Scottish Natural Heritage

# A handbook on environmental impact assessment

Guidance for Competent Authorities, Consultees and others involved in the Environmental Impact Assessment Process in Scotland

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Scottish Natural Heritage

# A handbook on environmental impact assessment

## Guidance for Competent Authorities, Consultees and others involved in the Environmental Impact Assessment Process in Scotland

Natural Heritage Management

Prepared for SNH by

David Tyldesley and Associates
Edinburgh

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# List of abbreviations

Some abbreviations are only used in Figures and Annexes to save space.

| | |
|---|---|
| AGLV | Area of Great Landscape Value |
| CCS | Countryside Commission for Scotland |
| DoE | Department of Environment (England) |
| EA | Environmental Assessment (the whole process) |
| EASR 88 | Former Environmental Assessment (Scotland) Regulations 1988 |
| EIASR 99 | Environmental Impact Assessment (Scotland) Regulations 1999 |
| EIA | Environmental Impact Assessment (the whole process) |
| EC | European Community |
| e.g. | For example |
| ES | Environmental Statement |
| HRA | Habitats Regulations Appraisal |
| IEMA | Institute of Environmental Management and Assessment |
| JNCC | Joint Nature Conservation Committee |
| LA | Local Authority |
| LNR | Local Nature Reserve |
| NCC | Nature Conservancy Council |
| NCCS | Nature Conservancy Council for Scotland |
| NNR | National Nature Reserve |
| NPPG | National Planning Policy Guideline |
| NSA | National Scenic Area |
| NVC | National Vegetation Classification |
| PAN | Planning Advice Note |
| PLI | Public Local Inquiry |
| RC | Regional Council |
| Reg. | Regulation |
| ROMP | Review of old minerals permissions |
| RSPB | Royal Society for the Protection of Birds |
| S. | Section (of Act of Parliament) |
| SAC | Special Area of Conservation |
| Sch. | Schedule |
| SCI | Site of Community Importance |
| SEA | Strategic Environmental Assessment |
| SEPA | Scottish Environment Protection Agency |
| SINC | Site of Importance for Nature Conservation |
| SINS | Site of Importance to Natural Science |
| SMs | The Scottish Ministers |
| SNH | Scottish Natural Heritage |
| SoS | Secretary of State |
| SPA | Special Protection Area |
| SPP | Scottish Planning Policy |
| SSSI | Site of Special Scientific Interest |
| TPO | Tree Preservation Order |
| UK | United Kingdom |
| WGS | Woodland Grant Scheme |


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# List of figures






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# Short reference section

This is a short reference section to enable quick navigation about the Environmental Impact Assessment Handbook. The headings below will take you to a short summary of the main sections in the Handbook. The links in the short summary will take you to the related full text in the Handbook.






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# 1 Introduction to the Environmental Impact Assessment Process

## The Environmental Impact Assessment process

The EIA process is intended to improve environmental protection. It informs the decision making processes by which public bodies, referred to as 'competent authorities', determine whether certain projects should go ahead. It provides these bodies with a written statement about the project's effects on the environment that are likely to be significant (the environmental statement or 'ES'), together with the comments of the public and statutory environmental organisations.

More>> Link to Handbook B.1

## The legislative background

EIA has been introduced in Scotland mainly as a result of Directives from the European Community (EC). The requirements of the EC Directives are transposed into Scots law by Regulations made by the Scottish Government. Case law in the European Court of Justice and the courts of Scotland and England provide important rulings on how the Directive and Regulations should be applied.

More>> Link to Handbook B.2

## The projects that are subject to EIA

The Regulations apply to 'projects'. The types of project which are to be subject to the EIA process are listed in Schedules to the Regulations. However, for many types of project, whether they are to be subject to EIA will depend on their nature, scale or location and whether they will be likely to have significant effects on the environment.

More>> Links to Handbook B.3 and C.1

## Criteria for deciding whether EIA is required

Deciding whether projects would be likely to have significant effects requires checking against some specific criteria set by the Directive and then against indicative thresholds or criteria set out by the Scottish Government. It is for the 'competent authority' to decide whether the project's effects are likely to be significant, taking account of advice from bodies such as SNH, SEPA and Historic Scotland, where necessary.

More>> Link to Handbook B.4

## The series of EIA Regulations click here

What we refer to as "the principal regulations" cover projects requiring planning permission and other planning related projects together with roads and drainage schemes. There are other regulations dealing with forestry, intensive agriculture, offshore petroleum production and pipelines, gas pipelines, nuclear reactors, water management works, marine dredging of minerals, other marine works, major transport and electricity works.

More>> Link to B.5

## The contents of an environmental statement click here

The Regulations set out specific requirements for what an environmental statement must contain. It must include the publication of a 'non-technical summary'.

More>> Link to Handbook B.6


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## Importance of compliance with the Directive click here

If the Regulations are not complied with a decision may be quashed by the courts because the process did not consider all significant environmental effects or it did not follow the procedures.

More>> Link to Handbook B.7

## EIA links with other types of assessment click here

Strategic environmental assessment (SEA) relates to plans, programmes and strategies, but may be closely related to project EIA and the two types of assessment may be undertaken in sequence. The requirements for assessment of projects under the Habitats Regulations differ in important respects from those of the EIA regulations, but they are often undertaken in parallel.

More>> Link to Handbook B.8

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## 2 EIA: Deciding Whether EIA Is Required: The "Screening" Process

### The projects that are subject to EIA

The Regulations apply to 'projects'. The types of project which are to be subject to the EIA process are listed in Schedules to the Regulations. However, for many types of project, whether they are to be subject to EIA will depend on their nature, scale or location and whether they will be likely to have significant effects on the environment.

More>> Links to Handbook B.3 and C.1 and Annexe 4

### Criteria for deciding whether EIA is required

Deciding whether projects would be likely to have significant effects requires checking against some specific criteria set by the Directive and then against indicative thresholds or criteria set out by the Scottish Government. It is for the 'competent authority' to decide whether the project's effects are likely to be significant, taking account of advice from bodies such as SNH, SEPA and Historic Scotland, where necessary.

More>> Links to Handbook B.4 and Annexe 4

### The 'Screening' process

Every project must be 'screened' by the authority responsible for giving it consent ('the competent authority') to see if it must be subject to EIA procedures. All projects listed in Schedule 1 of the EIA Regulations must be subject to EIA. Whether projects of a kind listed in Schedule 2 of the EIA Regulations are to be subject to EIA will depend on their nature, scale or location and whether they will be likely to have significant effects on the environment. Project proposers can ask competent authorities for a 'screening opinion', which will decide whether the project is to be subject to EIA. The Scottish Ministers also have powers to issue a 'screening direction'.

More>> Links to Handbook C.1 and Annexe 4

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# 3 EIA: Scoping the Environmental Statement

## Scoping the Environmental Statement

This is perhaps the most important single step in the EIA process. Every project proposer is strongly encouraged to apply to the competent authority for a 'scoping opinion', which must be issued within five weeks of the request. The scoping opinion allows the competent authority to decide what the main effects of the proposal are likely to be and, therefore, the topics on which the environmental statement should focus. It is a key stage in ensuring that the process is proportional to the project and its effects on the environment.

More>> Link to Handbook C.4

## What the Environmental Statement should contain

The Regulations set out specific requirements for what an environmental statement must contain. It must include the publication of a 'non-technical summary'.

More>> Link to Handbook B.6

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## 4 How an Environmental Statement is Prepared

### What the Environmental Statement should contain

The Regulations set out specific requirements for what an environmental statement must contain. It must include the publication of a 'non-technical summary'.

More>> Link to Handbook B.6

### Baseline environmental information

The preparation of the environmental statement is the responsibility of the project proposer. The 'baseline environmental information' should be relevant, accurate, complete and up-to-date and competently gathered, analysed and presented. A prediction of how the baseline conditions are likely to change in the absence of the project should be recorded, taking account, for example, of climate change and the effects of other projects with consent.

More>> Link to Handbook C.6.

### Predicting the environmental impacts

The 'environmental impacts' of the project, should be predicted using the best techniques, skills, methodologies and models available and should be realistic, adopting the 'worst case scenario' where appropriate. The effects of a project on the environment may, for example, be positive or negative; individual or cumulative; direct or indirect and so on. Predicting impacts will need to consider how likely the impacts are to occur and compare the baseline and predicted changes without the scheme (the 'do-nothing alternative') and the significance of the impacts.

More>> Link to Handbook C.7.

### Assessing the significance of impacts

The 'significance' of the environmental impacts should be assessed on a clearly explained and rational basis. This should usually take account of the 'sensitivity' to change of the environment or people affected, and the magnitude of the changes, including for example, the scale, location, extent, timing and duration of the impacts.

More>> Link to Handbook C.8.

### Mitigating measures and enhancement

It will be necessary to consider measures designed and incorporated into the project proposal that will counter-act the adverse impacts of a project on the environment and enhance its beneficial effects. They will usually include the sequential consideration of measures to avoid, cancel, reduce, remedy or compensate for adverse effects and measures designed to enhance or otherwise provide a net benefit for the environment.

More>> Link to Handbook C.9.

### Presentation

Environmental statements should be compliant with the Regulations, but proportional to the nature, scale and location of the project and the significance of its environmental impacts. Statements should be rigorously edited, focused on key issues and should not contain so much detail that they distract readers from important environmental effects; or so lengthy and technical that they deter people from reading them. They should be written in plain English wherever possible, clearly but not lavishly illustrated and structured in a way that makes it easy to use them.

More>> Link to Handbook C.10.

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## 5 EIA: Other Procedures and Good Practice Before Submission of the Environmental Statement

### Requiring the submission of an environmental statement

Competent authorities and the Scottish Ministers have the power to require submission of an environmental statement in any case where a project should be subject to the EIA procedures.

More>> Link to Handbook C.2

### Preliminary contact and liaison

Early contact and liaison is of benefit to the competent authority, the project proposers and the consultees. It will speed up the decision making process, make the EIA process more effective and ensure that all significant environmental effects are properly considered from the outset. It can also avoid unnecessary work and ensure that the process is proportional to the project and its effects on the environment. The whole process should be carefully planned and programmed.

More>> Link to Handbook C.3

### Provision of Information by the statutory consultees

SNH, SEPA and Historic Scotland, amongst others, have a duty to provide relevant environmental information held by them to further the EIA process, particularly providing it to applicants and proposers preparing an environmental statement, unless the information is held in confidence.

More>> Link to C.5

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## 6 EIA: Consideration of the Environmental Statement

### The roles of the competent authority, the developer and consultees

The competent authority is responsible for making the decision as to whether the project should be given consent. It must ensure that statutory procedures are followed. It is responsible for requiring further information to be submitted where necessary. The proposer must submit sufficient copies of the environmental statement to enable the statutory consultations and three copies for the Scottish Ministers. Amongst other things, the consultees advise whether the environmental statement is a reliable basis for decision making.

More>> Link to Handbook D.1

### Liaison between the competent authority and the project proposer

Dialogue and liaison between consultees, the competent authority and the proposer will generally improve understanding of the project, the environmental issues, the impacts of the project and the views of the consultees. It will usually increase the effectiveness of the EIA process and the influence of consultees on the decision.

More>> Link to Handbook D.3

### Reviewing the environmental statement

PAN 58 provides a checklist of "quality indicators" and 5 headings under which a Statement may be reviewed. Attachment A to the EIA Handbook provides, in Part 1, a guide to the scoping of an environmental statement; and in Part 2, a structured review of an environmental statement.

More>> Links to Handbook D.9 and Attachment A

### Formulating a consultation response click here

The competent authority has a duty to consider 'the environmental information' before granting consent to any project subject to the EIA process. A consultee's response is a part of the environmental information that the competent authority must consider. The advice of the consultee about the merits of the project itself may be supplemented by an expert review of the environmental statement.

Link to Handbook D.10

### Planning Permission in principle and approval of matters specified in conditions

Applications for planning permission in principle and their subsequent applications for approval, consent or agreement are 'multi-stage consents' and EIA procedures can apply at any stage.

More>> Link to Handbook D.11

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## 7 EIA: Consultation and Publicity Procedures

### Consultation and publicity

The competent authority has a duty to consult the "consultation bodies" including, but not limited to, SNH, SEPA and Historic Scotland) and to publicise every environmental statement. Regulations prescribe the procedures to be adopted.

More>> Link to Handbook D.2

### Liaison between the competent authority and the project proposer

Dialogue and liaison between consultees, the competent authority and the proposer will generally improve understanding of the project, the environmental issues, the impacts of the project and the views of the consultees. It will usually increase the effectiveness of the EIA process and the influence of consultees on the decision.

More>> Link to Handbook D.3

### Wider consultation and dissemination

It is a matter for the competent authority to decide who should be consulted beyond the statutory consultees. However, it is open to other stakeholders to suggest other bodies which should also be consulted. This is particularly important where other bodies are known to hold important and relevant information and/or expertise.

More>> Link to Handbook D.4

### Transboundary environmental effects

Where a competent authority considers that there may be transboundary effects arising from a project, it must notify the Scottish Government, who will then take any action necessary to undertake transboundary consultations with another Member State.

More>> Link to Handbook D.5

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## 8 EIA: Further Environmental Information and Modifications to the Project

### Requesting further information or evidence

The competent authority has the power to require certain additional information to be submitted by the proposer under the provisions of the EIA Regulations. It must then be subject to publicity and consultation in a similar way to the environmental statement.

More>> Link to Handbook D.6

### Modifications to the project

The iterative process of EIA is likely to lead to the proposer, consultees or the competent authority seeking changes to the proposals to avoid or further reduce environmental effects. However, where the modifications would be likely to have significant environmental effects, not already assessed, they must be subject to further assessment under the Regulations.

More>> Link to Handbook D.7

### Further information and Supplementary Environmental Statements

A competent authority has the power to require further environmental information to be submitted. Conventionally this may be in the form of a Revised or Supplementary Environmental Statement, but these are not statutory processes or terms. The Regulations only refer to "further information" being required and submitted or to "any other information" which is submitted voluntarily by the proposer. The further information must be subject to publicity and consultation.

More>> Link to Handbook D.8

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## 9 EIA: The Decision Making Stage

### Adopting the Precautionary Principle

Generally, decisions should be based on the best scientific and other information available. Competent authorities should adopt the precautionary approach in considering environmental information and when deciding whether to consent to projects, in accordance with Government policy such as that in PAN 58.

More>> Link to Handbook E.1 and PAN 58

### Relationship of EIA with the development plan and other consent procedures

When dealing with a planning application a planning authority must decide the application in accordance with the development plan unless material considerations indicate otherwise. The environmental information is a material consideration. Research has shown that the EIA process is very influential in decisions as to whether to grant consent to projects.

More>> Link to Handbook E.2

### Guaranteeing commitments and compliance

The granting of consent for a project almost always relies on conditions, which are intended to limit or restrict the proposed project or to ensure implementation of the mitigating measures. However, the Regulations do not require the implementation of the mitigation measures per se, this is left to the consenting procedures. Consequently, the mitigating measures must each be clearly identified and should be guaranteed in the event of the project proceeding.

More>> Link to Handbook E.3

### The decision of the competent authority

Competent authorities have a duty to consider the 'environmental information' before granting consent to a project which should be subject to the EIA process. This comprises the environmental statement, all other information submitted by the proposer, the consultation responses of the consultees and representations made by the public. The competent authority must state in writing that the environmental information has been taken into account. It must notify the Scottish Ministers and the consultation bodies of its decision and publicise it.

More>> Link to Handbook E.4

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## 10 EIA: Implementation and Compliance

### Implementation of mitigation and compensation measures

The competent authority has powers to enforce compliance. However, there is no duty on the competent authority to monitor compliance with conditions and the terms of the consent. Enforcement will often rely on interested parties drawing any non - compliances to the attention of the competent authority. The extent of monitoring for compliance with terms and conditions needs to be judged on a case by case basis.

More>> Link to Handbook F.1

### Monitoring programmes

The Directive and Regulations do not require monitoring procedures to be put in place, only mitigation measures. However, monitoring may be required by conditions or by legal agreements. It is vital that the effectiveness of mitigation is monitored to ensure that it meets the standards and achieves the objectives anticipated in the decision. Monitoring can improve the future mitigation of similar developments.

More>> Link to Handbook F.2 and F.3

### Review and reassessment and remedial programmes

These are non statutory procedures but may be required by conditions or by legal agreements. Provision must be made at the decision making stage to ensure that changes or remedial (i.e. corrective) action can be implemented effectively and quickly if monitoring reveals problems. There may be cases when monitoring to validate the predictions in the environmental statement may be appropriate, but usually monitoring will only be worthwhile if it is reinforced with effective review and remedial action mechanisms.

More>> Link to Handbook F.3 and F.2

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## 11 EIA: Technical Guidance on Natural Heritage Impact Assessments

### Guidance on assessing landscape and visual impacts click here

Link to Handbook Technical Appendix 1

### Guidance on assessing ecological impacts click here

Link to Handbook Technical Appendix 2

### Guidance on assessing earth heritage impacts click here

Link to Handbook Technical Appendix 3

### Guidance on assessing impacts on soils click here

Link to Handbook Technical Appendix 4

### Guidance on assessing impacts on outdoor access click here

Link to Handbook Technical Appendix 5

### Guidance on assessing impacts on the marine environment click here

Link to Handbook Technical Appendix 6

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# Part A
# Introduction to this handbook


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# A.1 Introduction to this handbook

Box **Key information**

A.1.1 The Handbook is intended to provide Competent Authorities, statutory consultees and others involved in the Environmental Impact Assessment (EIA) process with practical guidance and a ready source of information about the process. In places it illustrates or concentrates on the treatment of natural heritage issues but, even where there is such a focus, the principles are often more widely applicable to other environmental topics. It is intended to help all of those involved in the process to make it more effective and therefore lead to better informed decisions.

A.1.1 This Handbook has been prepared and published in response to many of Scottish Natural Heritage's (SNH) partners expressing a need for a publication of this kind. It utilises the framework and content of an internal Handbook that was first prepared for SNH by David Tyldesley and Associates (DTA) in 1997, and which was extensively revised and reissued following the amendments to the legislation in 1999. This third edition of the Partners' version is a major revision, again undertaken by DTA, drawing on further experience, revised policy and guidance from Government and more recent case law.

A.1.2 The third edition has been prepared with due care and diligence but it is not intended to be an authoritative interpretation of the law or government policy and neither DTA nor SNH can be responsible for any consequences from the use of the Handbook or any errors or omissions. Readers are advised to read the whole of the relevant court judgments and to seek their own legal advice in any particular case. Readers should also bear in mind the frequency with which the Regulations and Government guidance need to be updated and should check for subsequent changes and updates on the website of the Scottish Government Department of the Built Environment at http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/enviro-assessment/eia/Q/editmode/on/forceupdate/on

A.1.3 The Handbook is divided into six parts:

### Part A Introduction to this Handbook

This is a general introduction to the Handbook.

### Part B Introduction to the Environmental Impact Assessment Process

Part B is a general introduction to the EIA process, including the legislative background, the projects that are subject to EIA and the contents of an Environmental Statement.

A.1.4 The rest of the main text of the Handbook then considers each of the main steps in the process of EIA, under four main stages: before the Environmental Statement is submitted; during the consideration of the Environmental Statement; the decision making stage and the post decision stage. Thus, the remaining four sections of the Handbook are as listed below.

### Part C Before Submission of the Environmental Statement

Explaining the various stages before the Environmental Statement is submitted including

- deciding whether an Environmental Statement is required (the screening process);
- requiring the submission of an Environmental Statement;
- preliminary contacts and liaison;
- scoping an Environmental Statement;


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- provision of information by consultees;
- baseline environmental information;
- predicting environmental impacts;
- assessing the significance of impacts;
- mitigating measures and enhancement; and
- presentation of environmental information.

## Part D Consideration of the Environmental Statement (and Project Consent Application)

Explaining the various stages of considering the Environmental Statement including

- submission of the environmental statement;
- consultation and publicity;
- liaison with the Competent Authority and the proposer;
- wider consultation and dissemination;
- transboundary environmental effects;
- requiring more information or evidence;
- negotiating modifications of the project;
- Supplementary Environmental Statements; and
- reviewing the Environmental Statement.
- formulating a response;
- planning permission in principle and approval of reserved matters specified in conditions.

## Part E The Decision Making Stage

Explaining the decision making stage including

- use of the precautionary principle;
- the relationship of EIA with the development plan and other consent procedures; and
- guaranteeing commitments and compliance with the decision of the Competent Authority; and
- the decision of the Competent Authority.

## Part F Implementation and Compliance

Explaining the stages of implementation of the project including

- ensuring compliance with the terms of any authorisation given, in relation to mitigation and compensation for environmental effects;
- the roles of the parties in these stages, including time scale of implementation of mitigation and compensation measures;
- monitoring programmes; and
- review, reassessment and remedial programmes.


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A.1.5 There are then seven Annexes as follows:

| | |
|---|---|
| Annexe 1 | A Glossary of terms used in the Handbook |
| Annexe 2 | List of Current Legislation, annotated including a table showing the r eferences of the key stages in each set of EIA Regulations |
| Annexe 3 | List of Current National Policy and Guidance, annotated |
| Annexe 4 | Projects Requiring Environmental Impact Assessment |
| Annexe 5 | Annotated References and Bibliography |
| Annexe 6 | Historical Development of Environmental Assessment in Scotland |
| Annexe 7 | List of Principal Legal Cases Referred to. |

Each Annexe is 'bookmarked' in the document for ease of cross-referencing. Simply click on 'Home' 'Insert' 'Bookmark' select the Annexe and click 'Go to'.

A.1.6 The Handbook contains six Technical Appendices, which deal with detailed methodologies for impact assessment for:

| | |
|---|---|
| Appendix 1 | Landscape and Visual Impact |
| Appendix 2 | Ecological Impact |
| Appendix 3 | Geodiversity Impact |
| Appendix 4 | Soil Impact |
| Appendix 5 | Outdoor Access Impact |
| Appendix 6 | Effects on the Marine Environment |

A.1.7 Finally, the Handbook contains, in Attachment A, a 'master' copy of a scoping and review package to assist in scoping and reviewing Environmental Statements.

## Presentation

A.1.8 This Handbook covers a complex and often detailed range of information, policy advice, guidance and statutory and non statutory procedures relating to the whole of the EIA process. To make it more readable and easier to use, the text includes a series of figures and boxes. All of these are numbered for reference purposes.

The boxes used are as follows:

| | |
|---|---|
| Blue tinted boxes to summarise key points of information | **Key information** |
| Orange tinted boxes to highlight key points of advice. | **Key advice** |
| Good EIA Practice is in a green tinted box. | **Good EIA practice** |


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## The Principal Regulations

A.1.9 Previous versions of the Handbook have used acronyms to refer to the various sets of regulations, such as 'EIASR99'. With the increasing number and amendment of regulations, the escalation of acronyms reduced the readability of the text, so in this edition, each set of regulations is referred to by a name reflecting the sector(s) to which it applies, except the Environmental Impact Assessment (Scotland) Regulations 1999, http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm which are referred to as 'the principal regulations'. This is not because they are more important than other regulations, but simply because they were the first; they refer to several different sectors and the large majority of EIA is undertaken under their provisions.

## Application to Project Types

A.1.10 EIA is required for a wide range of project types. This Handbook applies to all project types in terms of the basic process of EIA. However, to continuously refer to all the different types of projects and different Competent Authorities and project proposers would make the text cumbersome and difficult to follow. For this reason and because the main body of the EIA guidance from government (Circular 08/2007[1]) addresses the EIA process in relation to the town and country planning system, this Handbook prefers to focus on those procedures. Unless otherwise indicated the advice in this Handbook applies to the EIA process in respect of all project types, even though it concentrates on the principal regulations and the Circular relating to planning projects. Where a specific procedure relates only or primarily to planning authorities under the principal regulations then the term "planning authority" is used instead of "Competent Authority".

## Scope of EIA Projects and Application of the Different EIA Regulations

A.1.11 Annexe 2 Table 1 of this Handbook lists all the relevant EIA Regulations relating to the different types of projects and their consent procedures. A summary of the scope of EIA regulations applicable to a wide variety of project types is given in Annexe 2 Table 2. This is followed by Table 3 which identifies the main project types in the various regulations and, for each one, summarises which is the Competent Authority; the relevant consent procedures; the relevant EIA Regulations; their geographical jurisdiction, the reference of the Statutory Instrument and the date it came into force.

## References to all Project Proposers and Developers as "proposers"

A.1.12 For the purposes of this Handbook, to help make the text more readable, all project developers and proposers are referred to as "proposers", whether or not their project is for public service or infrastructure or for commercial purposes.

## Web Links

A.1.13 In order to keep the text readable, whilst also providing immediate access to key documents referred to, web links are provided either in the run of text or as footnotes to the relevant page, for the first or principal reference to key Regulations, Circulars and the EIA Planning Advice Note 58.

1 http://www.scotland.gov.uk/Publications/2007/11/30082353/14


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# Part B
# Introduction to the environmental impact assessment process


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# B.1 Introduction to the EIA process

Box B.1.1 **The EIA Process**

**Key information**

'Environmental Impact Assessment' (EIA) is the whole process of:

1. gathering environmental information;
2. describing a development or other project;
3. predicting and describing the environmental effects of the project;
4. defining ways of avoiding, cancelling, reducing or compensating for the adverse effects;
5. publicising the project and the Environmental Statement including a clear, non-technical summary of the likely effects, so that the public can play an effective part in the decision making process;
6. consulting specific bodies with responsibilities for the environment;
7. taking all of this information into account before deciding whether to allow the project to proceed; and
8. ensuring that the measures prescribed to avoid, cancel, reduce or compensate for environmental effects are implemented.

B.1.1 The 'Environmental Statement' (ES) is the report normally produced by, or on behalf of, and at the expense of, the proposer which must be submitted with the application for whatever form of consent or other authorisation is required. It embraces the first four elements of:

1. gathering environmental information;
2. describing the project;
3. predicting and describing the environmental effects of the project; and
4. defining ways of avoiding, reducing or compensating for the adverse effects.

It is only one component, albeit a very important one, of the environmental information that must be taken into account by the decision maker. (See paras 20 and 87 - 93, Circular 8/2007 (http://www.scotland.gov.uk/Publications/2007/11/30082353/14 reference 1))

B.1.2 The 'Environmental Information' that must be taken into account by the decision maker includes the Environmental Statement and all the comments and representations made by any organisation or member of the public as a result of the consultations and publicity that must be undertaken in every case. It also includes any further environmental or other information submitted by the proposer which is relevant to the decision.

B.1.3 Paragraph 7 of Circular 8/2007 describes the EIA process as:

"The Directive's main aim is to ensure that the authority giving the primary consent (the 'Competent Authority') for a particular project makes its decision in the knowledge of any likely significant effects on the environment. The Directive therefore sets out a procedure that must be followed for certain types of project before they can be given 'development consent'. This procedure - known as Environmental Impact Assessment (EIA) - is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing any adverse effects, are properly understood by the public and the relevant Competent Authority before it makes its decision."


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Box **Key information**

B.1.2 It is important to appreciate that EIA is not, in itself, a decision making process.

It is a process that is integrated into existing decision making procedures, for example, the consideration of planning applications or applications for an Improvement Order in respect of land drainage, in order to better inform these decisions as to the environmental implications of the project. In this way, it contributes to the wider objectives of sustainable development.

B.1.4 Consequently, an EIA is not usually undertaken in isolation of some other procedure. Indeed, some procedures, such as the control of the intensive use of uncultivated land and semi-natural areas, were only introduced to provide a regulatory process to ensure compliance with the Directive. The main aim is to protect land which has a particular natural heritage or historic environment value or importance. Comments made on EIA cases still need to focus strongly on representations as to whether the project should proceed, or how it should proceed.

Box **Key advice**

B.1.3 Comments on an Environmental Statement should be used to support and justify the representations made in respect of whether the project should be given consent, and if so, what conditions or limitations it should be subject to.

Representations may also relate to the quality or compliance of the Environmental Statement.

B.1.5 The advice in Box B.1.3 is fundamental to the process. This Handbook seeks to distinguish between advice on whether the project should be consented and comments on the environmental information to be taken into account. For example, it is perfectly possible that a consultee may find the conclusions of an Environmental Statement to be appropriate and acceptable, but to conclude that the project ought not to be given consent. Equally, a perfectly acceptable project, from a consultee's point of view, could be accompanied by an inadequate Environmental Statement. In the latter case, the consultee would not, of course object to the proposal, but may advise the Competent Authority about the inadequacy of the Environmental Statement.

B.1.6 EIA is intended to ensure that the environmental effects of major developments and other projects likely to have significant environmental effects are fully investigated, understood and taken into account before decisions are made on whether the projects should proceed. Fundamental to the process are the statutory requirements for steps 5 - 8 in Box B.1.1 above, namely:

5. the publicising of the project and the Environmental Statement, including a clear, non-technical summary of the likely effects, so that the public can play an effective part in the decision making process;
6. consultation with specific bodies with responsibilities for the environment;
7. taking all of this information into account before deciding whether to allow the project to proceed; and
8. ensuring that the measures prescribed to avoid, reduce or compensate for environmental effects are implemented.

Box **Key information**

B.1.4 EIA should be of benefit to project proposers, decision makers and all of those consulted in the decision making process, including the public. It should help to ensure that development is sustainable, that development does not exceed the capacity of the environment to accommodate change without long-term harm. It should help to expedite the decision making process and guide the implementation of those projects that do proceed.

Many of the procedures are required by law but the effectiveness of EIA relies substantially on integrity and good practice.


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B.1.7 The process can be broken down into a series of stages and steps, which are reflected in the structure of the Handbook and summarised in Figure 1 below. Whilst the 4 main stages will normally follow consecutively, the steps within each stage could be undertaken concurrently or in a different order.

Box **Key information**

B.1.5 In practice, the whole EIA process should be an iterative one (repeated until the best solution has been found), with sometimes complex links back to earlier steps and a continuous process of assessment and reassessment until the best environmental fit is achieved and/or environmental effects cannot be reduced further.

B.1.8 As PAN 58 (http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58 reference 2) explains at paragraph 25:

"In practice the process rarely proceeds in a simple linear fashion. For example, environmental studies may identify a significant adverse impact which can only be overcome by altering the design, so the process reverts to the first step ....."

B.1.9 Not all of the steps in the process are actually required by law; some are a matter of good practice and common sense because without them the statutory requirements would not be fully realised.

B.1.10 It should also be noted that EIA procedures apply to projects in the marine environment, the procedures are not confined to land based developments in the way that statutory planning procedures are.

B.1.11 The whole process is described in more detail in the following sections of the Handbook and the statutory and non statutory elements are distinguished. The EIA process sits alongside decision making procedures and requirements. It does not directly duplicate other procedures, although it can be very closely related to them. For example, the decision making procedures required for a project that is likely to have a significant effect on a Natura 2000 site (a European site) may use some of the information in an Environmental Statement, prepared under the EIA Regulations, in the appropriate assessment under Regulation 48 of the Habitats Regulations 1994 http://www.opsi.gov.uk/si/si1994/uksi_19942716_en_1.htm and subsequent amendments including those linked below. See Section E.2 of this Handbook and paras 85 - 86 Circular 8/2007 (1).

B.1.12 Reference is made here to the various Annexes, Appendices and the Attachment at the end of this Handbook. To help illustrate and explain the EIA process, as it progresses through the Handbook, particular cross references are highlighted at the beginning of each Section.

B.1.13 Amendments to the Habitats Regulations since 1994, referred to in paragraph B.1.11 above, include the following:

- the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 (SSI 2004 No. 475)
- the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007 (SSI 2007 No. 80)
- the Conservation (Natural Habitats, &c.) Amendment No. 2 (Scotland) Regulations 2007 (SSI 2007 No. 349)
- The Conservation (Natural Habitats, &c.) Amendment Regulations 2007 (SI 2007 No. 1843)
- the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 (SSI 2007 No. 485)
- the Transport and Works (Scotland) Act 2007 (Consequential and Transitional Provisions) Order 2007 (SSI 2007 No. 517)
- The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2008 (SSI 2008 No. 17)
- the Conservation (Natural Habitats, &c.) Amendment No. 2 (Scotland) Regulations 2008 (SSI 2008 No. 425)
- Planning etc (Scotland) Act 2006 (Development Planning) (saving, Transitional and Consequential Provisions) Order 2008 (SSI 2008 No 427


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**Figure 1 Key Stages and Steps in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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# B.2 The legislative background

[See Annexes 2 and 4]

## The EIA Regulations

B.2.1 Annexe 2, Tables 1 - 3 of this Handbook list the current EIA legislation applicable in Scotland. It generally takes the form of "Statutory Instruments" (Regulations), which are made by the Scottish Ministers, the UK Parliament or the Secretaries of State. Although not "Acts of Parliament" they have much the same effect; they are statutory requirements. Failure to comply would render any case or decision open to challenge in the Court of Session, which means the decision could be quashed if it did not comply with the Regulations. Many of the important court cases and their implications are referred to in this Handbook (Annexe 7 below).

B.2.2 These statutory instruments are designed to bring into legal effect in Scotland the requirements of the EC Directives on EIA[2] (references 3 and 4). These Directives have to be applied in Scottish domestic legislation in a way that is legally binding on proposers and decision makers (decision makers are referred to in the Directive and the Regulations and in this Handbook as "Competent Authorities").

B.2.3 The first Regulations appeared in 1988 with the Environmental Impact Assessment (Scotland) Regulations 1988 (reference 5). These have been completely replaced by a new series of Regulations led by the Environmental Impact Assessment (Scotland) Regulations 1999[3] (reference 6) (abbreviated in this Handbook to 'the principal regulations', see A.1.9 above) covering the majority of developments likely to require EIA on land in Scotland. The Regulations have been amended, since 1999, mainly to take account of case law and further amendments to the Directive including changes made by Article 3 of Directive 2003/35/EC, known as the 'Public Participation Directive' [4], which aligns EIA requirements more closely with the provisions of the Aarhus Convention (reference 7). The amended Regulations cover EIA requirements for:

- projects which require planning permission in response to an application under the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc Scotland Act 2006 (Part II of the Regulations);
- certain trunk road projects, comprising construction and improvement which are authorised under the Roads (Scotland) Act 1984 (Part III of the Regulations);
- drainage works authorised by orders under the Land Drainage (Scotland) Act 1958 (Part IV of the Regulations).

B.2.4 Other Regulations cover a wide range of other project types and Annexe 2 Tables 1 - 3 below provide the full list.

B.2.5 As noted in paragraph B.1.10 above, EIA procedures apply to projects in the marine environment. Consequently, there are important implications, for example, for marine fish farming, port and harbour developments, off shore dredging and wind farms and works requiring Marine Construction Licences under the Food and Environment Protection Act 1985 (see Annexe 2 Tables 2 and 3).

B.2.6 The Directives (references 3 & 4) link EIA to the consent procedure and therefore imply that all projects subject to EIA should require consent from a statutory authority before they can proceed. Since most of the project types listed in Annex I and Annex II of the Directive already required some kind of consent under UK law the Government was generally able to implement the Directive by introducing sets of Regulations modifying existing legislation and procedures. Occasionally, however, it has been necessary to introduce new consenting procedures to meet the requirements of the Directives, for example, the control of the intensive use for agriculture of uncultivated land and semi-natural areas (see section B.5 below).

2 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1985L0337:20030625:EN:PDF
3 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm
4 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0035:EN:HTML


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B.2.7 In addition to the suite of statutory Regulations, there are three other ways in which EIA may be required:

1. The order making procedures under the provisions of the Transport and Works (Scotland) Act 2007[5] e.g. for major new infrastructure projects such as railways, tramways or bridges.
2. Parliamentary Standing Orders (Chapter 9A) governing the procedures by which Private Bills for major development projects pass through the Scottish Parliament.
3. By a Secretary of State or the Scottish Ministers introducing non statutory guidance or procedures for development carried out by a Government Department or projects that may require the consent of a Secretary of State or the Scottish Ministers but which are not specified in the Regulations.

## Changes to the Regulations

B.2.8 Changes in EIA legislation relating to development are facilitated by Section 2(2) of the European Communities Act 1972 and Section 40 of the Town and Country Planning (Scotland) Act 1997, empowering the Scottish Ministers to introduce further EIA Regulations, generally. These powers include the introduction of provisions different to the EIA Directives. As the Scottish Ministers could not make the Regulations less rigorous than the Directives, it follows that the power must have been introduced to enable a stricter regime than that directed by the EC, if the Scottish Ministers so wish.

B.2.9 The 1999 Regulations introduced a number of changes related to:

- increasing the range of projects requiring to be assessed;
- taking account of Integrated Pollution Prevention and Control and integrating the provisions of the IPPC Directive 96/61/EC of 24.9.96 into the EIA process;
- the way in which potential international (transboundary) effects are to be considered;
- environmental interactions;
- screening the need for EIA and thresholds for determining whether assessment may be required;
- increased public information and accountability;
- scoping the content of the Environmental Statement;
- describing the alternatives considered; and
- applying assessment requirements to modifications and extensions of both Schedule 1 and Schedule 2 projects.

B.2.10 In respect of the last bullet point, some Member States previously took the view that only modifications to projects in Annex I were subject to EIA. However, the Courts have now held that modifications to Annex II projects, as well as Annex I projects, require EIA where they are likely to have significant environmental effects. European Court of Justice, Aannemersbedrijf PK Kraaijeveld BV versus Gedeputeerde Staten van Zuid-Holland (October 24 1996). A more recent case in the High Court of Justice has since had further implications for the interpretation of schedule II thresholds for applications concerning changes or extensions to projects. At the time of writing, the Scottish Government has indicated that certain regulations may require updating in light of the ruling in The Queen on the application of Baker v Bath and North East Somerset Council, 19th February 2009. The Scottish Government Directorate for the Built Environment intends to issue advice to planning authorities on the matter.

B.2.11 The EIA process is also influenced by the provisions for access to environmental information (reference 8) and the Town and Country Planning (Electronic Communications) (Scotland) Order 2004[6] (see also Circular 3/2004[7] and PAN 70[8] (references 9 and 10).

5 http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070008_en_1
6 http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040332.htm
7 http://www.scotland.gov.uk/Publications/2004/07/19722/40739
8 http://openscotland.gov.uk/Publications/2008/11/17142750/7


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# B.3 The projects that are subject to EIA

[See Annexe 4]

## Statutory EIA: The General Principles

B.3.1 The Directive and Regulations relate to "certain public and private projects", generally those which require some form of licence, permission, consent or other authorisation before they can proceed.

B.3.2 Whether a project must be subject to the EIA process in Scotland depends entirely on whether it is of a kind described in the Regulations issued by the Scottish Government to ensure compliance with the EC Directives on EIA, as described in section B.2 above. Projects which are subject to the EIA process are of two kinds:

- those which are of a type of project that must always be subject to EIA, for example nuclear power stations, referred to as Schedule 1 development (or projects) because they are listed in Schedule 1 of the EIA Regulations. Schedule 1 is based on Annex I of the Directive, so sometimes Schedule 1 projects may be referred to as 'Annex 1' projects, and
- those which may be subject to EIA if they are of a kind listed in Schedule 2 of the Regulations (Annex II of the Directive), for example, a proposed urban development project.

If the proposal is of a type listed in Schedule 2 of the Regulations and meets one of the relevant criteria, or exceeds one of the relevant thresholds, listed in Schedule 2 of the Regulations, or is wholly or partly located in a sensitive area (see section B.4 below) it is referred to as Schedule 2 development and it must be 'screened' to see whether it is, therefore, likely to have significant effects on the environment. If it is, it must be subject to EIA and is referred to, along with all Schedule 1 development, as EIA development (see B.4, C.1 and Annexe 4 of this Handbook).

B.3.3 EIA development is development that must be subject to the EIA process because either it is a Schedule 1 project, or it is a Schedule 2 project likely to have significant effects on the environment, for example because it meets one of the relevant criteria or exceeds one of the thresholds in Schedule 2 of the principal regulations[9] or it is in a sensitive location and it is likely to have significant environmental effects.

B.3.4 The Scottish Government Circular 8/2007[10] (reference 1) provides advice in respect of determining whether a project of a kind listed in Schedule 2 is likely to have significant effects on the environment, including the publication of checklists to assist in that determination (see paras 27 - 53 and Annexes A and B of Circular 8/2007 and Annexe 4 of this Handbook).

B.3.5 Since the removal of Crown immunity from planning control, from 12th June 2006, the Crown is now required to obtain planning permission for its development and the provisions of the EIA Regulations apply accordingly.

B.3.6 The Scottish Ministers have the power, in exceptional cases, to direct that any particular project, or type of project, that would otherwise require EIA, is exempt from the requirement in accordance with article 2(3) of the Directive. Further guidance on the application of article 2(3) is available at http://ec.europa.eu/environment/eia/pdf/eia_art2_3.pdf.

9 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm
10 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm


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Box B.3.1 **Projects Requiring EIA**

**Key information**

All projects of the kinds listed in Schedule 1 of the Regulations must be subject to EIA, in every case.

Projects of a kind listed in Schedule 2 of the Regulations may need to be subject to EIA if the project meets one of the criteria or exceeds one of the thresholds listed in the second column of the Table in Schedule 2, or is wholly or partly located in a sensitive area and is likely to have significant effects on the environment.

The Scottish Government has provided guidance in Circulars, including checklists about the nature, scale and location of Schedule 2 projects and their effects, which should be taken into account when assessing whether a particular project is likely to have significant effects. Even if a project exceeds the thresholds or meets the criteria in the Regulations, if it would not be likely to have significant effects on the environment it will not need to be subject to EIA.

On the other hand, the advice in Circular 8/2007, indicates that a project may be regarded as EIA development if it is a Schedule 2 project even if it does not meet a criterion, or exceed a threshold, in the Table in Schedule 2, if it would be likely to have significant effects on the environment, by virtue of factors such as its size, nature or location, for example, if it is located close to, but not necessarily within a sensitive area. Under these circumstances it is open to Scottish Ministers to direct that such development is 'EIA Development'.

Modifications and extensions to Schedule 1 and 2 projects could also require EIA if they would be likely to have significant effects on the environment in combination with the existing development or existing project.

See further the commentary in section B.4 below.

### Voluntary EIA

B.3.7 The advantages of EIA are increasingly recognised by proposers, some of whom believe that an Environmental Statement can help to obtain consent more quickly, especially where they consider the project to be environmentally benign. Increasingly, proposers are submitting Environmental Statements without seeking a screening opinion, and sometimes without seeking a scoping opinion, because they accept that a Statement will be required and wish to expedite the process.

B.3.8 An Environmental Statement may, therefore, be submitted voluntarily. That is, the project would not actually be required to go through the EIA process, because it is not EIA development.

B.3.9 It should be noted that if a proposer submits a document referred to as an Environmental Statement for the purposes of the EIA Regulations, the planning authority is required by Regulation 4(2)(a) of the principal regulations to treat it as an environmental statement, and the proposal as EIA development, even if it may not be (see further para 58 of Circular 8/2007 (reference 1)). Exceptionally, the planning authority may apply to the Scottish Ministers for a direction that the proposal is not EIA development if it is clearly not one to which the regulations apply, and processing the statement would be inappropriate (see last sentence para 58 and paras 85 – 86 Circular 8/2007). A further scenario, therefore, is where a proposer submits an 'environmental report', or a similar document, which is not intended to be a formal Environmental Statement, subject to the Regulations, but nevertheless contains equivalent environmental information, to inform and influence the decision for cases which are not subject to the Regulations.


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### Parliamentary Private Bill Procedures

B.3.10 Article 1.5 of the Directive, and the Regulations, indicate that they do not apply to projects authorised or adopted by a specific Act of national legislation, such as Private Bills. There is a limited number of cases of these procedures in Scotland, mainly those relating to the Stirling / Alloa / Kincardine Railway, the Waverley Line and the two Edinburgh Tram Lines. However, in each case an Environmental Statement was prepared, even though the full EIA procedure is not required. However, the Transport and Works (Scotland) Act 2007, at http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070008_en_1 enables approval for certain transport projects to be achieved through Ministerial order, replacing the use of Private Bills to authorise transport projects and effectively invoking procedures required by the EIA Directive and Scottish Regulations.


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# B.4 Criteria for deciding whether EIA is required

[See B.3, C.1 Annexe 4]

## Introduction

B.4.1 Every Competent Authority has a duty to consider whether an application for any kind of consent that it receives for consideration is an application which should be subject to EIA (e.g. Regs 7, 49 and 54 in the principal regulations[11]). If it is a Schedule 1 project EIA will always apply, unless it is 'exempt development' (see C.1.5 below for the definition of 'exempt development' and B.4.2 below for the definition of 'Schedule 1 development'). For other projects a two stage test is needed to determine whether EIA will apply.

A] Firstly, is the project a Schedule 2 project within the relevant criteria and thresholds in Schedule 2 of the Regulations, OR is the project located wholly or partly in a 'sensitive area' as defined in the Regulations; and if so

B] Secondly, is it a Schedule 2 project likely to have significant effects on the environment by virtue of factors such as its nature, size or location (taking account, amongst other things of the checklists in Annex B of Circular 8/2007[12])?

B.4.2 "Schedule 1 development" means "development, other than exempt development, of a description mentioned in Schedule 1 of the Regulations";

"Schedule 2 development" means "development, other than exempt development, of a description mentioned in Column 1 of the table in Schedule 2 where-

a) any part of that development is to be carried out in a sensitive area; or
b) any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development"

(Reg 2 of the principal regulations)

B.4.3 A "sensitive area" is defined in Regulation 2(1) (see paragraph B.4.19 below). It is stressed that development in a sensitive area should only be considered to be Schedule 2 development if it falls within a description in Schedule 2 (see Annexe 4 of this handbook).

## Determining Whether an EIA is Necessary

B.4.4 Generally, it will fall to Competent Authorities in the first instance to consider whether a proposed development requires EIA.

B.4.5 Development outwith a sensitive area falling below the thresholds or meeting none of the criteria in the second column of the table in Schedule 2 does not normally require EIA and the authority need not adopt a screening opinion. In effect, the Regulations have already provided a negative screening opinion. However, there may be circumstances in which such small developments might give rise to significant environmental effects. In those exceptional cases Scottish Ministers can use their powers under regulation 4(8) of principal regulations to direct that EIA is required, even though it does not meet these thresholds and criteria. Such a Direction will usually be in response to a request by the Competent Authority.

11 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm
12 http://www.scotland.gov.uk/Publications/2007/11/30082353/14


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B.4.6 It is emphasised that decisions need to be taken on a case-by-case basis. The application of the checklists in Annex B of the Circular will not necessarily produce a determinative answer. Individual projects that fall below the applicable thresholds and do not meet the criteria in the Regulations may require EIA. The important thing is to consider whether the proposed development is likely to have significant environmental effects and to be clear about the reasons for the decision. Consequently it is prudent for project proposers to seek a screening opinion from the competent authority or to at least discuss the possible need for EIA at an early stage.

B.4.7 In legal proceedings, domestic courts must take account of judgements of the European Court of Justice (ECJ). So far as the EIA Directive is concerned the ECJ has consistently held that in its application it is to be interpreted as having a "wide scope and broad purpose" (Kraaijveld (Dutch Dykes) Case C-72/95). This has implications for Planning and other Competent Authorities when they are screening for EIA.

B.4.8 The wording of the EIA Directive should be interpreted widely. The fact that a particular type of development is not listed specifically within one of the categories of projects in the Directive, or the EIA Regulations, does not imply that it is exempt. The categories of projects are illustrative, not exhaustive. They should be read in a way that favours the application of the Directive, rather than avoiding its effects; project types similar to those listed should be considered for assessment. Particular care is needed when considering development that could fall within the categories of "industrial estate development" and "urban development projects" listed under 'Infrastructure' projects (Schedule 2.10 projects).

B.4.9 An example of how the 'wide scope and broad purpose' applies is found in the Court of Appeal judgment relating to a planning proposal by the Big Yellow Property Company Ltd to construct a storage and distribution facility (Goodman and another v Lewisham London Borough Council). The planning authority took the view that as such development was not specifically described in either the Directive or Regulations, there was no need to consider EIA. Following legal challenge, the Court of Appeal decided that:

"In this instance "infrastructure" goes wider, indeed far wider, than the normal understanding, as quoted from the Shorter English Dictionary, of "the installations and services (power stations, sewers, roads, housing etc.) regarded as the economic foundations of a country".

It held that the decision that the proposal was outside the reach of Schedule 2.10(b) of the EIA Regulations and was outside the range of reasonableness that was open to the planning authority. The planning permission was quashed and the application remitted to the planning authority for reconsideration.

B.4.10 Thus, the Directive is not open to narrow interpretation. The UK Courts will interpret the Directive in the European sense - i.e. as having wide scope and broad purpose. It should not be assumed that a project is excluded simply because it is not expressly mentioned in either the Directive or the Regulations. For example, neither the Directive nor the EIA Regulations refer specifically to "housing development". But it would be a mistake to consider that housing development does not fall within the ambit of "urban development projects". Moreover, projects can be described in different ways so it is important to consider carefully the scope and purpose of the project - not just its label. A proposal to create a new "Employment and Enterprise Opportunity Facility" may simply be another way of describing an industrial estate development.


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## Changes or extensions to Schedule 1 or Schedule 2 developments

B.4.11 Modifications or extensions to Schedule 1 or Schedule 2 developments, which are existing or have an outstanding consent, also fall within the scope of the Regulations where the change or extension itself would fall within one of the descriptions in Schedule 1 or Schedule 2.

B.4.12 The criteria and thresholds in the second column of the table in Schedule 2 apply equally to changes or extensions to relevant development as they do to new development. Paragraph 13(a) of Schedule 2 provides that, in such cases, the thresholds and criteria are to be applied to the change or extension itself, not to the thing being changed or extended. However, in the recent High Court ruling (The Queen on the application of Baker v Bath and North East Somerset Council, 19th February 2009) the High Court has held that changes or extensions to existing development must be subject to screening where the change considered together with the existing development satisfies the Schedule 2 thresholds. The Scottish Government's Directorate for the Built Environment has indicated its intention to issue advice to planning authorities.

