

Wildlife and Countryside Link Response to Natural England's Environmental Impact Assessment Public Guidance Review

Wildlife and Countryside Link (Link) brings together over 30 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 690,000 hectares of land.

This response is supported by the following 8 organisations;

- Bat Conservation Trust
- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Campaign to Protect Rural England
- The Grasslands Trust
- Plantlife
- The Royal Society for the Protection of Birds
- The Wildlife Trusts

1. Context

Link welcomes Natural England's review of the guidance for landowners and the general public, concerning the application of the Environmental Impact Assessment (Agriculture) (England) Regulations (no. 2) 2006. This guidance document is very important, partly because the Regulation is complex and many aspects of it require clear definitions to enable it to function effectively as a mechanism to protect wildlife.

For the past five years, a number of Link members have worked together as a coalition, led by The Grasslands Trust, to highlight the weaknesses in the Regulation, both in terms of its effectiveness, and the success with which it has been implemented. This coalition has provided evidence to Defra, and subsequently to the European Commission, of wildlife sites and their biodiversity which have been damaged and destroyed without successful application of the Regulation.

2. The guidance

The draft Public Guidance is substantially the same as the previous set of guidance. The most significant change, and the reason that the guidance had to be revised, is that land under a restoration option within an agri-environment scheme is now regarded as uncultivated land. The intention of this clarification is welcome, that being to close the loophole which prevented action being taken following damage to Brock's Common Local

Wildlife Site in Devon¹. Unfortunately it will not, as it is based on the assumption that all land entered into re-creation options of agri-environment schemes, such as HK8 in the Higher Level Scheme (HLS), will not meet the uncultivated land test. In fact, there are examples where uncultivated land, for example Culm grassland that had been afforested, but is still uncultivated for the purposes of the Regulations, is entered into HK8². The guidance should state clearly that land in re-creation options of agri-environment schemes should be assessed to determine whether it was “cultivated land” prior to being entered into those re-creation options.

There are a number of other issues which the guidance does not address, which Link believes could be further clarified in this guidance. This further clarification would help to define the limits within which the Regulations can operate, as they are currently laid out.

3. Screening Notice

The Screening Notice mechanism has not been successfully used once in the five years since the Regulation was made law. This is in part due to a Defra decision in 2006 to revoke on appeal the first attempt by Natural England to use a Screening Notice. Defra determined that projects affecting sub-threshold semi-natural areas would not, by definition, be likely to have a significant effect on the environment. On this basis any projects that did have a significant effect on a sub-threshold semi-natural area would need to have special features that justified a Screening Notice being used. Under questioning from the European Commission, Defra has now agreed that this was an error³. Yet in a recent written answer⁴ Minister for Agriculture, Jim Paice MP re-iterated that the Screening Notice could only be used where there a semi-natural area was of “*particularly high environmental quality*”. It is still very unclear to landowners, NGOs and general public how this Notice could be applied.

Two tests have to be passed before a Screening Notice can be made – firstly that the project “is likely to be carried out”; secondly that it is “likely to have a significant effect” on the environment.

On the first test, it is not clear what level of evidence is required to prove that a project “is likely to be carried out.” This should be clarified. For Stop Notices and Remediation Notices, the standard of proof required is “on balance of probabilities” - what is the standard of proof for Screening Notices, and what does this translate to in practice? Evidently, from recent examples, landowners stating to witnesses verbally their intention to carry out an uncultivated land project on a semi-natural area are not sufficient for Natural England to act⁵. It would be helpful if Natural England provided a range of examples of what standard of proof is required.

¹ 22ha of Purple Moor-grass/rush pasture priority habitat in Brocks Common County Wildlife Site was damaged by cultivation in 2008. A stop order was obtained by Natural England but this was overturned on appeal, as the site had been in a Countryside Stewardship Restoration Option, and was therefore technically cultivated land.

² Pers comm. between Miles King (TGT) and Peter Burgess Devon Wildlife Trust 6th October 2011.

³ Letter from Defra to The Grasslands Trust 27th October 2010

⁴ J. Paice written answer 6th September 2011 HC Deb, 6 September 2011, c377W.

⁵ Eg Jock’s meadow, Bishops Itchington, Warwickshire – correspondence between TGT and NE June 2011.

