

# Environmental Impact Assessment Handbook

Guidance for competent authorities, consultation bodies,  
and others involved in the Environmental Impact Assessment process in Scotland



**Scottish Natural Heritage**  
**Dualchas Nàdair na h-Alba**

All of nature for all of Scotland  
Nàdar air fad airson Alba air fad



**HISTORIC**  
**ENVIRONMENT**  
**SCOTLAND**

**ÀRAINNEACHD**  
**EACHDRAIDHEIL**  
**ALBA**

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Version 5

April 2018



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# A About this guidance

## A.1 Introduction

**Box A.1 Info.1****Key information**

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. It also provides advice to SNH and HES staff on procedures for handling EIA casework. It illustrates or concentrates on the treatment of natural and cultural 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 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 EIA Report), together with the comments of the public and statutory environmental organisations.
- A.1.2 Unless otherwise indicated the advice in this Handbook applies to the EIA process in respect of all project types.



## A.2 Structure

A.2.1 This Handbook provides guidance on the EIA process. This section gives a general introduction to the Handbook itself, including the terminology used and presentation.

A.2.2 [Part B](#) then gives an introduction to the process. It sets out the legislative background, the projects that are subject to EIA and the contents of an EIA Report.

A.2.3 The following sections then each focus on a main stage of the EIA process. These are set out below:

1. Before Submission of the EIA Report ([Part C](#))
2. Consideration of the EIA Report ([Part D](#))
3. The Decision Making and Implementation ([Part E](#))

The subsections of each part can be seen and linked to from the [Table of Contents](#) above.

A.2.4 The main part of the text is then followed by a [Glossary](#) and [References](#) section. The Glossary includes all abbreviations used in the text. The References section includes all legislation, case references and policy and guidance.

A.2.5 There are three Annexes to the main text:

1. [Annex 1 – Legislation information at a glance](#)  
This includes lookup tables for legislation by sector and project type, and key information and references for each set of EIA regulations.
2. [Annex 2 – Projects requiring EIA](#)  
This includes the details of Annex 1 and Annex 2 development given in [the EIA Directive](#), used for screening decisions.
3. [Annex 3 – Development of Environmental Assessment in Scotland](#)  
This sets out the history and background of the current assessment regimes in Scotland.

A.2.6 There are seven appendices to the text. Each gives an assessment methodology for a distinct EIA discipline or study area. These function as standalone documents.

A.2.7 Finally, the Handbook contains, in the [Attachment](#), a ‘master’ copy of a scoping and review package to assist in scoping and reviewing EIA Reports.

## A.3 Presentation

A.3.1 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.

A.3.2 The boxes used are as follows:

### Key information

| Box A.1 Info.1  | Key information |
|---|-----------------|
| Blue tinted boxes to summarise key points of information. |                 |

### Key advice

| Box A.1 Info.1  | Key advice |
|---|------------|
| Orange tinted boxes to highlight key points of advice, particularly useful for consultation bodies. |            |

### Good EIA Practice

| Box A.1 Info.1  | Good EIA Practice |
|---|-------------------|
| Green tinted boxes to give examples of good EIA practice. |                   |

### Case study

| Box A.1 Info.1   | Case study |
|--|------------|
| Yellow tinted boxes to identify case studies or detailed background information. |            |

A.3.3 In order to keep the text readable, whilst also providing immediate access to key documents referred to, web links are provided within the text wherever possible.

A.3.4 The document is fully referenced and bookmarked. Where sections are cross-referenced hyperlinks are provided.

### A.4 Terminology

- A.4.1 There is a large number of sets of EIA regulations. In the Handbook, each set of regulations is referred to by a name reflecting the sector(s) to which it applies. Where possible this is hyperlinked to the full legislation online.
- A.4.2 [The Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#), are referred to as **'the Planning Regulations'**. They are no more important than other regulations but the large majority of EIA is undertaken under their provisions.
- A.4.3 For the purposes of this Handbook, to help make the text more readable, all project developers and proposers are referred to as **'applicants'**, whether or not their project is for public service or infrastructure or for commercial purposes. This is to be consistent with the reference to the [Planning Regulations](#).
- A.4.4 Where advice relates to all EIA regimes, the decision-maker is referred to as the **'competent authority'**. Where reference is specific to the [Planning Regulations](#), the term **'planning authority'** is used.
- A.4.5 The [Planning Regulations](#) refer to **'consultation bodies'** in the EIA process. This Handbook uses this terminology when referring to bodies which are identified in the regulations. When referring to all the bodies consulted on a particular application, the term **'consultees'** is used, meaning simply 'those who were consulted'.
- A.4.6 Further explanation of any other terminology used is given in the [Glossary](#).

### A.5 This edition of the Handbook

- A.5.1 The Handbook was originally prepared by David Tyldesley and Associates and published in response to many of Scottish Natural Heritage's (SNH) partners expressing a need for a publication of this kind. The Handbook was updated in 2011 by Dundas and Wilson CS LLP. This fifth edition updates the handbook, taking into account the nine sets of Environmental Impact Assessment regulations that emerged in Scotland alone in 2017, as well as the changes in case law and updated policy and guidance that have taken place since 2011. This work has been carried out by Brodies LLP.
- A.5.2 Transitional arrangements are provided in the various EIA regulations which came into effect in May 2017. Specific advice on which regulations will apply to cases which straddle 16 May 2017 should be obtained. As an example, in broad terms, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 will continue to apply in the following circumstances:
- Where an application and an environmental statement has been submitted before 16 May 2017 (this includes an appeal or request to a Local Review Body).
  - Where a request for a scoping opinion or scoping direction has been made before 16 May 2017.
  - Where an application for a multi-stage consent with an environmental statement has been submitted before 16 May 2017.

In the case of the multi-stage application the 2011 regulations will apply subject to modifications detailed in the relevant regulations.

- A.5.3 The fifth 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. Brodies LLP, SNH or HES cannot be responsible for any consequences from the use of the Handbook or any errors or omissions. Readers are advised to read the relevant regulations or the whole of the relevant court judgments and to seek their own legal advice in any particular circumstances. 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 [planning building and design pages of the Scottish Government website](#).

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

## B.1 Introduction to the EIA process

B.1.1 The relevant process of environmental impact assessment is defined in the appropriate set of regulations and the proper account should be taken of the relevant definition. Each of the statutory EIA Regulations includes a definition of environmental impact assessment – see [Box B.1.Info.1](#) for the statutory definition of the EIA process. The definition applicable to each set of EIA regulations (the “EIA Regulations”) can be found as shown in the following table:

| <b>Regulations of specific relevance to Scotland:</b>   |  |
|---|--|
| <a href="#">The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017</a>   | Regulation 4w                                |
| <a href="#">The Electricity (Environmental Impact Assessment) (Scotland) Regulations 2017</a>   | Regulation 4                                 |
| <a href="#">Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007 as amended by The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Amendment Rules 2017</a>   | Rule 2A                                      |
| <a href="#">The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017</a>  | Regulation 5(1)                              |
| <a href="#">The Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017</a>  | Regulation 4                                 |
| <a href="#">The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017</a>  | Regulation 5                                 |
| <a href="#">The Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017</a>  | Section 20B of the Roads (Scotland) Act 1984 |
| <a href="#">The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 as amended by The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Amendment Regulations 2017</a> | Regulation 2A                                |
| <b>UK Regulations of specific relevance to the United Kingdom of Great Britain and Northern Ireland:</b>  |  |
| The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 as amended by the Offshore Petroleum Production and Pipelines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations 2017  | Regulation 3A                                |
| The Pipe-line Works (Environmental Impact Assessment) Regulations 2000 as amended by the Offshore Petroleum Production and Pipelines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations 2017  | Regulation 2A                                |
| Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 as amended by the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Amendment) Regulations 2006   | Regulation 2                                 |
| <b>Regulations of specific relevance to Great Britain:</b>  |  |
| The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999   | Regulation 2A                                |

## Box A.1 Info.1

## Key information

**The EIA Process – statutory definition**

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

- preparation of an EIA report
- completion of consultation, publication and notifications as required by the relevant regulations
- examination of the EIA report and any other environmental information by the competent authority or the Scottish Ministers as appropriate
- determination or conclusion of the significant effects of the proposal on the environment
- integration of the conclusion into the decision notice to be issued in terms of the relevant regulations.

B.1.2 Paragraph 4 of [Circular 1/2017](#) states:

*The main aim of the [EIA Directive](#) is to ensure that the authority granting consent (the ‘Competent Authority’) for a particular project makes its decision in full knowledge of any likely significant effects on the environment. The [EIA] 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 or ‘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 competent authority before it makes its decision.*

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.1.3 The EIA process derives most recently from EU Directive 2011/92/EU (as amended by EU Directive 2014/52/EU) (the “[EIA Directive](#)”), which considers the assessment of the effects of certain public and private projects on the environment.

The Environmental Impact Assessment Report (EIA Report) is the report normally produced by, or on behalf of, and at the expense of, the applicant. It must be prepared by a competent expert as defined in the relevant regulations and be submitted with the application for whatever form of consent or other authorisation is required. It embraces the following four elements of:

- i. gathering environmental information
- ii. describing the project
- iii. predicting and describing the environmental effects of the project
- iv. defining ways of avoiding, reducing or compensating for the adverse effects

The process must appropriately identify, describe and assess the direct and indirect significant effects (including operational effects where applicable) of the proposal on the following factors, including interaction among those factors:

- v. Population and human health
- vi. Biodiversity, particularly the species and habitats covered by the [Habitats Directive](#) and the [Birds Directive](#),
- vii. Land, soil, water, air and climate, and
- viii. Material assets, cultural heritage and landscape

Those effects include the expected effects deriving from the vulnerability of the proposal to risks of major accidents and disasters (insofar as relevant). The assessment process must identify the likely effects of the development on the environment before permission unless, those effects are not fully identifiable at the time of determining an application, or the planning authority is minded to grant a multi-stage consent.

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 paragraphs –76-84 among others, [Circular 1/2017](#))

- B.1.4 The ‘Environmental Information’ that must be taken into account by the competent authority includes the EIA Report 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 other information submitted by the proposer which is relevant to the decision.

**Box B.1.Info.2**
**Key information**

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

It is a process that is integrated into 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.1.5 Consequently, an EIA is not usually undertaken in isolation. 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 [EIA Directive](#). The main aim is to protect land which has a value or importance.

**Box B.1.Advice.1**
**Key advice**

Comments made on EIA cases still need to focus strongly on representations as to whether the project should proceed, or how it should proceed and be monitored

Representations may also relate to the quality or compliance of the EIA Report.

- B.1.6 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 EIA Report 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 EIA Report. In the latter case, the consultee would not object to the proposal, but may advise the competent authority about the inadequacy of the EIA Report.

**Box B.1.Info.3**
**Key information**

EIA should be of benefit to project applicants, 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 ensure that appropriate mitigation is implemented and monitored where appropriate. 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 relied substantially on integrity and good practice.

- B.1.7 The process can be broken down into a series of stages and steps. Whilst the 4 main stages will normally follow consecutively, the steps within each stage could be undertaken concurrently or in a different order.



**Box B.1.Info.4****Key information**

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 [Planning Advice Note \(PAN\) 1/2013](#) explains at paragraph 4.1:

*EIA is an iterative process. Whilst the overall process may be subdivided into a number of steps, in practice the process rarely proceeds in a simple linear fashion. For example, early assessment may identify a significant adverse impact which can only be overcome by altering the project design, so the process reverts to the first step...*

See also [PAN 1/2017](#) Annex A.

B.1.9 Not all of the steps in the process are 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 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 and the procedures can be co-ordinated.

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 EIA Report, prepared under the EIA Regulations, in the appropriate assessment under Regulation 48 of the [Conservation \(Natural Habitats &c\) Regulations 1994](#) or Regulation 61 of the [Conservation of Habitats and Species Regulations 2010](#) (together the Habitats Regulations) and subsequent amendments including those linked below. See [Section E.2](#) of this Handbook and paragraphs 73-75, [Circular 1/2017](#).

## B.2 The legislative background

### The EIA Regulations

- B.2.1 [Annex 1](#) of this Handbook list the current EIA legislation applicable in Scotland. It generally takes the form of Statutory Instruments or Regulations, which are made by the Scottish Parliament or Scottish Ministers or by the UK Parliament or Secretaries of State. Although not “Acts of Parliament” they are of statutory effect. Failure to comply with the relevant regulations would render any case or decision open to challenge in the Court of Session and the decision could be quashed. Many of the significant court cases (and their implications) are referred to in this Handbook ([Legal cases](#)).
- B.2.2 The EIA Regulations give legal effect in Scotland to the requirements of [the EIA Directive](#). The EIA Directive must be legally binding in Scottish domestic legislation on applicants and decision makers. Decision makers are referred to in the EIA Directive and the EIA Regulations as “competent authorities” and in this Handbook as planning authorities or competent authorities.
- B.2.3 The 2017 [Planning Regulations](#) have taken account of [EIA Directive](#) and cover EIA requirements for projects for which an application for planning permission has been submitted under the Town and Country Planning (Scotland) Act 1997 (the “[Planning Act](#)”), as amended by the [Planning etc. Scotland Act 2006](#).
- B.2.4 Other EIA Regulations cover a wide range of other project types and [B.1.1](#) and [Annex 1](#) provides the full list.
- B.2.5 As noted in paragraph [B.1.1](#) 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 Licences under the Marine (Scotland) Act 2010 (see [Annexe 2 Tables 2 and 3](#)).
- B.2.6 The [EIA Directive](#) links EIA to the consent procedure and all projects subject to EIA must require consent from a competent authority before they can proceed. Since most of the project types listed in Annex I and Annex II of the original EIA Directive required some kind of consent under UK law the Government was generally able to implement the EIA Directive by introducing sets of regulations modifying existing legislation and procedures. In other instances it was necessary to introduce new consenting procedures to meet the requirements of the EIA Directive, for example, the control of the intensive use for agriculture of uncultivated land and semi- natural areas (see section [B.5](#) below).
- B.2.7 In addition to the suite of EIA 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 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 EIA Regulations.

## Changes to the EIA Regulations

- B.2.8 Changes in EIA legislation relating to development in Scotland are facilitated by Section 2(2) of the [European Communities Act 1972](#) and Section 40 of the [Planning Act](#), empowering the Scottish Ministers to introduce further EIA Regulations, generally. These powers include the introduction of provisions different to the [EIA Directive](#). As the Scottish Ministers could not make the EIA Regulations less rigorous than the EIA Directive, it follows that the power must have been introduced to enable a stricter regime than that directed by the European Commission, if the Scottish Ministers so wish.
- B.2.9 The [2011 EIA Regulations](#) introduced a number of changes related to:
- presentation of decisions by the competent authority that an EIA is not required
  - applying assessment requirements to modifications and extensions of both [Schedule 1](#) and [Schedule 2](#) projects
  - applying assessment requirements to multi-stage consents

### Box B.2.Case.1

### Case study

In respect of the last bullet point, some Member States had taken the view that only modifications to projects in Annex I were subject to EIA. However, the Courts 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 subsequent case, [Baker v Bath and North East Somerset Council](#), 19th February 2009, had further implications for the interpretation of Schedule II thresholds for applications concerning changes or extensions to projects. The High Court in that case held that when applying the thresholds to applications for changes or extensions to projects it is not sufficient to only consider the change or extension itself; it is the development as modified or extended as a whole which must be considered. The [Planning Regulations](#) now reflect the position set out by the High Court.

- B.2.10 The EIA process is also influenced by the provisions for access to environmental information and the [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004](#) (see also [Circular 3/2004](#) and [PAN 70](#) as amended by [Data Protection Guidance for Planning Authorities](#)).

## B.3 The projects that are subject to EIA

### Statutory EIA: The General Principles

- B.3.1 The [EIA Directive](#) and EIA 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 EIA Regulations issued by the Scottish Government to ensure compliance with the EU [EIA Directive](#), as described in section [B.1.3](#) 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 [Planning Regulations](#). (Sometimes Schedule 1 projects may be referred to as ‘Annex 1’ projects.)
  - those which may be subject to EIA if they are of a kind listed in [Schedule 2](#) of the Planning Regulations, such as a proposed urban development project.

If the proposal is of a type listed in Schedule 2 of the Planning Regulations and meets one of the relevant criteria, or exceeds one of the relevant thresholds, listed in Schedule 2 of the principal 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 2](#) 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 [Planning Regulations](#) or it is in a sensitive location and it is likely to have significant environmental effects.
- B.3.4 The [Scottish Government Circular 1/2017](#) 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 paragraphs 22 and 23 of the Circular, and [Annex 2](#) of this Handbook).
- B.3.5 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 [EIA Directive](#). The European Commission has produced [further guidance](#) on the application of article 2(3).

**Box B.3.Info.1****Key information****Projects requiring EIA**

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 principal 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 1/2017](#), 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 the project, as modified or extended, would be likely to have significant effects on the environment.

## Voluntary EIA

- B.3.6 The advantages of EIA have been increasingly recognised by applicants, some of whom believe that an EIA Report can help to obtain consent more quickly, especially where they consider the project to be environmentally benign. Increasingly, applicants are submitting EIA Reports without seeking a screening opinion, and sometimes without seeking a scoping opinion, because they accept that an EIA Report will be required and wish to expedite the process.
- B.3.7 An EIA Report may, therefore, be submitted voluntarily. That is, where the project would not actually be required to go through the EIA process.
- B.3.8 It should be noted that if an applicant submits a document referred to as an EIA Report for the purposes of the [Planning Regulations](#), the planning authority is required by Regulation 6(1)(c) of the Planning Regulations to treat it as an EIA Report, and the proposal as EIA development, even if it may not be (see further paragraph 117 of [Circular 1/2017](#)).

## Parliamentary Private Bill Procedures

- B.3.9 Article 1.5 of the [EIA Directive](#), and the [Planning 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 EIA Report was prepared, even though the full EIA procedure is not required. However, the [Transport and Works \(Scotland\) Act 2007](#) (as amended), 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 EIA Regulations.

## B.4 Criteria for deciding whether EIA is required

### 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. Reg 11 in the [Planning Regulations](#)). If it is a [Schedule 1](#) project EIA will always apply, unless it is 'exempt development' (see [C.1.5](#)). For other projects a two stage test is needed to determine whether EIA will apply.

For [Schedule 2](#) projects the following needs to be considered:

1. Is the project of a type listed in schedule 2, column 1 of the planning regulations?
2. Then, is the project located wholly or partly within a sensitive area?
3. Does it meet or exceed the thresholds in column 2 of schedule 2?
4. Is the project likely to have a significant effect on the environment by virtue of factors such as its nature, size or location?

B.4.2 "Schedule 1 development" means "development, other than exempt development, of a description mentioned in [Schedule 1](#) of the Planning Regulations";

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

- any part of that development is to be carried out in a sensitive area; or
- 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"

This is set out in Regulation 2 of the [Planning Regulations](#).

B.4.3 A "sensitive area" is defined in Regulation 2(1) of the Planning Regulations (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 [Annex 2](#) of this handbook). However, the proximity to a sensitive site is likely to be a key consideration in determining likely significant effects (see [Box B.3.Info.1](#)).

## Determining Whether an EIA is Necessary

- B.4.4 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 [Planning 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 6(2) (b) of the Planning Regulations to direct that EIA is required, even though it does not meet these thresholds and criteria.

### Box B.4.Case.1

### Case study

#### Threadneedle Property Investments Ltd v Southwark LBC

The use of the equivalent English power was considered by the High Court in this case. The case concerned a challenge to the Secretary of State's failure to consider using the power when deciding whether or not to call-in the application for his determination. A letter submitted to the Secretary of State on behalf of the claimants requested that the Secretary of State use the power if he decided to call-in the application. The court stated that the power must be seen as an exceptional power in that it would only be used in an exceptional case. The court held that there was only a requirement to consider the use of the power upon receipt of an express request, bringing to the Secretary of State's attention a particular feature of the development that is said to be likely to have a significant effect on the environment. It is therefore not anticipated that this power will be used often.

### Box B.4.Info.1

### Key information

#### Friends of the Earth Ltd's Application for Judicial Review, Re Queen's Bench Division – Decision summary

It is emphasised that decisions need to be taken on a case-by-case basis. Individual projects that fall below the applicable thresholds and do not meet the criteria in the [Planning 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 applicants to seek a screening opinion from the competent authority or to at least discuss the possible need for EIA at an early stage.

- B.4.6 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 authorities and other competent authorities when they are screening for EIA.
- B.4.7 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 EIA 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 EIA 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). The European Commission has published [guidance on their interpretation of project categories in the EIA Directive](#) which can be consulted.

**Box B.4.Case.2****Case study****Goodman and another v Lewisham London Borough Council**

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. The planning authority took the view that as such development was not specifically described in either the [EIA Directive](#) or EIA Regulations (1999) in force at the time, 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 1999 and was outside the range of reasonableness that was open to the planning authority was incorrect. The planning permission was quashed and the application remitted to the planning authority for reconsideration. The wording of Schedule 2.10 has not been changed in the [Planning Regulations](#) and so this decision remains authoritative.

- B.4.8 Thus, the [EIA Directive](#) is not open to narrow interpretation. The UK Courts will interpret the EIA Directive in the European sense – as having wide scope and broad purpose.

**Box B.4.Info.2****Key information**

It should not be assumed that a project is excluded simply because it is not expressly mentioned in either the EIA Directive or the principal EIA Regulations. As noted above, the categories of development in Schedule 1 and Schedule 2 will be interpreted widely to achieve the objectives of the EIA Directive and ensure that projects which are likely to have significant effects on the environment are subject to EIA. For example, neither the EIA Directive nor the Planning 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”.

- B.4.9 There are examples of how this approach to interpreting the categories of development operates in practice, from both the ECJ and the domestic courts.



**Box B.4.Case.3****Case study****European Commission v Ireland (Case C-50/09)**

This case concerned whether Ireland had correctly transposed the [EIA Directive](#) by excluding demolition works from the scope of its domestic EIA legislation, the ECJ decided that the annexes to the EIA Directive describe sectoral categories of development rather than describing the precise nature of projects. It was stated that demolition works can constitute a project within the terms of the legislation and, as an example, it was noted that “urban development projects” often include demolition works. It was held that Ireland had therefore failed to correctly transpose the EIA Directive.

**Box B.4.Case.4****Case study**

A subsequent case saw a challenge in the High Court by Save Britain’s Heritage (March 2011) to a decision that demolition was not development requiring planning permission in which they also sought a declaration that demolition was capable of constituting a project falling within the scope of the EIA Directive. The court granted the declaration and commented that “if it is accepted that works are capable of having significant effects on the environment, the definition of “project” ...should, if possible, be construed so as to include, rather than exclude, such works”.

- B.4.10 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. In light of the case law, it will also be important to consider the impacts of the development; if it is likely to have significant effects on the environment then the descriptions of development should, to the extent that it is possible, be construed so as to include the development under consideration

## 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 principal 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 of Schedule 2 provides that, in such cases, the thresholds and criteria are to be applied to the development as changed or extended and not solely to the change or extension itself. Particular consideration should be given to forestry projects on land adjoining existing or previous projects or those completed less than 5 years previously and reference should be made to [The Forestry \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#) and specialist advice obtained if necessary.

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

### Box B.4.Info.3

### Key information

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.4.13 Because both the [EIA Directive](#) and the [Planning 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.4.14 Thus, [Schedule 3](#) of the Planning Regulations (see [Annex 2](#) 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 and design, use of natural resources, quantities of pollution and waste generated, risk of major accidents and disasters relevant to the project the environmental sensitivity of the location; and, the characteristics of the potential impact. This might include factors such as magnitude and duration, probability of impact, cumulation with existing and approved development and possibility of effectively reducing the impact.
- B.4.15 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.

## Large scale developments

- B.4.16 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](#)).

## Development in environmentally sensitive locations

- B.4.17 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) of the [Planning Regulations](#) as 'sensitive areas' and the thresholds/criteria in the second column of [Schedule 2](#) do not apply there.

| Box B.4.Info.4  | Key information |
|---|-----------------|
| <p>All developments listed in <a href="#">Schedule 2</a> to be located in the sensitive areas defined in Regulation 2(1) of the <a href="#">Planning Regulations</a> 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:</p> <ul style="list-style-type: none"> <li>• Sites of Special Scientific Interest</li> <li>• Land to which Nature Conservation Orders apply</li> <li>• Internationally designated nature conservation sites (SPAs, SACs and Ramsar Sites)</li> <li>• National Scenic Areas</li> <li>• World Heritage Sites</li> <li>• National Parks</li> <li>• Scheduled Monuments</li> <li>• Marine Protected Areas</li> <li>• Areas of deep peaty soils (<a href="#">Forestry Regulations</a> only)</li> </ul> |                 |

- B.4.18 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. (See [Circular 1/2017](#) at paragraphs 37-40). Urban locations may also be considered sensitive as a result of their heavier concentrations of population.
- B.4.19 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 or policies for other aspects of the environment, consideration should be given to whether the proposed development would breach these standards or policies.

## Development with particularly complex and potentially hazardous effects

- B.4.20 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

- B.4.21 Checklists can assist in the determination of whether EIA is required. The European Commission has published such [checklists](#) comprising a series of questions related to each of the selection. [PAN 1/2013](#) recognises that, while there is no requirement to use checklists, they can provide evidence of a transparent, consistent and systematic record of screening decisions.

## Applying the guidance to individual developments

- B.4.22 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 paragraphs 44 and 45 of [Circular 1/2017](#) and [SPP](#).
- B.4.23 What constitutes a cumulative effect, as well as an indirect and secondary effect, is a question of fact and judgement, subject to review on public law Wednesbury grounds (the legal basis on which a decision in the public sector is tested for irrationality or perversity) (*Bowen-West v Secretary of State for Communities and Local Government* (January 2012)).

### Box B.4.Case.5

### Case study

#### **Brown v Carlisle City Council (May 2010)**

This case covered the issue of cumulative effects. In that case there was a first application for airport works and a freight distribution centre which was accompanied by an ES. However, this was withdrawn when the application was called-in by the Secretary of State.

A second application did follow for a scaled down development including the freight distribution centre but most of the revised airport works were to be carried out under permitted development rights. The ES which accompanied this application only dealt with the freight distribution centre. Permission was granted and a section 106 Agreement (the English equivalent of a section 75 Agreement) was put in place which effectively ensured that the freight distribution centre could not lawfully be developed in isolation but only if it was developed in conjunction with the airport works. Again, it was stated that what constitutes a cumulative effect will be a question of fact in each case and developments may have cumulative effects despite no functional link between them.

In this case, the court decided that the granting of the permission without considering the environmental effects of the airport works was unlawful. The court considered whether to exercise discretion not to quash the permission even though the decision was flawed. The court ruled that the underlying purpose of the [EIA Directive](#) is that the environmental effects of a development, including any cumulative effects, are considered at the earliest possible stage in the consenting process. An assurance that they will be assessed subsequently when determining future applications will not, except in very exceptional circumstances, be a sufficient justification for the courts declining to quash a permission.

- B.4.24 It is important to determine the scope of the works that will be covered in the EIA Report and be considered as part of the assessment of cumulative effects in the EIA. As part of doing this, it will be necessary to look beyond the works that are applied for and to consider whether there are any other works that are required to facilitate the works applied for. Careful consideration will also have to be given to ensure that the cumulative effects of any relevant development which is permitted development are taken into consideration as part of the EIA, particularly as they will not be subject to a separate decision making process.

## 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. (See Paragraph 46 of [Circular 1/2017](#) following *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.