## The need for EIA for Schedule 2 development - general considerations

B.4.13 The Competent Authority must screen every application for Schedule 2 development in order to determine whether or not EIA is required. This determination is referred to as a "screening opinion". In each case, the basic question to be asked is: '"would this particular development be likely to have significant effects on the environment?" Section C.1 provides guidance on the screening process and related procedures. It should be read in conjunction with this section.

B.4.14 Because both the Directive and the EIA regulations refer to a project's 'nature, size or location', this implies that EIA may be required by just one of these factors. That certain types of development can have significant effects, irrespective of their location is evidenced by the mandatory requirements for EIA of all Schedule 1 projects, regardless of their location. Similarly whilst there is no corresponding list of locations for which EIA is mandatory, regardless of the type of development, there must be a presumption that certain locations are of such a type that EIA will be required for any development there. For most types of development, it will be necessary to consider the characteristics of the proposal along with its proposed location, in order to adequately understand the interactions between the project and its location, and thereby determine if the effects on the environment are likely to be significant.

B.4.15 Thus, Schedule 3 of the principal regulations (see Annexe 4 to this Handbook) sets out the 'selection criteria' which must be taken into account in determining whether a proposal is likely to have significant effects on the environment. It identifies three broad criteria which should be considered: the characteristics of the proposal (e.g. its size, use of natural resources, quantities of pollution and waste generated); the environmental sensitivity of the location; and, the characteristics of the potential impact (e.g. its magnitude and duration).

B.4.16 The number of cases of such development will be a very small proportion of the total number of Schedule 2 developments. It is again emphasised that the basic test of the need for EIA in a particular case is the likelihood of significant effects on the environment. It should not be assumed, for example, that conformity with a development plan rules out the need for EIA. Nor is the amount of opposition or controversy to which a proposal gives rise relevant to this determination, unless the substance of the objectors' arguments reveals that there are likely to be significant effects on the environment.


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## Large scale developments

B.4.17 In some cases, the scale of a proposal can be sufficient for it to have wide-ranging environmental effects that would justify EIA. There will be some overlap between the circumstances in which EIA is required because of the scale of the proposal and those in which Scottish Ministers may wish to exercise their power to "call in" an application for their own determination (see Circular 3/2009[13]). However, there is no presumption that all called in applications require EIA, or that all EIA applications will be called in.

## Development in environmentally sensitive locations

B.4.18 The more environmentally sensitive the location, the more likely it is that the effects of a project will be significant and will require EIA. Certain designated sites are defined in regulation 2(1) as 'sensitive areas' and the thresholds/criteria in the second column of Schedule 2 do not apply there.

Box **Key information**

B.4.1 All developments listed in Schedule 2 that may be located in the sensitive areas listed in Regulation 2(1) and below must be screened for the need for EIA whether or not they meet the criteria or exceed the thresholds in Schedule 2. These are:

- Sites of Special Scientific Interest
- Land to which Nature Conservation Orders apply
- Internationally designated nature conservation sites (SPAs, SACs and Ramsar Sites)
- National Scenic Areas
- World Heritage Sites
- National Parks
- Scheduled Monuments

(Note: Historic Gardens and Designed Landscapes are not listed and do not trigger the need for EIA in this way)

B.4.19 In certain cases other statutory and non-statutory designations which are not included in the definition of 'sensitive areas' may also be relevant in determining whether EIA is required. Circular 8/2007 at para 42 indicates that, where relevant, Local Biodiversity Action Plans will be of assistance in determining the sensitivity of a location. Urban locations may also be considered sensitive as a result of their heavier concentrations of population.

Box **Key information**

B.4.2 EIA Policy in Respect of International Designations

Generally, Government policy e.g. paragraph 40 of Circular 8/2007 indicates that any Schedule 2 projects likely to significantly affect any of the following international designations (whether in them or not) will require an Environmental Statement to be submitted:

Classified and Potential Special Protection Areas; Special Areas of Conservation / Sites of Community Importance; and Ramsar Sites.

B.4.20 Where statutory designations other than European or Ramsar sites are involved, including National Parks, SSSI, NNRs and NSAs, EIA will be appropriate where the particular natural heritage interest of the area would be likely to be significantly affected. Elsewhere, in the wider countryside it would be less likely that an Environmental Statement would be required on the grounds of the sensitivity of the location. However, the scale or nature of the proposal may be such as to require EIA, particularly if a major project is close to a human settlement.

13 http://www.scotland.gov.uk/Publications/2009/03/27112705/0


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B.4.21 In considering the sensitivity of a particular location, regard should also be had to whether any national or internationally agreed environmental standards are already being approached or exceeded. Examples include air quality, drinking water and bathing water. Where there are local standards for other aspects of the environment, consideration should be given to whether the proposed development would affect these standards or levels.

### Development with particularly complex and potentially hazardous effects

B.4.22 A small number of developments may be likely to have significant effects on the environment because of the particular nature of their impact. Consideration should be given to development which could have complex, long-term, or irreversible impacts, and where expert and detailed analysis of those impacts would be desirable and would be relevant to the issue of whether or not the proposal should be allowed. Industrial development involving emissions which are potentially hazardous to humans or the natural environment may fall into this category.

### Checklists in Circular 8/2007[14]

B.4.23 Circular 8/2007, at paragraph 35 encourages Competent Authorities to use checklists, either of their own design or otherwise, in order to assist in the determination of whether proposals would be likely to have significant environmental effects. The European Commission has published such checklists at http://europa.eu.int/comm/environment/eia/home.htm comprising a series of questions related to each of the selection. Most Competent Authorities will find the checklist in the Circular itself, at Annex B, will be adequate, but may adapt it to suit local circumstances. Paragraph 36 of the Circular describes the advantages of using checklists as screening aids especially by providing evidence of a transparent, consistent and systematic record of screening decisions.

### Applying the guidance to individual developments

B.4.24 In judging whether the effects of a proposal are likely to be significant, Competent Authorities should always have regard to the possible cumulative effects with any existing or approved development. There are occasions where the existence of other development may be particularly relevant in determining whether significant effects are likely. Similarly, there may be cases where applications for development should be considered jointly to determine whether or not EIA is required, see further advice on cumulative effects in para 50, Circular 8/2007, SPP Part 3 and PAN 45.

### Multiple applications

B.4.25 For the purposes of determining whether EIA is required, a particular application should not be considered in isolation if, in reality, it is properly to be regarded as an integral part of an ultimately more substantial development R v Swale BC ex parte RSPB 1991. In such cases, the need for EIA must be considered in respect of the total development. This is not to say that all applications that form part of some wider scheme must be considered together. In this context, it will be important to establish whether each of the proposed developments could proceed independently and whether the aims of the Regulations and Directive are being frustrated by the submission of multiple or sub-divided applications.

14 http://www.scotland.gov.uk/Publications/2007/11/30082353/14


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Box

**Key advice**

B.4.3 Competent Authorities should press a proposer to submit a complete project and complete Environmental Statement to ensure that the aims of the Regulations and Directive are not being frustrated by the submission of separate applications, the key test being whether the proposed project could proceed and fully operate as submitted.

### Changes or extensions to existing or approved development

B.4.26 Development which comprises a modification or extension to Schedule 1 or 2 development requires EIA if the change or extension, in combination with the existing development, is likely to have significant environmental effects. This should be considered in light of the general guidance in Circular 8/2007 and the checklists referred to above and the judgment in Baker referred to in paragraph B.4.12 above. In some cases, repeated small extensions may be made to development. Quantified thresholds cannot easily deal with this kind of 'incremental' development. An expansion of the same size as a previous expansion will not automatically lead to the same determination on the need for EIA because the environment may have altered since the question was last addressed.

B.4.27 Competent Authorities are encouraged in the Circulars to consult other bodies, where relevant, when deciding whether the effects of a proposal are likely to be significant and to take any views expressed into account. Although paragraph 61 of Circular 8/2007 indicates that it would be exceptional to consult the consultation bodies at screening stage, the Scottish Ministers and other Competent Authorities often do seek the advice of these bodies before making a screening decision.

### Applications for Outline Planning Permissions and Planning Permission in Principle

B.4.28 See section D.11 below, in respect of outline planning applications and approvals of reserved matters, and for planning permissions in principle and matters to be approved under conditions.

### The Degree of Confidence in Predicting Likely Significant Effects

B.4.29 The EIA Directive requires, amongst other things, firstly, that Competent Authorities decide whether EIA procedures apply to particular projects, a decision which in part is based on the likely significant effects on the environment; and secondly, to take into account the effects before granting permission. At the first stage, the responsibility is to consider whether the project is likely to have a significant effect on the environment. This calls for the exercise of professional judgement taking into account factors such as nature, scale and location of the project (see Schedule 3 of the EIA Regulations), knowledge of the local area and its environment and evaluation of such information as it is reasonable to expect the applicant to provide at this stage. But the amount of information necessary at this stage does not mean you need to have "full knowledge" of every environmental effect. Only if it is decided that EIA is required, will full and detailed knowledge of the project's likely significant effects be required.

B.4.30 A helpful judgment in this respect is that of Regina oao Jones v Mansfield DC where the judge held that in general a lesser degree of information is needed at the first stage of deciding whether EIA is required at all than at the second stage where it is necessary to provide the information. He commented that

"It is for the authority to judge whether a development would be likely to have significant effects. The authority must make an informed judgement, on the basis of the information available and to any gaps in that information and to any uncertainties that may exist, as to the likelihood of significant effects. The gaps and uncertainties may or may not make it impossible to reasonably conclude that there is no likelihood of significant environmental effects. Everything depends upon the circumstances of the individual case".


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B.4.31 The judgment also noted that:

"Whether sufficient information is available to enable a judgement to be made as to the likelihood of significant environmental effects is a matter for the authority, subject to review by the court on Wednesbury principles [the legal principles on which a decision in the public sector is tested for irrationality or perversity]".

B.4.32 Paragraph 61 of Circular 8/2007 also says

"Authorities should bear in mind that what is in question at this stage is the broad significance of the likely environmental effects of the proposal. This should not require as much information as would be expected to support a planning application."

Can the decision whether to require EIA take account of conditions and agreements that could ensure that likely significant effects were rendered unlikely or insignificant?

B.4.33 Paragraph 48 of Circular 8/2007 says that the extent to which the efficacy of proposed remediation (or other counteracting measures) may be taken into account for screening purposes depends on the facts of each case. Some measures may be so well established that they have become routine and need not be discounted when considering the likelihood of significant effects. In a case of any complexity, however, it should not be assumed that the measures would be successfully implemented.

B.4.34 Conditions can still be used in granting permission to EIA development, but planning authorities need to exercise care and judgement to ensure that conditions designed to mitigate the likely effects of a proposed development are not used as a substitute for EIA or to circumvent the requirements of the EIA Directive. It is useful to refer to relevant case law.

B.4.35 Regina oao Lebus v South Cambridgeshire DC involved development for an egg production unit to house 12,000 free range chickens. A local resident had written to the planning authority in 2000 suggesting that EIA was required for this development. After a meeting and discussion with the applicant, the planning officers dealing with the case took the view that this was not EIA development and the applicant was told informally that EIA was not required. The planning officer dealing with the case made no written record of his conclusions. At the meeting the officers concluded that the potential adverse impacts of the development would be insignificant with proper conditions and management enforceable under a section 106 planning obligation (equivalent to a S.75 Planning Agreement in Scotland). Planning permission was granted subject to conditions in 2002. The resident challenged the decision by judicial review.

B.4.36 The Court allowed the appeal and quashed the planning permission. So far as planning conditions and EIA are concerned it held

"it is not appropriate for a person charged with making a screening decision to start from the premise that although there may be significant impacts, these can be reduced to insignificance by the application of conditions of various kinds. The appropriate course in such a case is to require an environmental statement and the measures which it is said will reduce their significance".

B.4.37 The message from Lebus is that where proposed development is EIA development the use of conditions cannot be used to substitute for the proper assessment procedure. To do so would simply negate the purposes of the Directive. It is also clear from this case that planning authority staff need to make formal screening opinions on Schedule 2 applications.

B.4.38 The question of planning conditions was also considered in Gillespie v First Secretary of State and Bellway Urban Renewal. In this case the First Secretary of State granted planning permission for a housing development on the site of a former gas works. One of the former gasholders was still in situ. Soil surveys on the site had been carried out and revealed contamination but the type and extent was not fully known, particularly of that below the gasholder. The First Secretary of State, however, considered that there was no need for an EIA. He permitted the development subject to conditions to


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carry out a detailed site examination to establish the nature, extent and degree of the site contamination and to remedy it prior to commencement of the development. The remediation strategy would rely upon tried and tested methods so there was no reason to assume they would be unsuccessful in removing the contamination.

B.4.39 In quashing the First Secretary of State's decision, the Court of Appeal held that on considering whether an environmental impact assessment was required before planning permission could be granted the First Secretary of State did not have to ignore proposed remediation measures, but neither could he assume that, in a case of any complexity, they would be successfully implemented. The extent to which such measures could be taken into account in screening decisions would depend on the facts of each individual development having regard to:

a] The extent of the investigation into the impact of the development and environmental problems arising from it, up to the time of the screening decision;
b] The nature of the proposed remedial measures including uncertainties;
c] The extent to which those have been particularised;
d] Their complexity;
e] The prospects of their successful implementation;
f] The prospect of adverse environmental effects in the course of the development, even if of a temporary nature; and
g] The final effect of the development

B.4.40 Gillespie indicates that remediation measures need not be ignored when making decisions about the likely significant effects of proposed development. But care and judgement has to be exercised. Remedial measures that are well-established and uncontroversial, e.g. cleaning wheels of lorries and covering their loads to minimise dust etc. may well be taken into account. In more complex development, and/or where the nature of the proposed remediation measures is likely to be more complex and possibly less clearly established, it may be less appropriate to take the proposed measures into account. It is important that the offer of remediation measures is not used to frustrate the purpose of the EIA directive or serve as a surrogate for it.

B.4.41 See also the cases of R v Rochdale MBC ex parte Tew and R v Rochdale MBC ex parte Milne in respect of outline planning applications at D.11 below.

Taking account of avoidance and mitigation measures in screening decisions

B.4.42 The issue addressed in Hart District Council (Dilly Lane) was the extent to which Competent Authorities should to take account of measures built into a project and forming an integral part of the proposal, which are designed to avoid or reduce the significant effects of a project or plan, in this context on a European site in respect of the Habitats Regulations. The judge ruled (at paragraph 76) that

"I am satisfied that there is no legal requirement that a screening assessment under Regulation 48(1) must be carried out in the absence of any mitigation measures that form part of a plan or project. On the contrary, the competent authority is required to consider whether the project, as a whole, including such measures, if they are part of the project, is likely to have a significant effect on the SPA. If the competent authority does not agree with the proponent's view as to the likely efficacy of the proposed mitigation measures, or is left in some doubt as to their efficacy, then it will require an appropriate assessment because it will not have been able to exclude the risk of a significant effect on the basis of objective information….."

B.4.43 In making this judgment, the judge examined that cases of Lebus, Gillespie and Catt referred to above, in terms of the EIA regulations. It seems likely that the judge would have come to the same conclusion. Such measures should be taken into account in screening decisions for EIA, in the same way as Competent Authorities are required to take them into account in screening a plan or project under the Habitats Regulations.


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# B.5 Special cases and the series of other EIA regulations

## Introduction

B.5.1 In addition to the principal regulations, the Government has introduced a series of other regulations to implement the requirements of the Directive in Scotland. These generally relate to particular sectors, such as port or forestry projects, or they embedded the requirements of EIA into existing regulatory processes, such as the Transport and Works Act. In a few cases the other regulations also have the effect of introducing a new regulatory process because there was no consenting procedure into which the EIA requirements could be integrated.

B.5.2 Annexe 2 of this Handbook sets out in detail the full range of current (early 2009) regulations. In summary:

a) The principal regulations[15] have been modified to include procedures relating to:

i. 'Multi-stage consents' i.e. applications for the approval of 'reserved matters' or for consent or agreement required by a condition imposed on a grant of planning permission in principle, following a grant of outline planning permission or a planning permission in principle respectively (primarily regulations 21A to 21H);
ii. The review of old mineral permissions (ROMPs) (regulation 28A);
iii. Simplified Planning Zones and Enterprise Zones (regulations 27 and 28);
iv. Unauthorised development which is subject to a planning Enforcement Notice (regulations 29 - 39);
v. Marine fish farming (regulation 28C); and
vi. Urgent Crown development (regulation 28B).

b) Separate regulations now relate to the following sectors:

i. Forestry (1999); http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990043.htm
ii. Offshore petroleum production and pipelines (1999); http://www.coastlaw.uct.ac.za/iczm/legis/si1999/19990360.htm amended by http://www.coastlaw.uct.ac.za/iczm/legis/si2007/20070933.htm
iii. Public gas transporter pipeline works (1999); http://www.opsi.gov.uk/si/si1999/19991672.htm
iv. Nuclear reactors (1999); http://www.opsi.gov.uk/si/si1999/19992892.htm
v. Water management works (2003); http://www.opsi.gov.uk/legislation/scotland/ssi2003/20030341.htm
vi. Agriculture (2006); http://www.opsi.gov.uk/legislation/scotland/ssi2006/20060582.htm
vii. Extraction of minerals by marine dredging (2007); http://www.opsi.gov.uk/si/si2007/uksi_20071067_en_1
viii. Major new transport works such as railways, tramways and bridges (2007); http://www.opsi.gov.uk/legislation/scotland/ssi2007/ssi_20070570_en_1
ix. Other marine works (2007); and http://www.opsi.gov.uk/si/si2007/uksi_20071518_en_1
x. Electricity works (power stations and transmission lines) (2002 and 2008) http://www.opsi.gov.uk/legislation/scotland/ssi2000/20000320.htm and http://www.opsi.gov.uk/legislation/scotland/ssi2008/pdf/ssi_20080246_en.pdf

15 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm


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# B.6 The contents of an environmental statement

[See Annexes 1, 2 and 3]

B.6.1 Paragraphs 64 onwards of PAN 58[16] and Regulation 2(1) and Schedule 4 Parts I and II of the principal regulations[17], describe the contents of an 'Environmental Statement'. Essentially, an Environmental Statement is the written output of the proposer's EIA team. It is intended to provide the focus for the EIA process by setting out all of the relevant information on which the public and consultees may then comment and the Competent Authority must then take into account in making the decision.

B.6.2 In the case of Berkeley the House of Lords commented that an Environmental Statement must not be a paper chase. Lord Hoffman said, "the point about the environmental statement contemplated by the Directive is that it constitutes a single and accessible compilation, produced by the applicant at the very start of the application process, of the relevant environmental information and the summary in non-technical language."

B.6.3 Its primary purpose, therefore, is to inform the decision maker of the environmental implications of the proposal. It should also inform statutory consultees, other interested bodies and members of the general public and provide a basis for consultation and debate.

Box **Key information**

B.6.1 An Environmental Statement Should:

- be a "stand-alone" and complete document (though not necessarily a single volume);
- provide enough detail to allow readers to form an independent judgement;
- be unbiased, neither advocating the project nor attempting to serve public relations purposes; and
- avoid technical discussion and terminology except where absolutely necessary, for example in relation to noise or air quality; and include a Non-Technical Summary setting out the main findings of the ES in accessible plain English.

B.6.4 The EC Directive specifies, in Annex III, and the principal regulations in Schedule 4 Part II, the information which must be included in an Environmental Statement. However, recognising that there may be occasions when some information may not be relevant to the consent procedure or may be impractical to collect, they also specify other information that an Environmental Statement may reasonably be required to include, by way of explanation or amplification (the principal regulations Sch.4 Part I) (see also Box B.6.3 below). The equivalent requirements in other Regulations are referred to in Annexe 2, Table 3.

B.6.5 Thus, Regulation 2 of the principal regulations states that an environmental statement:

"a] means a statement that includes such of the information referred to in Part I of Schedule 4 [Box B.6.3 below] as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but

b] that includes at least the information referred to in Part II of Schedule 4 [Box B.6.2 below].

16 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58
17 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm


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Box B.6.2 **Key information**

Information that MUST be included in an Environmental Statement - the minimum requirement

- A description of the proposal, comprising information about the site and the design and size or scale of the proposal
- A description of the measures envisaged in order to avoid, reduce and if possible, remedy significant adverse effects (sometimes referred to as the mitigating measures but see C.9 below)
- The data required to identify and assess the main effects which that development is likely to have on the environment
- An outline of the main alternatives studied by the proposer and an indication of the main reasons for the choice, taking into account the environmental effects
- A non-technical summary of the above information

B.6.6 However, it should be noted that if matters in Box B.6.3 are not included in an Environmental Statement, but the Competent Authority decides that it is reasonably required to give proper consideration to the likely environmental effects of the proposal, the Competent Authority can require the proposer (by giving notice in writing) to submit the information specified. If it does require more, the Authority must have regard in particular to current knowledge and methods of assessment (Regulations 19, 36 and 60 of the principal regulations).

B.6.7 The responsibility for carrying out the studies for the Environmental Statement and reporting the findings is placed on the proposer, although there are statutory responsibilities for public bodies to make available the relevant information which they hold. Some environmental issues, however, fall outside the competence or knowledge of any individual proposer. In particular, the accurate characterisation of cumulative impacts of many developments in any one region or locality can rarely be satisfactorily assessed by individual proposers.

B.6.8 The regulations require the proposer to include alternatives which have been considered, if no alternatives have been considered none need be included in the Environmental Statement (see further para B.6.9 below). An analysis of alternatives which, for example, involve different approaches to meeting social needs (rail travel instead of road, for example, or energy conservation instead of a new oil terminal) cannot reasonably be expected in a project Environmental Statement.

### Electronic Versions

B.6.9 Environmental Statements are increasingly available on CD or DVD and distribution in this form can be compliant. The Town and Country Planning (Electronic Communications) (Scotland) Order 2004[18] (reference 8), came into force on 28th July 2004. The Order amended the principal regulations to allow for the use of electronic communications in carrying out certain procedures within the planning system. Further information and guidance can be found in Circular 3/2004 The Town and Country Planning (Electronic Communications) (Scotland) Order[19] (9) and PAN 70 Electronic Planning Service Delivery[20] (10). See also paragraphs D.1.8 and D.1.9 below.

18 http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040332.htm
19 http://www.scotland.gov.uk/Publications/2004/07/19722/40737
20 http://www.scotland.gov.uk/Publications/2008/11/17142750/7


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Box B.6.3

**Key information**

Matters normally to be included in an Environmental Statement which is reasonably required to assess the environmental effects of the proposal and which the applicant can reasonably be required to compile (subject to the minimum requirements listed in Box B.6.2 above), (for example, see the principal regulations Sch. 4 Part I):

### Description of the proposal

A description of the proposal including, in particular:

a] the physical characteristics of the whole development, and the land use requirements during the construction and operational phases;
b] the main characteristics of the production processes, for instance, the nature and quantity of the materials to be used;
c] an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation etc) resulting from the operation of the proposal.

### Alternatives considered

An outline of the main alternatives studied by the proposer and an indication of the main reasons for choosing the proposal proposed, taking into account the environmental effects.

### Baseline environmental information

A description of the aspects of the environment likely to be significantly affected by the proposal including in particular, population, flora and fauna, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between these factors.

### Environmental effects

A description of the likely significant effects of the proposal on the environment which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the proposal resulting from:

- the existence of the proposal;
- the use of natural resources;
- any emission of pollutants, creation of nuisances, and elimination of waste; and
- the description by the proposer of the forecasting methods used to assess the effects on the environment.

### Mitigation measures

A description of the measures envisaged to prevent, reduce and, where possible, to offset any significant adverse effects on the environment.

### A non technical summary of the above information

### Technical difficulties and limitations

An indication of any difficulties, such as technical deficiencies or lack of know-how, encountered in compiling the required information


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## The Assessment of Alternatives

B.6.10 The Environmental Statement should contain an outline of the main alternatives studied by the proposer and an indication of the main reasons for his choice, taking into account the environmental effect (see Box B.6.3 above). The following points seem clear:

a] a proposer does not have to consider alternatives; but if they do
b] they must provide an "outline of the main alternatives studied"; and
c] for each of the main alternatives studied, an indication of the main reasons for the choice, that is, why the alternative was not adopted, taking account of its environmental effects and those of the submitted project; noting that
d] the predicted environmental effects of the alternatives rejected may have been better or worse than the submitted project.

B.6.11 Thus, EIA does not absolutely constrain the selection of the submitted project in preference to alternatives studied, but it is reasonable to expect that a rational explanation would be included in the Environmental Statement as to why a more, or less, environmentally harmful project was chosen for submission.


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# B.7 Importance of compliance with the directive

B.7.1 It is clear from this Handbook that the EIA process is complex and involves many decisions and judgements, all of which could be challenged by an aggrieved party either through the domestic Courts or by reference to the European Commission.

B.7.2 Failing to comply with the Regulations may make a decision to grant permission unlawful and lead to it being quashed by the Court (e.g. Hardy). Although the Court has the power not to quash decisions where there has been procedural impropriety, this discretion is very limited in cases involving EIA because of the duty to comply with EC legislation. It can only be exercised where there has been "substantial compliance" with the Directive.

B.7.3 If the project is one to which the Regulations apply it is essential to comply fully with them. It is not sufficient to argue that EIA was not necessary because all of the information that could have been in the Environmental Statement was available elsewhere and was taken into account before the decision was taken; or that had an Environmental Statement been available the decision would have been the same.

B.7.4 In Berkeley the House of Lords unanimously emphasised the need to comply with the Regulations. It took the view that when considering compliance with the Regulations it was necessary to consider the EIA Directive. The Lords stressed that the importance of the EIA process extended beyond the decision on the application. Its purpose is to provide individual citizens with sufficient information about the possible effects and give them the opportunity to make representations. The Court was not entitled to decide after the decision had been made that the requirement of EIA could be dispensed with on the ground that the outcome would have been the same even if these procedures had been followed. In his leading judgment, Lord Hoffman noted that the Directive did not allow Member States to treat "a disparate collection of documents produced by parties other than the developer and traceable only by a person with a good deal of energy and persistence as satisfying the requirement to make available to the public the information which should have been provided by the developer".

B.7.5 The Directive has direct effect in Britain even though domestic Regulations are in place (Bozen and Delina Wells). Individuals may complain to the European Commission that planning and other types of applications should have been subject to EIA, or that where EIA was undertaken the procedures were not followed correctly or the information in the Environmental Statement was inadequate. This can lead to formal legal proceedings between the Commission and the United Kingdom. This can be lengthy and prolonged and can increase uncertainty for proposers and planning authorities.

B.7.6 Nothing can guarantee there will be no legal challenge. But all those involved in the EIA process can minimise the risk of such challenge being successful by ensuring compliance with all of the Regulations, particularly:

- All applications should be properly screened and copies of screening opinions made available to the public;
- Environmental Statements should contain all of the information required by Schedule 4 of the Regulations;
- All of the significant effects that the project is likely to have on the environment should be identified and taken into account prior to a decision to allow the project to go ahead;
- The permission that is granted should relate only to the project whose environmental effects have been described, assessed and mitigated in the Environmental Statement;
- A record of all decisions and the reasons for them should be kept.


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# B.8 Relationship of EIA with Strategic Environmental Assessment (SEA) and Assessments under the Habitats Regulations (HRA)

## Strategic Environmental Assessment

B.8.1 The EIA process does not operate in isolation. It concentrates on informing decisions to be taken in respect of whether specific 'projects' should proceed and, if so, how their potential environmental impacts should be avoided, cancelled, reduced or offset. In this context a project may comprise several component parts subject to a number of regulatory procedures. However, a project may also be part of a programme of proposals. The effects of a programme of several component projects may be different to the sum of the effects which each project alone would cause and, in any event, it may be important to understand the total effects of the programme before embarking on the first of the component projects.

B.8.2 It was for this reason that the EC introduced the concept of environmental assessment of plans and programmes, widely referred to as 'Strategic Environmental Assessment' or 'SEA'. SEA was widely undertaken by local authorities in Scotland from the mid-1990's, on a voluntary, good-practice basis. About half of the early SEA reports also assessed the effects of the plan on social and economic interests. This wider assessment process is referred to as 'sustainability appraisal'.

B.8.3 The EC introduced compulsory assessment of the effects of certain public plans and programmes on the environment in the EC Directive 2001/42/EC, which came into force via statutory regulations in Scotland in 2004. However, the scope of public plans and programmes subject to SEA under the provisions of the EC Directive is arguably not comprehensive. In 2005 the Scottish Parliament enacted the Environmental Assessment (Scotland) Act[21], which applies the SEA process to all plans, programmes and strategies in Scotland, with very few exceptions. The extended scope of the Act is unique in Europe.

B.8.4 The higher level of assessment in SEA is intended to inform authorities, who are responsible for making plans and programmes, about the environmental effects of implementing the plans and programmes, before they are adopted or given effect.

B.8.5 There are similarities with the EIA process. SEA also involves gathering baseline environmental information, predicting the significance of effects and modifying the proposals to avoid, cancel, reduce or offset the effects, as well as procedural similarities such as scoping, publication of a report and consultation with environmental bodies. However, there are also differences, most of which are related to the fact that the body responsible for the plan will usually be the body responsible for the SEA process and the Environmental Report. Differences also relate to the fact that this 'higher tier' of environmental assessment may not be able to assess the potential effects with the same degree of detail and confidence as a project EIA, and the consideration of alternatives is mandatory.

B.8.6 Figure B.8.1 below compares various aspects of the EIA and SEA processes. The application of the procedures is not mutually exclusive, although in practice a proposal will normally require either an EIA or an SEA, but not both. Notwithstanding this point, it is possible that a proposal could be assessed under both processes at different points in its preparation lifespan. Firstly, through an SEA at a strategic level, as part of a larger programme and secondly, in a detailed EIA, as an individual project before it is given consent. The circumstances under which detailed assessments are required for an

21 http://www.opsi.gov.uk/legislation/scotland/acts2005/asp_20050015_en_1


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individual proposal under both SEA and EIA is expected to be limited. However, where an SEA has previously been undertaken for such a proposal, there can be opportunities for streamlining the subsequent EIA, as many of the potential significant effects will have been addressed at strategic level.

### Habitats Regulations Appraisal

B.8.7 All Competent Authorities, before undertaking or giving any form of permission, consent or other authorisation to a plan or project, must check whether the plan or project would be likely to have a significant effect on a 'European site'. If the plan or project would be likely to have such an effect, it must be subject to an 'appropriate assessment' under the provisions of regulation 48 (plans and projects generally) or 85B (land use plans) of the Conservation (Natural Habitats &c) Regulations 1994, as amended http://www.opsi.gov.uk/si/si1994/uksi_19942716_en_1.htm as amended, see paragraph B.1.13 above.

B.8.8 These regulations implement the requirements of the Birds and Habitats Directives (EC Directives 79/409/EEC and 92/43/EEC) as they apply to the regulation of plans and projects in Scotland. European sites include all candidate and designated Special Areas of Conservation (SACs) and classified Special Protection Areas (SPAs), often referred to as the 'Natura 2000 network'. As a matter of Government policy the regulations are extended to cover the effects on potential SPAs and listed Ramsar sites. Further detail on the application of the regulations is given in Circular Scottish Executive Circular of June 2000[22] replacing Circular 6/1995 The Conservation (Natural Habitats Etc.) Regulations 1994 Annex D Appendix A paragraph 3 (reference 11).

B.8.9 Figure B.8.1 below compares various aspects of the EIA and SEA processes with the requirements of the Habitats Regulations appraisal. The Habitats Regulations appraisal may overlap the SEA or the project EIA. A project Environmental Statement may include all the information necessary for the Competent Authority to undertake the appraisal under the Habitats Regulations. The respective assessments may share some procedural steps, such as information gathering, scoping and consultation; but the Competent Authority must clearly and distinctly follow the procedures of the respective assessment processes, which are different in many respects. To merge the two procedures together could lead to a decision on a project being open to challenge for non-compliance.

B.8.10 The Environmental Report of the SEA of a plan or programme may include the plan-making body's assessment of the plan under the Habitats Regulations. However, the requirements of the respective assessment procedures are very different. If the information for the Habitats Regulations appraisal is included in an Environmental Report it must be clearly distinguishable, and the appraisal requirements clearly signposted, so that full compliance is transparent and demonstrable. In particular, if an appraisal is required under the Habitats Regulations, the assessment should either be recorded separately, or the Environmental Report must state clearly the outcome of the Habitats Regulations appraisal. It should clearly set out, amongst other things, the likely significant effects on the interest features of the relevant European site(s), the outcome of the appropriate assessment in terms of the implications for the site's conservation objectives, and whether the Competent Authority has been able to ascertain that there would not be an adverse effect on the integrity of the European site. Where the Competent Authority concludes that the plan or programme would have an adverse effect on the conservation interests for which a European Site has been designated, it may only proceed with the plan or programme where certain additional statutory tests are satisfied.

22 http://www.scotland.gov.uk/library3/nature/habd-01.asp


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**Figure 2 - Comparisons between the EIA, SEA and Habitats Regulations Appraisal processes**

| Elements of the process | EIA process | SEA process | HRA process |
|---|---|---|---|
| **Origin** | EC Directive 85/337/EEC amended by 97/11/EEC and 2003/35/EC. | EC Directive 2001/42/EC | EC Directives 79/409/EEC and 92/43/EEC |
| **Statutory basis Scotland** | Various statutory instruments see Annexe 2 of this Handbook | Environmental Assessment (Scotland) Act 2005 | Conservation (Natural Habitats &c) Regulations 1994 as amended |
| **Applies to** | Certain types of projects as defined in the Directive | All public plans, programmes and strategies with few exceptions | Any plans and projects likely to have significant effects on a European site. |
| **Responsible authority** | Competent Authorities responsible for giving authorisation to projects | Authorities responsible for giving effect to the plans etc | Competent Authorities responsible for undertaking or giving authorisation |
| **Assessment work undertaken by** | The project proposer | Authorities responsible for giving effect to the plans etc | The Competent Authority who can require all necessary information to be submitted by the proposer of a project |
| **Trigger for requiring assessment** | EIA is compulsory for 'Schedule 1 projects'. 'Schedule 2 projects' are screened for likely significant effects on any environmental interest | Compulsory for certain plans, programmes and strategies and screening the others that would have a likelihood of significant effect on the environment | Compulsory screening of plans and projects for likely significant effect on interest features of a European site |
| **Reporting provisions** | The project proposer must produce an Environmental (Impact) Statement which must contain specified material | The authority responsible for giving effect to the plan must produce an Environmental Report which must contain specified information | None, but in practice project proposers or plan makers produce a report to inform the assessment, although the content of the report is not specified |
| **Publicity requirements** | Statutory publicity set out in regulations | Statutory publicity set out in the Act | Consultation with the public discretionary, and only if an 'appropriate assessment' is required |
| **Consultation requirements** | Statutory consultation with SNH, SEPA, and other consultees (including the public) as specified in regulations | Statutory consultation with SNH, SEPA, Historic Scotland and other consultees (including the public) as specified in the Act | Statutory consultation only with SNH and only if an 'appropriate assessment' is required |
| **The precautionary principle** | Applied proportionally as a matter of policy and good practice as may be necessary | Applied proportionally as a matter of policy and good practice as may be necessary | Embedded in law – Competent Authority must ascertain (beyond reasonable doubt) that there would not be an adverse effect on integrity of the site |
| **Effect of a negative assessment** | Competent Authority must decide whether benefits of the project outweigh the identified negative environmental effects | Relevant authority must decide whether benefits of the plan programme or strategy outweigh the identified negative environmental effects | The plan or project cannot be undertaken, given effect or consent, as the case may be, unless there are no alternative solutions, there are imperative reasons of overriding public interest and compensatory measures are secured to ensure the coherence of the Natura 2000 network |
| **Monitoring requirements** | None required by the statute but Competent Authority may impose monitoring conditions where necessary | The effects of implementing the plan must be monitored in accordance with proposals set out in a report when the plan is adopted | None required by the regulations, Government has to report periodically to EC on site condition and on all cases where derogations have applied to allow a potentially damaging project to proceed |


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# Part C
# Before submission of the environmental statement


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# C.1 Deciding whether EIA is required: the "screening" process

See also Section B.3 and B.4 above and Annexe 4

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | **C1 Deciding whether EIA is required (screening)** |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Guidance

C.1.1 Competent Authorities have a statutory duty to consider whether any project which they may be responsible for authorising is a project that should be subject to the EIA process. The proposer can use statutory procedures to ask the Competent Authority or the Scottish Ministers whether an Environmental Statement will be required for a project. Guidance on this stage is provided in PAN 58[23] at paragraphs 35 - 37 and Circular 8/2007[24] paras 27 - 86. You may also find the Scottish Government questions and answers publication useful at http://www.scotland.gov.uk/Publications/2007/11/26103828/0 and the EC guidance on screening at http://www.ess.co.at/AIR-EIA/DOCS/scren-en.htm

C.1.2 The statutory provisions for the screening process are set out in Annexe 2 Table 3. Note that the criteria and tests required to determine which projects are subject to EIA are set out in section B.3 and B.4 above, this section is about the procedures relating to the screening process. It should also be noted that a prospective applicant seeking planning permission for a 'national development' or a 'major development' under the planning hierarchy must indicate in the optional pre-application screening notice, whether the Competent Authority has adopted a screening opinion, or the Scottish Ministers made a screening direction, in respect of that development (Regulation 5 Town and Country Planning (Development Management Procedure) Regulations 2008.[25]

## Introduction

C.1.3 Reference is made here to sections B.3 and B.4 and Annexe 4 which explain which projects require EIA. It is the responsibility of the Competent Authority to ensure that all relevant applications are "screened" to establish whether EIA is required. In a planning authority, this will normally be carried out by the officer dealing with the planning application. But the decision is taken on behalf of the planning authority so it is important to ensure that the officers have delegated authority to do so. In R v St Edmundsbury Borough Council, ex parte Walton a decision of the planning authority to grant planning permission was overturned because a decision not to require EIA was taken by an officer who had no formal delegation. Paragraphs 98 - 101 of PAN 58 gives best practice guidance advice in terms of the management of EIA applications.

C.1.4 Where EIA is required, the authority must provide a written statement giving full reasons for its decision. There is no similar requirement where the authority decides that EIA is not required. However, if an interested party so requests, the European Court of Justice has held that the competent authority is obliged to communicate to him the reasons for the determination or the relevant information and documents in response to the request made (case C-75/08, Christopher Mellor). It would therefore be prudent for the authority to make and retain for its own use a clear record of the issues considered and the reason for its decision. This would also be useful in the event of any challenge to the planning decision based on EIA grounds (see B.7 above).

C.1.5 If the project is EIA development the Competent Authority is prohibited from giving consent to the project until it has taken the environmental information into account unless it is "exempt development". Exempt development is development in respect of which the Scottish Ministers have directed that the particular proposal is exempted from the application of the EIA regulations (Reg 2 the principal regulations[26]). Paragraph B.3.6 gives further information.

Box **Key information**

C.1.1 The decision as to whether or not an EIA should be carried out for projects covered by the Regulations is a matter for the Competent Authority (e.g. the planning authority, Forestry Commission, the Scottish Ministers etc).

23 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58
24 http://www.scotland.gov.uk/Publications/2007/11/30082353/14
25 http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080432_en_1
26 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm


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## Proposer's Options as to the Submission of an Environmental Statement

C.1.6 If the project is a Schedule 1 project the proposer has no option but to submit an Environmental Statement. However, if it is a Schedule 2 project, the proposer can:-

- Submit an Environmental Statement with the application for a consent, in which case the EIA process is initiated
- Ask the Competent Authority for a screening opinion, which is a determination as to whether an Environmental Statement will be required.

## Procedures for establishing whether or not EIA is required ('screening')

C.1.7 The determination of whether or not EIA is required for a particular development proposal can take place at a number of different stages:

a) the proposer may decide that EIA will be required and submit a statement which he refers to as an Environmental Statement for the purpose of the Regulations with his application;
b) the proposer may, before submitting any application, request a screening opinion from the authority. If the proposer disputes the need for EIA (or a screening opinion is not adopted within the required period), the proposer may apply to Scottish Ministers for a screening direction;
c) the Competent Authority may determine that EIA is required following receipt of an application. Again, if the proposer disputes the need for EIA, the applicant may apply to Scottish Ministers for a screening direction;
d) Scottish Ministers may determine that EIA is required for a planning application that has been called-in for their determination or is before them on appeal;
e) Scottish Ministers may direct that EIA is required at any stage prior to the granting of consent for a particular project.

C.1.8 A proposer may ask the Competent Authority for a screening opinion as to whether an Environmental Statement will be required before submitting an application for consent. The Competent Authority has three weeks (or such extended period as agreed between the parties) from receipt of the request in writing to provide its opinion, in writing (for example, see Reg.5(4) of the principal regulations).

C.1.9 The Competent Authority may ask the proposer for any additional information necessary to give an opinion, and may consult any of the statutory consultees (see section D.2 below) before giving their opinion. Where the Competent Authority decides whether or not an Environmental Statement is required and they adopt a screening opinion, they must notify the proposer in writing (for example, re.g. 5(5) of the principal regulations).

C.1.10 To avoid unnecessary delays it is important that every attempt should be made to issue screening opinions within the statutory 3-week period. The regulations do, however, allow for the authority and the applicant to agree a longer period. Unless there is such agreement, the authority has no legal authority to request EIA beyond the 3-week period. However, if it had not issued a screening opinion and it considered that EIA was required the authority could seek to persuade the applicant voluntarily to carry out an assessment and provide an Environmental Statement, which would be submitted in accordance with the Regulations. Failing that, it would be open to the Competent Authority to request that Scottish Ministers issue a screening direction to determine whether EIA is required.

C.1.11 An authority can change its mind about a screening opinion, but should do so within the statutory period unless there is prior agreement of the applicant to extend the period. It is possible that additional information about the effects of the project not known to the authority when its screening opinion was given will come to light before a decision is taken on the application. If that information indicates that EIA is required the authority must not ignore it simply because it has already issued an opinion that EIA is not required. If the authority itself is unable to change its opinion, it should request a screening direction from the Scottish Ministers (who have a general power to direct whether EIA is required) before any decision is taken on the application.


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C.1.12 The case of Fernback and Others v Harrow LBC addressed this issue. In this case the Court held that a "negative" screening opinion issued by a planning authority did not determine whether an application for planning permission was "EIA Development" and a "positive" one by the Planning Authority was determinative only in the absence of one by the Secretary of State (Scottish Ministers). On the other hand, an opinion by the Secretary of State, either way, determines the outcome.

C.1.13 Failure by the Competent Authority to give an opinion in the three week period (or such extended period as agreed between the parties) means that the proposer is entitled to request a screening direction from the Scottish Ministers. The proposer may also request a screening direction from the Scottish Ministers where aggrieved by the decision of the Competent Authority to require EIA (Reg. 5(6) of the principal regulations). A request for a screening direction can be made by the proposer even if the Competent Authority required further information to be submitted and the information has not been submitted (this is in case the Competent Authority's requirements are unreasonable) (Reg. 5(7) of the principal regulations).

C.1.14 The Scottish Ministers have three weeks (or such extended period as agreed between the parties) within which to give notice in writing to the applicant of the screening direction. Such a Direction is final and the Scottish Ministers must inform the applicant and the Competent Authority of their decision (Reg 7 the principal regulations).


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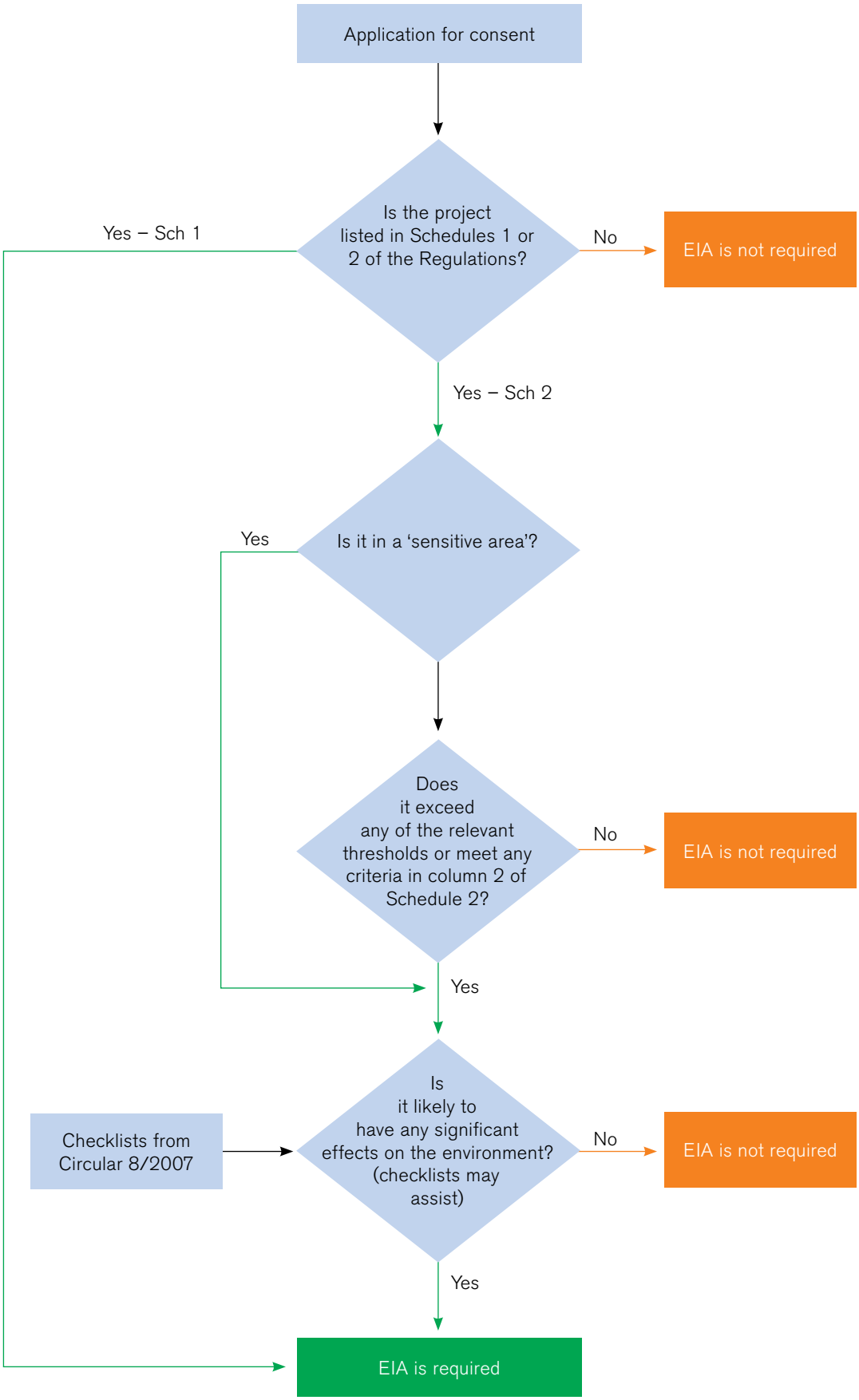
**Figure 3 – The procedure to establish whether an EIA is required**





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C.1.15 If a Competent Authority receives an application for consent, for a Schedule 1 or Schedule 2 project likely to have significant effects on the environment, it has three weeks (or such extended period as agreed between the parties) within which to give notice in writing to the applicant that an Environmental Statement should be submitted (Re.g. 7 the principal regulations). In making this decision the Competent Authority may consult the statutory consultees (see section D.2 below).

C.1.16 If the applicant receives a notice from the Competent Authority that in their opinion an Environmental Statement must be submitted, the applicant has three weeks in which to either:

a] confirm that a Statement will be submitted; or
b] unless the Scottish Ministers have already made a screening direction, to inform the Competent Authority that the proposer is writing to seek a screening direction from the Scottish Ministers (Regs 6 and 7 the principal regulations).

C.1.17 If no Environmental Statement is submitted, or no request made to the Scottish Ministers for a screening direction, or the Scottish Ministers direct that an Environmental Statement is required but none is submitted, the application is not actually invalid but consideration of the application is suspended until and unless an Environmental Statement is submitted. It would, however, be open to the Competent Authority to refuse permission on the grounds of inadequate information and, in any event, the Competent Authority should not grant any consent. (See Reg 3 of the principal regulations)

C.1.18 The procedure for establishing whether most projects under the principal regulations should be subject to EIA is shown in Figure 3 above.


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# C.2 Requiring the submission of an environmental statement

[See Also Figure 3, Sections B.3, C.1, C.3, Annexes 4 and 7]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | **C2 Requiring submission of an Environmental Statement** |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

C.2.1 Competent Authorities and the Scottish Ministers have a statutory power to require submission of an Environmental Statement in a particular case and a statutory duty not to grant any form of consent to a project which should be subject to the EIA process, without considering the environmental information. The Ministers have wide powers to enforce the EIA regime in Scotland.

## Introduction

C.2.2 Reference is made to section C.1 above and to section B.3 and Annexe 4 which explain which projects require EIA.

C.2.3 Whether or not it is consulted about the need for EIA, a consultee in the development consent process may decide independently to advise the Competent Authority that it considers that an EIA should be carried out when it receives an application for comment as part of the regular consultation process. In this case, the consultee would have to advise the Competent Authority in sufficient time to allow it to reach a decision and advise the proposer accordingly within the 3 week period (Reg 7 of the principal regulations[27]).

C.2.4 If the Competent Authority decides that it does not wish to follow the consultee's advice in a particular case, then the consultee can ask the Scottish Ministers to issue a Direction to the Competent Authority to require EIA under the Regulations (the principal regulations Reg 4).

C.2.5 It should be noted, however, that the Scottish Ministers do not have to wait for a proposer or a Competent Authority to ask for a Direction. They can act at any time.

27 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm


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# C.3 Preliminary contact and liaison

[See also Figure 3 and Sections C.1 and C.4.]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | **C3 Preliminary contacts and liaison** |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
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| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

C.3.1 Preliminary contacts and liaison are non statutory procedures. Early engagement with decision makers and consultees, however, is recommended for example in Circular 4/2009: Development Management Procedures, in the FC Guidance, EIA of Forestry Projects and also in PAN 58[28] at paragraphs 32 - 34.

## Advantages

C.3.2 Early contact and liaison about EIA cases is of benefit to the project proposers and to the consultees. It should help to reduce consultees' time input later in the process and increase the account taken of environmental issues in the Environmental Statement. The preparation of the Statement is the duty of the project proposer.