On the second test, Defra has clearly stated on more than one occasion⁶ that, by definition, a sub-threshold project will not have a significant effect on the environment. Natural England has the opportunity in this public guidance to lay out very clearly what it regards as likely significant effect in this context. Given that the only semi-natural areas that are currently within the scope of the Regulation are priority habitats, it is difficult to understand how the loss of priority habitat fragments below the threshold is not significant. The Independent Farming Regulation Taskforce (MacDonald review)⁷ suggested that there was an element of gold-plating about the 2ha threshold. Yet England's priority grassland habitats are known to be highly fragmented and a large proportion (nearly half of all surviving purple moor-grass/rush pasture for example) of sites outside SSSIs fall below this 2ha threshold⁸. This issue needs further clarification in the guidance.

4. Definition of Semi-Natural

Natural England has attempted to clarify what constitutes "Semi-natural areas" within the Regulation, by introducing a table (A2) with descriptions and a comparison of priority habitat type to National Vegetation Classification (NVC)⁹ community. Whilst the descriptions are useful, the NVC coding is only of use to the specialist - it will mean nothing to the average landowner.

A more useful approach to identifying semi-natural areas would be that adopted within Environmental Stewardship in the HLS Farm Environment Plan handbook. This is a systematic approach to identifying habitats without using the NVC and is much more amenable to use by a moderately proficient naturalist. Indeed Natural England staff are using this approach to identify new additions to the lowland grassland inventory, rather than relying on the much more complex, expensive and potentially ambiguous NVC approach.

One other issue that may require reappraisal is the requirement that semi-natural areas are by definition uncultivated, and that land cannot be determined to be uncultivated until at least 15 years since the last act of cultivation. Defra amongst other organisations is currently funding work carried out by the Centre for Agri-Environmental Research at the University of Reading, to develop a robust and repeatable methodology for assessing sites to determine when they have reached sufficient quality to be described as "priority habitat" or technically "habitats of principal importance" as defined in the NERC Act. These definitions underpin the definitions of semi-natural areas within the Regulations. If the methodology developed in this research programme is accepted, and once in use enables the identification of newly created sites for priority habitat, where that habitat has developed within 15 years since last cultivation, this will undermine the current definition of uncultivated land within the Regulations. At this point the definition of uncultivated land, using the 15 year test, will need to be revised.

⁶ Defra letters to TGT October 2010, 7th December 2009,

⁷ Striking a Balance: Independent Farming Regulation Taskforce 2011.

⁸ Data from Natural England quoted in letter from a coalition of NGOs to Hilary Benn 1st July 2009.

⁹ Rodwell, J et al (1991-2000). British Plant Communities volumes 1-5. Cambridge University Press.

5. Habitats for Priority Species

This is one of the major weaknesses in the definition of semi-natural areas. Quite arbitrarily (semi-natural is left undefined in the EIA Directive) Defra decided in 2006 that semi-natural areas were restricted to those defined according to the presence of an above-threshold area of priority habitat. This excludes sites that support priority species but which support either sub-threshold areas of priority habitat, or areas of habitat which do not meet the definitions of priority habitat laid out in the JNCC habitat definitions i.e. sub-threshold in terms of quality.

There is further confusion in the new guidance, in the notes at the bottom of page 9. These relate to habitats which might include grassland that would not qualify as semi-natural. These notes add confusion by defining Coastal Flood Plain Grazing Marsh as being semi-natural, even if it does not meet the (NVC) botanical tests, but if it supports “associated” species:

*“coastal and floodplain grazing marsh...[that] also provides conditions for species associated with grazing marshes such as wintering or breeding birds, aquatic plants and ditch invertebrates **should** be considered as a semi-natural area.”*

Coastal Floodplain grazing marsh qualifies as semi-natural if it provides conditions for species associated with grazing marshes – the implication being it is not necessary to prove that a species is actually present, just that the conditions are provided. But this is inconsistent with the approach taken to wood-pasture or orchard areas, where the grassland element is uncultivated but not semi-natural. An area of priority wood-pasture or orchard habitat does not qualify as semi-natural overall even if it supports priority species. The same logic applies to semi-improved grasslands which do not qualify as semi-natural on habitat grounds, even though they support priority species.

Link believes that grasslands and other habitats that support priority species should be regarded as “semi-natural areas” even if they do not qualify as such on grounds of habitat quality or extent.