**Box B.4.Case.6****Case study**

The High Court has provided some guidance on the approach to be taken in another Save Britain's Heritage case (July 2013). They held that:

*If it can be seen that the smaller project under consideration, although harmless in itself, will lead to a larger development which may have significant effects on the environment it is necessary to take the effects of the larger development into account so as to avoid a situation in which by a series of small developments which fall under the radar the larger development comes about without an opportunity to subject it to EIA.*

- B.4.26 A similar issue has also been considered by the ECJ in relation to transboundary projects. Where the part of the project located in a particular Member State is less than the threshold for that category but the project as a whole is greater than that threshold, that Member State must subject the part of the project located in their country to the EIA procedure (Karnten C-205/08).

**Box B.4.Case.7****Case study****Burridge v Breckland DC (April 2013)**

The Court of Appeal considered an appeal against a High Court judgement which had ruled that a biomass development and combined heat and power plant which were to be connected by a 1 km underground pipe were not sufficiently linked to constitute a single project for the purposes of EIA. Both applications were considered at the same committee meeting. The Court of Appeal stated that the two applications were not to be treated separately simply because there were two separate applications as the [EIA Directive](#) refers to "projects" and it is well established that it is not permissible to frustrate the aims of the EIA Directive by splitting projects to fall below the prescribed thresholds (salami-slicing).

It was decided that the two applications were to be regarded as a single development/project as they were functionally interdependent and the combined heat and power plant was integral to the biomass development. The judges stressed the relevance of the fact that both applications were being considered at the same time, possibly in light of earlier judgements that had said that it is not possible to look at development contemplated beyond that applied for when carrying out screening.

- B.4.27 The decision in [Burridge](#) has some similarities to the [interpretation suggested by the EC](#) in relation to the application of the [EIA Directive](#) to associated/ancillary works where they are not Annex I or Annex II development in their own right but the main element of the development is. The EC suggest considering whether the associated/ancillary works are integral or inextricably linked to the main works on a "centre of gravity test"; to consider whether the associated/ancillary works are central or peripheral to the main works and, to what extent they are likely to predetermine the EIA process for the main works. If the associated/ancillary works are integral or inextricably linked to the main works then the EC suggests that it would be a breach of the EIA Directive to consent those works before carrying out an EIA for the whole project. It should be noted that this suggested interpretation has not been endorsed by the courts.
- B.4.28 In this context, it will be important to establish whether a development under consideration is actually part of a wider project and, if so, whether it is an integral part of that wider project. If it is an integral part of a wider project then the screening assessment should be based on the wider project; this is likely to be a question of fact and degree in each case and an important consideration in this will be whether the aims of the Regulations and [EIA Directive](#) are being frustrated by the submission of multiple or sub-divided applications.. It should be noted that, due to the fact both applications were before the planning authority, the court in [Burridge](#) was keen to distinguish that case from earlier decisions which had suggested it was not possible to look beyond the development applied for. This suggests that future stages of a project do not necessarily need to be considered at screening; it is likely there would need to be sufficiently precise details of the future development to allow the assessment required for screening.

**Box B.4.Advice.1****Key advice**

Competent authorities should press an applicant to submit a complete project and complete EIA Report to ensure that the aims of the [Planning Regulations](#) and [EIA 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.4.29 Development which comprises a modification or extension to [Schedule 1](#) or 2 development requires EIA if the development as a whole, once modified or extended is likely to have significant environmental effects. Guidance on this is contained in [Circular 1/2017](#). 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.4.30 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 29 of [Circular 1/2017](#) 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 Planning Permission in Principle

- B.4.31 See section [D.11](#) below, in respect of planning permissions in principle and matters to be approved under conditions.

## The Degree of Confidence in Predicting Likely Significant Effects

- B.4.32 The [EIA Directive](#) requires, amongst other things, firstly, that competent authorities decide whether EIA procedures apply to particular projects,; 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 Planning 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. The courts have held that this is essentially a judgement for planning decision-makers and is not the kind of judgement the court will undo “unless it is shown to have been outside the range of a reasonable decision on the relevant facts”, on a public law Wednesbury basis (*Catt v Brighton and Hove City Council*, April 2013). 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.

**Box B.4.Case.8****Case study****R (Jones) v Mansfield DC**

This is a helpful judgment in this respect as 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.*

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.*

- B.4.33 Case law has also clarified that decision makers must also have regard to the precautionary principle when reaching screening decisions.

**Box B.4.Case.9****Case study**

In R (Loader) v Secretary of State for Communities and Local Government (June 2012), the Court of Appeal stated:

*The decision maker must have regard to the precautionary principle and to the degree of uncertainty, as to environmental impact, at the date of the decision. Depending on the information available, the decision maker may or may not be able to make a judgment as to the likelihood of significant effects on the environment. There may be cases where the uncertainties are such that a negative decision cannot be taken.*

- B.4.34 There may therefore be occasions when there is insufficient information for a decision maker to reach a conclusion that a [Schedule 2](#) development will not have a significant effect on the environment, in which case it should be subject to EIA.

**Box B.4.Case.10****Case study**

As put by the High Court in R (Cooperative Group Ltd v Northumberland CC (March 2010):

*In order to adopt a negative screening opinion... the LPA must have sufficient information about the project to be able to make an informed judgment as to whether it is likely to have a significant impact on the environment” and “it is not permissible to decide to adopt a negative screening opinion on the basis that information as to environmental effects will be provided in the future.*

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

- B.4.35 Paragraph 42 of [Circular 1/2017](#) states that the extent to which mitigation or other measures are taken into account in reaching a screening opinion will depend on the facts of each case. It is possible that some measures may be modest in nature and easily achievable so that there is no prospect of significant environmental effects. In a case of any complexity, however, it should not be assumed that the measures would be successfully implemented.
- B.4.36 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](#). Competent authorities must ensure that appropriate obligations are put in place to ensure that proposed mitigation measures are delivered and monitored where appropriate (Paragraph 43 [Circular 1/2017](#)).
- B.4.37 It is useful to refer to what is a substantial body of case law. When considering whether conditions and mitigation can be taken into account for the purposes of screening under EIA, the courts will regularly look at cases on the same point under the [Habitats Regulations](#), and vice versa (see [Feeney v Secretary of State for Transport \(May 2013\)](#) for example). Cases under the Habitats Regulations are therefore equally relevant on this issue (see [B.8](#) below and [Figure 1](#)).

### Box B.4.Case.11

### Case study

#### R. (Lebus) v South Cambridgeshire DC

This case 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 section 75 Agreement in Scotland). Planning permission was granted subject to conditions in 2002. The resident challenged the decision by judicial review.

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 [now an EIA Report] and the measures which it is said will reduce their significance.*



B.4.38 The message from the above case 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 [EIA Directive](#). It is also clear from this case that planning authority staff need to make formal screening opinions on [Schedule 2](#) applications.

**Box B.4.Case.12**
**Case study**
**Gillespie v First Secretary of State and Bellway Urban Renewal**

This case considered the question of planning conditions. 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 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.

In quashing the First Secretary of State's decision, the Court of Appeal held that on considering whether an EIA 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:

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:

- the nature of the proposed remedial measures including uncertainties
- the extent to which those have been particularised
- their complexity
- the prospects of their successful implementation
- the prospect of adverse environmental effects in the course of the development, even if of a temporary nature
- the final effect of the development

B.4.39 This case 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, such as cleaning wheels of lorries and covering their loads to minimise dust, may well be taken into account. In more complex development, 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.4.40 The courts have stated that the judgement as to the effectiveness of mitigation / remedial measures is for the decision maker subject to challenge on traditional Wednesbury grounds ([Alternative A5 Alliance](#) (March 2013)). Support from consultation bodies on the effectiveness of mitigation measures is likely to be an increasingly important factor if relying on mitigation and remedial measures to reach a decision that there is not likely to be significant effects on the environment. In *Feeney* (which concerned a Transport and Works Order as part of the Chiltern Railways Evergreen3 Project which will, among other things, provide a new direct rail route between Oxford and London) a condition was imposed requiring further survey work on the effects of air pollution to be carried out followed by the implementation of mitigation measures, if necessary, on the recommendation of Natural England. Natural England gave evidence that there are tried and tested management techniques available and that there could be confidence that they would be implemented and, on that basis, the court decided that the Secretary of State was entitled to take account of the condition as part of the screening and conclude that no appropriate assessment was required.

**Box B.4.Case.13****Case study****Treagus v Suffolk County Council**

In this case the Environment Agency advised, in the context of an application for planning permission for an anaerobic digestion plant, that the incorporation of the necessary measures to address the management of both existing and surface water systems would ensure that the development would not lead to any significant adverse environmental impacts. The court was satisfied that the planning authority “was reasonably entitled to conclude that the development was not likely to have significant effects on the environment”.

**Box B.4.Case.14****Case study****Alternative A5 Alliance's Application for Judicial Review**

On the other hand, in *Alternative A5 Alliance*, the agency with primary responsibility for the Foyle and Finn rivers gave evidence casting doubt as to the effectiveness of measures to mitigate the impact of a new trunk road on the rivers which are also SACs. That evidence was unchallenged and the court therefore ruled that the decision maker was in doubt as to the effectiveness of the mitigation measures, or that it was at least irrational for them not to be in such doubt, and it was unlawful for no appropriate assessment to be carried out (i.e. reach a negative screening decision).

- B.4.41 As well as the requirement to consider the effectiveness of remedial/mitigating measures, there is also a need to ensure that the measures will be implemented (Paragraphs 132 and 133 [Circular 1/2017](#)).
- B.4.42 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 [Box D.11.Info.1](#) below.

**Box B.4.Case.15****Case study****Hart District Council (Dilly Lane)**

The issue addressed in Hart District Council (Dilly Lane) was the extent to which competent authorities should 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...*

In making this judgment, the judge examined the cases of [Lebus](#), [Gillespie](#) and [Catt](#) referred to above, in terms of the EIA regulations.

- B.4.43 It is well established that avoidance and mitigation 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.

**Box B.4.Info.5****Key information**

When adopting a negative screening opinion, the planning authority must specify those features and measures envisaged to avoid or prevent significant adverse effects (Regulation 7 of the Planning Regulations). Therefore, if relying on those to conclude that there will not be a likely significant effect, decision-makers should have no doubt as to the effectiveness of the mitigation and should have confidence that the measures will be implemented.

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

### Introduction

- B.5.1 In addition to the [Planning Regulations](#), the Government introduced a series of other regulations to implement the requirements of the [EIA Directive](#) in Scotland and those have been replaced or amended in 2017. These generally relate to particular sectors, such as port or forestry projects, or are 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 [Annex 1](#) of this Handbook sets out in detail the full range of current in 2017 regulations. Below are the main areas of focus.
- 1) The [Planning Regulations](#) include procedures relating to:
    - a) Multi-stage consents (Section [D.11](#) below, regulations 32-36)
    - b) The review of old mineral permissions (ROMPs) (regulation 38)
    - c) Simplified Planning Zones and Enterprise Zones (regulation 37)
    - d) Marine fish farming (regulation 40)
    - e) Urgent Crown development (regulation 39)
  - 2) Separate regulations relate to the following sectors:
    - a) Forestry ([2017](#))
    - b) Offshore petroleum production and pipelines ([1999](#), amended [2017](#))
    - c) Public gas transporter pipeline works ([1999](#), amended [2017](#))
    - d) Nuclear reactors ([1999](#), amended [2006](#))
    - e) Agriculture ([2017](#))
    - f) Marine works ([2007](#), amended [2017](#))
    - g) Extraction of minerals by marine dredging ([2007](#))
    - h) Major new transport works such as railways, tramways and bridges ([2007](#), amended [2017](#))
    - i) Electricity works (power stations and transmission lines) ([2000](#), amended [2008](#) and [2017](#))

### Multi-regime Consents

- B.5.3 It is possible that some proposals will require consent under more than one consenting regime, and therefore potentially EIA under more than one set of EIA regulations. Previous [Scottish Government research](#) suggested that such projects are few in number in relation to the large number of applications requiring EIA under a single set of EIA regulations but they may become more common in future.

- B.5.4 For example, the emerging marine renewables sector has seen several applications requiring EIA under the [Electricity Works Regulations](#) and the [Marine Works Regulations](#). Regulation 8(4) of the Marine Works Regulations allows a competent authority to determine that an EIA is not required in relation to an application for a marine works proposal where an assessment of any effects on the environment of the proposal has been, is being or is to be carried out by the appropriate authority or another consenting authority in accordance with the requirements of the [EIA Directive](#). In relation to marine renewables, this provision would allow an EIA to be undertaken in accordance with the Electricity Works Regulations without the need to also consider the Marine Works Regulations.
- B.5.5 The Scottish Government research suggested that stakeholders did not have any significant difficulties with the requirement to assess certain proposals under multiple EIA regulations. However, it did contain a number of recommendations for good practice (see Chapter 4 of the research for additional information) which remain relevant notwithstanding the suite of 2017 EIA regulations:
1. Applicants should undertake early engagement with competent authorities and consultation bodies as it provides an opportunity to discuss what consents will be required, scoping of the environmental information likely to be required, the EIA strategy (such as whether a single EIA Report will be produced covering all aspects of the proposal or whether there will be separate EIA Reports for different elements of the proposal) and the extent to which particular environmental information may be utilised in other assessments such as a Habitats Regulations Appraisal.
  2. Clear and accessible guidance should be available to applicants, addressing legal and practical requirements of the relevant EIA process/processes, although direct early engagement will also help to provide clear guidance.
  3. Consenting authorities may consider preparation of sector or project specific guidance on EIA and related assessments as the projects which have required, or are likely to require, EIA under multiple EIA regulations are confined to a small number of sectors. Marine Scotland are in the process of doing this with their draft [Marine Scotland Licensing and Consents Manual Covering Marine Renewables and Offshore Wind Energy Development](#).
  4. Where possible, applicants should twin-track applications for planning permission (and similar consents) with applications for environmental authorisation as promoted by Scottish Government and SEPA guidance ([PAN 51](#) and [Land Use Planning System SEPA Guidance Note 15](#) respectively). However, applicants may, in some cases, wish to establish the planning acceptability of a project prior to developing the detailed technical specification and information required for environmental authorisations.

## B.6 The contents of an EIA Report

- B.6.1 Paragraph 5.4 of [PAN 1/2013](#) and Regulation 5 and [Schedule 4](#) of the [Planning Regulations](#), describe the contents of the EIA Report. Essentially, an EIA Report 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 consultation bodies may then comment and the competent authority must then take into account in making the decision, including measures to avoid or mitigate significant environmental effects.

### Box B.6.Case.1

### Case study

#### Berkeley

In this case 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 [EIA 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.6.2 The primary purpose of an EIA Report is to inform the decision maker of the environmental implications of the proposal. It should also inform consultation bodies, other interested bodies and members of the general public and provide a basis for consultation and debate.

### Box B.6.Info.1

### Key information

An EIA Report 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
- avoid technical discussion and terminology except where absolutely necessary
- include a Non-Technical Summary(NTS) setting out the main findings of the EIA Report in plain English

- B.6.3 The [EIA Directive](#) specifies, in Annex IV, and the [Planning Regulations](#) in Regulation 5(2) and Schedule 4, the information which must be included in an EIA Report. 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 EIA Report may reasonably be required to include, by way of explanation or amplification see also Box [B.6.Info.3](#) below). The equivalent requirements in other Regulations are referred to in [Annex 1 \(Figure 8\)](#).
- B.6.4 Regulation 5(3) of the [Planning Regulations](#) recognises the importance of the effective scoping in the assessment process by requiring that the EIA report must be based on the scoping opinion or direction where one has been issued. Further, Regulation 5(2) details the information that needs to be provided as a minimum ([Box B.6.Info.2](#)).

**Box B.6.Info.2****Key information**

Information that MUST be included in an EIA Report – the minimum requirement as identified in the [Planning Regulations](#):

- A description of the proposal, comprising information about the site, design, size and other relevant features of the proposal
- A description of the likely significant effects of the development on the environment
- A description of the features of the development and any measures envisaged in order to avoid, prevent, reduce and if possible, offset any 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
- A description of the reasonable alternatives studied by the proposer and an indication of the main reasons for the chosen option, taking into account the environmental effects
- A non-technical summary of the above information
- Any other information relevant to the specific characteristics of the development and the environmental features likely to be affected

- B.6.5 However, it should be noted that if matters in [Box B.6.Info.3](#) are not included in an EIA Report, 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 applicant (by giving notice in writing) to submit the information specified. If it does require more information, the authority must have regard in particular to current knowledge and methods of assessment (Regulation 26 of the [Planning Regulations](#)).

**Box B.6.Info.3****Key information**

Matters normally to be included in an EIA Report which are 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 [Planning Regulations](#) Sch. 4 Part 1):

**Description of the proposal**

A description of the proposal including, in particular:

- A. A description of the location of the development;
- B. the physical characteristics of the whole development, any requisite demolition works and the land use requirements during the construction and operational phases;
- C. the main characteristics of the operational phase (in particular production processes) for instance, energy demand and usage, the nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) to be used;
- D. an estimate, by type and quantity, of expected residues and emissions (water, air and soil and subsoil pollution, noise, vibration, light, heat, radiation etc.) and the quantities and types of waste produced during construction and operational phases.

**Box B.6.Info.3 – continued****Key information****Alternatives considered**

A description of the reasonable alternatives (e.g. design, technology, location, size and scale) relevant to the proposal studied by the proposer and an indication of the main reasons for choosing the selected option, including a comparison of the environmental effects.

**Baseline environmental information**

A description of the relevant aspects of the current state of the environment and an outline of the likely evolution in the absence of the proposal as far as that is possible, using reasonable effort and taking account of available relevant information and scientific knowledge.

**Factors likely to be significantly affected**

A description of those factors likely to be significantly affected by the proposal including in particular:

- population
- human health
- biodiversity (flora and fauna)
- land (e.g. land take)
- soil (e.g. organic matter, erosion, compaction, sealing)
- water e.g. hydromorphological changes, quantity and quality)
- air
- climate (e.g. greenhouse gas emissions, impacts relevant to adaptation)
- material assets
- cultural heritage, including architectural and archaeological aspects
- landscape

**Environmental effects**

A description of the likely significant effects of the proposal on the environment resulting from, inter alia:

- the construction and existence of the proposal, including any demolition works
- the use of natural resources, particularly land, soil, water and biodiversity and considering as far as possible the sustainable availability
- any emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste
- the risk to human health, cultural heritage of the environment (e.g. due to accidents or disasters)
- the cumulation of effects with other existing and/or consented/approved projects of proposals, taking account of existing problems relating to areas of particular environmental importance or use of natural resources
- the impact of the proposal on climate (e.g. nature and magnitude of greenhouse gas emissions and proposal vulnerability to climate change)
- the technologies and substances used



**Box B.6.Info.3 – continued****Key information**

The description should take account of direct and indirect effects, secondary, cumulative, transboundary, short-term, medium-term and long term effects, permanent and temporary effects and positive and negative effects of the proposal. The description should take account of established environmental protection objectives established at EU level and those under the relevant directives.

**Forecasting Methods**

A description of the forecasting methods or evidence used to identify and assess significant effects on the environment.

**Technical difficulties and limitations**

Details of any difficulties, such as technical deficiencies or lack of knowledge, encountered in compiling the required information and the main uncertainties involved.

**Mitigation measures**

A description of the measures envisaged to prevent, reduce and, where possible, to offset any significant adverse effects on the environment. This should include proposed monitoring measures and explain the extent to which the effects are avoided, reduced or offset and cover construction and operational phase.

**Vulnerability to risks of Major Accidents or Disasters**

A description of the expected effects deriving from the vulnerability of the development to risks of major accidents and or disasters relevant to the proposal, including information obtained/available through risk assessments pursuant to EU legislation including relevant directives. This should include measures to prevent or mitigate significant adverse effects of such events and details of preparedness and proposed response to emergencies.

**A non-technical summary of the above information****A reference list detailing the sources for the descriptions and assessments in the EIA Report**

- B.6.6 The responsibility for carrying out the studies for the EIA Report and reporting the findings is placed on the applicant, 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 applicant.
- B.6.7 The regulations require the applicant to include alternatives which have been considered, if no alternatives have been considered none need be included in the EIA Report (see further paragraph [B.6.10](#) 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 EIA Report.
- B.6.8 The [Planning Regulations](#) also require that where a scoping opinion (or direction) has been issued the EIA Report must be based on that opinion or direction and that the applicant must ensure that the EIA Report prepared by a competent expert and be accompanied by a statement outlining the relevant expertise or qualifications of such an expert (Regulation 5).

## Electronic Versions

- B.6.9 EIA Reports are generally available on CD or DVD and are transferable electronically. Distribution in this form can be compliant. The [Planning Regulations](#) allow for the use of electronic communications for certain procedures. Additional information and guidance can be found in [Circular 3/2004](#) and [PAN 70 Electronic Planning Service Delivery](#). See also paragraphs [D.1.8](#) and [D.1.9](#) below.

### The Assessment of Alternatives

- B.6.10 The EIA Report should contain an outline of the main alternatives studied by the applicant and an indication of the main reasons for their choice, taking into account the environmental effect (see [Box B.6.Info.3](#) above). An “outline of the main alternatives studied” must be provided. This must set out the main reasons for the choice made – explaining why an alternative was not adopted. This should take account of its environmental effects and those of the submitted project. It should be noted that 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 EIA Report as to why a more, or less, environmentally harmful project was chosen for submission.

## B.7 Importance of compliance with the EIA Directive

- B.7.1 It is clear from this Handbook that the EIA process is complex and involves many decisions and judgements. All of these 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 [Planning Regulations](#) may make a decision to grant permission unlawful and lead to it being quashed by the Court (an example of this can be seen in 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 [EIA Directive](#).
- B.7.3 If the proposal is one to which the [Planning 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 EIA Report was available elsewhere and was taken into account before the decision was taken; or that had an EIA Report been available the decision would have been the same.

| Box B.7.Case.1  | Case study |
|---|------------|
| <p data-bbox="248 860 1431 907"><b><a href="#">Berkeley v. Secretary of State for the Environment and Others</a></b></p> <p data-bbox="248 907 1431 1187">In Berkeley the House of Lords unanimously emphasised the need to comply with the EIA Regulations. It took the view that when considering compliance with the EIA Regulations it was necessary to consider the <a href="#">EIA Directive</a>. 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.</p> <p data-bbox="248 1187 1431 1348">In his leading judgment, Lord Hoffman noted that the EIA 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.”</p> |            |

- B.7.4 The [EIA 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 EIA Report 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 applicants and competent authorities.

- B.7.5 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.
  - EIA Reports must be based on screening opinions or directions where appropriate and take into account available results of other relevant assessments.
  - EIA Reports must be prepared by a competent expert and 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 decision should take into account the need for adequate monitoring and be made using sufficient expertise.
  - The permission that is granted should relate only to the project whose environmental effects have been described and assessed in the EIA Report.
  - A record of all decisions and the reasons for them should be kept.

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

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.

### Strategic Environmental Assessment

- B.8.2 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.8.3 It was for this reason that the EC introduced the concept of environmental assessment of plans, programmes and strategies (PPS), 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.8.4 The EC introduced compulsory assessment of the effects of certain public plans and programmes on the environment in the EC Directive, 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](#), which applies the SEA process to all plans, programmes and strategies prepared by public bodies in Scotland, with very few exceptions. The extended scope of the Act is unique in Europe.
- B.8.5 The higher level of assessment in SEA is intended to inform authorities who are responsible for making PPSs, about the environmental effects of implementing the plans and programmes, before they are adopted or given effect.
- B.8.6 There are similarities with the EIA process. SEA also involves gathering baseline environmental information, predicting the significance of effects and modifying the proposals to mitigate the effects. It also has 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 producing 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 reasonable alternatives is mandatory.
- B.8.7 [Figure 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 individual proposal under both SEA and EIA are 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.8.8 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'. Where a significant effect on a 'European site' cannot be excluded on the basis of objective information, a plan or project 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 and/or regulation 61 (plans and projects generally) or regulation 102 (land use plans) of the [Conservation of Habitats and Species Regulations 2010](#), see paragraph B.1.13 above. European Commission guidance, Managing Natura 2000 Sites: The provisions of Article 6 of the Birds and [Habitats Directive](#), make it clear that the requirement for a Habitats Regulations Appraisal is not restricted to proposals within a European site but will also apply to proposals outside the boundaries of a European site but which can have a significant effect on the site:
- As regards geographical scope, the provisions of Article 6(3) are not restricted to plans and projects which exclusively occur in or cover a protected site; they also target developments situated outside the site but likely to have a significant effect on it.*
- B.8.9 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 the [Scottish Government Circular 6/2013 on Development Planning](#).
- B.8.10 **Figure 1** below compares various aspects of the EIA and SEA processes with the requirements of the Habitats Regulations Assessment. The Habitats Regulations appraisal may overlap the SEA or the project EIA. A project EIA Report 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. Nonetheless, where in respect of an individual project there is a requirement to ensure that an HRA is carried out in addition to the Environmental Impact Assessment both assessments must be co-ordinated.
- B.8.11 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 HRA 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.

Figure 1 - Comparisons between the EIA, SEA and Habitats Regulations Appraisal processes

| Elements of the process                 | EIA process  | SEA process  | HRA process   |
|---|--|--|---|
| <b>Origin</b>                           | EC Directive 85/337/EEC amended by 97/11/EEC, 2003/35/EC, 2011/92/EU and 2014/52/EU.   | EC Directive 2001/42/EC  | EC Directives 79/409/EEC and 92/43/EEC  |
| <b>Statutory basis Scotland</b>         | Various statutory instruments see Annexe 2 of this Handbook  | Environmental Assessment (Scotland) Act 2005   | Conservation (Natural Habitats &c) Regulations 1994 as amended and Conservation of Habitats and Species Regulations 2010.   |
| <b>Applies to</b>                       | 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  |
| <b>Responsible authority</b>            | 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   |
| <b>Assessment work undertaken by</b>    | 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 and ensure that the assessment is co-ordinated where EIA is undertaken.  |
| <b>Trigger for requiring assessment</b> | 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 a European site   |
| <b>Reporting provisions</b>             | The project proposer must produce an EIA Report 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 applicants or plan makers produce a report to inform the assessment, although the content of the report is not specified  |
| <b>Publicity requirements</b>           | 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   |
| <b>Consultation requirements</b>        | Statutory consultation with SNH, SEPA, HES and other consultees (including the public) as specified in regulations                           | Statutory consultation with SNH, SEPA, HES and other consultees (including the public) as specified in the Act   | Statutory consultation only with SNH and only if an 'appropriate assessment' is required  |
| <b>The precautionary principle</b>      | 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   |
| <b>Effect of a negative assessment</b>  | 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 |
| <b>Monitoring requirements</b>          | None required by the statute but competent authority should 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  |

## **C Before submission of the EIA Report**



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

### 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 applicant can use statutory procedures to ask the competent authority or the Scottish Ministers whether an EIA Report will be required for a project. Guidance on this stage is provided in [PAN 1/2013](#) at paragraphs 4.9 – 4.13 and [Circular 1/2017](#) paragraphs 24-75. You may also find the [Scottish Government questions and answers publication](#) and [the EC guidance on screening](#) useful.
- C.1.2 The statutory provisions for the screening process are set out in [Annex 1 \(Figure 8\)](#). Note that the criteria and tests required to determine which projects are subject to EIA are set out in sections [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 [The Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2013](#)).

### Introduction

- C.1.3 Reference is made here to sections [B.3](#) and [B.4](#) and [Annex 2](#) 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. [PAN 1/2013](#) and [Annex A \(June 2017\)](#) gives best practice guidance advice in terms of the management of EIA applications. [Annex 1 \(Figure 8\)](#) identifies the competent authorities in respect of all of the different EIA Regimes.
- C.1.4 Where EIA is required, the authority must provide a written statement giving the main reasons for its decision. Similarly where the authority decides that EIA is not required the statement must refer to any features or measures included in the proposal that are to avoid or prevent any significant adverse effects.
- 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 and likely significant effects 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.6(6) [the Planning Regulations](#)). Paragraph [B.3.6](#) gives additional information.