C.3.3 A considerable amount of information may already exist about the project location. Many projects or developments will have their basis in, or will have to comply with, an approved plan, programme or strategy. Information in the form of baseline data, consideration of alternatives, and possible mitigation of impacts that will have formed part of the Strategic Environment Assessment of these plans or strategies may be of value in the EIA process. This will be particularly relevant for the more detailed scale plans or strategies such as Masterplans or Development Frameworks. It may be helpful to seek this information early on from the relevant plan maker.

C.3.4 Some EIA projects will be 'national development' or 'major development' as defined under the provisions of the Town and Country Planning (Heirarchy of Developments) (Scotland) Regulations 2009 (SSI 2009/51) and this includes all Schedule 1 developments. There will need to be pre-application consultation with communities in accordance with the Act and the Town and Country Planning (Development Management Procedure) Regulations 2008[29] for national and major developments. It should also be recognized that some proposals which may be subject to EIA will be categorised as "local Developments" in which case the following statutory requirements for consultation do not apply.

C.3.5 The statutory pre-application process is begun with the submission of a proposal of application notice to the planning authority – setting out the characteristics of the proposed development and the consultation that the prospective applicant intends to carry out. The proposer should consider the resources required and appoint a coordinator with overall responsibility for the coordination and production of the Environmental Statement and its submission. The coordinator should assemble a team with the right experience and expertise. The proposer should also allow sufficient time for the assessment to be conducted properly and as thoroughly as necessary. The advice of the main parties in the EIA process should be sought at as early a stage as possible. Preliminary dialogue can be of great assistance to the proposer, in understanding the potential concerns, and for the Competent Authority and key consultees in understanding the project and steering the preparation of the Environmental Statement.

C.3.6 One of the important contributors to the success of an Environmental Statement can be the extent of consultation prior to its submission and the careful consideration of its scope and content at the very beginning of the process (see Section C.4 below). Non-statutory pre-application discussions, between the proposer, the Competent Authority and consultees, can provide a key opportunity to discuss the scope and content of the Environment Statement, helping the proponent to identify the main issues quickly and effectively and assisting them in scoping out issues unlikely to have significant effects at an early stage. The issue of drafts or draft extracts of the Environmental Statement, to key consultees and the Competent Authority, before the submission of the final statement and before the design is finalised, can therefore improve the Environmental Statement considerably and expedite the EIA and decision making processes. For this to be effective, enough time must be given to the consultees and Competent Authority to comment on any drafts. This will need to be factored into the project programme.

28 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58
29 http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080432_en_3#pt2


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C.3.7 Whilst pre-application discussions are therefore to be encouraged, for the process to be effective, it is important that as much information as possible is provided about the location and nature of the proposal. The process has to be as open and transparent as possible. Otherwise, consultees will be cautious about commenting on a proposal before its full implications can be ascertained. It should be noted that consultees are entitled to subsequently change their advice on the grounds of information or detail coming to light at a later stage.

C.3.8 Scottish Government Circular 4/2009: Development Management Procedures contains further advice and guidance on pre-application discussions and introduces a more formal tool for project managing the planning process for national and major developments – the processing agreement.

C.3.9 A Processing Agreement is a framework for processing planning applications or groups of applications. Statutory consultees are encouraged to engage in these processing agreements. This should lead to clearer lines of communication, ie who to speak to and when and more effective early engagement of key stakeholders.

C.3.10 The advantages of early consultation and liaison include:

- Early identification and therefore more focused consideration of significant impacts / a more focused environment statement, and a more focused scoping process.
- Reduction in consultees' time and / or input required later in the process.
- Early indication of the need for detailed survey work, especially relating to data that is required over several seasons.
- Early indication of the information required to assess the application in a manner that is proportionate and appropriate in defining the likely significant impacts on the environment.
- It allows for early understanding of the potential concerns of the consultees, and encourages greater understanding of the project and the preparation of the Environmental Statement, by the consultees and decision maker.


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# C.4 Scoping the environmental statement

[See also Figure 3, Section C.3, Appendices 1 - 6 and the Scoping Guide in Appendix 6]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | **C4 Scoping the Environmental Statement** |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
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| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

C.4.1 Seeking a scoping opinion is a statutory procedure whenever requested by the applicant. That is, before making an application, an applicant may ask the Competent Authority for their formal opinion on the information to be supplied in the Environmental Statement (a "scoping opinion"). This provision allows the proposer to be clear about what the authority considers the main effects of the proposal are likely to be and, therefore, the topics on which the Environmental Statement should focus (Reg 10 of the principal regulations[30]).

C.4.2 The proposer must include the same information as would be required to accompany a request for a screening opinion and both requests may be made at the same time (the principal regulations Reg 10(2) and (5)). An applicant may also wish to submit a draft outline of the Environmental Statement, giving an indication of what he considers to be the main issues, to provide a focus for the authority's considerations. The authority can require the applicant to submit any further information needed to adopt a scoping opinion. The authority must consult the consultation bodies and the proposer before adopting its scoping opinion.

C.4.3 The Competent Authority must adopt a scoping opinion within five weeks of receiving a request for such an opinion from the proposer. Alternatively, where the proposer submitted a request for a screening opinion and a scoping opinion at the same time, the Competent Authority must provide the scoping opinion within five weeks of determining that the proposal is subject to EIA, see the principal regulations Reg 10(5)). This period may be extended by agreement in writing. As a starting point, authorities should study the definition of Environmental Statement in the regulations and the guidance in Circular 8/2007[31], paras 94 - 104. In addition, authorities may find it useful to consult other published guidance, such as the European Commission, 2001 guidance at http://www.mfcr.cz/cps/rde/xbcr/mfcr/EC_ENVIRO_EIA_Scoping.pdf

C.4.4 The scoping opinion must be kept available for public inspection for two years (with the request and documents submitted by the applicant as part of that request). For projects requiring planning permission, if an application is subsequently made for development to which the scoping opinion relates, the opinion and related documents should be transferred to Part 1 of the register with the application (the principal regulations Reg 20).

C.4.5 There is no provision to refer a disagreement between the proposer and the Competent Authority over the content of an Environmental Statement to Scottish Ministers (although on call-in or appeal Scottish Ministers will need to form their own opinion on the matter). However, where a Competent Authority fails to adopt a scoping opinion within five weeks (or any agreed extension), the proposer may apply to the Scottish Ministers for a scoping direction, see for example, the principal regulations at Reg 10(7). This application must be accompanied by all the previous documents relating to the request for a scoping opinion, together with any additional representations that the applicant wishes to make. The applicant should also send a copy of the request and any representations to the Competent Authority, who are free to make their own additional representations.

C.4.6 The Scottish Ministers must make a scoping direction within five weeks from the date of receipt of a request, or such longer period as they may reasonably require. They must consult the consultation bodies and the proposer beforehand. Copies of the scoping direction will be sent to the proposer and to the Competent Authority, which must ensure that a copy is made available for inspection with the other documents referred to in C.4.5.

## Effect of a scoping opinion or direction

C.4.7 An Environmental Statement is not necessarily invalid if it does not fully comply with the scoping opinion or direction. However, as these documents represent the considered view of the Competent Authority or Scottish Ministers, a statement that does not cover all the matters specified in the scoping opinion or direction will probably be subject to calls for further information under Reg 19 (see D.6 below).

30 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm
31 http://www.scotland.gov.uk/Publications/2007/11/30082353/14


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C.4.8 The fact that a Competent Authority or the Scottish Ministers have given a scoping opinion or scoping direction does not prevent them from requesting further information at a later stage under Reg 19 of the principal regulations. Where Scottish Ministers have made a scoping direction in default of the Competent Authority, the authority must still take into account all the information they consider relevant. In practice there should rarely be any difference between the relevant information and that specified by Scottish Ministers.

C.4.9 PAN 58 states at paras 41-42 that:

- The purpose of scoping is:
- to focus the EIA on the environmental issues and potential impacts which need the most thorough attention;
- to identify those which are unlikely to need detailed study;
- to provide a means to discuss methods of impact assessment and reach agreement on the most appropriate.

By drawing on the knowledge of the planning authority and consultees, a scoping exercise will help the developer to identify the main issues quickly. It also gives an early indication of where mitigation measures may be necessary and should help to reduce requests for further information once the Environmental Statement is submitted. In some cases developers have used a forum of interested parties to discuss the issues informally prior to the formal scoping stage. The matters identified by the scoping exercise will derive from the nature of the project, the site and the environment".

C.4.10 The PAN goes on to say (para 40) that:

- For the planning authority in particular, this is an opportunity to act positively and provide early advice on the EIA process, methodologies, sensitive issues and sources of information. Early involvement of all parties is encouraged. ..... The applicant has first to provide information on the proposal including a site plan, a brief description of the proposal and its possible effects. At project initiation stage developers may wish to carry out scoping to a limited extent, possibly on a confidential basis, prior to seeking the formal opinion of the planning authority. The scoping is a key part of the EIA process but additional issues may still emerge as work progresses and the planning authority is not precluded from requiring the applicant to submit further information at a later stage".

C.4.11 Some Environmental Statements have contained excessive detail relating to issues that are irrelevant or of little importance to the decision. Others have overlooked issues which, when they came to light later in the process, proved to be decisive in the decision. Developers should not have to pay the cost and experience the delays involved in addressing issues that are obviously not significant. Competent Authorities, consultees and the public should not have to deal with large volumes of material which is irrelevant to the decision to be made.

Box C.4.1 **Advantages of Scoping**

**Key information**

The "scoping" of the Environmental Statement can avoid excessive detail and omission of important issues and help the EIA process to focus on key issues. It is an important contribution to the EIA process. The Competent Authority has a statutory duty to provide a scoping opinion.


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## Objects of Scoping

C.4.12 The scoping exercise should provide three principal products:

a) A list of activities which may cause environmental effects, together with initial estimates of their likelihood and their potential magnitude;
b) A list of environmental receptors that are likely to be affected by the different stages or activities of the project;
(a) and (b) are usually combined into a scoping matrix:
c) A plan for conducting the technical studies, including details of methods to be used and resources required.

Box C.4.2 **Good EIA practice**

Developers or their consultants should:

- Make early site visits in order to ensure that matters of natural heritage and other environmental concern are identified at an early stage;
- Establish appropriate consultation arrangements with interested parties including the Competent Authority;
- Conduct the scoping exercise in a systematic manner using scoping matrices and producing a Scoping Report where appropriate; and
- Agree baseline survey requirements, prediction methods and evaluation criteria with appropriate bodies, including non governmental bodies where they have expertise.

## Products of Scoping

C.4.13 The findings of the scoping process should be formally presented in the form of a Scoping Report, with a scoping matrix, although the production of such a report is not a requirement of the EIA Regulations. The Regulations do not specify what form either a scoping request (report) or a scoping opinion should take.

C.4.14 A scoping report provides the proposer with a valuable check on the progress and competence of the EIA team, and provides an opportunity for interested parties to comment on the proposed coverage and methodology of the Environmental Statement. Since the scoping of the assessment should also be reported within the Environmental Statement the effort expended in producing the report will not be wasted.

C.4.15 As a matter of good practice, the Environmental Statement should contain a description of the scoping process, including a list of all consultees involved and any concerns raised by those consultees.

C.4.16 However, scoping should not be a formality, simply because it is seen as a good thing; it should be acted upon by the proposer. Research (reference 12) showed that:

- involvement of conservation organisations at the scoping stage did not necessarily lead to detailed consideration of ecological issues in the resulting environmental statement. In one notable example for a development within a site of considerable ecological value, there was direct reference to a letter seeking advice from the then Nature Conservancy Council and also of the NCC's reply. That advice, including the suggestion that an ecologist be employed to conduct the ecological assessment, was not acted upon and the resulting environmental statement, particularly the ecological section, was extremely weak ..... The scoping process has been wasted".

C.4.17 Developers are encouraged to use the published best practice guidance (references 13 and 14) and the further guidance in the Appendices of this Handbook. The Attachment to this Handbook, provides a Review Package which includes a guide through the scoping stage.


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## Scope of Impacts Covered

C.4.18 Appendices 1 to 6 of this Handbook give many examples of potential impacts that may be considered when drawing up scoping matrices. A comprehensive list is not possible to draw up owing to the diversity of projects likely to arise. The examples in the Appendices should be adapted in every case and each Environmental Statement will require its own impact matrix to be developed. This is a task for the proposer's project team. However, consultees should be asked to comment on the scoping matrix and to receive drafts and a final version.

C.4.19 When commenting, it is particularly important to bear in mind the different stages in the life of a project. Often an Environmental Statement will concentrate on operational stages, some will include construction and/or restoration stages, but few will include all the stages of a proposal unless prompted to do so. The main stages are summarised below in Figure 4. Not every project will go through every stage. Some projects, such as minerals and waste disposal will have several stages present on the site at the same time, at some stages in the project life, e.g. site preparation, extraction, restoration and after care. Each stage can be subject to phases.

C.4.20 The impacts of associated infrastructure that will be essential for a project's operation should be covered (e.g. grid connections from an electricity generator). The impacts of new developments which are likely to follow on from the project in question should also be considered (e.g. a new runway following the development of a new terminal at an existing airport). However, at the end of the day, the Competent Authority cannot insist that more is covered in the Environmental Statement than is the result of the development proposal subject to their consent, see section B.4 above and 51 of Circular 8/2007.

C.4.21 Direct and indirect impacts that arise from the use of natural resources for the project may be included in the Environmental Statement, by way of explanation or amplification. They should, therefore, be considered in the EIA where significant. However, because these effects are included in Schedule 4 Part I of the principal regulations, and not in Schedule 4 Part II, the Competent Authority can only require these details to be submitted in the Environmental Statement where they decide that the information is reasonably required to give proper consideration to the likely environmental effects of the proposed development and the applicant can, having regard to current knowledge and methods of assessment, reasonably provide it. In these cases, the Competent Authority can require the proposer (by giving notice in writing) to submit the information specified.

C.4.22 There may be some debate as to whether a particular development will cause indirect impacts of significance on natural resources. The key question is whether the new development will alter demand for the raw materials to the extent that significant impacts may be caused by the need to supply these. The following examples illustrate the point:

- A major road may have a substantial requirement for aggregates that would have to be extracted from local sources due to the high transport cost of these materials. The related impacts should be addressed in the Environmental Statement.
- It would be reasonable to consider the impact of gas extraction for a new turbine if the demand for gas created by the turbine would lead to an increased rate of extraction such that additional infrastructure would be needed; or
- An EIA might consider the impacts of North Sea capelin exploitation if that was the main natural resource for a fish meal factory.

## Scoping an Application for Planning Permission in Principle

C.4.23 Reference is made to section D.11 of this Handbook which sets out specific advice on applications for planning permission in principle, the powers that a planning authority has in respect of requiring more information to be submitted in respect of such applications, and also refers to important case law.


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## Relevance of Natural Heritage Designations to EIA Scoping

C.4.24 Whether or not an Environmental Statement has been required because of the project's potential impacts on a designated area, all natural heritage and other designations likely to be significantly affected should be addressed in an Environmental Statement. It is important, therefore, at the scoping stage, to ensure that the proposer is aware of and understands the significance and purpose of all relevant designations. The effects on the designation should be carefully assessed and conclusions drawn as to their significance. This should include reference to national, development plan and other policies relating to the designations.

C.4.25 The designations in box C.4.3 below should be included in the Environmental Statement wherever applicable. On the other hand, the Environmental Statement should not focus entirely on designations. The Technical Appendices to this Handbook indicate the importance of assessing significant effects on all aspects of the natural heritage, whether or not they are subject to specific designations.

## Selecting Methods for Impact Assessment

C.4.26 Whilst there can be no standard form of method for assessing the wide variety of impacts that may be encountered in an environmental assessment, the criteria in Box C.4.4 may assist in considering the selection of methods on a case by case basis, particularly for ecological and geological assessments, reference should also be made to Appendices 1 - 6 of this Handbook.

C.4.27 There should generally be less need to depart from the well defined procedures set out in Appendix 1, for landscape and visual impact assessment, although even here, there may be a need to consider the most appropriate form of visualisation e.g. by way of computer generated photomontage, or computer generated visual envelopes and zones of visual influence.


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**Figure 4 – Project Life Stages**

| Overall Stages | Life Stage | Examples of Sources of Potential Effects |
|---|---|---|
| **Pre Consent Stages** | Site Finding | Potential changes in management or use of sites, potential effects of neglect and blight. |
| | Site Investigation/ Exploration | Physical impacts to site from equipment for drilling and testing, anemometers and other testing and sampling equipment. |
| | Environmental Surveys | Disturbance and other impacts resulting from natural heritage, archaeological and other sampling and surveys. |
| **Pre Construction Stages** | Site Acquisition/ requisitioning | Abandonment of normal land use or management whilst site acquired. Neglect or removal of assets e.g. trees for timber value. Fencing may change. |
| | Advance mitigation | Earth moving, planting and other mitigation works in advance of commencement of main construction. |
| | Site Preparation | Permanent and temporary landtake, earth moving, soil stripping, overburden removal, removal of site features, access, water abstraction and drainage works, fencing. |
| **Construction Stages** | Construction | Storage and handling of materials, construction activities, earth moving, soil and sub soil compaction and stripping, blasting, drilling, piling, water abstraction and drainage works, construction of tunnels and culverts, access by vehicles plant and equipment, compounds, parking, accidental spillages, noise, vibration, light, disruption to public access. |
| | Restoration of Construction Works | Translocation from other sites, seeding, turfing, planting and cultivating. Compounds, use of plant and equipment, vehicular access, storage of materials, movement, soil and sub soil handling, testing and site investigations/surveys. |
| | Commissioning | Testing, repairing, altering, moving and otherwise modifying project, often at short notice. |
| **Operational Stages** | Operational Phase | Gaseous and particulate emissions, noise, vibration, disturbance, effluents, light, water abstraction and discharges, vehicular access and parking. |
| | Monitoring | Monitoring investigations, surveys etc., repair, maintenance, replacement, emergencies (foreseen and unforeseen), increased maintenance and repair as project ages. |
| **Decommissioning and Restoration** | Decommissioning | Run-down in outputs, changes in balance of emissions and effluents, changes in noise and disturbance, light, water abstraction and discharges, fluctuations in outputs and activity. |
| | Demolition/removal | Storage and handling of materials, demolition activities, earth moving, soil compaction, blasting, drilling, water abstraction and drainage works, tunnels, culverts, access by vehicles plant and equipment, compounds, parking, accidental spillages, noise, vibration, light, disruption to public access. |
| | Restoration | Translocation from other sites, seeding, turfing, planting and cultivating. Compounds, use of plant and equipment, vehicular access, storage of materials, movement, soil and sub soil handling, testing and site investigations/surveys. |
| | After Care | Testing and site investigations/surveys, continuing effects of translocation from other sites, seeding, turfing, planting and cultivating. |
| | Ongoing management | Restrictions on after use of land and ongoing management options as a result of project having occurred. |


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Box C.4.3

## Designations to be Included in EIA

Sites Designated to Meet International Obligations
Special Protection Areas (and pSPAs)
Special Areas of Conservation (and cSACs)
Sites of Community Importance
Ramsar Sites (and proposed Ramsar Sites)
World Heritage Sites
Biosphere Reserves
Biogenetic Reserves

Nationally Designated Sites
National Parks
National Scenic Areas
Regional Parks
Historic Gardens and Designed Landscapes
National Nature Reserves
Sites of Special Scientific Interest
Geological Conservation Review Sites
Nature Conservation Review Sites
Marine Nature Reserves
Areas of Special Protection
EC Salmonid and Cyprinid Fisheries
Aquifer Protection Zones
Environmentally Sensitive Areas (ESAs)

Local Designations with a Statutory Basis
Conservation Areas
Country Parks
Picnic Sites
Statutory Local Nature Reserves
Tree Preservation Orders

Locally Designated Non Statutory Designations
Areas of Great/High Landscape Value
Other local landscape designations
Ancient Semi Natural Woodland
Scottish Wildlife Trust Reserves
Woodland Trust Sites
Royal Society for the Protection of Birds Nature Reserves
Listed Wildlife Sites (SWT)
Sites of Importance for Nature Conservation (or local system variant)
Regionally Important Geological/Geomorphological Sites

Box C.4.4

**Key information**

Suggested Criteria for Selecting Impact Assessment Methods

- The predicted nature and scale of the impacts.
- The overall timescales of the different phases of the project.
- The practicability of the work required.
- The expertise and experience required and its availability to the EIA team.
- The importance of environmental, in particular natural heritage, issues in the assessment of the particular project.
- The requirements of information gathering and the availability and accessibility of the information.
- The geographical scale and location of the project.
- The extent of field survey required.
- The need for laboratory work, GIS, computer modeling and other resources and sophisticated techniques of limited availability.


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# C.5 Provision of information

[See also Figure 3, Sections C.1 and D.3, Appendices 1 - 6]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | **C5 Provision of Information** |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

C.5.1 The "consultation bodies" (see Glossary in Annexe 1 below) have a statutory duty to take reasonable steps to organise and keep up to date any environmental information relevant to their functions, and to actively and systematically disseminate the information to the public generally. This includes information listed in Reg 4(2) of the Environmental Information (Scotland) Regulations 2004[32] (EISR04 Reg. 4 reference 15). They also have an explicit duty to provide relevant environmental information held by them to further the EIA process, particularly providing it to applicants and proposers preparing an Environmental Statement, (Reg 5 EISR04 and Reg 12 the principal regulations[33]) but Reg. 12 of the principal regulations clearly states that any authority, body or person required to provide information under the principal regulations shall not be required to provide information which it is entitled or is bound to hold in confidence. They also have duties to provide advice and assistance to applicants as indicated below (C.5.9).

## Provision of Information

C.5.2 In addition to this duty the principal regulations also make provision for the mandatory release of environmental information, on request, to a proposer (or their agents or consultants) preparing an Environmental Statement. It applies to all public bodies and specifically to statutory consultees (see the principal regulations at Reg 12).

C.5.3 The duty to provide the information on request applies throughout the EIA process including the early stages of preparation of an Environmental Statement. A proposer is not bound to provide the consultation bodies with full details of the project when asking for the information - it is sufficient to identify

"the land and the nature and purpose of the development" and the "main environmental consequences to which the person giving the notice proposes to refer to in the environmental statement". (see the principal regulations Reg 12)

C.5.4 However, the EISR04 are more specific about the duties of the consultation bodies and what is expected of the applicant. Reg 5(2) requires the public authority to provide information to an applicant on request in 20 working days and to ensure, as far as practicable, that the information provided is up to date, accurate and comparable (Reg 5(3) EISR04). The applicant may request the information to be provided in a particular form or format (Reg 6 EISR04) and the consultation bodies shall comply unless either it is reasonable to make the information available in another form or format, or it is publicly available and easily accessible to the applicant in another form or format.

C.5.5 The 20 day period for supply of information may be extended by up to a further 20 days if the volume or complexity of the information requested makes it impractical for the consultation bodies to provide it in 20 days (Reg 7 EISR04). The consultation bodies can make a reasonable charge for providing certain types of information (Reg 8 EISR04).

C.5.6 In exceptional cases, Reg 10 of the EISR04 makes provision for the consultation bodies to refuse to provide environmental information requested by an applicant, but these cases will be rare.

C.5.7 The Competent Authorities have duties to inform the consultation bodies when they know of a case where the Regulations will apply but a proposer may approach the consultation bodies before the Competent Authority, and they have a duty to provide the information requested, if the proposer says it is in connection with the EIA Regulations.

32 http://www.hmso.gov.uk/legislation/scotland/ssi2004/20040520.htm
33 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm


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C.5.8 Developers should not simply ask for all information held by a consultation body for a particular site or area. The proposer may consult the consultation bodies to see whether they hold information relevant to the Environmental Statement. The Regulations require the consultation bodies to "enter into consultation with that person to determine whether it has in its possession any information which he or they consider relevant to the preparation of the environmental statement and, if they have, the public authority shall make that information available to that person." (see for example, the principal regulations at Reg 12(4)).

### Duty to Provide Advice and Assistance

C.5.9 Reg 9 of the EISR04 requires the consultation bodies to provide advice and assistance, so far as reasonable, to applicants and prospective applicants. Where a request for information has been formulated in too general a manner, the consultation bodies shall ask the applicant as soon as possible, and in any event within the 20 days period, to provide more particulars in relation to the request and should assist the applicant in providing those particulars. However, if the consultation bodies operate in accordance with a code of practice produced by the Scottish Ministers under Reg 18 EISR04, the duty to provide advice and assistance will be deemed to have been met by compliance with the code.

C.5.10 The EIA Regulations do not override the EISR04, but sit alongside them and are intended to be complementary to them. Both Regulations seek to apply the requirements of EC Directives (in the case of the Environmental Information Regulations, via The Freedom of Information Scotland Act 2002[34], which itself is intended to comply with the EC Directive 2003/4/EC on Public Access to Environmental Information[35] (reference 15).

34 http://www.opsi.gov.uk/legislation/scotland/acts2002/asp_20020013_en_1
35 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF


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# C.6 Describing baseline environmental information

[See also Figure 3, Section B.4, and Appendices 1 to 6]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | **C6 Describing baseline environmental information** |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

C.6.1 Contributing to the analysis of baseline information is a non statutory part of the process. However, the proposer must include the information in the Environmental Statement so this is a necessary procedure for the proposer. Guidance on this stage is also provided in PAN 58[36] at paragraphs 38 - 39 and 44 - 46.

## The Developer's Responsibilities

C.6.2 Collecting baseline information on the environment ought to be a relatively straightforward part of the EIA process (compared to impact prediction and other aspects) but it is often done inadequately. Unless there is a clear understanding of the baseline and how that may change without the changes that would be brought about by the project, there is little hope of the Environmental Statement accurately predicting and mitigating the impacts of the proposal.

C.6.3 Information gathering should be comprehensive in respect of the significant environmental issues to be addressed in the Environmental Statement. Field work should be carefully planned, bearing in mind the seasonal constraints on some work such as ornithological, botanical, landscape and archaeological surveys. Environmental information sources should be identified and the relevant central and local government authorities and agencies should be consulted. Local communities and voluntary bodies should also be consulted as these groups can provide invaluable information.

C.6.4 The Appendices 1 - 6 of the Handbook set out the best practice guidelines based on published work. This section sets out:

a) common problems and pitfalls (Box C.6.1)
b) good EIA practice (Box C.6.2) and
c) advice on ensuring an integrated approach to the natural heritage.

C.6.5 Wherever ecological impacts are expected to affect botanical interests or habitats supporting animal species of interest, vascular plants should normally be surveyed to at least establish National Vegetation Communities (NVC) as this information is likely to be needed to inform ecological assessment. In habitats where lower plants are important constituents of the vegetation (for example moorland, Sphagnum mires) bryophytes and lichens should also be surveyed. For similar reasons, benthic communities should be included in marine surveys. Landscape character assessments are an essential pre-requisite to effective landscape impact assessment.

36 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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Box C.6.1 **Good EIA practice**

Avoids these common problems and pitfalls in baseline information

- Reliance on existing recorded data only.
- Insufficient time to conduct surveys at appropriate seasons/times.
- Inadequate expertise in surveys.
- Lack of understanding of what information is needed to inform the EIA process.
- Inadequate resources for baseline surveys leading to incomplete or inept results.
- Use of out of date material.
- Lack of verification of collated information.
- Omission of important information that is available/obtainable.
- Lack of an adequate national/regional context e.g. of Landscape Character Types.
- Too narrow a focus on the site, paying insufficient attention to landscape, natural features, processes or influences of surrounding land.
- Use of inappropriate techniques or inappropriate application of appropriate methods of survey e.g. landscape character assessment, NVC, Phase 1 Habitat Surveys etc.
- Concentration on the easier aspects of survey e.g. birds and mammals, whilst ignoring difficult ones such as invertebrates or bryophytes which may be better indicators of environmental conditions.
- Inadequate acknowledgement of data limitations.
- Omission, lack of understanding or misrepresentation of designations, their purpose, reasons for designations and implications.

Box C.6.2 **Good EIA practice**

Baseline Information:

- Thorough scoping of baseline data requirements and available information.
- Consultation and agreement on survey subjects, methods and emphasis.
- Use of best available information.
- Identification of influences on baseline information that would lead to change in absence of the project.
- Recruitment to the EIA team, temporarily if necessary, of people with skills and experience of field surveys in all relevant fields.
- Correct timing of surveys with adequate timescales to record variations in differing circumstances.
- Careful verification and validation of existing records with an appropriate balance between use of documentary and field survey material.
- Inclusion of likely changes that would be brought about by other projects already consented but not yet implemented.
- Consideration of baseline information which would contribute to assessment of cumulative, offsite, indirect impacts etc.
- Clear identification and agreement as to the appropriate level of detail of surveys and information gathering.
- Relating all baseline studies to their relevance to the nature, size, duration and location of the project to ensure all relevant information is collated without submerging it in a volume of irrelevant or over-detailed information.
- Early recognition of gaps in information and limitations in data that can be collated and how these will be dealt with in the Environmental Statement.

Box C.6.3 **Key information**

### Field Surveys

The proposer should undertake field surveys in every case where natural heritage effects are likely to be significant or effects cannot be predicted at the scoping stage. Where relevant: landscape and visual surveys; habitat and species surveys; surveys of natural features and processes and outdoor recreation/access surveys will be essential to adequately inform landscape, visual, ecological, marine, earth heritage and outdoor recreation impacts in Environmental Statements.


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C.6.6 Where a long lead time on the Environmental Statement allows, it may be possible to monitor changes in existing conditions prior to the submission of the Environmental Statement. This would allow trends in ecological or landscape change or marine or other natural processes to be investigated and should be encouraged, although it is rarely possible to do this.

### Integrating Natural Heritage Issues

C.6.7 Owing to the different professional skills involved, it is common practice in Environmental Statements to address natural heritage issues separately, for example:-

- Landscape and Visual Impacts
- Ecological Impacts
- Impacts on the Marine Environment, Marine Systems and Coastal Processes
- Cultural Heritage: Historic Gardens and Designed Landscapes
- Geological and Soil Impacts: Earth Heritage
- Public Amenity/Recreation Impacts: Outdoor access.

C.6.8 In many Environmental Statements even these sections or chapters can be subdivided, each being written by a separate author with specialist knowledge of, for example, aquatic or terrestrial ecology. In order to ensure authoritative assessment the practice of different authors each presenting their conclusions should be encouraged, but the Environmental Statement team coordinator should ensure that all of these differing elements are consistent and drawn together in an integrated and understandable presentation.

Box C.6.4 **Key advice**

### The Approach to Baseline Information

When discussing or commenting on a (draft) Environmental Statement, Competent Authorities and consultees should encourage rigorous assessment by appropriately qualified and experienced professionals, with specialists used where appropriate, and the facility in the Environmental Statement for all of their respective assessments to be clearly and consistently set out.

However, Competent Authorities and consultees should also encourage an integrated approach to natural heritage issues. The interrelationships between landscape, visual, terrestrial, aquatic and marine ecological and earth heritage information and the implications for the enjoyment of, access to and better appreciation of the natural heritage should be clearly set out.

Competent Authorities and consultees should encourage different aspects of the natural heritage to be assessed on a common basis wherever possible. For example landscape and ecological assessments may be able to use the same broad scales of significance so the significance of the different effects on the natural heritage can be directly compared.

C.6.9 It is possible, and in many cases even likely, that baseline conditions reported in an Environmental Statement may change by the time the project is commenced on site, or becomes operational. This should, where possible, be anticipated in the Environmental Statement by predicting future change in absence of the project. However, additional projects may have come forward and received consent or even have been constructed before the subject project is undertaken, owing to different lead times and consenting procedures. Where projects A or B are subject to applications for consent at the time of preparation of the Environmental Statement for project C, the statement should assess the effects of baseline plus project C; the effects of the baseline plus project A + project C; baseline plus project B + project C; and baseline plus projects A + B + C; and so forth. The Competent Authority should be consulted about the combinations of projects to be assessed.


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# C.7 Predicting environmental impacts

[See also Figure 3, Sections C.3, C.4 and Appendices 1 - 6]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | **C7 Predicting environmental impacts** |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

C.7.1 A prediction of environmental effects must be included in an Environmental Statement so this is a necessary procedure for the proposer. Guidance on this stage is also provided in PAN 58[37] at paragraphs 47 - 52.

## Impact Prediction

C.7.2 Predicting and describing significant environmental impacts is a statutory requirement to include in an Environmental Statement, reference is made to C.4 above and Appendices 1 - 6 of this Handbook.

C.7.3 Predicting the effects of a proposed project is a fundamental stage in EIA. One of the main purposes of the Environmental Statement is to clearly explain what the impacts of a proposal would be. The impacts should always be included in the non-technical summary in a way that is understandable to the general public. However, this is not always easy in respect of natural heritage implications.

C.7.4 Predicting environmental impacts involves two main elements of work:

- Anticipating, modeling, predicting or forecasting the changes that would be brought about by the project at all of its life stages, often compared to baseline, and / or predicted changes without the project see C.8.4 below; and
- Explaining, in a rational, consistent, impartial and transparent way, the significance of the changes.

C.7.5 The results of changes or other effects of the project are usually referred to as “impacts”.

C.7.6 The effectiveness of impact prediction in Environmental Statements varies considerably. Given the constraints of sometimes inadequate available information, the evolving nature of modeling and predictive techniques, the lack of understanding as to how the environment may respond to some impacts and the extensive reliance of the process on professional judgment, it is not surprising that this element of the EIA process has been widely criticised. Research (references 12, 16 and 17) shows a more rigorous and more impartial assessment of predicted effects in many Environmental Statements since 1992. The trend has been one of improvement, but some Environmental Statements are still weak in this area.

C.7.7 Appendices 1 - 6 of this Handbook contain more detailed advice on best practice techniques for predicting impacts and assessing and explaining their significance. It is likely that Competent Authorities will need specialist advice in respect of some aspects of EIA, from the consultation bodies and others.

C.7.8 Different effects may be experienced at different stages in a project’s life (e.g. site preparation, construction, operation, decommissioning or restoration (See also Figure 4)). The Environmental Statement should clearly set out the effects on the natural heritage and their interrelationships with each other and with other environmental effects.

37 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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Box C.7.1 **The Approach to Impact Prediction**

**Key advice**

Competent Authorities and consultees should adopt a practical and rational approach to commenting on the effectiveness of impact prediction. If they are unable to support the findings, criticism should be focused on key issues rather than detail. As a minimum Competent Authorities and consultees should try to ensure that an Environmental Statement fairly and consistently describes

a) the sensitivity of the environmental resource;
b) the magnitude of change in absolute terms where possible and relative terms elsewhere;
c) the likelihood of the impacts occurring;
d) the certainty with which impacts have been identified;
e) the comparison with the do nothing alternative (see C.8.4 below) and other alternative solutions that are feasible and practical;
f) the significance of the impacts based on the factors (a) - (d) above.

Box C.7.2 **Types of Impact**

**Key information**

The effects of a proposal may be:-

- predictable or unpredictable
- positive (beneficial) or negative (harmful)
- short, medium or long-term
- one-off, intermittent or continuous
- avoidable or unavoidable
- localised or widespread
- individual or cumulative
- direct or indirect
- temporary or permanent
- immediate or delayed
- certain or uncertain
- reversible or irreversible
- small or large

and therefore may be significant or of no consequence.

C.7.9 This will usually require factual information. Prediction of impacts should be as objective and, where possible, as quantified as possible. However, there will often be uncertainties so a range of potential results may need to be considered with an explanation about the nature of the uncertainties associated with predictions.

C.7.10 The Information required for impact prediction will generally include:

The likelihood of the impact occurring at the magnitude anticipated;

- The likely duration of the impact and whether it would be continuous, intermittent, immediate or delayed;
- The extent to which the impact could be reversed;
- The feasibility and effectiveness of any measures designed to mitigate the impact;
- The cumulative effects of different impacts in this project;
- The cumulative effects of the same or different impacts in this and other projects; and
- The risk and effects of unscheduled, emergency or accidental events and the effects of the resulting activity.

C.7.11 The magnitude of change should generally be expressed in absolute terms and relatively in terms of percentage change to habitat area or species population or net gains and losses of important landscape features. Given the likelihood of uncertainties, the degree of confidence in the predictions as to the magnitude of effects should also be indicated. The status of the site will generally be a factual expression of the international, national, regional or local importance of landscape, habitats or species. The sensitivity of the landscape, habitats and species will require a professional and sometimes subjective judgement, usually taking account, for example, of the distribution, population, rarity or vulnerability to change of the habitats and species in nature conservation terms and the vulnerability of landscapes to loss of local character or distinctiveness.


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C.7.12 By way of example, Figure 5 is an illustration of a matrix showing the magnitude of changes in the landscape. Landscape impact magnitude is based, amongst other things, on the extent of change to the landscape resource, the duration, scale and nature of the change and the impact of the change on the character of the landscape and its tolerance for accommodating change. This is an example only, each EIA will require its own matrix designed to meet the particular circumstances.

C.7.13 The impacts should be considered in the light of any information available or reasonably obtainable about the capacity of environments to accommodate change. Limits of acceptable change can sometimes be defined and these are particularly relevant to EIA procedures.

**Figure 5 – Example of Scale of Magnitude of Changes to the Landscape Resource**

| | |
|---|---|
| **Substantial magnitude** | Significant changes, over a significant area, to key characteristics or features or to the landscape's character or distinctiveness for more than 2 years |
| **Moderate magnitude** | Noticeable but not significant changes for more than 2 years or significant changes for more than 6 months but less than 2 years, over a significant area, to key characteristics or features or to the landscape's character or distinctiveness. |
| **Slight magnitude** | Noticeable changes for less than 2 years, significant changes for less than 6 months, or barely discernible changes for any length of time. |
| **Negligible or no change** | Any change would be negligible, unnoticeable or there are no predicted changes. |

C.7.14 Where limits cannot or should not be defined, a broader approach, assessing the capacity of habitats or landscapes to accommodate change, in more general, relative terms could be used. The SNH national programme of Landscape Character Assessments is a particularly important resource contributing to the EIA process. These assessments should be used in every case. They are likely to be the best available baseline information for landscape assessment and the most authoritative source of comment on the sensitivity of landscapes, based more on their character and distinctiveness. Assessment should focus on landscape character rather than designations, although designations will need to be considered in the light of their policy implications (see Section C.6 above).


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# C.8 Assessing the significance of impacts

[See also Figure 3, Sections C.3, C.4 and C.7 and Appendices 1 - 6]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | **C8 Assessing the significance of impacts** |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

C.8.1 The Environmental Statement should include a description of the nature, scale and significance of the effects, so this is a necessary procedure for the proposer. It will also be a necessary procedure for consultees to consider the significance of the effects in order to make representations to the Competent Authority. Guidance on this stage is also provided in PAN 58[38] at paragraphs 47 - 52.

## The Significance of Impacts

C.8.2 Assessing the significance of impacts relies, at least in part, on value judgements, including placing weight or value on the environment likely to experience the change. The significance of impacts at this stage should relate back to the impacts deemed to be significant at the scoping stage (section C.4 above). It is also possible that new environmental effects may come to light in the assessment process because it should be iterative. Essentially, the EIA was undertaken to address impacts that were then deemed to be significant, so it should have revealed the impacts that will occur and how important they will be.

C.8.3 The significance of change is also related to the duration, timing and extent of effects, the degree of certainty in the prediction of impacts and the likelihood of irreversible changes occurring. For example, an effect which is unlikely, or the likelihood of which is uncertain, may nevertheless be significant if it would be a very serious or irreversible adverse effect, if it did occur. This is the basis of the "precautionary principle", see Section D.1 below.

C.8.4 The significance of the effects of a proposed development should be considered in the context of changes that will occur regardless of whether the project goes ahead or not, the "do nothing alternative". The "do-nothing" comparison, or in some cases, such as road improvements, the "do-minimum" comparison, is a projection of the existing data to provide a baseline for comparison to show how the site would change if the project did not go ahead. The "do-nothing" comparison examines trends currently occurring at the site, including likely management, land use changes, effects of climate change (eg species migration) or other interventions, and assesses the significance of these changing conditions. The "do-nothing" comparison, however, should be used in a reasonable way. It should genuinely predict likely change, on a realistic basis, for example by including the effects of projects which already have consent but are not yet implemented. It should not take the best possible comparison for the purpose of the Environmental Statement, in order to try to demonstrate that the project proposed would have less adverse, or even beneficial, effects over a "do nothing" prediction that is not likely to materialise.

C.8.5 Alternative solutions, if the project went ahead in a different form or at a different location, should normally be considered. This will reveal the full picture of the project's effects and the least damaging option. If alternatives have been considered they should be included in the Environmental Statement with an explanation as to why they were rejected.

38 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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Box C.8.1 **Key information**

### Factors Affecting Significance of Impacts

The significance of an impact is derived from an analysis of:-

- The sensitivity of the environment to change, including its capacity to accommodate the kinds of changes the project may bring about;
- The amount and type of change, often referred to as the impact magnitude which includes the timing, scale, size and duration of the impact;
- The likelihood of the impact occurring - which may range from certainty to a remote possibility;
- Comparing the impacts on the environment which would result from the project with the changes that would occur without the project- often referred to as the "do-nothing" or "do minimum" comparison; and
- Expressing the significance of the impacts of the project, usually in relative terms, based on the principle that the more sensitive the resource, the more likely the changes and the greater the magnitude of the changes, compared with the do nothing comparison, the greater will be the significance of the impact.

C.8.6 A matrix can be used for considering the significance of impacts. This may combine the work previously undertaken for the assessment in respect of baseline information about the resource and impact prediction. The sensitivity of the resource can be analysed from the baseline information and may be summarised and classified in a matrix, an example of which is given in Figure 6 below.

**Figure 6 – Example of Scale of Sensitivity of Landscape Receptors**

| | |
|---|---|
| **High Sensitivity** | Key characteristics and features, identified by systematic landscape character assessment, which contribute significantly to the distinctiveness and character of the landscape character type. Designated landscapes e.g. National Parks, NSAs and AGLVs and landscapes identified as having low capacity to accommodate proposed form of change. |
| **Medium Sensitivity** | Other characteristics or features of the landscape that contribute to the character of the landscape locally. Locally valued landscapes which are not designated. Landscapes identified as having some tolerance of the proposed change subject to design and mitigation etc. |
| **Low Sensitivity** | Landscape characteristics and features that do not make a significant contribution to landscape character or distinctiveness locally, or which are untypical or uncharacteristic of the landscape type. Landscapes identified as being generally tolerant of the proposed change subject to design and mitigation etc. |

C.8.7 The significance matrix can combine the information about the sensitivity of the resource, in this case the landscape resource, with the information previously compiled about the magnitude of impacts, of the kind shown in Figure 5 above. Combining the two sets of analysis, from Figures 5 and 6, enables a simple matrix of significance to be compiled as shown in Figure 7.


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**Figure 7 – Example of a Matrix Showing Impact Significance Related to Sensitivity and Magnitude of Change**

| Sensitivity of environmental receptor | Magnitude of Change | | | |
|---|---|---|---|---|
| | **Substantial** | **Moderate** | **Slight** | **Negligible/None** |
| **High** | Major | Major | Moderate | Negligible/None |
| **Medium** | Major | Moderate | Minor | Negligible/None |
| **Low** | Moderate | Minor | Minor | Negligible/None |

C.8.8 The construction of the matrix for weighing the significance of landscape and visual impacts should be adapted to fit individual cases or types of cases. For example, a significance matrix for natural heritage impacts may look like the example in Figure 7. The impacts are individually ranked for their significance on the basis of the sensitivity of the resource and the magnitude of the change, a high sensitivity resource and high magnitude of change would result, self evidently, in an impact of major significance. It is suggested that shaded impacts of major or moderate significance, in Figure 7, would be changes that would be regarded as likely significant effects in the EIA process, which at screening stage would trigger the submission of an Environmental Statement.

C.8.9 Beneficial and adverse impacts should be treated in the same way.

Box C.8.2 **Key advice**

### The Approach to Impact Significance

Competent Authorities and consultees should ensure that all Environmental Statements:

- clearly set out the sensitivity of the natural heritage resource;
- the magnitude and likelihood of change, compared with at least the baseline information but preferably compared with the do nothing or do minimum alternative; and
- explain the significance of all relevant impacts on the natural heritage in a systematic, impartial, consistent and rational way that is clearly described in the Environmental Statement.

C.8.10 Predicting impact significance is partly objective and partly subjective. It relies on the professional judgement of landscape architects, ecologists and others who may place varying weight on the many factors involved. This naturally leads to differences of opinion. The Environmental Statement should therefore set out the basis of these judgements so that others can see the weight attached to different factors and can understand the rationale of the assessment. The Environmental Statement should clearly explain how the impact significance has been derived.


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Box C.8.3

**Key advice**

## Comments on Significance

Consultees should not seek to criticise an Environmental Statement merely because it expresses conclusions which do not accord with their conclusions.

Wherever possible, comments should identify why the conclusions are different so the Competent Authority may judge the basis of the two different assessments.

Consultees should indicate how and where impact prediction in the Environmental Statement is inappropriate, e.g. where:-

- inappropriate predictive techniques have been used;
- impacts have been omitted;
- the sensitivity of the resource is under-estimated, (e.g. insufficient attention has been paid to reasons why areas have been designated);
- any aspect of the timing, scale, size or duration of the impact has been omitted or inappropriately applied to the assessment;
- the impacts are not compared adequately or appropriately with the do nothing or other relevant alternatives;
- the scale of impact significance is unclear, inconsistent, inappropriate or partial.


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# C.9 Mitigating measures and enhancement

[See also Figure 3, Sections B.6, C.4, D.7, D.10, E.2 and Appendices 1 - 6]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | **C9 Mitigation measures and enhancement** |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
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| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

C.9.1 The Environmental Statement must include a description of the mitigation measures, so this is a necessary procedure for the proposer. It will also be a necessary procedure for consultees to consider the effectiveness of mitigation in order to make representations to the Competent Authority.

C.9.2 Mitigation measures are a statutory requirement to include in an Environmental Statement, enhancement is not, reference is made to B.6, C.4 above and Appendices 1 - 6 of this Handbook. Guidance on this stage is also provided in PAN 58[39] at paragraphs 53 - 61.

## Introduction

C.9.3 One of the main purposes of EIA is to ensure that potentially significant environmental effects of proposed projects are avoided or reduced as far as possible or practicable. This can be achieved by many different measures which might include:-

- locating the project so as not to affect environmentally sensitive locations;
- using construction, operation and restoration methods or processes which reduce environmental effects;
- designing the whole project carefully to avoid or minimise environmental impacts;
- introducing specific measures into the project design, construction, decommissioning and restoration that will reduce or compensate for adverse effects.

## Counter-acting measures

C.9.4 In the EIA process it will be necessary to consider five potentially distinct kinds of counter-acting measures for the effects of a project on the environment as follows:

- Avoidance
- Cancellation
- Reduction
- Remedial/Compensatory
- Enhancement/Net Beneficial.

C.9.5 The word "mitigation" has developed a wider meaning and common usage in environmental assessment than its strict meaning related to reducing the severity of something. Mitigation can sometimes be used as a generic term for a wide range of counter-acting measures, all of which, as the Directive and Regulations prescribe, are intended to "prevent, reduce and where possible offset any significant adverse effect on the environment". 'Mitigation' can be used to encompass measures intended to avoid, cancel or reduce adverse effects.

## Avoidance measures

C.9.6 Are intended to stop or prevent effects from occurring, or to eliminate (completely remove or get rid of) the risk of them occurring, perhaps by relocating a project away from a sensitive area, or removing from a project the element that may cause an adverse effect. Successful avoidance measures mean there will be no adverse effect.

## Cancellation measures

C.9.7 Are intended to completely neutralise or fully negate the adverse nature of effects. There will be an effect, but its negative outcomes will be cancelled out.

39 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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### Reduction measures

C.9.8 These are mitigation measures in the narrower, but accurate, sense. They are intended to make effects smaller or less in amount, degree, size or likelihood, either by reducing the effect itself, or the likelihood of it occurring, or both. These measures may so reduce the adversity of the effect, or they become so unlikely, that they are no longer of concern. There will, nevertheless, be a residual effect, it may be necessary to check that the residual effects of one proposed change do not exacerbate the effects of others, by way of cumulative, combined or synergistic processes.

### Compensatory measures

C.9.9 Are measures, only taken into account after a decision has been made, and intended to at least try to recompense, or otherwise make up for, or off-set, the adverse effects of a proposed change that could or would occur and would be of concern. Thus, an important negative effect is anticipated and environmental loss or harm is likely to occur. However, it has been decided that the project should nevertheless go ahead, and the compensatory measures try to make amends. The objective should be that the recompense is made in time to make good the environmental benefit or function that would be affected.

### Application of counter-acting measures

C.9.10 These distinctions are not merely of academic interest. Avoidance, cancellation, reduction, and remedial or compensatory measures in the context of the EIA Regulations are all measures to prevent, reduce and where possible offset any significant adverse effect on the environment. They must, therefore, be included and described in every Environmental Statement (see sections B.6 and C.4 above). It should be noted, however, that they may need to be applied in specific and different ways in the context of the Conservation (Natural Habitats &c) Regulations 1994[40] as amended (see para B.1.13 above), particularly in relation to compensatory measures. Enhancement, or net benefit, or new benefit, may be offered by the proposer.

C.9.11 Often an Environmental Statement has claimed enhancement but the measures are not genuine enhancement because the loss or damage to the natural heritage is greater than the benefit of the “enhancement” proposed or the measures are more akin to compensatory measures.

C.9.12 The distinction is also relevant to consultees. For example, a project may result in adverse ecological effects, on existing habitats, that cannot be mitigated, e.g. loss of an important peatland area but may also result in genuine landscape enhancement elsewhere. The one is not a compensation for the other. The loss and the benefit must be evaluated as separate issues. Likewise, a Competent Authority may need to weigh the significance of harm to the natural heritage perhaps with enhancement of other environmental conditions.

40 http://www.opsi.gov.uk/si/si1994/uksi_19942716_en_1.htm


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Box C.9.1 **Key information**

### Mitigation compensation and enhancement

Mitigating measures or mitigation are the measures taken to avoid, cancel or reduce adverse impacts of the project.