6. Scrub

The approach to the management of scrub is unclear in the guidance. Scrub as a habitat qualifies as semi-natural according to the Regulations and the guidance. But the guidance (paragraph 34) states that clearing scrub does not qualify as cultivation. Yet cultivation is defined as an operation that would “increase the agricultural productivity of the land”. Clearing scrub is an operation which will unambiguously increase the agricultural productivity of the land because more land is available to produce herbage for grazing animals. This inconsistency needs to be resolved. One problem with tying the definition of semi-natural to the JNCC priority habitat definitions, is that scrub has no priority habitat status or definitions. This is problematical – clearly some scrub communities and species do have priority status e.g. juniper. Under this approach a patch of juniper scrub could be cleared without requiring EIA if the sward underneath the juniper did not qualify as priority grassland habitat from its own botanical composition.

7. Cultivation

There are some anomalies within the definition of cultivation which could be clarified, to aid landowners, contractors and the general public, to understand how and when the Regulations apply.

8. Herbicide use

Paragraph 32 states that, spraying of herbicide qualifies as an uncultivated land project. Yet paragraph 34 states that herbicide application does not qualify as cultivation. There appears to be a contradiction between these two positions.

9. Fertiliser

Paragraphs 40-42 seek to explain that low levels of fertiliser use eg farm yard manure do not cause land to change its status from uncultivated to cultivated if the semi-natural status of the area is maintained. It should also be made clear that, under certain circumstances, application of chemical fertiliser e.g. basic slag or rock phosphate, will also not alter the uncultivated status of the land if the semi-natural status of the area is maintained.

10. EIA application to equine or camelid grazing; afforestation and development

We understand that land that is grazed by equines and camelids may or may not fall within the scope of the EIA (Agriculture) Regulations, depending on whether the animals are fed and housed or not. It is important that this guidance clearly states to what extent the EIA (Agriculture) Regulations cover equine and camelid – grazed land.

Equally, it is important for the public to understand how EIA (Agriculture) relates to EIA (Forestry) and the Town and Country Planning (EIA) Regulations, so that the gaps between the various EIA regulations are closed.

The guidance should also clarify how the Regulation applies to overgrazing, and in particular GAEC 9 overgrazing.

11. How can better information about these small sites be gathered to ensure that significant impacts on uncultivated or semi-natural land area averted?

“ We understand the need to protect even small valuable pieces of biodiverse grassland, but the current approach does not appear to adequately separate these from the many more bits of grassland that do not have the same value. We do however recognise that the EIA Regulations form only part of the approach to the protection of important grassland

*We think Natural England should establish a better way to identify these valuable sites to enable their protection. The upcoming review of the guidance on the use of the Regulations provides an opportunity to do so and we would encourage all stakeholders to participate fully.” (Recommendation 6.93 **Striking a Balance; report of the independent farming regulation task force 2011)***

One of the major problems with implementing the EIA (Agriculture) Regulations is that landowners are unaware of the value of the semi-natural grasslands on their land, and the Regulations make the identification of those grasslands onerous to achieve. All too often it is impossible to determine whether a grassland is semi-natural or not, before it has already been subject to an uncultivated land project. After the project, there is no proof that the area was semi-natural, so not only is the area lost, but no sanctions can be applied.

One solution to this would be to develop a comprehensive inventory of semi-natural grasslands, including those grasslands which support priority species but do not qualify on botanical community (NVC) grounds. There are already good quality data sets available for some counties in England from local record centres. These should be incorporated much more effectively into the lowland grassland inventory and other NE inventories. Local Wildlife Sites, for example should be included in the inventory in full. Those counties where local wildlife sites systems do not have comprehensive coverage of semi-natural grasslands should be targeted for more survey. Species data for sites of priority species need to be incorporated into the lowland grassland inventory and other inventories.

A public campaign could be launched to gather information on previously unknown grassland sites. Bringing together a range of NGOs, statutory bodies and local authorities, a campaign could provide a large quantity of data on sites to be added. A verification process would need to be developed to ensure that data quality was sufficient to meet the requirements of the Regulations.

Such an inventory is required for reasons above and beyond EIA

- To meet the targets laid out in *Biodiversity 2020*, a much improved baseline and reporting framework is needed for priority grasslands.
- To identify valuable grasslands within the new planning framework.

**Wildlife and Countryside Link
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