### Applicant’s Options as to the Submission of an EIA Report

- C.1.6 If the project is a [Schedule 1](#) project the applicant has no option but to submit an EIA Report. However, if it is a [Schedule 2](#) project, the applicant can:
- Submit an EIA Report 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 EIA Report 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:
- The applicant may decide that EIA will be required and submit an EIA Report with their application.
  - The applicant may, before submitting any application, request a screening opinion from the authority. If the applicant disputes the need for EIA (or a screening opinion is not adopted within the required period), the applicant may apply to Scottish Ministers for a screening direction.
  - The competent authority may determine that EIA is required following receipt of an application. Again, if the applicant disputes the need for EIA, the applicant may apply to Scottish Ministers for a screening direction.
  - 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.
  - Scottish Ministers may direct that EIA is required at any stage prior to the granting of consent for a particular project.
- C.1.8 An applicant may ask the competent authority for a screening opinion before submitting an application for consent. The competent authority has 21 days (or a maximum period of 90 days if agreed between the parties) from receipt of the request in writing to provide its opinion, in writing (for example, see Reg.9(1) of the [Planning Regulations](#)). Where, in exceptional circumstances arising because of the nature, complexity, location or size of the proposal, the competent authority considers it is not practicable to adopt a screening opinion within 90 days, that period may be extended by the competent authority giving notice to the applicant stating (i) a date by which the screening opinion will be adopted and (ii) the justification for the extension. The time limits vary among the EIA Regulations and the relevant regulations should be checked to ensure that they do not differ from those in the Planning Regulations referred to here.
- | Box C.1.Info.1  | Key information |
|---|-----------------|
| <p>The decision as to whether or not an EIA should be carried out for projects covered by the EIA Regulations is a matter for the competent authority (for example, the planning authority, Forestry Commission, the Scottish Ministers).</p> |                 |
- C.1.9 The applicant should carefully consider the information that is to be provided to the competent authority with the screening request, particularly features and measures that are intended to avoid or prevent significant adverse effects on the environment. The competent authority may ask the applicant for any additional information necessary to give an opinion, and may consult any of the consultation bodies where they are uncertain about the significance of the effect of the project on the environment (see section [D.2](#) below) before giving their opinion. Whether or not the competent authority decides that an EIA Report is required, they must notify the applicant in writing when they adopt a screening opinion (for example, Reg.7(3) of the [Planning Regulations](#)).
- C.1.10 To avoid unnecessary delays it is important that every attempt should be made to issue screening opinions within the statutory 21 day period. Unless there is agreement with the applicant, the authority has no legal authority to request EIA beyond the 21 day period except in exceptional circumstances and where notice has been given to the applicant. However, if the authority had not issued a screening opinion and it considered that EIA was required the authority could seek to persuade the applicant to carry out an assessment voluntarily and provide an EIA Report, which would be submitted in accordance with the EIA 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 a prior agreement with the applicant to extend the period or notice has been given in exceptional circumstances. It is possible that additional information about the effects of the project not known to the authority when the 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.

**Box C.1.Case.1****Case study****Fernback and Others v Harrow LBC**

The above case 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.1.12 Failure by the competent authority to give an opinion in the 21 day period (or such extended period as agreed between the parties or notified to the applicant) means that the applicant is entitled to request a screening direction from the Scottish Ministers. The applicant may also request a screening direction from the Scottish Ministers where aggrieved by the decision of the competent authority to require EIA (Reg.9(5) of the [Planning Regulations](#)). A request for a screening direction can be made by the applicant even if the competent authority required additional information to be submitted and the information has not been submitted (this is in case the competent authority’s requirements are unreasonable) (Reg.9(6) of the Planning Regulations).
- C.1.13 The Scottish Ministers have 21 days (or such extended period as agreed between the parties or notified to the applicant) 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.10(4) of the [Planning Regulations](#)).
- C.1.14 If a competent authority receives an application for consent, for a [Schedule 1](#) or [Schedule 2](#) project that is likely to have significant effects on the environment, it has 21 days (or such extended period as may be agreed between the parties or notified to the applicant) within which to give notice in writing to the applicant that an EIA Report should be submitted (Reg.11(4) and 12(3) of the [Planning Regulations](#)). In making this decision the competent authority may consult the statutory consultees (see section [D.2](#) below).
- C.1.15 If the applicant receives a notice from the competent authority that in their opinion an EIA Report must be submitted, the applicant has 21 days in which to either:
- confirm that an EIA Report will be submitted (unless the Scottish Ministers have already made a screening direction)
  - inform the competent authority that the applicant is writing to seek a screening direction from the Scottish Ministers (Regs. 12 (4) of the [Planning Regulations](#)).

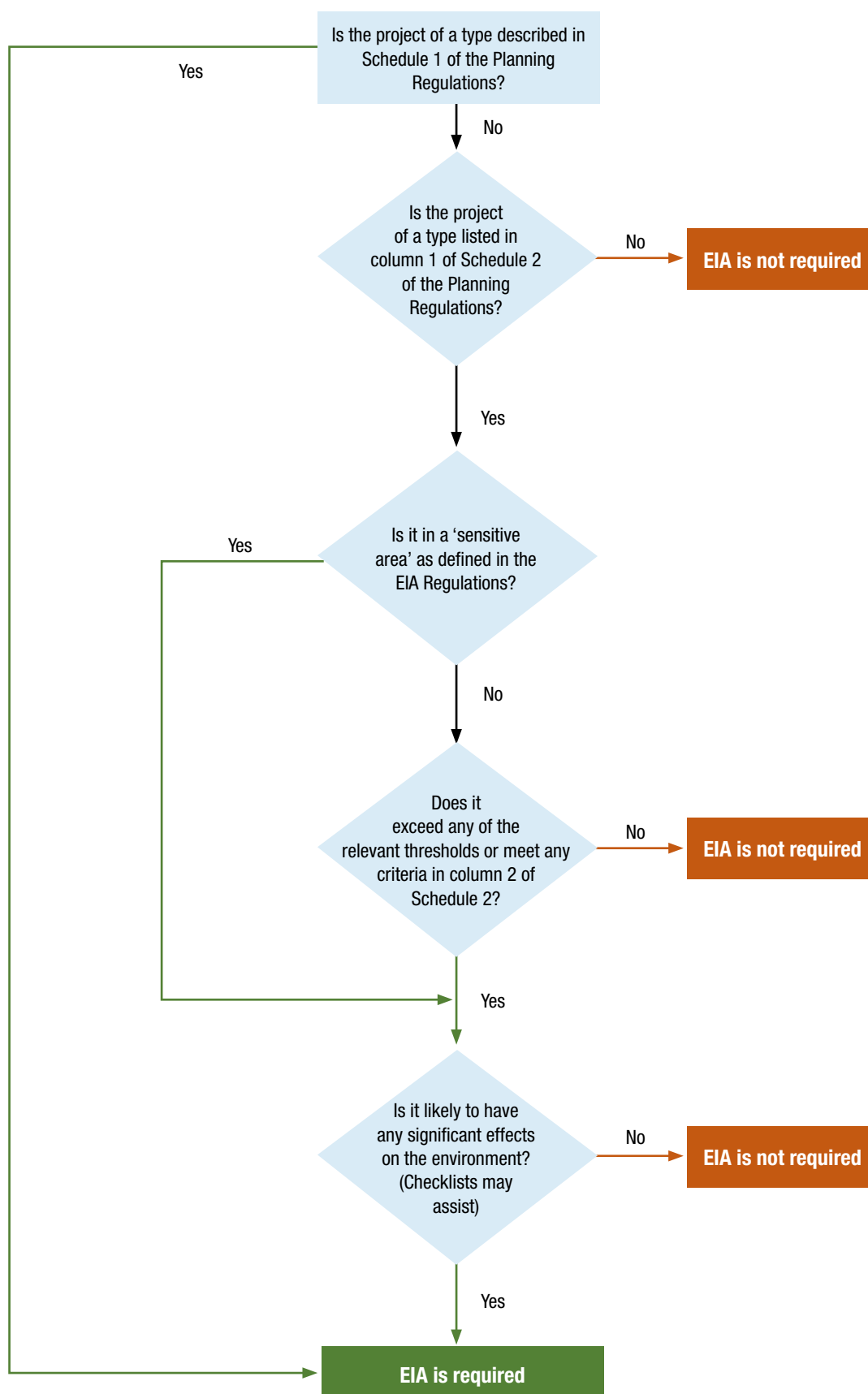
C.1.16 If the applicant does not respond to the notice as above, unless the Scottish Ministers have made the decision that the development is not EIA development, then the application will be deemed to be refused at the end of the 21 day period if:

- no EIA Report is submitted
- no request is made to the Scottish Ministers for a screening direction
- the Scottish Ministers direct that an EIA Report is required but none is submitted

If this occurs, then the deemed refusal will not be subject to a right of appeal in terms of section 47 of the [Planning Act](#) or to a right of review in terms of section 43A(8) (Reg 12(5) of the [Planning Regulations](#)).

C.1.17 The procedure for establishing whether projects processed under the [Planning Regulations](#) should be subject to EIA is shown in [Figure 2](#) below. Where a project is subject to different regulations the procedure that is shown may not apply and detailed consideration should be given to the requirements of the applicable regulations.

Figure 2 – The procedure to establish whether an EIA is required for an application for planning permission



## C.2 Requiring the submission of an EIA Report

### Statutory Provisions and Government Guidance

- C.2.1 Competent authorities and the Scottish Ministers have a statutory power to require submission of an EIA Report in particular cases and a statutory duty not to grant any form of consent to a project which should be subject to the EIA process, without taking the likely significant effects on the environment into account. The Scottish Ministers have wide powers to enforce the EIA regime in Scotland.
- C.2.2 Reference is made to section [C.1](#) above and to section [B.3](#) and [Annex 2](#) which explain which projects require EIA.
- C.2.3 It should be noted, however, that the Scottish Ministers do not have to wait for an applicant or a Competent Authority to ask for a Direction. They can act at any time.

#### Box C.2.Advice.1

#### Key advice

Whether or not it is consulted about the need for EIA, a consultation body 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 consultation body would have to advise the competent authority in sufficient time to allow it to reach a decision and advise the applicant accordingly within the 21 day period (Reg.9 of the [Planning Regulations](#)).

If the competent authority decides that it does not wish to follow the statutory consultee's advice in a particular case, then the statutory consultee can ask the Scottish Ministers to issue a Direction to the competent authority to require EIA under the EIA Regulations (the Planning Regulations Reg.7(4)).

## C.3 Preliminary contact and liaison

### Statutory Provisions and Government Guidance

- C.3.1 Preliminary contacts and liaison are non-statutory procedures. Early engagement with decision makers and statutory and other consultees, however, is recommended, for example in [PAN 1/2013](#), [PAN 3/2013](#) and [Forestry Commission guidance](#) on EIA of Forestry Projects.

### Advantages

- C.3.2 Early contact and liaison about EIA cases is of benefit to applicants and to the consultation bodies. It should help to reduce consultees' time input later in the process and increase the account taken of environmental issues in the EIA Report. The preparation of the EIA Report is the duty of the applicant who should ensure it is prepared by competent experts (Reg 5(5)(a) [Planning Regulations](#)).
- 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. Account should be taken of the available results of other assessments in the preparation of the EIA Report. (Reg. 5(4) of the [Planning Regulations](#)).
- C.3.4 Some EIA projects will be 'national development' or 'major development' as defined under the provisions of the [Town and Country Planning \(Hierarchy of Developments\) \(Scotland\) Regulations 2009](#) and this includes all [Schedule 1](#) developments. There will need to be pre-application consultation with communities in accordance with the [Town and Country Planning \(Scotland\) Act 1997](#) and the [Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2013](#) 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 statutory requirements for pre-application consultation do not apply.
- C.3.5 The statutory pre-application process is begins 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 applicant should consider the resources required and appoint a coordinator with overall responsibility for the coordination and production of the EIA Report and its submission. The coordinator should assemble a team of competent experts with the right experience and expertise. (Reg.5(5)(a)). The applicant 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 applicant, in understanding the potential concerns, and for the competent authority and consultation bodies in understanding the project and steering the preparation of the EIA Report. However, it is not just the competent authority and consultation bodies who can steer the preparation of the EIA Report. [PAN 1/2013](#) also promotes pre-application consultation with the community as an opportunity to help inform the content of the EIA Report.

- C.3.6 One of the important contributors to the success of an EIA Report 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 applicant, the competent authority and consultation bodies, can provide a key opportunity to discuss the scope and content of the EIA Report, helping the applicant 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 EIA Report, to key consultees and the competent authority, before the submission of the final statement and before the design is finalised, can therefore improve the EIA Report 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. Both the Scottish Government's Energy Consents Unit and the Marine Scotland Licensing Operations Team have introduced a non-statutory [gatechecking process](#) where applicants submit, and receive feedback on, their draft application. This process does not look at the quality of the EIA Report but is designed to check that all relevant issues have been examined.
- 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, and takes into account the information required in terms of Reg. 5 of the [Planning Regulations](#). 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 [Circular 3/2013](#) contains further advice and guidance on pre-application discussions and includes 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. Consultees are encouraged to engage in these processing agreements. [PAN 1/2013](#) argues that they will “develop a shared understanding and expectation of the processes involved, and can help to identify what information is required, and from whom, and in the setting of agreed timescales for the various stages of the process”. This should help to encourage a more co-operative approach throughout the EIA process.
- C.3.10 The advantages of early consultation and liaison include:
- Early identification and therefore more focused consideration of significant impacts, the need for and possible mitigation, a more focused report, 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.
  - Early understanding of the potential concerns of the consultees, and encourages greater understanding of the project and the preparation of the EIA Report, by the consultees and decision maker.
  - Identification of opportunities to factor mitigation measures into the design of the proposal.



## C.4 Scoping the EIA Report

### Statutory Provisions and Government Guidance

- C.4.1 A scoping opinion is a statutory procedure that may be requested by the applicant. Before making an application, an applicant may ask the competent authority for their formal opinion on the information to be supplied in the EIA Report (a “scoping opinion”). This provision allows the applicant 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 EIA Report should focus (Reg.17 of the [Planning Regulations](#)).
- C.4.2 The applicant must include the same information as would be required in terms of Reg 17(2) (the scope of the assessment) to accompany a request for a screening opinion. Both requests may be made at the same time (the [Planning Regulations](#) Reg.17(7)) although additional information is required in respect of the screening opinion (Reg 8(2)). An applicant may also wish to submit a draft outline of the EIA Report, giving an indication of what are considered 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 and must notify the applicant of the points on which additional information is required within 21 days of receipt of the request for a screening opinion. The authority must consult the consultation bodies (detailed at Reg 17(4) of the Planning Regulations) and the applicant before adopting its scoping opinion.
- C.4.3 The competent authority must adopt a scoping opinion within 35 days of receiving a request for such an opinion from the applicant. This is the time limit for applications for planning permission. Different time limits may apply to other applications and the relevant regulations should be checked. Alternatively, where the applicant 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 [Planning Regulations](#) Reg 17(7)). This period may be extended by agreement in writing. As a starting point, authorities should study the general requirements for of EIA Reports in the Planning Regulations and the guidance in [Circular 1/2017](#), and in [PAN 1/2013](#). In addition, authorities may find it useful to consult other published guidance, such as the [European Commission guidance](#).
- 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 [Planning Regulations](#), Reg.28).
- C.4.5 There is no provision to refer a disagreement between the applicant and the competent authority over the content of an EIA Report 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 35 days (or any agreed written extension), the applicant may apply to the Scottish Ministers for a scoping direction, see for example, the [Planning Regulations](#) at Reg.17(8). 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 35 days 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 applicant beforehand. Copies of the scoping direction will be sent to the applicant 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](#) above.

## Effect of a scoping opinion or direction

- C.4.7 Where a scoping opinion or direction has been provided the EIA Report must take that into account. An EIA Report 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 Report that does not cover all the matters specified in the scoping opinion or direction will probably be subject to calls for additional information under Reg.26 (see [D.6](#) below).
- 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 additional information at a later stage under Regulation 26 of the [Planning 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 1/2013](#) states at paragraph 4.15:
- The purpose of scoping is to:*
- *identify the key issues to be considered*
  - *identify those matters which can either be scoped out or which need not be addressed in detail*
  - *discuss and agree appropriate methods of impact assessment, including survey methodology where relevant*
- C.4.10 By drawing on the knowledge of the planning authority and consultees, a scoping exercise will help the applicant 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 additional information once the EIA Report is submitted. In some cases applicants 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.4.11 Some EIA Reports 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. Applicants should not have to pay the cost and experience the delays involved in addressing issues that are obviously not significant. Competent authorities, consultation bodies 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.Info.1

### Key information

#### Advantages of Scoping

The “scoping” of the EIA Report 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.

## Products 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.
  - C. A plan for conducting the technical studies, including details of methods to be used and resources required.
- A. and B. are usually combined into a scoping matrix.

### Box C.4.Practice.1

### Good EIA Practice

Applicants or their consultants should:

- Make early site visits in order to ensure that matters of natural and cultural 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, preferably using scoping matrices and producing a Scoping Report where appropriate.
- Agree baseline survey requirements, prediction methods and evaluation criteria with appropriate bodies, including nongovernmental bodies where they have expertise.

C.4.13 The [Planning Regulations](#) do not specify what form either a scoping request report or a scoping opinion should take. However, it is recommended that 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 Planning Regulations.

C.4.14 A Scoping Report provides the applicant 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 EIA Report. Since the scoping of the assessment should also be reported within the EIA Report the effort expended in producing the report will not be wasted.

C.4.15 The Scoping Report should consider the features and measures that are envisaged to avoid, prevent or reduce any significant adverse impacts on the environment and, where possible, offset any remaining effects. As a matter of good practice, the EIA Report should contain a description of the scoping process, including a list of all consultees involved and any concerns raised by those consultees.

## Scope of Impacts Covered

C.4.16 Appendices 1 to 7 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 EIA Report will require its own impact matrix to be developed. This is a task for the applicant's project team. However, consultees should be asked to comment on the scoping matrix and to receive drafts and a final version.

C.4.17 The Report should consider all stages, not least because that will ensure that all mitigation measures and necessary subsequent monitoring are adequately secured should consent be granted. The main stages are summarised below in [Figure 3](#). 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, such as site preparation, extraction, restoration, and after care. Each stage can be subject to phases.

**Box C.4.Advice.1****Key advice**

When commenting, consultation bodies need to bear in mind the different stages in the life of a project. Often an EIA Report 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.

- C.4.18 The impacts of associated infrastructure that will be essential for a project's operation should be covered (such as 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 (such as a new runway following the development of a new terminal at an existing airport).
- C.4.19 The impacts that arise from the use of natural resources (land, soil, water and biodiversity) for the project and insofar as possible their sustainable availability and other factors detailed in Schedule 4 of the [Planning Regulations](#) should be included in the EIA Report.
- C.4.20 Schedule 4 of the [Planning Regulations](#) identifies topic specific issues to be considered in relation to the use of natural resources. Among the key questions are whether the new development will:
1. alter demand for raw materials to the extent that significant impacts may be caused by the need to supply these
  2. result in emissions of pollutants, noise vibration, heat and radiation, light or other significant effects
  3. risks to human health, cultural heritage or the environment
  4. cumulation of effects with existing or approved projects
  5. impact on the climate

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 EIA Report.
- 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.
- 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.4.21 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.

### Relevance of Designations to EIA Scoping

- C.4.22 Whether or not an EIA Report has been required because of the project's potential impacts on a designated area, all natural and cultural heritage and other designations likely to be significantly affected should be addressed in an EIA Report. It is important, therefore, at the scoping stage, to ensure that the applicant is aware of and understands the significance and purpose of all relevant designations. The potential effects on the designation should be considered at this stage, and where they have the potential to be significant, should be included in the scope of the EIA. This should include reference to national, development plan and other policies relating to the designations. It is helpful if scoping reports set out how decisions have been made as to whether impacts have been scoped in or out.
- C.4.23 The designations in [Box C.4.Info.2](#) above should be included in the EIA Report wherever applicable. On the other hand, the EIA Report should not focus entirely on designations. The Technical Appendices to this Handbook indicates the importance of assessing significant effects on all aspects of the natural and cultural heritage, whether or not they are subject to specific designations.

### Selecting Methods for Impact Assessment

- C.4.24 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.Info.3](#) 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 - 7 of this Handbook.
- C.4.25 There should generally be less need to depart from the well-defined procedures set out in [Appendix 2](#), for landscape and visual impact assessment, although even here, there may be a need to consider the most appropriate form of visualisation, such as by way of computer generated photomontage, or computer generated visual envelopes and zones of visual influence.

**Figure 3 – 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   |

| Box C.4.Info.2   | Key information   |
|--|---|
| <p><b>Designations to be considered in EIA and their relative importance</b></p> <p><b>International:</b></p> <ul style="list-style-type: none"> <li>• Special Protection Areas (and pSPAs)</li> <li>• Special Areas of Conservation (and cSACs)</li> <li>• Sites of Community Importance</li> <li>• Ramsar Sites (and proposed Ramsar Sites)</li> <li>• World Heritage Sites</li> <li>• Biosphere Reserves</li> <li>• Biogenetic Reserves</li> </ul> <p><b>National:</b></p> <ul style="list-style-type: none"> <li>• National Parks</li> <li>• National Scenic Areas</li> <li>• Inventory Gardens and Designed Landscapes</li> <li>• Inventory Historic Battlefields</li> <li>• Scheduled Monuments</li> <li>• Listed Buildings (Category A)</li> <li>• National Nature Reserves</li> <li>• Sites of Special Scientific Interest</li> <li>• Geological Conservation Review Sites</li> <li>• Nature Conservation Review Sites</li> <li>• Marine Nature Reserves</li> <li>• Areas of Special Protection</li> <li>• EC Salmonid and Cyprinid Fisheries</li> <li>• Aquifer Protection Zones</li> <li>• Environmentally Sensitive Areas (ESAs)</li> <li>• Marine Protected Areas</li> <li>• Historic Marine Protected Areas</li> <li>• Marine Conservation Zones</li> </ul> | <p><b>Regional/Local:</b></p> <ul style="list-style-type: none"> <li>• Conservation Areas</li> <li>• Country Parks</li> <li>• Regional Parks</li> <li>• RSPB Nature Reserves</li> <li>• Statutory Local Nature Reserves</li> <li>• Tree Preservation Orders</li> <li>• Areas of Great/High Landscape Value</li> <li>• Other local landscape designations</li> <li>• Ancient Semi Natural Woodland</li> <li>• Scottish Wildlife Trust Reserves</li> <li>• Woodland Trust Sites</li> <li>• Royal Society for the Protection of Birds</li> <li>• Nature Reserves</li> <li>• Listed Wildlife Sites (SWT)</li> <li>• Sites of Importance for Nature Conservation (or local system variant)</li> <li>• Regionally Important Geological/Geomorphological Sites</li> <li>• Unscheduled archaeology</li> <li>• Listed buildings (Category B and C)</li> <li>• Non-inventory Gardens and Designed Landscapes</li> </ul> |

**Box C.4.Info.3****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 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 modelling and other resources and sophisticated techniques of limited availability.



## C.5 Provision of information

### Statutory Provisions and Government Guidance

- C.5.1 The consultation bodies 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 (the Environmental Information Regulations). They also have an explicit duty to provide relevant environmental information held by them to further the EIA process, particularly providing it to applicants preparing an EIA Report, (Reg.5 the Environmental Information Regulations and Reg.19 the [Planning Regulations](#)). Note that Reg.19 of the Planning Regulations clearly states that any authority, body or person required to provide information under the Planning 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 [Planning Regulations](#) also make provision for the mandatory release of environmental information, on request, to an applicant or their agents or consultants) preparing an EIA Report. It applies to all public bodies and specifically to consultation bodies (see the Planning Regulations at Reg.19).
- C.5.3 The duty to provide the information on request applies throughout the EIA process including the early stages of preparation of an EIA Report. An applicant is not bound to provide the consultation bodies with full details of the project when asking for the information. The [Planning Regulations](#) (Reg.19) state that 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 EIA Report.
- C.5.4 However, the [Environmental Information Regulations](#) 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)). The applicant may request the information to be provided in a particular form or format (Reg.6) 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 [Environmental Information Regulations](#)). The consultation bodies can make a reasonable charge for providing certain types of information (Reg.8 Environmental Information Regulations).
- C.5.6 In exceptional cases, Reg.10 of the [Environmental Information Regulations](#) 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 EIA Regulations will apply but an applicant may approach the consultation bodies before the competent authority, and they have a duty to provide the information requested, if the applicant says it is in connection with the EIA Regulations.

- C.5.8 Applicants should not simply ask for all information held by a consultation body for a particular site or area. The applicant may consult the consultation bodies to see whether they hold information relevant to the EIA Report. The EIA 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 authority shall make that information available to that person.” (See, for example, the [Planning Regulations](#) at Reg.19(5).

### Duty to Provide Advice and Assistance

- C.5.9 Reg.9 of the [Environmental Information Regulations](#) 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 of the Environmental Information Regulations, 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 Environmental Information Regulations, but sit alongside them and are intended to be complementary to them. Both sets of 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](#), which itself is intended to comply with the [EC Directive 2003/4/EC on Public Access to Environmental Information](#)).

## C.6 Describing baseline environmental information

### 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 applicant must include the information in the EIA Report so this is a necessary procedure for the applicant. Guidance on this stage is also provided in [PAN 1/2013](#). Where a Habitats Regulation Assessment is required as well as the environmental impact assessment the processes should be co-ordinated (Regulation 53 of the [Planning Regulations](#)). [Useful guidance](#) can be found on the EU website.

### The Developer's Responsibilities

- C.6.2 Collecting baseline information on the environment ought to be a relatively straightforward part of the EIA process 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 EIA Report 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 EIA Report. 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. The technical appendices 1 – 7 also provide further guidance on topic specific assessment requirements.

#### Box C.6.Practice.1

#### Good EIA Practice

##### Baseline Information

The gathering of appropriate baseline information is a critical part of the EIA process. Information to be included within EIA Reports is set out in schedule 4 of the [Planning Regulations](#). Using that information the following points offer advice on the thorough collection of data to support an assessment of impacts.

- The **level of information** gathered should be proportionate to the project, and the importance of potential receptors.
- The **study areas** identified should be appropriate for the scale and extent of the project – this should be agreed with any relevant consultees.
- The **survey subjects, methods, emphasis, timing and level of detail** should be consulted on and agreed.
- The **best and most up to date information** available should be used. This should include verification of existing records and project specific field survey.
- **Influences on baseline** that would lead to a change in the absence of the project should be identified.
- All **relevant aspects of receptors** should be included. For heritage assets this will include taking into account the site and its setting, as an example.
- **Gaps, limitations and assumptions** made in the gathering of data should be acknowledged. Where possible it should be made clear how they will be addressed in the assessment.
- Baseline information must be underpinned by a **clear understanding of designated sites**, their purpose, reasons for designation and the implications of this in EIA.

**Box C.6.Info.1****Key information****Field Surveys**

The applicant should undertake field surveys in every case where natural and cultural heritage effects are likely to be significant or effects cannot be predicted at the scoping stage. Where relevant this should include:

- landscape and visual surveys
- archaeological surveys;
- habitat and species surveys
- surveys of natural features and processes
- outdoor recreation/access surveys

These will be essential to adequately inform landscape, visual, historic environment, ecological, marine, earth heritage and outdoor recreation impacts in EIA Reports.

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.