Avoidance measures eliminate or avoid any adverse impacts, and may include alternative or 'do nothing' options.

Cancellation measures nullify or cancel out the effects of a project before they can have a negative impact

Reduction measures minimise or at least reduce adverse impacts of the project that have not been avoided or cancelled out.

Remedial or Compensatory measures or compensation are other measures taken to (at least try to) offset or compensate for residual adverse effects which have not been avoided, cancelled out or reduced to insignificant levels or risks.

Enhancement/Net Benefit/New Benefit is the genuine enhancement of the environmental interest of a site or area because adverse effects are limited in scope and scale, and the project includes improved management or new habitats or features, which are better than the prospective management, or the habitats or features present there now. There is, therefore, a net or new benefit to the natural heritage.

C.9.13 Proposers are entitled to include environmental enhancement in their Environmental Statement. Whilst most Environmental Statements tend to focus on mitigation, proposers may perceive an opportunity to help to persuade a Competent Authority to grant consent by offering some form of enhancement, to tip the balance in favour of the project.

C.9.14 In many cases there will be opportunities to encourage enhancement of the natural heritage, especially where the existing ecological interest is low or a landscape has been degraded. Mineral or waste restoration schemes and woodland planting schemes often offer potential for genuine enhancement where the harm to the natural heritage is insignificant.

C.9.15 However, it should be borne in mind that enhancement cannot be insisted upon.

C.9.16 The effectiveness of mitigation and other counter-acting measures, their reliability and certainty, and the commitment to ensuring their practical implementation should be addressed in the Environmental Statement (See Section D.3). The environmental effects of these measures themselves should also be assessed. Measures may have been added at a late stage and may not have been assessed in the Environmental Statement. The measures themselves may have significant environmental effects, for example through further habitat loss or by the obstruction of wildlife corridors or intrusion into the landscape or obstruction of views.

Box C.9.2 **Key advice**

### The Approach to Mitigation

There is a well established approach to the use of counter-acting measures.

Generally, Competent Authorities and consultees should promote a sustainable approach and give priority to:

- firstly avoiding or cancelling adverse impacts on the natural heritage; then
- minimising or at least reducing adverse effects on the natural heritage that have not been avoided or cancelled out; then
- compensating for the adverse effects that cannot be further reduced; and
- in parallel with this prioritised approach encourage opportunities to enhance the natural heritage


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C.9.17 The effectiveness of measures such as habitat recreation, restoration, revegetation or habitat or species translocation should be considered on their merits in the circumstances of each case. However, bearing in mind the general experience of habitat and species translocation, this should normally be regarded as a last resort when destruction of individuals of the species is inevitable, that is, a rescue operation.

C.9.18 Guaranteeing and committing to mitigation is a vital aspect of EIA procedures and mitigation measures should always be subject to legally enforceable commitments in the project application or related conditions and legal agreements, see further section E.3 below.


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# C.10 Presentation of information in the environmental statement

[See also Figure 3, Section B.6 and Appendices 1 – 6]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | **C10 Presenting environmental information in the Environmental Statement** |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

C.10.1 There are statutory duties on proposers to include certain matters in an Environmental Statement (see B.6 above). There are statutory powers for Competent Authorities to require the inclusion of certain matters in an Environmental Statement. However, the way in which these matters are presented in the Environmental Statement is a matter for the proposer, a non statutory procedure, which may involve discussion with consultees.

C.10.2 The Regulations do not specify how environmental information should be presented in an Environmental Statement, except to say that a non-technical summary must be included. In practice, non-technical summaries are often separately bound and more widely distributed and available. Guidance on this stage is also provided in PAN 58[41] at paragraphs 72 - 79.

## Presentation

C.10.3 Presentation therefore depends largely on the importance of the various issues in the Environmental Statement. Where no significant natural heritage issues arise the Environmental Statement may simply refer to them in a general chapter on other environmental effects or information. Where natural heritage issues are significant they should be addressed to the extent necessary in the main body of the Environmental Statement, although larger Environmental Statements may have separate volumes containing detailed information about specific issues. Topic reports in Appendices are a common and accepted feature of Environmental Statements.

C.10.4 The size of an Environmental Statement will depend on the range and complexity of issues and no standard size can be given. However, the Institute of Environmental Management and Assessment consider that Environmental Statements with less than 50 pages are usually regarded as inadequately detailed if more than one or two key topics are involved. Environmental Statements of more than 150 pages should only be necessary where the project has many environmental impacts and is of a large scale. Too much detail can distract and deter readers and make key issues difficult to appreciate.

C.10.5 Environmental Statements are increasingly available on CD or DVD and distribution in this form is compliant subject to the caveats explained in paragraphs D.1.8 and D.1.9 below.

Box **Key advice**

C.10.1 Environmental Statements should be compliant but proportional to the nature, scale and significance of effects; they should be rigorously edited, focused on key issues and should not contain so much detail that they distract readers from important environmental effects, or so lengthy and technical that they deter people from reading them.

41 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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Box C.10.2

**Good EIA practice**

## Presentation of Environmental Statements

Environmental Statements should be:

- adequate for the purpose but succinct and not over-detailed;
- clear and understandable;
- consistent in content and presentation across issues;
- well, but not lavishly, presented with the effective use of maps, diagrams, charts, drawings, illustrations, photographs, sketches, photo montages, tables and matrices to reduce text and explain complex issues and with summaries and key conclusions highlighted;
- scientifically sound, but with the minimum use of scientific and technical language, with glossaries and the use of common names for species and an annex for scientific nomenclature wherever possible;
- inclusive of source data to allow readers to interpret this for themselves but with detailed information in appendices or separate volumes to avoid cluttering the main text of the assessment;
- logical in its structure, presenting a clear description of the project, baseline information, prediction of effects and their significance, before mitigation measures, and then describing the mitigation measures and the residual effects of the project (including their significance) taking mitigation into account;
- free standing and not reliant on key information in another document especially if that document is not publicly available;
- based wherever possible on standard methods or standard forms of presentation that will be familiar at least to other specialists or professionals advising the Competent Authority.


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# Part D
# Consideration of the environmental statement
## (and the project consent application)


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# D.1 Submission of the environmental statement and project application

[See also Sections B.2 and E.2, Attachment A and Annexe 2]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | **D1 Submission of Environmental Statement and project application** |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

D.1.1 The Competent Authority has a statutory duty to consult the consultation bodies and to publicise every Environmental Statement. The consultation bodies should respond in every case. The form of their response is not prescribed in the Regulations, which refer only to them making "representations".

## The Competent Authority's Role

D.1.2 The Competent Authority is the body responsible for making the decision as to whether the project should be given consent, permission, a licence or other kind of authorisation. It may be the Scottish Ministers, a planning authority, SEPA or other statutory authorities such as the Forestry Commission.

D.1.3 With regard to their duties in respect of an Environmental Statement a Competent Authority must:

a) register and publicise the application and Environmental Statement as required by the Regulations and take account of any representations received from the public;
b) notify other bodies and consult in accordance with the Regulations and take account of any representations received;
c) not make a decision on the application for at least 4 weeks; and
d) not grant consent or other authorisation unless they have taken account of the environmental information;
e) if granting consent must record on the face of the permission or other authorisation that they have taken account of the environmental information;
f) notify their decision in accordance with the Regulations.

D.1.4 The Competent Authority is responsible for evaluating the Environmental Statement to ensure it addresses all of the relevant environmental issues and that the information is presented accurately, clearly and systematically. The Competent Authority should be prepared to challenge the findings of the Environmental Statement if it believes they are not adequately supported by scientific evidence. If it believes that key issues are not fully addressed, or not addressed at all, it must request further information. The authority has to ensure that it has in its possession all relevant environmental information about the likely significant environmental effects of the project before it makes its decision whether to grant permission. It is too late to address the issues after permission has been granted.

D.1.5 The Competent Authority may also:-

a) seek and take the advice or representations of bodies other than the statutory consultees;
b) require the proposer to submit further environmental information;
c) refuse the application;
d) grant consent subject to conditions or limitations over and above those set out in the Environmental Statement and the application.

D.1.6 The proposer must submit sufficient copies of the Environmental Statement to the Competent Authority to enable them to undertake the statutory consultations and, in addition, three copies for the Scottish Ministers, one of which will be deposited in the Scottish Government library where a full collection of all Environmental Statements submitted in Scotland is available to the public.


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D.1.7 Under the provisions of Article 21 and Sch 11 to The Town and Country Planning (Electronic Communications) (Scotland) Order 2004[42] (TCPECSO04), environmental statements and under the Development Management Regulations 2009[43], planning applications, may be distributed electronically and (with the exceptions noted at D.1.8 below) notices under the principal regulations[44] will be deemed to have been given on condition that the electronic communication (e mail and attachment(s)) of the document (statement or notice):

A] is capable of being accessed by the recipient; and
B] is legible in all material respects, that is, it is as readable as if it were available to the recipient in hard copy (see further definition at regulation 2A(5) of the principal regulations added by the TCPECSO04); and
C] sufficiently permanent that it can be used for subsequent reference.

D.1.8 Electronic communication cannot be used in the EIA process in respect of a proposer serving any notice under regulation 13 on those with an interest in neighbouring land, or in respect of any transboundary consultation with other EC Member States or in respect of any unauthorised development, which is going through the EIA process retrospectively.

D.1.9 Environmental Statements are increasingly available on CD or DVD and distribution in this form is compliant subject to the above caveats.

Consultees and the public need to be clear about the proposal applied for

D.1.10 In all cases, it is important that it is clear as to what the proposal is that is applied for. In granting consent, the Competent Authority will permit the proposal applied for as described in the application and the plans submitted with it (subject to any conditions or modifications); this may or may not be exactly the same as the proposal described and assessed in the environmental statement. It may be important to differentiate between information in the Environmental Statement about the proposal and information on the environmental impacts of the proposal. Where there is any discrepancy between information on the application plans and information in the environmental statement, it is the information in the plan that will normally prevail and which will be granted permission.

42 http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040332.htm
43 http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080432_en_1
44 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm


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# D.2 Consultation and publicity

[See also Sections C.4, D.1 and D.8 and Annexe 2]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | **D2 Consultation and publicity** |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

D.2.1 The Competent Authority has a statutory duty to consult the "consultation bodies", and to publicise every Environmental Statement.

D.2.2 The Regulations prescribe the procedures to be adopted by Competent Authorities in respect of consultations and publicity. Every Environmental Statement must be accessible to the public and must be publicised. Planning related Environmental Statements must be placed on deposit in the planning authority's office for at least 4 weeks, and must be advertised by notices in newspapers to enable the public to make representations about the project and its environmental effects and to comment on the Environmental Statement. Neighbouring landowners, occupiers and lessees must also be notified (the principal regulations[45] Regs 13 - 17 also Circular 8/2007 paragraphs 105 - 107. Guidance on this stage is also provided in PAN 58[46] at paragraphs 26 - 27).

D.2.3 In addition, to ensure compliance with the Directive, the Regulations require some Competent Authorities to consult certain bodies in respect of every Environmental Statement and other bodies in respect of particular types of Environmental Statement or where a project is in a particular type of location.

## The Statutory Consultees

D.2.4 The statutory consultees (where they are not the Competent Authority making the decision) include:

- The Planning Authority
- Adjacent planning authorities whose area may be affected
- Scottish Natural Heritage
- The Scottish Environment Protection Agency (SEPA)
- Scottish Water
- The Health and Safety Executive (but not for roads EIA);
- The Scottish Ministers (Historic Scotland)
- Other bodies designated by statutory provision as having specific environmental responsibilities and which the relevant planning authority or the Scottish Ministers, as the case may be, considers are likely to have an interest in the application and
- For marine fish farming any district salmon fishery board in whose area the proposed development is to be situated
  (regulations 2 and 28C of the principal regulations).

D.2.5 These Statutory Consultees have a duty to provide the proposer, on request, with any relevant information in their possession, which may assist in the preparation of the Environmental Statement, the principal regulations Reg 12, (see also C.5 above).

D.2.6 The Regulations also require that Consultees are informed of the submission of an Environmental Statement in conjunction with a development application, supplied with a copy of the Environmental Statement, and given an opportunity to comment on its contents. Such comments should be supplied to the Competent Authority to assist in the decision. The time allowed to respond is generally 28 days (4 weeks) from the date of notice (which is considered here to be the date of receipt by them as there can be no notice until the consultation has been received).

45 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm
46 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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D.2.7 There is no statutory provision for consultation with members of the general public during the preparation of an Environmental Statement. Developers may, however, legally prepare an Environmental Statement without informing the Competent Authority or statutory consultees beforehand. If this occurs, the consultees must be informed upon the Authority's receipt of the Environmental Statement. There are three obligations on proposers in this regard.

a] a notice should be placed in a local newspaper and in the Edinburgh Gazette by the planning authority advertising the deposit of the Environmental Statement and its availability and the proposer must pay the cost of this publicity;
b] a reasonable number of copies of the Environmental Statement should be made available to the public (the principal regulations Reg 17) but a charge may be made (the principal regulations Reg 18);
c] notice must be given to everyone with a legal interest in neighbouring land.

D.2.8 Electronic communication cannot be used for the notices served on those with a legal interest in neighbouring land, but the statement can be distributed electronically in accordance with the TCPECSR04 (see further D.1.8 - 9 above).

### Further information and evidence

D.2.9 See section D.6 below for the consultation arrangements in respect of 'further information' submitted after the original Environmental Statement. In essence, the additional material must be subject to the same consultation and publicity as the original Environmental Statement


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# D.3 Liaison with the competent authority and the developer

[See also, Sections C.4, D.1 and D.8 and Annexe 2]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | **D3 Liaison with the Competent Authority and the Proposer** |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

D.3.1 The Competent Authority has a statutory duty to consult the consultation bodies, and to publicise every Environmental Statement.

D.3.2 Consultees should maintain such liaison with the Competent Authority as may be necessary in the circumstances of each case. Sometimes it will be sufficient to respond to the application and Environmental Statement in writing in one step. Often, however, there will be advantages in a dialogue between consultees and the Competent Authority and often the proposer too. EIA, at its best, is an interactive process with each of the main parties informing and influencing the others.

Box D.3.1 **Liaison**

**Key advice**

Dialogue and liaison between consultees, the Competent Authority and the proposer will generally improve understanding of the project, the environmental issues, the effects of the project and the views of the consultees. It will usually increase the effectiveness of the EIA process and the influence of consultees on the decision.

Correspondence between the proposer and consultees should normally be copied to the Competent Authority


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# D.4 Wider consultation and dissemination

[See also Sections B.1, D.1, D.2, and D.3 and Annexe 2]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | **D4 Wider Consultation and dissemination** |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

D.4.1 The Competent Authority has a statutory duty to consult the consultation bodies, and to publicise every Environmental Statement. Guidance on this stage is also provided in PAN 58[47] at paragraphs 26 - 27.

## Wider Consultation

D.4.2 It is a matter for the Competent Authority to decide who should be consulted beyond the statutory consultees. However, it is open to consultees to suggest or recommend that other bodies should also be notified or consulted. This is particularly important where other bodies are known to hold important and relevant information and/or expertise.

D.4.3 Whilst it may be convenient to share copies of the application and Environmental Statement, copying Environmental Statements may be restricted by copyright; do not copy without the permission of the authors or proposer. Many consultants or proposers will supply further copies, either free or at a reasonable cost or other bodies could go to the locations where the Statement is lodged. Environmental Statements are increasingly available on CD or DVD and distribution in this form is compliant subject to the caveats in D.1.8 above.

D.4.4 Where a consultee has involved other bodies their comments should be submitted separately. Even if the Competent Authority declined to consult them directly, the other bodies have a right to submit representations to the Competent Authority direct. Their representations must be taken into account, as environmental information in the meaning of the Regulations.

47 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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# D.5 Transboundary environmental effects

[See also Sections D.1, D.2, D.3 and D.4 and Annexe 2]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | **D5 Transboundary environmental effects** |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

D.5.1 Guidance on the Government's procedures for transboundary EIA are given in paragraphs 124 - 126 of Circular 8/2007[48] and statutory requirements are in Regs 40 - 41 the principal regulations[49].

D.5.2 Electronic communication cannot be used for transboundary consultations see further D.1.8 above.

D.5.3 Where a Competent Authority considers that there may be transboundary effects arising from a project for which they are the deciding authority it must notify the Scottish Government forthwith, who will then take any action necessary to undertake transboundary consultations with another Member State. Similarly, in the event that the Government receives a consultation from another Member State about a project that may affect Scotland, it will consult the Competent Authorities and consultation bodies affected.

48 http://www.scotland.gov.uk/Publications/2007/11/30082353/14
49 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm


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# D.6 Requesting further information or evidence

[See also Figure 3, Sections C.3, C.4, D.7 and D.8, Appendices 1 – 6, Attachment A and Annexe 2]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | **D6 Requesting more information or evidence** |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

D.6.1 The Competent Authority has the statutory power to require certain additional information to be submitted by the proposer under the provisions of each of the EIA regulations, for example, Reg 19 of the principal regulations[50], see further Circular 8/2007[51] at paragraphs 119 - 123. Guidance on this stage is also provided in PAN 58[52] at paragraphs 91 - 92).

## Requiring Further Information

D.6.2 If important information, which could affect the outcome of the application, is absent or inadequate consultees should inform the Competent Authority as soon as possible. They should ask the Competent Authority to require the applicant to submit the information, and ask the authority not to determine the application until all of the necessary environmental information is available. Submission of the information may mean that environmental impacts of the proposal need to be re-assessed.

D.6.3 It is important to obtain any further information via the Competent Authority; but, in exceptional circumstances, for example where that authority is slow or reluctant to request the information, consultees may approach the proposer directly. However, in such cases it is vital that the information is submitted to the Competent Authority, not just the consultee, in order that it can be publicised in the same way that the original Statement was publicised. Consultees should act expeditiously in requesting further information so that the decision making process is not unnecessarily impeded. Requests should normally be made during the routine consultation period, but a Competent Authority can ask for further information at any time before deciding the application.

D.6.4 A consultee's advice is required primarily on whether the project should be consented or authorised and, if so, on what terms and conditions and if not, what the grounds of refusal should be. A consultee should not risk its views being too late to influence the decision merely because they are awaiting a response to a request for more information.

Box D.6.1 **Key advice**

### Requests for Further Information

If a consultee seeks more information this should generally be through the Competent Authority but, in exceptional circumstances, for example where that authority is slow or reluctant to request the information, the consultee may approach the proposer directly; however, in such cases it is vital that the information is submitted to the Competent Authority, not just the consultee, in order that it can be publicised.

Information should only be requested when it is essential, not merely desirable, to the decision on the project, or where it would influence conditions that may be imposed, or where it could influence a consultee's or a Competent Authority's views in a substantive way.

Requests for additional information should have regard to the feasibility and practicality of obtaining it and the timescale and cost.

- Requests should be reasonable.
- They should normally be made via the Competent Authority.
- They should be made promptly and in one step if possible.

D.6.5 It is important to bear in mind that the costs and delays involved in obtaining and submitting additional information can be considerable. EIA is not an opportunity to obtain information that is desirable for other purposes, although information obtained as a necessity in an EIA case may, of course, contribute to environmental knowledge generally.

50 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm
51 http://www.scotland.gov.uk/Publications/2007/11/30082353/14
52 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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D.6.6 Repeated requests for more and more information can be very frustrating to the proposer and Competent Authority and can indicate a lack of clarity of thought initially on the part of the body making repeated requests. However, it is reasonable to expect that, from time to time, new information may prompt an obvious need for yet further information.

### Requesting further information for Planning Applications

D.6.7 In respect of full planning applications, the planning authority has the power to require information to be submitted under two statutory provisions, namely:

a) Regulation 19 of the principal regulations, requiring submission of:
   i) any further environmental information to enable the application to be determined; or
   ii) information concerning any matter which is required to be dealt with in the Environmental Statement (i.e. matters in Schedule 4 the principal regulations); or
   iii) evidence to verify any information in the Environmental Statement; or
b) Regulation 24 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, SSI 2008/432.

D.6.8 When requesting planning authorities to require further information, reference can be made to the EIA regulations, the Development Management Procedure (Scotland) Regulations 2008, (the DMR), and paras 119 – 121 of Circular 8/2007[53].

D.6.9 A request for further information on the planning application should be made under regulation 24 of the DMR. A request for further work on the EIA should be made under the EIA regulations. A clear distinction should be made wherever possible.

D.6.10 If the applicant refuses to make available further information and / or the planning authority will not support a consultee's request, or the planning authority agrees with the applicant that further information is not necessary, the consultee will have to accept that the information will not be obtained. The result may be that they have no choice but to object to the application and, if necessary, ask that the case be referred to the Scottish Ministers for their own determination.

D.6.11 A consultee should always take care to identify what further information is required and should be able to justify this request clearly. Most planning authorities will use their powers to require further information to be submitted rather than merely going straight for a refusal of permission.

53 http://www.scotland.gov.uk/Publications/2007/11/30082353/14


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# D.7 Modifications to the project

[See also Sections C.9, D.6 and D.8, E.3 and E.4, Attachment A and Annexe 2]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | **D7 Modifications to the project** |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Modifications

D.7.1 The fact that a project is subject to the EIA process does not preclude modifications or amendments to it during the consideration of the application. These may be made during the EIA process, after the Environmental Statement has been submitted. Indeed, the iterative process of EIA is very likely to lead to consultees or the Competent Authority seeking changes to the proposals to avoid or further reduce environmental effects. Equally, the proposer may wish to make changes to help satisfy concerns expressed by the Competent Authority, consultees or the public.

D.7.2 Where they would meet a consultee's concerns, modifications should be encouraged both before and after the consultation response has been submitted (indeed, it may be the consultation responses that initiate the discussions about modifications).

D.7.3 It is open to a consultee, throughout the EIA process to negotiate modifications to a project via the Competent Authority. If necessary, the consultee can ask a proposer to modify the project if the Competent Authority will not require the proposer to do so (see D.6.5 above). However, if the proposer does agree to modify the project, it is vital that the modification is submitted formally to the Competent Authority. Modifications provided solely to the consultee, and not to the Competent Authority as an amendment to the application will not constitute any part of the application, nor will they constitute any part of the permission if granted.

Box D.7.1 **Key advice**

### Negotiating Changes

A consultee should consider whether to open negotiations, with the Competent Authority and / or the proposer, to affect changes to the proposals, if they conclude that:

a) more or different mitigation would be appropriate;
b) adverse effects could be avoided, cancelled, reduced or compensated, or
c) new benefits could be achieved.

D.7.4 Most Competent Authorities take a practical approach. They accept modifications and ensure that it is clear which scheme is consented, if a consent is issued (e.g. by imposing a condition referring to revised plans). From a procedural point of view, whether the modifications can be accepted as an amendment, without a new application being made, is a decision for the Competent Authority alone.

D.7.5 The key questions will be:

(a) whether the modifications are so extensive as to amount to a different project proposal - in which case a new application should be made; or
(b) whether the modifications are significant but not extensive - in which case a new application is generally not required but the Competent Authority should re-consult and re-notify and re-publicise the proposal; or
(c) whether the modifications are not so significant as to merit re-consultation and re-publicising generally, but may be appropriate for selected consultees to comment or whether no consultees need comment.

D.7.6 Any substantive amendments or additions to the Environmental Statement, whether requested by the Competent Authority or submitted voluntarily by the proposer, must be publicised and consulted on in a similar way as the original statement. Regulation 19 of the principal regulations refers.


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# D.8 Further information and supplementary environmental statements

[See also Sections B.4, D.1, D.6, D.7 and E.4, Attachment A and Annexe 2]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | **D8 Further Information and Supplementary Environmental Statements** |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

D.8.1 A Competent Authority has the statutory powers to require further environmental information to be submitted, for example in regulation 19 of the principal regulations[54]. This may be in the form of a Revised or Supplementary Environmental Statement or otherwise. However, it should be noted that submission of documents called Supplementary or Revised Environmental Statements is a convention, which often occurs in practice, but is not a statutory process or term. The principal regulations only refer to "further information" being required and submitted or to "any other information" which is submitted voluntarily by the proposer. See the definition of "any other information" at regulation 2(1) of the principal regulations.

D.8.2 Where the Competent Authority has decided to accept a modification it will need to consider whether a new or revised or supplementary Environmental Statement is necessary. Essentially the question to be asked will be "is the project still the project that was assessed in the original Environmental Statement or a different project in ways that mean the effects of the project have not been adequately assessed?" The legal cases referred to in Annexe 7 will be relevant here.

D.8.3 The key point is that the final decision on the application must take account of the environmental information for that project, as it would be consented. It follows that it would not be appropriate to consider environmental information about another form of the project.

## Supplementary and Revised Environmental Statements

D.8.4 A supplementary Environmental Statement is submitted where the original Environmental Statement was incomplete or further work on environmental effects has been undertaken, (whether or not the project has been modified since the original application and Environmental Statement were submitted). A supplementary Environmental Statement may be submitted, to add to the original, to ensure that all of the relevant environmental information is considered by the Competent Authority. The supplementary Environmental Statement may include a revision of the whole or part of the original document or additions that are needed to cover the further information.

D.8.5 Whatever the reason for the new or revised or supplementary Environmental Statement, the Competent Authority will subject it to publicity and consultation in the same way as the original Environmental Statement, for example, see regulation 19 of the principal regulations and Circular 8/2007[55] at paragraphs 119 - 121). Even if the further information is submitted voluntarily the Competent Authority must follow the publicity and consultation requirements where the information is of a substantive nature. If further or additional environmental information is submitted as part of an appeal procedure, it will need to be publicised and consultees notified, so that their advice can be submitted to the Reporter before a decision is made or before an Inquiry opens.

D.8.6 Revised Environmental Statements may be submitted where the original needs extensive or partial revision. They are treated as further environmental information under the regulations, in the same way as supplementary Environmental Statements.

54 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm
55 http://www.scotland.gov.uk/Publications/2007/11/30082353/14


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## Deciding about Submissions

D.8.7 Deciding the extent to which environmental information should be re-submitted as a result of modifications to the project is sometimes difficult to ascertain. There are no statutory provisions for procedures and a Competent Authority may need help from the consultees in deciding whether:

a) the project is so extensively different that a new application and new Environmental Statement is required; or
b) the project is significantly different and the Environmental Statement should be revised (with consultation on the revision) or added to by a supplementary Environmental Statement (with consultation following); or
c) the project and its environmental effects are not so significantly different as to invalidate the original Environmental Statement and consultation and publicity responses about the original documentation will remain valid.

D.8.8 Like the decision on whether to require an Environmental Statement in the first instance, the decision as to whether a new or supplementary or revised Environmental Statement is required, and the procedures for dealing with the submission, consultation, publicity etc, are all a matter for the Competent Authority.

Box **Key advice**

D.8.1 How a Competent Authority deals with revisions or supplementary information is a matter for the Competent Authority. However, it will need to comply with the regulations in respect of publicity and consultation in respect of all further information or any other information submitted, whether it is submitted as a supplementary or revised Environmental Statement or in any other form.


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# D.9 Reviewing the environmental statement

[See also Sections D.10, E.1, E.2, E.3 and E.4, Appendices 1 – 6, Attachment A and Annexe 2]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | **D9 Reviewing the Environmental Statement** |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

D.9.1 The Competent Authority has a statutory duty to consider the environmental information before granting consent to any project subject to the EIA process.

D.9.2 PAN 58[56] provides useful guidance on this stage, paragraphs 80 - 90 discuss the process of evaluation of the Environmental Statement and its review. PAN 58 provides a checklist of "quality indicators" and 5 headings under which a Statement may be reviewed:

a] elements of the project
b] policy framework
c] environmental effects
d] mitigating measures
e] risks and hazardous development.

## Reviewing Environmental Statements

D.9.3 In addition to the advice in Scottish Government guidance, the Circular and PAN 58, this Handbook includes Attachment A which is a review package for the scoping and reviewing of an Environmental Statement. These are intended to be helpful working tools for adaptation by users to meet particular circumstances. They will hopefully assist in a more systematic and logical approach to these stages for EIA. They are not intended either to replace any existing formal review procedures undertaken by Competent Authorities or consultees, or to establish inflexible or standardised approaches to good practice. Users are positively encouraged to extend, reduce or otherwise adapt the frameworks suggested to suit particular needs.

D.9.4 The guidance published by the EC[57] may also be helpful during the review of an Environmental Statement.

56 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58
57 http://www.ess.co.at/AIR-EIA/DOCS/revch-en.htm


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# D.10 Formulating a consultation response

[See also Sections C.9, D.9, E.1, E.2, E.3 and E.4, Appendices 1 – 6, Attachment A and Annexe 2]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | **D10 Formulating a Consultation Response** |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
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| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Consultee's Role

D.10.1 Consultees will review the Environmental Statement and comment on the application for the proposal. Consultees may assist the Competent Authority and advise on the adequacy and conclusions of the environmental information.

## Statutory Provisions and Government Guidance

D.10.2 The Competent Authority has a statutory duty to consider the environmental information before granting consent to any project subject to the EIA process (e.g. Reg 3 the principal regulations[58]). Consultees should also provide advice to the Competent Authority on matters within their remit, where advice is requested. A consultee's response is a part of the environmental information that the Competent Authority must consider (e.g. Reg 2 the principal regulations).

## The Consultation Response

D.10.3 Whilst the consultee's comments on the Environmental Statement and the letter making representations about the project itself are separate things, the representations about the acceptability of the project will clearly be informed and supplemented by the information in and comments on the Statement. Reference is made to section C.9 above, relating to requests for mitigation, even if the project, in principle, is acceptable.

Box D.10.1 **Key information**

### The Environmental Information

It should be stressed that the environmental information is not just the Environmental Statement submitted by the proposer, but also any additional information submitted by the proposer, the comments of the statutory consultees and the public when received by the Competent Authority.

D.10.4 Therefore, the comments of a consultee should cover matters which it considers important which have been omitted from the Environmental Statement, as well as those which have been covered by the document. All of this information must be considered by the Competent Authority, and should be material to their decision. Indeed, research (12) and (19) found that responses by consultees were usually given more weight in the Competent Authority's decision than the Environmental Statement on which they were based.

D.10.5 The consultee should provide its own evaluation of the importance of impacts. This should address whether the affected resource is of international, national, regional or local importance, and the degree to which the impact will affect the resource.

58 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm


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Box D.10.1 **Representations**

**Key advice**

Comments should cover the following points:

- the accuracy of the Environmental Statement (especially baseline information and the prediction of impacts);
- the coverage of the Environmental Statement - whether there are important omissions, and whether the emphasis on the different impacts is appropriate;
- with respect to omissions of matters which the consultee considers to be important: the issues involved and further work required to address them;
- the level of confidence that the consultee has in the findings (including the degree of uncertainty);
- whether the consultee agrees with the evaluation of significance of the impacts identified;
- whether the mitigating or compensatory measures are satisfactory or not; and
- the adequacy of proposals in the Environmental Statement for monitoring impacts and responding to them.

In cases where the Environmental Statement is of a particularly poor standard, it may be appropriate for the consultee to make only a general, not a detailed response.

D.10.6 It should be noted that the comments on the contents of an Environmental Statement are, technically speaking, distinct from the consultee's formal response to the application for development consent. The consultee's comments on the Environmental Statement are considered to be environmental information which inform the authority in its decision, whereas the response to the application is the consultee's view as to the best course of action available to the authority and the extent to which this view is, or is not, supported by the Environmental Statement.

D.10.7 Thus, the consultee's comments on an Environmental Statement might be to the effect that the Environmental Statement accurately describes the impacts of a proposal, that the consultee agrees with the Environmental Statement that these impacts are significant and that the mitigation measures proposed in the Environmental Statement would not adequately address these impacts, although a modification of them would do so. The consultee's response to the application would therefore be that it advises against granting consent to the proposal because of the significant natural heritage impacts detailed in the Environmental Statement, but would be minded to lift this objection if the suggested modified mitigation measures were incorporated into the conditions for the consent.

Box D.10.2 **Response to Consultations: The Project and the Environmental Statement**

**Key advice**

It is advisable to distinguish clearly between the two parts of a consultee's response to an application, by stating the formal response to the application in a covering letter, and appending comments on the Environmental Statement in an annex.


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# D.11 Planning permission in principle and approval of matters specified in conditions

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | **D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions** |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
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| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Introduction

D.11.1 This section draws together commentary and advice about how the former outline planning applications and approval of reserved matters were considered to be 'multi-stage consents' and thus EIA procedures could apply at any stage if necessary. The same principles apply to applications for planning permission in principle introduced from August 2009, and their subsequent applications for approval, consent or agreement.[59] Further relevant advice is found in sections B.4, C.4 and D.6 above.

## Applying the EIA Regulations to Applications for Permission in Principle

D.11.2 Where it applies, the Directive requires EIA to be carried out prior to the grant of "development consent". Development consent is defined as "the decision of the competent authority or authorities which entitled the proposer to proceed with the development". Under the UK planning system, it is the planning permission that usually enables the applicant to proceed with the development, but in the case of outline permissions and planning permissions in principle, development cannot begin until further approvals are obtained, so making the process a multi-stage consent. Consequently, the courts have ruled, as discussed below, that EIA can apply to the applications for the approval of reserved matters following the grant of outline planning permission, and by implication in the future, to approvals of matters specified in conditions.

D.11.3 In the first place, the planning permission and the conditions attached to it must be designed to prevent the development from taking a form - and having effects - different from what was considered during EIA. This was confirmed in the case of R V SSTLR ex parte Diane Barker (2001).

D.11.4 The cases of R v Rochdale MBC ex parte Tew (1999) and R v Rochdale MBC ex parte Milne (2000) set out the approach that planning authorities need to take when considering EIA in the context of an application for outline planning permission if they are to comply with the Directive and the Regulations. Both cases dealt with a legal challenge to a decision of the authority to grant outline planning permission for a business park. In both cases an Environmental Statement was provided. In ex parte Tew the Court upheld a challenge to the decision and quashed the planning permission. In ex parte Milne, the Court rejected the challenge and upheld the authority's decision to grant planning permission.

D.11.5 In ex parte Tew, the authority authorised a scheme based on an illustrative master plan showing how the development might be developed, but with all details left to reserved matters. The Environmental Statement assessed the likely environmental effects of the scheme by reference to the illustrative master plan. However, there was no requirement for the scheme to be developed in accordance with the master plan and in fact a very different scheme could have been built, the environmental effects of which would not have been properly assessed. The Court held that description of the scheme was not sufficient to enable the main effects of the scheme to be properly assessed, in breach of Schedule 4 of the Regulations.

D.11.6 In ex parte Milne, the Environmental Statement was more detailed; a Schedule of Development set out the details of the buildings and likely environmental effects, and the master plan was no longer merely illustrative.

D.11.7 Conditions were attached to the permission "to tie the outline permission for the business park to the documents which comprise the application". The outline permission was restricted so that the development that could take place would have to be within the parameters of the matters assessed in the Environmental Statement. Reserved matters would be restricted to matters that had previously been assessed in the Environmental Statement. Any application for approval of reserved matters that went beyond the parameters of the Environmental Statement would be unlawful, as the possible environmental effects would not have been assessed prior to approval.

59 http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080432_en_1


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D.11.8 The Judge emphasised that the Directive and Regulations required the permission to be granted in the full knowledge of the likely significant effects on the environment. This did not mean that developers would have no flexibility in developing a scheme. But such flexibility would have to be properly assessed and taken into account prior to granting outline planning permission (now permission in principle).

D.11.9 He also commented that the Environmental Statement need not contain information about every single environmental effect. The Directive refers only to those that are likely and significant. To ensure it complied with the Directive the authority would have to ensure that these were identified and assessed before it could grant planning permission.

D.11.10 The Court of Appeal in ex parte Diane Barker (2001) confirmed this approach and there are some general conclusions that can be drawn about applications for planning permission in principle:

a] An application for a "bare" permission in principle, with all matters specified in conditions for later approval, consent or agreement is extremely unlikely to comply with the requirement of the Regulations;
b] When granting permission in principle, the permission must be "tied" to the environmental information provided in the Environmental Statement, and considered and assessed by the authority prior to permission being granted. This can usually be done by conditions although it would also be possible to achieve this by a planning agreement (under section 75 of the Town and Country Planning (Scotland) Act 1997).
c] An example of a condition was referred to in ex parte Milne (2000). "The development on this site shall be carried out in substantial accordance with the layout included within the Development Framework document submitted as part of the application and shown on (a) drawing entitled 'Master Plan with Building Layouts'" The reason for this condition was given as "The layout of the proposed Business Park is the subject of an Environmental Impact Assessment and any material alteration to the layout may have an impact which has not been assessed by that process." (see paras 28 and 131 of the judgment);
d] Developers are not precluded from having a degree of flexibility in how a scheme may be developed. But each option will need to have been properly assessed and be within the remit of the permission in principle;
e] Development carried out pursuant to a subsequent approval, consent or agreement for a matter that does not fall within the remit of the permission in principle will be unlawful, unless the application for approval, consent or agreement under the condition was itself subject to EIA.


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D.11.11 Circular 8/2007[60], paragraph 136 provides the following advice on outline applications:

"Where EIA is required for a planning application made in outline, the requirements of the Regulations must be fully met at the outline stage. The position following the ruling of the European Court in the case (Commission v UK C-508/03) has not changed in this respect. The ruling held that outline planning permission (OPP) and the decision that subsequently gives approval of reserved matters must now be considered to constitute a multi-stage development consent within the meaning of the EIA Directive. Consideration must therefore be given for the need for EIA before determining a planning application for approval of reserved matters. However, if sufficient information is given with the application for OPP, it ought to be possible for the authority to determine whether the EIA obtained at that stage will take account of all potential environmental effects likely to follow as consideration of an application proceeds through the multi-stage process. Furthermore, if when granting OPP the authority ensures permission is conditioned by reference to the development parameters considered in the ES, it will normally be possible for an authority to treat the EIA at the outline stage as sufficient for the purposes of granting a multi-stage consent. In this way authorities can seek to minimise the risk that new environmental information comes to light at reserved matters stage which, had it been known about at the outline stage, would have resulted in the permission being refused or which requires additional mitigation measures to be imposed."

### Requesting further information for Applications for Permission in Principle

D.11.12 When any planning application is made for permission in principle, the planning authority will need to satisfy themselves that they have sufficient information available on the environmental effects of the proposal to enable them to determine whether or not planning permission should be granted in principle. If the information available in the Environmental Statement at this stage is insufficient to determine whether the proposal is acceptable in principle, the planning authority should require such information to be submitted, as it is reasonably necessary to assess the likely environmental effects of the proposal, or they should refuse planning permission, possibly with an indication that a detailed application would be considered if it is supported by an Environmental Statement.

D.11.13 In addition to the powers, described in section D.6 above,

a) under regulation 19 of the principal regulations[61], to require further environmental information or evidence to support the Environmental Statement, and
b) under regulation 24 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 requiring any further information in order to enable them to deal with the application,

D.11.14 The nature of the further information that may be required is dependent on the nature of the proposal and the nature of the environmental sensitivities of the site. A proposal on or near a bog or mire, for instance, may require details of access and road drainage so that their hydrological effects can be assessed. Where there are landscape and visual sensitivities, the siting, mass, and height of the main components of the proposal, and possibly ancillary development such as roads, car parks, etc., will be necessary. Each proposal, however, is unique and will have to be considered carefully.

D.11.15 Circular 8/2007 provides important advice in respect of the treatment of the former outline planning applications and their subsequent reserved matters in paragraphs 137 – 142, which are not reiterated here, but may equally apply to applications for permission in principle. It relates to the need to supersede earlier screening opinions, advice on the submission of revised and updated Environmental Statements, and on revisions to mitigation measures.

60 http://www.scotland.gov.uk/Publications/2007/11/30082353/14
61 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm


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# Part E
# The decision making stage


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# E.1 Adopting the precautionary principle

[See also Sections D.6 - D.10, E.2, E.3 and E.4, Attachment A and Annexe 1]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | **E1 Adopting the precautionary principle** |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## The Precautionary Principle

E.1.1 This principle is particularly relevant to the EIA process. Generally, decisions should be based on the best scientific and other information available.

E.1.2 The EIA should ensure that this is available to the decision maker, at the right time. The environmental information should make clear, or as clear as possible, the environmental effects and consequences of the project. However, there are bound to be limitations in many cases where prediction is uncertain, e.g. based largely on professional judgement using assumptions that are themselves uncertain. Comparison with the effects of other projects elsewhere is often not available and sometimes it is not practical or feasible to obtain all the information desirable, e.g. where considerable costs or long time scales are involved.

E.1.3 The principle was described in the Rio Declaration 1992 which set out the "precautionary approach":

"Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

E.1.4 This wording indicated that the principle can be applied to all forms of environmental damage that might arise and should not be confined only to the actions of government.

E.1.5 Importantly, the precautionary principle is addressed in some detail in PAN 58[62], where paragraph 94 defines it as:

"The precautionary principle - the principle that authorities should act prudently to avoid the possibility of irreversible environmental damage in situations where the scientific evidence is inconclusive but the potential damage could be significant" It also states that "It applies particularly where there are good grounds for judging either that action taken promptly at comparatively low cost may avoid more costly damage later, or that irreversible effects may follow if action is delayed."

E.1.6 Paragraph 97 of the draft consolidated SPP, 2009[63], states: "planning authorities should apply the precautionary principle where the impacts of a proposed development on nationally or internationally significant landscape or natural heritage resources are uncertain but there are good scientific grounds for believing that significant irreversible damage could occur. Where the precautionary approach is justified, modifications to the proposal which would eliminate the risk of irreversible damage should be considered"

E.1.7 In cases where a designated European site may be affected, Regulation 48 of the Conservation (Natural Habitats &c) Regulations 1994 (as amended), embodies the precautionary principle in the requirement to grant consent (subject to the derogations in Regulation 49) only if the Competent Authority has ascertained that the project will not adversely affect the integrity of the site. There is no requirement to demonstrate that there would be harm, the duty is to establish that there would be no harm to the integrity of the site.

Box E.1.1 **Key advice**

### The Precautionary Approach

Competent Authorities should adopt the precautionary approach in considering environmental information and when deciding whether to give consent to projects, in accordance with Government policy.

E.1.8 The SNH approach and recommendations as to the application of the Precautionary Principle are set out in "Applying the Precautionary Principle to decisions on the natural heritage", 2001, SNH

62 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58
63 http://www.scotland.gov.uk/Publications/2009/04/01132105/2


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# E.2 Relationship of EIA with the development plan and other consent procedures

[See Also Sections D.6 - D.10, E.1, E.3 and E.4 and Attachment A]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | **E2 Relationship of EIA with the Development Plan and other Consent Procedures** |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Role of EIA

E.2.1 It is important to bear in mind that the EIA process is only one part of the decision making procedure and that the Environmental Statement is only one part of the EIA process. Guidance on this issue is also provided in PAN 58[64] at paragraphs 10 - 15.

## Planning Related Decisions

E.2.2 For example, when dealing with a planning application a planning authority must decide the application in accordance with the development plan unless material considerations indicate otherwise (see TCPSA 1997 S.25). The environmental information is a material consideration. The Environmental Statement is an important part of the environmental information. There is no requirement for the planning authority or Reporter or Scottish Ministers to agree with or to adopt or reject the conclusions of an Environmental Statement. They need to take it into account, and, if granting permission, to state in their decision that they have taken the environmental information into account (e.g. Reg 3 the principal regulations[65]).

E.2.3 Environmental Statements relating to development requiring planning permission should directly relate the environmental effects of the project to the relevant development plan policies: all of them, not just a favourable selection. It should be clear from the Environmental Statement whether the development is in accordance with the development plan. Whether or not it is in accordance with the development plan, it is open to the proposer to state in the Environmental Statement or in his submissions explaining the proposals to the planning authority, what other material considerations may be relevant to the planning decision.

E.2.4 Consequently, an Environmental Statement may fairly conclude that the project is not in accordance with some development plan policies because of its adverse environmental effects but, nevertheless, the Environmental Statement may set out material considerations which could outweigh the policies - such as economic benefits or benefits to other aspects of the environment that may be enhanced rather than harmed.

## Other Decisions

E.2.5 These same principles apply to all Competent Authorities and all decision making procedures. EIA is intended to inform the decision not to direct what decision should be made.

## Assessment under the Habitats Directive and Regulations – Natura 2000 sites

E.2.6 If a project would be likely to have a significant effect on a Natura 2000 site in Great Britain, and it is not necessary for the management of that site, then the decision maker must follow the procedures in Regulations 48 and 49 of the Habitats Regulations 1994 http://www.opsi.gov.uk/si/si1994/uksi_19942716_en_1.htm as amended see para B.1.13 above and carry out an appropriate assessment.

E.2.7 The appropriate assessment is not the same as an EIA under the provisions of the EIA Regulations. Compliance with the Directives 85/337/EEC and 97/11/EC is achieved through the EIA process which should run alongside and concurrently with the "appropriate assessment" under the Habitats Regulations in compliance with Directive 92/43/EEC. Neither procedure overrides the other; both must be followed where both sets of Regulations apply. In many cases, plans or projects that will be subject to an appropriate assessment will need an Environmental Statement to be prepared under the EIA Regulations.

64 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58
65 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm


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E.2.8 The Environmental Statement will address all likely significant environmental effects. The appropriate assessment will only address the effects of the proposal on the internationally important habitats and/or species for which the site is or will be designated or classified. It will be appropriate to use the information assembled for the Environmental Statement when carrying out the appropriate assessment under the Habitats Regulations (Scottish Executive Circular June 2000[66] replacing Circular 6/1995 The Conservation (Natural Habitats Etc.) Regulations 1994, Annex D Appendix A paragraph 3 (Annexe 5 reference 11)). In view of this it would be helpful if relevant Environmental Statements clearly identified, under a specific heading, the likely significant effects on the internationally important habitats and/or species.

E.2.9 It should also be noted that, in Natura 2000 site casework, the consideration as to whether the proposal would be likely to have a significant effect on the site is to be made in view of the site's conservation objectives. These should be provided to the proposer by SNH at the earliest opportunity in relevant cases. The proposer should seek guidance on the assessment from SNH. If the information for the appropriate assessment under Regulation 48 is to be included in the Environmental Statement, it should include an assessment of each of the site's (international) interest features in view of the conservation objectives for those interests.

E.2.10 The other main implication of the Habitats Regulations is that there is a greater need for the proposer to consider and set out alternative solutions, showing why there are none or why they must be rejected, so that the Competent Authority may determine whether there are alternative solutions under the procedures in Regulation 49 of the Habitats Regulations, should it be necessary to apply that Regulation.

## Influence of the EIA Process

E.2.11 Research (reference 12) has shown that with increasing experience of EIA, Environmental Statements have become more open and well balanced and therefore a more credible part of the decision making process. Environmental Statements completed since 1992, by experienced assessors, demonstrated a more objective, impartial and rigorous approach.

E.2.12 The EIA process can be extremely influential. Even where decision making authorities are inexperienced in the EIA process, or they have no expertise in some aspects of the assessment, they generally treat the process seriously and seek expert advice and guidance where necessary. However, this is sometimes constrained by a lack of resources to commission external help.

Box E.2 **Consultation Responses** — **Key advice**

It is vital that consultees concentrate on making representations about the project - clearly setting out their opinion as to the effects on the environment and the significance of the effects.

These representations can, and should, draw upon the information in the Environmental Statement and indicate whether the conclusions in the Environmental Statement are a sound basis for informing the Competent Authority as to the effects on the environment.

The response should not, however, focus entirely on the strengths or weaknesses of the Environmental Statement.

Detailed comments on the Environmental Statement may assist the Competent Authority and may be important, but the consultee's response should clearly distinguish between the formal response to the application, which should be in the covering letter, and the comments on the Environmental Statement, which might usefully be included in an Annex to the consultee's main response.

66 http://www.scotland.gov.uk/library3/nature/habd-00.asp


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E.2.13 Expert advice and guidance usually comes from statutory consultees or other well-informed commentators. Generally, the comments of these bodies are considered carefully and weight is attached to Environmental Statements, which the consultees consider to be well prepared, balanced and competent. It follows that statements prepared in the erroneous belief that they can be used to conceal adverse impacts and promote alleged environmental enhancement are not given weight in the decision. Poorly balanced or ill-prepared statements can form an obstacle to the decision. They have led to skepticism, lack of credibility, delay and often to a refusal of the consent being sought.

E.2.14 Well balanced, thoroughly prepared, impartial, clear and comprehensive statements expedite the decision making process, reduce the need to apply precautionary restrictions and increase confidence that the project would be responsibly undertaken with a commitment to mitigation.

E.2.15 The influence of the consultees, both statutory and non-statutory, is vital to the process. Clearly specified and reasoned requests for scoping, survey information, analysis, prediction and mitigation are usually received positively by decision makers and proposers. As a result of consultation responses, Environmental Statements are frequently improved or supplemented, the effect of mitigating measures enhanced and projects modified.


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# E.3 Guaranteeing commitments and compliance

[See also Sections D.6 - D.10, E.1, E.2, and E.4 and Attachment A]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | **E3 Guaranteeing commitments and compliance** |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

E.3.1 The Competent Authority has statutory powers to impose conditions, restrictions or limitations on the project consent and / or to enter into legal agreements to guarantee compliance with the terms of the consent. Circular 8/2007 strongly endorses the approach in this section of the handbook at paragraphs 128 – 132; whilst PAN 58[67] gives guidance on the use of planning conditions and legal agreements at paragraphs 93 – 97, and guidance on monitoring for compliance at paragraphs 55 - 61.

## Conditions and other Limitations

E.3.2 The granting of consent for a project almost always relies on conditions that are intended to limit or restrict the proposal and on the implementation of the mitigating measures. Without the conditions and the mitigation the project would be environmentally unacceptable.

E.3.3 However, the Directive and the Regulations do not require the implementation of the mitigation measures specified in the Environmental Statement or elsewhere. The implementation and enforcement is left to the consenting procedures.

E.3.4 It is not sufficient, therefore, for an Environmental Statement merely to indicate what the mitigating measures would be. They must each be clearly identified (a statutory requirement of the Regulations, see Box B.6.2 above); and should be guaranteed in the event of the project proceeding. Neither is it likely to be sufficient for a condition on a consent which merely states that the proposal shall be "in accordance with the environmental statement", Circular 8/2007 at para 129 says this is likely to be too vague.

