

Natural England Standard

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



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1:0 About this standard

Background

The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006 ('the EIA Regulations') came into force on 10 October 2006, with subsequent 2017 amendments coming into force on the 16th May 2017. Natural England is the regulator. The EIA Regulations introduced a formal procedure to assess the potential environmental impact of certain proposed changes to land use before those works are allowed to proceed. There are also EIA regulations in other sectors such as forestry, land drainage and most notably in Town and Country Planning.

Environmental Impact Assessment (EIA) is a procedure for considering the potential environmental effects of land use change. EIA helps to inform decision-making and enables decisions on land use change to be taken with full knowledge of the likely environmental consequences.

The aim of the EIA regulations is to protect the most environmentally significant land in England from agricultural intensification. They also guard against possible negative environmental effects from the physical restructuring of rural land holdings, such as changes to field boundaries. They do not cover hedgerows because the removal of hedgerows is covered by the Hedgerow Regulations 1997 and they are specifically exempted from the EIA Regulations¹. The regulations apply to semi-natural areas and uncultivated land and these terms are defined elsewhere in our operational and [public guidance](#).

In summary, the EIA Regulations apply to two types of project: **uncultivated land projects** and **restructuring projects** ('EIA projects'). Before starting an EIA project, a land holder must apply for and receive a screening decision from Natural England. The application must be accompanied by an Environmental Screening Report which presents an account of the environmental assets that are present on the area over which the project is proposed. If the project is 'screened in' as being likely to have significant environmental effects, then it cannot start until Natural England's consent is applied for and received. Our consent decision is based on the evaluation of an Environmental Statement which is produced and paid for by the applicant.

¹ Regulation 5(1) of the Hedgerow Regulations 1997 sets out the procedures to be followed by an applicant and a local planning authority (LPA) for the removal and retention of hedgerows and the powers that the LPA has to prevent the removal of hedgerows. Hedgebanks may be included within the EIA Regulations;

There are eight main aspects to the EIA regulations:

1. Customer and case management;
2. Screening;
3. Scoping;
4. The EIA & Environmental Statement;
5. Consent;
6. Appeals;
7. Offences
8. Reporting.

Summary details of these eight aspects are given below and more is available in the EIA operational guidance. The flowchart in Figure 1 picks out the most important points.

Why is a standard required?

A Standard on EIA is required to ensure that Natural England:

- Will always be able to show that it has acted lawfully and in accordance with its duties and powers under the regulations;
- Can give confidence and clarity to our customers on our decisions and actions;
- Operates a nationally consistent framework to delivering our statutory obligations in a way which is fair, transparent and legally compliant, whilst reflecting the guidance to regulators provided by Government;
- Carries out screening assessments and reaches consent decisions that are robust, professional, evidence-based and reach a consistent standard of quality;
- Delivers its screening and consent decisions within the specified Statutory timescales;
- Uses screening notices, stop notices and remediation notices in an appropriate manner having first explored other mechanisms to achieve the same effect;
- Takes proportionate enforcement action under the regulations, where appropriate, which is in line with our enforcement standard;
- Works effectively with other Defra family bodies, particularly the Rural Payments Agency to ensure that cross compliance requirements are followed;
- Provides links to clear, concise instructions to staff engaged in this work so that they can quickly understand exactly what is required of them in order to effectively discharge their responsibilities; and
- Ensures that the EIA regulations make an important contribution to achieving the Governments 2020 BAP Targets.

Who is this standard for?

This Standard applies to all Natural England staff engaged in EIA Regulations screening applications, consent decisions and enforcement cases.