- C.6.4 Where a long lead time on the EIA Report allows, it may be possible to monitor changes in existing conditions prior to the submission of the EIA Report. 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 and Cultural Heritage Issues

- C.6.5 Owing to the different professional skills involved, it is common practice in EIA Reports to address environmental issues separately, for example:
- Landscape and visual impacts
  - Ecological Impacts
  - Impacts on the marine environment, marine systems and coastal processes
  - Cultural heritage impacts
  - Geological and soil impacts: earth heritage
  - Public amenity/recreation impacts: outdoor access
- C.6.6 In many EIA Reports 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 EIA Report team co-ordinator should ensure that all of these differing elements are consistent and drawn together in an integrated and understandable presentation.

**Box C.6.Advice.1****Key advice****The Approach to Baseline Information**

When discussing or commenting on a (draft) EIA Report, competent authorities and consultation bodies should encourage rigorous assessment by appropriately qualified and experienced professionals, with specialists used where appropriate, and the facility in the EIA Report for all of their respective assessments to be clearly and consistently set out. For example the Report should be prepared by a competent expert in terms of Regulation 5(5)(a) of the [Planning Regulations](#) and the competent authorities must ensure that they have access to sufficient expertise to assess the EIA Report.

However, competent authorities and consultation bodies should also encourage an integrated approach to natural and cultural 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 consultation bodies should encourage different aspects of the natural and cultural 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 and cultural heritage can be directly compared.

- C.6.7 It is possible, and in many cases even likely, that baseline conditions reported in an EIA Report may change by the time the project is commenced on site, or becomes operational. This should, where possible, be anticipated in the EIA Report 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 EIA Report 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.

The competent authority is required to include confirmation in a decision to grant planning permission that the reasoned conclusion for the decision remains up to date.

## C.7 Predicting environmental impacts

### Statutory Provisions and Government Guidance

C.7.1 A prediction of environmental effects must be included in an EIA Report so this is a necessary procedure for the applicant. Guidance on this stage is also provided in [PAN 1/2013](#) at paragraph 5.1 onwards.

### Impact Prediction

C.7.2 Predicting and describing significant environmental impacts is a statutory requirement to include in an EIA Report, reference is made to [C.4](#) above and Appendices 1 - 7 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 EIA Report is to clearly explain what the impacts of a proposal would be. The impacts should always be included in the Non-Technical Summary (NTS) in a way that is understandable to the general public. However, this is not always easy in respect of technically complex issues.

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

- Anticipating, modelling, 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).
- 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 EIA Reports varies considerably. Given the constraints of sometimes inadequate available information, the evolving nature of modelling 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 had been widely criticised. The EIA Regulations implemented in 2017 assist in further improvement.

C.7.7 Appendices 1 - 7 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 (such as site preparation, construction, operation, decommissioning or restoration (see also [Figure 3](#))). The EIA Report should clearly set out the effects on the natural and cultural heritage interests and their interrelationships with each other and with other environmental effects.

## Box C.7.Advice.1

## Key advice

### The Approach to Impact Prediction

Consultation bodies should adopt a practical and rational approach to commenting on the effectiveness of impact prediction. If there are concerns over the approach to impact prediction, it will usually be helpful to establish the area of disagreement. For example, can the baseline information be agreed and can methods of survey or analysis, or prediction, or models, or criteria / thresholds etc. be agreed?

If there is a difference of judgement or opinion, consultation bodies should express and justify the way in which it differs and any reasons that can be given as to how the difference of opinion may arise. The EIA Report should not be criticised if the evidence base is accurate and the difference is simply one of professional judgement, unless it is clear that the judgement is irrational, extreme or inconsistent with standard practice.

As a minimum competent authorities and consultees should check that an EIA Report 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. mitigation and consideration given to alternatives
- G. the significance of the impacts

## Box C.7.Info.1

## Key information

### Types of impact

The effects of a proposal may be:

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• predictable or unpredictable</li> <li>• direct or indirect</li> <li>• positive (beneficial) or negative (harmful)</li> <li>• temporary or permanent</li> <li>• short, medium or long-term</li> <li>• immediate or delayed</li> </ul> | <ul style="list-style-type: none"> <li>• one-off, intermittent or continuous</li> <li>• certain or uncertain</li> <li>• avoidable or unavoidable</li> <li>• reversible or irreversible</li> <li>• localised or widespread</li> <li>• small or large</li> <li>• individual or cumulative</li> </ul> |
|---|--|

These factors may contribute to the level of significance of the impact.

- 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
  - The risk and effects of unscheduled, emergency or accidental events and the effects of the resulting activity
- C.7.11 In terms of biodiversity, 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 in relative terms of the international, national, regional or local importance of landscape, habitats or species, and cultural heritage interests. The assessment of sensitivity will require a professional and sometimes subjective judgement. This usually takes account, for example, of the distribution, population, rarity or vulnerability to change of the habitats and species in nature conservation terms; the distribution, character and special interests of heritage assets and their setting and the vulnerability of landscapes to loss of local character or distinctiveness.
- C.7.12 By way of example, [Figure 4](#) 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 4 – Example of Scale of Magnitude of Changes to the Landscape Resource**

|                                |   |
|--------------------------------|---|
| <b>Substantial magnitude</b>   | Significant changes, over a significant area, to key characteristics or features or to the landscape's character or distinctiveness for more than 2 years.  |
| <b>Moderate magnitude</b>      | 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. |
| <b>Slight magnitude</b>        | Noticeable changes for less than 2 years, significant changes for less than 6 months, or barely discernible changes for any length of time.   |
| <b>Negligible or no change</b> | 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).



## C.8 Assessing the significance of impacts

### Statutory Provisions and Government Guidance

- C.8.1 The EIA Report should include a description of the nature, scale and significance of the effects. It should also consider measures and means of mitigating, avoiding and offsetting any significant adverse effects, so this is a necessary procedure for the applicant. 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 1/2013](#) at paragraphs 4.10.

### 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 although some value may have been established through the designation process. 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, an EIA is undertaken to address impacts that are considered to be significant having taken account of the requisite information, so it should have revealed the impacts that will occur and how important they will be. The EIA should also identify and detail methods of mitigating or avoiding identified significant adverse impacts on the environment.
- 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 [E.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 (e.g. 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 EIA Report, 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 Reasonable alternatives, for example, 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 EIA Report with an explanation as to why they were rejected.

**Box C.8.Info.1****Key information****Factors Affecting Significance of Impacts**

The significance of an impact is topic specific and is a matter of professional or expert judgement. The technical appendices to this handbook provide guidance on assessing impacts for a number of environmental topics.

However in general it is arrived at from an analysis of:

- The importance of the receptor and/or 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

The significance of the impacts of the project should then be expressed, 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 relative importance of 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. Figure 5 is an example specific to landscape impact assessment. Readers should also refer to the technical appendices for other topic areas.

**Figure 5 – Example of Scale of Sensitivity of Landscape Receptors**

|                           |  |
|---------------------------|--|
| <b>High Sensitivity</b>   | 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. |
| <b>Medium Sensitivity</b> | 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.  |
| <b>Low Sensitivity</b>    | 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 4 above. Combining the two sets of analysis, from [Figures 4](#) and [5](#), enables a simple matrix of significance to be compiled as shown in [Figure 6](#).

**Figure 6 – 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 or cultural heritage impacts may look like the example in [Figure 6](#). 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, selfevidently, in an impact of major significance. It is suggested that shaded impacts of major or moderate significance, in [Figure 6](#), 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 EIA Report.
- C.8.9 Beneficial and adverse impacts should be treated in the same way.

**Box C.8.Advice.1**

**Key advice**

**The Approach to Impact Significance**

Competent authorities and consultation bodies should check that all EIA Reports:

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

- C.8.10 Predicting impact significance is partly objective and partly subjective. It relies on the professional judgement of specialists such as landscape architects, ecologists, historic environment specialists and others who may place varying weight on the many factors involved. This naturally leads to differences of opinion. The EIA Report 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 EIA Report should clearly explain how the impact significance has been derived.

**Box C.8.Advice.2****Key advice****Comments on Significance**

Consultees should not seek to criticise an EIA Report 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 EIA Report is inappropriate, for example where:

- inappropriate predictive techniques have been used
- impacts have been omitted
- the sensitivity of the resource is under-estimated, (for example, if 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

## C.9 Mitigating measures and enhancement

### Statutory Provisions and Government Guidance

- C.9.1 The EIA Report must include a description of the mitigation measures (Schedule 4 of the [Planning Regulations](#)). It is a necessary procedure for consultation bodies to consider the effectiveness of mitigation in order to make representations to the competent authority who must ensure that the decision notice includes a description of the mitigation measures as well as any monitoring measures.
- C.9.2 Mitigation measures are a statutory requirement to include in an EIA Report, 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 1/2013](#) at paragraphs 4.30 onwards.

### 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. 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 important to consider four potentially distinct kinds of counter-acting measures for the effects of a project on the environment as follows:
- Avoidance
  - Cancellation
  - Reduction
  - Remedial/Compensatory

Consideration should also be given to potential enhancement measures, and the possibility of creating a net environmental benefit.

- C.9.5 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. The word “mitigation” has a specific meaning and common usage in environmental assessment which is wider than the dictionary definition 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 [EIA Directive](#) and EIA Regulations prescribe, are intended to “prevent, reduce and where possible offset any significant adverse effect on the environment”.

## Avoidance measures

- C.9.6 These 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. For example, a filter may cancel the impact of emissions by stopping their impact before it takes place.

## Reduction measures

- C.9.8 These 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 In environmental assessment these measures are only taken into account after a decision has been made. They are 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 must be included and described in every EIA Report (see [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](#) and the [Conservation of Habitats and Species Regulations 2010](#) as amended, particularly in relation to compensatory measures. Enhancement, or net benefit, or new benefit, may be offered by the proposer.
- C.9.11 A proposal should not be considered as enhancement unless the measures are genuine enhancement because the loss or damage to the cultural and natural heritage is less 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 consultation bodies. For example, a project may result in adverse ecological effects, on existing habitats, that cannot be mitigated, such as loss of an important peatland area. It may also result in genuine landscape enhancement elsewhere. The one is not a compensation for the other.

- C.9.13 In another example, a project may result in a significant adverse impact on the setting of a heritage asset for which the applicant has proposed improved site interpretation. In this case the proposed interpretation measures will not lessen the severity of the impact of the project and the interpretation proposals could only be considered as compensatory measures. In both cases 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 or cultural heritage perhaps with enhancement of other environmental conditions.
- C.9.14 Applicants are entitled to include environmental enhancement in their EIA Report. Whilst most EIA Reports have tended to focus on mitigation, applicants 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.9.15 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.9.16 However, it should be borne in mind that enhancement cannot be insisted upon.

| Box C.9.Info.1  | Key information |
|---|-----------------|
| <p><b>Mitigation compensation and enhancement</b></p> <p><b>Mitigating measures</b> or mitigation are the measures taken to avoid, cancel or reduce adverse impacts of the project. In EIA terms, these can include the following:</p> <ul style="list-style-type: none"> <li>• <b>Avoidance</b> measures eliminate or avoid any adverse impacts, and may include alternative or ‘do nothing’ options.</li> <li>• <b>Cancellation</b> measures nullify or cancel out the effects of a project before they can have a negative impact.</li> <li>• <b>Reduction</b> measures minimise or at least reduce adverse impacts of the project that have not been avoided or cancelled out.</li> <li>• <b>Compensatory</b> 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.</li> </ul> <p><b>Enhancement/Net Benefit/New Benefit</b> 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 environment.</p> |                 |

- C.9.17 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 EIA Report (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 EIA Report. 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 or by increasing impacts on the setting of heritage assets.

**Box C.9.Advice.1****Key advice****The Approach to mitigation**

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

Generally, competent authorities and consultation bodies should promote a sustainable approach and give priority to:

- Firstly, avoiding or cancelling adverse impacts on the environment.
- Secondly, minimising or at least reducing adverse effects on the environment that have not been avoided or cancelled out.
- Finally, compensating for the adverse effects that cannot be further reduced.

In parallel with this prioritised approach encourage opportunities to enhance the environment.

- C.9.18 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.9.19 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. The competent authority's decision will include a description of any mitigation measures that are required and a description of the monitoring measures that are required to ensure that the mitigation is effective.



## C.10 Presentation of information in the EIA Report

### Statutory Provisions and Government Guidance

- C.10.1 There are statutory duties on applicants to include certain matters in an EIA Report (see [B.6](#) above). There are statutory powers for competent authorities to require the inclusion of certain matters in an EIA Report. However, the way in which these matters are presented in the EIA Report is a matter for the applicant, a non-statutory procedure, which may involve discussion with consultees.
- C.10.2 The [Planning Regulations](#) do not specify how environmental information should be presented in an EIA Report, except to say that a Non-Technical Summary (NTS) must be included. In practice, NTSs are often separately bound and more widely distributed and available. Guidance on this stage is also provided in [PAN 1/2013](#) at paragraphs 4.22 and 5.5. PAN 1/2013 suggests that the NTS should focus on the key points of the EIA Report, helping to direct decision-makers to the main findings of, and the mitigation measures proposed within, the Report.

### Presentation

- C.10.3 Presentation therefore depends largely on the importance of the various issues in the EIA Report. Where no significant cultural or natural heritage issues arise the EIA Report may simply refer to them in a general chapter on other environmental effects or information. Where cultural or natural heritage issues are significant they should be addressed to the extent necessary in the main body of the EIA Report although larger EIA Reports may have separate volumes containing detailed information about specific issues. Topic reports in Appendices are a common and accepted feature of EIA Reports.
- C.10.4 The size of an EIA Report will depend on the range and complexity of issues and no standard size can be given. [IEMA's research](#) 2011, has found that many practitioners are frustrated with the length of ES and have concerns about the value these documents give to consenting authorities, let alone wider groups such as the public. Too much detail can distract and deter readers and make key issues difficult to appreciate.
- C.10.5 EIA Reports are usually supplied as a 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 C.10.Advice.1

#### Key advice

EIA Reports 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.

**Box C.10.Practice.1****Good EIA Practice****Presentation of EIA Reports**

EIA Reports 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

## D. Consideration of the EIA Report

## D.1 Submission of the EIA Report and project application

### Statutory Provisions and Guidance

D.1.1 The competent authority has a statutory duty to consult the consultation bodies and to publicise every EIA Report. The consultation bodies should respond in every case. The form of their response is not prescribed in the [Planning 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 EIA Report a competent authority must:

1. Register and publicise the application and EIA Report as required by the EIA Regulations and take account of any representations received from the public.
2. Notify other bodies and consult in accordance with the Planning Regulations and take account of any representations received.
3. Not grant consent or other authorisation unless they have reached a reasoned conclusion on the significant effects of the development on the environment.
4. If granting consent, must record on the face of the permission or other authorisation that they have taken account of the environmental information.
5. Notify their decision in accordance with the EIA Regulations.

D.1.4 The competent authority is responsible for evaluating the EIA Report to ensure it addresses all of the relevant environmental issues and that the information is presented accurately, clearly and systematically. The competent authority must ensure that they have, or have access to as required, sufficient expertise to examine the EIA Report. The competent authority should be prepared to challenge the findings of the EIA Report 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 additional information. The authority has to ensure that it has in its possession all relevant environmental information so that it may reach a reasoned conclusion as to the significant effects of the development on the environment, 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:

- seek and take the advice or representations of bodies other than the consultees named in regulations
- require the applicant to submit additional environmental information
- refuse the application
- grant consent subject to conditions or limitations over and above those set out in the EIA Report and the application

D.1.6 The applicant must submit sufficient copies of the EIA Report to the competent authority to enable them to undertake the statutory consultations plus one copy for the Scottish Ministers (if they are to determine the application) and one further additional copy. As an alternative a single copy of the EIA Report may be submitted electronically to the competent authority to send on to consultees provided it satisfies the requirements listed below.

- D.1.7 Under the provisions of regulations 43 to 45 of the [Planning Regulations](#) and regulation 47 of the [Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2013](#), EIA Reports and planning applications (and associated documentation), may be distributed electronically and (with the exceptions noted at [D.1.8](#) below) notices under the Planning Regulations will be deemed to have been given on condition that the electronic communication (email and attachment(s) of the document (statement or notice) is:
1. capable of being accessed by the recipient
  2. is legible in all material respects, that is, it is available to no lesser extent than if it were provided to the recipient in hard copy (see regulation 43 of the Planning Regulations)
  3. sufficiently permanent that it can be used for subsequent reference
- D.1.8 Regulation 43(4) of the [Planning Regulations](#) sets out the instances when electronic communication cannot be used in the EIA process in respect of an applicant serving any notice under regulation 20 of the Planning Regulations on those with an interest in neighbouring land, in respect of any transboundary consultation with other EEA States or in respect of any projects in other EEA which are likely to have significant effects on the environment in Scotland.
- D.1.9 EIA Reports are increasingly available on CD or DVD and distribution in this form is compliant subject to the above caveats.
- 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 EIA Report. It may be important to differentiate between information in the EIA Report 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 EIA Report, it is the information in the plan that will normally prevail and which will be granted permission – this should be clarified in the conditions imposed on the consent.

## D.2 Consultation and publicity

### Statutory Provisions and Government Guidance

- D.2.1 The competent authority has a statutory duty to consult the “consultation bodies” (the consultees identified in the regulations for the relevant EIA regime). They also have discretion to consult any other public body which they consider likely to have an interest in the proposed development by reason of that body’s specific environmental responsibilities or local and regional competencies. Reference below to “consultees” includes both consultation bodies and any other bodies consulted.
- D.2.2 The [Planning Regulations](#) prescribe the procedures to be adopted by competent authorities in respect of consultations and publicity. Every EIA Report must be accessible to the public and must be publicised. Planning related EIA Reports must be placed on deposit in the planning authority’s office and on the application website 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 EIA Report. It is likely that publicity and consultation on the EIA Report and consultation under the planning legislation will be combined to provide the public with a single, accessible process to comment on the proposal. Neighbouring landowners, occupiers and lessees must also be notified (regulation 20 of the Planning Regulations, also [Circular 1/2017](#) paragraph 107. Guidance on this stage is also provided in [PAN 1/2013](#) at paragraph 4.21 and Table 1).
- D.2.3 In addition, to ensure compliance with the Directive, the [Planning Regulations](#) require some competent authorities to consult certain bodies in respect of every EIA Report and other bodies in respect of particular types of EIA Report or where a project is in a particular type of location.

D.2.4 Comparison of publicity requirements between EIA regimes

| Publicity requirements                    | EIA Regs 17  | EIA Forestry 17   | EIA Offshore 99   | EIA Gas Trans 99  | EIA Nuclear 99   | EIA Electricity 17  | EIA Pipelines 00  | EIA Agriculture 17   | EIA Trans & Works 07   | EIA Marine Works 17   | EIA Roads 17   |
|---|--|---|---|---|--|---|---|--|--|---|--|
| Responsibility for publicising EIA Report | Planning authority; applicant pays costs.  | Commissioners; applicant pays costs.  | The relevant undertaker (i.e. the applicant).   | The relevant gas transporter (i.e. the applicant).  | The relevant licensee (i.e. the applicant)   | The relevant developer (i.e. the applicant)   | The applicant   | Scottish Ministers; applicant pays costs.  | The applicant  | Scottish Ministers but note SM have power to direct the applicant to undertake publicity requirements.  | Scottish Ministers   |
| Min. no. of days for representations      | 30 days  | 30 days   | 30 days   | 30 days   | 30 days  | 30 days   | 30 days   | 30 days  | 30 days  | 30 days   | 42 days  |
| Means of publicity required               | Advert in Edinburgh Gazette, newspaper local to project and application website.<br><br>Copies of EIA Report to be available on application website and at office of planning authority. | Advert in Edinburgh Gazette, newspaper local to project and application website.<br><br>Copies of EIA Report to be available on application website and at office of the Commissioners. | Advert in such newspapers as the Secretary of State may direct and on a public website relating to the project application.<br><br>Copies of EIA Report to be available on the relevant public website and at an address in the UK, chosen with regard to the location of any persons likely to be interested in, or affected by, the relevant project. | Advert in Edinburgh Gazette, newspaper local to project (for two successive weeks) and on a public website relating to the project application. | Advert in at least one newspaper circulating in the local area where the project is located and any other newspaper specified by the ONR.<br><br>Copies of EIA Report to be available at an address in the locality of the power station or reactor. | Advert in Edinburgh Gazette, newspaper local to project and application website.<br><br>Copies of EIA Report to be available at an address as stated in the adverts for the project.<br><br>Once the planning authority has received a copy of the EIA Report, it is required to publish it on the planning register. | Advert in Edinburgh Gazette, some further means which the Ministers may specify with a view to bringing the application to the attention of those in the vicinity and on a public website relating to the project application.<br><br>Copies of EIA Report to be available on the relevant public website and at an address in the in the locality of the pipeline project. | Advert in Edinburgh Gazette, newspaper local to project and application website.<br><br>Copies of EIA Report to be available on application website and at a public building for inspection (no further specification as to location given in the Regs). | Advert in Edinburgh Gazette, and an advert in at least one newspaper local to project (for two successive weeks).<br><br>Copies of EIA Report to be available for inspection at a public building in the area within which the project will take place.<br><br>Depending on the nature of the works required for the project, the applicant may also be required to display notices at specific locations at/ near to the application land.<br><br>The Scottish Ministers are also required to publish details of the project on the relevant website for such applications. | Advert in Edinburgh Gazette, a newspaper likely to bring the attention of those in the vicinity and on a public website relating to the project application.<br><br>Copies of EIA Report to be available at a public building for inspection (no further specification as to location given in the Regs). | Advert in Edinburgh Gazette, and an advert in at least one newspaper local to project and on the website used by the Scottish Govt to publicise applications for such projects.<br><br>Copies of EIA Report to be available on application website and for inspection at a public building in the area within which the project will take place. |

## The Consultation Bodies

- D.2.5 The consultees (where they are not the competent authority making the decision) will vary depending on the nature of the development and the relevant EIA regulations (a comparison of the different statutory consultees required by the various EIA regimes is provided in the key information table below) but can include:
- The Planning Authority
  - Adjacent planning authorities whose area may be affected
  - Scottish Natural Heritage
  - The Scottish Environment Protection Agency (SEPA)
  - Historic Environment Scotland
  - Scottish Water
  - The Health and Safety Executive (but not for roads EIA)
  - The Scottish Ministers
  - 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 40 of the [Planning Regulations](#)).
- D.2.6 These consultees have a duty to provide the applicant, on request, with any relevant information in their possession, which may assist in the preparation of the EIA Report, the regulation 19(5) of the [Planning Regulations](#), (see also [C.5](#) above).
- D.2.7 The [Planning Regulations](#) also require that consultees are informed of the submission of an EIA Report in conjunction with a development application, supplied with a copy of the EIA Report, 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 under the Planning Regulations is not less than 30 days after the date on which the copy of the EIA Report was sent.
- D.2.8 There is no statutory provision for consultation with members of the general public during the preparation of an EIA Report. Pre-application consultation is a requirement, however, in respect of applications for national and major developments in terms of the [Town and Country Planning \(Scotland\) Act 1997](#). Applicant/s may, however, legally prepare an EIA Report without informing the competent authority or consultees beforehand. If this occurs, the consultees must be informed upon the Authority's receipt of the EIA Report. There are three obligations on applicant/s applicant/sin 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 EIA Report and its availability and the applicant must pay the cost of this publicity
  - B. a reasonable number of copies of the EIA Report should be made available to the public (regulation 25 of the [Planning Regulations](#)) but a charge may be made
  - C. notice must be given to everyone with a legal interest in neighbouring land
- D.2.9 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 [Planning Regulations](#) (see further [D.1.8](#) above).



## D.2.10 Comparison of consultation requirements between EIA regimes

| Consultation requirements | Who are the statutory consultees?  | Min. no. of days for consultation period                         |
|---------------------------|--|--|
| EIA Regs 17               | Any adjoining planning authority, HES, SEPA, SNH, Scottish Water.  | 30 days  |
| EIA Forestry 17           | Planning authority, HES, SEPA, SNH, any other relevant body with relevant environmental responsibilities.  | 30 days  |
| EIA Offshore 99           | Secretary of State to provide undertaker with list of public bodies it considers likely to be interested in the relevant project by reason of either their particular environmental responsibilities or local or regional competence.  | 30 days  |
| EIA Gas Trans 99          | Planning authority, HES, SEPA, SNH, any other relevant body with relevant environmental responsibilities which the Secretary of State considers is likely to have an interest in the pipe-line works in question.  | 30 days  |
| EIA Nuclear 99            | Planning authority, roads authority, SEPA, SNH.  | Such reasonable time as the ONR may specify.                     |
| EIA Electricity 17        | Planning authority, HES, SEPA, SNH.  | 30 days  |
| EIA Pipelines 00          | <p>Planning authority, SEPA, SNH, any other relevant body with relevant environmental responsibilities which the Secretary of State considers is likely to have an interest in the pipe-line works in question.</p> <p>Note there is also provision for the Secretary of State to serve on the applicant a notice specifying those consultation bodies to whom the applicant should send copies of the EIA Report.</p> | 30 days  |
| EIA Agriculture 17        | HES, SEPA, SNH, any other relevant body with environmental responsibilities which the Scottish Ministers considers is likely to have an interest in the project.   | 30 days  |
| EIA Trans & Works 07      | Planning authorities in the project area, any National Park in the project area, HES, SPEA, SNH.   | 30 days  |
| EIA Marine Works 17       | Planning authorities in the project area, HES, SEPA, SNH, any other relevant body with environmental responsibilities which the Scottish Ministers considers is likely to have an interest in the project.   | 30 days or a longer period as agreed between SM and consultee(s) |
| EIA Roads 17              | Planning authorities in the project area, any National Park in the project area, HES, SPEA, SNH, any other relevant or statutory body with environmental responsibilities which the Scottish Ministers considers is likely to have an interest in the project.   | 42 days  |

### Additional information and evidence

- D.2.11 See section [D.6](#) below for the consultation arrangements in respect of additional information submitted after the original EIA Report. In essence, the additional material must be subject to the same consultation and publicity as the original EIA Report.

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

### Statutory Provisions and Government Guidance

- D.3.1 The competent authority has a statutory duty to consult the consultation bodies, and to publicise every EIA Report. In turn, consultees are expected to engage with the applicant and the competent authority in respect of applications for national and major developments.
- 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 EIA Report in writing in one step. Often, however, there will be advantages in a dialogue between consultees and the competent authority and often the applicant too. Pre-application consultation by the applicant with both the competent authority and consultees is also generally recognised as good practice. EIA, at its best, is an interactive process with each of the main parties informing and influencing the others.

**Box D.3.Advice.1****Key advice****Liaison**

Dialogue and liaison between consultation bodies, the competent authority and the applicant will generally improve understanding of the project, the environmental issues, and 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 applicant and consultees should normally be copied to the competent authority.

### D.4 Wider consultation and dissemination

#### Statutory Provisions and Government Guidance

- D.4.1 The competent authority has a statutory duty to consult the consultation bodies, and to publicise every EIA Report. Guidance on this stage is also provided in [PAN 1/2013](#) at paragraph 4.21 and Table 1.

#### Wider Consultation

- D.4.2 It is a matter for the competent authority to decide who should be consulted beyond the consultation bodies. 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 EIA Report, copying EIA Reports may be restricted by copyright; the permission of the authors or applicant will need to be sought. Many consultants or applicants will supply further copies, either free or at a reasonable cost or other bodies could go to the locations where the EIA Report is lodged. EIA Reports are most often supplied on CD or DVD or are available on the competent authority's website and distribution in this form is compliant subject to the caveats in [D.1.8](#) above.

