



## Assessment of Environmental Impact Assessment (Agriculture) Regulations on Field Boundary Removal



Hedge Laying Association of Ireland Biodiversity Work Package Report: N. Foulkes (Dec'17)

### **Abstract**

The objective of this work package is to carry out an assessment of the operation of the Environmental Impact Assessment (EIA) (Agriculture) Regulations (SI 456 of 2011) in respect of field boundary removals including a detailed assessment of all field boundary related screening applications made under the Regulations since their inception in September 2011. A spreadsheet containing all relevant data and analysis accompanies this report.

**NB. During the course of this project the EIA (Agriculture) Regulations were amended by the European Communities (Environmental Impact Assessment) (Agriculture) (Amendment) Regulations (SI 407) (September 2017). Some of the amendments have a significant bearing on this project and I have endeavoured to highlight where this is the case at the appropriate points in this report.**

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**Acknowledgement**

I would like to thank Michael O'Donoghue and Mandy Murphy of DAFM for their assistance in providing the data for this project.

## 1. Executive Summary

The European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 came in to force on 8<sup>th</sup> September 2011. The Regulations provide, *inter alia*, a process of environmental oversight of landowners wishing to restructure their holdings by removing field boundaries above certain linear or area thresholds or where this may impact on designated sites, national monuments or be deemed to have a significant effect on the environment. The Regulations are administered by the Department of Agriculture, Food and the Marine (DAFM).

Since their introduction in September 2011 up to the end of 2016 there have been 480 screening applications for field boundary removal under the Regulations.

- 446 of these have been given approval by DAFM; an approval rate of 93% (95% if Excluded and Closed Applications are taken in to account).
- The approvals have been for a total of 155km of field boundary removal, plus the removal of an unspecified length of field boundary on 1134 hectares of land. There is no linear or area data available on eleven approved applications.
- There is a strong geographic bias in the number of applications with the majority in the south and south-east of the country. The number of applications in northern and western areas is relatively very low.
- 98 of the 446 approvals (22%) relate solely to County Wexford. The approval rate in County Wexford was 100%.
- In comparison, only 44 approvals were given in the whole of Connacht
- Four counties, Wexford, Cork, Tipperary and Kilkenny account for over half of all approvals.
- 22% of applications were referred to National Parks and Wildlife Service for comment. 18% were referred to the National Monuments Service. None of the applications were referred to any of the other recognised consultation bodies.
- Rejection rates were highest in Counties Clare, Galway and Mayo (40%, 30% and 22% respectively).
- 31 approvals were given for field boundary removal for lengths of 1000m or greater. A further 44 approvals were given for areas greater than 10 ha. I.e. 17% of approvals were for twice the minimum threshold or more.
- The largest approved application was for 3490m of field boundary removal (in County Mayo). Approval was given for field boundary removal on 40 ha in County Kildare.
- No applications were received above the 4km threshold requiring a mandatory Environmental Impact Assessment and only two Environmental Impact Statements have been submitted.

- Based on the data provided 27.6% of approved screening applications for field boundary removal do not contain details of the length of field boundary to be removed.
- 7.6% of approvals are made within one week of application. One application was approved on the day of application.

This report contains an analysis of field boundary related screening applications with recommendations for future improvements in the operation of the Regulations. A spreadsheet (HLAI EIA (Agriculture) Screening Assessment.xls) containing all relevant data and analysis accompanies this report.

## 2. Introduction

Teagasc figures indicate that hedgerows, scrub and non-forest trees cover 6.4% of the country: Native woodland cover is less than 1.5%. Given the low percentage of land cover offered by native vegetation in Ireland, particularly woodland, native species hedgerows are highly significant habitats and ecological corridors in the lowland farmed landscape. In addition to this, hedgerows provide a range of ecosystem services which include carbon sequestration, reduction of siltation, flood reduction, land drainage, nutrient buffering, soil protection as well as agricultural services such as Stockproofing, shade and shelter.

Article 10 of the Habitats Directive states:

*Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora. Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.*

The principle mechanism for protecting hedgerows from removal comes through the cross compliance conditions of Good Agricultural and Environmental Condition (GAEC) of the Common Agricultural Policy where hedgerows are defined as Landscape Features and can only be removed if an equivalent length is planted on the holding in advance of removal.

The European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 (SI 456) which came in to force on 8<sup>th</sup> September 2011 are the main legislative safeguard for directly protecting hedgerows from removal. The Regulations were introduced following a judgment of the European Court of Justice against Ireland (C-66/06) (see Appendix A).

By using uniform, unqualified size thresholds the Commission considered that the Irish legislation transposing Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment was deficient.

The purpose of the EIA Regulations is to provide development consent in respect of certain proposed on-farm activities which may have a significant affect on the environment. The EIA (agriculture) Regulations transferred responsibility for implementation of the EC

Directive in respect of the restructuring of rural holdings from the Department of Environment to the Department of Agriculture, Food and the Marine.

## Post Script

A new Statutory Instrument (SI 407) came in to force in September 2017 amending SI 456. The principle change in relation to the removal of field boundaries is that the thresholds for screening have been removed. In future any field boundary removal will now require a screening application compared with the previous threshold of 500m. The Mandatory EIA (Consent) threshold of 4 km remains the unchanged.

## 3. Environmental Impact Assessment Regulations Process

### 3.1 Scope of the Regulations

The Regulations apply to three different types of activities;

- Restructuring of rural land holdings (including field boundary removal)
- Commencing to use uncultivated land or semi-natural areas for intensive agriculture
- Land drainage works on lands used for agriculture.

### 3.2 Screening

Where a landowner intends to undertake any of these activities and the proposed works exceed the size threshold for screening set out in the Regulations (see following table for field boundary removal) they must make an application to the Department of Agriculture, Food and the Marine (DAFM) for screening giving details of the works.

If the proposed activity does not exceed the size thresholds but

- may have a significant effect on the environment
- may have significant effect on a European site (e.g. Special Area of Conservation (SAC) or Special Protection Area (SPA))
- may impact adversely on an National Heritage Area (NHA) or a nature area, or
- may damage a monument.

the landowner must also make a screening application to DAFM.

Examples of what constitutes significant effect on the environment include the relative abundance of the habitat in the area and the environmental sensitivity of the areas likely to be affected by the project. This includes whether a hedgerow is an important commuting route or feeding habitat for bat species.

If the proposed works exceed a higher threshold then a mandatory EIA is required.

### 3.3 Thresholds for removal of field boundaries

Type of on-farm	Activity Screening by DAFM required
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Restructuring by removal of field boundaries:	<ul style="list-style-type: none"> <li>• Over 5 hectares affected or over 500 metres field boundary being removed, whichever is the lesser</li> <li>• Sub-thresholds;- where the proposed works are to be carried out within (or may effect) a proposed NHA or a nature reserve or</li> <li>- the proposed works may have a significant effect on the environment</li> </ul>
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Thresholds for Mandatory EIA	
Type of on-farm Activity	Mandatory EIA
Restructuring by removal of field boundaries	Above 50 hectares or over 4 kilometres field boundary being removed, whichever is the lesser

### 3.4 Screening application

A screening application must contain the following information:

- the name and address of the applicant,
- the location of the land, Land Parcel Identification System (LPIS) Number assigned by the Minister, townland and county to which the application relates,
- the nature and extent of the proposed activity including the anticipated outcomes of the activity,
- the name and address of the person who will perform the activity, and
- any such other information as the Minister considers necessary.

Once an application is made it is centrally processed by DAFM in Johnstown Castle, County Wexford. DAFM has forty-nine officers authorised for the purposes of implementing the Regulations. A site inspection is carried out by one of the authorised officers which involves the completion of a template report. A copy of the template is reproduced as Appendix E.

### 3.5 Consultation

Under the Part 3 Section 7 (3) of the Regulations the Minister may consult with any consultation body or make such enquiries as the Minister considers necessary for the purposes of deciding on the application. Under the Regulations a 'consultation body' is defined as either:

- (a) a Minister of the Government;
- (b) Environmental Protection Agency;
- (c) National Parks and Wildlife Service of the Department of Culture, Heritage and the Gaeltacht;
- (d) Inland Fisheries Ireland;
- (e) the relevant local authority
- (f) An Taisce — The National Trust of Ireland;

Also, under Part 3 Section 7 (4) of the Regulations the Minister may consider any representations made in relation to an application.