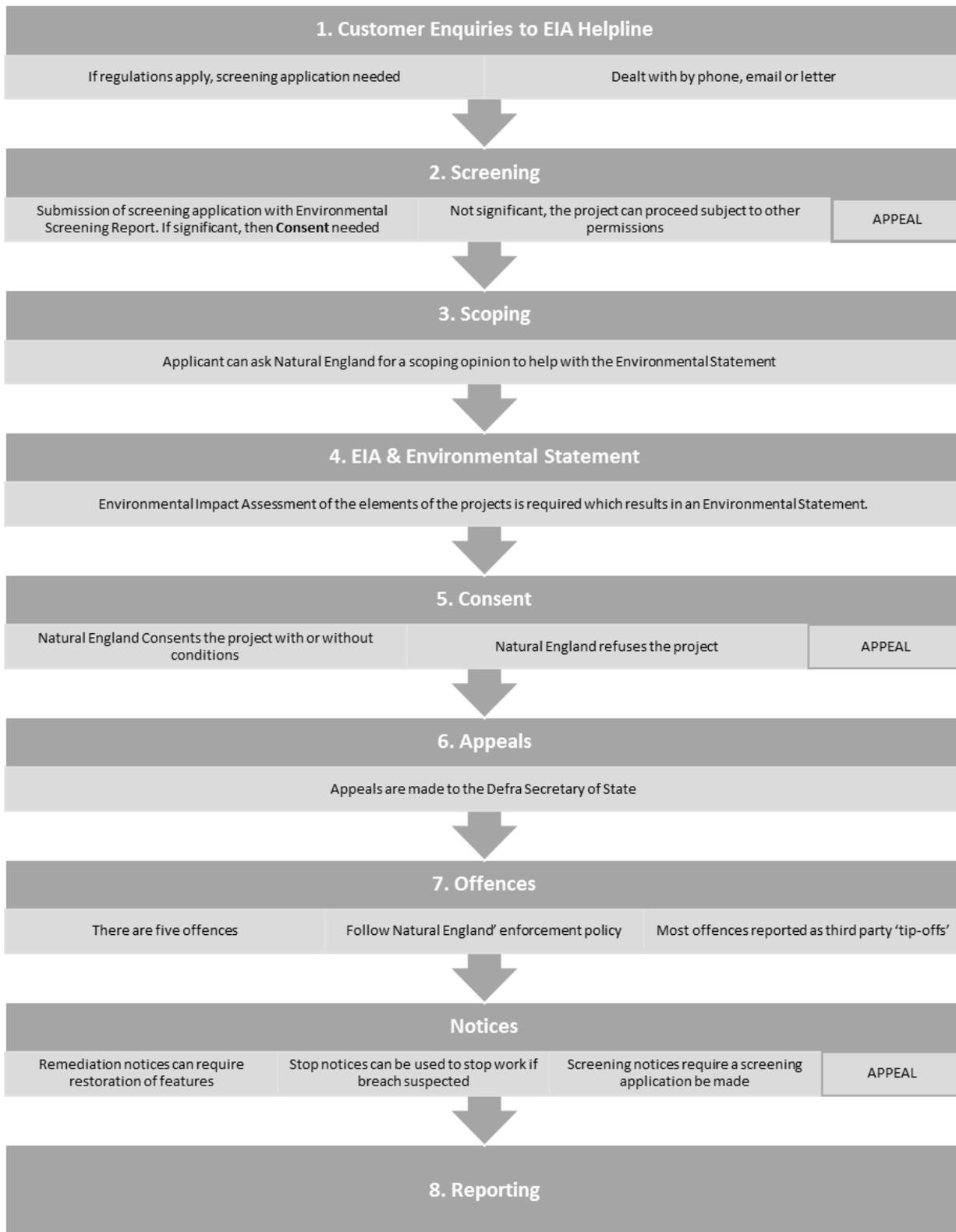


Figure 1: Flow chart of the eight main aspects of the EIA Regulations

2:0 The Standard

This standard sets out:

- a set of principles that apply to Natural England staff in carrying out its EIA business; and,
- a list of mandatory activities which Natural England must carry out to fulfil its duties in relation to the EIA Regulations.

Mandatory Principles

The following principles apply to Natural England staff in carrying out its EIA work:

1. Natural England staff will adopt the highest possible professional standards when it comes to implementing the EIA Agriculture Regulations.