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## D.5 Transboundary environmental effects

### Statutory Provisions and Government Guidance

- D.5.1 Guidance on the Government's procedures for transboundary EIA are given in paragraphs 121 - 123 of [Circular 1/2017](#) and statutory requirements are in Regs.41-42 the [Planning Regulations](#).
- D.5.2 Electronic communication cannot be used for transboundary consultations see further [D.1.8](#) above.
- D.5.3 When an EIA Report is sent to the Scottish Ministers by the competent authority, this enables the Ministers to consider whether the proposed development is likely to have significant effects on the environment of another EEA State. Similarly, in the event that the Government receives a consultation from another EEA State about a project that may affect Scotland, it will consult the competent authorities and consultation bodies affected.

## D.6 Requesting additional information evidence

### 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 applicant under the provisions of each of the EIA regulations, for example, Reg.26 of the [Planning Regulations](#) (see further [Circular 1/2017](#) at paragraphs –116 - 120. Guidance on this stage is also provided in [PAN 1/2013](#) at paragraphs 4.27 and 4.28).

#### Box D.6.Advice.1

#### Key advice

##### Requests for Additional Information

If a consultation body seeks more information this should generally be through the competent authority. In exceptional circumstances, for example where that authority is not will to request the information, the consultee may approach the applicant directly. 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 the view of a consultation body or competent authority in a substantive way.

Consultees should act expeditiously in requesting further additional 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 additional information at any time before deciding the application

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

All requests should be:

- reasonable
- normally be made via the competent authority
- made promptly and in one step if possible

- D.6.2 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.
- D.6.3 Repeated requests for more and more information can be very frustrating to the applicant 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 additional information.

## Requesting additional information for Planning Applications

- D.6.4 In respect of full planning applications, the planning authority has the power to require additional information to be submitted under two statutory provisions, namely:
1. Regulation 26 of the [Planning Regulations](#), requiring submission of:
    - a. any additional information which in the opinion of the planning authority is directly relevant to reaching a reasoned conclusion on the significant effects of the development on the environment (if the competent authority believe this information to be missing – referred to as “supplementary information” they are under an obligation to request it); or
    - b. evidence to verify any information in the EIA Report (the competent authority has discretion as to whether or not to request any such information); or
  2. Regulation 24 of the [Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2013](#).
- D.6.5 When requesting planning authorities to require additional information, reference can be made to the EIA regulations, the [Development Management Procedure \(Scotland\) Regulations 2013](#), (the DMR), and paragraphs 116-120 of [Circular 1/2017](#).
- D.6.6 A request for additional 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.6.7 If the applicant refuses to make available additional information and/or the planning authority will not support a consultee’s request, or the planning authority agrees with the applicant that additional 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.6.8 A consultee should always take care to identify what additional information is required and should be able to justify this request clearly. Most planning authorities will use their powers to require additional information to be submitted rather than merely going straight for a refusal of permission.

## D.7 Modifications to the project

### 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 EIA Report 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 applicant may wish to make changes to help satisfy concerns expressed by the competent authority, consultation bodies 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).

#### Box D.7.Advice.1

#### Key advice

##### Negotiating Changes

A consultee should consider whether to open negotiations, with the competent authority and / or the applicant, to affect changes to the proposals, if they conclude that:

- more or different mitigation would be appropriate
- adverse effects could be avoided, cancelled, reduced or compensated
- new benefits could be achieved

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 an applicant to modify the project if the competent authority will not require the applicant to do so (see D.6.5 above). However, if the applicant 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.

- D.7.3 Most competent authorities 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.7.4 The key questions will be:
- Are the modifications are so extensive as to amount to a different project proposal? If so, a new application should be made
  - Are the modifications are significant but not extensive? If so, a new application is generally not required but the competent authority should re-consult and re-notify and republicise the proposal.
  - Are the modifications are not so significant as to merit re-consultation and republicising generally, but may be appropriate for selected consultees to comment or whether no consultees need comment.
- D.7.5 Any substantive amendments or additions to the EIA Report, whether requested by the competent authority or submitted voluntarily by the applicant, must be publicised and consulted on in a similar way as the original statement. Regulation 27 of the [Planning Regulations](#) refers. What constitutes a substantive amendment or addition to an EIA Report will depend on the individual circumstances of a particular project and is a decision for the competent authority.



## D.8 Additional Information and Evidence Relating to EIA Reports

### Statutory Provisions and Government Guidance

- D.8.1 A competent authority has the statutory powers to require additional environmental information to be submitted, for example in regulation 26 of the [Planning Regulations](#). This may be in the form of a Revised or Supplementary EIA Report or otherwise. However, it should be noted that submission of documents called Supplementary or Revised EIA Reports is a convention, which often occurs in practice, but is not a statutory process or term. The planning regulations only refer to additional information either in the form of “supplementary information” being required and submitted or to “evidence as may reasonably be required to verify any information contained in the EIA report”.
- 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 EIA Report is necessary. The determining factor will be whether the project still the project that was assessed in the original EIA Report, or a different project in ways that mean the effects of the project have not been adequately assessed.

#### Box D.8.Info.1

#### Key information

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 EIA Reports

- D.8.3 A supplementary EIA Report is submitted where the original EIA Report was incomplete or further work on environmental effects has been undertaken, (whether or not the project has been modified since the original application and EIA Report were submitted). A supplementary EIA Report 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 EIA Report may include a revision of the whole or part of the original document or additions that are needed to cover the additional information. A supplementary EIA Report should make clear which parts of the original EIA Report are being supplemented or revised.
- D.8.4 Whatever the reason for the new or revised or supplementary EIA Report, the competent authority will subject it to publicity and consultation in the same way as the original EIA Report, for example, see regulation 27 of the [Planning Regulations](#) and [Circular 1/2017](#) at paragraphs –116-120). Even if the additional information is submitted voluntarily the competent authority must follow the publicity and consultation requirements where the information is of a substantive nature.
- D.8.5 If additional environmental information is submitted as part of an appeal procedure, it will need to be publicised and consultation bodies notified. This will allow their advice to be submitted to the Reporter before a decision is made or before an Inquiry opens. An exception to the publicity requirements under the [Planning Regulations](#) is made in situations where the additional information is provided for the purposes of a planning inquiry, the request for the additional information states that it is to be provided for the purpose of an inquiry and the additional information is required to be publicised as part of the inquiry.
- D.8.6 Revised EIA Reports may be submitted where the original needs extensive or partial revision. They are treated as additional environmental information under the regulations, in the same way as supplementary EIA Reports.

### Deciding about Submissions

- D.8.7 Deciding the extent to which environmental information should be resubmitted as a result of modifications to the project is sometimes difficult to ascertain. There are no statutory provisions or procedures and a competent authority may need help from the consultation bodies in deciding whether:
- A. The project is so extensively different that a new application and new EIA Report is required.
  - B. The project is significantly different and the EIA Report should be revised (with consultation on the revision) or added to by a supplementary EIA Report (with consultation following).
  - C. The project and its environmental effects are not so significantly different as to invalidate the original EIA Report and consultation and publicity responses about the original documentation will remain valid.
- D.8.8 Like the decision on whether to require an EIA Report in the first instance, the decision as to whether a new or supplementary or revised EIA Report is required, and the procedures for dealing with the submission, are all 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 additional information or any other information submitted, whether it is submitted as a supplementary or revised EIA Report or in any other form.

## D.9 Reviewing the EIA Report

### 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 1/2013](#) provides useful guidance on this stage, paragraphs 4.23 - 4.26 discuss the process of evaluation of the EIA Report and its review.

### Reviewing EIA Reports

- D.9.3 In addition to the advice in Scottish Government guidance, as set out in [Circular 1/2017](#) and [PAN 1/2013](#), this Handbook includes an [Attachment](#) which is a review package for the scoping and reviewing of an EIA Report. 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 consultation bodies, 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](#), may also be helpful during the review of an EIA Report.

## D.10 Formulating a consultation response

### Statutory Provisions and Government Guidance

- D.10.1 The competent authority has a statutory duty to consider the environmental information before granting consent to any project subject to the EIA process. 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 [Planning Regulations](#)).

### Consultee's Role

- D.10.2 Consultation bodies will review the EIA Report and comment on the application for the proposal. They may assist the competent authority, and advise on the adequacy and conclusions of the environmental information.

### The Consultation Response

- D.10.3 Whilst the consultee's comments on the EIA Report 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 EIA Report. Reference is made to section [C.9](#) above, relating to requests for mitigation, even if the project, in principle, is acceptable.

#### Box D.10.Info.1

#### Key information

##### The Environmental Information

The environmental information is not just the EIA Report submitted by the applicant, but also any additional information submitted by the applicant, the comments of the 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 EIA Report, 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.
- D.10.5 The consultation responses should include an 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.
- D.10.6 It should be noted that comments on the contents of an EIA Report are, technically speaking, distinct from the consultation body's formal response to the application for development consent. The comments on the EIA Report 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 EIA Report.
- D.10.7 Thus, comments on an EIA Report might be to the effect that the EIA Report accurately describes the impacts of a proposal, that the consultee agrees with the EIA Report that these impacts are significant and that the mitigation measures proposed in the EIA Report 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 impacts detailed in the EIA Report, 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.Advice.1****Key advice**

## Representations

Comments should cover the following points:

- the accuracy of the EIA Report (especially baseline information and the prediction of impacts)
- the coverage of the EIA Report - 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, whether any monitoring measures are required to gauge the effectiveness of any mitigation measures identified
- the adequacy of proposals in the EIA Report for monitoring impacts and responding to them

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

It is advisable to distinguish clearly between the two parts of a consultation response – those on the project and those on the EIA Report.

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

### Introduction

- D.11.1 This section draws together commentary and advice about how planning permission in principle and the approval of matters specified in conditions are considered to be ‘multi-stage consents’ and thus EIA procedures can apply at any stage if necessary. Further relevant advice is found in sections [B.4](#), [C.4](#) and [D.6](#) above.

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

#### Box D.11.Info.1

#### Key information

For “multi-stage consents”, the environmental effects of a project must be identified and assessed at the stage of applying for planning permission in principle.

A further EIA Report may require to be prepared when the subsequent application for approval of matters specified in conditions is made. This will depend on the extent to which the environmental effects have been identified at the planning permission in principle stage.

When granting planning permission in principle, the need for further EIA can be avoided if sufficiently stringent conditions are attached to the consent to ensure the project remains with the development parameters as established in the EIA prepared for the planning permission in principle application.

Applicants can retain some flexibility in relation to how a project is developed but any alternatives will require to have been assessed as part of the EIA and be within the scope of the planning permission in principle that has been granted.

- 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 applicant 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 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 approvals of matters specified in conditions following the grant of planning permission in principle. In short, the processes for preparing, consulting on and publicising the EIA Report may be required to be carried out twice: firstly for the application for planning permission in principle and then again when the applications for approval of matters specified in conditions are submitted.
- 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 SSSLR ex parte Diane Barker* (2007).
- 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 (now termed an “EIA Report”) 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 The following case studies give more detail on this.

**Box D.11.Case.1**

**Key advice**

**R v Rochdale MBC ex parte Tew (1999)**

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 EIA Report 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 [Planning Regulations](#).

**Box D.11.Case.2**

**Key advice**

**R v Rochdale MBC ex parte Milne (2000)**

In *ex parte Milne*, the EIA Report 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.

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 EIA Report. Reserved matters would be restricted to matters that had previously been assessed in the EIA Report. Any application for approval of reserved matters that went beyond the parameters of the EIA Report would be unlawful, as the possible environmental effects would not have been assessed prior to approval.

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).

He also commented that the EIA Report 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.

## Box D.11.Case.3

## Case study

**R v SSTR ex parte Diane Barker (2007)**

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:

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:

- When granting permission in principle, the permission must be “tied” to the environmental information provided in the EIA Report, 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 Planning Act).
- 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 paragraphs 28 and 131 of the judgment).
- 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.
- 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.
- In circumstances where it does not become apparent until after planning permission in principle has been granted for a development falling within the ambit of EIA development that the project is likely to have significant effects on the environment, an assessment would have to be carried out at the approval of matters specified in conditions stage before consent could be given for the development.

D.11.6 [Circular 1/2017](#) paragraphs –138-140 provide the following advice on outline applications:

*In cases where a consent procedure comprises more than one stage (a ‘multi-stage consent’), one stage involving a principal decision and the other an implementing decision which cannot extend beyond the parameters set by the principal decision, the European Court of Justice has made clear that the effects which a project may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision. (Cases C-201/02 (see [Paragraph B.7.4](#)) and [C-508/03](#) refer.) However, the courts have equally made clear that if those effects are not identified or identifiable at the time of the principle decision, assessment must be undertaken at the subsequent stage.*

*If sufficient information is given with the application for planning permission (whether an application for planning permission in full, or for planning permission in principle), 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 planning permission the authority ensures the 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 permission stage as sufficient for the purposes of granting any subsequent multi stage consents. In this way authorities can seek to minimise the risk that new environmental information comes to light at a later stage which, had it been known about previously, would have resulted in the principle decision being refused or which subsequently requires additional mitigation measures to be imposed.*



The ruling in case [Commission v UK \(C-508/03\)](#) has made it clear that there may be circumstances in which certain significant effects on the environment are not identifiable at the time of the procedure relating to the implementing decision. In the event the assessment of those effects should be carried out in the course of the subsequent stage.

## Requesting additional information for Applications for Permission in Principle

- D.11.7 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 EIA Report 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 EIA Report.
- D.11.8 In addition to the powers, described in section [D.6](#) above:
- A. under regulation 26 of the [Planning Regulations](#), to require additional environmental information or evidence to support the EIA Report
  - B. under regulation 24 of the [Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2013](#) requiring any additional information in order to enable them to deal with the application
- D.11.9 The nature of the additional 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 or car parks will be necessary. Each proposal, however, is unique and will have to be considered carefully.
- D.11.10 [Circular 1/2017](#) provides important advice in respect of determining applications for multi-stage consents in paragraphs 141 - 149, 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 and advice on the submission of revised and updated EIA Reports.

## E. Decision Making and Implementation

## E.1 Adopting the precautionary principle

### The Precautionary Principle

#### Box E.1.Info.1

#### Key information

#### The Precautionary Principle

The [precautionary principle](#) is detailed in [Article 191 of the Treaty on the Functioning of the European Union](#). It aims at ensuring a higher level of environmental protection through preventative decision-taking in the case of risk. However, in practice, the scope of this principle is far wider and also covers consumer policy, European Union (EU) legislation concerning food and human, animal and plant health.

- E.1.1 Competent authorities should adopt the precautionary principle in considering environmental information and when deciding whether to give consent to projects, in accordance with Government policy (see paragraph 204 of [SPP](#)). 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 Report should ensure that this is available to the decision maker. 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, for example where it is 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, such as where considerable costs or long timescales 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 Paragraph 204 of [SPP \(2014\)](#) 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 is sound evidence indicating that that significant irreversible damage could occur. The precautionary principle should not be used to impede development without justification. If there is any likelihood that significant irreversible damage could occur, modifications to the proposal to eliminate the risk of irreversible damage should be considered. If there is uncertainty, the potential for research, surveys or assessments to remove or reduce uncertainty should be considered.*
- E.1.6 In cases where a designated European site as defined by Regulation 10 of the [Conservation \(Natural Habitats &c\) Regulations 1994 No.2716 as amended](#) (“the 1994 Habitats Regulations”) may be affected, Regulation 48 and 48A of the 1994 Habitats Regulations and Regulation 61 of the [Conservation of Habitats and Species Regulations 2010 No. 490](#) (“the 2010 Conservation of Habitats Regulations”), embody the precautionary principle in the requirement to grant consent (subject to the derogations in Regulation 49 of the 1994 Habitats Regulations and Regulation 62 of the 2010 Conservation of Habitats Regulations respectively) only if the competent authority has ascertained that the project will not adversely affect the integrity of the site. The duty is to establish that there would be no harm to the integrity of the site.
- E.1.7 For additional information on the application of the precautionary principle see [Practical Guidance on Applying the Precautionary Principle \(2006\)](#) and [Applying the Precautionary Principle – An Overview \(May 2005\)](#) both published by the Scotland and Northern Ireland Forum for Environmental Research (SNIFFER).

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

### 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 EIA Report is only one part of the EIA process. [PAN 1/2013](#) reflects the [Circular 1/2017](#) and continues to aim to promote improved integration between EIA and the Habitats Regulation Appraisal (HRA) development management process (see paragraph 1.2 and 4.21 of the PAN, on publicity and consultation requirements for example).

### Planning Related Decisions

- E.2.2 When dealing with a planning application, a planning authority must decide whether the application is in accordance with the development plan unless material considerations indicate otherwise (see the [Planning Act](#) section 25). The environmental information is a material consideration. The EIA Report 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 EIA Report, or to adopt the advice of the consultation bodies. However, they must take all of this information into account, and, if granting permission, state in their decision that they have taken the environmental information into account (see Reg.3 the [Planning Regulations](#)).
- E.2.3 EIA Reports relating to development requiring planning permission should directly relate the environmental effects of the project to all the relevant development plan policies. It should be clear from the EIA Report 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 EIA Report or in his submissions explaining the proposals to the planning authority, what other material considerations may be relevant to the planning decision.

### Other Decisions

- E.2.4 These same principles generally apply to all competent authorities and all decision making procedures. However, please note that the decision making context is not uniform across all EIA Regulation Regimes and development plan is not directly relevant in all cases. It should always be borne in mind that the EIA process 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.2.5 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, 48A and 49 of the 1994 Habitats Regulations and/or Regulations 60 and 61 of the 2010 Conservation of Habitats Regulations and carry out an appropriate assessment. As noted above, this requirement will apply to proposals outside of a Natura 2000 site which would be likely to have a significant effect on that site, as well as proposals in a Natura 2000 site which would be likely to have a significant effect on the site (see [B.8](#) above).

- E.2.6 The appropriate assessment is not the same as an EIA under the provisions of the EIA Regulations. Compliance with the [EIA Directive](#) is achieved through the EIA process which should run alongside and concurrently with the “appropriate assessment” under the 2010 Conservation of Habitats Regulations in compliance with the [Habitats Directive](#) (see also [Box B.4.Info.2](#) above). 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 EIA Report to be prepared under the EIA Regulations.
- E.2.7 The EIA Report will address all likely significant environmental effects of the development. The appropriate assessment will only address the effects on the Natura 2000 sites although this will necessitate consideration of 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 EIA Report when carrying out the appropriate assessment under the Habitats Regulations.

**Box E.2.Practice.1****Good EIA Practice**

It is helpful if relevant EIA Reports clearly identified, under a specific heading, the likely significant effects on the Natura 2000 sites and their internationally important habitats and/or species.

- E.2.8 Regulation 53 of the EIA [Planning Regulations](#) states that where a development is EIA development and also requires a Habitats Regulation Assessment, the planning authority (or Scottish Ministers as the case may be) must, where appropriate ensure that the HRA and the EIA are coordinated. (As at 24 November 2017, paragraph 75 of [1/Circular 2017](#) incorrectly refers to Regulation 54(1).) This is affirmed by [PAN 1/2013](#) (updated in 2017) which states that it would be useful for the EIA to identify any likely significant effects on a European site and ensure that it contains information necessary to help the competent authority to make an assessment as to whether or not there will be a detrimental effect on the conservation interest (see page 21, PAN 1/2013).
- 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 applicant by SNH at the earliest opportunity in relevant cases. The applicant should seek guidance on the assessment from SNH. If the information for the appropriate assessment under Regulation 48 and 48A of the 1994 [Habitats Regulations](#) and/or Regulation 61 of the 2010 [Conservation of Habitats Regulations](#) is to be included in the EIA Report, it should include an assessment of each of the site’s qualifying 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 1994 Habitats Regulations and/or Regulation 61 and 62 of the 2010 Conservation of Habitats Regulations, should it be necessary to apply either Regulation.

## Influence of the EIA Process

- E.2.11 The EIA process can be extremely influential on the decision making process. The Planning Authority (or the Scottish Ministers as the case may be) “must ensure” that they have, or have access as necessary to, sufficient expertise to examine the EIA Report.
- E.2.12 Specialist advice and guidance usually comes from consultation bodies or other well- informed commentators. Generally, the comments of these bodies are considered carefully and weight is attached to EIA Reports, where the consultees consider to be well prepared, balanced and competent (see section [D.10](#)). It follows that poorly or ill-prepared EIA Reports can form an obstacle to a timely decision as these can often lead to requests for additional information.

- E.2.13 It should be noted that it is an offence for any person (or bodies corporate), in order to obtain a particular decision on an EIA application to:
- i. knowingly or recklessly make a false or misleading statement in a material particular
  - ii. with intent to deceive, use a document which is false or misleading in a material particular
  - iii. to withhold any material information with intent to deceive
- Any person guilty of such an offence is liable to a fine.
- E.2.14 Well balanced, thoroughly prepared, impartial, clear and comprehensive statements expedite the decision making process, reducing the need to apply precautionary restrictions and increasing confidence that the project would be responsibly undertaken with a commitment to mitigation.
- E.2.15 The involvement of consultees, both those named in regulations and others, is vital to the process. Clearly specified and reasoned advice on the requirement or otherwise for screening, scoping, survey information, analysis, prediction and mitigation are usually received positively by competent authorities and applicant/s. As a result of consultation responses, EIA Reports are frequently improved or supplemented, the effect of mitigating measures enhanced and projects modified.

| <b>Box E.2.Advice.1</b>   | <b>Key advice</b> |
|---|-------------------|
| <p><b>Consultation responses</b></p> <p>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.</p> <p>These representations can, and should, draw upon the information in the EIA Report and indicate whether the conclusions in the EIA Report are a sound basis for informing the competent authority as to the effects on the environment.</p> <p>Detailed comments on the EIA Report may assist the competent authority and may be important. Response should not, however, focus entirely on the strengths or weaknesses of the EIA Report.</p> <p>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 EIA Report, which might usefully be included in an Annex to the consultee's main response.</p> |                   |

## E.3 Guaranteeing commitments and compliance

### 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 1/2017](#) endorses the approach in this section of the handbook at paragraphs 132 – 134. [PAN 1/2013](#) gives guidance on the use of planning conditions and legal agreements at paragraph 4.31.

### 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 The [EIA Directive](#) and the EIA Regulations do not require the implementation of the mitigation measures specified in the EIA Report or elsewhere. The implementation and enforcement is left to the consenting procedures.
- E.3.4 It is not sufficient, therefore, for an EIA Report merely to indicate what the mitigating measures would be. They must each be clearly identified (a statutory requirement of the EIA Regulations, see [Box B.6.Info.2](#) above); and should be guaranteed in the event of the project proceeding.
- E.3.5 It is not likely to be sufficient for a condition on a consent to merely state that the proposal shall be “in accordance with the EIA Report”. [Circular 1/2017](#) at paragraph 133 and [PAN 1/2013](#) at paragraph 4.31 state that this is unlikely to be valid unless the EIA Report is exceptional in the precision with which it specified mitigation measures. PAN 1/2013 recommends that planning authorities request a schedule of mitigation. This also has advantages for applicants as it can provide more certainty as to the requirements with which they must comply.
- E.3.6 The EIA Report 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.3.7 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 section 75 of [the Town and Country Planning \(Scotland\) Act 1997](#). Agreements under section 75 may be registered with the [General Register of Sasines](#) or recorded on [the Land Register of Scotland](#), making them binding on successors in title unless expressly drafted otherwise. Planning conditions are also enforceable against subsequent landowners. Such legally binding 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.3.8 Alternatively, [Circular 1/2017](#) at paragraph 134 urges applicants to consider adopting environmental management systems to demonstrate implementation of mitigation measures and to monitor their effectiveness.

**Box E.3.Info.1****Key information****Conditions and Agreements**

In order for mitigation measures proposed in the EIA Report to be binding, they must form part of the application, conditions of consent, or other legal agreement (such as a section 75 Planning Agreement) between the competent authority and the applicant.

Monitoring impacts should be covered by a section 75 Agreement, or equivalent. Therefore, competent authorities and consultation bodies should ensure that appropriate provisions are made in the consent.



## E.4 The decision of the Competent Authority

### Statutory Provisions and Government Guidance

- E.4.1 Regulation 3 of the [Planning Regulations](#) states that the competent authority must not grant planning permission for EIA development unless an EIA has been carried out in respect of that development. It also states that in coming to a decision the proposals, the competent authority must take the environmental information into account.
- E.4.2 Regulation 31 of the [Planning Regulations](#) states that where an EIA application is determined by the planning authority, they must as soon as practicable send a copy of the decision notice to the Scottish Ministers and inform the public and those bodies consulted and make a copy of the decision notice available for public inspection at the planning authority office, on the application website and in the local newspaper or by any other means as are reasonable in the circumstances. Where an EIA application is determined by the Scottish Ministers, they must send a copy of the decision notice to the planning authority in the same terms as if it were a decision of the planning authority.

### The Decision

- E.4.3 The competent authority will make its decision on whether to consent to the project. As referred to at [E.4.1](#) above, the EIA 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 EIA Report or to accept the advice or recommendations of consultation bodies 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 Regulation 29 of the [Planning Regulations](#) confirms that where an EIA application is determined by the competent authority, the notification of the decision to be given to the developer (the decision notice) must be in a prescribed form and provide a summary of the environmental information and results of any consultations.
- E.4.5 For planning applications and all other EIA regimes, a copy of the decision notice must provide the following:
1. any conditions to which the decision is subject
  2. the reasoned conclusion for making the decision
  3. a statement that the competent authority is satisfied that the reasoned conclusion is up to date
  4. a description of any mitigation or monitoring measures required
  5. information regarding the right to challenge the validity of the decision and the procedures for doing so

## E.5 Implementation and compliance

### Statutory Provisions and Government Guidance

- E.5.1 The applicant has a statutory duty to comply with the terms of the consent. The competent authority has statutory powers to enforce compliance.
- E.5.2 The EIA Regulations requires a competent authority to consider whether monitoring measures are required and also whether any provision should be made for appropriate remedial action. Enforcement may also rely on interested parties such as consultation bodies 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.
- E.5.3 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.
- E.5.4 Where any conditions are placed on a project consent, legal agreements put in place they are legally enforceable by the competent authority. [PAN 1/2013](#) at 4.31 suggests that planning obligations should only be used exceptionally to secure mitigation. In most cases, a condition should be sufficient to regulate appropriate mitigation and monitoring.
- E.5.5 Review, reassessment and remedial measures are statutory procedures in terms of the EIA Regulations and may be required by conditions on a project consent, or by legal agreements.

### Compliance and mitigation measures

- E.5.6 Many EIA Reports will contain a project programme indicating the likely start and end dates of the main phases of the project, assuming consent is granted. However, the length of time it will take to obtain the consent can often render these inaccurate. Such programmes may therefore be out of date by the time the consent is issued. Applicants will usually be willing to advise consultation bodies and the competent authority of any revisions to programmes, on request.
- E.5.7 The degree of monitoring will vary according to the type of project and some phases may be more environmentally sensitive than others. For planning applications the key phases will usually be site preparation and construction and, at a later date, decommissioning and/or restoration. Many schemes will include advance mitigation works, such as advanced planting for screening and these may need to be checked. The consultation bodies may have asked for a schedule of mitigation within the EIA Report and this can also help to form the basis for a monitoring report.

**Box E.5.Advice.1****Key advice****The Approach to Monitoring**

Monitoring requirements for projects should be decided on a case by case basis. This will include considering:

- which projects should be monitored for compliance
- how such monitoring should be undertaken and by whom
- which of the counter-acting measures should be checked
- at which stages of the proposal monitoring should be undertaken

Consultation bodies should work closely with the competent authority to draw up appropriate conditions and agreements to ensure adequate monitoring. This may be quarterly, annually, or on any other appropriate timescale, as appropriate to the nature of the concern. Provision should also be made for counter-acting measures (which could include financial and other guarantees). Whilst consultation bodies don't write or approve such conditions, advice can be provided as to the outcomes and overarching matters that should be secured by conditions or other agreements.

