemed granted where the Department of Agriculture fails to adhere to timelines.

17. Approval Term

IFA proposes that in keeping with other permissions, where consent is granted, it should remain in place for at least five years.

18. Screening Decision Rights

IFA proposes that a screening decision must transfer with the land if a sale takes place during the approval term.

19. Requirement for Regional Information Meetings

IFA proposes that the measures contained in the regulation should only be introduced after the Department of Agriculture has completed a series of information seminars. It is unreasonable to impose legislation before it is explained to farmers affected.

20. Fines

Fines and penalties should be proportionate and dissuasive. The imposition of class A fines, which may be up to €5,000, are excessive given that the average farm income in Ireland is €18,000.

Fines and penalties should be replaced with a commitment to inform and educate, as set out in point 19.

Part 1: General Amendments Proposed

1.1 Necessary Farm Maintenance

IFA welcomes the clarification provided by the Department of Agriculture that farmers will not require consent when carrying out general farm maintenance, including the cleaning of open drains¹. However, the Association believes that the interpretation of *farm maintenance* is too restrictive based on the overall requirements of the Environmental Impact Assessment (EIA) Directive.

The main objective of the EIA Directive is to ensure that a consent process is put in place for projects that will have a *significant adverse negative effect* on the environment. IFA considers that the following basic farm remediation works do not constitute activities that would significantly impact on the environment and should therefore be excluded from any consent process or be subject to thresholds:

- The restoration of lands to their original state.
- The removal of scrub.
- The replacement of an existing drainage network.

Food Harvest 2020 sets out ambitious growth targets for the sector which IFA members are committed to delivering. In order to achieve this potential, farmers will be required to maximise output by renting and buying under-utilised lands and carrying out necessary remediation works to bring the land back to its original state.

IFA proposes that where such activity takes place and is limited to the restoration of lands to their original state, then it should be classified as maintenance and not subject to the consent/threshold process.

During the 1970s substantial land improvement works took place as part of the Farm Modernisation Scheme, the Western Drainage Scheme and the Cross-Border Drainage Scheme. Farmers with grant-approval carried out these improvement works adhering to standards and specifications set out by the Department of Agriculture. Over time some of this drainage has broken down and now requires replacement.

In addition, the cleaning of land drains is not considered as a notifiable action for the purpose of the implementation of the Habitats Directive. However, it is now proposed that such action will require screening and/or consent under the EIA Directive.

IFA proposes that farmers should not be obliged to seek consent from the Department of Agriculture, where repair and replacement of existing drainage systems takes place.

The proposed extension of drainage activity into the consent process, on non-designated lands, represents a designation by default and forms the basis for a justifiable claim for compensation.

1.2 Wetlands vs Wetland

The definition of wetlands, and in particular floodplains, in section 5.3 of the guidance document has caused confusion and concern amongst farmers. Wetland is very different to wetlands, and the

¹ Callinan B. (2011) Presentation to Joint Oireachtas Committee on Communications, Natural Resources and Agriculture, EU Directives: Discussion, Dáil Éireann, 12th October 2011

inclusion of “floodplains that are permanently or periodically inundated with water..” is too subjective and provides no reasonable guidance to farmers.

In 1997 IFA, in association with a number of State Agencies and Government Departments, agreed a more prescriptive definition of floodplains, for the purpose of the implementation of the Habitats Directive. This definition would reduce concerns regarding ponds appearing in fields being considered as wetlands and provide a more reasonable approach.

IFA proposes that the definition of floodplains, as outlined in the implementation agreement of the Habitats Directive, should replace the existing definition of floodplains proposed in the Guidance document.

1.3 Re-contouring vs Restructuring

An anomaly has emerged regarding the interpretation of the area of lands being restructured by the removal of field boundaries. In the regulation, a farmer must apply for screening above 5 hectares. However, if re-contouring is taking place as part of this restructuring then the screening threshold drops to 2 hectares. This re-contouring may be taking place to improve the gradient and make the fields safer when operating machinery.

IFA proposes that in situations where farmers are doing a combination of re-contouring and re-structuring works on the same parcel of land, then the higher threshold of 5 hectares should apply.