As England's statutory nature conservation adviser, Natural England staff will promote the importance of securing compliance with the EIA Regulations in line with Government policy, whilst delivering natural environment outcomes and an efficient decision-making service to its customers.

Natural England's EIA decisions will always be clear and transparent, with a comprehensible and logical narrative throughout. Each screening decision will include a clear justification for why or why not the EIA project has or has not likely significant environmental effects. At each key stage of the life of an EIA case, Natural England will clearly record and justify the decisions made.

Natural England will take full account of guidance provided by Government which informs the application of the EIA Regulations.

When making screening and consent decisions, Natural England staff will base the decision on a robust and evidence-based assessment of the available sources of information and consultation responses received from consultation bodies.

2. All decisions will be made according to statutory deadlines. In the situation where it is not possible to provide a decision within the time period, an extension will be negotiated and agreed with the applicant and confirmed in writing. It will be as short as reasonably possible.

The EIA Regulations set out specific statutory deadlines for responses and consultation with other organisations and the general public. Most of Natural England's EIA work is concerned with screening decisions which requires that a response to the applicant must be made within 35 days. This is interpreted to mean 35 calendar days. However, where Natural England considers there are exceptional circumstances, it may write to the applicant, extend the deadline for the screening decision, and explain the reasons why this decision has been made.

If Natural England fails to make a decision after this time, then the EIA Regulations allow that the applicant may notify Natural England that this failure is a decision that the EIA project will have significant environmental effects.

In many cases it is necessary to consult with third-party consultation bodies that often require a minimum 20 working day period to respond. Because of the 35 day deadline, we are only able to allow 10 days to receive comments. This sometimes generates a potential over-run in Natural England's response.

If there is an over-run for this reason, then an extension will be negotiated and agreed with the applicant in writing. The extension period should not be by more than 40% of the deadline without further referral within Natural England to Senior Specialist or Senior Advisor. For example in the case of the 35 day limit, this would mean an extension could not be agreed which is longer than 14 calendar days. The EIA Regulations do allow for an extension to be agreed. If the customer is not prepared to agree to this, then the case should be assigned a higher priority and escalated to the Area Team leader to consider appropriate action. Inclusion of the case on the Area Team risk register should be considered at this point.

3. When making an EIA decision (screening decision, consent, or a scoping opinion), Natural England staff will use a robust, evidence-based approach, be consistent, transparent and work in accordance with our EIA operational guidance.

All of Natural England's EIA screening decisions will demonstrate a high degree of technical credibility which is underpinned by sound evidence conforming to our organisation's evidence standards. Our decisions will be subject to quality assurance management processes to validate the attainment of these standards and to benchmark our work against them.

The following minimum standards apply to EIA decisions:

1. Decisions will use our nationally-set operational guidance templates to ensure a nationally consistent, compliant and transparent audit trail across the organisation. Screening and consent decisions will be recorded on the organizational casework tracker;
2. Complex, novel or controversial cases will be subject to peer review. High risk cases will be escalated through the proper channels and will be recorded on the appropriate Risk and Issues Register;
3. Decisions will be clearly-recorded, reasoned, evidence-based judgments informed by specialist advice and opinion where required, and be proportionate to the scale and complexity of the project/plan under consideration;
4. Decisions will be informed by advice from Natural England technical specialists, where it is relevant to do so.
5. Decisions will be made following consultation with the relevant bodies set out in the EIA Regulations and other organisations as decided on a case by case basis. For decisions where a Historic Environment interest has been identified, the County Archaeologist will always be consulted. English Heritage will only be consulted where a scheduled monument is concerned. For decisions which may affect a Local Wildlife Site, Natural England will always consult the County Wildlife Trust (or similar appropriate body). The Environment Agency will always be consulted and where their advice is pertinent to the decision, we will copy our decision letters to them;

6. The quality of a selection of decisions will be subject to peer review by referral to experienced or specialist colleagues, as set in the [Quality Management Standard](#). Routine quality assurance will also take place, instigated by area teams or the relevant national team;
7. Decisions will always be based on the best available evidence and knowledge including the best publicly available factual information and evidence, in line with our [Evidence Standard](#) and;
8. Decisions will always be made available internally and externally on our register of screening applications and log of consents. Where enforcement action is carried out, or where a landowner chooses to enter into an Enforcement Undertaking, this will also be presented on the Gov.uk website.