E.3.5 The Environmental Statement and/or the decision notice should expressly state how the various measures will be implemented. These may include, for example, requirements of conditions on planning permissions and licences or legally binding agreements.

E.3.6 Where there is need to impose a restriction on a development this can be done through the planning system either by the use of conditions or through a planning agreement under s75 of the Town and Country Planning (Scotland) Act 1997. Agreements under s75 may be registered with the Register of Sasines or the Land Registry, making them binding on successors in title. Conditions are also enforceable against subsequent landowners. Such agreements or conditions can be enforced by the planning authority and have a good record of compliance which provides confidence for the public and interested bodies.

E.3.7 Alternatively, Circular 8/2007[68] at paragraph 132 urges proposers to consider adopting environmental management systems such as the Eco Management and Audit Scheme (EMAS) to demonstrate implementation of mitigation measures and to monitor their effectiveness. However, the wording of this paragraph clearly indicates that the Scottish Government sees this as "In addition" to the conditions and agreements described above.

Box E.3 **Key advice**

### Conditions and Agreements

In order for mitigation measures proposed in the Environmental Statement to be binding, they must form part of the application, conditions of consent, or other legal agreement (e.g. Section 75 Planning Agreement) between the Competent Authority and the proposer.

Monitoring impacts should be covered by a Section 75 Agreement, or equivalent. Therefore, Competent Authorities and consultees should ensure that appropriate provisions are made in the consent.

67 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58
68 http://www.scotland.gov.uk/Publications/2007/11/30082353/14


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# E.4 The decision of the competent authority

[See also Figure 3, Sections D.6 - D.10, E.1, E.2 and E.3 and Attachment A]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | **E4 The Decision of the Competent Authority** |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

E.4.1 The Competent Authority must state in writing, when granting a consent to a project that was subject to EIA, that the environmental information has been taken into account. See, for example, the principal regulations[69] at regulation 3, and para 127 of Circular 8/2007[70]). Guidance on this stage is also provided in PAN 58[71] at paragraphs 93 - 97).

E.4.2 The Competent Authority must also notify the Scottish Ministers, the consultation bodies and the applicant of their decision, irrespective of whether they are granting or refusing the consent. They must also publicise their decision in the local press and indicate in the press notice where a copy of the decision making documents and the decision are available for public inspection, free of charge (Reg 21 the principal regulations and paragraphs 133 - 135 Circular 8/2007). However, this has been overlooked in the past and consultation bodies have not been notified of the decision. This could be because both para 128 of the former Circular 15/1999 and para 133 of Circular 8/2007 only refer to the requirement to notify the Scottish Ministers and the applicant and the public press notice; there is no reference to the consultation bodies. However, the provision of regulation 21(1)(a), that statutory consultees must be notified, is clear.

## The Decision

E.4.3 The Competent Authority will make its decision on whether to consent to the project. The Regulations require that the environmental information must be taken into account. There is no duty on the Competent Authority to agree with the conclusions of the Environmental Statement or to accept the advice or recommendations of the consultees or the public. The duty is limited to taking all of the information into account. It is, therefore, open to the Competent Authority to grant consent to an environmentally damaging project or to refuse consent for an environmentally beneficial or benign project.

E.4.4 The Competent Authority must state on the face of the consent that they have taken account of the environmental information, in accordance with the Regulations. They do not have to do this if they are refusing consent. Indeed, if refusing consent they do not have to take the environmental information into account, in order to comply with the Regulations, although they almost certainly will do so to give further and better reasons for refusing consent. The Competent Authority must notify the Scottish Ministers and the consultation bodies of their decision, whether or not they grant permission.

E.4.5 For planning applications, a copy of the decision, including any conditions imposed, must be kept with the planning register and along with such other documents as contain:

a] the main reasons and considerations on which the decision was based; and
b] where permission has been granted, a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the proposal.

Circular 8/2007 fairly indicates that in most cases a copy of the planning officer's report to the committee is likely to meet these requirements.

69 http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm
70 http://www.scotland.gov.uk/Publications/2007/11/30082353/14
71 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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# Part F
# Implementation and compliance


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# F.1 Implementation of mitigation and compensation measures

For each of the pre-construction, construction, operational, decommissioning and restoration stages

[See also Sections C.9, D.6, D.9, D.10, E.2, E.3, E.4, F.2 and F.3]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | **F1 Implementation of mitigation and compensation measures** |
| | F2 Monitoring |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

F.1.1 The proposer has a statutory duty to comply with the terms of the consent. The Competent Authority has statutory powers to enforce compliance. Guidance on this stage is also provided in PAN 58[72] at paragraphs 58 - 61

F.1.2 There is no duty on the Competent Authority to monitor compliance with conditions and the terms of the consent. Enforcement will often rely on interested parties such as statutory consultees or local residents drawing any non - compliances to the attention of the Competent Authority. Consultees may not be made aware of the commencement of the project. The extent of monitoring for compliance with terms and conditions, which consultees relied on in the decision to grant consent, needs to be judged on a case by case basis, depending on the issues involved, the resources required and available, and the resources of the Competent Authority and the proposer.

## Implementation

F.1.3 Many Environmental Statements will contain a project programme indicating the likely start and end dates of the main phases of the project, assuming consent is granted. However, these are often over optimistic as to the length of time it will take to obtain the consent. Such programmes may well be out of date by the time the consent is issued. Developers will usually be willing to advise consultees and the Competent Authority of any revisions to programmes, on request.

F.1.4 The degree of monitoring will vary according to the type of development and some phases may be more environmentally sensitive than others. Usually, the key phases will be site preparation and construction and, at a later date, decommissioning and / or restoration. Many schemes will include advance mitigation works, e.g. advanced planting for screening and these may need to be checked.

Box F.1.1 **Key advice**

### The Approach to Monitoring

It will need to be decided, on a case by case basis, which projects should be monitored for compliance, how such monitoring should be undertaken and by whom, and which of the counter-acting measures should be checked, at which stages of the proposal.

Consultees should work closely with the Competent Authorities to draw up appropriate conditions and agreements to ensure adequate monitoring (quarterly, annually, etc., as appropriate to the nature of the concern) and provision for counter-acting measures (which could include financial and other guarantees).

See also Sections E.2 - 3 above.

72 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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# F.2 Monitoring programmes

[See also Sections C.9, D.6, D.9, D.10, E.2, E.3, E.4, F.1 and F.3]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | **F2 Monitoring** |
| | F3 Review, reporting, reassessment and remedial measures |


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## Statutory Provisions and Government Guidance

F.2.1 Monitoring is a non-statutory procedure but may be required by conditions on a project consent, or by legal agreements (such as planning agreements under S.75 of the Town and Country Planning (Scotland) Act 1997), that would be legally enforceable by the Competent Authority. Guidance on this stage is also provided in PAN 58[73] at paragraphs 58 - 61.

## Monitoring

F.2.2 Implementation of mitigating measures may still not guarantee their success in reducing environmental effects. It is vital that someone monitors the effectiveness of mitigation to ensure that it meets the standards and achieves the objectives anticipated in the decision. Monitoring can improve the future mitigation of similar developments. It may also be necessary where no mitigation was proposed or required because the proposal was not expected to cause significant environmental change. The Directive and Regulations do not require monitoring procedures to be put in place, only mitigation measures.

F.2.3 Post-project monitoring and review are appropriate to planning and other legal agreements and should be clearly described and guaranteed in the EIA process. The Environmental Statement should contain a prescription for the implementation of mitigating measures, monitoring and review procedures with a clear commitment and readiness to accept conditions and legal agreements to ensure they are implemented at the right time and in appropriate ways.

F.2.4 Consultees may be able to make a valuable contribution to the design of monitoring, and will have the opportunity to comment on the adequacy of monitoring proposals set out in the Environmental Statement.

F.2.5 Monitoring may be delegated to a range of bodies, which commonly include the proposers or their consultants or university research teams. However, monitoring will not usually be feasible unless it is financed by the proposer.

F.2.6 Monitoring to verify the predictions of EIA has seldom been undertaken other than by Transport Scotland, though it may be possible to obtain data relevant to the topic where developments are situated in, or close to, sites where surveys are proceeding for other reasons.

F.2.7 The lack of such monitoring is common to EIA in all parts of the world, and has been identified as one of the primary reasons for the low scientific reliability of many EIAs.

Box F.2.1 **Key advice**

### Monitoring Programmes/Agreements

Consultees should assist and advise in drawing up the schedule and methodology for monitoring and where appropriate should agree to assess the results of monitoring and to advise the Competent Authority and proposer of these results.

Consultees should be consulted by the Competent Authority when it is considering whether to approve or amend mitigation schemes, wherever the effects on the natural heritage are potentially significant. It is for the Competent Authority to ensure (enforce) that these conditions, monitoring and mitigation, are met. If there is a timetable for receipt of details of monitoring and this is not met Consultees should alert the Competent Authority and press them to take action. Similarly, if there is a time-table for agreeing and implementing mitigation measures and this is not met, or consultees believe it is not being met, consultees should alert the authority or press them to take action.

73 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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# F.3 Review and reassessment and remedial programmes

[See also Sections C.9, D.6, D.9, D.10, E.2, E.3, E.4, F.1 and F.2]

**Stage and Step in the EIA Process**

| Stage | Step |
|---|---|
| **Stage 1: Before Submission of the Environmental Statement** | C1 Deciding whether EIA is required (screening) |
| | C2 Requiring submission of an Environmental Statement |
| | C3 Preliminary contacts and liaison |
| | C4 Scoping the Environmental Statement |
| | C5 Provision of Information |
| | C6 Describing baseline environmental information |
| | C7 Predicting environmental impacts |
| | C8 Assessing the significance of impacts |
| | C9 Mitigation measures and enhancement |
| | C10 Presenting environmental information in the Environmental Statement |
| **Stage 2: Submission of Environmental Statement and Consideration of Environmental Information** | D1 Submission of Environmental Statement and project application |
| | D2 Consultation and publicity |
| | D3 Liaison with the Competent Authority and the Proposer |
| | D4 Wider Consultation and dissemination |
| | D5 Transboundary environmental effects |
| | D6 Requesting more information or evidence |
| | D7 Modifications to the project |
| | D8 Further Information and Supplementary Environmental Statements |
| | D9 Reviewing the Environmental Statement |
| | D10 Formulating a Consultation Response |
| | D11 Planning Permission in Principle and Approval of Reserved Matters specified in Conditions |
| **Stage 3: Making the Decision** | E1 Adopting the precautionary principle |
| | E2 Relationship of EIA with the Development Plan and other Consent Procedures |
| | E3 Guaranteeing commitments and compliance |
| | E4 The Decision of the Competent Authority |
| **Stage 4: Implementation** [For each of the pre-construction, construction, operational, decommissioning and restoration stages] | F1 Implementation of mitigation and compensation measures |
| | F2 Monitoring |
| | **F3 Review, reporting, reassessment and remedial measures** |


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## Statutory Provisions and Government Guidance

F.3.1 Review, reassessment and remedial measures are non statutory procedures but may be required by conditions on a project consent, or by legal agreements (such as planning agreements under S.75 of the Town and Country Planning (Scotland) Act 1997), that would be legally enforceable by the Competent Authority. Guidance on this stage is also provided in PAN 58[74] at paragraphs 58 - 61.

## Review

F.3.2 Provision must be made at the decision making stage to ensure that changes or remedial (i.e. corrective) action can be implemented effectively and quickly if monitoring reveals problems. Procedures for monitoring and the review of mitigation after the project has commenced, and for as long as may be necessary, are therefore essential if monitoring is to have any real effect.

F.3.3 The key point about monitoring is that it should not be monitoring for its own sake. There may be occasions when monitoring simply to verify or validate the predictions in the Environmental Statement may be appropriate (to assist predictions in other, similar cases in the future) but usually monitoring will only be worthwhile if it is reinforced with effective review and remedial action mechanisms. These may include re-assessment of the project in the light of actual effects that occur, or may include observation and reporting on the nature and scale of effects and comparison with those predicted in the Environmental Statement.

F.3.4 Reviews may need to include consultation. Often this can be accommodated by an annual report (or some other appropriate time scale) being submitted to the Competent Authority and statutory consultees by the proposer's consultants or the monitoring team. These reports could be considered at an annual review meeting where the relevant parties decide the effectiveness of the mitigation.

F.3.5 Again, review is only worthwhile where there is a clear purpose to it. If there are no mechanisms whereby the proposer has agreed to adjust or otherwise change mitigation, in the light of the monitoring and review, then there is usually no point reviewing the monitoring.

Box F.3.1 **Guaranteeing Monitoring** — **Key information**

The decision of the Competent Authority in deciding to grant consent or authorisation for the project, or legally binding agreements drawn up at the time of the decision, should make clear what procedures will be put in place to review the monitoring and to change the mitigation if necessary.

They should indicate who will review the effects, who will report to whom, who is responsible for taking decisions, who will implement the changes to mitigation and other remedial works, and who will pay the costs of remedial work and corrective action. It is for the planning authority to determine whether a planning condition or a S.75 Agreement will be required.

74 http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58


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# Annexes


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# Annexe 1 Glossary

## Alternative solutions

These are alternative ways of achieving the objectives of a project. They may include:

- alternative locations that are suitable and available; or
- different approaches in terms of: design, manufacturing or other processes; the use of different forms of transport or energy; different sources for the supply of materials etc.

## Annex I Projects (Also referred to as Schedule 1 Projects)

See Schedule 1 Projects below.

## Annex II Projects (Also referred to as Schedule 2 Projects)

See Schedule 2 Projects below.

## Compensatory measures or 'compensation'

Measures designed to at least try to offset or compensate for residual adverse effects which cannot be avoided, cancelled or further reduced (see mitigation measures below).

## Competent Authority

This is the authority which determines the application for consent, permission, licence or other authorisation to proceed with a proposal. It is the authority that must consider the environmental information before granting any kind of authorisation. For example, for projects requiring planning permission this will usually be the Planning Authority, but in some cases may be the Scottish Ministers.

## Consultation bodies

Is any body specified in the relevant EIA Regulations which the Competent Authority must consult in respect of an Environmental Statement, and which also has a duty to provide information or advice during the EIA process. They are:

- The Planning Authority
- Adjacent planning authorities whose area may be affected
- Scottish Natural Heritage
- The Scottish Environment Protection Agency (SEPA)
- Scottish Water
- The Health and Safety Executive (but not for roads EIA);
- The Scottish Ministers (Historic Scotland)
- Other bodies designated by statutory provision as having specific environmental responsibilities and which the relevant planning authority or the Scottish Ministers, as the case may be, considers are likely to have an interest in the application and
- For marine fish farming any district salmon fishery board in whose area the proposed development is to be situated
- (regulation 2(1) of the principal regulations http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm).


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## Crown Land/The Crown

Is a generic term for land held by Her Majesty the Queen, as Monarch and certain other royal land and all Government held land, for example land held by the Ministry of Defence and land owned by the Scottish Ministers including prisons, Trunk Roads and Motorways.

## Do-nothing comparison

Or in some cases, such as road improvements, the "do-minimum" comparison, is a projection of the existing data to provide a baseline for comparison to show what changes, if any, would take place if the project did not go ahead, or what the conditions would be on the road, railways etc if the project was not undertaken.

## EEA State

A State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.

## EIA application

An application for planning permission for EIA development;

## EIA development

Development which is either-

a) Schedule 1 development; or
b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

## Enhancement / Net Benefit / New Benefit

In natural heritage terms, this is the genuine (as opposed to asserted) improvement of the natural heritage interest of a site or area, for example, because adverse effects are limited in scope and scale, and the project includes measures to improve the physical state or management of landscapes or habitats, or new landscape features or habitats, which are better than they are at present. There is, therefore, a net or new benefit to the natural heritage.

## Environmental Impact Assessment

Is the whole process of gathering environmental information; describing a development or other project; predicting and describing the environmental effects of the project; defining ways of avoiding, reducing or compensating for these effects; consulting the general public and specific bodies with responsibilities for the environment; taking all of this information into account before deciding whether to allow the project to proceed and ensuring that the measures prescribed to avoid, reduce or compensate for environmental effects are implemented.

## Environmental information

This is the information that must be taken into account by the decision maker (the Competent Authority) before granting any kind of authorisation in any case where the EIA process must be applied. It includes the environmental statement, including any further or any other information, any representations made by any body required by the Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the proposal.


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## Environmental statement

Is the report normally produced by, or on behalf of, and at the expense of, the proposer or project promoter which must be submitted with the application for whatever form of consent or other authorisation is required. It is only one component, albeit a very important one, of the environmental information that must be taken into account by the decision maker. The principal regulations define it as a statement-

a) that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the proposal and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
b) that includes at least the information referred to in Part II of Schedule 4.

## Exempt development

Means development in respect of which the Scottish Ministers have made a direction under regulation 4(4), in accordance with article 2(3) of the Directive.

## Iterative

(A process) repeated until the best solution has been found so, in the context of EIA, it can be understood as the process of assessment and reassessment until the best environmental fit is achieved.

## Matters Specified in Conditions

See Planning Permission in Principle below

## Mitigating measures or 'mitigation'

These are the measures taken to avoid, cancel or reduce adverse impacts of a project. They are:

- Avoidance measures
  Designed to avoid or eliminate any adverse impacts arising in the first place, including alternative or 'do nothing' options;
- Cancellation measures
  Designed to nullify or cancel out any adverse effects of a project before adverse effects are felt;
- Reduction measures
  Designed to minimise or at least reduce adverse impacts remaining after avoidance and cancellation measures have been applied to a project.

## Outline Planning Permission / (see also Planning Permission in Principle)

Prior to 2009, this was the procedure to establish whether a particular kind of development was acceptable in principle, before detailed plans were prepared. Outline planning applications were subject to EIA procedures. If outline planning permission was granted, the developer had three years in which to submit applications for the approval of 'reserved matters'. When all of these were approved by the Competent Authority development could begin. The European Court of Justice ruled that this was a 'multi-stage' consent process, and that EIA procedures could apply to the reserved matters applications, if EIA had not been applied, or not fully applied, at outline application stage, or if new issues arose as a result of consideration of the reserved matters.


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## Planning Permission in Principle

From 2009 applications for planning permission in principle replaced the outline planning permission procedures (see above). If Planning Permission in Principle is granted, the developer submits application(s) for approval, consent or agreement of 'matters specified in conditions' see further Regulations 10 - 12 (Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008). When all of these are approved development may begin. This procedure is also a multi-stage consent process in the same way that outline planning applications and reserved matters were (see above). EIA procedures may therefore apply to applications for approval of matters specified in conditions.

## Proposer

For the purposes of this Handbook, to help make the text more readable, all project proposers are referred to as 'proposers', whether or not their project constitutes development within the meaning of the Town and Country Planning (Scotland) Act 1997 and whether or not the project is for public service or infrastructure or for commercial purposes.

## Reserved Matters

See 'outline planning permission' above

## Revised Environmental Statement

Where a project has been modified since the original application and Environmental Statement was submitted, a revised Environmental Statement may be submitted, to amend the original, to ensure that the environmental information considered by the Competent Authority relates to the project as modified. The revised Environmental Statement may be a revision of the whole of the original document or revisions only of those parts of the original Environmental Statement that need to be changed as a result of the modifications.

## Schedule 1 Projects

These are projects which are listed in Annex I of the Directive, as revised, and Schedule 1 of the Regulations, as revised.

## Schedule 2 Projects

These are projects which are listed in Annex II of the Directive, as revised, and Schedule 2 of the Regulations, as revised.

## Schedule 1 application and Schedule 2 application

Mean an application for planning permission for Schedule 1 development and Schedule 2 development respectively.

## Schedule 1 development

Means development, other than exempt development, of a description mentioned in Schedule 1 of the EIA Regulations 1999


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## Schedule 2 development

Means development, other than exempt development, of a description mentioned in Column 1 of the table in Schedule 2 of the EIA Regulations 1999 where-

a) any part of that development is to be carried out in a sensitive area; or
b) any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development.

## Scoping

Is the procedure whereby the Competent Authority and the relevant statutory and other consultees are consulted at the outset, or very early in the EIA process, by the proposer to agree what effects are likely to be significant and should therefore be covered in the Environmental Statement, how they should be covered and the methods to be used to assess them. If requested by the proposer the Competent Authority must give a scoping opinion.

## Screening

Is the process of deciding whether a particular project that is proposed is EIA development. It involves checking whether the project falls within the classes of project in Schedules 1 or 2 of the Regulations (or Annexes I or II of the Directives) and if in Schedule 2, whether it would be likely to have significant effects on the environment.

## Screening direction

Means a direction made by the Scottish Ministers as to whether a particular development or type of development is EIA development

## Screening opinion

Means a written statement of the opinion of the relevant planning authority as to whether a particular development is EIA development

## Sensitive area

Means any of the following-

a) A Site of Special Scientific Interest;
b) Land to which a Nature Conservation Order applies;
c) a World Heritage Site;
d) a National Park;
e) a scheduled monument;
f) a European site within the meaning of Reg 10 of the Conservation (Natural Habitats, &c.) Regulations 1994 (including a Special Protection Area or a Special Area of Conservation);
g) a National Scenic Area.

## Statutory Consultee

Is any body specified in the relevant EIA Regulations which the Competent Authority must consult in respect of an Environmental Statement, and which also has a duty to provide information or advice during the EIA process. They are listed under the definition of 'consultation bodies' above.


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## Strategic Environmental Appraisal / Assessment (SEA)

This is the whole process of considering the environmental effects of certain public plans, programmes or strategies at a strategic level, as required by the Environmental Assessment (Scotland) Act 2005.

## Supplementary Environmental Statement

Where the original Environmental Statement was incomplete or further work on environmental effects has been undertaken, (whether or not the project has been modified since the original application and Environmental Statement were submitted) a supplementary Environmental Statement may be submitted, to add to the original, to ensure that all of the relevant environmental information is considered by the Competent Authority. The supplementary Environmental Statement may include a revision of the whole or part of the original document or additions that are needed to cover the additional information.


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# Annexe 2 Current Legislation

**Annexe 2 Table 1 List of Relevant Current Legislation in Date Order**

| Statute | Commentary / Description |
|---|---|
| **The Roads (Scotland) Act 1984** | Applies EIA procedures to certain roads and bridges by way of additions and amendments to the Act made by the EIA Regs 99 (as amended) (see below). |
| **Standing Orders of the Scottish Parliament, 3rd edition (April 2007).** The Orders were made in accordance with section 22 of and Schedule 3 to the Scotland Act 1998 (c.46). | Chapter 9A applies a form of EIA procedure to projects likely to have significant effects on the environment which are to be authorised by Parliament directly. |
| **The Town and Country Planning (General Development Procedure) (Scotland) Order 1992** (SI 1992 No. 224) | This General Development Order contains provisions for requiring further information on planning applications under Articles 6 and 13 (see Section D.6 of this Handbook); and for the Scottish Ministers to issue Directions about EIA under Articles 16 and 19. |
| **The Town and Country Planning (Scotland) Act 1997, S.40** | Provides the Scottish Ministers with the power to make Regulations governing the EIA process generally, to add further types of projects to Schedule 2 of the Regulations and to make directions to planning authorities. |
| **The Environmental Impact Assessment (Scotland) Regulations 1999** (Scottish Statutory Instrument 1999 No. 1), as amended. | Apply EIA procedures to: projects that require planning permission, including appeals under the Town and Country Planning (Scotland) Act 1997; certain construction and improvement projects for trunk roads authorised under the Roads (Scotland) Act 1984; and agricultural drainage works authorised by the Scottish Ministers by way of an improvement order under the Land Drainage (Scotland) Act 1958. Amended in 2002 2006 and 2007 see below. (Part II of the regulations are referred to in this Handbook as the Principal Regulations 99. In tables in this Handbook these Regulations are abbreviated to 'EIA Regs 99' ) |
| **The Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999** (Scottish Statutory Instrument 1999 No. 43) | Apply EIA procedures to forestry works, including afforestation and re-afforestation as regulated by the Forestry Commission through grant schemes and other measures under the Forestry Acts. Amended in 2006 see below. In tables in this Handbook these Regulations are abbreviated to 'EIA Forestry 99' |
| **The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999** (SI 1999 No 360) | Apply EIA procedures to offshore oil industry and pipeline projects. In tables in this Handbook these Regulations are abbreviated to 'EIA Offshore 99' |
| **The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999** (SI 1999 No 1672) | Apply EIA procedures to new gas pipelines and related infrastructure. In tables in this Handbook these Regulations are abbreviated to 'EIA Gas Trans 99' |
| **The Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999** (SI 1999 No 2892) | Apply EIA procedures to the decommissioning of nuclear reactors. In tables in this Handbook these Regulations are abbreviated to 'EIA Nuclear 99' |
| **The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999** (SI 1999 No. 367) | Apply EIA procedures to fish farms in marine waters (fresh water fish farms are covered by the Principal Regulations above). Amended by the Regulations and Order of 2007, see below. In tables in this Handbook these Regulations are abbreviated to 'EIA Marine Fish 99' |
| **The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000** (Scottish Statutory Instrument 2000 320) | Apply EIA procedures to electricity generating power stations and overhead lines in Scotland. Amended in 2008, see below. In tables in this Handbook these Regulations are abbreviated to 'EIA Electricity 00' |


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**Annexe 2 Table 1 List of Relevant Current Legislation in Date Order**

| Statute | Commentary / Description |
|---|---|
| **The Pipeline Works (Environmental Impact Assessment) Regulations 2000** (SI 2000 No. 1928) | Apply EIA procedures to pipeline projects. In tables in this Handbook these Regulations are abbreviated to 'EIA Pipelines 00' |
| **The Environmental Impact Assessment (Scotland) Amendment Regulations 2002** (Scottish Statutory Instrument 2002 No 324) | Introduced the requirement to apply EIA procedures to the Review of Old Mineral Permissions in order to comply with a court ruling that the review and issue of new conditions amounts to the grant of a new consent that should be subject to EIA. In tables in this Handbook these Regulations are abbreviated to 'EIA Amend 02' |
| **The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations) (Scotland) Order 2002** (Scottish Statutory Instrument 2002 No 407) | Require all offshore generating stations mainly operated by wind or wave energy and over 1MW output subject to consenting procedures and the application of the Electricity Works (EIA) (Scotland) Regulations 2000 |
| **The Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003** (Scottish Statutory Instrument 2003 No 331) | Amends the definition of consultation bodies at regulation 2(1) of the principal regulations. |
| **The Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003** (Scottish Statutory Instrument 2003 No 341) | Amend the definition of development to include carrying out of irrigation or drainage or other water management works for agriculture so making such projects potentially EIA development subject to the principal regulations. In tables in this Handbook these Regulations are abbreviated to 'EIA Water 03' |
| **The Town and Country Planning (Electronic Communications) (Scotland) Order 2004** (Scottish Statutory Instrument 2004 No 332) | Provides for the distribution of certain notices and other documents in administrative processes by e mail subject to caveats. |
| **The Environmental Information (Scotland) Regulations 2004** (Scottish Statutory Instrument 2004 No 520) | Transpose requirements of the Freedom of Information (Scotland) Act 2002 and EC Directive 90/313/EEC on public access to environmental information, requires all public authorities to collect, maintain, disseminate and make available environmental information relevant to their functions |
| **The Town and Country Planning (Application of Subordinate Legislation to the Crown) (Scotland) Order 2006** (Scottish Statutory Instrument 2006 No 270) | Amends the Principal regulations to apply them to the Crown, subject to modifications concerns urgent applications for crown development which can be made directly to Ministers. |
| **The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006** (Scottish Statutory Instrument 2006 No 582) | Applies the EIA and Habitats Directives to projects relating to uncultivated land and semi-natural areas in Scotland, and to the restructuring of rural land holdings, subjecting all projects to a screening process. It requires those likely to have significant effects to obtain the prior consent of the SM after first being subject to assessment. Amended in 2006 see below. In tables in this Handbook these Regulations are abbreviated to 'EIA Agriculture 06' |
| **The Environmental Impact Assessment (Scotland) Amendment Regulations 2006** (Scottish Statutory Instrument 2006 No 614) | Amends the TCP, Land Drainage, Roads, Fish Farming and Forestry EIA Regulations to comply with the requirements of the Public Participation Directive 2003, principally ensuring that further and supplementary information is publicised in a way consistent with the original ES and that decisions such as screening directions are accompanied by published reasoning. SM must publish information about how they have taken comments of consultation bodies and others into account and how decisions may be challenged, explicitly including reference to environmental NGOs. Other minor amendments and corrections |
| **The Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2007** (Scottish Statutory Instrument 2007 No 175) | Set out requirements for planning applications for existing marine fish farms, to 12nm, to be determined by SM under S26AA and S31A TCPSA 1997. All fish farms authorised pursuant to an application made on or after 14th March 1999 (and therefore subject to the 1999 Regs) will be subject to audit, but those authorised pursuant to an application considered under the 1988 Fish Farm EIA Regs will require a planning application to be made |


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**Annexe 2 Table 1 List of Relevant Current Legislation in Date Order**

| Statute | Commentary / Description |
|---|---|
| **The Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007** (Scottish Statutory Instrument 2007 No 268) | Amends a variety of legislation so as to bring existing and proposed marine fish farms, to 12nm, under the TCPSA regime. It amends the EIA Regs as a consequence of the extension of planning controls to the marine environment and amends the Fish Farming EIA Regs to avoid duplication of EIA procedures. |
| **The Environmental Impact Assessment (Scotland) Amendment Regulations 2007** (Scottish Statutory Instrument 2007 No 484) | Amend the definition of 'any other information' and 'environmental information' to include a revised or updated ES and prescribe how supplementary information must be made available to the public. Introduce EIA procedures for multi-stage consents |
| **The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) Regulations 2007** (Scottish Statutory Instrument 2007 No 485) | With certain exceptions, applies the EIA and Habitats Directives to extraction of minerals by marine dredging in marine waters in Scotland, subjecting all projects to a screening process. It requires those likely to have significant effects to obtain the prior consent of the SM after first being subject to assessment. In tables in this Handbook these Regulations are abbreviated to 'EIA Marine Dredge 07' |
| **The Transport and Works Scotland Act 2007 (Applications and Objections Procedure) Rules 2007** (Scottish Statutory Instrument 2007 No 570) | Apply the requirements of the EIA Directive to procedures in connection with the authorisation by the SM of a transport system (e.g. tram or railway) or inland waterway by way of an Order under the TWSA 2007. It provides for a pre-application scrutiny process by SM, including a review of the ES by SNH and SEPA so that they may comment on the final draft proposals. In tables in this Handbook these Regulations are abbreviated to 'EIA Trans & Works 07' |
| **The Marine Works (Environmental Impact Assessment) Regulations 2007** (Statutory Instrument 2007 No 1518) | Apply EIA procedures to certain works undertaken in the marine environment including those by a Port or Harbour Authority under the provisions of the Harbours Act 1964 as regulated by the Scottish Ministers through Harbour Empowerment and Harbour Improvement Orders. They supersede the former EIA regulations for Harbour Works of 1999. In tables in this Handbook these Regulations are abbreviated to 'EIA Marine Works 07' |
| **The National Scenic Areas (Scotland) Regulations 2008** (Scottish Statutory Instrument 2008 No 202) | Amends the definition of 'sensitive areas' in the Principal Regulations with respect to National Scenic Areas. |
| **The Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008** (Scottish Statutory Instrument 2008 No 246) | Amends the Electricity Works EIA Regulations to comply with the requirements of the Public Participation Directive 2003, principally by improving consultation procedures, and ensuring that further and supplementary information is publicised in a way consistent with the original ES. The regulations increase the range of documentation to be placed on planning registers and amend the description of developments in Schedules 1 and 2 of the 2000 Regs. |


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**Annexe 2 Table 2 – The Application Of Eia Regulations By Sector And Project Type**

| Sector | Project type | EIA Regulations |
|---|---|---|
| **Agriculture** | – Buildings for intensive animal rearing<br>– Development for irrigation and water management schemes<br>– Land claim from the sea | EIA Regs 99 Part II |
| | – Land drainage and flood prevention / control | EIA Regs 99 Part IV |
| | – Conversion of uncultivated land and semi-natural areas for intensive agricultural purposes and for projects for large scale restructuring of rural land holdings | EIA Agriculture 06 |
| | – Abstraction of water, irrigation, drainage and other water management projects for agriculture | EIA Water 03 |
| **Aquaculture** | – Installations for intensive marine fish farming | EIA Marine Fish 99 |
| | – Installations for intensive fresh water fish farming | EIA Regs 99 Part II |
| **Coastal projects** | – Claiming land from the sea<br>– Coast protection works<br>– Flood banks and other flood prevention and control | EIA Regs 99 Part II |
| | – Land drainage schemes | EIA Regs 99 Part IV |
| **Energy production and storage** | – Coal, gas or oil fired power stations<br>– Marine barrages for electricity generation<br>– Nuclear power stations<br>– Tidal and wave energy utilisation for electricity generation | EIA Electricity 00 |
| | – Development for hydro electric schemes<br>– Development for wind turbine generators (wind farms)<br>– Development for industrial briquetting of coal or lignite<br>– Development for steam or hot water generation<br>– Exploratory drilling for energy production<br>– Geothermal drilling and utilisation<br>– Oil refineries<br>– Surface storage of natural gas and other fossil fuels<br>– Underground storage of combustible gases | EIA Regs 99 Part II |
| | – Offshore oil and gas production | EIA Offshore 99 |
| | – Offshore electricity generating stations | EIA Electricity 00 |
| **Energy Transmission** | – Offshore oil and gas pipelines | EIA Offshore 99 |
| | – Overhead Electricity power lines | EIA Electricity 00 |
| | – Gas pipelines | EIA Gas Trans 99 |
| | – Oil/petroleum pipelines<br>– Pipelines for transmission of steam or hot water | EIA Pipelines 00 |
| **Energy decommission-ing and waste** | – Decommissioning of nuclear power stations and other reactors | EIA Nuclear 99 |
| | – Disposal of pulverised or other fuel ash<br>– Drilling to store nuclear waste<br>– Development for processing, re-processing and storing radioactive waste | EIA Regs 99 Part II |
| **Forestry** | Afforestation including natural regeneration, reforestation and deforestation<br>Forestry tracks and quarries | EIA Forestry 99 |
| | Development for pulp/paper/board mills | EIA Regs 99 Part II |


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**Annexe 2 Table 2 – The Application Of Eia Regulations By Sector And Project Type**

| Sector | Project type | EIA Regulations |
|---|---|---|
| **Industrial development** | – Development for all forms of industrial processing, re-processing, manufacturing, assembling, packing, testing etc, and industrial estates | EIA Regs 99 Part II |
| **Leisure, sport and recreation** | – Camping and caravanning sites<br>– Golf courses and associated developments<br>– Hotels, spas and similar complexes<br>– Leisure centres<br>– Marinas<br>– Motor racing circuits and test tracks<br>– Multiplex cinemas<br>– Ski-runs, ski-lifts, cable cars, funicular railways<br>– Sport stadiums<br>– Theme parks | EIA Regs 99 Part II |
| **Mineral extraction** | – Disposal of mineral waste<br>– Exploratory deep drilling<br>– Extraction of minerals at the surface by open casting/quarrying<br>– Extraction of minerals by underground mining<br>– Fluvial dredging<br>– Peat extraction (commercial)<br>– Installations for the processing of specified minerals / products | EIA Regs 99 Part II |
| | – Marine dredging | EIA Marine Dredge 07 |
| | – Review of old mineral permissions | EIA Amend 02 |
| **Transport and communications** | – Docks, harbours, ports, piers and jetties and ferry terminals | EIA Marine Works 07 |
| | – Airfields, airports, runways<br>– Intermodal trans-shipment facilities and terminals<br>– Motorway service areas | EIA Regs 99 Part II |
| | – Inland waterways and canals/canalisation for transport<br>– Railways, light railways and tram systems | EIA Trans & Works 07 |
| | – Pipelines to carry chemicals | EIA Pipelines 00 |
| | – Roads | EIA Regs 99 Part III |
| **Urban developments** | – Business parks, industrial estates and employment developments<br>– Housing estates<br>– New settlements<br>– Retail parks and other retail developments | EIA Regs 99 Part II |
| **Waste management** | – Deposit of dredgings on land<br>– Disposal of mineral waste or hazardous wastes<br>– Incinerators and other installations for waste disposal<br>– Landfill and land-raise<br>– Scrap yards<br>– Sludge deposition<br>– Waste water treatment plants and outfalls | EIA Regs 99 Part II |
| | – Deposit of dredgings at sea | EIA Marine Works 07 |
| **Water** | – Dams and installations designed to hold or store water<br>– Development for abstraction from river systems<br>– Development for artificial recharge systems<br>– Development for abstraction from ground waters<br>– Development for water treatment and supply<br>– Development for transfer of water between river basins | EIA Regs 99 Part II |
| | – Long distance aqueducts | EIA Water 03 |


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## Abbreviations

The following abbreviations of the EIA Regulations are used in Annexe 2 Tables 2 and 3

| | |
|---|---|
| EIA Regs 99 | Environmental Impact Assessment (Scotland) Regulations 1999 |
| EIA Forestry 99 | Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 |
| EIA Offshore 99 | Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 |
| EIA Gas Trans 99 | Public Gas Transporters (Pipeline Works) (Environmental Impact Assessment) Regulations 1999 |
| EIA Nuclear 99 | Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 |
| EIA Marine Fish 99 | Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 |
| EIA Electricity 00 | Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 |
| EIA Pipelines 00 | Pipeline Works (Environmental Impact Assessment) Regulations 2000 |
| EIA Amend 02 | Environmental Impact Assessment (Scotland) Amendment Regulations 2002 (Review of Old Mineral Permissions (ROMPs)) |
| EIA Offshore Gen 02 | The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations) (Scotland) Order 2002 |
| EIA Water M 03 | Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003 |
| EIA Agriculture 06 | Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 |
| EIA Marine Dredge 07 | Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) Regulations 2007 |
| EIA Trans & Works 07 | The Transport and Works Scotland Act 2007 (Applications and Onbections Procedure) Rules 2007 |
| EIA Marine Works 07 | Marine Works (Environmental Impact Assessment) Regulations 2007 |

## Key to Annexe 2 Table 3 below

| | |
|---|---|
| Interpretation | Interpretation, including definitions |
| Compliance | The requirement to comply with the regulations before granting consents |
| Screening | Screening to establish whether EIA will apply |
| Scoping | Scoping of the environmental statement |
| Application without ES | What happens where an application is made without an environmental statement |
| SNH to give info | The provisions requiring SNH to give information to help the proposer compile the statement |
| Publicity | Provisions for publicity |
| Consultations | Requirements for consultations |
| Further info | The powers to require further information or evidence to be submitted |
| Transboundary | Provisions for dealing with potential transboundary effects affecting another EC member state |
| Public Cons period | The statutory minimum public consultation / notification period |
| SNH Cons period | The statutory minimum period allowed for SNH to reply to a consultation (if specified) |
| Final decision/records | Requirements for making and recording the competent authority's decision |
| Schedule 1 projects | The definition of schedule 1 projects |
| Schedule 2 projects | The definition of schedule 2 projects |
| Matters to consider | The matters to be considered when determining whether a project is EIA development subject to the EIA procedure |
| Content of ES | The requirements for the content of environmental statements. |

## Other abbreviations used in Annexe 2 Table 3

| | |
|---|---|
| CEC | Crown Estate Commissioners |
| E, S & W | England Scotland and Wales |
| GB | Great Britain |
| HA 64 | Harbours Act 1964 |
| LDSA 58 | Land Drainage (Scotland) Act 1958 |
| NI | Northern Ireland |
| PA | Planning Authority |
| PP | Planning Permission |
| Reg | Regulation |
| RSA 80 | Roads (Scotland) Act 1980 |
| S | Section (of Act) |
| Sch | Schedule |
| SM | Scottish Ministers |
| TCP | Town and Country Planning |
| UK | United Kingdom inc territorial waters |


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**Annexe 2 Table 3 – Key Information And References In Each Of The Eia Regulations Part 1**

| Project Type | Dev requiring PP including marine fish farms | Unauthorised dev appeal | Review of Old Mineral Permissions | Motorways and trunk roads | Drainage Improvements | Marine Fish Farming other than that requiring PP |
|---|---|---|---|---|---|---|
| **Competent Authority** | PA or Scottish Ministers | Scottish Ministers | PA or Scottish Ministers | Scottish Ministers | Scottish Ministers | CEC, Orkney Islands Council and Shetland CC |
| **Consent Procedure** | Planning permission under TCP (Scotland) Act 1997 | Enforcement Notice appeal under TCP (Scotland) Act 1997 | Review process of Mineral Permissions granted between 1948 and 1982 and all later permissions every 15 yrs | SM decide to proceed or make order under Sch 1 Roads (Scotland) Act 1984 | SM consent under Land Drainage (Scotland) Act 1958 | CEC consent for fish farming in marine waters + licence from OIC or SCC |
| **EIA Regulations** | EIA Regs 99 | EIA Regs 99 | EIA Amend 02 | EIA Regs 99 | EIA Regs 99 | EIA Marine Fish 99 |
| **Jurisdiction** | Scotland | Scotland | Scotland | Scotland | Scotland | Great Britain |
| **Statutory Instrument** | SSI 1999/1 | SSI 1999/1 | SSI 2002/324 | SSI 1999/1 | SSI 1999/1 | S.I.1999/367 |
| **Came into force** | 1.8.1999 | 1.8.1999 | 23.9.2002 | 1.8.1999 | 1.8.1999 | 14.3.1999 |
| **Interpretation** | Reg 2 as amended by the TCP Marine Fish Farming Order 2007 | Reg 2 | Reg 2 of 1999 Regs as amended | Reg 2 | Reg 2 & Reg 55 | Reg 2 amended by the TCP Marine Fish Farming Order 2007 |
| **Compliance** | Reg 3 | Reg 29 | Regs 3 and 28A of 1999 Regs as amended | Reg 49 & 50 amend S20A & 55A RSA 1980 | Reg 57 | Reg 3 |
| **Screening** | Reg 4 - 6 | Reg 30 - 31 | Regs 4-6 and 28A of 1999 Regs as amended | N/A | Reg 56 | Reg 4 |
| **Scoping** | Reg 10 - 11 | N/A | Regs 10-11 and 28A of 1999 Regs as amended | N/A | N/A | Reg 6 |
| **Application without ES** | Reg 7 + 9 | Reg 33 - 34 | Reg 7-9 and 28A of 1999 Regs as amended | N/A | N/A | Reg 5 |
| **SNH to give info=** | Reg 12 | Reg 32 | Reg 12 of 1999 Regs as amended | N/A | Reg 58 | Reg 7 |
| **Publicity** | Reg 13 as substituted by the TCP Marine Fish Farming Order 2007, and 14 –18 | Reg 37 - 38 | Reg 13 -18 and 28A of 1999 Regs as amended | Reg 49 & 50 amend S20A & 55A RSA 80 | Reg 59 | Reg 8 |
| **Consultations** | Reg 2, 14 + 16 and 28C added by the TCP Marine Fish Farming Order 2007 | Reg 35 | Reg 14 + 16 of 1999 Regs as amended | | Reg 59 | Reg 9 |





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**Annexe 2 Table 3 – Key Information And References In Each Of The Eia Regulations Part 1**

| Project Type | Dev requiring PP including marine fish farms | Unauthorised dev appeal | Review of Old Mineral Permissions | Motorways and trunk roads | Drainage Improvements | Marine Fish Farming other than that requiring PP |
|---|---|---|---|---|---|---|
| **Further info=** | Reg 19 | Reg 36 | Reg 19 and 28A of 1999 Regs as amended | N/A | Reg 60 | Reg 10 |
| **Transboundary** | Reg 40 - 41 | Reg 39 - 41 | Reg 39 - 41 of 1999 Regs as amended | Reg 49 amends S20B & 55B RSA 80 | N/A | N/A |
| **Public Cons period** | 4 weeks | 2 weeks after a min 3 wk publicity | 4 weeks | 3 weeks | 28 days (LDSA 58) | 28 days |
| **SNH Cons period** | 4 weeks | Unspecified | 4 weeks | Opportunity to express an opinion | 28 days (LDSA 58) | 28 days |
| **Final decision/ records** | Reg 20 - 21 | Reg 38 | Regs 20 - 21 of 1999 Regs as amended | Reg 52 amends Sch 1 RSA 80 | N/A | Reg 11 |
| **Schedule 1 projects** | Sch 1 | Sch 1 | Sch 1 of 1999 Regs | Sch 1 | N/A | N/A |
| **Schedule 2 projects** | Sch 2 | Sch 2 | Sch 2 of 1999 Regs | Sch 2 | Sch 2 | N/A |
| **Matters to consider** | Sch 3 | Sch 3 | Sch 3 of 1999 Regs | Sch 3 | Sch 3 | N/A |
| **Content of ES** | Sch 4 | Sch 4 | Sch 4 of 1999 Regs | Sch 4 | Sch 4 | N/A |





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**Annexe 2 Table 3 – Key Information And References In Each Of The Eia Regulations Part 2**

| Project Type | Forestry Works | Agriculture - Semi-Natural Areas & Rural Holdings | Water Management for Agriculture | Electricity power stations (over 50MW) and overhead lines | Offshore Electricity power stations over 1MW | Gas Pipelines not requiring PP |
|---|---|---|---|---|---|---|
| **Competent Authority** | FC or on appeal Scottish Ministers | Scottish Ministers | PA or Scottish Ministers | Scottish Ministers | Scottish Ministers | Scottish Ministers |
| **Consent Procedure** | Consent of the FC for afforestation, deforestation, forest tracks and quarries | All projects to be screened, relevant projects require consent under the Regs | Relevant irrigation or drainage or other water management works for agriculture require planning permission | All power stations on and offshore over 50MW require SM consent under S36 (Power Station) or S37 (Overhead lines) of Electricity Act 1989 | All offshore power stations driven mainly by water or wind over 1MW require consent of SM under S36 of Electricity Act 1989 so Electricity Works EIASR 00 apply | Consent under Reg 14 of these Regs for development under Part 17 Class Fa of the TCP (GPDO) 92 where subject to an environmental determination by SM |
| **EIA Regs** | EIA Forestry 99 | EIA Agriculture 06 | EIA Water 03 | EIA Electricity 00 as amended by EIA Electricity Works Amendment Regs 08 | EIA Offshore Gen 02 | EIA Gas Trans 99 |
| **Jurisdiction** | Scotland | Scotland | Scotland | Scotland | Scotland | Great Britain |
| **Statutory Instrument** | SSI 1999/43 | SSI 2006/582 | SSI 2003/341 | SSI 2000/320 | SSI. 2002/407 | S.I. 1999/1672 |
| **Came into force** | 6.9.1999 | 1.1.2007 | 30.9.2003 | 5.10.2000 | 26.9.2002 | 15.7.1999 |
| **Interpretation** | Reg 2, 3 & 15 | Reg 2 | Reg 2 EIA Regs 99 | Reg 2 | Reg 2 of 02 Regs | Reg 2 |
| **Compliance** | Reg 4 | Reg 8 | Reg 3 EIA Regs 99 | Reg 3 - 4 | Reg 3 - 4 of 02 Regs | Reg 3 |
| **Screening** | Reg 5 - 8 | Regs 4 - 7 | Reg 4 - 6 EIA Regs 99 | Reg 5 | Reg 5 of 02 Regs | Reg 6 |
| **Scoping** | Reg 9 | Regs 9 | Reg 10 - 11 EIA Regs 99 | Reg 7 | Reg 7 of 02 Regs | Reg 7 |
| **Application without ES** | N/A | Reg 11 | Reg 7 + 9 EIA Regs 99 | Reg 6 | Reg 6 of 02 Regs | |
| **SNH to give info** | Reg 12 | Reg 10 | Reg 12 EIA Regs 99 | Reg 8 + 15 | Reg 8 + 15 of 02 Regs | Reg 9 |
| **Publicity** | Reg 13 | Reg 11 | Reg 13 - 18 EIA Regs 99 | Reg 9 - 11 + 14 | Reg 9 - 11 + 14 of 2002 Regs | Reg 10 |
| **Consultations** | Reg 20 - 23 (enforce) | Reg 11 | Reg 14 + 16 EIA Regs 99 | Reg 11 | Reg 11 of 02 Regs | Reg 10 |
| **Further info** | Reg 11 | Reg 12 | Reg 19 EIA Regs 99 | Reg 13 | Reg 13 of 02 Regs | Reg 11 |





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**Annexe 2 Table 3 – Key Information And References In Each Of The Eia Regulations Part 2**

| Project Type | Forestry Works | Agriculture - Semi-Natural Areas & Rural Holdings | Water Management for Agriculture | Electricity power stations (over 50MW) and overhead lines | Offshore Electricity power stations over 1MW | Gas Pipelines not requiring PP |
|---|---|---|---|---|---|---|
| **Transboundary** | Reg 14 | Regs 13 and 14 | Reg 40 - 41 EIA Regs 99 | Reg 12 | Reg 12 of 02 Regs | Reg 13 |
| **Public Cons period** | 28 days | 42 days (28 for further information) | 4 weeks | 4 weeks after publicity | 4 weeks after publicity | 28 days |
| **SNH Cons period** | 28 days | 42 days | 4 weeks | 28 days | 28 days | 28 days |
| **Final decision / records** | Reg 15, 16 + 24 | Regs 15 | Reg 20 - 21 EIA Regs 99 | N/A | N/A | Reg 8 |
| **Schedule 1 projects** | N/A | N/A | Sch 1 EIA Regs 99 | Sch 1 | Sch 1 of 2002 Regs | Sch 3 |
| **Schedule 2 projects** | N/A | Reg 6 & Sch 1 | Sch 2 EIA Regs 99 as amended | Sch 2 | Sch 2 of 2002 Regs | Sch 3 |
| **Matters to consider** | Sch 2 & 3 | Sch 2 | Sch 3 EIA Regs 99 | Sch 3 | Sch 3 of 2002 Regs | Sch 2 |
| **Content of ES** | Sch 1 | Sch 3 | Sch 4 EIA Regs 99 | Sch 4 | Sch 4 of 2002 Regs | Sch 1 |