When re-contouring is taking place the machine operator will usually segregate the top-soil from the sub-soil and a working area larger than the footprint of the actual job will be required.

When calculating the threshold area with regard to carrying out re-contouring works, the net area should apply (i.e. the area used for the storage of topsoil or subsoil, while work is progressing should be disregarded).

1.4 Cumulative Period

Agricultural land in Ireland is predominately in grassland, with over 90% of the agricultural area consisting of pasture, grass silage or hay and rough grazing. In the vast majority of cases the land improvement works will increase the area under grassland. Ireland’s climate is well suited to pasture production and for up to 10 months of the year temperatures are conducive for grass growth.

Therefore, it is reasonable to assume that crop regeneration will take place within a twelve month period and in such cases (grass, cereal crops etc) where establishment takes place in a twelve month period, a cumulative period of not greater than one year should apply.

IFA proposes that where re-generation takes place over a twelve month period, the cumulative period proposed of five-years is considered excessive and such projects should be considered on a year-to-year basis.

1.5 Significant Negative Effect on the Environment

During Ireland’s negotiations with the Commission, the Association understands that Ireland had two options regarding the implementation of the EIA Directive, as it relates to agriculture. One was to

operate without any thresholds and require all projects to apply for screening to the Department of Agriculture and the other, which was signed into law on 8th September 2011, was to introduce significantly reduced thresholds.

However, *catch-all* statements, such as those set out in section 3 of the Guidance document, whereby sub-threshold works may also require screening (depending on a farmer's subjective view as to whether the project may have a significant negative effect on the environment), ignores the principle of thresholds, which Ireland successfully negotiated with the Commission.

The Guidance document as it is currently written is subjective and open to interpretation and may hold-up development or even result in a farmer unintentionally breaching obligations under the regulation. For example, the works carried out by one farmer may have no impact on the environment, but when these works are considered in association with works carried out by adjoining farmers, then the overall impact may be of concern.

IFA proposes that the threshold levels should represent the assessment criteria when a farmer applies for screening or consent.

1.6 Species Rich Grassland

Section 4 of the Guidance Document states that uncultivated land or semi-natural areas (ULSNA) are "...areas that are not covered by hard or artificial surfaces, perennial ryegrass, dominated grasslands, tillage or other crops or gardens. The types of land considered to be semi-natural are for example:

- Species-rich grassland, upland
- Species-rich grassland, lowland....."

The inclusion of species-rich grassland in the definition of ULSNA will deter farmers from selecting the option of sowing/regenerating such species rich grasses as part of an AEOS plan, because such lands may now be classified as ULSNA and farmers may be required to apply for consent for any future works taking place on their lands.

IFA proposes that species-rich grassland should be removed from the definition of ULSNA.

1.7 Restructuring of Rural Land Holdings

Section 3 of the Guidance document states that "...restructuring of rural land-holdings involves changing the layout of the farm.....Maintenance work on existing structures, such as repairing stone walls, maintenance of hedgerows is not covered by the Regulations. Removal of post and wire fencing (barbed wire or electric wire) is also exempt from the requirements of the Regulations."

Where enterprises are being set-up or developed, as is currently taking place in the dairy sector, realignment of fields are required to ensure the paddocks are of equal size to provide for efficient rotational grazing.

IFA proposes that the areas not covered by the regulations should include the realignment of fields, where the planting of hedgerows elsewhere within the farm offsets the same length of hedgerow removed.

1.8 Definition of Semi-Natural Areas

Section 4 of the Guidance Document states that: “*Semi-natural areas will not normally have had any form of chemical cultivation other than low levels of organic or chemical fertilisers.*”

Use of chemical fertilisers continues to decline, with current use of phosphorous and potassium now at 1950's levels and use of chemical nitrogen falling by 20% in a five year period. This reduction in fertiliser use can be associated with the more efficient use of fertilisers and considered as environmentally desirable.

It would be wrong to now impose additional compliance obligation and land designations on farmers who have reduced their fertiliser use, by classifying their land as semi-natural.