4. We will apply our standards of customer service to all of our EIA work

Natural England will always strive to deliver its EIA work in accordance with its external customer service standards. We will liaise with applicants during the decision making process, for example should we need further information from them where it is reasonable and necessary to do so and informing them as to the likely timescales involved. Where decisions are particularly complex, we will make it clear to applicants that there are additional requirements placed on Natural England and it may take longer than usual to determine their application. See above.

5. In making our decisions, we will adhere to the Natural England governance arrangements (through the Non-Financial Schedule of Delegation).

All staff involved in EIA decisions should be familiar with, and follow Natural England's [Non-Financial Schedule of Delegation](#)

Where complex cases are encountered, the EIA practitioner should inform the Area Team Leader and consult with the EIA Senior Adviser. Those cases which are assessed as high risk may be recorded on the Area Team risk register and in exceptional circumstances considered by the High Risk Casework Panel.

6. Natural England will work 'as one' across teams to deliver EIA work and ensure that we continue to develop the skills, experience and expertise of Natural England staff in support of our decisions and field assessments.

Several national and local teams work together to deliver the EIA work and this standard will help to nurture a joint working ethic in delivery across the organisation.

National advisers and specialists will support EIA delivery through the preparation of training, casework guidance, and leading on appeals and enforcement. **Area Teams** will lead on EIA decision making, will provide local geographic literacy and intelligence, and will work closely with national advisers largely on complex cases. Area Teams will undertake site visits where these are needed (especially in relation to tip-offs and enforcement cases) acting in accordance with our field assessment guidance. **Specialists** will provide the know-how and up to date information to evidence our screening and consent decisions, scoping opinions and our appeals cases. They will also support training and learning where possible. **Legal Services** will usually only become involved where there is enforcement action, or where a particular case is deemed to be precedent setting.

Staff making EIA decisions will need to show that they have achieved a strong working understanding and knowledge of the legislation and possess Practitioner-level skills in understanding and undertaking EIA.

EIA Activities

The purpose of the EIA Regulations is to regulate projects which increase productivity for agriculture of uncultivated land and semi-natural areas and which may have an environmentally significant impact. The activities which Natural England carries out to fulfill its duties are in the following list which follows the process of an EIA project from start to finish. Further details are given in the EIA operational guidance.

| Activity | Functions with lead responsibility (in bold) | Details |
|--|---|---|
| <p>1. Customer and case management</p> <ul style="list-style-type: none"> Managing Customer helpline - dealing with phone and email pre-screening requests and informal enquiries from customers. Responding to routine EIA screening applications and validating Environmental Screening Reports. Contacting applicants to request additional information where the ESC is incomplete. Receiving 3rd party consultations or tip-offs. Management of e-case files and casework tracker. | <p>UIA Unit, Area Team (AT)</p> | <p>EIA Unit and AT are jointly responsible for maintaining good customer relations.</p> |
| <p>2. Screening Screening Applications</p> <ul style="list-style-type: none"> Dealing with applications for screening decisions concerning EIA projects from customers within the Statutory 35 calendar days from receipt. In complex cases, or where Natural England will exceed the 35 calendar day deadline, practitioners will write to the applicant to extend the deadline for response. | <p>AT (EIA practitioner); EIA Unit; (EIA Senior Adviser).</p> | <p>Our decision is whether the EIA project is a significant project. EIA practitioners are responsible for the decision. Area Team Leaders and EIA Senior Adviser are involved in complex/ novel situations. Where required, the Area Team will carry out field visits, particularly in relation to tip-offs and enforcement.</p> |
| <p>Screening Notices</p> <ul style="list-style-type: none"> Decision on whether to apply a screening notice for those EIA projects where the thresholds have not been met; where Natural England reasonably believes such a project will be carried out and where there would be a likely significant effect. | <p>AT (EIA practitioner and Team Leader); (EIA Senior Adviser) Legal Services Delivery</p> | <p>Screening Notices are only used in exceptional circumstances. They can be used in relation to situations where we suspect that a semi-natural area has or will be lost as a result of the cultivation of an area of land below the 2 hectare thresholds.</p> |