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**Annexe 2 Table 3 – Key Information And References In Each Of The Eia Regulations Part 3**

| Project Type | Offshore Oil and Gas and Pipelines | Other Pipelines | Decommissioning Nuclear Installations | Marine Works including ports and harbours | Marine Dredging | Transport and Works Act projects |
|---|---|---|---|---|---|---|
| **Competent Authority** | Secretary of State | Secretary of State | Health & Safety Executive | Scottish Ministers | Scottish Ministers | Scottish Ministers |
| **Consent Procedure** | Prior consent required by a licence to explore, produce or transport oil & gas granted under provisions of Petroleum Act 1998 | Pipeline construction authorisation under Pipelines Act 1962 | Nuclear Installations Act 1965 Licensees apply for consent under Reg 8 | Consents under S34 or S35 Coast Protection Act 1949; S37 Merchant Shipping Act 1988; any local Act; Harbour Revision or Empowerment Orders under Harbours Act 1964; consents under the Food and Environment Protection Act 1985 | Consent for dredging of aggregates in the marine environment | Orders under the 2007 T&W Scotland Act for railways, trams, other transport systems, canals and inland waterways |
| **EIA Regs** | EIA Offshore 99 | EIA Pipelines 00 | EIA Nuclear 99 | EIA Marine Works 07 | EIA Marine Dredge 07 | EIA Trans & Works 07 |
| **Jurisdiction** | UK | E, S & W | Great Britain | GB & NI | Scotland | Scotland |
| **Statutory Instrument** | S.I. 1999/360 | S.I. 2000/1928 | S.I.1999/2892 | S.I. 2007/1518 | S.S.I. 2007/485 | S.S.I. 2007/570 |
| **Came into force** | 14.3.1999 | 1.9.2000 | 19.11.1999 | 24.6.2007 | 23.11.2007 | 28.12.2007 |
| **Interpretation** | Reg 3 | Reg 2 | Reg 2 | Reg 2 | Reg 2 | Rule 2 |
| **Compliance** | Regs 4, 5 + 11 | Reg 3 | Reg 3 - 5 + 8 | Reg 4 & 12 | Reg 4 & 12 | Rules 3 – 8 |
| **Screening** | Reg 6, 11 + 12 | Reg 4 | N/A | Reg 6 – 11 & Sch 2 | Reg 6 | Rule 5 & Sch 5 |
| **Scoping** | Reg 7 | Reg 5 | Reg 6 | Reg 13 & Sch 4 | | Rule 6 |
| **Application without ES** | Reg 5 | Reg 11 - 13 | Reg 16 | Reg 12 | Reg 9 | Reg 9 |
| **SNH to give info** | Reg 5 + 8 | Reg 6 | Reg 7 | Reg 15 | Reg 8 | Rule 4 |
| **Publicity** | Reg 9 + 10 | Reg 7 - 8 | Reg 9 | Reg 15 | Reg 11 | Rule 12 |
| **Consultations** | Reg 9 + 10 | Reg 7 | Reg 8 - 9 | Reg 17 | Reg 11 | Rules 3 & 11 & Sch 3 |
| **Further info** | Reg 10 | Reg 8 | Reg 10 | Reg 14 | Reg 10 | Rules 15 & 18 & Sch 2 Form 5 |





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**Annexe 2 Table 3 – Key Information And References In Each Of The Eia Regulations Part 3**

| Project Type | Offshore Oil and Gas and Pipelines | Other Pipelines | Decommissioning Nuclear Installations | Marine Works including ports and harbours | Marine Dredging | Transport and Works Act projects |
|---|---|---|---|---|---|---|
| **Transboundary** | Reg 5 + 12 | Reg 3 | Reg 8 + 12 | Reg 8 – 20 | Reg 14 | |
| **Public Cons period** | 4 weeks | 28 days | 30 days | 42 days | 8 weeks | As specified in notice of application |
| **SNH Cons period** | 4 weeks | 28 days | Such reasonable time as HSE may specify + 14 days for further info= | 42 days | 8 weeks | As specified in notice of application |
| **Final decision / records** | Reg 5 | Reg 3 | Reg 11 | Reg 22 – 24 | Reg 12 | |
| **Schedule 1 projects** | N/A | N/A | N/A | Reg 7 | | Sch 5 |
| **Schedule 2 projects** | N/A | N/A | N/A | Reg 8 | | Scg 5 |
| **Matters to consider** | Sch 1 | Sch 2 | Sch 2 | Reg 8 | Sch 2 | Sch 5 and Annex III of the Directive |
| **Content of ES** | Sch 2 | Sch 1 | Sch 1 | Sch 3 | Sch 1 | Rule 9 & Sch 1 |





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# Annexe 3 – Current relevant national policy and guidance

**This Annexe is listed in date order.**

| Guidance | Commentary |
|---|---|
| **Scottish Executive Development Department PAN 51, Planning Environmental Protectionand Regulation,** revised 2006. | This Planning Advice Note provides background information and advice on good practice in the planning process with reference to pollution control and other forms of environmental protection, with obvious relevance to the EIA process. |
| **Scottish Executive Circular June 2000 Habitats and Birds Directives Nature Conservation: Implementation in Scotland of the EC directives on the Conservation of Natural Habitats and of wild flora and fauna and the Conservation of Wild Birds. Amends Scottish Office Circular 6/1995 Habitats and Birds Directives The Conservation (Natural Habitats Etc.) Regulations 1994.** | Provides procedural and policy guidance on the Habitats Regulations 1994, and specifically indicate that any project likely to have a significant effect on a Natura 2000 (European) Site, whether fully designated or not, should normally be subject to the Environmental Impact Assessment process. The Circular also explains how this differs from the appropriate assessment undertaken by the Competent Authority under the Habitats Regulations. |
| **Scottish Executive Development Department PAN 58, 1999, Environmental Impact Assessment** | This Planning Advice Note provides background information and advice on good practice in the EIA. The Principal Regulations and Circular 8/2007 take precedence over the advice contained in the PAN, which the Scottish Government intends to update in due course. |
| **Scottish Executive Development Department Circular 3/2003 The Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003 Nov 2003** | Explains the regulations that amend the definition of development to include carrying out of irrigation or drainage or other water management works for agriculture so making such projects potentially EIA development subject to the EIASR 99 |
| **Scottish Executive Environment and Rural Affairs Department (SEERAD) Guidelines on Environmental Impact Assessment (EIA) for Agriculture December 2007** | Provides guidance on the 2006 EIA Regulations relating to Agriculture including the consenting and screening procedures, but the content of this guidance is under review |
| **Forestry Commission, Environmental Impact Assessment of Forestry Projects April 2007** | Provides guidance on the 2006 EIA Regulations relating to Forestry including the consenting and screening procedures |
| **Scottish Government Department for Environment, Food and Rural Affairs Explanatory Memorandum to the Marine Works (Environmental Impact Assessment) Regulations 2007** | Provides an explanation of new legislation relating to EIA for deposits at sea and on the sea bed and other works requiring a license under the Food and Environment Protection Act 1985, works to ensure navigational safety at sea and harbour works |
| **Scottish Government Circular 8/2007 The Environmental Impact Assessment (Scotland) Regulations 1999** | This Circular provides comprehensive guidance on the EIA process with particular emphasis on projects requiring planning permission and those requiring approval under the Roads (Scotland) Act or the Land Drainage Acts. It includes special cases such as the review of old mineral permissions and multi-stage consents. The 1999 Rgulations are referred to in the Handbook as the 'principal regulations'. At the time of writing the Scottish Government had noted its intention to update this Circular and to make the updated version available online at http://www.scotland.gov.uk/Topics/Built-Environment/planning/publications |
| **Scottish Government Guidance on the Electricity (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008** | Provide guidance on the EIA process, public notices and judicial review for electricity works in Scotland |


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# Annexe 4 – Projects requiring environmental impact assessment

## Annex 1 (of the Directive) Developments requiring EIA in every case

1) Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more and nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed one kilowatt continuous thermal load).

3) Installations for the reprocessing of irradiated nuclear fuel; installations designed for the production or enrichment of nuclear fuel; for the processing of irradiated nuclear fuel or high-level radioactive waste; for the final disposal of irradiated nuclear fuel; solely for the final disposal of radioactive waste; solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4) Integrated works for the initial smelting of cast-iron and steel. Installations for the production of non-ferrous crude metals (as described and further specified in Schedule 1(4) of the EIASR 99).

5) Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos
   a] where the installation produces asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products,
   b] where the installation produces friction material, with an annual production of more than 50 tonnes of finished products, and
   c] other cases where the installation will utilise more than 200 tonnes of asbestos per year.

6) Integrated chemical installations (as described and further specified in Schedule 1(6) of the EIASR 99).

7) Construction of motorways, express roads and other roads of four or more lanes and the realignment or widening of roads to provide 4 or more lanes where the road would be 10 km or more continuous length. Lines for long-distance railway traffic and airports with a basic runway length of 2,100m or more.

8) Trading ports and construction of piers for loading and unloading connected to land outside ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.

9) Waste-disposal installations for the incineration or chemical treatment or landfill of hazardous waste.

10) Incineration or chemical treatment of non-hazardous wastes (installations with a capacity of more than 100 tonnes per day);

11) Ground water abstraction or artificial recharge schemes exceeding 10 million m; per year;

12) Transfer of water resources other than piped drinking water between river basins above 100 million m;/year or over 5% of flows where the abstracted river exceeds a flow of 2000 million m;/year;

13) Waste water treatment plants (over 150,000 population equivalents);

14) Extraction of petroleum (more than 500 tonnes per day) and natural gas (over 500,000m; per day);

15) Dams and similar installations, with water holdback capacity exceeding 10 million m;;

16) Pipelines to transport oil, gas or chemicals (more than 40km long and 800mm diameter);

17) Installations for intensive rearing of poultry or pigs above 85,000 broilers, 60,000 hens, 3,000 pigs over 30kg or 900 sows;

18) All pulp and those paper and board factories over 200 tonnes/day production;

19) Quarries and opencast mining (over 25 ha) and peat extraction (over 150 ha);

20) Installations for storage of petrol, petrochemical products (200,000 tonnes and over).


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## Annex 2 (of the Directive) Developments

Requiring assessment if they are likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location. The carrying out of development to provide any of the following-

| Column 1 Description of development | Column 2 Applicable thresholds/criteria |
|---|---|
| **1. Agriculture and aquaculture** | |
| 1(a) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes | The area of the development exceeds 0.5 hectare |
| 1(b) Water management projects for agriculture, including irrigation and land drainage projects | (i) The project is an irrigation project involving the abstraction or diversion of water for more than 48 hours in any calendar year and the total area of agricultural land to be irrigated in any agricultural unit or any part thereof exceeds 50 hectares;<br>(ii) In any other case the area of the works exceeds one hectare<br>And for the purposes of this entry, "agricultural land" and "agricultural unit" have the same meaning as in Part 6 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 |
| 1(c) Intensive livestock installations (unless included in Schedule 1) | The area of new floorspace exceeds 500 square metres |
| 1(d) Intensive fish farming | The installation resulting from the development is designed to produce more than 10 tonnes of dead weight fish per year |
| 1(e) Reclamation of land from the sea | All development |
| **2. Extractive industry** | |
| 2(a) Quarries, open-cast mining and peat extraction (unless included in Schedule 1)<br>2(b) Underground mining | All development except the construction of buildings or other ancillary structures where the new floorspace does not exceed 1,000 square metres |
| 2(c) Extraction of minerals by marine or fluvial dredging | All development |
| 2(d) Deep drillings, in particular -<br>(i) geothermal drilling;<br>(ii) drilling for the storage of nuclear waste material;<br>(iii) drilling for water supplies;<br>with the exception of drillings for investigating the stability of the soil. | (i) In relation to any type of drilling, the area of the works exceeds 1 hectare; or<br>(ii) in relation to geothermal drilling and drilling for the storage of nuclear waste material, the drilling is within 100 metres of any controlled waste |
| 2(e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale | The area of the development exceeds 0.5 hectare |


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| Column 1 Description of development | Column 2 Applicable thresholds/criteria |
|---|---|
| **3. Energy industry** | |
| 3(a) Industrial installations for the production of electricity, steam and hot water (unless included in Schedule 1) | The area of the development exceeds 0.5 hectare |
| 3(b) Industrial installations for carrying gas, steam and hot water | The area of the works exceeds 1 hectare |
| 3(c) Surface storage of natural gas<br>3(d) Underground storage of combustible gases<br>3(e) Surface storage of fossil fuels | (i) The area of any new building, deposit or structure exceeds 500 square metres; or<br>(ii) a new building, deposit or structure is to be sited within 100 metres of any |
| 3(f) Industrial briquetting of coal and lignite | The area of new floorspace exceeds 1,000 square metres |
| 3(g) Installations for the processing and storage of radioactive waste (unless included in Schedule 1) | (i) The area of new floorspace exceeds 1,000 square metres; or<br>(ii) the installation resulting from the development will require an authorisation or the variation of an authorisation under the Radioactive Substances Act 1993. |
| 3(h) Installations for hydroelectric energy production | The installation is designed to produce more than 0.5 megawatts |
| 3(i) Installations for the harnessing of wind power for energy production (wind farms) | (i) The development involves the installation of more than 2 turbines; or<br>(ii) the hub height of any turbine or height of any other structure exceeds 15 metres. |
| **4. Production and processing of metals** | |
| 4(a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting<br>4(b) Installations for the processing of ferrous metals-<br>(i) hot-rolling mills;<br>(ii) smitheries with hammers;<br>(iii) application of protective fused metal coats<br>4(c) Ferrous metal foundries<br>4(d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc)<br>4(e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process<br>4(f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines<br>4(g) Shipyards<br>4(h) Installations for the construction and repair of aircraft<br>4(i) Manufacture of railway equipment<br>4(j) Swaging by explosives<br>4(k) Installations for the roasting and sintering of metallic ores | The area of new floorspace exceeds 1,000 square metres. |


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| Column 1 Description of development | Column 2 Applicable thresholds/criteria |
|---|---|
| **5. Mineral industry** | |
| 5(a) Coke ovens (dry coal distillation)<br>5(b) Installations for the manufacture of cement<br>5(c) Installations for the production of asbestos and the manufacture of asbestos-based products (unless included in Schedule 1)<br>5(d) Installations for the manufacture of glass including glass fibre<br>5(e) Installations for smelting mineral substances including the production of mineral fibres<br>5(f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain. | The area of new floorspace exceeds 1,000 square metres. |
| **6. Chemical industry (unless included in Schedule 1)** | |
| 6(a) Treatment of intermediate products and production of chemicals<br>6(b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides | The area of new floorspace exceeds 1,000 square metres. |
| **7. Food industry** | |
| 7(a) Manufacture of vegetable and animal oils and fats<br>7(b) Packing and canning of animal and vegetable products<br>7(c) Manufacture of dairy products<br>7(d) Brewing and malting<br>7(e) Confectionery and syrup manufacture<br>7(f) Installations for the slaughter of animals<br>7(g) Industrial starch manufacturing installations<br>7(h) Fish-meal and fish-oil factories<br>7(i) Sugar factories | The area of new floorspace exceeds 1,000 square metres. |
| **8. Textile, leather, wood and paper industries** | |
| 8(a) Industrial plants for the production of paper and board (unless included in Schedule 1)<br>8(b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles<br>8(c) Plants for the tanning of hides and skins<br>8(d) Cellulose-processing and production installations. | The area of new floorspace exceeds 1,000 square metres. |
| **9. Rubber industry** | |
| Manufacturing and treatment or elastomer-based products. | The area of new floorspace exceeds 1,000 square metres. |


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| Column 1 Description of development | Column 2 Applicable thresholds/criteria |
|---|---|
| **10. Infrastructure projects** | |
| 10(a) Industrial estate development projects<br>10(b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas<br>10(c) Construction of intermodal transshipment facilities and of intermodal terminals (unless included in Schedule 1) | The area of the development exceeds 0.5 hectare. |
| 10(d) Construction of railways (unless included in Schedule 1) | The area of the works exceeds 1 hectare. |
| 10(e) Construction of airfields (unless included in Schedule 1) | (i) The development involves an extension to a runway; or<br>(ii) the area of the works exceeds 1 hectare. |
| 10(f) Construction of roads (unless included in Schedule 1)<br>10(g) Construction of harbours and port installations, including fishing harbours (unless included in Schedule 1)<br>10(h) Inland-waterway construction not included in Schedule 1, canalisation and floor-relief works<br>10(i) Dams and other installations designed to hold water or store it on a long-term basis (unless included in Schedule 1)<br>10(j) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport | The area of the works exceeds 1 hectare. |
| 10(k) Oil and gas pipeline installations (unless included in Schedule 1)<br>10(l) Installations of long-distance aquaducts | (i) The area of the works exceeds 1 hectare; or<br>(ii) in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge. |
| 10(m) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works | All development. |
| 10(n) Groundwater abstraction and artificial groundwater recharge schemes not included in Schedule 1<br>10(o) Works for the transfer of water resources between river basins not included in Schedule 1 | The area of the works exceeds 1 hectare. |
| 10(p) Motorway service areas. | The area of the development exceeds 0.5 hectare. |


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| Column 1 Description of development | Column 2 Applicable thresholds/criteria |
|---|---|
| **11. Other projects** | |
| 11(a) Permanent racing and test tracks for motorised vehicles | The area of the development exceeds 1 hectare. |
| 11(b) Installations for the disposal of waste (unless included in Schedule 1) | (i) The disposal is by incineration; or<br>(ii) the area of the development exceeds 0.5 hectare; or<br>(iii) the installation is to be sited within 100 metres of any controlled waters. |
| 11(c) Waste-water treatment plants (unless included in Schedule 1) | The area of the development exceeds 1,000 square metres. |
| 11(d) Sludge-deposition sites<br>11(e) Storage of scrap iron, including scrap vehicles | (i) The area of deposit or storage exceeds 0.5 hectare; or<br>(ii) a deposit is to be made or scrap stored within 100 metres of any controlled waters. |
| 11(f) Test benches for engines, turbines or reactors<br>11(g) Installations for the manufacture of artificial mineral fibres<br>11(h) Installations for the recovery or destruction of explosive substances<br>11(i) Knackers' yards. | The area of new floorspace exceeds 1,000 square metres. |
| **12. Tourism and leisure** | |
| 12(a) Ski-runs, ski-lifts and cable cars and associated developments | (i) The area of the works exceeds 1 ha; or<br>(ii) the height of any building or other structure exceeds 15 metres. |
| 12(b) Marinas | The area of the enclosed water surface exceeds 1,000 square metres. |
| 12(c) Holiday villages and hotel complexes outside urban areas and associated developments<br>12(d) Theme parks | The area of the development exceeds 0.5 ha |
| 12(e) Permanent camp sites and caravan sites<br>12(f) Golf courses and associated developments. | The area of the development exceeds 1 ha. |


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| Column 1 Description of development | Column 2 Applicable thresholds/criteria |
|---|---|
| **13. Changes or extensions** | |
| 13(a) Any change to or extension of development of a description listed in Schedule 1 or in paragraphs 1 to 12 of Column 1 of this table, where that development is already authorised, executed or in the process of being executed, and the change or extension may have significant adverse effects on the environment | (i) In relation to development of a description mentioned in Column 1 of this table, the thresholds and criteria in the corresponding part of Column 2 of this table applied to the change or extension (and not to the development as changed or extended).<br>(ii) In relation to development of a description mentioned in a paragraph in Schedule 1 indicated below, the thresholds and criteria in Column 2 of the paragraph of this table indicated below applied to the change or extension (and not to the development as changed or extended:<br>Paragraph in Schedule 1 — Paragraph of this table<br>1 — 6(a)<br>2(a) — 3(a)<br>2(b) — 3(g)<br>3 — 3(g)<br>4 — 4<br>5 — 5<br>6 — 6(a)<br>7(a) — 10(d) (in relation to railways) or 10(e) (in relation to airports)<br>7(b) and (c) — 10(f)<br>8(a) — 10(h)<br>8(b) — 10(g)<br>9 — 11(b)<br>10 — 11(b)<br>11 — 10(n)<br>12 — 10(o)<br>13 — 11(c)<br>14 — 2(e)<br>15 — 10(i)<br>16 — 10(k)<br>17 — 1(c)<br>18 — 8(a)<br>19 — 2(a)<br>20 — 6(c) |
| 13(b) Development of a description mentioned in Schedule 1, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years. | All development. |


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## Selection criteria for screening schedule 2 (Annex 2) development

These criteria are specified in Regulation 4(5) and Schedule 3 of the principal regulations http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm (Annex A Circular 8/2007)

### 1. Characteristics of development

The characteristics of development must be considered having regard, in particular to:

(a) the size of the development;

(b) the cumulation with other development;

(c) the use of natural resources;

(d) the production of waste;

(e) pollution and nuisances;

(f) the risk of accidents, having regard in particular to substances or technologies used.

### 2. Location of development

The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to:

(a) the existing land use;

(b) the relative abundance, quality and regenerative capacity of natural resources in the area;

(c) the absorption capacity of the natural environment, paying particular attention to the following areas:-
- (i) wetlands;
- (ii) coastal zones;
- (iii) mountain and forest areas;
- (iv) nature reserves and parks;
- (v) areas classified or protected under Member States' legislation; areas designated by Member States pursuant to Council Directive 79/409/EEC on the conservation of wild birds1 and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora2;
- (vi) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
- (vii) densely populated areas;
- (viii) landscapes of historical, cultural or archaeological significance.

### 3. Characteristics of the potential impact

The potential significant effects of development must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to:-

(a) the extent of the impact (geographical area and size of the affected population);

(b) the transfrontier nature of the impact;

(c) the magnitude and complexity of the impact;

(d) the probability of the impact;

(e) the duration, frequency and reversibility of the impact.


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# Annexe 5 – Annotated references


(1) Scottish Government Circular 8/2007, The Environmental Impact Assessment (Scotland) Regulations 1999
http://www.scotland.gov.uk/Publications/2007/11/30082353/14

This Circular provides comprehensive guidance on the EIA process with particular emphasis on projects requiring planning permission and those requiring approval under the Roads (Scotland) Act or the Land Drainage Acts.

(2) Scottish Executive Development Department PAN 58, 1999, Environmental Impact Assessment
http://www.scotland.gov.uk/Publications/1999/10/pan58-root/pan58

This Planning Advice Note provides background information and advice on good practice in the EIA process. The Principal Regulations and Circular 8/2007 take precedence over the advice contained in this PAN, which the Scottish Government intends to update in due course.

(3) Commission of the European Communities (1985) Council Directive on the Assessment of the Effects of Certain Public and Private Projects on the Environment (85/337/EEC).
http://ec.europa.eu/environment/eia/full-legal-text/85337.htm

The EC Directive which triggered statutory environmental impact assessment procedures for the first time in the UK. It is still the basis of all EC and UK legislation but was extensively revised in 1999, see (4) below.

(4) European Community EC Directive 97/11/EC of 3.3.97
http://ec.europa.eu/environment/eia/full-legal-text/9711.htm

Amending the 1985 Directive on Environmental Assessment, (3) above.

(5) Environmental Assessment (Scotland) Regulations 1988 (SI 1988 No. 1221).

These were the Regulations that introduced many of the requirements for environmental impact assessment in Scotland, in respect of a wide range of projects, in 1988, in order to comply with EC Directive 85/337. Other Regulations were introduced at the same time and subsequently.

(6) Environmental Impact Assessment (Scotland) Regulations 1999.
http://www.opsi.gov.uk/legislation/scotland/ssi1999/19990001.htm

These are the current principal Regulations applying the requirements for environmental impact assessment in Scotland, in respect of a wide range of projects, in order to comply with EC Directives 85/337, as amended. Other Regulations were introduced at the same time and subsequently, see Annexe 2 of this Handbook.

(7) Directive 2003/35/EC, known as the 'Public Participation Directive', Aarhus Convention
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0035:EN:HTML

(8) The Town and Country Planning (Electronic Communications) (Scotland) Order 2004
http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040332.htm

(9) Circular 3/2004 the Town and Country Planning (Electronic Communications) (Scotland) Order
http://www.scotland.gov.uk/Publications/2004/07/19722/40737

(10) Planning Advice Note (PAN) 70 Electronic Planning Service Delivery
http://www.scotland.gov.uk/Publications/2008/11/17142750/0

(11) Scottish Executive Circular June 2000 replacing Circular 6/1995 The Conservation (Natural Habitats Etc.) Regulations 1994

This Circular provides procedural and policy guidance on the Habitats Regulations 1994, http://www.opsi.gov.uk/si/si1994/uksi_19942716_en_1.htm and specifically indicates that any project likely to have a significant effect on a Natura 2000 (European) Site, whether fully designated or not, should normally be subject to the Environmental Assessment process. The Circular also explains how this differs from the appropriate assessment undertaken by the Competent Authority under the Habitats Regulations.





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(12) RSPB Wildlife Impact: The Treatment of Nature Conservation in Environmental Assessment, 1995, RSPB, Sandy, Beds.

An independent analysis of some 38 environmental statements for a wide variety of project types in Great Britain, from 1988 to 1995, published by the RSPB. Generally the research conclusions were consistent with others showing an improvement since 1992 but still many weaknesses in the way that the process is carried out. The research showed how consultation responses e.g. from SNH could strongly influence decisions, especially where the Statement was poor.

(13) Institute of Environmental Assessment, Guidelines for Baseline Ecological Assessment, 1995, Spons.

The most authoritative and widely recognised and adopted best practice guide for ecological baseline studies in the environmental assessment process. Recommended as good practice guidance by all relevant Institutes. See particularly Appendix 2 of this Handbook.

(14) Institute of Environmental Assessment / The Landscape Institute, Guidelines for Landscape and Visual Impact Assessment, 2002, Second Edition, Spons.

The most authoritative and widely recognised and adopted best practice guide for landscape and visual impact assessment in the environmental assessment process. Unlike (21) above, these guidelines cover the whole of the environmental assessment process. Recommended as good practice guidance by all relevant Institutes, supported and partly funded by SNH. See particularly Appendix 1 of this Handbook.

(15) Environmental Information (Scotland) Regulations 2004 implementing the EC Directive 90/313/EC On Freedom of Access to Information on the Environment
http://www.hmso.gov.uk/legislation/scotland/ssi2004/20040520.htm

EC Directive ensuring that the public has a right of access to environmental information, applied in the UK through the 2004 Regulations.

(16) Institute of Environmental Assessment, Practical Experience of Environmental Assessment in the UK, 1993, IEA.

An authoritative, thorough but relatively succinct overview of practice 1988 to 1993, by the IEA itself. Many shortcomings in practice are highlighted emphasising how reliant the statutory procedures are on integrity and quality of the environmental statements.

(17) a) Jones, C E, Lee N and Wood C (1991). UK Environmental Statements 1988-1990: An Analysis. Occasional Paper 29, University of Manchester EIA Centre.

b) Lee, N and Colley R (1990) Reviewing the Quality of Environmental Statements Occasional Paper 24, Department of Planning and Landscape, University of Manchester.

c) Lee, N & Colley, R, Reviewing the Quality of Environmental Statements Occasional Papers, Department of Planning and Landscape, University of Manchester 24, 2nd Edition, 1992, Manchester University.

d) Jones, C, Lee, N, & Wood, C, UK Environmental Statements 1988 - 1990 An Analysis, Occasional Papers, Department of Planning and Landscape, University of Manchester 29, 1991, Manchester University.

e) Environmental Impact Assessment Centre, University of Manchester, for Dept of Environment, Monitoring Environmental Assessment and Planning, 1991 HMSO.
A series of readable, well researched studies analysing the effectiveness of environmental assessment for a variety of clients and for University research purposes. The Centre is highly regarded internationally as one of excellence in the field of environmental assessment.

(18) Catlow J and Thirlwall G, Environmental Assessment, Report to Department of the Environment, 1977, HMSO.

The first officially commissioned report on environmental assessment in the UK, now difficult to obtain but still remarkably relevant to present day issues. It would have formed the basis of UK legislation had this not been overtaken by the EC Directive coming into force in July 1988.

(19) Wood C & Jones C: The Effect Of Environmental Assessment On Planning Decisions; Workshop at Manchester University, July (1995)

A useful and reasonably succinct resume of the relationship between the environmental assessment process and decision making in planning authorities. Scotland is not well covered.



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# Annexe 6 – Historical Development of Environmental Impact Assessment in Scotland

## First UK Examples in Scotland

An.6.1 The first examples of Environmental Impact Assessment in the UK occurred in Scotland, in the early 1970's, in relation to the major infrastructure developments for North Sea oil and gas installations on the Firth of Forth. These commendable early attempts to use the process of Environmental Impact Assessment were entirely voluntary. Environmental Impact Assessment was not introduced as a statutory requirement until 1988. This section briefly outlines the historical development of Environmental Assessment, internationally and nationally, to provide an understanding as to why the process was introduced, its original intentions and to shed light on the current approaches to Environmental Impact Assessment.

## International Recognition of the Need for Environmental Impact Assessment

An.6.2 A number of factors contributed to the international recognition of the need for and the development of Environmental Impact Assessment. These included:

- The apparent failure of traditional project appraisal techniques such as Cost/Benefit Analysis (CoBA) to account for intangible environmental effects;
- The growth of environmental awareness particularly in the United States;
- The recognition that the efficiency and profitability of some commercial projects had been affected by the consequent environmental changes they brought about and that unforeseen risks associated with such impacts could be environmentally damaging and commercially unacceptable;
- A number of widely reported disasters which highlighted the risks to the environment from human activities such as: the mercury poisoning from a factory in Minamata, Japan (1952-1960); recognition of the effects of the Aswan Dam on the fertility of the Nile valley; and the Torry Canyon oil spill in the English Channel (1967).

## US Legislation 1969

An.6.3 The first legislation requiring environmental assessment was enacted in the US in 1969. The National Environmental Policy Act was adopted by the Nixon administration in 1970. Amongst other things, the Act required federal agencies to include in every recommendation for legislation, and other major federal actions that may significantly affect the quality of the human environment, a detailed statement to assess:

- the environmental impacts of the proposed action;
- any unavoidable adverse environmental effects should the proposal go ahead;
- alternatives to the proposed action;
- relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity;
- any irreversible and irretrievable commitments of resources which would be involved.

An.6.4 Despite considerable teething problems many of the NEPA's ideas and provisions became widely accepted and it formed a recognised model for Environmental Impact Assessment adopted or adapted by a number of countries around the world.

## Early UK Initiatives

An.6.5 In the UK the Department of Environment commissioned a report in 1974 which was intended to examine the scope for and feasibility of introducing Environmental Impact Assessment into UK procedures. The report was produced by John Catlow and Geoffrey Thirlwall, in 1976, and eventually published by the Department in 1977(36). The recommendations of that report were progressed so slowly that they were eventually overtaken by the EC Directive requiring Member States to introduce domestic legislation to comply. This, effectively, led to the implementation of many of the recommendations in the 1977 report, but not all of the report's main conclusions have been adopted in statutory form, although many remain relevant as good practice rather than mandatory requirements.


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An.6.6 For example, the 1977 report recognised that analysis should commence early in the preparation of the development proposal to be useful as a design tool and to examine alternatives; that analysis should include economic and social impacts as well as those affecting the physical environment; that the study should be carried out by a team of experts, from a wide range of disciplines, and should be supervised by the planning authority and proposer in cooperation; and that a responsible authority should determine what environmental impacts are likely to be relevant and therefore should be included in the analysis.

An.6.7 The 1977 report envisaged only a small number of projects ever being appropriate for Environmental Impact Assessment but it soon became evident from the EC Directive that many more projects would have to comply.

## The First EC Directive

An.6.8 The EC Directive itself had proved to be controversial. It had been circulated as a draft as early as 1980 but there had been severe delays in reaching a standard and policy acceptable to all Member States, some of whom already had Environmental Impact Assessment provisions of their own. Eventually, compromises were found and Environmental Assessment procedures were formally introduced into the European Community through the Directive 85/337/EEC "The Assessment of the Effects of Certain Public and Private Projects on the Environment". It allowed three years for Member States to implement the proposals through national legislation. UK Regulations were first introduced just after the compliance date, in July 1988, but gaps in compliance have led to a continuing series of further Regulations, those relevant in Scotland being listed in Annexe 2 of this Handbook.

An.6.9 The principal aims of the Directive were:

- to ensure that the environmental consequences of new development were known and taken into account before any consent could be granted; and
- to encourage proposers to consider environmental concerns from the earliest stage of project planning and design, when potentially adverse effects can be most effectively and economically addressed.

An.6.10 It follows from this second objective that proposers were responsible for having the analysis carried out, and needed to promote interaction between project design and environmental concerns.

An.6.11 The Directive consisted of 14 articles and 3 annexes. The major provisions are listed below:

- Member States must adopt 'all measures necessary' to ensure that 'before consent is given, projects likely to have significant effects on the environment by virtue, among other things, of their nature, size or location are made subject to an assessment with regard to their environmental effects'.
- Requirements may be integrated into the existing consent procedures of individual states which were allowed considerable discretion in implementation.
- Exemptions from Environmental Assessment requirements could be made in exceptional circumstances.
- The types of development affected were those which were "likely to have significant effects on the environment" and were listed in two Annexes to the Directive: Schedule 1 Projects which should always be subject to Environmental Assessment; and Schedule 2 Projects which may be subject to Environmental Assessment 'if their characteristics so require'.
- Member States were required to develop criteria for deciding when projects listed in Schedule 2 should be subject to Environmental Assessment and to review these criteria periodically.
- The information which should be included in an Environmental Statement was specified, in Annex III, but the Directive did not prescribe assessment methods.

## Experience of Statutory Environmental Assessment in the UK and Scotland

An.6.12 Over 1000 environmental statements were submitted in the first five years following the introduction of statutory Environmental Assessment in the UK, in 1988. By February 1999, 347 Environmental Statements had been submitted in Scotland, in respect of all kinds of projects that are subject to Environmental Impact Assessment. 37 of these related to Schedule 1 projects, the others related mainly to minerals (92), waste (66), wind energy (27) and urban projects (32). Self evidently, this far exceeds the number envisaged by the Government and means that Environmental Impact Assessment is now a well established and by no means uncommon procedure. The number of Environmental Assessment cases further increased owing to the revised Regulations in 1999 widening the scope of projects requiring EIA.


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## Standards and Effectiveness of Environmental Assessment

An.6.13 The debate about Environmental Assessment used to be focused on the number of projects that ought to be subject to assessment and whether there is a need for Environmental Impact Assessment in particular cases. However, it has extended to include a debate about the standards of Environmental Statements and the effectiveness of the procedures. Important research projects, separately undertaken on behalf of the IEA (26), DoE (27) and RSPB (25), have exhibited remarkably consistent conclusions which include a distinct improvement in the quality of Environmental Statements since about 1992.

An.6.14 This appears to be the direct consequence of several important factors, namely:

a) the wider availability and use of published good practice guidance;
b) the increasing level of experience of Environmental Impact Assessment particularly in consultancies that have prepared several Environmental Statements;
c) a wider recognition that Environmental Assessment can be a useful and positive contribution to project design and management;
d) the increasing proportion of Environmental Statements that have been subject to prior scoping and consultation;
e) the increasing experience of proposers, Competent Authorities and consultees in dealing with Environmental Impact Assessment and knowing what information to require and how to deal with it.

An.6.15 The best Environmental Statements have been those which involved:-

- thorough scoping and continuing consultation;
- experienced assessors working in well co-ordinated, multi-disciplinary teams with qualified experts dealing with specific topics;
- thorough survey and diligent research to provide comprehensive and up to date information based on standard survey methods;
- objective and impartial analysis of information using good practice techniques;
- clear identification of the nature, scale and significance of all relevant impacts;
- acknowledging limitations in data and understanding of impacts;
- a clear description of all mitigating measures, their effects and effectiveness and how they would be guaranteed;
- a commitment to mitigation, monitoring, review and remedial procedures.

An.6.16 The poorer Environmental Statement were those that:-

- failed or inadequately attempted to carry out early liaison and scoping of the issues;
- failed or inadequately attempted to maintain consultation during the whole process;
- failed to address the full scope of effects or to describe the development adequately;
- relied only on existing, often out of date information;
- failed to provide clear baseline data;
- failed to identify all relevant impacts and/or failed to indicate their nature, scale or significance;
- did not address the policy context in which the project would be determined;
- failed to identify/describe all mitigating measures and their effects and effectiveness;
- did not indicate how mitigation could be guaranteed; and
- ignored monitoring.

An.6.17 The publication of Circular 15/1999 and PAN 58, in 1999, which contained much more comprehensive guidance on good practice further raised the standards of assessment. It is widely acknowledged that the promotion of good practice by SNH through this Handbook and good practice seminars has further improved the effectiveness of Environmental Impact Assessment in Scotland.


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# Annexe 7 – List of principal legal cases referred to

## In date order with the generally used short name of the case in bold

European Court of Justice, Aannemersbedrijf PK Kraaijeveld BV versus Gedeputeerde Staten van Zuid-Holland October 24 (1996) (**Dutch Dykes**) Case C-72/95.

**WWF UK Ltd** and RSPB v SNH, the Secretary of State for Scotland, the Highland Council, Highlands and Islands Enterprise and the Cairngorm Chairlift Co Ltd. (Court of Session 28 October 1998)

Regina v St Edmundsbury Borough Council, ex parte **Walton** (1999) [1999 JPL 805]

Regina v Rochdale MBC ex parte (1) Andrew **Tew**, (2) George Daniel Milne, (3) Steven Garner Queens Bench Division, Sullivan J., (1999) [2000 JPL 54]

R (**Hardy**) v Cornwall County Council (2000) [2001 JPL 786] [2001] Env.L.R. 25

**Berkeley** v Secretary of State Environment Transport and the Regions (2000) [JPL 2001 58],

Regina v Rochdale MBC ex parte **Milne** (2000) [2001 JPL 470]

ECJ WWF v **Bozen** [2000] 2 P.L.R. 1

Regina v Secretary of State Environment Transport and the Regions ex parte **Diane Barker** (2001)

Regina on the application of **Lebus** v South Cambridgeshire DC (2002) [2003 JPL 466]

**Fernback** and Others v Harrow LBC (2000) [2001 EWHC Admin 278; 2002 Env LR 10]

**Gillespie** v First Secretary of State and Bellway Urban Renewal (TLR 7/4/2003) [14 LS Gaz R 30] and Bellway Urban Renewal Southern v Gillespie [2003] EWCA Civ 400

**Goodman** and another v Lewisham London Borough Council (2003) [TLR 21/2/03] [Env.L.R.28]

R (**PPG11 Limited**) v Dorset County Council and Viridor Waste Management Ltd [2003] EWHC 1311 Admin

**BAA plc** v Secretary of State [2003] J.P.L. 610

R (**Jones**) v Mansfield DC [2004] Env.L.R. 21

R (**Delina Wells**) v Secretary of State Transport, Local Government and the Regions [2004] 1. C.M.L.R. 31 and ECJ C – 201/02

R (**Prokopp**) v London Underground Ltd and others [2004] Env. L.R.8

R (**Edwards**) v Environment Agency [2005] EWHC 657 (Admin)

R (**Candlish**) v Hastings BC [2005] EWHC 21539 (Admin)

**Alford** v Department for Environment Food and Rural Affairs [2005] EWHC 808 (Admin)

R (**Catt**) v Brighton and Hove City Council [2007] EWCA Civ 298

**Seaport Investments Ltd**, Magherafelt District Council, F P McCann (Developments) Ltd., Younger Homes Ltd., Herron Bros Ltd., G Small Contracts and Creagh Concrete Products Ltd High Court of Justice Northern Ireland, ([2007] NIQB 62) especially paras 10 – 18

R (**Hart District Council**) v The Secretary of State for Communities and Local Government Luckmore Ltd, Barratt Homes Ltd case CO/7623/2007, [2008] EWHC 1204 (Admin); 2008 WL 2148207

R (**Millgate Developments Ltd**) v Secretary of State for Communities and Local Government [2008] EWHC 1906 (Admin)

R (**Christopher Mellor**) v Secretary for State for Communities and Local Government ECJ Case C-75/08 preliminary ruling 30 April 2009.


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# Attachment A Part 1 – Guide to the scoping of an environmental statement

**(With emphasis on the natural heritage)**

## Note on Use of Part 1 of the Guide

This is intended to assist Competent Authorities and consultees in their responses to a scoping request from a developer. It is not intended, and should not be used, as a framework to enable developers or their agents to produce a scoping report. This is a separate exercise not covered here.

For obvious reasons, the scope of topics is limited here to natural heritage issues but users are encouraged to extend / replace / adapt these issues to cover those which are relevant to them, e.g. the cultural heritage, air quality etc.

Tick appropriate boxes or circle appropriate answers and compile a letter to, or action list for a meeting with, the developer and / or Competent Authority

### 1. Do you know the site?

Yes go to question 2
No visit site as soon as possible or talk to someone who knows the site well, then, or in the meantime, go to question 2 and on the evidence available:

### 2. Could the proposal affect a natural heritage designation, including:

- ❑ National Park
- ❑ Regional Park
- ❑ Country Park
- ❑ Picnic Site
- ❑ NSA
- ❑ An Historic Garden or Designed Landscape
- ❑ AGLV
- ❑ Other landscape designation
- ❑ SAC
- ❑ SPA
- ❑ Ramsar Site
- ❑ SSSI
- ❑ MNR
- ❑ LNR
- ❑ Non statutory wildlife site

Yes If any boxes ticked ensure developer / Competent Authority is fully aware of designation and its boundaries, interest features / value, reason and purpose of designation, conservation or management objectives etc. Go to Question 3
No Go to Question 3

### 3. Could the proposal affect any statutory or other important outdoor access facility including?

- ❑ Long Distance Route
- ❑ Public right of way
- ❑ Access area / route

Go to question 4.

### 4. Could the proposal affect species or habitats, for example, any

- ❑ Protected species
- ❑ (L)BAP species or habitat

Go to question 5

### 5. Could the proposal have a significant effect on:

- ❑ The character, integrity or distinctiveness of the landscape?
- ❑ The amenity or enjoyment of the landscape experience including its wildland character?
- ❑ Important, typical, distinctive or otherwise important landscape features?
- ❑ The historical/cultural interest of the landscape?

Yes Ensure the developer / Competent Authority are aware of the Landscape Character Assessment, see Technical Appendix 1 of this Handbook and other good practice guides and how they may inform the EIA process. Go to Question 6
No Go to Question 6


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## 6. Could the proposal have a significant effect on

- ❑ Any other natural heritage resources or on
- ❑ Access to the countryside?

Yes Ensure the developer / Competent Authority are aware of the interest, Annexe 5 of this Handbook and good practice guides that may inform the EIA process. Go to Question 7

No Go to Question 7

## 7. What in your view are the key environmental issues raised by the proposal?

Use the table below to circle and note the important issues.

| Receptor (What may be affected) | Issue (What the effect might be) | Will it be covered in ES |
|---|---|---|
| People | | |
| Landscape | | |
| Visual Amenity | | |
| Recreation / Access | | |
| Geology, rocks and minerals | | |
| Geomorphology, natural systems and processes | | |
| Soil | | |
| Water | | |
| Hydrology | | |
| River systems | | |
| Habitats | | |
| Plant species | | |
| Animal species | | |
| Designed Landscape | | |
| Cultural Heritage | | |
| Built Environment | | |
| Air quality / Climate | | |
| Other (Specify | | |

## 8. If there is evidence that any of these issues will not be addressed (or will not be appropriately addressed) in the Environmental Statement:

Yes Write to developer / Competent Authority expressing your views, copy letter to Competent Authority. Go to question 9

No Go to question 9

## 9. Do you know which person will be co-ordinating the preparation of the Environmental Statement?

Yes Go to Question 10

No Contact developer and find out. Go to Question 10.


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**10. Do you know which persons will be responsible for assessing effects on specific issues of interest to you?**

Yes Go to Question 11
No Contact developer and find out. Go to Question 11

**11. Do you know of and agree with methodologies and timetables proposed for survey and assessment?**

Yes Go to Question 12
No Write to developer / Competent Authority expressing your views, copy letter to Competent Authority. Go to Question 12

**12. Will the environmental statement consider alternative solutions e.g. other sites, designs or processes?**

Yes Go to Question 13
No Where relevant write to developer / Competent Authority advocating consideration of alternative solutions. Go to Question 13

**13. Will the EIA process involve consultation with other appropriate conservation / environmental bodies (e.g. RSPB, SWT)?**

Yes Go to Question 14
No Write to developer / Competent Authority advocating consultation with relevant conservation bodies. Go to Question 14

**14. Is the EA co-ordinator aware of relevant information held by you?**

Yes Go to action point below
No In response to scoping exercise, inform proponent of information held by you and the arrangements for obtaining it. Go to action point below

**Action Point** Go back to beginning and collate all relevant points of concern and action points and communicate with developer and / or Competent Authority.


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# Part 2 – Review of the environmental statement

**Part 1 above, relating to scoping must be filled in before completing this Section.**

**The questions below are intended to guide a consultee's or a Competent Authority's review of an Environmental Statement (ES) and the application proposal that it relates to.**

**Responses need to make clear whether they relate to the adequacy of an Environmental Statement and/or to the suitability of a proposal.**

**Use the technical guidance in Parts C and D and Appendices 1 to 6 of the Handbook to help you to decide the answers to the questions.**

Circle the appropriate answers. Compile an action list and letter to the Competent Authority or annex to send with your consultation response to the Competent Authority.

### Is the purpose and rationale of the project clearly described along with how it would be carried out at each phase of the development?

❑ Yes ❑ No Try and clarify with developer / Competent Authority, note deficiencies in ES in response to Competent Authority.

### Is the description of the receiving environment accurate?

❑ Yes ❑ No Note in response to ES consultation.

### Does the ES give an accurate account of the policy context against which the proposal and its effects will be considered?

❑ Yes ❑ No Note major omissions in response to ES consultation.

### Does the ES properly acknowledge any deficiencies or uncertainties in the information base?

❑ Yes ❑ No Note deficiencies in response to ES consultation

### Does the ES adequately and accurately describe the existing status of natural heritage resources?

❑ Yes ❑ No Note errors/omissions in response to ES consultation


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Complete the table below as fully as possible but concentrate on the important effects.

| Effects on Natural Heritage | Is it identified in ES? | Proposed Mitigation | Unavoidable, Residual Adverse Effects |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Describe any positive enhancement | | | |

### Are the predictions of effects clear, comprehensive and reasonable?

❑ Yes ❑ No Note concerns in response to ES consultation.

### Have indirect, knock-on and cumulative effects been considered?

❑ Yes ❑ No Advise Competent Authority of possible secondary effects, and the need to take account of cumulative effects.

### Will significant effects be avoided or adequately mitigated wherever possible?

❑ Yes ❑ No Object to the proposal, unless there are overriding policy reasons in favour of the proposal.

### Are the significant residual adverse impacts of the proposal adequately compensated for?

❑ Yes ❑ No Object to the proposal.

### Are there any proposals for enhancement that need to be weighed against the residual adverse impacts of the proposal?

❑ Yes ❑ No Object to the proposal if the adverse effects are upon statutory designations.

### Where necessary, has the ES guaranteed the mitigating measures and proposed an effective regime to monitor and redress adverse effects?

❑ Yes ❑ No Request that mitigation is guaranteed by conditions and legally binding agreements and that it includes effective monitoring review and remedial or corrective action as may be required.

NB. If the ES is revised and resubmitted, fill in Part 2 again, marking the original sheet as “superseded”. If supplementary information is submitted which changes your views, then amend answers on original sheet indicating that that amendment results from supplementary information.


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# Appendices


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# Appendix 1: Landscape and Visual Impact Assessment

For information on the assessment of cumulative landscape and visual impacts of wind energy developments please visit SNH's website: www.snh.org.uk

## Introduction to This Appendix

1. This Appendix explains in more detail the techniques for assessing the landscape and visual impacts of a proposal, within the overall framework of the EIA process. Essentially, many proposals are likely to change the landscape and the way in which people see the landscape. The techniques described are based on the current best practice guidance for a systematic approach to landscape and visual impact assessment developed by the Landscape Institute and the Institute of Environmental Management and Assessment with support from SNH. It is set out in the publication Guidelines for Landscape and Visual Impact Assessment, The Landscape Institute with the Institute of Environmental Management and Assessment, Spons. 2002 (the GLVIA) available from http://www.landscapeinstitute.org/publications/index.php and also Landscape Character Assessment Guidance for England and Scotland prepared on behalf of the Countryside Agency and SNH, 2002 available at http://www.snh.org.uk/wwo/sharinggoodpractice/cci/cci/guidance/Main/Content.htm

   Other SNH publications relevant to the assessment of landscape and visual impacts include:

   [a] Marine Aquaculture and the Landscape, The Siting and Design of Marine Aquaculture Developments in the Landscape http://www.snh.org.uk/pubs/detail.asp?id=113
   [b] Guidelines on the Environmental Impacts of Windfarms and small Hydroelectric Schemes and http://www.snh.org.uk/pubs/detail.asp?id=108
   [c] Minerals and the Natural Heritage in Scotland's Midland Valley; http://www.snh.org.uk/scottish/ns-un-a2.asp
   and
   Visual Representation of Windfarms: Good Practice Guide SNH 2007 http://www.snh.org.uk/pdfs/publications/heritagemanagement/Visual%20Representation%20of%20windfarms%20-%20excerpt.pdf

**Key advice**

If you require further guidance after reading this Appendix, you should refer to the above guidelines. SNH should be consulted at as early a stage as possible wherever landscape or visual impact issues may be significant.

## Introduction to Landscape Planning and the Environmental Impact Assessment Process

2. The box overleaf illustrates the key steps in landscape planning. It will be seen that these steps integrate with those of the EIA process. For example, looking at alternatives, developing mitigation measures and preparing a detailed assessment to inform the decision-making process.


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3. In particular, EIA for landscape and visual impact assessments should include:

   - Screening a project to see if it should be subject to assessment.
   - Scoping of the assessment.
   - Pre-application discussions and consultation.
   - Description of development/proposal.
   - Baseline studies.
   - Identify impacts at each stage of the project, predict magnitude, durations etc.
   - Mitigation.
   - Assess magnitude, duration etc of residual impacts.
   - Assess significance of residual impacts.
   - Presentation of findings.
   - Consultation.
   - Analysis and reporting.
   - Decision.