In addition many farmers may find their lands re-classified as semi-natural areas by following current Teagasc grassland guidance and reducing/eliminating fertiliser by substituting chemical fertiliser with clover in the sward.

IFA proposes the deletion of the link between the definition of semi-natural areas and use of chemical fertilisers.

1.9 Wetlands – Peatlands

Section 5.3. of the Guidance document states that peatlands include bogs, wet heath and fens.

The introduction of these restrictive EIA regulations for wetlands provides an opportunity to review S.I. No. 538 of 2001 and S.I. 539 of 2001, and repeal the lowering of the extraction and planning thresholds for peat extraction. Farmers must be allowed to cut adequate amounts of turf on their own land, without having to apply to the County Council for permission.

IFA proposes that all non-designated bogs should be removed from the definition of wetlands. In addition, current thresholds should be reviewed upwards. Compensation should be paid if additional obligations are now being placed on non-designated bogs.

1.10 Notifiable Actions in Designated Areas

Section 6.1.1 of the Guidance document states that “Landowners are sent copies of the notifiable actions that are relevant to their lands.” In practice this does not always happen and it is unacceptable that a farmer's lands are designated and he/she is not adequately notified.

Section 6.1.1 continues, “In any event, proposed works in all areas (protected or not) that exceed the screening thresholds will require screening by DAFF.”

Under the Agreement between the Government and Farming Organisations on Review of Implementation of the Habitats Regulations 1997 and its subsequent review, certain actions are not notifiable actions and this position should remain.

The extension of the consent process to all works on non-designated lands represents a designation by default and forms the basis for a justifiable claim for compensation.

1.11 Duplication by Public Bodies

Section 6.1.1. of the Guidance document sets out the current consent procedure which exists when works are taking place on designated areas (NHAs, SACs & SPAs).

The proposed consent process also set out in the Guidance document will now oblige farmers who intend to carry out works on designated areas to apply for consent to possibly three public bodies (Department of Art, Heritage and the Gaeltacht; Department of Agriculture, Fisheries and Food and County Councils).

The current best practice in environmental regulation implementation is *Collect Once, Report Often*². To achieve this and ensure the efficient delivery of public service and a reducing of unnecessary bureaucracy on farmers, it is important that an agreement is reached between the relevant Government Departments that a standardised format is reached for the collection and reporting of details and information.

Precedence already exists for such co-operation between Government Departments and State Agencies, for example felling license applications are sent to the Forestry section of the Department of Agriculture and then forwarded by that Department to National Parks and Wildlife Services for consideration; similarly forestry planning applications to the Forestry section of the Department of Agriculture may be forwarded to the archaeology and monuments section of National Parks and Wildlife.

IFA proposes that an agreement is reached between the relevant Government Departments that a standardised format is agreed for the collection and reporting of details and information.

1.12 Environmental Impact Statement

Section 8.1 of the Guidance document outlines the general procedure for the completion of an EIS.

The completion of an EIS must be simple, straightforward and cost-effective. To achieve this, a template EIS form should be drafted and included in the annex.

When a farmer is requested to submit an EIS, full use must be made of CMMS data by the Department, in advance of requesting additional information from farmers. The Department of Agriculture should consider other lower cost studies such as ecology studies or mammalian studies in place of costly EISs, where appropriate.

Similar to the SPA process a contribution to help alleviate the cost of completing the environmental report must be put in place.

The application for an Environmental Impact Assessment decision contains a request for the farmer to outline the details of the person who will carry out the proposed works. Such details are not requested by other Member States when implementing this regulation. In addition, a farmer will probably not know who will complete the work at the time of submitting an application for screening and may carry out a tendering process at the same time as the screening process is taking place.

² O'Leary G. (2011), *Setting Priorities for Delivering Water Quality*; Paper Delivered at Environmental Protection Agency National Water Conference.

IFA proposes the removal of the details of the contractor from the screening application as this information has no function in understanding the environmental impact of the project and it may hinder the farmer from securing the best price to complete the works.

1.13 Right to Appeal Decision

This regulation introduces a new system of land management in Ireland, in that farmers who intend to carry out land improvement works on their lands above a certain scale, must apply to the Department of Agriculture for screening and/or consent to complete such works.