| Activity | Functions with lead responsibility (in bold) | Details |
|--|---|--|
| 3. Scoping <ul style="list-style-type: none"> Preparation and dispatch of a scoping opinion to an applicant within the Statutory 35 days (5 weeks) of a request, ensuring that it draws on the best current evidence available from within Natural England and from other appropriate external consultation bodies. | Area Team (EIA practitioner and Team Leader); (EIA Senior Adviser); technical specialists in Specialist Services. | Area Teams manage deadlines, draft and request content from topic specialists as necessary, and dispatch to customer. EIA Senior Adviser may be consulted as required. |
| 4. EIA & the Environmental Statement (ES) <ul style="list-style-type: none"> Making an assessment as to the suitability of an Environmental Statement and assisting the applicant on matters of clarity or supplying access to sources of evidence which Natural England holds. | AT (EIA practitioner and Team Leader), National EIA Senior Adviser; technical specialists in Specialist Services. | The ES forms part of the Consent decision. |
| 5. Consent <ul style="list-style-type: none"> Determination of applications for consent for EIA applications within the detailed statutory timelines and provisions in the regulations, including the requirement to publicise the application on our website and in the press and to consult appropriate consultation bodies. | AT (EIA practitioner and Team Leader), (National EIA Senior Adviser); technical specialists in Specialist Services. | In making a consent decision, Natural England must consider the ES, any additional environmental information, representations we receive and any socio-economic impacts if we are minded to refuse consent. |
| 6. Appeals <ul style="list-style-type: none"> Responding to Defra within the statutory deadlines with our statement of case so that they are able to determine an appeal, and to respond to any follow up questions of clarification. | Legal National Appeals Officer); AT (EIA practitioner and Team Leader); Technical specialists in | Appeals can be made at all stages of an EIA case. |
| 7. Offences <ul style="list-style-type: none"> Responding to suspected breaches of the EIA regulations. | AT (EIA practitioners and Team Leaders); (National EIA Senior Adviser); Technical Specialists in Specialist Services; Legal Services | Five offences are set out in the legislation. The most likely ones to be encountered are carrying out relevant work without a screening decision or consent and contravention of a stop or remediation Notice. |
| 8. Reporting <ul style="list-style-type: none"> Logging all Natural England's screening decisions on a public register. Informing the Rural Payments Agency (RPA) of breaches in the legislation as they occur and making an annual report to the RPA. | AT (EIA Practitioner); EIA Unit | This is held on our website and updated on a monthly basis. Uncultivated land projects are subject to cross compliance, restructuring projects are not. |

Quick reference

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| Type of Standard | Operational standard |
| Purpose: | To set out the principles and activities which all functions should follow to ensure Natural England discharges its role as the regulator for the EIA Agriculture Regulations 2006. |
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| Sign-off: | Ginny Swaile (Strategy Implementation Manager) |
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| 0.3 | Third draft. Amended to include comments from Natural England consultation: R Leishman; M O'Donnell; A Kwolek; R Alexander; R Jefferson; I Alonso; D Enright; F MacCullagh; S Stainer; S Cooch; D Ward | P. Eckersley | 12/6/13 |
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| 1.2 | Minor amendment by | M. Powell | 7/11/2018 |
| 1.3 | Minor amendment and signoff | G. Swaile | 23/03/2019 |
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