(Given that details of applications are not published in advance of any decision it is difficult to see how any party other than the consultation bodies, where they have been notified, can be in a position to make representation since they have no knowledge of the application.)

**The provision for the Minister to consider representations made in relation to an application (Section 7 (4)) has been removed from the Regulations by SI 406.**

An application may be refused if it is incomplete in any material detail.

### **3.6 Screening Decision**

Once all relevant information has been considered a decision on the application is made centrally through DAFM (Johnstown Castle). If no adverse impact is anticipated a decision to proceed is issued to the applicant. If the Minister, through DAFM, is of the opinion that the activity may have an impact in terms of any of the criteria detailed under the heading of 'Screening' above, then a consent application is required.

Screening approvals that are not subject to consent application are effectively deemed as not requiring an Environmental Impact Assessment.

Sections 7 and 8 of the Regulations (Screening application and Screening decision) are reproduced as Appendix D.

### **3.7 Consent**

Where the threshold for mandatory EIA is crossed or issues are identified during the screening process then an Environmental Impact Assessment is required and a Consent application must be made. This involves the submission of an Environmental Impact Statement (EIS) and requires a public consultation process before a decision is made.

## **4. Scope of this work package**

This work package is limited to an examination of the removal of field boundaries which falls under the category of Restructuring of Rural Holdings.

### **4.1 Work Package Method**

An Access to Information on the Environment (AIE) request was submitted to DAFM on 29-3-17 requesting full details of all screening applications involving Field Boundaries under the Environmental Impact Assessment (Agriculture) Regulations 2011 (see Appendix B).

A response was provided which showed a significant data deficit in terms of the linear metres to be removed in respect of over 100 screening applications. It was this data deficit that prompted the development of this Work Package.

On notification of the successful application for a Biodiversity Work Package (2-8-17) initial contact was made with Michael O'Donoghue, DAFM on 6-9-17.

This was followed up with an email (18-9-17) requesting specific information in relation to the operation of the implementation of the Regulations plus additional details (see Appendix C). This included a spreadsheet of all cases indicating any data deficits in the information provided under the original AIE.

The requested information was provided between 17<sup>th</sup> November and 18<sup>th</sup> December 2017.

On receipt of the data a detailed analysis of the screening applications was conducted. A more detailed investigation of a proportion of the applications was made. This was predominantly those where the length of proposed field boundary removal was equal to or greater than twice the 500m screening threshold figure. The information investigated included details of the nature and extent of the proposed works including the anticipated outcomes.



The reason for refusal of screening applications was also investigated.

## 5. Results

### 5.1 Analysis of Screening Applications

The analysis contains the following:

- Annual breakdown of the number of Approvals / Rejections
- Annual breakdown in terms of length / area approved for removal.
- County by county breakdown in terms of length / area approved for removal.
- County by county breakdown of Approvals / Rejections
- Breakdown into broad categories of the reasons for Rejection
- Annual breakdown of time to process applications
- Breakdown of approval and decision months within the calendar year.
- Total applications related to thresholds
- Linear and Area applications related to thresholds
- Breakdown of the justification / anticipated outcomes for all Approvals for 1000m or more.

Full details and analysis of all screening applications are contained in the spreadsheet that accompanies this report

**Table 1: Annual breakdown of the number of Approvals / Rejections**

Year	Applications	Approved	Rejected	Other*	Approval Rate
2011	15	14	0	1	100%
2012	96	88	6	2	94%
2013	74	69	2	3	97%
2014	107	99	6	2	94%
2015	121	114	6	1	95%
2016	67	62	3	2	95%
<b>Total</b>	<b>480</b>	<b>446</b>	<b>23</b>	<b>11</b>	<b>95%</b>

\* Closed, Exempt, Pending, REPS Derogation

The number of applications fell significantly to 67 in 2016 from a high of 121 in 2015. There is a consistently high rate of approval for each of the years that the Regulations have been in operation.

**Table 2: Annual breakdown in terms of length / area approved for removal**

Year	Length (m)	Area (ha)	No. of approvals where Length or Area unknown
2011	3854	48.57	
2012	32619	191.72	
2013	24883	211.24	1
2014	30557	291.82	4
2015	41090	195.47	4

2016	21966	195.56	2
<b>Total</b>	154969	1134.37	

The regulations were only introduced in September 2011 so data for that year is for a shortened period. Data is only available up to the end of 2016. Almost 155km of field boundary has been approved for removal with approval given for an unspecified length of boundary on 1134 hectares of land. Based on county hedgerow surveys the average hedgerow density in Ireland is approximately 6km/km<sup>2</sup>. At this density 1134 ha would involve a further 68km of boundary. Based on the data provided by DAFM there is no linear or area record for eleven approved applications.

**Table 3: County by county breakdown in terms of length / area approved for removal**

County	Approvals	Length (m)	Area (ha)	No. of approvals where Length or Area unknown
Wexford	98	28095	260.38	3
Cork	49	25590	88.79	
Tipperary	47	14711	88.02	1
Kilkenny	33	14146	45.60	1
Meath	26	10200	21.41	
Waterford	24	11500	71.91	
Offaly	19	3634	34.81	1
Laois	17	6846	46.06	1
Kildare	16	3280	174.54	
Cavan	14	7762	0.00	
Galway	14	3444	47.44	
Mayo	14	5606	30.56	
Westmeath	14	3230	11.16	
Kerry	11	4887	22.64	
Carlow	9	1171	59.45	
Sligo	8	300	26.39	4
Louth	7	1624	51.59	
Roscommon	6	1828	13.27	
Wicklow	6	1699	0.00	
Clare	3	484	6.50	
Dublin	3	3425	0.00	
Limerick	3	560	7.66	
Leitrim	2	677	5.57	
Longford	2	50	20.63	
Donegal	1	220	0.00	
Monaghan	0	0	0.00	
<b>Total</b>		154969	1134.37	

A county by county analysis of approved applications shows a very distinct geographic spread with higher concentrations of approvals in the south and south-east. The number of approvals in the north-west is significantly lower.

This is more clearly illustrated by Figure 1.