Good EIA practice

Appendix 1 Box 1:

**Key Steps in Landscape Planning**

- Understand nature of the landscape
- Identify data, opportunities and constraints
- Modify location, layout, design etc of all options to achieve best environmental fit
- Prepare strategies to avoid impacts and utilise opportunities
- Compare options, select least harmful
- Develop landscape masterplan
- Prepare landscape and visual impact assessment
- Decision-making process
- Detailed design and specification
- Implementation
- After care, maintenance
- Monitoring

4. SNH will mainly be involved in screening, scoping, providing information and pre-application consultation procedures and again at the consultation stage of the application.

5. For consultees, the approach to appraisal of landscape and visual impacts will follow the sequence shown in Figure 1 below.

Key information

Appendix 1 Figure 1

**The Approach to Landscape and Visual Impact Assessment**

- Landscape Observation and Description
- Appreciation of Landscape Character and Landscape Change
- Reading about, examining and understanding the proposal – at various life stages
- Considering the assessment of the Landscape and Visual Impacts and their significance
- Considering whether the Environmental Statement is an acceptable basis to inform the decision
- Considering whether more or different mitigation is possible and seeking further information or discussing/negotiating changes
- Drafting a written consultation response
- Deinition of “Landscape”

6. The simplest definition of “Landscape” is “the appearance of the land”. Landscape is everywhere and may comprise rural landscape, urban landscape (or townscape), urban fringe landscape, coastal landscape, seascape etc.


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7. However, human perceptions of place also include things that cannot be seen but which add to the appreciation of places; these are:

   _ feelings generated by other senses – touch, hearing, smell, taste;
   _ feelings generated by a knowledge of the place (its cultural and historical associations with people, events, etc.);
   _ feelings generated by past experience of the place, or similar places – life experience.

8. These combine to give an experience of landscape perceived by all the senses – sight, sound, smell, touch, taste – and by knowledge.

9. What is experienced is influenced by:

   – natural and semi-natural features and processes;
   – the use and management of the land by people now;
   – the result of the historical use and management of the land;
   – the cultural associations; and
   – human activity.

10. SNH takes a comprehensive view of landscape, taking account of more than just the visible components. We recognise that historical and cultural associations and the total experience of landscape through all the senses and through knowledge are integral to understanding landscape character.

11. SNH believes that all landscapes, everywhere, are important as:

   – an essential part of our natural heritage resource base;
   – a reservoir of archaeological and historical evidence;
   – an environment for plants and animals, the condition of which directly affects biodiversity conservation;
   – a resource that evokes sensual, cultural and spiritual responses essential to human well being;
   – a recreational resource providing enjoyable health benefits;
   – an important part of our quality of life, not least as the habitat/environment in which we live.

12. SNH recognises that the landscape of Scotland is the direct product of the interaction of innumerable and often extremely complex natural and human influences over thousands of years. The landscape is dynamic and continues to change as a result of climate change, natural systems and processes and human influences – land use and management continue to change the components of landscape. The range and scale and speed of change have all increased with technological progress. Armed with modern technology we are able to pay less regard to natural influences – geology, topography, climate, coastal processes than we had to in the past. Development in an inappropriate location or which is poorly sited or badly designed can erode landscape character and local distinctiveness by departing from more sensitive ways of building and utilising the land, which respect natural constraints and use natural, locally available materials.

13. Change, however is inherent in all landscapes. SNH's approach is to manage change not protect the status quo. SNH believes that a better understanding of landscape, its evolution, management, conservation, restoration and enhancement are essential to achieve environmental sustainability, having regard to the European Landscape Convention see http://www.coe.int/t/dg4/cultureheritage/Conventions/Landscape/ To reach an improved understanding we need to better appreciate the composition and distribution of landscape types in Scotland, their evolution, the pressures for change that they experience and the likely effects of change and how change may be managed and controlled. The EIA process is an important contribution to improving and informing decisions that may affect landscape and visual amenity. The national programme of Landscape Character Assessments is also an important contribution and SNH's responses to EIA will be built upon the foundations provided by the local Landscape Character Assessments.


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14. EIA is about the appraisal of components of the landscape, appreciating the character or distinctiveness including attributes such as tranquillity, remoteness and wildness of landscape and how changes may affect all of these things. It is not about how individuals may respond to the landscape, or changes to it. People's responses to the landscape will vary as a result of their own personal aesthetic taste, tolerance of sound, preferences for smells and tastes, life experiences, philosophies, interests, education and knowledge. EIA should not try to consider people's responses to landscapes. One person's landscape of wild beauty and tranquility is another person's landscape of featureless desolation. EIA should look at the physical aspects of the landscape and what is experienced but should not attempt to describe or assess people's reactions to these.

## Landscape and Visual Impacts

15. Landscape and visual impacts are related but different concepts.

    Landscape Impacts are on the fabric, character and quality of the landscape. They are concerned with:

    – Landscape components
    – Landscape character – regional and local distinctiveness, tranquillity, wildness etc.
    – Special interests eg designations, conservation sites, cultural associations.

    Visual Impacts are the effects on people of the changes in available views through intrusion or obstruction and whether important opportunities to enjoy views may be improved or reduced.

16. Landscape and visual impacts do not necessarily coincide. Landscape impacts can occur in the absence of visual impacts, for instance where a development is wholly screened from available views, but nonetheless results in a loss of landscape elements, and landscape character within the site boundary. Similarly, some developments, such as a new communications mast in an industrial area, may have significant visual impacts, but insignificant landscape impacts. However, such cases are very much the exception, and for most projects both landscape and visual impacts will need to be assessed.

## Landscape Observation and Description: Components of the Landscape

17. The components of landscape and the influences on those components are fundamental to our appreciation of landscape character and its distinctiveness. Some of these components are objective some are subjective. Landscape observation, description and appreciation always involves objective and subjective matters but the subjective elements can be analysed with confidence by confining description to the components of the landscape and not responses to these components.

18. The Components of the Landscape are its features and characteristics. The landscape includes:

    – visible, physical, objective, tangible components, e.g. landform, buildings.
    – visible, spatial (rather than physical), more subjective, intangible components, e.g. scale, pattern, colour, texture etc.
    – non-visible components that cannot be seen, e.g. tranquillity, remoteness, wildness, sound and cultural associations.

19. In order to structure the approach to observation and description, it is useful to have a field sheet that acts as an aide-memoir. No standard fieldsheet could be devised that would be appropriate to all the landscape types in Scotland. Example Fieldsheets 1, 2 and 3 at the end of this Appendix, entitled Landscape Observation and Description are designed to indicate the wide range of features and characteristics that may be found in Scotland, they are certainly not exhaustive, and should be modified in each case.


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## Physical Features and Characteristics

20. The physical features and characteristics can be grouped under 4 broad headings or categories (See Example Fieldsheets 1 and 2).

Appendix 1 Box 2: **Key information**

### The Physical Components of Landscape

- Landform (See Example Fieldsheet 1)
- Land Cover and Land Use (See Example Fieldsheets 1 and 2)
- Linear Features (See Example Fieldsheet 2)
- Single Point Features (See Example Fieldsheet 2).

21. These broad categories can be subdivided (See Example Fieldsheets 1 and 2). For example:

    Land Use and Land Cover divided into:

    - water;
    - forestry, woodland and trees;
    - agriculture, fields and boundaries;
    - settlements;
    - other land uses.

22. All of these components are: real, physical, measurable, tangible–touchable as well as visible.

23. They can, therefore, be described with objectivity: a matter of fact, not opinion. We are not describing our responses to them, e.g. whether we like them or not, just whether they are there or not. Together they create compositions in infinitely variable ways.

24. Some components will be more significant than others. The significant ones may contribute to the character of the landscape or may form conspicuous features within the landscape that are not typical. In completing the fieldsheet you might develop a system e.g. of boxes or highlighting to indicate the most significant, i.e. visually prominent or frequent features.

25. We are not making judgements about good or bad compositions or intrusive features. It is a matter of fact how these components combine and whether particular components occur uniquely or frequently.

## Components of Landscape Experience

26. Sometimes referred to as "Experiential Characteristics" and set out on Example Fieldsheet 3 at the end of this Appendix. These are not physical components but may include:

    - visible, spatial characteristics that cannot be touched but can be seen (e.g. colour or pattern);
    - characteristics that relate to our other senses, such as hearing, smell, taste (e.g. sounds odours and scents);
    - characteristics that are introduced by knowledge of the area (e.g. associations with people events or cultural heritage or artistic or literary works).

    They are all included in the list of components in Box 3 and on Example Fieldsheet 3).


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Appendix 1 Box 3:

**Key information**

### The Components of Landscape Experience

**Visible:** Balance, colour, diversity, form, line, management, movement, openness, scale, texture

**Other Senses:** Sound, taste, smell

**Knowledge:** Historical associations, cultural associations (but factual things, not emotional things)

27. In turn, each of the visible components can be described in relative terms. They do not lend themselves to accurate measurement, like the physical characteristics, but they can be described within a range of common adjectives associated with the subject. For example: openness may be described as: tightly enclosed, confined, open or exposed. (See Example Fieldsheet 3). These adjectives give us a fairly descriptive picture. See other descriptions on Example Fieldsheet 3 at the end of this Appendix.

28. These descriptions are subjective but, nevertheless, meaningful. The likelihood is that most people would describe a component in a particular landscape in the context of its location in Scotland, by using the same adjective. Context of location is important. What is open and large scale in the Western Highlands will be different to open, large scale landscapes in the Midland Valley of Scotland.

29. These descriptions can be collated into paragraphs of text and are capable of portraying a written picture, or 'pen portrait' of the landscape character.

30. These descriptions do not relate to our responses to the landscape but our experience of it. If descriptive methods are approached in the right way, understanding, expression and appreciation of the landscape is valid. There is nothing wrong with subjectivity if it is founded on an informed understanding and structured approach.

31. It is also important to realise that because these components are capable of meaningful description they can also change if the landscape changes. Furthermore, most are capable of being changed by human activity, such as changes in land use or management or development.

32. For example, removing field boundaries will change the scale and openness. Mineral operations may change texture, colour, scale, balance, form, line, movement and sound.

33. These must, therefore, be important components in landscape character and need to be considered in landscape assessment.

## Appreciation of Landscape Character and Landscape Change

34. The components of the landscape combine to create special combinations that everyone sees and feels, no matter what their response to it may be. The combinations of components are more than the sum of their component parts. Landscape character is the combination of all the components, and the way they come together and interact.

## Landscape Distinctiveness

35. The combinations of landscape characteristics vary considerably, indeed, infinitely from place to place and usually provide such a unique combination of components that it is distinctive – not quite like anywhere else. This gives a sense of place and identity unique to each area (except for example a monotonous housing estate or forest plantation that is anonymous – it could be anywhere).


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## Landscape Character

36. Most areas have landscape characteristics that come together in particular combinations to create broad landscape 'types', which may be unique or may occur in more than one locality. These broad combinations are identified as "Landscape Types". Their local variations are identified as "Landscape Character Areas" or sub areas. A sense of place for local people comes from their recognition and familiarity with their local area which provides, for them, a strong sense of place and identity even if it is not familiar to other people.

## Landscape Change

37. Landscapes are dynamic. They change through natural processes – e.g. maturity of woodlands, and natural systems – e.g. coastal accretion, river erosion. Most changes, however, are the result of human activity, land use, management or neglect.

38. Change is inevitable and can alter the landscape character making it more or less typical of its landscape type or even changing it to another landscape type altogether. Change in itself is not, therefore, necessarily negative. It can restore or enhance landscape character. Alternatively, it can damage, degrade or destroy landscape character. SNH seeks to manage change, usually in a way that sustains or improves landscape character.

39. Appreciation of landscape character – what is significant, what is important – is fundamental to landscape planning and management. When considering proposals for change we need to focus on those aspects that form the key components of the landscape and assess the changes to them that would occur:

    (a) anyway, as a result of trends and natural changes; and
    (b) as a result of the proposal that is subject to the EIA.

## Examining and understanding the proposal – at various life stages.

40. Landscape and visual impacts can arise from a variety of sources. They can be caused by changes in land use, for example mineral extraction, afforestation and land drainage; by the development of buildings and structures such as power stations, industrial estates, roads and housing developments; by changes in land management, such as intensification of agricultural use, which can be a vehicle for biological and landscape change; and, less commonly, by changes in production processes and emissions, for instance from quarries, chemical, food and textile industry plants.

41. In order to predict the changes that would result from a project it is necessary to fully understand the project itself. There will be relatively obvious points to familiarise yourself with, such as the location and size or scale of the development and the nature of the project – what it would look like and sound like. There will also be less obvious points to consider, such as the different stages that a project may go through. Reference should be made to the project life cycle at Figure 3 of the Handbook.

42. Means of access or of importing or exporting materials, or energy transmission, water supply etc. could all have landscape and visual impacts including indirect and off site impacts. The excavation of local borrow pits for construction materials, temporary or permanent disposal or storage of waste, top soil, sub soil, other overburdens and surface water or settlement lagoons could create new features in the landscape.

43. The project may necessarily need ancillary or related forms of development which have not been clearly identified and described in the proposal such as: construction yards or compounds; ancillary buildings or structures; jetties; lighting; security fencing; gantries, poles, masts, cranes or towers; signs and even sirens or other audible warning devices.


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44. The design of the project may include mitigation measures. It is necessary to consider their form, scale, duration and location and how they would be constructed or implemented. How effective would they be and would they have landscape or visual impacts themselves?

## Predicting the Landscape and Visual Impacts

See Section C.7 of the Handbook and Example Fieldsheets 4 and 5).

45. Impact occurs when landscape or visual resources are affected. Where we have a proposal for assessment there will be: "receptors" things that will be affected, e.g.

- landscape – that is there now;
- people that are there now; and
- "impacts" – the changes that the landscape and the people would experience.

46. Receptors of landscape and visual impact may include physical and natural landscape and biological resources, special interests and groups of viewers. Receptors can be, e.g.

- Specific landscape components e.g. shoreline, hill or river
- Areas of distinctive character
- Valued landscapes such as local beauty spots or specific viewpoints
- Historic, designed landscapes
- People – residents, workers, travellers.

47. Reference should be made to the full range of types of impacts shown in Box C.7.2 of the Handbook. (See also Example Fieldsheets 4 and 5).

## Assessing the Significance of Landscape and Visual Impacts

See Section C.8 of the Handbook and Example Fieldsheets 4 and 5 below.

48. Section C.8 of the Handbook considers the assessment of the significance of impacts. Essentially this depends, amongst other things on:

- the type of impact;
- the magnitude or scale of the impact;
- duration whether it is a permanent or temporary impact;
- the importance of the receptor as a landscape component (or the number of people affected, what they are doing and the context of the view).

49. Significance thresholds can, therefore, be determined from different combinations of sensitivity and magnitude. In order to develop significance thresholds it is necessary first to classify the sensitivity of receptors and the magnitude of change according to reference points along a continuum, as shown in the examples in Figure 2 below. These can be used in Fieldsheets, as in Example Fieldsheets 4 and 5 at the end of this Appendix. You should clearly distinguish between landscape and visual receptors and a useful way of ensuring that you do this is to use separate fieldsheets for landscape receptors and impacts (Example Fieldsheet 4) and visual receptors and impacts (Example Fieldsheet 5).

50. Reference should be made to section C.8 of the Handbook, which explains the approach to expressing the significance of impacts in respect of landscape and visual impacts and other impacts which cannot be expressed in numerical or other objective ways.

It is expressed, for example, in a scale of 'major, moderate and low', but it must be stressed that this is only an example.


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51. Every project will require its own set of criteria and thresholds, tailored to suit local conditions and circumstances, and it should be remembered that impacts can be positive as well as negative. The benefit of such a system, though, is to help separate fact from interpretation, and hence to simplify discussion and agreement on the significance of impacts. The Example Fieldsheets at the end of this Appendix use a four point "major/moderate/low/negligible" scale, again to illustrate different approaches that may be applicable in different circumstances.

52. Numerical scoring or weighting should be avoided. Attempting to attach precise numerical values to qualitative resources is rarely successful, and should not be used as a substitute for reasoned professional judgement.

53. Similarly for visual impact assessment, it may help to use a fieldsheet or checklist (again modified to the case) to structure the approach to assessment. When in the field, it is necessary to envisage the landscape with the development in place – add and subtract relevant features and consider what effect that would have. Visualisations, used with care and accuracy, can help to envisage the effects of the project in the landscape or view.

54. Landscape impacts in the checklist may usefully be grouped under "receptors" with a similar list to those used to describe the landscape components. Thus, you will be using a basis for assessing landscape and visual impact significance directly drawn from your landscape description and related to the key characteristics and features that you identified in your observations (assisted by the Landscape Character Assessment for the relevant area). This provides a rational and well reasoned justification for assessment.

55. For each impact a level of significance can be assigned, such as major, moderate or low or negligible adverse or beneficial effect.

56. Similarly a fieldsheet/checklist can be used for assessing the Visual Impacts.

57. The assessment relates to residual impacts – taking mitigation into account but remember that some mitigation will take time (screen planting) and some mitigation measures can have impacts themselves e.g. screen mounds can obstruct views and look out of scale and place because of their size and shape.

## Considering the Environmental Statement

See Sections D.9 and D.10 of the Handbook

58. A key test is whether the Environmental Statement clearly distinguishes between landscape and visual impacts.

    Does the Environmental Statement fully and fairly describe all relevant and significant landscape and visual impacts and does it assign appropriate levels of significance to these impacts?

59. It is not feasible to produce a comprehensive checklist of all the points that should be considered when appraising the adequacy and effectiveness of Environmental Statements, owing to the considerable scope of content, project types and methods of presentation. However, some of the points in Box 4 below will usually be worth considering.


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Appendix 1 Box 4

**Good EIA practice**

## Useful Tests to Apply to Environmental Statements in respect of Landscape and Visual Impact Assessments

- Does the Environmental Statement contain fair/accurate/appropriate illustrations?
- Is there a Map showing relevant Zones of Theoretical Visibility (ZTV) and is it clear what they relate to and how they were compiled?
- Are there before and after illustrations such as artist's impressions, sketches, photomontage or computer aided montages or overlays?
- Are viewpoints fair and typical and comprehensive of relevant views?
- Are maps diagrams and illustrations clear and is the text clear and unambiguous?
- Are options or alternatives adequately considered?
- Are mitigation measures adequately described and are their effects assessed?
- Are residual effects clearly identified and if so could they be further reduced at reasonable cost?


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## EXAMPLE FIELDSHEET 1 - DESCRIPTION

| | | | | |
|---|---|---|---|---|
| **Location** | | | | |
| **Viewpoint** | | | | |
| **Date** | | | | |
| **Visible, physical components of landform, its features and characteristics** | | | | |
| High Plateau | Peak | Knoll ridge | Spur / crags | Outcrops |
| Corrie/gully | Low plateau | Distinct hills | Rolling hills/slopes | Glen valley |
| Gorge | Bench/terrace | Flats | Wide basin | Confined basin |
| Den | Hollows | Plain | Mounds/moraines | Cliff |
| Coastal brae | Bay | Headland | Beach | Intertidal |
| Notes | | | | |
| **Land cover and land use – water** | | | | |
| Sea | Sea loch | Intertidal | Mud/sand | Delta |
| Estuary | Loch | Lochans | Pools | River |
| Whitewater | Burn | Drain/ditch | Canal | Waterfall |
| Reservoir | | | | |
| Notes | | | | |
| **Land cover and land use – forestry, woodland and trees** | | | | |
| Coniferous plantation | Mixed plantation | Broadleaved plantation | Semi-natural woodland | |
| Tree clumps/copses | Shelterbelts/tree lines | Roadside tree belts | Policy/parkland trees | |
| Hedgerow trees | Notable single trees | | | |
| Notes | | | | |
| **Land cover and land use - agriculture** | | | | |
| Arable | Horticulture | Intensive livestock | Ley grassland | |
| Permanent pasture | Unimproved grassland | Rough hill grazing | Moorland | |
| Animals: | Cattle | Sheep | Pigs | |
| | Poultry | Horses | Deer | |
| Notes | | | | |
| **Land cover and land use – fields and boundaries** | | | | |
| Stone dykes | Dykes with fencing | Remnant dykes | Continuous hedgerows | |
| Hedgerows with gaps | Remnant hedgerows | Lost hedgerows | Post and wire fencing | |
| Post and rail fencing | High stone walls | Stone pillars | Wooden/metal gates | |
| Beech hedges | Hawthorn hedges | | | |
| **Field size:** | Very large | Large | Medium | Small |
| Notes | | | | |


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## EXAMPLE FIELDSHEET 2 - DESCRIPTION

| | | | | |
|---|---|---|---|---|
| **Location** | | | | |
| **Viewpoint** | | | | |
| **Date** | | | | |
| **Land cover and land use – other land uses** | | | | |
| Country park | Urban park | Nature reserve | Car parks | Sports fields |
| Golf course | Angling | Camping site | Caravan site | Marine/boats |
| Dock/harbour | Military | Open cast coal | Sand and gravel | Hard rock |
| Industrial | Warehousing | Airfield | Retail | Utilities |
| Notes | | | | |
| **Land cover and land use – Settlements** | | | | |
| Nucleated | Scattered | Linear | Unplanned | Model/planned |
| Traditional | Modern | Mixed | Frequent | Infrequent |
| Absent | Town | Village/township | Hamlet | Sprawling |
| Steadings: | Regular | Irregular | Absent | Frequent |
| | Infrequent | Small | Medium | Large |
| | Traditional | Modified | Extended | Converted |
| Notes | | | | |
| **Dominant Building Materials** | | | | |
| Stone colour | Brick colour | Render/colourwash | | |
| Tile roof colour | Slate roof colour | Stone roof colour | | |
| Notes | | | | |
| **Linear Features** | | | | |
| Motorway | Main road | B roads | Minor Roads | Tracks |
| Bridleways/paths | Drove roads | Hill tracks | Derelict/operational railway | |
| Embankments | Cuttings | Powerlines | High Voltage | Low voltage |
| Rivers/watercourses | Overhead telephone | Pipelines | Coast/shoreline | |
| Notes | | | | |
| **Single point features** | | | | |
| Church | Castle | Ruin | Folly / Obelisk | Wind turbine |
| Cairn | Bridge | Large house | Steadings | Signs |
| Mast/transmitter | Industrial site | Tips/bings | Quarry/mine | Quarry buildings |
| Notes | | | | |


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## EXAMPLE FIELDSHEET 3 - DESCRIPTION

| | | | | |
|---|---|---|---|---|
| **Location** | | | | |
| **Viewpoint** | | | | |
| **Date** | | | | |
| **Components of landscape experience – visible/spatial characteristics** | | | | |
| SCALE | Intimate | Small | Large | Vast |
| OPENNESS | Tightly enclosed | Confined | Open | Exposed |
| COLOUR | Monochrome | Muted | Colourful | Garish |
| TEXTURE | Smooth | Varied texture | Rough | Craggy |
| DIVERSITY | Uniform | Simple | Diverse | Complex |
| FORM | Vertical | Sloping | Rolling | Flat/horizontal |
| LINE | Straight | Angular | Curved | Sinuous |
| BALANCE | Harmonious | Balanced | Discordant | Chaotic |
| MOVEMENT | Dead | Calm | Active | Busy |
| PATTERN | Random<br>Indistinct | Organised<br>Irregular | Planned<br>Regular | Formal<br>Geometric |
| MANAGEMENT | (Semi) Natural | Derelict/disturbed | Tended | Manicured |
| **Components of landscape experience – other senses** | | | | |
| SOUND | Silent | Quiet | Disturbed | Noisy |
| SMELL | Fresh | Agricultural | Coastal | Industrial |
| OTHER | | | | |
| Notes | | | | |


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## EXAMPLE FIELDSHEET 4 - ASSESSMENT

| | |
|---|---|
| **Location** | |
| **Viewpoint** | |
| **Date** | |
| **Proposal** | |

| **Landscape receptors<br>What will be affected?** | **Sensitivity<br>How important is it?** | **Impact<br>What will the effect be?** | **Significance of impact** |
|---|---|---|---|
| Landform | High / Medium / Low | | |
| Water | High / Medium / Low | | |
| Woodland and trees | High / Medium / Low | | |
| Agriculture | High / Medium / Low | | |
| Fields and boundaries | High / Medium / Low | | |
| Other land uses | High / Medium / Low | | |
| Settlement pattern | High / Medium / Low | | |
| Linear features | High / Medium / Low | | |
| Point features | High / Medium / Low | | |
| **Aspects of landscape experience** | | | |
| Colour | High / Medium / Low | | Major / Moderate / Low / Negligible |
| Texture | High / Medium / Low | | Major / Moderate / Low / Negligible |
| Pattern etc | High / Medium / Low | | Major / Moderate / Low / Negligible |


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## EXAMPLE FIELDSHEET 5 - ASSESSMENT

| | |
|---|---|
| **Location** | |
| **Viewpoint** | |
| **Date** | |
| **Proposal** | |

| **Visual receptors** | **Sensitivity of viewpoint?** | **Impact: e.g. visual intrusion / obstruction** | **Significant of impacts** |
|---|---|---|---|
| Trunk roads and motorways | High / Medium / Low | | Major / Moderate / Low / Negligible |
| A and B roads | High / Medium / Low | | Major / Moderate / Low / Negligible |
| Minor roads | High / Medium / Low | | Major / Moderate / Low / Negligible |
| Rights of way | High / Medium / Low | | Major / Moderate / Low / Negligible |
| Important viewpoints | High / Medium / Low | | Major / Moderate / Low / Negligible |
| Railways | High / Medium / Low | | Major / Moderate / Low / Negligible |
| Open space and recreation areas | High / Medium / Low | | Major / Moderate / Low / Negligible |
| Public buildings | High / Medium / Low | | Major / Moderate / Low / Negligible |
| Residential properties | High / Medium / Low | | Major / Moderate / Low / Negligible |
| Workplaces | High / Medium / Low | | Major / Moderate / Low / Negligible |


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# Appendix 2: Ecological Impact Assessment

## Introduction

1. This Appendix relates to the assessment of the ecological impacts of a project in the EIA process. For the UK there is now an authoritative and universally accepted best practice approach published by the Institute of Ecology and Environmental Management (IEEM). They are the Guidelines for Ecological Impact Assessment in the United Kingdom available in March 2009 at http://www.ieem.net/ecia/ IEEM refers to this guidance as the 'EcIA'. SNH supports and promotes the use of the Guidelines as a good quality standard and to help provide consistency in the EIA process.

2. The guidelines update and build upon previous good practice guidance published in 1995 as Guidelines for Baseline Ecological Assessment written by the Institute of Environmental Management and Assessment and published by Spons.

3. IEEM emphasises that the purpose of EcIA is to provide decision-makers with clear and concise information about the likely significant ecological effects associated with a project. Good outcomes for biodiversity depend on input from ecologists at all stages in the decision-making and planning process, from the early design of a project through to its implementation.

4. The Guidelines set new standards for the assessment of the ecological impact of projects and plans, so as to improve the consideration of the needs of biodiversity and thereby reduce the impacts of any development. They can also be used, for example, to provide environmental information to accompany an application for consent, to guide a development brief or to inform a management plan.

5. The Guidelines aim to:

   - Promote a scientifically rigorous and transparent approach to Ecological Impact Assessment (EcIA).
   - Provide a common framework to EcIA in order to promote better communication and closer cooperation between ecologists involved in EcIA.
   - Provide decision-makers with relevant information about the ecological impacts associated with a project, positive and negative.

6. With the purpose of:

   - Ensuring structured ecological input at all stages of project design and implementation.
   - Obtaining best possible outcomes for biodiversity resulting from changes in land use and developments.
   - Improving the effectiveness of current EcIA practice on five key fronts through:
     - identifying and evaluating ecological features;
     - characterising and quantifying impacts and assessing their significance;
     - minimising negative impacts and maximising positive outcomes through the project design process;
     - identifying legal and policy implications and their consequences for decision-making; and
     - identifying the role of stakeholders in achieving maximum benefits for biodiversity.


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7. It is essential that consideration of effects on biodiversity, flora and fauna in EIA are not limited to European protected species or the interest features of designated areas, such as Natura 2000 sites or Sites of Special Scientific Interest. All competent authorities have a duty under section 1 of the Natire Conservation (Scotland) Act 2004, to have regard to the conservation of biodiversity, especially those habitats and species of recognised importance in national and local Biodiversity Action Plans, which frequently occur widely throughout Scotland and outwith designated areas, see for example: http://www.biodiversityscotland.gov.uk/pageType2.php?id=7&type=2&navID=29 Furthermore, those involved in the assessment of ecological impacts must be aware of the requirements for obtaining a licence in respect of work with a wide range of protected species, including European Protected Species, see further http://www.snh.org.uk/about/directives/ab-dir08.asp

8. The IEEM Guidelines provide practical advice for ecologists involved in EcIA for any type of project in the terrestrial, freshwater and coastal environments to the mean low water mark in the UK. In September 2008, IEEM published for consultation purposes, draft Guidelines for Ecological Impact Assessment: Marine and Coastal. At March 2009 these were available at http://www.ieem.net/docs/EcIA%20Marine%20and%20Coastal%20-%20Consultation%20Version%20September%202008.doc

9. The EcIA guidelines are intended for everyone involved in the EIA process. They are structured around the main stages in the EIA process mapped out in this Handbook. However, IEEM again emphasise that although described in this staged way, it is important to recognise that EcIA is, like the whole EIA process, an iterative process, with early stages (notably project design and scoping) often revisited as the assessment proceeds.

10. In order to promote the methodologies set out by IEEM and to avoid unnecessary duplication, this Appendix refers to the guidelines and provides links to each of the main EIA stages.

11. Chapter 2 of the IEEM guidelines refer to both the screening and scoping procedures at http://www.ieem.net/ecia/screening-scoping.html

12. The scoping stage explains that it may not be appropriate or necessary to study all possible ecological impacts to the same level of detail. Effort must be focused on those features or resources that are sufficiently important to merit more detailed consideration. A clear rationale should be given for deciding which features and resources should be subject to more detailed consideration (a key purpose of scoping), to enable all those involved in the assessment to understand the reasoning behind the scope of investigations. Policy considerations will influence the criteria that will be appropriate for determining the threshold in any particular case; cumulative impacts should also be considered.

13. Chapter 3 of the IEEM guidelines deals with the concept of ecological 'valuation', which is the assignment of values to ecological features and resources, including those that have been designated for their nature conservation interest. This discussion is found at http://www.ieem.net/ecia/determining-value.html

14. Like this Handbook, the IEEM guidelines adopt the concept of 'significance' in the EcIA process. This subject is discussed in Chapter 4 of the guidelines at http://www.ieem.net/ecia/impact-assess.html EIA must include a description of the ecologically significant impacts of a project and of how likely they are to occur. This, together with the value of the affected resource or feature, should then be given due consideration; firstly when identifying ways of avoiding harm to ecological interests, then when considering the need for mitigation and then in determining whether to give consent to a particular project and what conditions or legal obligations should be attached to this consent in order to safeguard ecological interests.


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15. There are differences in the various criteria currently used for determining whether ecological impacts are significant and decisions are often subjective. The IEEM guidance suggests a systematic and consistent approach to determining whether an ecological impact is significant. This approach should help to reduce the need for subjective judgement. In the IEEM guidelines a significant impact, in ecological terms (whether negative or positive), is defined as an impact on the integrity of a defined site or ecosystem and/or the conservation status of habitats or species within a given geographical area.

16. Chapter 5 of the IEEM guidelines provides advice on avoiding adverse impacts, 'mitigation', 'compensation' and 'enhancement'. It is important to ensure that any significant residual impacts are clearly identified after taking mitigation into account; in such cases compensation may be necessary. These issues are described at http://www.ieem.net/ecia/mitigation.html

17. Chapter 6 sets out the consequences of a significant impact, in terms of the legal and policy framework within which a decision should be taken by a competent authority. These are found at http://www.ieem.net/ecia/decision-making.html

18. The IEEM guidelines summarise the EcIA process, within the context of the overall procedures of EIA, as follows.

### Initial project design

19. At the outset of the project the proposer's ecologist should:

    a) Obtain and provide information on the project, any alternatives that have been studied and existing ecological information;

    b) review the relative ecological implications of options and how the preferred solution compares with alternatives;

    c) discuss key ecological constraints and considerations about the project design (and alternatives) with the proposer and the design team (e.g. engineers, architects); and

    d) avoid ecological impacts where possible, reduce impacts by effective mitigation, compensate for residual impacts and seek opportunities for ecological enhancements as early as possible, as well as opportunities to modify the design to avoid or reduce negative effects.

### Screening (see sections B.3, B.4 and C.1 of the Handbook)
http://www.ieem.net/ecia/screening-scoping.html

20. The proposer may seek a formal screening opinion from the competent authority concerning the need for EIA under the EIA Regulations. Ecologists working for or advising the competent authority will need to determine whether significant ecological impacts are likely. The decision will be based on the criteria set out in the relevant EIA Regulations for establishing whether or not EIA is required and should take into account the guidance provided in Chapters 3, 4 and 5 of the IEEM guidelines.

### Scoping (see section C.4 of the Handbook)
http://www.ieem.net/ecia/screening-scoping.html

21. IEEM guidelines emphasise the need to adopt standard survey methods wherever appropriate, so that results can be compared with those arising from other investigations. Details of how methods have been tailored to meet the needs of the study should be included. If the method used varies from accepted good practice this should be noted and the effect on the reliability of the results discussed. Standard survey methods are described in Institute of Ecology and Environmental Management (2005) Guidelines for Survey Methodology (Unpublished) http://www.ieem.org.uk/Guidance%20on%20Survey%20Methodology.pdf


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22. It is recommended that all ecologists should ensure that scoping:

a) involves contact with all ecological advisers including the proposer's, competent authority's and consultees' ecologists);
b) involves appropriate consultation with regulatory bodies regarding the proposed scope of the assessment;
c) identifies non-statutory consultees;
d) identifies any potential licensing requirements for survey and/or development regarding legally protected species;
e) identifies all proposed activities that may generate significant ecological impacts;
f) identifies potentially important ecological features or resources that could suffer significant impacts and therefore require detailed assessment;
g) proposes suitable spatial and temporal scopes for the assessment and identifies the main ecological issues to be addressed;
h) undertakes preliminary assessment of potential ecological impacts on identified features or resources, incorporating existing data/information;
i) reconsiders spatial and temporal scope and amends the extent of preliminary investigations if necessary;
j) recommends suitable survey/research methodologies that have been agreed with consultees;
k) results in a scoping report/summary which can be circulated for comment and modified accordingly; and
l) confirms potential opportunities for ecological enhancement or avoidance of impacts.

## Pre-application consultations

23. Under the provisions of the Planning etc (Scotland) Act 2006

http://www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060017_en_1 and the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008,

http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080432_en_1 pre-application consultations are compulsory for national developments and major developments. These consultations provide an early and effective opportunity to ensure that all avoidance, mitigation, compensation and enhancement measurers are fully explored and integrated into the project.

## Impact assessment (see sections C.6 to C.8 of the Handbook)

http://www.ieem.net/ecia/determining-value.html
http://www.ieem.net/ecia/impact-assess.html

24. Ideally, the EcIA team (i.e. including the proposer's, competent authority's and other relevant ecologists) will be involved in the following assessment process, which should cover construction, operation and any decommissioning stages of any project (se Figure 3 in the Handbook):

a) determine the value of ecological features and resources affected, through survey and/or research;
b) assess impacts affecting those important features and resources, which meet or exceed a defined threshold value, with reference to ecological processes and functions as appropriate;
c) quantify the extent, magnitude, duration, timing and frequency of the impacts;
d) assess impact reversibility;
e) explain the level of confidence in these predictions; and
f) identify likely significant impacts in the absence of any mitigation, and taking any mitigation into account that is built into the project at this stage.


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25. The surveys and research that are undertaken may indicate that the scope of the assessment should be adjusted and further studies should be undertaken as required. Impact assessment should also review the relative ecological implications of options and how the preferred solution compares with alternatives.

### Evolution of project design and mitigation

(see sections C.9 to C.10 of the Handbook)
http://www.ieem.net/ecia/mitigation.html

26. This stage should:

a) Identify measures to avoid, reduce or compensate for negative impacts;
b) identify opportunities for enhancement;
c) demonstrate likely success of mitigation measures; and
d) provide sufficient information for mitigation measures to be implemented effectively, i.e. through an Environmental Action Plan (EAP).

Identify significant residual impacts (see sections C.8 to C.10 of the Handbook)

27. This stage should produce a clear summary of the significant residual impacts of the project incorporating mitigation and enhancement measures. Where significant impacts cannot be avoided or reduced, the stage should identify compensation measures to be implemented. It should also consider the consequences of significant residual impacts in the light of planning policies and legislation; and include mitigation, compensatory actions and enhancements in the EAP or similar delivery mechanism.

### Reporting (see sections C.10 and D.1 of the Handbook)

http://www.ieem.net/ecia/decision-making.html

28. The Environmental Statement should set out clearly all the ecological information necessary for a decision to be made. Key aspects include:

a) A description of ecological baseline and trends if the project were not to go ahead;
b) An explanation of the criteria used to evaluate ecological resources and assess the significance of impacts of the project;
c) a statement of ecological methods used, including the timing and duration of surveys;
d) a presentation of any analytical techniques used and the analysis itself;
e) identification of likely ecological impacts and an explanation of their significance and the level of certainty with which this can be stated; and
f) a description of legal and policy consequences.

### Follow-up and monitoring (see Part F of the Handbook)

http://www.ieem.net/ecia/decision-making.html

29. This stage should include:

a) implementation of conditions/planning agreements;

b) designing and agreeing a monitoring strategy with consultees;

c) an audit of predicted impacts against the actual situation; and

d) taking measures to rectify unexpected impacts or ineffective mitigation or compensation measures.


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# Appendix 3: Geodiversity (Earth Heritage) Impact Assessment

## Introduction

1. This Appendix explains in more detail the issues likely to arise in the EIA process in respect of geodiversity conservation . There are no published environmental assessment techniques or good practice methods relating specifically to geodiversity impact assessment. Geodiversity issues are often overlooked in published Environmental Statements and, unless a geological or geomorphological SSSI is involved, competent authorities may also overlook potential geodiversity impacts. Consequently, consideration of these impacts may be absent or inadequate at any stage in the EIA process and one of the key objectives of the guidance in this Appendix is to help to remedy such deficiencies.

2. The EIA process described in the main text of this Handbook is entirely relevant and applicable to geodiversity impact assessment. Equally, geodiversity issues should be an integral consideration at every step in the process. This Appendix:

   (a) sets out the importance of geodiversity considerations in EIA;
   (b) summarises the general classification of geodiversity sites and their conservation objectives relevant to the EIA process;
   (c) identifies the main or typical threats to geodiversity, i.e. the main potential impacts, and project types particularly relevant to geodiversity conservation; and
   (d) provides general advice on assessing the significance of geodiversity impacts.

   Note that assessment of impacts on soils are addressed separately in Appendix 4.

## References

3. Reference is made here to the following publications:

   Prosser, C., Murphy, M. & Larwood, J. (2006) Geological conservation: a guide to good practice. English Nature, Peterborough. http://naturalengland.etraderstores.com/NaturalEnglandShop/product.aspx?ProductID=712db525-75de-4079-862e-5b654546ea56

   Thompson, A., Hine, P.D., Poole, J.S. & Greig, J.R. (1998). Environmental Geology in Land Use Planning. A Guide to Good Practice Report to DETR by Symonds Travers Morgan, East Grinstead

   HR Wallingford (2000). A Guide to Managing Coastal Erosion in Beach/Dune Systems. Scottish Natural Heritage, Perth

   Hoey, T.B. et al. (1998). Engineering Methods for Scottish Gravel Bed Rivers. Scottish Natural Heritage Review, No. 47.

   Scottish Natural Heritage 2008. Scottish Fossil Code. Scottish natural Heritage, Perth.

   Wilson R.C.L. (Ed), (1994). Earth Heritage Conservation. The Geological Society in association with The Open University, Milton Keynes;

   SNH Information and advisory notes on earth heritage conservation.

   Importance of Earth Heritage Considerations in Environmental Impact Assessment

4. Geodiversity considerations are an essential element of the EIA process and any significant impacts on geodiversity features and sites must be included in an Environmental Statement.


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5. Annex III of the EIA Directive, and Schedules in all of the EIA regulations, require that an Environmental Statement must include a description of the aspects of the environment likely to be significantly affected by the development, including, inter alia, landscape, soil and water and the interrelationship between them and all other aspects of the environment.

6. Where significant adverse effects are identified the Environmental Statement must include a description of mitigation measures.

7. Schedules in all of the EIA regulations also specify that an Environmental Statement may include, by way of explanation or amplification, information on, inter alia:

   (b) the nature and quality of materials to be used in production processes;
   (c) the type and quantity of expected pollutants including pollution of soils and water;
   (d) the likely significant direct and indirect effects of the proposal which may result from the use of natural resources including secondary, cumulative, short, medium and long-term, permanent, temporary, positive and negative effects.

8. The EIA regulations provide all competent authorities with the power to require the above information to be submitted, having regard in particular to current knowledge and methods of assessment, where it is reasonably required to give proper consideration to the likely environmental effects of the proposed development.

9. Thus, all geodiversity interests can and should be included in an Environmental Statement and throughout the EIA process wherever the effects of a proposal are likely to be significant. Where they are not included the competent authority should require the developer to submit the information before it grants any consent for the project.

   Geodiversity Site Classification and Objectives Relevant to Environmental Impact Assessment

10. The potential effects of a project on geodiversity interests will usually depend on two main considerations:

    (a) the type of geodiversity site or feature; and
    (b) the type of project, including its nature, scale, location, duration etc

11. Impact assessment therefore needs to take account of the differing issues and conservation objectives for geodiversity sites. Table 1 summarises the classification of geodiversity sites and indicates the changing emphasis of the key conservation objectives.

**Types of Impact** See Sections C.4, C.7, C.8 and C.9 of the Handbook.

12. All likely significant effects on geodiversity interests should be assessed. Generally, effects, or impacts, are likely to fall into one or more of the categories summarised in Table 1 below. For each category, examples of potential impacts are given.


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**Appendix 3 Table 1**
**Site Classification and Conservation Objectives Relevant to EIA**

| Classification | Sites Types | Conservation Objectives |
|---|---|---|
| **Integrity Sites** | Coastal systems | Minimise changes, avoid significant interference with natural processes and preserve integrity of physical attributes, composition, structure and visibility of systems and sites. |
| | River systems | |
| | Other active geomorphological areas/sites | |
| | Caves and karst sites | |
| | Static geomorphological sites, e.g. kames, eskers | |
| **Finite Sites** | Unique/finite mineral or fossil sites | |
| | Old mine dumps/bings | |
| | Underground mines and tunnels | |
| | Buried interest | |
| **Exposure or Extensive Sites** | Buried interest | Preserve exposures judging changes on their merits in terms of exposure, and where possible, enhance the sites. |
| | Underground mines and tunnels | |
| | Inland natural outcrops | |
| | River and stream sections | |
| | Road, rail and canal cuttings | |
| | Coastal cliffs and foreshore exposures | |
| | Exposures in disused quarries, pits and cuttings | |
| | Exposures in active quarries/pits | |


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**Appendix 3 Table 2**
**Potential Earth Heritage Impacts**

| Indirect/ Direct | Type | Example | Timescale | Reversibility | Comments |
|---|---|---|---|---|---|
| **Integrity Sites** | Loss | Landtake from site or feature | Permanent | Irreversible | Usually adverse can be cumulative |
| | Removal | Mineral extraction from geological feature e.g. a kame | Permanent | Irreversible | Usually adverse can be cumulative |
| | Fragmentation | Partial removal of features | Permanent | Irreversible | Usually adverse, often cumulative |
| | Burial | Burial by landfill material of quarry or cutting | Permanent | Irreversible | Usually adverse |
| | Obscuring/ covering | Afforestation over geological features | Long-term | Reversible | Usually adverse can be cumulative |
| | | Mineral overburden dump on geological features | Medium-term | Reversible | Usually adverse |
| | | Screen mounds around construction site | Short-term | Reversible | Usually adverse |
| | Changes to natural systems | River engineering works/ flood defences | Permanent or long-term | May be irreversible | Usually adverse can be cumulative |
| | Changes to coastal processes | Coast protection works | Permanent or long-term | May be irreversible | Usually adverse can be cumulative |
| **Indirect** | Consumption of natural resources | Mineral extraction | Permanent | Irreversible | Usually adverse |
| | Changes to natural systems | River engineering works/ flood defences | Permanent or long-term | May be irreversible | Usually adverse can be cumulative |
| | Changes to coastal processes | Coast protection works | Permanent or long-term | May be irreversible | Usually adverse can be cumulative |
| | Obstructing access | Closure of paths to geological features | Various time scales | Usually reversible | Usually adverse |
| | Enhancing access | Provision of access and/ or interpretation | Various time scales | Usually reversible | Usually beneficial |
| | Obscuring views of geological and landform features | Afforestation | Long-term | Reversible | Usually adverse can be cumulative |
| | Changes to setting and context | Built development | Permanent | Irreversible | Usually adverse can be cumulative |


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## Project Types Particularly Relevant to Geodiversity Conservation

See Sections C.4, C.7, C.8 and C.9 of the Handbook

13. Almost any project type that may be subject to the EIA procedures could potentially affect earth heritage interests. However, experience indicates that particular project types frequently have significant earth heritage implications and frequently raise specific issues in the EIA process. These are summarised in Table 3.

**Appendix 3 Table 3**
**Projects Frequently Resulting in Significant Earth Heritage Impacts**

| Project Type | Site Types Potentially Affected |
|---|---|
| **Mineral Extraction** | Outcrops, exposures, landforms, geomorphological (both static and active), river systems and stream sections; old mines and tunnels, caves and karst, unique mineral and fossil sites, mineral waste dumps, soils. |
| **Landfill/landraise** | Active and disused quarries, pits, cuttings, mines and tunnels, static and active geomorphological sites, caves and karst, unique mineral and fossil sites, soils. |
| **Mineral Restoration** | Restoration of active or disused pits and quarries can affect exposures in active/disused quarries, pits and cuttings, landforms, river systems, outcrop in stream sections, old mines and tunnels, caves and karst, unique/finite mineral and fossil sites, mineral waste dumps, soils. |
| **Coast Protection** | Coastal features, including cliffs and foreshore, and natural coastal processes including erosion and accretion. |
| **Flood Prevention** | Coastal features, including cliffs and foreshore, and natural coastal processes including erosion and accretion, natural lochs, river systems and outcrops in stream sections, soils. |
| **River Engineering** | Riverine features, river systems, river cliffs, outcrop in stream sections, natural lochs and soils. |
| **Land Drainage** | Natural coastal processes, river systems, stream sections, natural lochs and soils. |
| **Coastal Reclamation** | Coastal features, including cliffs and foreshore, and natural coastal processes including erosion and accretion. |
| **Hydro Schemes/ Reservoirs** | Active and disused quarries, natural lochs, river systems and outcrop in stream sections and river cliffs. |
| **Coastal Development e.g. marinas, barrages and built developments** | Coastal features, including cliffs and foreshore, and natural coastal processes including erosion and accretion. |
| **Afforestation** | Inland outcrops and stream sections and other exposure site types, buried interest, landforms, geomorphology (both static and active), and river systems. |
| **First Cultivation of Uncultivated land** | Static and active geomorphological sites, river systems, inland ourcrop and stream sections, buried interest, soils. |
| **Other Land Management Changes** | Can affect run off, rates of erosion and accretion, sediment supplies, river systems and stream sections. |
| **Dredging** | Natural coastal processes including erosion and accretion. |
| **Major industrial/ housing or other urban developments** | Outcrops, exposures, landforms, geomorphological (both static and active), river systems and stream sections; old mines and tunnels, caves and karst, unique/finite mineral and fossil sites, mineral waste dumps, soils. |
| **Transport infrastructure** | Outcrops, exposures, landform, geomorphological (both static and active), river systems and stream sections; old mines and tunnels, caves and karst, unique mineral and fossil sites, mineral waste dumps, soils. |


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14. Other typical pressures and impacts on earth heritage features, systems and habitats are summarised in Table 4 below. It should also be appreciated that the different life stages of a project may have different effects on the earth heritage resource, Figure 3 of the Handbook and Section C.7 highlight these life stages.