See sections [E.2](#) and [E3](#) above.

## Monitoring programmes

- E.5.8 Implementation of mitigating measures may still not guarantee their success in reducing environmental effects. 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. It may also be necessary where no mitigation was proposed or required because the proposal was not expected to cause significant environmental change.
- E.5.9 Post-project monitoring and review are appropriate to planning and other legal agreements and should be clearly described and guaranteed in the EIA consenting process. The EIA Report 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.
- E.5.10 Consultation bodies 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 EIA Report.
- E.5.11 Monitoring may be delegated to a range of bodies under other regulatory regimes, as appropriate, but with a view to avoiding duplication. Where monitoring measures are required, the competent authority must take steps to ensure those measures are implemented. However, monitoring will not usually be feasible unless it is financed by the proposer.
- E.5.12 To date, 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. Marine Scotland also advocate monitoring in respect of offshore developments to improve the knowledge and understanding of effects on the marine environment.

**Box E.5.Advice.2****Key advice****Monitoring Programmes/Agreements**

Consultation bodies, where appropriate, should assist and advise in drawing up the schedule and methodology for monitoring. Where resources permit, they may also be able to help assess the results of monitoring and advise the competent authority accordingly.

The competent authority should consult the consultation bodies when it is considering whether to approve or amend mitigation schemes, wherever there are potentially significant environmental effects. It is for the competent authority to ensure that these conditions, monitoring and mitigation, are met.

If there is a timetable for receipt of details of monitoring and this is not met consultation bodies, other consultees and/or third parties are entitled to notify 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 consultation bodies, other consultees and/or third parties believe it is not being met, they can alert the competent authority or press them to take action.

## Review and reassessment and remedial programmes

- E.5.13 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 a material effect.
- E.5.14 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 EIA Report may be appropriate (to assist predictions in other, similar cases in the future). 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 EIA Report.
- E.5.15 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 consultation bodies 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.
- E.5.16 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, reviewing the monitoring will have little value.

**Box E.5.Info.1****Key information****Guaranteeing Monitoring**

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 the following:

- 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
- who will pay the costs of remedial work and corrective action

For planning applications/appeals, it is for the planning authority to determine whether a planning condition or a section 75 Agreement will be required.

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# Glossary

## Terminology

### Additional Environmental Information

**Related terms:** Further Environmental Information

Information submitted after an initial EIA report. This may take the form of a supplementary EIA Report, or a revised EIA Report.

### 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.

### Applicant

**Related terms:** Appellant; developer; project proposer

The term used in this Handbook to denote the proposer of a project. This may not always be a developer, dependent upon the EIA Regime. For the purposes of the document, it may also cover an appellant where a decision is being appealed.

### Appropriate assessment

**Related terms:** Habitats Regulations

For a competent authority to approve a proposal which will have likely significant effects on a Natura site, it must carry out an appropriate assessment (AA) and this must clearly show that the plan or project won't adversely affect the site's integrity.

### Circular

**Planning circulars** are produced by the Scottish Government and contain guidance on policy implementation through legislative or procedural change.

### Compensation

**Related terms:** compensatory measures

Identified as a form of mitigation in [the EIA PAN](#), compensatory or offsetting measures are considered to be the 'least preferred' mitigation option, only to be explored when options to avoid or reduce impacts have been exhausted. They are measures to recompense or make up for adverse effects, rather than altering the level of the effect itself.

## Competent authority

**Related terms:** decision maker; planning authority; statutory authority; appropriate authority; consenting 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 body

**Related terms:** consultee; statutory consultee

A public body named in the EIA Regulations which must be consulted on EIA Reports and scoping requests.

## Crown Estate Scotland

Crown Estate Scotland is a public corporation which manages land and property owned by the Monarch in right of the Crown.

## 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

**Related terms:** Do-minimum 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.

## EIA development

Development of a type listed in Schedule 1 or Schedule 2 of the EIA Regulations.

## EIA Directive, the

**Related terms:** The Directive

The requirement for EIA comes from [European Directive 2011/92/EU](#), which is amended by [Directive 2014/52/EU](#). This is referred to in the Handbook as ‘the Directive’ or ‘the [EIA Directive](#)’.

## EIA Regulations

Any of the sets of regulations which bring the EIA Directive through into Scottish Law. A full list is given in the [Legislation](#) part of the References section, and [Annex 1](#) of this Handbook.



## EIA Report

**Related terms:** EIAR; Environmental Statement; ES

Applications for EIA development must be accompanied by an EIA Report (or EIAR). It is the applicant's responsibility to prepare the EIA report. There is no statutory provision as to the form of an EIA report but it must constitute a 'single and accessible compilation'. The EIA Report is one output from the environmental impact assessment process and forms an important part of the environmental information. Prior to the 2017 EIA regulations, this was called an 'Environmental Statement' or ES.

## 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

**Related terms:** EIA

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 EIA Report, including any further or any other information, any representations made by any body required by the EIA Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the proposal.

## European site

As defined by the [1994 Habitats Regulations](#). European sites are 'sensitive areas' under the EIA regulations.

## Exempt development

Any project which would normally require EIA but has been deemed to be exempt by Scottish Ministers.

## Habitats Directive

[EU Directive 92/43/EEC](#) - The [Habitats Directive](#) ensures the conservation of a wide range of rare, threatened or endemic animal and plant species. Some 200 rare and characteristic habitat types are also targeted for conservation in their own right.

## Habitats Regulations

The regulations which bring the [Habitats Directive](#) through to Scottish Law. They require all competent authorities must consider whether any plan or project will have a 'likely significant effect' on a Natura site.

## Heritage assets

Features, buildings or places that provide physical evidence of past human activity identified as being of sufficient value to this and future generations to merit consideration in the planning system.

## Inquiry

**Related terms:** PLI; Public Local Inquiry

A Public Local Inquiry, or PLI, or Inquiry, is a further procedure used as part of an appeal process where the reporter requires more information than that provided in the appeal documents. It involves people presenting their case in person in front of the reporter who has been appointed to make the decision on the appeal.

## Iterative

(Of a process) Repeated until the best solution has been found. In the context of EIA, it can be understood as the process of assessment and reassessment until the best environmental fit is achieved.

## Landscape Character Assessments

Landscape Character Assessment is a standard method used to identify, describe, classify and map what's distinctive about our landscapes. [SNH's website](#) has more detailed information.

## Matrix

A matrix is a grid used to store or display data in a structured format. It is often used synonymously with a table, which contains horizontal rows and vertical columns.

## Matters specified in conditions

**Related terms:** Reserved matters

See planning permission in principle.

## Mitigation

**Related terms:** Mitigating measures

Measures to avoid, reduce, cancel or compensate for adverse effects.

## Multi-stage consent

A consent procedure comprises more than one stage, one stage involving a principal decision and the other an implementing decision which cannot extend beyond the parameters set by the principal decision. In the Scottish planning system, this would most commonly relate to applications for planning permission in principle (PPP), and subsequent applications for approval of matters specified in conditions.

## Natura sites

Special Areas of Conservation (SACs) and Special Protection Areas (SPAs).

## Planning Act, the

[Town and Country Planning \(Scotland\) Act 1997](#)

## Planning Advice Note

Scottish Government [guidance notes on planning procedures](#).

## Planning permission in principle

**Related terms:** Outline planning permission; matters specified in conditions; multi-stage consent

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 2013](#)). When all of these are approved development may begin. This procedure is known as a multi-stage consent process. It replaced the outline planning permission and reserved matters procedures.

## Planning Regulations, the

[The Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#)

## Precautionary principle

**Related terms:** Precautionary approach

The precautionary principle is detailed in [Article 191 of the Treaty on the Functioning of the European Union](#). It aims at ensuring a higher level of environmental protection through preventative decision-taking in the case of risk. However, in practice, the scope of this principle is far wider and also covers consumer policy, European Union (EU) legislation concerning food and human, animal and plant health.

## Processing agreement

A processing agreement is a project management tool for a planning application. Processing agreements can be used to set out the key processes involved in determining an application, identify what information is required, and from whom, and set the timescales for the delivery of various stages of the process.

## Ramsar

Ramsar sites are classified under the [Convention on Wetlands of International Importance](#). Every Ramsar site in Scotland is also part of the Natura 2000 network – either as a Special Protection Area (SPA) or Special Area of Conservation (SAC).

## Reporter

The person appointed to decide an appeal, or, in the case of a called in decision, to write a report to inform Scottish Ministers in their decision making.

## Revised EIA Report

**Related terms:** Updated EIA Report

Additional environmental information submitted to a competent authority in the form of an altered EIA Report.

## Rochdale envelope

The Rochdale Envelope allows an applicant to describe its project within a number of agreed parameters for the purposes of an EIA and undertake assessment based on the maximum extents of the parameters. This provides the applicant with a level of flexibility on the final iteration of the project.

## Schedule 1

**Related terms:** Annex 1

Schedule 1 of the [Planning Regulations](#), which lists projects given in Annex 1 of the [EIA Directive](#). EIA is required for Schedule 1 these projects.

## Schedule 2

**Related terms:** Annex 2

Schedule 2 of the [Planning Regulations](#), which lists projects given in Annex 2 of the [EIA Directive](#). EIA is required for these Schedule 2 projects if they are likely to have significant effects on the environment.

## Schedule 3

Schedule 3 of the [Planning Regulations](#), which sets out selection criteria for screening projects of a type listed in Schedule 2. These are given in 3 categories:

- Characteristics of the development
- Location of the development
- Characteristics of the potential impact

## Scheduled monument

Monuments included on the schedule (list) of monuments of national importance. The aim of scheduling is to preserve our most significant sites and monuments as far as possible in the form in which they have been passed down to us today. Scheduled monuments are identified as a 'sensitive area' in the EIA Regulations.

## Scoping

**Related terms:** scoping direction; scoping opinion; scoping report; scoping request

An applicant may ask the competent authority for their formal opinion on the information to be supplied in the EIA Report (a 'scoping opinion'). Scottish Ministers may make a 'scoping direction' where a competent authority fails to adopt a scoping opinion within defined timescales. Where a scoping opinion has been adopted or a scoping direction issued the EIA report must be based on that opinion or direction.

## Screening

**Related terms:** screening direction; screening opinion; screening report; screening request

Before submitting an application for Schedule 2 development, the applicant may make a 'screening request', asking the competent authority to adopt a screening opinion - to decide whether or not the application is for EIA Development. Scottish Ministers may make a 'screening direction' regarding development at any stage prior to final consent being granted.

## Section 75 Agreement

**Related terms:** English section 106

Planning obligations (known as section 75 Agreements in Scotland and section 106 Agreements in England and Wales) are contracts entered into between a landowner and the planning authority.

## Sensitive area

All developments of a type listed in Schedule 2 to be located in such areas must be screened for the need for EIA. The 'sensitive areas' are:

- Sites of Special Scientific Interest
- Land subject to Nature Conservation Orders
- European Sites
- National Scenic Areas
- World Heritage Sites
- Scheduled Monuments
- National Parks
- Marine Protected Areas
- Areas of deep peaty soils ([Forestry Regulations](#) only)

## Setting

The way the surroundings of a historic asset or place contribute to how it is understood, appreciated and experienced.

## Special area of conservation

A Special Area of Conservation (SAC) protects one or more special habitats and/or species – terrestrial or marine – listed in the [Habitats Directive](#).

## Special protection area

Special Protection Areas (SPAs) are selected to protect one or more rare, threatened or vulnerable bird species listed in Annex I of the [Birds Directive](#), and regularly occurring migratory species.

## Strategic Environmental Assessment

**Related terms:** SEA

This is the whole process of considering the environmental effects of certain public plans and programmes, including development plans, under the [Environmental Assessment \(Scotland\) Act 2005](#).

## Supplementary EIA Report

Where the original EIA Report was incomplete or further work on environmental effects has been undertaken, (whether or not the project has been modified since the original application and EIA Report were submitted) a supplementary EIA Report 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 EIA Report may include a revision of the whole or part of the original document or additions that are needed to cover the additional information.

## Transboundary project

A project that is located in more than one EEA state.

## Wednesbury principles

A standard of unreasonableness used in assessing an application for judicial review of a public authority's decision. A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it.

## Abbreviations

### Legislation short form names

| Short Name                         | Full details  |
|------------------------------------|---|
| <b>EIA Agriculture 17</b>          | The Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017  |
| <b>EIA Electricity 17</b>          | The Electricity (Environmental Impact Assessment) (Scotland) Regulations 2017   |
| <b>EIA Forestry 17</b>             | The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017  |
| <b>EIA Gas Trans 99</b>            | Public Gas Transporters (Pipeline Works) (Environmental Impact Assessment) Regulations 1999 (as amended)  |
| <b>EIA Marine Works 17</b>         | Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017  |
| <b>EIA Nuclear 99</b>              | Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (as amended)  |
| <b>EIA Offshore 99</b>             | Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 (as amended)   |
| <b>EIA Offshore Gen 02</b>         | The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations) (Scotland) Order 2002  |
| <b>EIA Pipelines 00</b>            | Pipeline Works (Environmental Impact Assessment) Regulations 2000 (as amended)  |
| <b>EIA Regs 17</b>                 | The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017   |
| <b>EIA Roads 17</b>                | The Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017 (which amends the Roads (Scotland) Act 1984 (RSA 1984);  |
| <b>EIA Trans &amp; Works Rules</b> | The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Amendment Rules 2007 (as amended)   |
| <b>FRM 17</b>                      | The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Amendment Regulations 2017 (which amends the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 |
| <b>Marine Fish 13</b>              | The Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2013   |
| <b>MSA 2010</b>                    | Marine (Scotland) Act 2010  |
| <b>TaWR 17</b>                     | The Transport and Works (Scotland) Act 2007 (Environmental Impact Assessment) Regulations 2017 (SSI 2017 138) (which amends the Transport and Works (Scotland) Act 2007)  |

## Acronyms

| Term     | Meaning   |
|----------|---|
| CEC      | Crown Estate Commissioner   |
| DMR/DMPR | Development Management Regulations/Procedure - The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 |
| E, S & W | England Scotland and Wales  |
| EC       | European Commission   |
| ECJ      | European Court of Justice   |
| EEA      | European Economic Area  |
| EZ       | Enterprise Zone   |
| FC       | Forestry Commission   |
| GB       | Great Britain   |
| HES      | Historic Environment Scotland   |
| HRA      | Habitats Regulations Appraisal/Assessment   |
| NI       | Northern Ireland  |
| ONR      | Office for Nuclear Regulation   |
| PA       | Planning Authority  |
| PAN      | Planning Advice Note  |
| PP       | Planning Permission   |
| PPP      | Planning Permission in Principle  |
| PPS      | Plans, Policies and Strategies  |
| SAC      | Special Area of Conservation  |
| SEA      | Strategic Environmental Assessment  |
| SEPA     | Scottish Environmental Protection Agency  |
| SM       | Scottish Ministers  |
| SNH      | Scottish Natural Heritage   |
| SPA      | Special Protection Area   |
| SPP      | Scottish Planning Policy  |
| SPZ      | Simplified Planning Zone  |
| TCP      | Town and Country Planning   |
| UK       | United Kingdom of Great Britain and Northern Ireland inc territorial waters   |
| ZTV      | Zone of theoretical visibility  |



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# References

## Current legislation

This includes EIA legislation and other legislation relevant to the EIA procedures.

The [Glossary](#) gives the short form name for each piece of legislation.

### **The Roads (Scotland) Act 1984** ([1984 c.54](#))

Applies EIA procedures to certain roads and bridges by way of additions and amendments to the Act made by the EIA Regs 17 (In tables in this Handbook this statute is abbreviated to 'RSA 84').

### **The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013** ([Scottish Statutory Instrument 2013 No. 155](#))

Contains provisions for requiring additional information on planning applications under Regulation 24 (see Section D.6 of this Handbook); and for the Scottish Ministers to issue Directions about EIA under Regulations 30 – 35.

### **The Town and Country Planning (Scotland) Act 1997** ([1997 c.8](#))

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 EIA Regs 17 and to make directions to planning authorities. (In tables in this Handbook this statute is abbreviated to '1997 Act'.)

### **The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017** ([Scottish Statutory Instrument 2017 No. 102](#))

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (EIA Regs 17), re-enact and update, with amendments and savings, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011.

The EIA Regs 17 impose procedural requirements in relation to the consideration of applications for planning permission under the Town and Country Planning (Scotland) Act 1997, development by local planning authorities and restrict the grant of planning permission by Simplified Planning Zones (SPZ), Enterprise Zones and the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

All development in schedule 1 of the EIA Regs 17 requires an EIA. Development in Column 1 of the table in Schedule 2 which is either to be carried out in a sensitive area or satisfies a threshold or criterion in Column 2 of that table ("Schedule 2 Development") requires an EIA if it is likely to have significant effects on the environment. Development which requires EIA is referred to in the EIA Regs 17 as "EIA Development". (In tables in this Handbook these Regulations are abbreviated to 'EIA Regs 17'.)

### **The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017** ([Scottish Statutory Instrument 2017 No. 113](#))

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. In tables in this Handbook these Regulations are abbreviated to 'EIA Forestry 17'.

### **The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999** ([Statutory Instrument 1999 No 360](#)) as amended by **the Offshore Petroleum Production and Pipe-lines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations** ([Statutory Instrument 2017 No. 582](#))

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 ([Statutory Instrument 1999 No 1672](#))** as amended by **the Offshore Petroleum Production and Pipe-lines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations 2017 ([Statutory Instrument 2017 582](#))**

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 ([Statutory Instrument 1999 No 2892](#))** as amended by the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Amendment) Regulations 2006 2006/657

Apply EIA procedures to the decommissioning of nuclear reactors. In tables in this Handbook these Regulations are abbreviated to 'EIA Nuclear 99'.

**The Electricity (Environmental Impact Assessment) (Scotland) Regulations 2017 ([Scottish Statutory Instrument 2017 101](#))**

Apply EIA procedures to electricity generating power stations and overhead lines in Scotland. In tables in this Handbook these Regulations are abbreviated to 'EIA Electricity 17'.

The Pipeline Works (Environmental Impact Assessment) Regulations 2000 (SI 2000 No. 1928) as amended by Offshore Petroleum Production and Pipe-lines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations (SI 2017 No 582)

Apply EIA procedures to pipeline projects. In tables in this Handbook these Regulations are abbreviated to 'EIA Pipelines 00'.

**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 Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 ([Scottish Statutory Instrument 2017 No 114](#))**

The Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 revoke and re-enact and update with savings the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 and Part IV of the Environmental Impact Assessment (Scotland) Regulations 1999.

In tables in this Handbook these Regulations are abbreviated to 'EIA Agriculture 17'.

The EIA Agriculture 2017 Regulations implement in relation to the use of uncultivated land or semi-natural areas for intensive agricultural purpose, the restructuring of rural land holdings on agricultural land, irrigation and land drainage. Furthermore, they place a prohibition on beginning or carrying out a project for agriculture, irrigation or restructuring without first obtaining a screening opinion (subject to thresholds).

**The Environmental Impact Assessment (Miscellaneous Amendments) Regulations 2017 ([Scottish Statutory Instrument 2017 No 168](#))**

These Regulations make minor changes and corrections to the EIA Electricity 17, EIA Regs 17, the EIA Forestry 17, the EIA Agriculture 17 and the EIA Marine Works 17.

## **The Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2013 ([Scottish Statutory Instrument 2013 No 277](#))**

The Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2013 revoke the Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2007 and also revoke the Town and Country Planning (Marine Fish Farming) (Scotland (Amendment) Regulations 2011 and 2012 and set out how an application for planning permission for the operation of a marine fish farm is to be made to the Scottish Ministers under section 31A of the Town and Country Planning (Scotland) Act 1997

In tables in this Handbook these Regulations are abbreviated to '**Marine Fish 13**'.

## **The Transport and Works Scotland Act 2007 (Applications and Objections Procedure) Rules 2007 ([Scottish Statutory Instrument 2007 No 570](#)) as amended by the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Amendment Rules 2017 ([Scottish Statutory Instrument 2017 No 74](#))**

The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Amendment Rules 2017 implement the amendments to Directive 2011/92/EU made by Council Directive 2014/52/EU 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 Transport and Works (Scotland) Act 2007. It provides for a pre-application scrutiny process by SM, including a review of the EIA Report 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**'

## **Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ([Statutory Instrument 2017 No 115](#))**

The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 replaced the Marine Works (Environmental Impact Assessment) Regulations 2007 in order to transpose Directive 2014/52/EU which amended the 2011 Directive.

Key Changes include:

Environmental Impact Assessment Process, Screening, EIA Report, Decisions and Monitoring, Objectivity and Conflict of Interest, Offences, Transitional Arrangements, Multistage Consents, Thresholds, Consultation, Impact Assessments and Financial Effects.

In addition:

The Environmental Impact Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 repealed the Marine Works (Environmental Impact Assessment) Regulations 2007 and apply EIA procedures to fish farms in marine waters (fresh water fish farms are covered by the EIA Regs 17 above).

In tables in this Handbook these Regulations are abbreviated to '**EIA Marine Works 17**'

## **Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 ([Scottish Statutory Instrument 2017 No 101](#))**

The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 updates and replaces the Electricity Works (Environmental Impact Assessment) (Scotland) (Regulations 2000 (as amended in 2008) in order to implement Directive 2014/52/EU. In tables in this Handbook these Regulations are abbreviated to '**EIA Electricity 17**'.

## Current guidance

These references are given in date order.

Hyperlinks are given to online version of the documents.

1. **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 [EIA Regulations \(1999\)](#).
2. **Scottish Executive Development Department, [PAN 51](#): Planning Environmental Protection and 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.
3. **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.
4. **Scottish Government, [Guidance on the Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Amendment Regulations 2008](#), reviewed Jan 2016**

Provides guidance on the EIA process, public notices and judicial review for electricity works in Scotland.
5. **Scottish Government, [Circular 1/2017](#): The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 May 2017**

This Circular provides comprehensive guidance on the EIA process with particular emphasis on projects requiring planning permission. It includes special cases such as the review of old mineral permissions and multi-stage consents.
6. **Scottish Executive Development Department, [PAN 1/2013](#): Environmental Impact Assessment June 2017**

This Planning Advice Note provides background information and advice on good practice in the EIA. It has been updated to take account of the 2017 Regulations. The Principal Regulations and Circular 1/2017 take precedence over the advice contained in the PAN.
7. **Forestry Commission Scotland, [Environmental Impact Assessment for Forestry Projects](#) Feb 2018**

Provides guidance on the 2006 EIA Regulations relating to Forestry including the consenting and screening procedures. This Guidance is in the process of being updated – refer to Forestry Commission website for latest guidance.

## Legal cases

Cases are given in date order.

The common short name for the case is given in bold.

Links to detailed references in the text are given.

1. European Court of Justice, Aannemersbedrijf PK Kraaijeveld BV versus Gedeputeerde Staten van Zuid-Holland October 24 (1996) (**Dutch Dykes**) Case C-72/95. ([Box B.4.Case.2](#))
2. Regina v St Edmundsbury Borough Council, ex parte **Walton** (1999) [1999 JPL 805] ([Paragraph C.1.3](#))
3. 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] ([Box D.11.Case.1](#))
4. R (**Hardy**) v Cornwall County Council (2000) [2001 JPL 786] [2001] Env.L.R. 25 ([Paragraph B.7.2](#))
5. **Berkeley** v Secretary of State Environment Transport and the Regions (2000) [JPL 2001 58] ([Box B.7.Case.1](#))
6. Regina v Rochdale MBC ex parte **Milne** (2000) [2001 JPL 470] ([Box D.11.Case.2](#))
7. ECJ WWF v **Bozen** [2000] 2 P.L.R. 1 ([Paragraph B.7.4](#))
8. Regina v Secretary of State Environment Transport and the Regions ex parte **Diane Barker** (2001) ([Box D.11.Case.3](#))
9. Regina on the application of **Lebus** v South Cambridgeshire DC (2002) [2003 JPL 466] ([Box B.4.Case.4](#))
10. **Fernback** and Others v Harrow LBC (2000) [2001 EWHC Admin 278; 2002 Env LR 10] ([Box C.1.Case.1](#))
11. **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 ([Box B.4.Case.4](#))
12. **Goodman** and another v Lewisham London Borough Council (2003) [TLR 21/2/03] [Env.L.R.28] ([Box B.4.Case.2](#))
13. R (**Jones**) v Mansfield DC [2004] Env.L.R. 21 ([Box B.4.Case.2](#))
14. 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 ([Paragraph B.7.4](#))
15. 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 ([Box B.4.Case.15](#))
16. R (**Baker**) v Bath and North East Somerset District Council [2009] EWHC 595 (Admin) ([Box B.2.Case.1](#))
17. Umweltschutz von **Karnten** v Karntner Landesregierung 10 December 2009, Case C-205/08 ([Paragraph B.4.26](#))
18. **Zeb** v Birmingham City Council [2009] EWHC 3597 (Admin) ([Section C.1](#))
19. R (**Cooperative Group Ltd**) v Northumberland County Council [2010] EWHC 373 (Admin) ([Box B.4.Case.10](#))
20. **Brown** v Carlisle City Council [2010] EWCA Civ 523 ([Box B.4.Case.5](#))
21. R (**Bateman**) v South Cambridgeshire District Council [2011] EWCA Civ 157 ([Section C.1](#))
22. European **Commission v Ireland** 3 March 2011, Case C-50/09 ([Box B.4.Case.3](#))
23. **Save Britain's Heritage** v Secretary of State for Communities and Local Government [2011] EWCA Civ 334 ([Box B.4.Case.4](#))
24. **Bowen-West** v Secretary of State for Communities and Local Government [2012] EWCA Civ 321 ([Paragraph B.4.23](#))

25. R (**Berky**) v Newport City Council [2012] EWCA Civ 378 ([Section C.1](#))
26. **Threadneedle** Property Investments Ltd v Southwark London Borough Council [2012] EWHC 855 (Admin) ([Box B.4.Case.1](#))
27. R (**Loader**) v Secretary of State for Communities and Local Government [2012] EWCA Civ 869 ([Box B.4.Case.9](#))
28. R (**Long**) v **Monmouthshire** County Council [2012] EWHC 3130 (Admin) ([Section C.1](#))
29. Re **Alternative A5 Alliance**'s Application for Judicial Review [2013] NIQB 30 ([Box B.4.Case.14](#))
30. R (**Burridge**) v Breckland District Council [2013] EWCA Civ 228 ([Box B.4.Case.7](#))
31. R (**Catt**) v Brighton and Hove City Council [2013] EWHC 977 (Admin) ([Paragraph B.4.32](#))
32. R (**Treagus**) v Suffolk County Council [2013] EWHC 950 (Admin) ([Box B.4.Case.13](#))
33. **Feeney** v Secretary of State for Transport [2013] EWHC 1238 (Admin) ([Paragraph B.4.40](#))
34. R (**Save Britain's Heritage**) v Secretary of State for Communities and Local Government [2013] EWHC 2268 ([Box B.4.Case.6](#))
35. **Friends of the Earth Ltd's Application for Judicial Review**, Re Queen's Bench Division (Northern Ireland), [2016] NIQB 91 ([Box B.4.Info.1](#))

## Annotated references

1. Scottish Government Planning **Circular 1/2017**: Environmental Impact Assessment Regulations 2017: <http://www.gov.scot/Resource/0051/00518122.pdf>  
 This Circular provides comprehensive guidance on the Planning Regulations with a particular focus on the EIA process for planning applications (including multi-stage consents) and the review of old mineral permissions.
2. Scottish Executive Development Department **PAN 1/2013**, Environmental Impact Assessment: <http://www.gov.scot/Resource/0043/00432581.pdf>  
 This Planning Advice Note provides advice on good practice in the EIA process for planning authorities and consultation bodies and seeks to promote three key principles; integration with the development management process, proportionate EIA focusing on significant environmental impacts and efficiency (updated in May 2017 to reflect the Planning Regulations).
3. Codified Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 (the **EIA Directive**) on the assessment of the effects of certain public and private projects on the environment.  
 Directive 85/337/EC is the original Directive which triggered statutory EIA and there have been various extensive revisions since it was first introduced. In 2011, the original Directive and its various amendments were consolidated into Directive 2011/92/EU subsequently amended by Directive 2014/52/EU.
4. Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (the **Planning Regulations**): [http://www.legislation.gov.uk/ssi/2017/102/pdfs/ssi\\_20170102\\_en.pdf](http://www.legislation.gov.uk/ssi/2017/102/pdfs/ssi_20170102_en.pdf)  
 Note that there are various other regulations applicable to other regimes with further information provided in Annexe 2 to this Handbook.
5. Directive 2003/35/EC (the **Public Participation Directive**): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0035:EN:HTML>  
 The Public Participation Directive was introduced to align European law with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.
6. Institute of Environmental Assessment, Guidelines for Baseline Ecological Assessment, 1995, Spons.
7. Institute of Environmental Assessment/The Landscape Institute, Guidelines for Landscape and Visual Impact Assessment, 2013, Third Edition, Routledge.  
 These guidelines present general guidance on good practice in the preparation of landscape and visual impact assessments.
8. Chartered Institute of Ecology and Environmental Management, Guidelines for Ecological Impact Assessment in the UK and Ireland – Terrestrial, Freshwater and Coastal, second edition, Jan 2016.  
 Please note, at the time of publication, these guidelines are currently being amalgamated with the Marine and Coastal Guidelines in ref (9) below.
9. Chartered Institute of Ecology and Environmental Management, Guidelines for Ecological Impact Assessment in Britain and Ireland: Marine and Coastal, August 2010.  
 These guidelines build upon the June 2006 Guidelines to provide guidance on the ecological impact assessment for marine and coastal works. Please note, at the time of publication, these guidelines are currently being amalgamated with the Marine and Coastal Guidelines in ref (8) above.