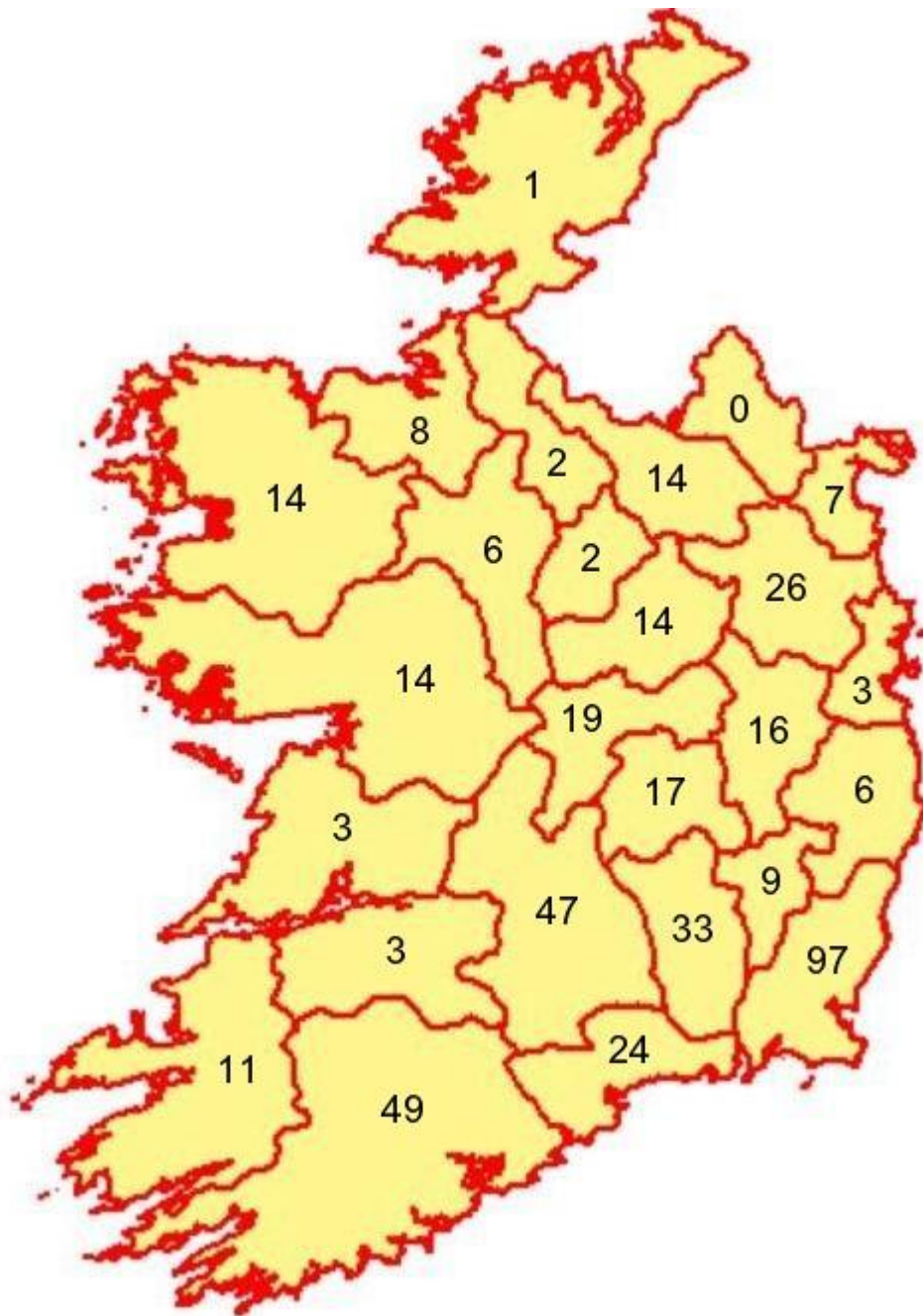


Figure 1: Number of Approvals by County

The counties which predominate are those that would generally be considered to have the better quality agricultural land where tillage and dairying would be more common. Counties with more marginal agricultural land where more extensive farming regimes are practiced feature much less prominently.

Table 4: County by county breakdown of Approvals / Rejections

County	Total	Approved	Rejected	Approval Rate
Clare	5	3	2	60%
Galway	20	14	6	70%
Mayo	18	14	4	78%
Roscommon	7	6	1	86%
Wicklow	7	6	1	86%

Sligo	9	8	1	89%
Kildare	17	16	1	94%
Offaly	20	19	1	95%
Tipperary	49	47	2	96%
Waterford	25	24	1	96%
Cork	51	49	2	96%
Meath	27	26	1	96%
Donegal	1	1	0	100%
Leitrim	2	2	0	100%
Longford	2	2	0	100%
Dublin	3	3	0	100%
Limerick	3	3	0	100%
Louth	7	7	0	100%
Carlow	9	9	0	100%
Kerry	11	11	0	100%
Cavan	14	14	0	100%
Westmeath	14	14	0	100%
Laois	17	17	0	100%
Kilkenny	33	33	0	100%
Wexford	98	98	0	100%
Monaghan	0	0	0	N/A
<b>Total</b>	469	446	23	95%

This data is expressed as a rejection rate in Figure 2.

The overall approval rate of screening applications is 95%. Outside of Counties Clare, Galway and Mayo the approval rate is 97.4%. Of the six counties with approval rates of less than 90% five are in the west, including four of the five counties of Connacht.



Only four applications were rejected on biodiversity grounds outside of Special Areas of Conservation (SAC); all of these were in either Counties Mayo or Galway.

**Table 6: Annual breakdown of time to process applications**

Year	1-30 days	31-60 days	61-90 days	91-120 days	>120 days	Average no. of days for decision	Maximum no. of days	Minimum no. of days
2011	4	7	2	0	1	58	199	27
2012	52	14	14	6	8	49	377	2
2013	20	29	7	4	12	70	399	3
2014	39	29	19	4	16	64	284	2
2015	51	31	17	8	14	59	481	0
2016	20	18	16	4	9	62	266	10
Total	39.2%	26.9%	15.8%	5.5%	12.6%	60		

The average time for a decision to be made on an application is sixty days. Almost 40% of applications receive a decision within thirty days: 17% of these are within 14 days and 7.6% within seven days. In 2015 one application, in County Wexford, was approved on the day of application. Over 18% of applications take more than 90 days with the maximum time period taken being 481 days (County Clare).

**Table 7: Breakdown of approval and decision months within the calendar year**

Month	Application	%	Decision	%
January	42	9%	55	12%
February	31	7%	60	13%
March	28	6%	30	7%
April	21	5%	15	3%
May	19	4%	25	6%
June	39	9%	22	5%
July	50	11%	35	8%
August	39	9%	25	6%
September	57	13%	53	12%
October	41	9%	58	13%
November	32	7%	39	9%
December	47	11%	29	7%
Closed Period	196	44%	152	34%
Open Period	250	56%	294	66%
<b>Total</b>	<b>446</b>		<b>446</b>	

Under Section 40 (1) of the Wildlife Act the removal of hedgerows is prohibited between 1<sup>st</sup> March and 31<sup>st</sup> August of the year (Closed Period). The first three months of the Closed Period show the lowest number of screening applications. The timing of when a decision for approval is issued can be significant from a landowner's perspective. Two thirds of

screening approvals were issued during the Open Period when landowners could commence works immediately if required.

**Table 8: Total applications related to thresholds**

Year	Total	< threshold	>= threshold	>= 2x threshold
2011	14	79%	21%	7%
2012	88	55%	45%	14%
2013	68	49%	51%	22%
2014	95	59%	41%	19%
2015	110	56%	44%	16%
2016	60	57%	43%	18%
	435	56%	44%	17%

Over half of the approved applications are for lengths or areas below the thresholds (550m or 5 ha). 17% of approvals are for lengths or areas greater than or equal to twice the threshold. Further analysis of this data shows a distinct difference between linear and area based applications.

**Table 9: Linear and Area applications related to thresholds**

Year	Linear application	%	< 500m	>= 500m	>= 1000m	Area application	%	<5 ha	>=5 ha	>= 10 ha
2011	12	86%				2	14%			
2012	66	75%				22	25%			
2013	48	71%				20	29%			
2014	68	72%				27	28%			
2015	84	76%				26	24%			
2016	45	75%				15	25%			
<b>Of Total</b>	323	74%	68%	32%	10%	112	26%	21%	79%	39%
	435		51%	24%	7%			6%	20%	10%

74% of applications give a linear figure for field boundary removal; 26% give an area figure. The data shows that linear figure applications are approximately twice as likely to be less than the threshold of figure of 500m than above it. In contrast, area figure applications are almost four times more likely to be over the 5 ha threshold than below it.

Over a quarter of approved applications do not contain details of the length of boundary to be removed (including 11 applications where no data on length or area is available).

**Table 10: Breakdown of the justification for all approvals for 1000m or more**

Screening applications are required to include details of the nature and extent of the proposed works including the anticipated outcomes. An assessment of all approved applications for field boundary removal of 1000m or greater was carried out using keyword indicators.

<b>Keyword/s in justification</b>	<b>No.</b>
Modern Machinery / Farm Efficiency (keywords also include 'viable')	22
Paddock	7
Replanting / Rebuilding / Replacing (includes moving)	7
Dairy	4
Tillage	3
Access (includes new farm roadway)	3
Health & Safety	2
Conversion (Beef / Tillage to Dairy)	2
Pipe Drains	1
Livestock Management	1
Other (Repair and 'cleaning up' of field boundaries)	1

The main justifications for field boundary removal are centred round agricultural modernisation and farm efficiency. In particular there is an emphasis on a change to paddock / dairy systems.

## **5.2 Assessment of consultations**

There have been 107 referrals by DAFM to the DCHG (National Parks & Wildlife Service) and 87 referrals to the National Monuments Service under Section 7 (3) of the Regulations.

Of the 10 rejected applications which were based on the potential to have a significant effect on flora, fauna or habitats or SAC's only 3 can definitely be attributed to the opinion of the DCHG.

6 applications were rejected on the grounds of the potential to adversely affect a monument. From the information provided it is not clear whether these decisions were on the advice of the National Monuments Service.

There is no evidence that the Environmental Protection Agency, Inland Fisheries Ireland, An Taisce or any local authority have been consulted on any of the screening applications.

Only two Environmental Impact Statements have been submitted in connection with screening applications which suggests that DAFM is generally approving or rejecting screening applications without invoking Part 4 of the Regulations on consent application. Screening approvals that are not subject to consent application are effectively deemed as not requiring an Environmental Impact Assessment.