**Appendix 3 Table 4**
**Pressures and Impacts on Geodiversity Features, Systems and Habitats**

| Pressure | Examples of on-site impacts | Examples of off-site impacts on active process systems and habitats |
|---|---|---|
| **Mineral extraction (Includes pits, quarries, opencast, extraction from rivers, dunes and beaches).** | Destruction of landforms, rock outcrops, and sediment records. Destruction of soils, structure and soil biodata. May have positive benefits in creating new rock or sediment sections. | Contamination of watercourses. Changes in sediment supply to active process systems, leading to deposition or channel scour. Disruption of drainage network (impacts on runoff). Dust (may affect soil pH). |
| **Restoration of pits quarries** | Loss of rock, sediment or soil exposures. Loss of natural landform. May have positive benefits in creating new accessible sections. | Habitat creation. |
| **Landfill** | Loss of rock, sediment or soil exposures. Loss of natural landform; soil disturbance. | Detrimental effects of gases and other decomposition products on soils and soil biota. Contamination of water courses. Contamination of groundwater. Redistribution of waste on beach/dune systems. |
| **Commercial and industrial developments** | Large scale damage, obscuring and disruption of surface and sub-surface features including rock outcrops, landforms and soils. | Changes to geomorphological processes downstream, arising from channelisation or water abstraction. |
| **Transport infrastructure** | Negative effects from land-take, obscuring or removing rock outcrops, disruption of landforms, soils, hydrology and geomorphological processes, leading to permanent loss or fragmentation of geodiversity features. The construction phase can result in disturbance of natural processes both directly and indirectly (e.g. through the consequent need for on-site and off-site coast protection, slope stabilisation measures or river bank protection). Site restoration works can obscure new or replacement geological sections. | Changes to geomorphological processes downstream, arising from channelisation. During construction phase: contamination of watercourses; changes in sediment supply to active process systems, leading to deposition or channel scour; disruption of drainage network (impacts on runoff). |
| **Coast protection** | Loss of coastal exposures. Destruction of active and relict landforms. Disruption of natural processes. | Changes to sediment circulation and processes downdrift. |
| **River management/ engineering** | Loss of exposures. Destruction of active and relict landforms. Disruption of active processes. | Changes to sediment movement and processes downstream. Change in process regime. |
| **Afforestation** | Loss of landform and outcrop visibility. Physical damage to small scale landforms. Stabilisation of dynamic landforms (sand dunes). | Increase in sediment yield and speed of run-off from catchments during planting and harvesting. Changes to water chemistry. |
| **Agriculture** | Landform damage through ploughing, ground levelling and drainage. Soil compaction, loss of organic matter, reduction in biodiversity. Effects of excess fertiliser applications on soil chemistry and biodiversity. Effects of pesticides on soil biodiversity. | Changes in run-off response times arising from drainage. Episodic soil erosion leading to increased sedimentation and chemical contamination in lochs and river systems. |
| **Other land management changes (e.g. drainage, dumping, construction of tracks)** | Degradation of exposures and landforms. | Changes in run-off and sediment supply. Drying out of wetlands through local and distal drainage. |


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**Appendix 3 Table 4**
**Pressures and Impacts on Geodiversity Features, Systems and Habitats**

| Pressure | Examples of on-site impacts | Examples of off-site impacts on active process systems and habitats |
|---|---|---|
| **Recreation (Infrastructure, footpath development, use of all-terrain vehicles).** | Physical damage to small-scale landforms and soils. Localised soil erosion. Stabilisation and other works to secure public safety. Safety works obscuring outcrop. | |
| **Soil pollution** | Acidification of soils. Accumulation of heavy metals. | Downstream impacts on watercourses. Contamination of groundwater. |
| **Soil erosion** | Deterioration of landforms. | Enhanced sedimentation streams and lakes. Changes in water chemistry. |
| **Climate change** | Changes in active system processes. Changes in system state (reactivation or fossilisation). | Changes in flood frequency. Changes in sensitivity of landforming environments (rivers, coasts, etc) leading to changes in types and rates of geomorphological processes (e.g. erosion, flooding). |
| **Sea-level rise** | Changes in coastal exposures and landforms. | Changes in wider patterns of erosion and deposition. Increased flooding. |

## Assessing Significance of Earth Heritage Impacts

See Section C.8 of the Handbook

15. Where effects on key earth heritage resources are likely to occur specialist advice is essential. Generally, SNH would consider earth heritage impacts to be significant where, either alone or in combination with other projects, the project would lead to:

(a) adverse or beneficial impacts on the systems or processes or features for which a geological/geomorphological SSSI had been notified;
(b) permanent or long-term change that would affect the integrity and long-term sustainable management of natural coastal processes and other natural geomorphological and hydrological systems;
(c) permanent or long-term change to the quality of the natural heritage locally or regionally as a result of the destruction or enhancement or widespread or extensive degradation or improvement of earth heritage features which have been designated, or could merit designation, as a Regionally Important Geological/Geomorphological Site (RIGS); or
(d) major constraints on or improvements to access to or interpretation of geological/geomorphological SSSI.

16. It is particularly important that these considerations are not confined to the on-site, direct impacts of a proposal but applied equally to off-site, indirect effects such as downstream effects of river engineering works or coast protection or flood defence works or developments leading to changes in surface water run-off to natural river systems.


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# Appendix 4: Assessment of Impacts on Soils

## Background

1. Soils occupy a unique position in earth heritage environmental assessment, because although explicitly listed as an environmental factor in the EIA Directive and Regulations, they are not explicitly and routinely covered by any of the existing designated area legislations in Britain. These designations are often used as the basis for assessing threats to biological, geological and geomorphological interests. The first site notified on the basis of its soils was a Regionally Important Geological and geomorphological Site (RIGS) in Anglesey, Wales in 2004, but so far no such designation is under consideration in Scotland.

2. Because soils do not fit neatly into this site-based framework, they can be overlooked in EIA. The position of soils at the interface between the geosphere, biosphere and hydrosphere further compounds this, as they cannot be easily compartmentalised. They also play an important part in biodiversity conservation so, it is vitally important that soils information is included as an integral part of the EIA process, as changes to soils can have subsequent effects on other parts of ecosystems, such as vegetation, freshwater and coastal habitats condition and composition. Also key to natural heritage interests is the intrinsic value of the soil resource in its own right and its functional roles in the context of changing climate (e.g. as a carbon repository and source of greenhouse gases). For further details, see: "Soils and the Natural Heritage: a Vision by the Soils LCN for the Protection of the UK Soil Resource and Sustainable Use of Soils" (2007) http://www.jncc.gov.uk/page-1435 .

## Importance of Soil Considerations in Environmental Impact Assessment

3. Soil considerations are an essential element of the EIA process and any significant impacts on soils (properties and functionality) should be included in an Environmental Statement.

4. Annex III of the EIA Directive, and all of the EIA regulations require that an Environmental Statement must include a description of the aspects of the environment likely to be significantly affected by the development, including, inter alia, soil and water and the interrelationship between them and all other aspects of the environment.

5. Where significant adverse effects are identified, the Environmental Statement must include a description of mitigation measures.

6. Schedules in all of the EIA regulations also specify that an Environmental Statement may include, by way of explanation or amplification, information on, inter alia:

   (b) the nature and quality of materials to be used in production processes;
   (c) the type and quantity of expected pollutants including pollution of soils and water;
   (e) the likely significant direct and indirect effects of the proposal which may result from the use of natural resources including secondary, cumulative, short, medium and long-term, permanent, temporary, positive and negative effects.

7. Regulations 19, 36 and 60 of the principal regulations and equivalent provisions in all the other EIA regulations provide competent authorities with the power to require the above information to be submitted, having regard in particular to current knowledge and methods of assessment, where it is reasonably required to give proper consideration to the likely environmental effects of the proposed development.


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8. Thus, soils can and should be included in an Environmental Statement and throughout the EIA process wherever the effects of a proposal are likely to be significant. Where they are not included the competent authority should require the developer to submit the appropriate level of soil information, commensurate with the scale and type of development and its impact, before they grant any consent for the project.

9. As it is not an offence in UK law to degrade or contaminate soil per se, the ways in which soils information is included in Environmental Statements are flexible, and influenced through various forms of guidance and advice issued by the Government and others. For example, some sectors of activities are covered by extensive soil guidelines (e.g. UK Forestry Standard and its associated suite of Guidelines (such as the Forests & Soils Guidelines and Forests & Water Guidelines) currently under review). Apart from the EIA Regulations, the only other legislation that refers specifically to soil is that relating to the application of sewage sludge on agricultural land, principally on the basis of soil acidity and toxic metal concentrations in sludge and the receiving soil. Planning legislation provides little additional support for soils, as it deals principally with land as space, and not the soil functions listed below.

10. However, it should be noted that the proposed Scottish Soil Framework (SSF) to be published in 2009 will provide links to the body of policy and guidance in place in Scotland providing some direct or indirect protection of soils. The SSF will also promote awareness of soil and access to Scottish soil data and guidance resources. It will, however, not produce new legislation or regulations for the protection of soil.

## Soil Functions

11. For assessment purposes, soils can be considered to have seven general functions (see SSF, 2009) :

    - Providing the basis for food and biomass production.
    - Controlling and regulating environmental interactions - regulating water flow and quality.
    - Storing carbon and maintaining the balance of gases in the air.
    - Providing valued habitats & sustaining biodiversity.
    - Preserving cultural and archaeological heritage.
    - Providing raw material.
    - Providing a platform for buildings and roads.

12. These functions can be linked to the concept of ecosystem goods and services which is underpinned by the principle that human life depends on natural resources and that nature contributes to the fulfilment of human needs. Hence soil functions may be valued in terms of social, economic or ecological forms of land use and management.

## Soil Heterogeneity

13. Different soil types have their own characteristic properties, which affect the significance and magnitude of impacts and their ability to resist and adapt to threats. Some soils are relatively resistant (i.e. how much disturbance they can sustain before responding to change) and resilient (magnitude and persistence of change) and are able to support a wide range of potential applications, whereas others can only be utilised in more limited ways. Soil types and properties can change over short distances, and it is common to find a variety of soils on sites earmarked for development, often leading to some soils being exploited in ways for which their properties are unsuited. Further complexities are introduced by the fact that, unlike geological exposures or landforms, which occupy distinct areas of the landscape and are generally fairly easy to assess, soils form a continuous pattern over the land surface and are for the most part hidden from view. All of these factors combine to create very specific requirements for EIA of soils


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**Source of Information** See Sections C.4, C.5 and C.6 of the Handbook

14. In order for informed decisions to be made, an adequate source of soil data and the ability to interpret changes in soil properties that may arise as a result of development impacts are a necessity.

15. On a national scale, the former Soil Survey of Scotland (subsequently part of the Macaulay Land Use Research Institute (MLURI) in Aberdeen) undertook in the 1980s a comprehensive soil sampling and mapping exercise over the whole of Scotland. This National Soil Inventory for Scotland (NSIS) provided a full coverage of soil maps at 1:250,000 and a more detailed but partial coverage at 1:63,360 (mainly lowland areas), with missing areas being covered by unpublished 1:50,000 maps (upland areas). In addition, MLURI holds a comprehensive database of over 12,000 soil profile descriptions, collected concurrently with the mapping programme in the 1980s. This database is being updated by a partial re-sampling of the NSIS (2007 – 2009). These data are of sufficient detail for assessment of land with reference to broad categories of land use.

16. On a more local scale, existing spatial soil data tend to be patchy and of variable quality through being obtained by a range of methods. Moreover they are often difficult to consult, often being unpublished and held by a number of different organisations and individuals. Some local authorities (e.g. West Lothian, Angus) have produced geodiversity and soil audits which do provide additional information on soil state and pressures.

17. There is, however, a particular scarcity of data in urban and peri-urban areas, as soil surveys have traditionally been carried out almost solely for agricultural or forestry purposes. As most environmental assessments are made at the more site specific level, it is essential that the authorities involved seek appropriate professional advice where it is evident that soil factors will be integral to the assessment. The scoping stage is of particular importance here, as the time to consider the effects on soils is at an early stage.

18. The ability to interpret routine soil measurement is constrained by our understanding of the complexity of soil processes. Standard operational protocols for the measurement and interpretation of soil state and change are only available for a limited number of soil pressures and functions, such as soil nutrient requirement for biomass production, physical soil properties for soil engineering assessment, and chemical loading for pollution control. Agreed standards are more variable in other fields such as soil biodiversity assessment or interpretation of impacts on natural and semi-natural soils and habitats. The state of understanding, however, is improving through the development of strong research drivers to support establishment of national and European soil protection frameworks.


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## References

19. Useful sources of soil information for EIA include:

    - The Macaulay Land Use Research Institute
    - Soil Resources (data, maps and soil memoirs) http://www.macaulay.ac.uk/soilquality/SQ_resources.php
      Note that most electronically held soil data are only available under licence but hard copies are mostly available for a small production and handling fee.
    - SNIFFER (2004) Planning for Soil: Advice on how the planning system can help to protect and enhance soils. Good practice guidance. Project UKLQ01. www.sniffer.org.uk
    - SNIFFER (2009) Strategic Environmental Assessment- Practical Guidance for Practitioners on How to Take Account of Air, Water and Soil- Project UKCC09
    - Scottish Government recent publications
        - Scotland's Soil Resource - Current State and Threats. (2006) http://www.scotland.gov.uk/Publications/2006/09/21115639/0
        - The Scottish Soil Framework: Supporting Material - Working Group 8 Planning and Soil sealing (2008). http://www.scotland.gov.uk/Publications/2008/06/27092800/8
        - The Scottish Soil Framework: A Consultation Document. (2008) http://www.scotland.gov.uk/Publications/2008/06/27092711/0
        - Calculating carbon savings from wind farms on Scottish peat lands - A New Approach. (2008) http://www.scotland.gov.uk/Publications/2008/06/25114657/0

20. The proposed Scottish Soil Framework is also expected to deliver web-based access to soil data and soil information hold by Scottish agencies and research providers. It is, however, unclear what access and licensing restrictions may apply to the use of the data by non-governmental bodies and individual users.

## Predicting Soil Impacts: Projects Likely to Give Rise to Impacts on Soils

See Sections C.4, C.7 and C.8 of the Handbook

21. The most extreme impact on soils is a total coverage of soil (so-called burial or sealing) by an impermeable surface, which may or may not be associated with a physical removal of topsoil and subsoil. Soil sealing is often considered as irreversible as no remediation and restoration effort can return a soil to its previous condition and functionalities.

22. More often, project developments likely to give rise to impacts on soils in EIA will only partly modify the soil. Changes can be directly relevant to the functional capacity, sensitivity, vulnerability and general condition of soils. The range of type of projects likely to give rise to impacts on soils may include but not be limited the following:

    - urban planning and infrastructure development (included housing, SUDS, transport and power supply infrastructure, footpath development);
    - other developments such as landfill, sewage works, hazardous installations and industrial developments;
    - activities associated with the reclamation of contaminated and derelict land prior to development;
    - land stabilisation (not associated with site preparation phase in development control) (e.g. soft and hard engineering for road networks, and river and coastal management and realignment);
    - land drainage for improving land productivity or access to land;
    - mineral, gravel, sediment and peat extractions covered by EIA;
    - archaeological, geological or soil excavations;
    - land and habitat creation, restoration and enhancement;
    - recreation (e.g. footpaths, sports facilities, park and greenfield);
    - land use changes associated with forestry;
    - land use changes associated with agriculture (including energy crops).


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23. Some of the main project types likely to give rise to impacts on soils in EIA (see Figure 1 below) and which can be directly relevant to the functional capacity, sensitivity, vulnerability and general condition of soils include:

- location of developments (e.g. sewage works, hazardous installations, landfill sites)
- other industrial developments
- urban and infrastructure development
- reclamation of contaminated and derelict land
- land instability
- land drainage
- mineral extraction
- archaeological excavations
- land restoration
- recreation (e.g. footpaths, sports facilities)
- land use changes associated with forestry
- land use changes associated with agriculture.

## Predicting Soil Impacts: Impacts on Soils

See Sections C.4, C.7 and C.8 of the Handbook

24. The impacts of these projects on soil properties and soil processes are complex and may include amongst others:

- increased sensitivity to soil erosion. This may lead to direct loss of the soil resource itself, loss soil nutrients and potential mobilisation of inherent soil contaminants. Soil erosion is often associated with significant off-site impacts (water quality, silting/ sedimentation of water reservoirs, landslides).
- changes to soil water regime. In organic soils, drying up of peat will lead to oxidation of organic matter and increase erosion. Increased runoff and leaching may also contribute to greater off-site pollution and loss of soil nutrients.
- changes in pH (acidification or alkalinisation). This will impact on soil biodiversity and many of the soil bio-chemical processes (nutrient and carbon turnover, pollution degradation).
- alteration of soil physical properties, including soil compaction and structural deterioration from heavy machinery, trampling and handling of soil.
- increase in soil pollution loading, e.g. from heavy metals, organic compounds, industrial wastes, fertilisers and pesticides.
- decline in soil fertility, e.g. removal of soil nutrients or decline in nutrient input sources.
- loss of or reduction in biodiversity (both above ground vegetation and soil biodiversity), e.g. soil macrofauna, fungi and microbial communities.
- loss of organic matter. This may lead to increased dissolved organic carbon (DOC) in watercourses.
- increased emission of greenhouse gases
- homogenisation and loss of characteristic horizons, e.g. during stripping and storage of topsoil and subsoil in planning development.
- damage to soil historical and archaeological value, including destruction or modification of palaeosols and other buried archaeological artefacts, imprints of past land use and land practices and environmental markers (e.g. past climatic records from pollen sequences in peat and rig and furrow systems).
- other direct impacts on geodiversity features, including removal or alteration of parent material.
- loss or sealing (burial) of soil.
- loss of soil water buffer and storage capacity relevant to control of water supply and flood control


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25. Figure 1 below summarises the main pressures on soils and examples of the various types of on-site and off-site impacts they may cause

## Soil Properties and Functions: Mitigating Measures

See Section C.9 of the Handbook

26. In relation to soil properties and functions it is essential to remember that soils are a non-renewable resources at a human time-scale. At the outset, a fundamental principle should be to avoid or at least significantly limit the severity of impact before considering mitigation measures rather than seeking any potential trade-off of soil values.

27. In assessing soil mitigation measures, consideration should be given to the following:

    a. By contrast with mitigation measures for other aspects of the environment, a significant impact on a specific soil function or properties may be mitigated through the adaptation of other soil functions and soil properties (e.g loss of basis for biomass production trade against increase support to habitats). This, however, can only be justified in cases where the restoration or remediation of a soil function and soil properties to their pre-existing conditions is not possible within reasonable operational standards according to current good practice and state of knowledge. None of the above should be equated as a trade-off and must always be supported by monitorable evidence of the overall benefit of the selected measures on the soil functionality and its interaction with associated biodiversity and geodiversity.
    b. Soil mitigation measures cannot be designed to address aspects of climate change unless the impacts on a soil are likely to lead to significant reduction of its resilience and resistance to climatic factors or lead to potentially increased emission of greenhouse gases. Where this the case, the mitigation measures must provide appropriate options to account for these longer term impacts.
    c. Most mitigation measures aiming to create or restore soil properties and soil functions will not immediately deliver fully functional soils. They will only initiate a direction of change towards a new or improved soil state.. It is therefore important for the applicant to demonstrate the effectiveness of the whole mitigation process, not just the initiation of the process or the success of interim stages.

28. By matching as far as possible particular developments with appropriate soils, the consequences of many of these impacts can be minimised. In this context, EIA involves the consideration of key soil properties and characteristics in relation to the proposed development or change of land use. Some of the more important soil properties that should be considered in mitigation measures are:

    - texture
    - structure
    - organic matter content
    - pH
    - nutrient status
    - depth – both total and of individual horizons
    - parent material characteristics
    - horizonation (i.e. nature and arrangement of individual horizons)
    - salinity
    - stoniness
    - soil water regime
    - soil contaminants (as appropriate)
    - soil biological indicators (when appropriate)

29. The mitigation measures should consider how the above properties, either separately or when relevant in combination, may act as limiting factors to any desirable soil functionality.


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**Appendix 4 Figure 1**
**Examples of Pressures and their Impacts on Soils**

| Pressure | On-site Impacts | Off-site Impacts |
|---|---|---|
| Reclamation of contaminated land | Disposal of contaminants. Changes in chemistry. Lack of suitable quality soil. | Leakage of contaminants to watercourses. |
| Location of developments | Soil loss; contamination; structural damage; changes to soil water regime; disposal of wastes; effects on soil biota. | Leakage of contaminants to watercourses. Groundwater contamination. Effects of waste products on vegetation. |
| Urban and infrastructure development | Soil loss or burial (sealing); contamination; structural damage. | Ground and surface water contamination. |
| Land instability | Shrinkage/swelling of clays; compaction; erosion. | Movement of soil off-site. |
| Land stabilisation (river and coastal protection) | Nutrient flushed from newly flooded areas, soil water change, salinisation | Reduced sediment yield, leading to erosion elsewhere, leaching of soil contaminant to water course |
| Land drainage | Oxidation of organic matter; physical damage; soil water changes; effects on pH. | Sedimentation of water courses. Changes to water chemistry. |
| Mineral extraction | Loss of soil; physical damage; effects on biota; contamination; soil stripping and storage. | Contamination of water courses. Changes to sediment load. |
| Archaeological and other soil excavations | Damage to palaeosols, soil palaeoenvironment records. | |
| Land restoration | Problems associated with reinstatement of previous soil conditions. | Changes to water chemistry. |
| Recreation | Erosion; compaction; loss of organic matter | |
| Forestry | Erosion; changes to pH; changes to horizons; changes to soil water; effects on soil biota. | Increased sediment yield. Changes to run-off. Changes in water chemistry. |
| Agriculture | Loss of organic matter; erosion; changes to nutrient status; compaction; structural damage; effects on biodiversity; pH changes; homogenisation. | Pollution of groundwater. Pollution of surface water. Increased sediment yield. |


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# Appendix 5: Outdoor Access Impact Assessment

## Introduction

There is no precise definition of "outdoor access". Rather, it is a diverse collection of activities which are linked by common values and by a dependence on open air settings for their practice or enjoyment. It can range from walking to windsurfing to bird watching. Outdoor access can be undertaken for a variety of purposes including recreation, education, socialising, health benefits and travel from one place to another. The types of recreation in which SNH has a particular interest are as follows.

- Those that are dependent on, or draw inspiration from the enjoyment of the qualities of the outdoors.
- Recreation that is practised informally and non-competitively.
- Accessible to and practised by the general public, without the need for membership of groups or societies in order to practice that activity.

Whatever the activity, SNH takes an interest in all types of recreation which take place out of doors, especially where they make use of natural resources or have effects on them, or on other people's enjoyment of their own recreation.

1. This Appendix explains in more detail the issues likely to arise in the EIA process in respect of outdoor access. There are no published EIA techniques or good practice methods relating specifically to outdoor access impact assessment. Outdoor access issues are often overlooked or understated in published Environmental Statements unless a particularly important facility is involved. This Appendix aims to remedy such deficiencies.

2. It should be borne in mind that recreational developments may themselves create impacts on the natural heritage. These impacts will need to be assessed by the general procedures set out in this guide, and include adverse effects on, or opportunities for access to the recreation being practised on land to be developed or adjacent to it.

3. The general procedures of assessment described in the main text of this Handbook are relevant and applicable to outdoor access issues. Equally, outdoor access issues should be an integral consideration at every step in the process. This Appendix:

   (a) sets out the importance of outdoor access considerations in EIA;
   (b) summarises the main outdoor access provisions relevant to the EIA process;
   (c) identifies the main or typical threats to outdoor access, i.e.. the main potential impacts, and project types particularly relevant to outdoor access provision; and
   (d) provides general advice on assessing the significance of outdoor access impacts.

4. There are very close relationships between the likely effects of development on visual amenity, guidance on which is found in Appendix 1 of this Handbook, and the extent to which people's enjoyment will be impaired, either in the generality or, in many cases, when engaging in open air recreation. This Appendix, however, deals with issues that arise when developments impinge on the ability of people to engage in open air recreation or on the facilities used by them rather than what may be seen of the development from the place at which people are taking their leisure.

5. Throughout the EIA process, impacts on outdoor recreation should be integrated with other assessments to the extent that it may be relevant (e.g. visual impacts assessment, effects on material assets etc.). Furthermore, consultation should be undertaken with bodies representing recreation interests wherever impacts on those interests may be significant. The access authority should play a key role in assessing impacts on recreational access, whether or not it may be the competent authority. Where it considers that more information is required to assess such impacts, it should encourage the competent authority to require submission of further information.


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## Enjoyment of the Natural Heritage

6. SNH's responsibilities for enjoying the natural heritage are founded in the 1967 Countryside (Scotland) Act, and in its enabling legislation, the 1991 Natural Heritage (Scotland) Act. In the legislation, the word enjoyment is primarily about the use of the countryside for open-air recreation, with the 1967 Act providing the local authorities (and also SNH) with a range of powers and duties to facilitate better access and the provision of facilities. The National Parks (Scotland) Act 2000 gave to national park authorities powers similar to those of local authorities. Part 1 of the Land Reform (Scotland) Act 2003 established statutory access rights to most land and inland water, subject to these rights being exercised responsibly, and also introduced very specific duties and powers for local authorities and national park authorities for upholding access rights and for planning and managing access. This Act has been effective since 9 February 2005. People can also enjoy the countryside as part of everyday travelling to work or for social reasons; people enjoy both extensive and small-scale element of the natural heritage and it is also possible to enjoy the values of the countryside at a distance, as an important existence value, through which it is sufficient for people to know that valued places exist and are unaffected by adverse changes.

7. In this way, enjoyment can encompass values which underlie both the physical aspects of recreation and the varied aesthetic pleasures that people find in the outdoors. SNH's prime role is with the informal pursuits, but we also take a positive stance on behalf of the active and organised pursuits which primarily fall under sportscotland's remit, always assuming that these activities themselves are being practised in ways which do not cause adverse effects on natural resources. Some recreational activities do fall outside SNH's remit. These include field sports such as angling and shooting which are normally a form of private or commercial use of land or water, and fall outside issues of access rights. Also the way in which these recreational activities are practised, and their commercial links and special management needs place them beyond SNH's remit to facilitate public enjoyment.

8. In assessing the effects of a development on access, a distinction should be made between the access itself, which is the ability to make use of a site or route, and accessibility, which is the ease with which access can be taken. In different settings, these factors may have different levels of significance. In settings close to where people live we are usually concerned to enhance both access and accessibility but in a remoter setting in open country, access may not be a major factor and greater accessibility of less certain value. Assessment should always consider the needs of recreation dispersed in the countryside as well as at facilities, and the importance of local networks (and threats to the loss of key linkages) always borne in mind.

## Importance of Outdoor Access Considerations in Environmental Impact Assessment

9. Outdoor access considerations are an essential element of the EIA process and any significant impacts on outdoor access features and sites must be included in an Environmental Statement.

10. Annex III of the EIA Directive, and all the EIA regulations require that an Environmental Statement must include the aspects of the environment likely to be significantly affected by the development including:

    (a) Population
    (b) Landscape
    (c) Cultural heritage and
    (d) the inter-relationship between them and all other aspects of the environment.


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11. Where significant adverse effects are identified, the Environmental Statement must include a description of mitigation measures (see below).

12. Schedules in all the EIA regulations also specify that an Environmental Statement may include, by way of explanation or amplification, information on, inter alia:

    (c) the type and quantity of expected pollutants including noise, vibration, light, heat, and radiation;

    (e) the likely significant direct and indirect effects of the proposal which may result from the emission of pollutants and the creation of nuisances, including secondary, cumulative, short, medium and long-term, permanent, temporary, positive and negative effects.

13. Competent authorities have the power to require the above information (and any other information in Schedule 4) to be submitted, having regard in particular to current knowledge and methods of assessment, where it is reasonably required to give proper consideration to the likely environmental effects of the proposed development.

14. Thus, outdoor access interests can and should be included in an Environmental Statement as a crucial element of the interaction of human beings with the environment often involving resources of a physical or cultural nature. They should be reflected throughout the EIA process, wherever the effects of a proposal are likely to be significant. Where they are not included the competent authority should require the developer to submit the information before it grants any consent for the project.

## Outdoor Access Facilities Relevant to Environmental Impact Assessment

See Sections C.4, C.6, C.7 and C.8 of the Handbook

15. The potential effects of a project on outdoor access interests will usually depend on the following main considerations:

    (a) the type of outdoor access facility;
    (b) the type of project, including its nature, scale, location, duration etc.; and
    (c) the nature of recreation practised at the site or facility.

16. Impact assessment therefore needs to take account of the differing issues and objectives for outdoor access facilities. Access rights are a material consideration in planning and related decisions. Table 1 below summarises the types of countryside access facilities relevant to the EIA process, in addition to access rights.

**Appendix 5 Table 1**
**Outdoor Access Resources Relevant to EIA in addition to access rights**

| | |
|---|---|
| **Area based facilities** | – National Park , Regional Park, Country Park<br>– Geoparks<br>– Munros<br>– Areas subject to S.49A Management Agreements including public access<br>– National Nature Reserve and Local Nature Reserves<br>– Local open space and green infrastructure<br>– Inland lochs and reservoirs<br>– Promoted surfing, diving and climbing sites |
| **Linear access facilities** | – Core Paths and the wider paths network available through access rights<br>– Long Distance Routes, regional routes, National Cycle Network<br>– Public rights of way<br>– Path orders<br>– Path Agreements (s30 of the Countryside (Scotland) Act and s21 of the Land Reform (Scotland) Act)<br>– Permissive paths and routes on land where access rights do not apply<br>– Rivers and canals |


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17. The effects of any major development on people's ability to enjoy open air recreation in the countryside and their access rights can arise in a number of different ways, as shown in Table 2 below.

**Appendix 5 Table 2**
**Effects of Development on People's Ability to Enjoy Open Air Recreation in the Countryside**

| Type of effect | Implications |
|---|---|
| Effects on the intrinsic quality of the resources enjoyed by people. | Aesthetic changes, mainly visual and aural as considered in earlier sections of this Appendix. However, there are recreational values in solitude, challenge and hazard, enjoyment of wildlife and habitats or in the sociability enjoyed in the more gregarious pursuits, which can be affected by development. |
| Direct effects on the facilities or infrastructure used to take access or for the practice of recreation. | Restriction of access to facilities, barriers, physical restrictions or limitations on the use of the site or facility, or even its loss. |
| Effects on the practice of recreations. | Restrictions or limitations on the kinds of recreations pursued, or in the ways in which they are practised, and limitations on specific recreations say by reduction in available space. |
| Foreclosure on options for future access development. | Any of the foregoing which might affect proposals either formalised and recorded statutory plans or local access and recreation strategies or less formerly known about, which might limit development of future options in enhancing the supply or quality of recreation opportunity for a community. |
| Implications for public safety. | These might arise from the development itself from the relocation of facilities to a less suitable location, from the intensification of use, or from the mixing of recreations previously having more space for their own use. |
| Restrictions on the less able. | Reductions to accessibility may lead to effects on the enjoyment of the disabled, the elderly or people who are otherwise disadvantaged (say, those without access to private motor transport). |
| Effects on particular recreations. | These will be assessed according to the specific circumstances, but might include issues such as a loss of access to boat launching or the loss of key link routes in an access network etc. |

## Types of Impact

See Sections C.4, C.7 and C.8 of the Handbook

18. All significant potential effects on outdoor access facilities should be assessed. Generally, effects, or impacts, are likely to fall into one or more of the types summarised in Table 3 below. For each type, an example of potential impacts is given.


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**Appendix 5 Table 3**
**Examples of Potential Outdoor Access Impacts**

| Type | Example | Timescale | Reversibility | Comments |
|---|---|---|---|---|
| **Loss/closure/ extinguishment** | Landtake from route or facility for built development | Permanent | Usually irreversible | Usually adverse can be cumulative |
| | Permanent closure of right of way at motorway | Permanent | Irreversible | |
| | Temporary closure for mineral extraction | Short-medium term | Reversible | |
| **Diversion** | Hydro scheme or trunk road requires diversion of path | Permanent | Irreversible | Usually adverse can be cumulative |
| | Mineral extraction requires diversion of path | Long term | Reversible | |
| | Waste disposal requires diversion of path | Medium term | Reversible | |
| | Building construction works require diversion of path | Short term | Reversible | |
| **Reduction in amenity** | Industrial plant/factory causes noise or smell to section of long distance route | Permanent | Irreversible | Usually adverse can be cumulative |
| | Mineral working causes noise, dust or vibration to country park. | Long term | Reversible | Usually adverse can be cumulative |
| **Enhancement of amenity** | Golf course adjacent to a country park reclaims derelict land | Permanent | Irreversible | Usually beneficial |
| **Intrusion** | Telecommunications mast in wildland area. | Medium to Long term | May be reversible | Usually adverse |
| **Obstructing access routes** | Closure of paths to e.g. Viewpoints and natural features | Various timescales | Usually reversible | Usually adverse |
| **Restriction on types of access** | Golf course having access rights restricted to right of passage | Various timescales | Usually reversible | Usually adverse |
| **Enhancing access** | Provision of access and/or interpretation | Various timescales | Usually reversible | Usually beneficial |
| **Changes to setting and context** | Built development adjacent to Regional Park | Permanent | Irreversible | Usually adverse can be cumulative |


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## Project Types Particularly Relevant to Countryside Access Conservation

19. Almost any project type that may be subject to the EIA procedures could potentially affect outdoor access interests. It is important to be alert to the potential impacts on outdoor access in all EIA cases. However, experience indicates that particular project types frequently have significant outdoor access implications and frequently raise specific issues in the EIA process. These are summarised in Table 4.

**Appendix 5 Table 4**
**Projects Frequently Resulting in Significant Outdoor Access Impacts**

| Project Type | Potential Impacts |
|---|---|
| Mineral Extraction | Adverse effects on adjacent facilities from noise, dust, vibration and visual impact and can require closure or diversion of linear facilities for long periods of time. |
| Landfill/landraise | Adverse effects on adjacent facilities from noise, dust, smell and visual impact and can require closure or diversion of linear facilities for medium periods of time. |
| Flood Prevention | Direct and indirect impacts on amenity of area facilities and can lead to permanent closure or diversion of linear routes. |
| Windfarms | Can change perception and amenity of both area and linear facilities through visual and noise impacts, access tracks can interfere with/or facilitate public access, general deterrent / attractor effects. |
| Hydro Schemes/ Reservoirs | Can affect wildland qualities of remote areas, interfere with pre existing access and adversely affect amenity of routes along rivers/lochsides. Also can affect the ability to undertake, and the quality of, recreation on or in rivers. |
| Marine renewable schemes | Effects on coastal access and amenity and outdoor activities relying on coastal or maritime locations |
| Powerlines, masts and other pylons | Effects on valued landscapes especially in remote countryside. |
| Afforestation | Can affect wildland qualities of remote areas, interfere with pre existing access and adversely affect amenity of area facilities and routes in the uplands. |
| Roads | Major road proposals often sever access routes and may lead to extinguishment or diversion. Area facilities can be adversely affected by noise and visual intrusions. |
| Major urban developments | Can reduce amenity value of area facilities and increase pressures for use on vulnerable areas. Can lead to extinguishment or diversion of rights of way. |
| Rural industrial and statutory undertaker developments | Effects on valued landscapes, loss of rural character, inappropriateness in the setting, loss or division of linear access routes, pollution. |
| Recreational developments | Implications for other recreational users/the site or area resource, affecting the quality of enjoyment by others, affecting levels of use of an area or accessibility to it. |


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## Assessing Significance of Outdoor Access Impacts

See Sections C.7, C.8 and D.9 of the Handbook

20. Where effects on key outdoor access resources are likely to occur specialist advice should be sought. Generally, SNH would consider outdoor access impacts to be significant where, either alone or in combination with other projects already approved, the project would lead to:

    (a) permanent or long-term effects on the resources on which enjoyment of the natural heritage depends, in particular where facilities have been provided by SNH or others under statutory powers;
    (b) permanent or long-term change that would affect the integrity and long-term sustainable management of facilities which were provided by SNH or others under statutory powers;
    (c) where there are recreational resources for open air recreation pursuits affected by the proposal which have more than local use or importance, especially if that importance is national in significance;
    (d) major constraints on or improvements for access or accessibility to designated natural heritage sites;
    (e) where mitigation and/or compensatory or alternative recreational provision is considered to be inadequate.

21. Assessment of the scale of prospective effects from a development on recreation and access can be considered against a range of criteria, not all of which will apply in any one circumstance. The main factors to be borne in mind are as follows.

**Appendix 5 Table 5**
**Assessment of the Scale of Effects of Development on Outdoor Recreation and Access**

| Assessment Factor | Commentary |
|---|---|
| Obtrusiveness or the scale of the effect in the context in which recreation takes place. | Thus noise effect might be accommodated or open to mitigation in an urban edge setting, but much less acceptable or even beyond amelioration in remoter countryside. |
| The intensity, frequency of occurrence, timing, or performance of the effect. | These will be important factors in assessment of the acceptability of effects on recreation. At the less intense levels of effect, the outcomes may be acceptable or open to mitigation either in intensity or through time limitations on certain activities within the development. |
| Potential for the effects to augment the scale and frequency of occurrence. | This is a precautionary point of reasonable anticipation of how effects might increase in scale over the years and thereby make mitigation ineffective. |
| The extent of local supply of access and recreation opportunities. | This involves an assessment of the extent to which a community has a shortage (or ample supply) of facilities which may be made worse by a development, allowing for the potential for compensatory provision through the creation of alternative opportunities. |
| Scarcity value of the recreation resource. | This factor recognises there are considerable geographic imbalances in the supply of recreation opportunities, and where a resource is in short supply then less compromise may be feasible. As examples, some parts of the country are very poorly endowed with accessible open water space. |
| Recognition of the recreation opportunities spectrum (ROS). | The recreation opportunities spectrum is a basic principle of recreation planning that provision should be made for people's recreation needs along a range which provides for gregarious, active and some noisy recreations at one end of the scale, to opportunities for the enjoyment of solitude and quiet enjoyment at low densities of participation. This ensures high quality provision for small numbers of people at one end of the spectrum as important as providing for the many at the other end. |


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## Opportunities for Mitigation

See Sections C.9, and D.7 of the Handbook

22. Developments need not just create effects on recreation resources, on the practice of recreations, or on the potential for the future needs of a community. Opportunities may arise from new developments, either directly as a consequence of new access being created, through the opportunity to manage or plan for better recreation provision. In some cases recreation itself may be having effects on natural resources which are not managed effectively, or too sensitive to bear increased use, in cases where accessibility is enhanced. The nature of mitigation will have to be tailored to resolving or compensating for the predicted adverse effects described earlier, but some general issues to consider are summarised in Table 6 below.

**Appendix 5 Table 6**
**Mitigation Measures for Outdoor Access and Recreation**

| Measure | Commentary |
|---|---|
| Realignment of access | This can be a simple and very acceptable measure, provided that major diversion of use is not proposed. Excessive diversion may lead to non-compliance or be inadequate to serve certain interests, especially the disadvantaged and disabled, or simply may be too distant for visitors' real needs. |
| Compensatory provision | Best acceptance of alternative provision will arise where the overall benefits are perceived by the visiting public to outweigh the losses, particularly if both access and accessibility are enhanced. |
| Reduction of the intensity, frequency or timing of the effects. | Mitigation of this kind is always potentially acceptable, provided that the amelioration is realistic, can be guaranteed and is not in due course overtaken by a greater intensity of use at the development site, and provided that the adverse effects are not wholly incompatible with the nature of recreational use and its setting, in which case, limitations will probably not be effective. |
| Enhanced management provision for the recreational use of the area or site. | Likely to provide beneficial mitigation, especially where recreation management was absent or weakly provided for, and perhaps even a cause of adverse effects itself on natural resources. However, new management regimes in any area where recreation is a significant use of land should be the subject of consultation with recreational interests, especially where the development itself is a matter of controversy as a result of its projected effects on the enjoyment of the natural heritage. |


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# Appendix 6: Effects on the Marine Environment

## Introduction

This Appendix explains in more detail the issues likely to arise in the EIA process in respect of the marine environment. Although the situation is improving, compared to terrestrial interests, there are few published EIA techniques or good practice methods relating specifically to marine impact assessment (see list of references below). Marine issues are often overlooked in published Environmental Statements and, unless a European Marine Site is involved, competent authorities may also overlook potential impacts on the marine environment. Consequently, consideration of these impacts may be absent or inadequate at any stage in the EIA process and one of the aims of this Appendix is to remedy such deficiencies.

The EIA process described in the main text of this Handbook is entirely relevant and applicable to impact assessment on the marine environment. Equally, marine issues should be an integral consideration at every step in the process. This Appendix:

a) sets out the importance of marine considerations in EIA;
b) summarises the designations relating to marine areas and their conservation objectives relevant to the EIA process;
c) identifies the main or typical threats to the marine environment, ie. the main potential impacts, and project types particularly relevant to the marine environment; and
d) provides general advice on assessing the significance of impacts on the marine environment.

## References

Reference is made here to the following:


A. Crown Estate Commissioners, Feb 2000, Environmental Assessment Guidance Manual for Marine Salmon Farmers, CEC available as a pdf download in March 2009 at: http://www.thecrownestate.co.uk/print/our_portfolio/marine/aquaculture/aquaculture_leases.htm

B. SARF, Environmental Impact Assessment Practical Guidelines Toolkit For Marine Fish Farming at http://www.sarf.org.uk/Project%20Final%20Reports/SARF024%20-%20Final%20Reports%20and%20Templates/EIA%20Guidelines%20FINAL+%20Templates.pdf

C. SNH, March 2000, Marine Aquaculture and the Landscape: The siting and design of marine aquaculture developments in the landscape, SNH at http://www.snh.org.uk/pubs/detail.asp?id=113

D. Marine Biological Association of the UK, Marine Life Information Network (MarLIN), ongoing website at http://www.marlin.ac.uk

E. Campbell, J.A. 1993, Guidelines for assessing marine aggregate extraction. MAFF Laboratory Leaflet Number 73, Directorate of Fisheries Research Lowestoft, 1993 ISSN 0143 8018 at http://www.cefas.co.uk/Publications/lableaflets/lableaflet73.pdf

F. University of Liverpool, Centre for Marine and Coastal Studies Environmental Research and Consultancy 2001, Assessment of the effects of noise and vibration from offshore windfarms on marine life, at http://www.berr.gov.uk/files/file20261.pdf

G. In September 2008, IEEM published for consultation purposes, draft Guidelines for Ecological Impact Assessment: Marine and Coastal. At March 2009 these were available at http://www.ieem.net/docs/EcIA%20Marine%20and%20Coastal%20-%20Consultation%20Version%20September%202008.doc




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H. A voluntary system of using templates for the assessment of the effects of marine fish farming was introduced in 2008, it is found under the title of EIA Template for Pre-application Screening and Scoping for Marine Pen Fish Farming at http://www.sarf.org.uk/Project%20Final%20Reports/SARF024%20-%20Final%20Reports%20and%20Templates/MASTER%20PRE-APP%20AND%20SCREEN%20SCOPE%20TEMPLATE%20230807.doc

## Importance of Marine Considerations in EIA

1. Marine considerations are an essential element of the EIA process and any significant impacts on marine features and sites must be included in an Environmental Statement.

2. Annex III of the EIA Directive, and Schedules in all the EIA regulations require that an Environmental Statement must include "a description of the aspects of the environment likely to be significantly affected by the development including in particular ..... fauna, flora, ..... water, air, climatic factors, ..... landscape ..... and the interrelationship between the above factors ...." These include the marine environment.

3. Where significant adverse effects are identified the Environmental Statement must include a description of mitigation measures.

4. Schedules in the EIA regulations also specify that an Environmental Statement may include: "A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long term, permanent and temporary, positive and negative effects of the development resulting from:

   a) the existence of the development;
   b) the use of natural resources;
   c) the emission of pollutants, the creation of nuisances and the elimination of waste"

5. The Regulations provide competent authorities with the power to require the above information to be submitted, having regard in particular to current knowledge and methods of assessment, where it is reasonably required to give proper consideration to the likely environmental effects of the proposed development.

6. Thus, all marine interests can and should be included in an Environmental Statement and throughout the EIA process wherever the effects of a proposal are likely to be significant, whether or not the area affected is designated.

## Marine Site Designations Relevant to EIA

7. The potential effects of a project on marine interests will usually depend on two main considerations:

   a) the type of marine interest; and
   b) the type of project, including its nature, scale, location, duration etc.

8. Impact assessment therefore needs to take account of the differing issues and conservation objectives for marine sites. Table 1, below, summarises the natural heritage designations relevant to marine areas.


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**Appendix 6 Table 1**
**Marine Site Designations Relevant to EIA**

| Designation | Interest / purpose of designation |
|---|---|
| Marine Nature Reserve (MNR) | Conservation and study of marine flora or fauna or geological or physiographical features |
| Marine Protected Areas | To be designated by Scottish Government under the provisions of the Marine Bill |
| European Marine Site (Marine SPAs and Marine SACs) | Comprise those parts of Special Protection Areas (SPAs) under the EC Birds Directive and Special Areas of Conservation (SACs) under the EC Habitats Directive that lie below Highest Astronomic Tide (HAT). The interests for which the sites are designated are, in the case of SPAs, the bird species listed in Annex 1 of the Birds Directive and the assemblage of species and, in the case of SACs, the habitats and species listed in Annexes I and II of the Habitats Directive respectively (and also giving added protection to species listed in Annexes IV and V) that are specified in the citation for the classification / designation. European Marine Sites are subject to the protection and management provisions of the Habitats Regulations 1994. |
| Sites of Special Scientific Interest (SSSI) with marine features | The protection and management of sites which, in the opinion of SNH, are of special scientific interest by reason of their flora or fauna or geological or physiographical features. SSSI will normally extend down to Mean Low Water Mark Ordinary Spring Tides (MLWMOST) but the interests may extend beyond this level down to Lowest Astronomic Tide (LAT) or to sub-tidal areas. |
| Marine Consultation Areas | A non-statutory designation intended to assist in the protection and conservation of marine areas which are of high conservation value but not otherwise designated |
| National Scenic Areas | Designated by the Scottish Ministers to conserve the natural beauty and amenity of some of the finest landscapes in Scotland, several of which include coastal areas and some include extensive areas of sea as well as land. |


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## Types of Impact

9. All likely significant effects on marine interests should be assessed. Projects could affect the ecology, biology, geology, geomorphology, visual (both landscapes and seascapes), cultural and amenity value or accessibility of the marine environment. For example, projects can have:

   Direct effects:such as

   a) Land take with consequent loss of habitat from intertidal or subtidal areas; or
   b) Severance or fragmentation of areas eg by the construction of barriers or causeways; or
   c) Burial of marine flora and fauna by deposits on the sea bed; or
   d) Loss of marine flora or fauna and disturbance to habitats caused by extraction of material from the sea bed; or
   e) Visual intrusion caused by conspicuous and uncharacteristic structures detracting from visual amenity; or
   f) Loss of small jetties or quays which facilitate quiet recreational enjoyment of coastal areas; or
   g) Noise disturbance to birds eg from land based industrial activity or from increased use of powered boats; or
   h) Noise disturbance to marine mammals as a result of oil and gas seismic surveys; or
   i) Vibration disturbance to fish and marine mammals eg from blasting or drilling operations; or

   Indirect effects:such as

   a) Changes in tidal prisms or sediment budgets in natural systems caused by a one-off "capital" dredge or frequent maintenance dredging; or
   b) Interruption or other changes to natural coastal processes eg by coast protection works; or
   c) Changes in sediment erosion or deposition caused by increased navigation;
   d) Pollution from discharges or diffuse or accidental runoff from various project types;
   e) Biological impacts from disease transfer, alien species etc from various project types, or
   f) Increased disturbance to marine flora and fauna caused by increased levels of recreational diving / sub-aqua activities.

10. In the marine environment it is particularly important to consider cumulative impacts. One discharge to the sea, or one small physical change to coastal processes may be acceptable on its own, but in combination with the effects of other projects could comprise a significant adverse effect.

11. The relative paucity of information about some aspects of the marine environment may also mean that the precautionary principle may need to be invoked more often in marine EIA cases (see section F.1 of the Handbook).

## Project Types Particularly Relevant to Marine Conservation

12. Almost any project type that may be subject to the EIA procedures could potentially affect marine interests. However, experience indicates that particular project types frequently have significant marine implications and frequently raise specific issues in the EIA process. These are summarised in Table 2. It should also be appreciated that the different life stages of a project may have different effects on the marine resource, these different life stages are described in the Handbook, in Figure 3.


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**Appendix 6 Table 2**
**Projects Frequently Resulting in Significant Marine Impacts**

| Project type | Marine Natural Heritage interests most likely to be potentially affected* |
|---|---|
| Marine dredging for mineral extraction (construction and maintenance) | Water quality, flora, fauna, marine habitats, geological features and natural coastal and maritime systems and processes including sediment drift, erosion and accretion |
| Marine dredging for navigation | |
| Deposit of dredgings at sea or on the coast | As above plus potential landscape and visual amenity and access to the coast |
| Waste management and disposal of waste at sea | Water quality, flora and fauna, marine habitats, natural coastal and maritime systems and processes |
| Aqueous and other liquid discharges to the sea including waste water treatment work discharges | Water quality, (including temperature) flora and fauna, marine habitats, natural coastal and maritime systems and processes, visual amenity. |
| Gaseous emissions likely to be deposited on the marine environment | Water quality, flora and fauna, marine habitats. |
| Radio-active discharges into the sea | Water quality, flora and fauna, marine habitats. |
| Laying cables, pipes etc on or in the sea bed | Flora, fauna, marine habitats, geological features and natural coastal and maritime systems and processes including sediment drift, erosion and accretion |
| Land claim from the sea | Water quality, flora, fauna, marine habitats, geological features and natural coastal and maritime systems and processes including sediment drift, erosion and accretion; landscape and visual amenity and access to the coast |
| Coast Protection Schemes | |
| Flood Prevention Schemes | |
| Transport infrastructure including bridges and causeways | Flora, fauna, marine habitats, geological features and natural coastal and maritime systems and processes including sediment drift, erosion and accretion; landscape and visual amenity and access to the coast |
| Coastal Development eg. marinas and built developments | Water quality, flora, fauna, marine habitats, geological features and natural coastal and maritime systems and processes including sediment drift, erosion and accretion; landscape and visual amenity and access to the coast |
| Energy projects including oil, gas, marine wind turbine generators, wave energy generators and tidal barrages | Water quality, flora, fauna, marine habitats, geological features and natural coastal and maritime systems and processes including sediment drift, erosion and accretion; landscape and visual amenity and access to the coast |
| Marine aquaculture | Water quality, flora, fauna, marine habitats, natural maritime systems and processes; landscape and visual amenity and access to the coast |

*NB The interests listed here are intended to be illustrative of the range and nature of natural heritage interests potentially affected. The Table should not be used as a "checklist" and all projects should be carefully scoped for all potentially significant effects on the natural heritage and wider environment where appropriate.


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## Assessing Significance of Marine Impacts

13. Where effects on key marine resources are likely to occur, specialist advice should be used. SNH will usually take the view that marine impacts are likely to be significant where, either alone or in combination with other projects, the project would lead to:

    a. adverse or beneficial impacts on the systems or processes or features for which a site had been notified or designated;

    b. permanent or long term change that would affect the integrity and long term sustainable management of natural coastal processes and other natural marine systems;

    c. permanent or long term change to the quality of the natural heritage locally or regionally as a result of the destruction or enhancement or widespread or extensive degradation or improvement of marine habitats, species populations or features.

14. It is particularly important that these considerations are not confined to the on-site, direct impacts of a proposal but applied equally to off-site, indirect effects such as outfalls or coast protection or flood defence works or developments leading to changes in surface water run-off to rivers / estuaries etc.


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# Index

*Note: page numbers are preceded by 'p.' and figures by 'fig.'; other references are to paragraph numbers.*






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