

DEFRA Rural Development Service (RDS) – EIA Guidelines Comments

The Rural Development Service, on behalf of the Department for Environment, Food and Rural Affairs is the competent authority for the EIA (uncultivated land and semi-natural areas) Regulations 2001. Clearly the IEEM guidelines have been written principally with EIA as it relates to planning in mind. Although the proposed formation of Natural England in 2006 will widen the scope of our activities, we have restricted our comments on this document to those that are most relevant to our work. These are set out below.

1. With the introduction of the EIA (uncultivated land and semi-natural areas) Regulations, the provisions of the EIA Directives have been extended to relatively small scale land use change to uncultivated land. In future, this may be extended to other areas of rural land use change (for details, see public consultation on: <http://www.defra.gov.uk/corporate/consult/eia2005/index.htm>). Given the focus of the IEEM guidelines on larger-scale development projects, we wondered whether further consideration could be given to rural land use change as part of the proposed IEEM guidelines on appropriate assessment – in both cases it is possible that an ES with reduced scope or detail may be required. If you are in agreement, representatives of RDS would be keen to be involved.
2. We felt that the examples of Dartford Warbler were useful in clarifying the recommended procedures. However, we wondered whether these could be improved by the addition of a second species or habitat feature, perhaps with conflicting management requirements, to show how conflicts or differing priorities could be resolved.
3. Page 3. We support the adoption of the precautionary principle. However, we felt that the document would benefit from a definition or legal clarification of how the precautionary principle applies to environmental law (i.e. that it can be applied where there is a feature but where there is uncertainty about significance of impact, but not where there is uncertainty about the presence or value of a feature).
4. Page 7 (Box 2, para 2, final paragraph). Competent authorities will need to determine whether significant ecological impacts are likely (to assess whether an ES is required) – in our cases, this has to be done on non-statutory sites. We would welcome further guidance on criteria that may be used to assess likely significant impacts at the screening stage, when competent authorities will not have the benefits of an ES.
5. Page 9 (Screening). Given the need to assess likely significant impacts at the screening stage, there has to be some assessment of value prior to scoping. Further guidance (as suggested in point 4 above) would be really useful here or in an additional guidance note.
6. Page 10 (2.9). The addition of examples of scoping opinions for two or three projects of differing size would be welcome.
7. Page 16 (Box 9). Could this include a link to the Defra webpage? <http://www.defra.gov.uk/environ/eia/default.htm>
8. Page 22 (3.23). We think that the statement on Habitat Action Plans is overstated. Whilst it is true that they were designed to guide conservation action, the statutory authorities have a duty, under the CROW Act, to conserve biological diversity in accordance with the Convention (see box below). Part of the Convention is the commitment to produce action plans in member states. Acting on behalf of Defra, RDS is therefore charged with taking the priority habitat or species status into account at the screening stage to determine likely impacts of land use change. Whilst this may well be a fairly isolated example and although 'having regard' is a relatively weak term, we would welcome recognition of this duty on competent authorities.
9. Page 34 (4.39). We found the section on determining 'conservation status' particularly useful. It may be that this is a useful concept in determining likely significant effects, although having only partial information is likely to limit the value of the concept during screening.

Countryside and Rights of Way Act 2000

74. - (1) It is the duty of-

- (a) any Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975),
- (b) any Government department, and
- (c) the National Assembly for Wales,

in carrying out his or its functions, to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biological diversity in accordance with the Convention.

10. Page 41 (6.6). As discussed in points 4 and 5, for Annex 2 projects, competent authorities may need to judge likely significant effects at the screening stage (prior to production of an ES – and before having an opportunity to produce a scoping opinion). Some reference to the section on screening likely effects would be useful here.
11. Page 48 (Table 5). This lists priority habitats as of regional or local importance. We would agree with this categorisation. However this conflicts with statements on the value of habitats with action plans on page 22. Admittedly Table 5 is from the TAG guidance, but, again, we wondered if this inconsistency could be clarified.

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