## **5.3 Prohibition Notices**

Under Paragraph 5 of Part 2 of SI 456 (2011)

5. The Minister may serve a notice prohibiting all or part of the work with immediate effect, where the Minister believes that person has or is likely—

- (a) to commence an activity in contravention of Regulation 4, or



(b) to fail to satisfy a condition of a consent under Regulation 13.

Three prohibition notices have been served (in 2015 and 2016)

#### **5.4 Re-instatement Notices**

Under Paragraph 6 of Part 2 of SI 456 (2011)

6. (1) The Minister may serve a notice directing that the land be reinstated to its original state or such mitigating works as the Minister considers necessary be undertaken with immediate effect where a person has—

- (a) commenced an activity in contravention of Regulation 4, or
- (b) failed to comply with a condition of a consent under Regulation 13.

No re-instatement notices have been served under the Regulations

#### **5.5 Conditions of approval**

There are no standard conditions applied where screening applications are approved.

#### **5.6 Appeals and Reviews**

No appeals or requests for review have been made by any of the applicants.

#### **5.7 Offences and Penalties**

No offences have been committed under the Regulations.

No penalties have been imposed under the Regulations.

## **6. Discussion**

### **6.1 Regulations**

#### **Thresholds**

The linear threshold requiring a mandatory EIA is eight times the basic threshold (4km against 500m). The area threshold is ten times that of the basic threshold (50 ha against 5 ha). Eight and ten are both significant factors greater than the basic threshold level before a mandatory EIA is required; the degree of difference between the basic threshold and that requiring mandatory EIA and also the discrepancy between the scaling up of area and linear thresholds require justification.

Hedgerow density in county hedgerow surveys varies from 1.96km/km<sup>2</sup> (Donegal) to 11.01km/km<sup>2</sup> (Cavan). A hedgerow density of 8km/km<sup>2</sup> would equate to 4km of hedgerow in 50 hectares. Based on this figure mandatory EIA is only required where removal of all field boundaries is planned. Given that the average figure across the county surveys is between five and six kilometres per square kilometre the threshold for mandatory EIA is excessively high.

Screening applications involving an area rather than a linear figure were significantly more likely to be greater than the minimum threshold. The opposite was the case where the application cited a linear figure.

An average of 17% of approved applications are for lengths or areas two or more times greater than the threshold.

N.B. Under SI 406 the minimum threshold for screening application has been removed. All field boundary removal now requires screening application. The threshold for a mandatory EIA remains unchanged.

## 6.2 Consultation

### **Lack of consultation**

Less than 25% of applications are referred to NPWS for consultation. This would be of concern. There is no evidence that the Environmental Protection Agency, Inland Fisheries Ireland, An Taisce or any local authority, all recognised consultation bodies, have been consulted on any of the screening applications.

The lack of feedback from NPWS in some areas where there is a high number of screening applications also would be of concern.

### **Lack of opportunity for representation to be made**

Although under Regulation 7 (4) the Minister could consider any representations made in relation to an application there is no requirement to publish details of screening applications in order that representations could be made by third parties. This is an anomaly that has been rectified the wrong way.

The provision for the Minister to consider representations made in relation to an application has been removed from the Regulations by SI 406. There is now no opportunity for representation to be made in respect of screening applications other than by the prescribed consultation bodies. Given Ireland's obligations under Article 10 of the Habitats Directive, the wide range of ecosystem services provided by hedgerows and the fact that they are designated as landscape features by DAFM then opportunities for wider scrutiny of applications to remove them should be obliged not reduced. The removal of a legal requirement to consider representations for screening applications is regretted but it should not prevent DAFM from consulting more widely. Appropriate wider consultation can happen irrespective of a legal framework within the Regulations. Article 13 of Council Directive 85/337/EEC states

*"The provisions of this Directive shall not affect the right of Member States to lay down stricter rules regarding scope and procedure when assessing environmental effects."*

## 6.3 Screening Process

### **High approval rate**

The overall approval rate of applications is 92%. This rises to 95% if Exempt or Closed applications are excluded. Some counties, including Wexford and Kilkenny (first and fourth in terms of the number of applications) have a 100% approval rate. Only five applications were rejected on the grounds of the potential impact on flora, fauna or habitats outside of SAC's. All five were in either County Galway or County Mayo. The relevant importance of hedgerow habitat in areas of more intensive agricultural production can not be over-estimated. Taken in conjunction with the relatively low level of consultation with the recognised consultation bodies the high approval rate would be of serious concern.

### **Qualitative Assessment**

Site inspections carried out by local Department officials involve the completion of a template report. A copy of the blank template used is reproduced as Appendix E. A critique of key items on the template follows:

### **Item 3 Cumulative effect**

Is the cumulative effect of this application likely to have a significant environmental impact?  
Is the amount and type of the proposed activity in this locality known to be a significant issue?

It is not clear from the form what is meant by the cumulative effect of this application. Clearly the cumulative effect of wide-scale hedgerow removal would have a significant environmental impact. The question as to what constitutes 'this locality' is also an issue. Does it relate to farm level, townland level or wider?

### **Item 5 Rarity of Landscape Feature**

Will the proposed works remove a rare landscape feature?

What qualifies as 'rare'? How much hedgerow removal would be permitted before a hedgerow was deemed to be a rare landscape feature?

### **Item 6 Proximity of Proposed Works to High Value Environmental Sites**

Are the proposed works close to areas of high environmental quality?

It is not clear as to what constitutes an area of high environmental quality?

### **Item 7 Habitats**

Is there an abundance of the habitat in the area?

What determinants are used to assess the abundance of habitat in the area? What qualifies as abundant? Quantitative measures, such as km/km<sup>2</sup> should be used to assess abundance.

### **Item 11 Flora**

Are the proposed works within an area of high nature value that are likely to cause:

- Loss of indigenous vegetation,
- Introduction of invasive species.

It is not clear what constitutes an area of high nature value nor is it clear why only areas of high nature value appear to be of concern. Hedgerows provide habitat and ecological stepping stones in all agricultural landscapes and are often the only significant habitat on some farms. The relative loss could be more significant in areas that may not be considered to be of overall high nature value.

### **Item 12 Fauna**

Are the proposed works within an area of high nature value that are likely to cause:

- Changes to extent/diversity of habitat;
- Introduction of invasive species;
- Shift in species mix/abundance.

Again it is not clear what constitutes an area of high nature value nor is it clear why only areas of high nature value appear to be of concern. Removal of hedgerows by its nature will result in a change to the extent of habitat.

### **Lack of ecological assessment for bats**

All bat species in Ireland are protected under Annex IV of the Habitats Directive therefore it is immaterial as to whether the application relates to a high nature value area or not.. The assessment as to whether hedgerows planned for removal constitute an important commuting route or feeding habitat for bat species is left to the landowner making the application and does not form part of the template. Leaving the assessment in the hands of someone who is not certain to have the requisite knowledge and also has a vested interest in removing the habitat concerned is contrary to common sense and can not be considered to be an adequate safeguard.

An assessment of the dates for screening applications and their subsequent approval shows that there has been little or no scope in many cases for any assessment of bat activity. Applications made and approved during the period from November to February do not present any realistic opportunity for meaningful assessment of bat populations.

### **Item 16 Landscape**

Are the proposed works within an area that are likely to cause major changes in landscape character such as:

- Obstruction of views,
- Changes in elevation,
- Changes in landcover/vegetation,
- Creation of ditches/dykes,
- Changes in coastal defences.

Hedgerows are designated as Landscape Features under the Good Agricultural and Environmental Conditions (GAEC) of Cross Compliance. By its vary nature the removal of a landscape feature must impact on the landscape.

### **Item 18**

Were comments from the Local Authority requested?

### **Item 19**

Were comments from the Local Authority received and examined?

There is no evidence that any applications were referred to a Local Authority for comment.

A number of issues related to the Regulations are not addressed by the template

### **Lack of assessment of impact on climate**

Based on work by Black et al. (2014) hedgerows and non-forest woodlands could potentially sequester 0.66–3.3t CO<sub>2</sub>/ha/year. The impact on carbon storage and sequestration is not assessed when screening for removal of field boundaries (confirmed in correspondence from DAFM). This is in direct conflict with Article 3 of Council Directive 85/337/EEC which requires an assessment of the direct and indirect effects of a project on climate. The cumulative impact of all hedgerow removal needs to be evaluated in terms of the potential impact on Ireland's greenhouse gas emission targets. This needs to be factored in to the screening process.