A refusal to grant consent and/or a referral from screening to the consent process by the Department of Agriculture represents a designation of lands, and this may limit and reduce the future productivity and return per hectare.

IFA proposes that an appeals process for farmers is put in place, which allows a farmer to appeal an unsatisfactory decision by the Department. The Chairman of the appeal should be at liberty to make recommendations regarding compensation for yield loss, income loss and property devaluation.

1.14 Vexatious Objectors Must Not Be Tolerated

In Food Harvest 2020, industry leaders identified the potential of agriculture to increase farm gate output by €1.5bn and to grow export value to €12bn. The achievement of these targets requires planning and significant financial expenditure by farmers. This regulation provides scope for vexatious objectors to frustrate and prevent good and logical farm improvement works.

IFA proposes that:

- ***Serial crank objectors must not be allowed.***
- ***Observations must be restricted to State Bodies.***
- ***An appropriate fee must accompany any objection.***
- ***The objector must be directly impacted by the proposed works.***

1.15 Farmers Must Not Be Penalised Retrospectively

The thresholds contained in the regulations became effective since 8th September 2011 and since then “rainfall in September was above average almost everywhere...”³.

This poor weather has left land un-trafficable and has resulted in many farmers not finishing work which commenced before the legislation was enacted. The Association welcomes the clarity provided by the Department of the Environment that farmers will not be penalised retrospectively⁴ however, it is essential that this information is communicated in the Guidance document and to Department of Agriculture Inspectors.

IFA welcomes the confirmation that farmers who commenced works before the 8th September 2011 will not be penalised, and proposes that this fact should be included in the Guidance document and communicated to Department of Agriculture Inspectors.

³ Met Éireann, Weather Summaries, The Weather of September 2011

⁴ Walsh D. (2011) Presentation to Joint Oireachtas Committee on Communications, Natural Resources and Agriculture, EU Directives: Discussion, Dáil Éireann, 12th October 2011

1.16 Timeframe for Delivering Screening and Consent Decisions

The Guidance document does not place any specific timeframe obliging the Department of Agriculture to report their screening or consent decision to a farmer. This is unsatisfactory and out of line with how other EU Member States have implemented the regulation.

Farmers and contractors need to plan their work schedule and can only do so in the knowledge that a screening or consent decision will be made within a certain timeframe.

IFA proposes that all screening decisions should be made within 4 weeks of the request for screening, and all consent decisions will be made within 2 weeks of the closing date of requests for observations from consultation bodies.

Consent should be deemed granted where the Department of Agriculture fails to adhere to timelines.

1.17 Approval Term

The Guidance document does not provide any indication as to the length of the approval term.

IFA proposes that in keeping with other permissions, where consent is granted, it should remain in place for at least five years.

1.18 Screening Decision Rights

When a screening application is lodged with the Department of Agriculture, it is done so for works taking place on a specific area of land. In the event that the land is sold before the approval term expires then the screening decision should transfer with the land parcel. It is illogical that it would remain with the original farmer applicant.

IFA proposes that a screening decision must transfer with the land if a sale takes place during the approval term.

1.19 Requirement for Regional Information Meetings

This regulation will require farmers to consider a range of new procedures when doing future land improvement works, including thresholds, screening and consent procedures and environmental impact statements. These obligations are complex and may have significant implication for farmers if they do not adhere to the requirements.

Similar to the introduction of new schemes such as AEOS and REPS, communication by the Department of Agriculture with farmers is extremely important.

IFA proposes that the measures contained in the regulation should only be introduced after the Department of Agriculture has completed a series of information seminars. It is unreasonable to impose legislation before it is explained to farmers affected.

1.20 Fines

Section 10 of the Guidance document states that on summary conviction, Class A fines are applicable.

Fines and penalties should be proportionate and dissuasive. The imposition of Class A fines, which may be up to €5,000, are excessive given that the average farm income in Ireland is €18,000.

Fines and penalties should be replaced with a commitment to inform and educate, as set out in section 1.19.