10. Environmental Information (Scotland) Regulations 2004 implementing the EC Directive 90/313/EC on Freedom of Access to Information on the Environment (the **Environmental Information Regulations**): <http://www.legislation.gov.uk/ssi/2004/520/contents/made>

EC Directive ensuring that the public has a right of access to environmental information, applied in the UK through the Environmental Information (Scotland) Regulations 2004.
11. European Commission, Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (**EIA Directive**): Interpretation of definitions of certain project categories of Annex I and II of the EIA Directive, 2008.

Guidance from the European Commission on their suggested interpretation of the various categories of projects listed in Annex I and II of the EIA Directive. It should be noted that the interpretations in this document are the views of the Commission and ultimately it is for the ECJ to interpret the EIA Directive.
12. European Commission, Environmental Impact Assessment of Projects: Rulings of the Court of Justice, 2013.

This guidance document discusses rulings of the ECJ and opinions of the Advocate-General in some of the most important ECJ cases on EIA.

## Annex 1: Legislation information at a glance



| Sector                           | Project type  | EIA Regulations    |
|----------------------------------|---|--------------------|
| Energy Transmission              | Overhead Electricity power lines  | EIA Electricity 17 |
|                                  | Gas pipelines   | EIA Gas Trans 99   |
|                                  | Oil/petroleum pipelines   |                    |
|                                  | Pipelines for transmission of steam or hot water  | EIA Pipelines 00   |
|                                  | Decommissioning of nuclear power stations and other reactors  | EIA Nuclear 99     |
| Energy decommissioning and waste | Disposal of pulverised or other fuel ash  | EIA Regs 17        |
|                                  | Drilling to store nuclear waste   |                    |
|                                  | Development for processing, re-processing and storing radioactive waste   |                    |
|                                  | Afforestation including natural regeneration, reforestation and deforestation   |                    |
| Forestry                         | Forestry tracks and quarries  | EIA Forestry 17    |
|                                  | Development for pulp/paper/board mills  | EIA Regs 17        |
| Industrial Development           | Development for all forms of industrial processing, re-processing, manufacturing, assembling, packing, testing etc., and industrial estates | EIA Regs 17        |

**Figure 7: The Application of EIA Regulations by Sector and Project Type (Continued)**

Abbreviations used in this table are defined in the [Abbreviations section of the Glossary](#).

A [full list of current legislation](#) is given in the References section of the Handbook.

| Sector                                    | Project type  | EIA Regulations      |
|---|---|----------------------|
| Leisure, sport and recreation             | Camping and caravanning sites                                     | EIA Regs 17          |
|   | Golf courses and associated developments                          |                      |
|   | Hotels, spas and similar complexes                                |                      |
|   | Leisure centres   |                      |
|   | Marinas   |                      |
|   | Motor racing circuits and test tracks                             |                      |
|   | Multiplex cinemas   |                      |
|   | Ski-runs, ski-lifts, cable cars, funicular railways               |                      |
|   | Sport stadiums  |                      |
| Theme parks                               |   |                      |
| Mineral extraction                        | Disposal of mineral waste   | EIA Regs 17          |
|   | Exploratory deep drilling   |                      |
|   | Extraction of minerals at the surface by open casting/quarrying   |                      |
|   | Extraction of minerals by underground mining                      |                      |
| Marine dredging                           | Fluvial dredging  | EIA Marine Works 17  |
|   | Peat extraction (commercial)                                      |                      |
|   | Installations for the processing of specified minerals / products |                      |
| Transport and communications              | Marine dredging   | EIA Marine Works 17  |
|   | Review of old mineral permissions                                 | EIA Regs 17          |
|   | Docks, harbours, ports, piers and jetties and ferry terminals     | EIA Marine Works 17  |
|   | Airfields, airports, runways                                      | EIA Regs 17          |
|   | Intermodal trans-shipment facilities and terminals                |                      |
|   | Motorway service areas  | EIA Trans & Works 07 |
|   | Inland waterways and canals/canalisation for transport            |                      |
| Railways, light railways and tram systems | EIA Pipelines 00  |                      |
| Pipelines to carry chemicals              |   |                      |
| Roads                                     | EIA Regs 17   |                      |
| Urban developments                        | Business parks, industrial estates and employment developments    | EIA Regs 17          |
|   | Housing estates   |                      |
|   | New settlements   |                      |
|   | Retail parks and other retail developments                        |                      |

| Sector           | Project type  | EIA Regulations     |
|------------------|---|---------------------|
| 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 17         |
|                  | Deposit of dredgings at sea<br>Dams and installations designed to hold or store water   | EIA Marine Works 17 |
| Water            | 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 17         |
|                  | Long distance aqueducts   | EIA Marine Works 17 |

**Figure 8: Key information and references in each of the EIA Regulations**

Terminology used in this table is explained in [Figure 9](#) below.

Abbreviations used in this table are defined in the [Abbreviations section of the Glossary](#).

A [full list of current legislation](#) is given in the References section of the Handbook.

|                                       | Project Type  |  |  |
|---------------------------------------|---|--|--|
| Key information                       | Dev requiring PP including Marine fish farms  | Review of Old Mineral Permissions (ROMP)   | Motorways and trunk roads  |
| Competent authority                   | PA or Scottish Ministers  | PA or Scottish Ministers   | Scottish Ministers   |
| Consent Procedure                     | Planning permission under TCP (Scotland) Act 1997   | Review process of Mineral Permissions granted between 1948 and 1982 and all later permissions every 15 years | SM decide to proceed or make order under Sch 1 Roads (Scotland) Act 1984 |
| EIA Regulations                       | EIA Regs 17   | EIA Regs 17  | EIA Roads 17 (which had the effect of directly amending the RSA 1984)    |
| Jurisdiction                          | Scotland  | Scotland   | Scotland   |
| Statutory Instrument                  | SSI 2017/102  | SSI 2017/102   | SSI 2017 No. 137   |
| Came into force                       | 16.5.2017   | 16.5.2017  | 16.5.2017  |
| Interpretation                        | Reg 2   | Reg 2  | s151 to 152  |
| Compliance                            | Reg 3 (48 for fish farming)   | Regs 3 and 38  | Reg 5 substitutes 20A and 20B and inserts sections 20C to 20G RSA 1984   |
| Screening                             | Reg 6 -16   | Regs 6 -16and 38   | S 20C and 55A  |
| Scoping                               | Reg 17 - 19   | Regs 17 - 19and 38   | N/A  |
| Application without EIA Report        | Reg 11 -16  | Regs11 -16 and 38  | N/A  |
| Consultation body to give info        | Reg 18  | Reg 18   | N/A  |
| Publicity                             | Reg 16, 20, 21  | Reg 20, 21 and 38  | Reg 5 substitutes 20A and 20B and inserts sections 20C to 20G            |
| Consultations                         | Reg 22 -25  | Reg 22 - 25 and 38   | RSA 1984   |
| Further Information                   | Reg 26 - 27   | 26 - 27 and 38   | N/A  |
| Transboundary                         | Reg 41, 42  | Reg 41, 42   | S 20F  |
| Public consultation period            | 30 days   | 30 days  | 42 days  |
| Consultation body consultation period | 30 days   | 30 days  | Opportunity to express an opinion within 42 days                         |
| Final decision / records              | Reg 29-31   | Regs 29-31   | Reg 9 amends para 7 of Sch 1 RSA 1984                                    |
| Schedule 1 projects                   | Sch 1<br>Note: Reg 37 states that no schedule 1 development can be granted planning permission by the adoption or approval of a SPZ or through the designation or modification of an EZ.  | Sch 1  | Sch 1  |
| Schedule 2 projects                   | Sch 2<br>Note: Reg 37 states that no schedule 1 development can be granted planning permission by the adoption or approval of a SPZ or through the designation or modification of an EZ.  | Sch 2  | Sch 2  |
| Matters to consider                   | Sch 3<br>A number of 'Special Cases' are detailed at Part 9 Reg 37 to 40. These being:<br>SPZ or EZ – Reg 37;<br>ROMP applications – Reg 38; and<br>Applications for planning permission under s.242 of the 1997 Act (i.e. Urgent Crown Development). | Sch 3  | Sch 1A   |
| Content of EIA Report                 | Sch 4   | Sch 4  | Sch 1A   |

Figure 8: Key information and references in each of the EIA Regulations (Continued)

Terminology used in this table is explained in [Figure 9](#) below.

Abbreviations used in this table are defined in the [Abbreviations section of the Glossary](#).

A [full list of current legislation](#) is given in the References section of the Handbook.

| Key information                              | Project type                                       |  |  |   |   |
|--|--|--|--|---|---|
|  | Drainage Improvements                              | Marine Fish Farming other than that requiring PP | Forestry Works   | Agriculture – SemiNatural Areas & Rural Holdings                              | Water Management for Agriculture  |
| <b>Competent authority</b>                   | Scottish Ministers                                 | Scottish Ministers                               | FC or on appeal Scottish Ministers   | Scottish Ministers  | Scottish Ministers  |
| <b>Consent Procedure</b>                     | SM consent under Land Drainage (Scotland) Act 1958 | SM consent under TCP (Scotland) Act 1997         | 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 |
| <b>EIA Regulations</b>                       | EIA Agriculture 17                                 | EIA Marine Fish 17                               | EIA Forestry 17  | EIA Agriculture 17  | EIA Agriculture 17  |
| <b>Jurisdiction</b>                          | Scotland   | Scotland   | Scotland   | Scotland  | Scotland  |
| <b>Statutory Instrument</b>                  | SSI 2017/114                                       | SSI. 2017/115                                    | SSI 2017 113   | SSI 2017 114  | SSI 2017 114  |
| <b>Came into force</b>                       | 16.5.2017  | 16.5.2017  | 16.05.2017   | 16.05.2017  | 16.05.2017  |
| <b>Interpretation</b>                        | Reg 2  | Reg 2  | Reg 2  | Reg 2   | Reg 2   |
| <b>Compliance</b>                            | Reg 46   | Reg 4 & 12                                       | Reg 4  | Reg 46  | Reg 46  |
| <b>Screening</b>                             | Reg 10   | Reg 4  | Reg 8 – 14   | Regs 10   | Reg 10  |
| <b>Scoping</b>                               | Reg 14   | Regs 14 - 15                                     | Reg 15 - 17  | Regs 14   | Reg 14  |
| <b>Application without EIA Report</b>        | N/A  | N/A  | N/A  | N/A   | N/A   |
| <b>Consultation body to give info</b>        | Reg 17   | Reg 14   | Reg 17   | Reg 17  | Reg 17  |
| <b>Publicity</b>                             | Reg 17   | Regs 16 - 20                                     | Reg 18 - 20  | Reg 17  | Reg 17  |
| <b>Consultations</b>                         | Reg 17   | Reg 18   | Reg 17   | Reg 17  | Reg 17  |
| <b>Further Information</b>                   | Reg 18   | Reg 21 22  | Reg 13 -14   | Reg 18  | Reg 18  |
| <b>Transboundary</b>                         | Reg 20   | Regs 30 - 31                                     | Reg 27   | Reg 20  | Reg 20  |
| <b>Public consultation period</b>            | 30 days Reg 17                                     | 30 days  | 30 days  | 30 days (Reg 17)  | 30 days (reg 17)  |
| <b>Consultation body consultation period</b> | 30 days  | 30 days  | 30 days  | 30 days (Reg 17)  | 30 days (reg 17)  |
| <b>Final decision / records</b>              | Reg 22   | Regs 23 - 25                                     | Reg 24 and 26  | Reg 22  | Reg 22  |
| <b>Schedule 1 projects</b>                   | Sch 1  | Sch 1  | Sch 1  | Sch 1   | Sch 1   |
| <b>Schedule 2 projects</b>                   | N/A  | Sch 2  | N/A  | N/A   | N/A   |
| <b>Matters to consider</b>                   | Sch 2  | Reg 8 and Sch 4                                  | Sch 2 & 3  | Sch 2   | Sch 2   |
| <b>Content of EIA Report</b>                 | Sch 3  | Sch 3 and 4                                      | Sch 1  | Sch 3   | Sch 3   |



**Figure 8: Key information and references in each of the EIA Regulations (Continued)**

Terminology used in this table is explained in [Figure 9](#) below.

Abbreviations used in this table are defined in the [Abbreviations section of the Glossary](#).

A [full list of current legislation](#) is given in the References section of the Handbook.

| Key information                              | Project type  |  |  |
|--|---|--|--|
|  | Electricity power stations (over 50MW) and overhead lines   | Offshore Electricity generating stations over 1MW  | Gas Pipelines not requiring PP   |
| <b>Competent authority</b>                   | Scottish Ministers  | Scottish Ministers   | Scottish Ministers   |
| <b>Consent Procedure</b>                     | 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 generating stations driven wholly or mainly driven by water or wind over 1MW require consent of SM under S36 of Electricity Act 1989 EIA Electricity 17 apply | Public Gas Transporter to submit an application to the Secretary of State alongside Environmental Statement. |
| <b>EIA Regulations</b>                       | EIA Electricity 17  | EIA Electricity 17   | EIA Gas Trans 99   |
| <b>Jurisdiction</b>                          | Scotland  | Scotland   | Great Britain  |
| <b>Statutory Instrument</b>                  | SSI 2017 101  | SSI 2017 101   | S.I. 1999/1672   |
| <b>Came into force</b>                       | 16.05.2017  | 16.05.2017   | 15.7.1999  |
| <b>Interpretation</b>                        | Reg 2   | Reg 2  | Reg 2  |
| <b>Compliance</b>                            | Reg 3   | Reg 3  | Reg 3  |
| <b>Screening</b>                             | Reg 6 – 9   | Regs 6 – 9   | Reg 6  |
| <b>Scoping</b>                               | Reg 5   | Reg 5  | Reg 7  |
| <b>Application without EIA Report</b>        | Reg 11  | Reg 11   |  |
| <b>Consultation body to give info</b>        | Reg 12 and 13   | Reg 12 and 13  | Reg 9  |
| <b>Publicity</b>                             | Regs 14 - 18  | Regs 14 -18  | Reg 10   |
| <b>Consultations</b>                         | Regs 21 29 and 30   | Regs 21, 29 and 30   | Reg 10 + 11  |
| <b>Further Information</b>                   | Regs 19 and 20  | Regs 19 and 20   | Reg 11 and 11A   |
| <b>Transboundary</b>                         | Reg 29  | Reg 29   | Reg 13   |
| <b>Public consultation period</b>            | 30 days   | 30 days  | 30 days  |
| <b>Consultation body consultation period</b> | 30 days   | 30 days  | 30 days  |
| <b>Final decision / records</b>              | Regs 21-23  | Regs 21 -23  | Reg 8  |
| <b>Schedule 1 projects</b>                   | Sch 1   | Sch 1  | Sch 3  |
| <b>Schedule 2 projects</b>                   | Sch 2   | Sch 2  | Sch 3  |
| <b>Matters to consider</b>                   | Sch 4   | Sch 4  | Sch 2  |
| <b>Content of EIA Report</b>                 | Sch 4   | Sch 4  | Sch 1  |

Figure 9: Terminology used in Figure 8

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

## Annex 2: Projects requiring EIA

## Annex 1 Development

Developments of a type identified in Annex 1 of the [EIA Directive](#) require EIA in every case. They are as follows:

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 [Planning Regulations](#)).
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos:
  - where the installation produces asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products,
  - where the installation produces friction material, with an annual production of more than 50 tonnes of finished products, and
  - 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 [Planning Regulations](#)).
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 cubic metres per year.
12. Transfer of water resources other than piped drinking water between river basins above 100 million cubic metres per year or over 5% of flows where the abstracted river exceeds a flow of 2000 million cubic metres per 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 500,000cubic metres 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 or chemical products (200,000 tonnes and over).
21. Storage sites for carbon dioxide in accordance with the CCs Directive.
22. Installations for capturing gases intended for storage under the CCS Directive where the capture is 1.5 Megatonnes or more per year.
23. Any change to or extension of development in this Annex 4 where the change or extension on its own meets the thresholds of this Annexe 4.

## Annex 2 Development

Development of a type listed in Annex 2 of the [EIA Directive](#) requires assessment if it is likely to have significant effects on the environment by virtue of its nature, size or location.

**Figure 10: Schedule 2 Development**

| <b>Sector</b>                         | <b>Column 1:<br/>Description of development</b>   | <b>Column 2:<br/>Applicable thresholds/criteria</b>   |
|---------------------------------------|---|---|
| <b>1. Agriculture and aquaculture</b> | 1(a) Projects for the use of uncultivated land or seminatural areas for intensive agricultural purposes   | The area of the development exceeds 0.5 hectare   |
|                                       | 1(b) Water management projects for agriculture, including drainage projects but excluding irrigation projects   | i) the area of the works exceeds one hectare  |
|                                       | 1(c) Intensive livestock installations (unless included in Schedule 1)  | The area of new floorspace exceeds 500 square metres  |
|                                       | 1(d) Intensive fish farming   | (i) The installation resulting from the development is designed to produce more than 10 tonnes of dead weight fish per year;<br>(ii) where the development is situated in marine waters, the development is designed to hold a biomass of 100 tonnes or greater; or<br>(iii) the development will extend to 0.1 hectare or more of the surface area of the marine waters, including any proposed structures or excavations. |
|                                       | 1(e) Reclamation of land from sea   | All development   |
| <b>2. Extractive Industry</b>         | 2(a) Quarries, open-cast mining and peat extraction (unless included in Schedule 1)   | All development except the construction of buildings or other ancillary structures where the new floorspace does not exceed 1,000 square metres   |
|                                       | 2(b) Underground mining   |   |
|                                       | 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   |

| Sector                    | Column 1:<br>Description of development  | Column 2:<br>Applicable thresholds/criteria   |
|---------------------------|--|---|
| <b>3. Energy industry</b> | 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  | (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 controlled waters   |
|                           | 3(d) Underground storage of combustible gases  |   |
|                           | 3(e) Surface storage of fossil fuels   |   |
|                           | 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.   |

| Sector  | Column 1:<br>Description of development   | Column 2:<br>Applicable thresholds/criteria             |
|---|---|---|
| <b>4. Production and processing of metals</b> | 4(a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting   | The area of new floorspace exceeds 1,000 square metres  |
|   | 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      |   |
|   | 4(c) Ferrous metal foundries  |   |
|   | 4(d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.) |   |
|   | 4(e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process  |   |
|   | 4(f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines  |   |
|   | 4(g) Shipyards  |   |
|   | 4(h) Installations for the construction and repair of aircraft  |   |
|   | 4(i) Manufacture of railway equipment   |   |
|   | 4(j) Swaging by explosives  |   |
|   | 4(k) Installations for the roasting and sintering of metallic ores  |   |
| <b>5. Mineral industry</b>                    | 5(a) Coke ovens (dry coal distillation)   | The area of new floorspace exceeds 1,000 square metres. |
|   | 5(b) Installations for the manufacture of cement  |   |
|   | 5(c) Installations for the production of asbestos and the manufacture of asbestos-based products (unless included in Schedule 1)  |   |
|   | 5(d) Installations for the manufacture of glass including glass fibre   |   |
|   | 5(e) Installations for smelting mineral substances including the production of mineral fibres   |   |
|   | 5(f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.                                       |   |



| Sector  | Column 1:<br>Description of development  | Column 2:<br>Applicable thresholds/criteria   |
|---|--|---|
| <b>6. Chemical industry (unless included in Schedule 1)</b> | 6(a) Treatment of intermediate products and production of chemicals  | The area of new floorspace exceeds 1,000 square metres<br><br>(i) the area of any building or structure exceeds 0.05 hectare; or<br><br>(ii) more than 200 tonnes of petroleum, petrochemical or chemical products is to be stored at any one time. |
|   | 6(b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides                 |   |
|   | 6(c) Storage facilities for petroleum, petrochemical and chemical products   |   |
| <b>7. Food industry</b>                                     | 7(a) Manufacture of vegetable and animal oils and fats   | The area of new floorspace exceeds 1,000 square metres.   |
|   | 7(b) Packing and canning of animal and vegetable products  |   |
|   | 7(c) Manufacture of dairy products   |   |
|   | 7(d) Brewing and malting   |   |
|   | 7(e) Confectionery and syrup manufacture   |   |
|   | 7(f) Installations for the slaughter of animals  |   |
|   | 7(g) Industrial starch manufacturing installations   |   |
|   | 7(h) Fish-meal and fish-oil factories  |   |
|   | 7(i) Sugar factories   |   |
| <b>8. Textile, leather, wood and paper industries</b>       | 8(a) Industrial plants for the production of paper and board (unless included in Schedule 1)                             | The area of new floorspace exceeds 1,000 square metres.   |
|   | 8(b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles |   |
|   | 8(c) Plants for the tanning of hides and skins   |   |
|   | 8(d) Cellulose-processing and production installations   |   |
| <b>9. Rubber industry</b>                                   | Manufacturing and treatment of elastomer-based products.   | The area of new floorspace exceeds 1,000 square metres.   |

| Sector                             | Column 1:<br>Description of development   | Column 2:<br>Applicable thresholds/criteria  |
|------------------------------------|---|--|
| <b>10. Infrastructure projects</b> | 10(a) Industrial estate development projects  | The area of the development exceeds 0.5 hectare.   |
|                                    | 10(b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas  |  |
|                                    | 10(c) Construction of intermodal transshipment facilities and of intermodal terminals (unless included in Schedule 1)   |  |
|                                    | 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)   | The area of the works exceeds 1 hectare.   |
|                                    | 10(g) Construction of harbours and port installations, including fishing harbours (unless included in Schedule 1)   |  |
|                                    | 10(h) Inland-waterway construction not included in Schedule 1, canalisation and floor-relief works  |  |
|                                    | 10(i) Dams and other installations designed to hold water or store it on a long-term basis (unless included in Schedule 1)  |  |
|                                    | 10(j) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport  |  |
|                                    | 10(k) Oil and gas pipeline installations and pipelines for the transport of carbon dioxide streams for the purposes of geological storage (unless included in Schedule 1)   | (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(l) Installations of long-distance aqueducts  |  |
|                                    | 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  | The area of the works exceeds 1 hectare.   |
|                                    | 10(o) Works for the transfer of water resources between river basins not included in Schedule 1   |  |
|                                    | 10(p) Motorway service areas.   | The area of the development exceeds 0.5 hectare.   |

| Sector                         | Column 1:<br>Description of development  | Column 2:<br>Applicable thresholds/criteria   |
|--------------------------------|--|---|
| <b>11. Other projects</b>      | 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;<br>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 development exceeds 1,000 square metres   |
|                                | 11(d) Sludge-deposition sites  | (i) The area of deposit or storage exceeds 0.5 hectare; or  |
|                                | 11(e) Storage of scrap iron, including scrap vehicles                                      | (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                                       | The area of new floorspace exceeds 1,000 square metres  |
|                                | 11(g) Installations for the manufacture of artificial mineral fibres                       |   |
|                                | 11(h) Installations for the recovery or destruction of explosive substances                |   |
|                                | 11(i) Knackers' yards  |   |
| <b>12. Tourism and leisure</b> | 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 | The area of the development exceeds 0.5 ha.   |
|                                | 12(d) Theme parks  |   |
|                                | 12(e) Permanent camp sites and caravan sites   | The area of the development exceeds 1 ha.   |
|                                | 12(f) Golf courses and associated developments   |   |

| Sector                           | Column1:<br>Description of development   | Column 2:<br>Applicable thresholds/criteria  |
|----------------------------------|--|--|
| <b>13. Changes or extensions</b> | 13. 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 development as changed or extended   |
|                                  | 14. Any change to or extension of development of a description mentioned in Schedule 1 (other than a change or extension following within paragraph 23 of Schedule 1) 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 | (ii) In relation to development of a description mentioned in a paragraph in Schedule 1 indicated in <a href="#">Figure 11</a> , the thresholds and criteria in Column 2 of the paragraph of this table indicated in <a href="#">Figure 11</a> applied to the development as changed or extended |
|                                  | 15. 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.   |

Figure 11: Schedule 1 Lookup Table

| Paragraph in Schedule 1 | Paragraph in Figure 10          |
|-------------------------|---------------------------------|
| 1                       | 6(a)                            |
| 2(1)                    | 3(a)                            |
| 2(2)                    | 3(g)                            |
| 3                       | 3(g)                            |
| 4                       | 4                               |
| 5                       | 5                               |
| 6                       | 6(a)                            |
| 7(1)                    | 10(d) (in relation to railways) |
| 7(1)                    | 10(e) (in relation to airports) |
| 7(2) and (3)            | 10(f)                           |
| 8(1)                    | 10(h)                           |
| 8(2)                    | 10(g)                           |
| 9                       | 11(b)                           |
| 10                      | 11(b)                           |
| 11                      | 10(n)                           |
| 12                      | 10(o)                           |
| 13                      | 11(c)                           |
| 14                      | 2(e)                            |
| 15                      | 10(i)                           |
| 16                      | 10(k)                           |
| 17                      | 1(c)                            |
| 18                      | 8(a)                            |
| 19                      | 2(a)                            |
| 20                      | 6(c)                            |
| 21                      | 3(j)                            |
| 22                      | 3(j)                            |

## Selection criteria for screening schedule 2 development

These criteria are specified in Regulation 4(5) and Schedule 3 of the principal regulations. This is a reproduction of Schedule 3 of the Regulations as given in [Circular 1/2017](#) (see also paragraphs 24, 28, 32, 53, of the Circular).

### Characteristics of development

1. The characteristics of development must be considered having regard, in particular, to: -
  - a. the size and design of the development;
  - b. cumulation with other existing development and/or approved development;
  - c. the use of natural resources, in particular land, soil, water and biodiversity ;
  - d. the production of waste;
  - e. pollution and nuisances;
  - f. the risk of major accidents, and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;
  - g. the risks to human health (for example due to water contamination or air pollution).