### **Lack of cultural heritage assessment**

Article 3 of Council Directive 85/337/EEC requires an assessment of the direct and indirect effects of a project on the cultural heritage. Six applications have been rejected on the basis of the potential to impact on a National Monument but there is no evidence from the template that the screening process makes any assessment of the cultural value of the field boundaries themselves. Is the boundary a townland, parish or other boundary of cultural significance? Is the boundary part of a well established network of field boundaries? Is the boundary part of a locally traditional style or type?

Overall the qualitative assessment of the field boundary to be removed is inadequate. There is no assessment of the historical, species diversity (tree, shrub or ground flora), structural or habitat connectivity significance of the boundary habitat to be removed. Also, there is no assessment of its condition. The Hedgerow Appraisal System was developed for just such a situation and its use for the appraisal of hedgerows as part of the screening process is recommended.

### **Time taken to process applications**

An examination of the time taken between applicants submitting an application and receiving a decision has highlighted some issues of concern. Although the average time for the process is sixty days a significant number of applications receive decisions within fourteen days (17%). It is difficult to see how there has been adequate time for a proper consultation process within such a short period of time. 7.6% of applications receive a decision within a week and there is one example where approval was granted on the day of application.

An average of 12.6% of applications take over 120 days to receive a decision. From a landowners perspective this may not be acceptable in terms of forward planning.

### **Timing of decisions and operations**

Under Section 40 (1) of the Wildlife Act it is an offence for a person to cut, grub, burn or otherwise destroy any vegetation growing in any hedge during the period from the 1<sup>st</sup> day of March to the 31<sup>st</sup> day of August. There does appear to be a general emphasis from DAFM of issuing decisions at an appropriate time to coincide with the open season of the Wildlife Act.

### **Geographic bias in the applications**

There is a very distinct geographic bias to the screening applications with 98 of the 446 approvals (22%) relating solely to County Wexford. The south and south-east dominate the applications. Four counties, Wexford, Cork, Tipperary and Kilkenny account for over half of all approvals. Applications in the west and north are more sporadic. There were over twice as many applications in Wexford as in the whole of Connacht. No screening applications were received for County Monaghan. It would be of concern that the principle counties in terms of the number and lengths / areas for field boundary removal are those which have not conducted County Hedgerow Surveys. Therefore there is no baseline context in which to assess the data.

It would appear that the removal of hedgerows (or approval for) is more likely in areas of the country where their role in terms of nature and biodiversity value are relatively high.

There is a possible implication here that intensive agricultural areas are becoming more intensive with the potential to create deserts for wild nature.

This distribution in screening applications raises a number of questions. Are certain areas and certain farm types more likely to want to remove field boundaries? Are farmers / agricultural advisors in certain areas more aware of the EIA Regulations and therefore more likely to submit screening applications? The reasons for the geographic bias should be investigated further.

### **Geographic bias in Rejection rates**

Contrary to the southern and eastern bias in the number of screening applications the geographic bias in terms of the rejection of applications has a strong western bias. Twelve of the twenty-three rejected applications came from the three western counties of Galway, Mayo and Clare. The rejection rate in County Wexford was zero. The results raise questions over the consistency of the on-the-ground inspection and interpretation by authorised DAFM officers.

### **Justification for removal**

Agricultural modernisation and conversion to paddock dairy systems appears to be the principle driver for landowners to remove field boundaries. The targets of DAFM 's Food Wise 2025 are not incidental in this regard.

## **6.4 Data Deficits**

Based on the data provided 27.6% of approved screening applications for field boundary removal do not contain details of the length of field boundary to be removed. Eleven approved applications (2.5%) contain no linear or area data.

### **Inadequate public presentation of data**

The DAFM website contains a page with a Register of EIA screening applications <https://www.agriculture.gov.ie/ruralenvironment/environmentalimpactassessment/registerofeiascreeningapplicationdecisions/#>

The information presented does not include any details on the extent and nature of the proposed works including any anticipated outcomes or any grounds as to why a particular application has been rejected. The Register is only complete up to December 2016. More detailed, more accurate and more up-to-date data should be publically available. Information on applications should be made publically available as well as decisions. This would allow for greater public scrutiny of private actions which have wider social, cultural and environmental consequences.

## **6.5 Monitoring**

### **Lack of assessment of cumulative impact**

Under Regulation 8 (Schedule 2) of SI 456 the environmental sensitivity of geographical areas likely to be affected by an activity must be considered, having regard to the relative abundance, quality and regenerative capacity of natural resources in the area. The cumulative impact of activities must also be considered.

There is no indication that there is or has been any assessment of the cumulative impact of screening decisions. In particular, no County Hedgerow survey has been conducted in Wexford but based on a guestimate figure of 8km of hedgerow per square km the screening approvals would have accounted for 0.15% of the counties hedgerow stock in just over 5 years. Given that County Wexford is one of the main area for concentrations of yellowhammer populations in Ireland this lack of any obvious assessment of the cumulative impact is disturbing. As has been pointed out before, the approval rate for screening applications in County Wexford is 100%.

### **No knowledge of on the ground impact**

There is no indication that there is any follow up by the Department to check that the approved works have been carried out and if so whether the works have conformed to the approval and any conditions, particular the need for replanting of an equivalent length of hedge.

Aerial images have been examined of a number of townlands of some of the larger applications for field boundary removal. These have focused on applications from 2011, 2012 and 2013 as any works should have been completed within 3 years of approval. By comparing the latest aerial image (2017) with earlier images (2005 and earlier) it is possible to identify boundaries that have been removed within a townland. In only a few cases is it possible to identify where some boundaries have been removed. Approval for a screening application for field boundary removal does not automatically result in removal and actual removal rates from screening approvals need to be verified.

### **Replacement planting**

Since 2009, hedgerows have been designated as Landscape Features under the Good Agricultural and Environmental Condition (GAEC) of Cross Compliance. Under cross compliance rules landscape features cannot be removed unless an equivalent length is established on the holding prior to the removal of the feature. This condition should form part of any approval decision. The condition to pre-plant an equivalent length to that being removed may be difficult for larger applications (and probably counter productive to the reason for removal). Finding suitable areas to replant the amount of hedgerow screened for removal may not be possible in all situations.

Where hedgerows are being removed with a view to facilitating modern machinery, improving farm efficiency or instituting paddock systems (23 out of 31 Approvals for >1000m) it has to be questioned as to how these farms can meet the requirement, under cross compliance, to plant an equivalent length of hedgerow (in advance of any removal) without compromising the justification for removal of boundaries.

### **Conditions of approval**

There are no standard conditions associated to screening approval.

## **6.6 Other Jurisdictions**

### **U.K.**

In the U.K. applicants must include an Environmental Screening Report when applying for a screening decision. The report must include a description of the:

- overall project
- physical features of the site and where demolition will take place, if relevant
- location and likely environmental effect of proposed changes
- effects of residues or emissions expected from waste production
- use of natural resources particularly soil, land, water
- biodiversity (plants and wildlife and their habitat) on site

## **7. Recommendations**

### **7.1 Regulations**

- A consultative process should be established to review the thresholds for both screening and mandatory EIA's.
  - The screening threshold for a mandatory EIA is, at 4km, very high. Based on average farm size and hedgerow density across the country this would constitute the majority of hedges on an average farm.

- The 500m threshold for screening application is a de-contextualised figure; it does not relate to the proportion of hedgerow on the individual farm or in the wider landscape.

Thresholds should relate to the general hedgerow / semi-natural habitat density and connectivity in the area. This means a wider area than just the individual farm. Hedgerow removal should not be permitted where it reduces hedgerow density below agreed thresholds or reduces habitat connectivity in the wider landscape, i.e. removal should only be permitted where adequate habitat quantity and connectivity remains.

**SI 406 has removed the basic threshold of 500m / 5 ha. All field boundary removal now requires screening.**

## 7.2 Consultation

- A formal consultation procedure needs to be established for all screening applications.
  - All 'consultation bodies' should be informed of all applications and given an adequate period in which to respond.
  - Although there is no longer a legal provision for the Minister to seek or accept representation on a screening application this should not preclude this from forming part of the consultative process. There needs to be some mechanism for comment from wider stakeholders than just the consultation bodies listed in the Regulations. This can only happen if screening applications are made publically available or circulated to relevant stakeholder groups or bodies.

## 7.3 Screening Applications

- An examination of the reasons for the geographic bias in the number of screening applications should be conducted by DAFM.
- There should be emphasis on using the Hedgerow Appraisal System (HAS) to determine hedgerow significance.
  - This should apply to landowners considering screening applications, agricultural advisors involved in applications for their clients and authorised DAFM officials.
- A Hedgerow Appraisal System survey should be completed on all hedgerows screened for removal.
  - Where a screening application is for the removal of a 'Heritage Hedgerow' identified by the HAS a mandatory EIA should be required.
  - Where a screening application is for the removal of a hedgerow with a condition score greater than an agreed threshold consideration should be given as to whether a consent application should be required.
  - DAFM should commission a retrospective, independent review of all field boundary removals to date to assess, based on desk study, what length of Heritage Hedgerow has been approved for removal.
- The EIA Inspection Report Form should be reviewed in consultation with relevant stakeholders.



- All screening applications for field boundary removal should require an ecologists report on the potential impact on any species listed under Annex IV of the Habitats Directive, notably bats.
  - Assessment for whether hedgerows constitute an important commuting route or feeding habitat for bat species must be carried out by an ecologist not the applicant.

#### **7.4 Screening Decisions**

- An examination of the reasons for the geographic bias in the rejection rates should be conducted by DAFM.
- Screening decisions must take account of the impact on carbon storage and sequestration and hence the potential impacts on climate change.
- Screening decisions must take account of the cultural value of field boundaries, particularly townland, parish and other boundaries of antiquity.
- Unless otherwise agreed by both parties, applicants should be entitled to receive a decision on their application within a specified (reasonable) period. The recommended period would be 90 days.

**N.B. This has been covered in SI 406.**

- Timing of the issuing of decisions should be streamlined such that Approvals are notified to leave applicants adequate time to plan and carry out approved works within the appropriate time window (September to February, inclusive). Landowners should be advised to take account of the time taken for the screening process when making their application.

#### **7.5 Record keeping and data presentation**

- Irrespective of the threshold used (length or area) all screening applications for field boundary removal must state the length of field boundary planned for removal.
- The record keeping and public availability of data by DAFM should be improved.
  - Data presented should include a brief justification of and details of the extent of works and grounds for refusal where this applies
  - The Register should be updated on a 3 monthly basis.

#### **7.6 Monitoring**

- DAFM should commission an independent evaluation of the operation of the Regulations.
- Screening approvals need to take account of the overall situation and not just the individual case; the landscape impact as well as the farm level impact.
- DAFM need to establish a process to follow up on granted applications
  - To determine if works have been carried out (and if not, the reasons why)
  - To ensure any conditions relating to the approval have been complied with

- A verification system should be established by DAFM where a proportion of screening decisions are assessed, on an annual basis, independently by ecological specialists to act as a quality control on the Regulations process.

## 7.7 Further Research

- County Hedgerow Surveys should be conducted in the nine counties in which no baseline data is available (Carlow, Clare, Cork, Kilkenny, Limerick, Tipperary, Waterford, Wexford and Wicklow). DAFM should consider providing some funding towards this.

## 7.8 Awareness Raising

- DAFM should carry out a study to determine the levels of awareness amongst farmers of the EIA Regulations.
- DAFM needs to raise awareness with landowners of the changes to the screening thresholds.

The IEN should support a further work package on the evaluation / assessment of other elements of the EIA Regulations. A more detailed investigation could be carried out looking at screening applications for field boundary removals specifically in County Wexford.

A copy of this Report and accompanying spreadsheet will be distributed to appropriate bodies including the consultation bodies listed in the Regulations and also to DG Agriculture and DG Environment.

The HLAI (along with other interested IEN Member groups) will seek a meeting with DAFM to discuss the issues raised in this report.

## References

**Black, K., Green, S., Mullooley, G., & Poveda, A., (2014)** Carbon Sequestration by Hedgerows in the Irish Landscape, *Environmental Protection Agency, Ireland*

**DAFM (2011)**, Environmental Impact Assessment (Agriculture) Regulations 2011 Guide for Farmers, *Department of Agriculture, Food and the Marine*

**DAFM (2011)**, Environmental Impact Assessment (Agriculture) Regulations 2011 Guide for Farmers, *Department of Agriculture, Food and the Marine*

**DAFM (2016)**, Explanatory Handbook for Cross Compliance Requirements, *Department of Agriculture, Food and the Marine*

**Foulkes, N. et al. (2010)**, Hedgerow Appraisal System: Best Practise Guidance on Hedgerow Surveying, Data Collation and Appraisal, *Heritage Council*

European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011, SI 456 of 2011

European Communities (Environmental Impact Assessment) (Agriculture) (Amendment) Regulations 2017, SI 406 of 2017,

Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC)

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)

### **Websites**

<https://www.gov.uk/guidance/eia-agriculture-regulations-apply-to-make-changes-to-rural-land>

## **Appendix A** Judgment of the European Court of Justice against Ireland (C-66/06)

The Court:

1.

Declares that, by not adopting, in conformity with Articles 2(1) and 4(2) to (4) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, all measures to ensure that, before consent is given, projects likely to have significant effects on the environment that belong to the categories of projects covered by point 1(a) to (c) and (f) of Annex II to that directive are made subject to a requirement for development consent and to an assessment with regard to their environmental effects in accordance with Articles 5 to 10 of the directive, Ireland has failed to fulfil its obligations under the directive;

By using uniform, unqualified size thresholds the Commission considered that the Irish transposing legislation was deficient as it did not provide, in respect of project categories covered by Annex II Class 1(a), (b) and (c) of the Environmental Impact Assessment (the EIA Directive), for effective measures to achieve the results required by Articles 2(1), 4(2) and 4(3) of the EIA Directive. Article 4(2) permits Member States to determine, by either a case-by-case examination or by 'thresholds or criteria set by the Member State', the necessity of an EIA for projects listed in Annex II. Whatever the means of determination implemented by the Member State, this means must satisfy Article 4(3), i.e., take into account the selection criteria listed in Annex III. These selection criteria include, for example, the project size, cumulation with other projects, its location, the environmental sensitivity of the geographical area and its impact on landscapes of historical, cultural or archaeological significance. In its transposing legislation regarding projects falling under Annex II Class 1(a), (b) and (c), Ireland, however, relied on a uniform, unqualified size threshold without any possibility of assessing any other project characteristics.

## **Appendix B** AIE Request submitted 29-3-17

- 1) The information requested to include the following details
  - a. Date of application
  - b. Date of decision
  - c. County
  - d. DED
  - e. Townland
  - f. Linear Measurement in metres
  - g. Details of the nature and extent of the proposed works including the anticipated outcomes
  - h. Decision Status
  - i. Where Approval has been granted details of any conditions that apply.
  
- 2) Copies of all Mandatory EIA Reports submitted (suitably redacted) involving Field Boundaries under the Environmental Impact Assessment (Agriculture) Regulations 2011

## Appendix C

### Follow up queries submitted to DAFM 18-9-17

No.	Query
1	<b>Who within the Department makes the decision to Approve, Reject or Exempt a screening application?</b> Is it done centrally or locally?
2	<b>What ecological input is there in to the assessment of the screening applications?</b> It is not explicit in the Criteria in Annex II of the EIA Guide for Farmers.
3	<b>Does potential impact on biodiversity form part of the assessment?</b>
4	<b>Is there any assessment of the quality and condition of the boundaries to be removed?</b>
5	<b>Is a site inspection conducted?</b>
6	<b>Whose responsibility is it to know if a hedgerow is an important commuting route or feeding habitat for bat species?</b> It seems arbitrary to leave this decision to individual landowners whose knowledge of such matters will vary widely.
7	<b>How is the impact on water movement through the landscape assessed when removing field boundaries, particularly those with associated drains?</b>
8	<b>How is the impact on carbon storage &amp; sequestration assessed when removing field boundaries?</b>
9	<p><b>Prohibition Notices</b> Under Item 5 of Part 2 of SI 456 (2011) 5. The Minister may serve a notice prohibiting all or part of the work with immediate effect, where the Minister believes that person has or is likely— (a) to commence an activity in contravention of Regulation 4, or (b) to fail to satisfy a condition of a consent under Regulation 13.</p> <p><b>How many Prohibition Notices have been served?</b></p>
10	<p><b>Re-instatement Notices</b> Under Item 6 of Part 2 of SI 456 (2011) 6. (1) The Minister may serve a notice directing that the land be reinstated to its original state or such mitigating works as the Minister considers necessary be undertaken with immediate effect where a person has— (a) commenced an activity in contravention of Regulation 4, or (b) failed to comply with a condition of a consent under Regulation 13.</p> <p><b>How many Re-instatement Notices have been served?</b></p>
11	<p><b>Screening</b> Under Item 7, Paragraph 3 of Part 3 of the SI 456 (2011) <i>(3) The Minister may consult with any consultation body or make such enquiries as the Minister considers necessary for the purposes of deciding on the application.</i></p> <p><b>a) How many consultations has the Minister made regarding field boundary removal with each of the consultation bodies?</b> <b>b) What enquiries has the Minister made for the purpose of deciding on any application?</b></p>
12	<p>Under Item 7, Paragraph 4 of Part 3 of the SI 456 (2011) <i>(4) The Minister may consider any representations made in relation to an application made under paragraph (1)</i></p> <p><b>a) Representations from whom?</b> <b>b) Who is made aware of the screening application?</b> <b>c) Is there a requirement to publish details of screening applications in order that representations can be made by third parties?</b></p>
13	<b>Is there a mandatory maximum response time from receipt of a screening application to the issue of decision?</b>
14	<b>How many EIS's have been submitted?</b>
15	<p><b>Consent</b> <b>Notices to Consultation bodies</b> Under Item 11, Paragraph 1 of Part 4 of SI 456 (2011) <i>(1) Where the Minister receives an application under Regulation 9 and it appears to him or her that the proposed activities may have a significant impact on—</i></p>

	<p>(a) the environment,  (b) a European site,  (c) a NHA or  (d) a nature area,  the Minister shall issue a notice in writing to one or more consultation bodies that the Minister believes may have an opinion on the proposed activity.</p> <p><b>a) How many notices have been issued to each of the consultation bodies?</b>  <b>b) How many submissions or observations have been received by the Minister from the consultation bodies?</b></p>
16	<p>Under Regulation 13, Paragraph 4 of Part 4 of SI 456 (2011)  (4) The Minister may grant consent, refuse consent or may attach such conditions to a consent as he or she considers necessary.</p> <p><b>Are there any standard conditions relating to approval decisions?</b></p>
17	<p><b>Public Consultation</b>  Under Item 12, Paragraph 1 of Part 4 of SI 456 (2011)  (1) Where the Minister receives an application for consent under Regulation 9 which is accompanied by an EIS or an Natura impact statement, he or she shall, before making a decision, publish a notice of the application.</p> <p><b>How many public consultation notices have been published?</b></p>
18	<p><b>Notification of decision</b>  Under Regulation 14, Paragraph 4 of Part 4 of SI 456 (2011)  (4) The Minister shall publish the decision and make available to the public the matters referred to in paragraph (1).</p> <p><b>How many decisions have been published?</b></p>
19	<p><b>How many appeals / requests for review have been made?</b></p>
20	<p><b>Administration</b>  <b>Authorised officers</b>  Under Regulation 18, Paragraph 1 of Part 6 of SI 456 (2011)  The Minister may appoint in writing such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of these Regulations as may be specified in the appointment.</p> <p><b>How many authorised officers have been appointed by the Minister?</b></p>
21	<p><b>Offences and Penalties</b>  <b>a) How many offences have been committed under the Regulations?</b>  <b>b) What penalties have been imposed under the Regulations?</b></p>

## Appendix D Sections 7 & 8 of S.I. No. 456 of 2011

### PART 3

#### Screening

##### *Screening application*

7.

- (1) Subject to Regulation 9, a person, who wishes to undertake an activity shall submit an application to the Minister for a screening decision, irrespective of the location of such activity where—
  - (a) the area of land or length of field boundary involved exceeds the thresholds set out in Part A of Schedule 1,
  - (b) the activity may have a significant effect on the environment,
  - (c) the activity may have significant effect on a European site,
  - (d) the activity may impact adversely on an NHA or a nature area, or
  - (e) the activity may damage a monument.
- (2) An application under paragraph (1) shall contain—
  - (a) the name and address of the applicant,
  - (b) the location of the land, Land Parcel Identification System (LPIS) Number assigned by the Minister, townland and county to which the application relates,
  - (c) the nature and extent of the proposed activity including the anticipated outcomes of the activity,
  - (d) the name and address of the person who will perform the activity, and
  - (e) any such other information as the Minister considers necessary.
- (3) The Minister may consult with any consultation body or make such enquiries as the Minister considers necessary for the purposes of deciding on the application.
- (4) The Minister may consider any representations made in relation to an application made under paragraph (1).
- (5) The Minister may refuse an application if the application is incomplete in any material detail.

##### *Screening decision*

8.

- (1) Where the Minister, having considered all relevant information including the criteria set out in Schedule 2, is of the opinion that the activity is not likely-
  - (a) to have significant effects on the environment,
  - (b) to have significant effects on a European site,
  - (c) to impact adversely on an NHA, or a nature area, or
  - (d) to damage a monument,he or she shall inform the applicant that the activity may proceed within such period as the Minister may specify in his or her decision.
- (2) Where the Minister considers that the proposed activity is likely to have a significant effect on the environment the activity may not proceed without a consent.
- (3) Where the Minister considers that the proposed activity is likely to have a significant effect on a European site the activity may not proceed without a consent.
- (4) Where the Minister considers that the proposed activity is likely to have a significant effect on an NHA, the Minister shall consult with the Minister for Arts, Heritage and the Gaeltacht prior to making a decision on the application and shall consider any views of that Minister, following which the Minister may decide that the activity may not proceed without a consent.
- (5) Where the Minister considers that the proposed activity is likely to have a significant effect on a nature area, the Minister may consult with the relevant consultation bodies prior to making a decision on the application and shall consider any views of such bodies, following which the Minister may decide that the activity may not proceed without a consent.
- (6) Where the Minister considers that the proposed activity would be likely to damage a monument, the Minister shall consult with the Minister for Arts, Heritage and the Gaeltacht prior to making a decision on the application and shall consider any views of that Minister, following which the Minister may decide that—
  - (a) subject to Regulation 23, the activity may proceed subject to any modifications that the Minister considers appropriate, or

- (b) the activity may not proceed.
- (7) The Minister shall inform the applicant of his or her decision under paragraphs (2), (3), (4), (5) and (6) and give reasons for such decision.
- (8) The Minister may publish a decision made under this Regulation.

## Appendix E Copy of template used by DAFM officials for site inspections

### European Communities (Environmental Impact Assessment) (Agriculture) Regulations SI No. 456 of 2011 Application to the Minister of Agriculture, Food & Marine under Section

7

#### Assessment for an EIA Screening Decision

Name of Applicant:

Reference Number: 2017 EIA S-00

This form must be completed for every application for screening. Tick yes or no as appropriate. Where comments are necessary insert in comments box at end of form (quote question number).

	Project Description	Yes	No
1	The description and characteristics of the activity outlined in the above application form have been examined?  <i>All details submitted on Form EIA1, associated maps and all correspondence and consultations in relation to this file must be examined before this question can be ticked "yes"</i>		
	<b>Size of the proposed activity</b>		
2	Does the extent of the proposed activity exceed the thresholds for mandatory EIA?		
	<b>Cumulative effect</b>		
3	Is the cumulative effect of this application likely to have a significant environmental impact?  Is the amount and type of the proposed activity in this locality known to be a significant issue?  <i>If 'yes' to either of both questions describe in Inspectors comments box below</i>		
	<b>Pollution and nuisance</b>		
4	Will the activity generate pollution or nuisance?  <i>If 'yes' to this question describe in Inspectors comments box below Where it is thought that the activity will generate water, air or soil pollution or cause a nuisance to people living in the surrounding area then this question should be ticked "yes"</i>		
	<b>Rarity of Landscape Feature</b>		
5	Will the proposed works remove a rare landscape feature?  <i>If 'yes' to this question describe in Inspectors comments box below</i>		
	<b>Proximity of Proposed Works to High Value Environmental Sites</b>		
6	Are the proposed works close to areas of high environmental quality?  <i>If 'yes' to this question describe in Inspectors comments box below</i>		



	<b>Habitats</b>		
7	<p>Is there an abundance of the habitat in the area?</p> <p><i>If 'no' to this question describe in Inspectors comments box below</i></p>		
	<b>Existing land use</b>		
8	<p>Has the existing land use been examined?</p> <p><b><i>The SPS system must be consulted before answering "yes" to this question</i></b></p>		
	<b>Water</b>	<b>Yes</b>	<b>No</b>
9	<p>Are the proposed works within an area that are likely to cause:</p> <ul style="list-style-type: none"> <li>- Siltation,</li> <li>- Pollution from pesticides/fertilisers,</li> <li>- Land drainage issues,</li> <li>- Flooding,</li> <li>- Leachates (from reclamation of land)</li> </ul> <p><i>If 'yes' to any of these question describe in Inspectors comments box below</i></p> <p><b><i>Siltation is the pollution of water by fine silt or clay particles. If it is thought that the activity will cause siltation to water then this question must be answered "yes". Siltation is of particular importance where the activity is near or discharging into a salmon or trout spawning river.</i></b></p> <p><b><i>If it is thought that the proposed works will cause pollution from pesticides/fertilisers then this question must be answered "yes".</i></b></p> <p><b><i>If the activities are likely to damage an area of high environmental importance, e.g. drain a bog in the vicinity, then this question must be answered "yes".</i></b></p> <p><b><i>Where it is thought that the activity will cause flooding downstream then this question must be answered "yes".</i></b></p> <p><b><i>Leachate is the movement of solids in water and can occur during or following land reclamation. If it is thought that the activity will cause the occurrence of leachate then this question must be answered "yes".</i></b></p>		
	<b>Soil</b>	<b>Yes</b>	<b>No</b>
10	<p>Are the proposed works within an area that are likely to cause:</p> <ul style="list-style-type: none"> <li>- Soil erosion,</li> <li>- Stability/settlement issues,</li> <li>- Drainage problems,</li> <li>- Flooding,</li> <li>- Alteration of soil structure/fertility.</li> </ul> <p><i>If 'yes' to any of these question describe in Inspectors comments box below</i></p> <p><b><i>Where it is thought that the activity will cause significant soil erosion then this question must be answered "yes".</i></b></p> <p><b><i>If the activity will lead to soil stability and or settlement issues then this question must be answered "yes".</i></b></p> <p><b><i>Where it is thought that the activity will impede on drainage then this question must be answered "yes".</i></b></p> <p><b><i>Where the inspector believes that the activity may cause flooding issues downstream this question must be answered "yes".</i></b></p> <p><b><i>If the activity alters existing soil structure and/or fertility then this question must be answered "yes".</i></b></p>		
	<b>Flora</b>		
11	<p>Are the proposed works within an area of high nature value that are likely to cause:</p> <ul style="list-style-type: none"> <li>- Loss of indigenous vegetation,</li> <li>- Introduction of invasive species.</li> </ul> <p><i>If 'yes' to any of these question describe in Inspectors comments box below</i></p> <p><b><i>If the proposed works will result in the loss of indigenous vegetation to an area then this question must be answered "yes".</i></b></p>		

	<b>Where it is thought that the proposed works are likely to introduce invasive species then this question must be answered "yes".</b>		
	<b>Fauna</b>		
12	<p>Are the proposed works within an area of high nature value that are likely to cause:</p> <ul style="list-style-type: none"> <li>- Changes to extent/diversity of habitat;</li> <li>- Introduction of invasive species;</li> <li>- Shift in species mix/abundance.</li> </ul> <p><i>If 'yes' to any of these question describe in Inspectors comments box below</i>  <b>Where it is thought that the activity will cause changes to the extent and/or diversity of the habitat this question must be answered "yes".</b>  <b>If the activity is likely to introduce invasive species then this question must be answered "yes".</b>  <b>If the inspector believes that the activity will cause a shift in the mix and/or abundance of the activity then this question must be answered "yes".</b></p>		
	<b>Protection of Fresh Water Pearl Mussel (FPM)</b>	<b>Yes</b>	<b>No</b>
13	<p>Are there populations of the Fresh Water Pearl Mussel likely to be affected by the proposed works?</p> <p><i>If 'yes' describe in Inspectors comments box below</i>  <b>The iFORIS system will identify the catchments for the FPM. Where the inspector believes that the activity will affect the populations of FPM then this question must be answered "yes".</b></p>		
	<b>Archaeology</b>		
14	<p>Does the area contain or adjoin a listed archaeological site or monument, archaeological area, zones of archaeological amenity or World Heritage Sites?</p> <p><i>If 'yes' describe in Inspectors comments box below</i>  <b>The record of Monuments and Places (RMP) and iFORIS system will identify archaeological features in the area of the proposed activity.</b></p>		
15	<p>Following referral to the National Monuments Service (DoEHLG), in evaluating the scale and significance of any potential impact, the following comments were received:</p> <ol style="list-style-type: none"> <li>1. Specific conditions regarding buffer zones etc.,</li> <li>2. Archaeological Monitoring during ground preparation or drainage works,</li> <li>3. Archaeological Assessment,</li> <li>4. Agree with proposal.</li> </ol>		
	<b>Landscape</b>		
16	<p>Are the proposed works within an area that are likely to cause major changes in landscape character such as:</p> <ul style="list-style-type: none"> <li>- Obstruction of views,</li> <li>- Changes in elevation,</li> <li>- Changes in landcover/vegetation,</li> <li>- Creation of ditches/dykes,</li> <li>- Changes in coastal defences.</li> </ul> <p><i>If 'yes' to any of these question describe in Inspectors comments box below</i>  <b>Where it is thought that the activity will cause one or more of the above then the answer to this question must be "yes".</b></p>		
17	<p>Is this site within a prime scenic area in the County Development Plan or within an area listed in the Inventory of Outstanding Natural Landscapes or in a Landscape Conservation Area?</p> <p><i>If 'yes' describe in Inspectors comments box below</i>  <b>County Development Plans are available on each of the County Council's websites.</b></p>		
18	Were comments from the Local Authority requested?		

	<i>If 'yes' describe in Inspectors comments box below</i>		
19	Were comments from the Local Authority received and examined?  <i>If 'yes' describe in Inspectors comments box below</i>		
	<b>Designated Habitats</b> <b>Nature reserves and national parks, special protection areas and areas of conservation designated pursuant to Directive 79/409/EEC and 92/43/EEC, SACs, etc Candidate, indicative and proposed sites are also included.</b>	<b>Yes</b>	<b>No</b>
20	Is this proposed area within a European or national designation, including; SACs, cSACs, SPAs, iSPAs, NHAs, pNHAs Nature Reserves and National Parks?  <i>If 'yes' describe in Inspectors comments box below</i>		
21	Is this proposed area within 3km upstream of a European or national designation including; SACs, cSACs, SPAs, iSPAs, NHAs, pNHAs Nature Reserves and National Parks?  <i>If 'yes' describe in Inspectors comments box below</i>		
	<b>Designated or non designated Habitat Recommendation</b>		
22	Following referral to NPWS the following comments were received: 1. Agree with part of the proposal, 2. EIA recommended, 3. Agree with proposal.		
	<i>Social</i>		
23	Do the proposed works impact on an area commonly used by the general public for recreation?  <i>If 'yes' describe in Inspectors comments box below</i>		
24	Do the proposed works impact on a densely populated area?  <i>If 'yes' describe in Inspectors comments box below</i>		
	<b>Transfrontier</b>	<b>Yes</b>	<b>No</b>
25	Is the proposed application within 3km upstream of the border with Northern Ireland?  <i>If 'yes' describe in Inspectors comments box below</i>		
26	Is the proposed application within 500m of the border with Northern Ireland?  <i>If 'yes' describe in Inspectors comments box below</i>		
27	Will the proposed project be likely to have a significant transfrontier impact?  <i>If 'yes' describe in Inspectors comments box below</i>		
	<b>Accidents</b>		
28	Is there a significant risk of accidents, having regard in particular to substances or technologies used?  <i>If 'yes' describe in Inspectors comments box below</i>		