### Location of development

2. The environmental sensitivity of geographical areas likely to be affected by development must be considered having regard, in particular, to:-
  - a. the existing and approved land use;
  - b. the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
  - c. the absorption capacity of the natural environment, paying particular attention to the following areas:-
    - i. wetlands, riparian areas, river mouths;
    - ii. coastal zones and the marine environment;
    - iii. mountain and forest areas;
    - iv. nature reserves and parks;
    - v. european sites and other areas classified or protected under national legislation;
    - vi. areas in which there has already been a failure to meet the environmental quality standards, laid down in Community legislation and relevant to the project, or in which it is considered that there is such a failure;
    - vii. densely populated areas;
    - viii. landscapes and sites of historical, cultural or archaeological significance.

## Characteristics of the potential impact

3. The potential significant effects of development must be considered in relation to criteria set out under paragraphs 1 and 2 above, with regard to the impact of the development on the factors specified in Regulation 3A(3), taking into account –
  - a. the magnitude and special extent of the impact (for example geographical area and size of the population likely to be affected);
  - b. the nature of the impact;
  - c. the transfrontier nature of the impact;
  - d. the intensity and complexity of the impact;
  - e. the probability of the impact;
  - f. the expected onset, duration, frequency and reversibility of the impact;
  - g. the cumulation of the impact with the impact of other existing and/or approved development;
  - h. the possibility of effectively reducing the impact.

## Annex 3: Development of EIA in Scotland

### First UK Examples in Scotland

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

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

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

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

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.

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.

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

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.

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
- 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

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.

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

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.

## Standards and Effectiveness of Environmental Assessment

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.

This appears to be the direct consequence of several important factors, namely:

- the wider availability and use of published good practice guidance;
- the increasing level of experience of Environmental Impact Assessment particularly in consultancies that have prepared several Environmental Statements;
- a wider recognition that Environmental Assessment can be a useful and positive contribution to project design and management;
- the increasing proportion of Environmental Statements that have been subject to prior scoping and consultation;
- 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.

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.

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.

## The 1999 EIA Regulations

In 1999, the Environmental Impact Assessment (Scotland) Regulations 1999 were introduced to take account of updates to the EIA Directive. The 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 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.

Advice on the practical implications of the 1999 Regulations was published in the form of Circular 15/1999 and PAN 58, which contained much more comprehensive guidance on good practice. The regulations together with the practical advice 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.

## The 2011 EIA Regulations

In 2011, the Environmental Impact Assessment (Scotland) Regulations 2011 were introduced to consolidate, update and replace the Environmental Impact Assessment (Scotland) Regulations 1999 (as amended) which transpose European Directive 85/337/EEC (as amended) into the Scottish planning system. The key changes related to:

- Reasons for negative screening decisions: Following a preliminary ruling from the European Court of Justice in case ref: C-75/08, new provisions were made to clarify the requirement that, where Scottish Ministers or a Planning Authority issue a Screening Decision such that an EIA is not required, the reasons for that conclusion shall be made available on request; and
- Multi-stage consents: following amendments in 2007 applying EIA to reserved matters applications (i.e. applications for approval of matters specified in conditions attached to a planning permission in principle), new provisions were made requiring EIA (including revised/updated EIA) to be considered before approving applications for approval required by conditions attached to a planning permission; and
- Changes or extensions to existing development: following a ruling in the English High Court of Justice, introduction of new provisions determining the need to screen certain planning applications for changes or extensions to existing development.

A number of other miscellaneous changes were made which included changes to the circumstances in which the Health & Safety Executive is required to be consulted on an Environmental Statement to help achieve a more targeted approach to consultation. In addition, new categories of development to which EIA procedures apply in accordance with [European Directive 2009/31/E](#) on the Geological Storage of Carbon Dioxide were added.

Advice on the practical implications of the 2011 Regulations was published in the form of Circular 15/1999 and [PAN 1/2013](#) (which replaced PAN 58).

## The 2017 EIA Regulations

In 2017, the [Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#) revoked, re-enacted and updated, with amendments and savings, the Environmental Impact Assessment (Scotland) Regulations 2011.

The 2017 Regulations introduce a number of changes in terms of the factors and topics that are to be taken into account in the screening, scoping and assessment of any proposal. Many of the factors from the 2011 Regulations remain but greater detail is specified and new topics are introduced. For example; “soil” includes reference to organic matter, erosion, compaction and sealing, and “water” includes references to hydromorphological changes, quantity and quality. Human health is among the factors specifically mentioned in the 2017 Regulations.

For the avoidance of doubt, the 2011 Regulations will still apply where applications had been submitted before 16 May 2017.

The changes introduced by the 2017 Regulations are summarised as follows:

- Terminology change from ‘Environmental Statement’ to ‘EIA Report’.
- In order to determine whether or not development is EIA development it is possible for the applicant to request from the planning authority a “screening opinion” or to the Scottish Ministers for a “screening direction”. Any such opinion or direction must be made in accordance with specified criteria and include detail of the information to be included in the EIA Report. Any such information should take account of any proposed mitigation that removes or reduces identified significant impacts and any associated monitoring measures to secure that mitigation.

- In detailing the information to be included within the EIA Report, the planning authority or the Scottish Ministers must consult bodies with environmental responsibilities before adopting a scoping opinion or scoping direction. Consultation bodies are thereafter required, if requested, to assist the preparation of the EIA Report by making information available to the applicant.
- Time limits that apply to the provision of screening and scoping opinions and directions remain generally unaltered. However, any request for screening opinions and directions should be addressed by the planning authority or by the Scottish Ministers within 21 days of receipt, unless a longer period of up to 90 days is agreed in writing (previously under the 2011 Regulations the period was unlimited). In exceptional circumstances relating to specified factors, the 90 day period can be extended by service of notice on the developer stating the justification.
- The applicant must ensure that a “competent expert” prepares an EIA Report and the planning authority must use “sufficient expertise” in examination of the EIA Report (albeit without definition of either term).
- There is greater emphasis on ‘front-loading’ by the provision of more information at the outset of the application process and subsequent reliance on that information including monitoring to ensure that proposed measures are implemented and the effects of a development are as anticipated. The additional information required must now include descriptions of:
  - The proposed development;
  - Reasonable alternatives relevant to the proposal and its specific characteristics and the reasons for selecting an option, including a comparison of the environmental effects. Reasonable alternatives may relate to the development design, technology, location and the size and scale of the project; and
  - Relevant aspects of the current status of the environment and its likely evolution (in absence of the development)
- There is a prohibition on the grant of planning permission for EIA development unless an EIA is carried out and that the planning authority or the Scottish Ministers have first taken account of the environmental information which is before them (with an equivalent provision for the determination of multi-stage consent. A subsequent decision notice for a planning application for EIA development must also include a description of the mitigation measures and requisite monitoring.

Advice on the practical implications of the 2017 Regulations was published in the form of [Circular 01/2017](#) and an update to [PAN 1/2013](#).

## Attachment A, Part 1 – Guide for the Consultation Bodies on the scoping of an environmental impact assessment report

(With emphasis on the cultural and natural heritage)

### Note on Use of Part 1 of the Guide

This is intended to assist Consultation Bodies 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.

The scope of the guide is on cultural and natural heritage issues but users are encouraged to extend/replace/adapt these issues to cover those which are relevant to them, e.g. 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** Check the site and designated assets layers on GIS. Consider a site visit if 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 or cultural heritage designation or interest, including:

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> SAC (including Marine SAC)                 | <input type="checkbox"/> Sites in the Inventory of Garden or Designed Landscapes in Scotland | <input type="checkbox"/> LNR                            |
| <input type="checkbox"/> SPA (Including Marine SPA)                 |  | <input type="checkbox"/> Non statutory wildlife site    |
| <input type="checkbox"/> Ramsar Site                                | <input type="checkbox"/> Category A Listed Building or its setting                           | <input type="checkbox"/> Long Distance Route            |
| <input type="checkbox"/> Marine Protected Areas                     | <input type="checkbox"/> Inventory Battlefield site  | <input type="checkbox"/> Public right of way            |
| <input type="checkbox"/> European or other Protected species        | <input type="checkbox"/> National Park   | <input type="checkbox"/> Access area/route              |
| <input type="checkbox"/> GCR Sites                                  | <input type="checkbox"/> NSA   | <input type="checkbox"/> Important soil interests       |
| <input type="checkbox"/> World Heritage Site                        | <input type="checkbox"/> (L)BAP species or habitat   | <input type="checkbox"/> Important geological interests |
| <input type="checkbox"/> SSSI (including SSSI with marine features) | <input type="checkbox"/> Regional Park   | <input type="checkbox"/> Important water interests      |
| <input type="checkbox"/> Scheduled monument or its setting          | <input type="checkbox"/> AGLV  |   |

**Yes** If any boxes ticked you should consider whether the effect is likely to be significant. Go to Question 3.

**No** Go to Question 3

### 3. 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 remoteness and wildness?
- Important, typical, distinctive or otherwise important landscape features?
- The historical/cultural interest of the landscape?

**Yes** consider and advise the Competent Authority of the guidance in Technical Appendix 2 of this Handbook, other good practice guides and how they may inform the EIA process. **Go to Question 4.**

**No** If your assessment at this stage leads you to conclude that none of the above the interests identified in 2 or 3 above that could be affected then it would be appropriate to inform the developer and the competent authority to scope out these interests (bearing in mind that they are very specific as listed above). You should highlight that the local authority planners/ heritage advisors will want to comment for their own interests on matters including local landscape or recreational designations, unscheduled archaeology, category B and C listed buildings and conservation areas.

#### 4. What in your view are the key environmental issues raised by the proposal?

Use the table below to circle and note the important issues in terms of your remit.

| Receptor (What may be affected)  | Issue (What the effect might be) | Will it be covered in ES |
|--|----------------------------------|--------------------------|
| International/European designated nature conservation sites (including marine) |                                  |                          |
| National designated nature conservation sites (including marine)               |                                  |                          |
| Regionally and locally important nature conservation sites                     |                                  |                          |
| European and other protected species   |                                  |                          |
| National Park  |                                  |                          |
| Regional Park  |                                  |                          |
| NSA  |                                  |                          |
| (L)BAP species or habitats   |                                  |                          |
| Inventory Designed landscape   |                                  |                          |
| Category A listed building or its setting                                      |                                  |                          |
| Scheduled monument (site and/or setting)                                       |                                  |                          |
| GCR site and other geological and geomorphological interests                   |                                  |                          |
| World heritage site  |                                  |                          |
| Inventory battlefield  |                                  |                          |
| Landscape and visual amenity   |                                  |                          |
| Important recreational/access interests  |                                  |                          |
| Air quality/climate  |                                  |                          |
| Hydrology, river and other freshwater interests                                |                                  |                          |
| soils  |                                  |                          |
| Other (Specify)  |                                  |                          |
| Other (Specify)  |                                  |                          |

Go to Question 5

**5. If there is evidence that any of these issues will not be addressed (or will not be appropriately addressed) in the Environmental Impact Assessment Report:**

**Yes** Include this issue in your letter or e-mail to the developer/Competent Authority, copying correspondence to developer/Competent Authority as appropriate. Go to question 6

**No** Go to question 6.

**6. Do you know of and agree with methodologies and timetables proposed for survey and assessment?**

**Yes** Go to Question 7.

**No** Include this issue in your letter or e-mail to the developer/Competent Authority, copying in the developer/Competent Authority as appropriate. Go to Question 7.

**7. Will the environmental report consider alternative solutions e.g. other sites, designs or processes?**

**Yes** Go to Question 8.

**No** Include this issue in your letter or e-mail to the developer/Competent Authority, copying in the developer/Competent Authority as appropriate. Go to Question 8.

**8. Are cumulative, combined or synergistic effects likely to be important in the assessment and if so do you agree with the proposed methodology and the projects to be assessed in combination?**

**Yes** Go to Question 9.

**No** No, include this issue in your letter or e-mail to the developer/Competent Authority recommending they consider what other plans or projects should be in the cumulative assessment. Go to Question 9.

**9. 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 applicant of the 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.



## Part 2 – Review of the environmental impact assessment report

Part 1 above, relating to scoping must be filled in before completing this Section.

The questions below are intended to guide the Consultation Body on the review of an Environmental Impact Assessment Report (EIAR) and the application proposal that it relates to.

Responses need to make clear whether they relate to the adequacy of an EIAR and/or to the suitability of a proposal.

Use the technical guidance in Parts C and D and Appendices 1 to 7 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.

1. **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 EIAR in response to Competent Authority.
2. **Is the description of the receiving environment accurate?**  
 Yes  No Note in response to EIAR consultation.
3. **Does the EIAR 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 EIAR consultation.
4. **Does the EIAR properly acknowledge any deficiencies or uncertainties in the information base?**  
 Yes  No Note deficiencies in response to EIAR consultation.
5. **Does the EIAR adequately and accurately describe the existing status of natural heritage resources?**  
 Yes  No Note errors/omissions in response to ES consultation.

Complete the table below as fully as possible but concentrate on the important effects.

| Box Att.Advice.1                  |                           |                     | Key advice                            |
|-----------------------------------|---------------------------|---------------------|---------------------------------------|
| Environmental Effects             | Is it identified in EIAR? | Proposed Mitigation | Unavoidable, Residual Adverse Effects |
|                                   |                           |                     |                                       |
|                                   |                           |                     |                                       |
|                                   |                           |                     |                                       |
|                                   |                           |                     |                                       |
|                                   |                           |                     |                                       |
|                                   |                           |                     |                                       |
|                                   |                           |                     |                                       |
|                                   |                           |                     |                                       |
|                                   |                           |                     |                                       |
|                                   |                           |                     |                                       |
| Describe any positive enhancement |                           |                     |                                       |

**6. Are the predictions of effects clear, comprehensive and reasonable?**

Yes  No Note concerns in response to EIAR consultation.

**7. 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.

**8. Will significant effects be avoided or adequately mitigated wherever possible?**

Yes  No Advise Competent Authority accordingly.

**9. Are the significant residual adverse impacts of the proposal adequately compensated for?**

Yes  No Advise Competent Authority accordingly

**10. Are there any proposals for enhancement that need to be weighed against the residual adverse impacts of the proposal?**

Yes  No Advise Competent Authority accordingly.

**11. Where necessary, has the EIAR 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/or legally binding agreements and that it includes effective monitoring review and remedial or corrective action as may be required.

If the EIAR 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

### Key advice

It is important to remember that our response should clearly distinguish between the formal response to the application and comments on the ES. The consultation on the application for consent and the consultation on the associated EIAR are two separate consultations made under two separate pieces of legislation. There may also be occasions where the proposal also requires another consent such as listed building consent. In practice we will nearly always receive consultations on relevant consent and the EIAR at the same time. A single, co-ordinated response should be issued for to these consultations, but keep comments on the ES clearly separate from the comments on the development proposal and any other relevant consents which we are commenting on.

### Appendix 1: Cultural Heritage Impact Assessment

## Introduction

1. This Appendix provides guidance relating to the assessment of a proposal's impacts upon cultural heritage in the context of the EIA process. Given the multiplicity of cultural heritage assets and the range of proposals that may be subject to EIA, it does not provide a rigid approach that must be adopted. Rather, it is intended to provide a framework for a transparent and consistent approach that is broadly applicable hence facilitating the robust application of professional judgement. As with the other Appendices, this should be read in conjunction with the general guidance provided elsewhere in the Handbook; relevant elements are highlighted in the following text. Key terms are defined in [Box Ap1.Info.1](#).
2. The historic environment as defined in [Our Place in Time](#) is 'the physical evidence for human activity that connects people with place, linked with the associations we can see, feel and understand.' It is described as being 'a combination of physical things (tangible) and those aspects we cannot see – stories, traditions and concepts (intangible). It comprises a variety of structures, landscapes and features.' The historic environment is the product of millennia of human activity and is composed of a diverse range of elements, often referred to individually as heritage assets. These include archaeological sites and monuments and other historic features or places, such as marine losses, historic landscapes, gardens and designed landscapes, historic buildings and battlefields. The cultural significance of these assets, or ways in which they are valued, is equally diverse.
3. Some elements of Scotland's historic environment are designated. With the exception of Category B and C listed buildings and conservation areas, designations relate to assets considered to be of national or higher importance. In 2017 in Scotland there were:
  - a. 67,736 listed buildings;
  - b. 664 conservation areas;
  - c. 8142 scheduled monuments;
  - d. Nine historic marine protection areas (MPAs);
  - e. Six World Heritage Sites;
  - f. 367 inventory gardens and designed landscapes; and
  - g. 40 inventory battlefields.

Non-designated assets are less readily quantifiable, but an indication of their number is given by the number of records held by [Canmore](#), the National Record of the Historic Environment, which contains over 300,000 entries. The greater part of the historic environment is not therefore designated. Whilst non-designated assets are most frequently of regional or local importance they still have the potential to meaningfully contribute to understanding of the past and many will be valued for their contribution to Scotland's economy, cultural identity and quality of life. Accordingly, [Our Place in Time](#) sets out a vision for the historic environment that aims to increase understanding of the historic environment, protects it and values it.

4. This vision does not preclude change in the historic environment. The historic environment is not static; it develops and changes. For example, new buildings over time become a part of the historic environment, spatial and visual relationships can be lost and new ones created, whilst all elements are subject to natural processes, such as decay and erosion, and human interventions, such as development, reworking of the asset itself and changes in land management, that change both the asset and its setting. In addition, non-tangible cultural changes may occur that affect the ways in which an asset is valued, hence aspects of cultural significance may vary over time. Given this inherent dynamism, Historic Environment Scotland (HES) believes that protection of the historic environment is not about preventing change. However, change as a result of development should be managed sensitively and with understanding, to achieve the best outcome for the historic environment and for the people of Scotland. Specifically, change should be managed to protect and, where possible, enhance the cultural significance of heritage assets. To achieve this goal, planning decisions must be based on an appropriately detailed understanding of the affected assets' cultural significance, the ways in which the proposal will affect the assets and their setting and the resultant change in their cultural significance.
5. **SPP 2014** sets out the approach to realise these aims in the context of the planning system, stating that the planning system should:
  - *promote the care and protection of the designated and non-designated historic environment (including individual assets, related settings and the wider cultural landscape) and its contribution to sense of place, cultural identity, social well-being, economic growth, civic participation and lifelong learning; and*
  - *enable positive change in the historic environment which is informed by a clear understanding of the importance of the heritage assets affected and ensure their future use. Change should be sensitively managed to avoid or minimise adverse impacts on the fabric and setting of the asset, and ensure that its special characteristics are protected, conserved or enhanced.*
6. The EIA process provides a mechanism to identify the potential impacts of qualifying projects on the historic environment and to allow applicants, competent authorities, consultation bodies and the public to understand any likely significant effects. The process also allows applicants and consultees to discuss and agree mitigation measures necessary to avoid, reduce, or otherwise compensate for those effects. As noted above, the general principles relating to those parts of the EIA process are discussed in detail in the relevant sections of this handbook.
7. It is important to note that whilst relevant policies provide a framework for considering impacts, their application through cultural heritage impact assessment will always be based primarily on professional judgement. As such, differences in opinion will inevitably arise. It is therefore in the interests of all concerned that early discussions are held where there is potential for development to affect the historic environment and that the reasoning behind the conclusions of the assessment are clearly presented.

## Box Ap1.Info.1

## Key information

### Key Terms

Precision and clarity in any assessment will be aided greatly by the consistent use of key terms. The following definitions have been applied in this Appendix:

**Cultural Significance** is a concept first introduced by the [Burra Charter](#) (current edition 2013) and is now widely applied. It is a separate consideration from value (see below) and relates to the ways in which a heritage asset is valued by both specialists and the wider public. It may derive from factors including the asset's fabric, setting, context and associations. It applies to varying degrees to all of Scotland's historic environment. Cultural significance may change over time, for example as use changes or as understanding develops owing to new information or changes in ideas or values. [Historic Environment Scotland Policy Statement](#) (HESPS) provides guidance on identifying and understanding the cultural significance of monuments and historic MPAs (Annex 1 and 4 respectively). This guidance is intended to assist HES in designating these particular classes of asset, nevertheless the terminology used provides a useful framework for discussing the cultural significance of other classes of asset.

**Designated Heritage Assets** comprise listed buildings, conservation areas, scheduled monuments, historic marine protection areas, World Heritage Sites, Inventory gardens and designed landscapes and Inventory battlefields. Such assets meet the relevant designation criteria provided in Annexes 1-6 of HESPS or, in the case of World Heritage Sites, are of outstanding universal value and meet one of the [published criteria](#); their value has therefore been established through the designation process.

**EIA Significance** is used to describe the relative importance of impacts, generally based on the magnitude of change and sensitivity of the receptor.

**Heritage Assets** are features, buildings or places that provide physical evidence of past human activity identified as being of sufficient value to this and future generations to merit consideration in the planning system. These may occur in isolation or form historic landscapes in combination with other heritage assets, which may in themselves be considered to form heritage assets in their own right.

**Sensitivity** is the term EIA practitioners use for value (see definition below) used to provide consistency across disciplines throughout the EIA Report.

**Setting** is defined in [HES' Managing Change Guidance](#) as 'the way the surroundings of a historic asset or place contribute to how it is understood, appreciated and experienced.'

The **Value** of a heritage asset reflects the relative importance of the asset as an element of the historic environment and is most commonly categorised as International, National, Regional and Local. Value may derive from a range of factors which are set out in the HESPS criteria for the determination of national importance in relation to monuments (Annex 1), historic marine protected areas (Annex 4), gardens and designed landscapes (Annex 5) and battlefields (Annex 6) and criteria for determining whether a building or area is of special architectural or historic interest (Annexes 2 and 3 respectively). The value of designated heritage assets has been established by the designation process. However, many assets are not designated and the assessor will need to establish such assets' value in order to carry out the impact assessment. In this context, the HESPS criteria will provide a transparent framework for establishing value and allow consistency in the consideration of designated and non-designated assets.

## Guidance

8. There is no all-encompassing Scottish or UK wide guidance relating to Cultural Heritage Impact Assessment. Therefore this Appendix draws upon the available guidance contained in the following documents:
  - a. Chartered Institute for Archaeologists 2017 Standard and Guidance for Historic Environment Desk-Based Assessment:  
[http://www.archaeologists.net/sites/default/files/CIfAS%26GDBA\\_3.pdf](http://www.archaeologists.net/sites/default/files/CIfAS%26GDBA_3.pdf)
  - b. COWRIE 2007 Historic Environment Guidance for the Offshore Renewable Energy Sector:  
<https://www.thecrownestate.co.uk/media/5876/km-ex-pc-historic-012007-historic-environment-guidance-for-the-offshore-renewable-energy-sector.pdf>
  - c. COWRIE 2011 Offshore Geotechnical Investigations and Historic Environment Analysis: Guidance for the Renewable Energy Sector:  
<https://www.historicenvironment.scot/media/2376/2011-01-offshore-geotechnical-investigations-and-historic-environment-analysis-guidance-for-the-renewable-energy-sector.pdf>
  - d. Historic Environment Scotland 2016 Historic Environment Scotland Policy Statement June 2016:  
<https://www.historicenvironment.scot/archives-and-research/publications/publication/?publicationid=f413711b-bb7b-4a8d-a3e8-a619008ca8b5>
  - e. Historic Environment Scotland 2016 Historic Environment Circular 1:  
<https://www.historicenvironment.scot/archives-and-research/publications/publication/?publicationid=ec209755-9bf8-4840-a1d8-a61800a9230d>
  - f. Historic Environment Scotland's Managing Change in the Historic Environment series:  
<https://www.historicenvironment.scot/advice-and-support/planning-and-guidance/legislation-and-guidance/managing-change-in-the-historic-environment-guidance-notes/>
  - g. ICOMOS 2011 Guidance on Heritage Impact Assessments for Cultural World Heritage Properties:  
[http://www.icomos.org/world\\_heritage/HIA\\_20110201.pdf](http://www.icomos.org/world_heritage/HIA_20110201.pdf)
  - h. Key Agencies Group National and Major Developments: An Agency Joint Statement on Pre-application Engagement:  
<http://www.gov.scot/Resource/0048/00487380.pdf>
  - i. Scottish Government 2011 Planning Advice Note 2/2011: Planning and Archaeology:  
<http://www.gov.scot/Resource/Doc/355385/0120020.pdf>
  - j. Scottish Government 2014 Scottish Planning Policy:  
<http://www.gov.scot/Publications/2014/06/5823>
  - k. Scottish Government 2013 Planning Advice Note 1/2013: Environmental Impact Assessment (amended 2017):  
<http://www.gov.scot/Publications/2013/08/6471/downloads>
  - l. Scottish Government 2017 Planning Circular 1 2017: Environmental Impact Assessment Regulations 2017:  
<http://www.gov.scot/Publications/2017/05/6292>
  - m. Transport Scotland et al 2007 Design Manual for Roads and Bridges (DMRB) Vol 11, Section 3 Part 2: Cultural Heritage:  
<http://www.standardsforhighways.co.uk/ha/standards/dmr/vol11/section3/ha20807.pdf>



## The Role of HES and Local Authorities' Advisors

9. Cultural heritage assets are a finite and non-renewable resource. The planning system seeks to manage change to avoid or minimise adverse impacts upon the fabric and setting of heritage assets and protect, enhance or conserve their special characteristics.
10. Heritage designations are intended to preserve heritage assets and their settings. [SPP](#) (para. 145) directs that permission should only be granted for proposals that adversely affect scheduled monuments or the integrity of their setting in exceptional circumstances and reiterates the [statutory duty](#) of the decision maker when considering a proposal that affects a listed building or its setting to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest (para 141). [SPP](#) broadly directs planning authorities to protect other designated assets.
11. In respect of non-designated archaeological assets, [SPP](#) directs that they should be preserved in situ wherever possible (para. 150), whilst other non-designated assets should be protected and preserved as far as possible, in situ wherever feasible.
12. Competent authorities will be assisted when considering the implementation of the policy above by HES and the local authorities' specialist advisors, as appropriate. Their roles in the EIA process are outlined below.
13. HES is a consultation body on all qualifying EIA projects in Scotland. The role of the consultation bodies is explained in Scottish Government guidance – [Circular 1/2017](#) and [PAN 1/2013](#) (as amended). Whilst this advice relates to the [Planning Regulations](#), the general role of HES as a consultation body is the same across all EIA regimes. HES has a role in providing information to assist with the preparation of an EIA Report where notice has been given that an applicant intends to prepare one. Competent authorities are required to consult HES at the scoping stage before adopting a scoping opinion. Competent authorities are also required to consult HES on an EIA Report. Whilst there is no requirement for competent authorities to consult at screening stage, there may be circumstances where it is considered that additional advice from the consultation bodies would be helpful. Such requests should be targeted and identify the specific issue on which advice is being sought.
14. HES is also a statutory consultee in the planning process and provides advice and comment in relation to the following:
  - a. Scheduled monuments and their setting;
  - b. Category A listed buildings and their setting;
  - c. Inventory gardens and designed landscapes;
  - d. Inventory battlefields;
  - e. World Heritage Sites; and
  - f. development of land which is situated within 800 metres from any Royal Palace or Park, and might affect the amenities of that Palace or Park
15. With regard to historic marine protected areas, HES will be consulted indirectly through Marine Scotland in its capacity as advisor to Scottish Government.
16. HES will comment on:
  - a. screening where requested by a competent authority and where a specific issue has been identified;
  - b. scoping; and
  - c. the EIA report and the associated application for consent.

17. In addition, HES is pleased to engage with applicants through the lifetime of a project. At the pre-application stage in line with the commitments made in the [Key Agencies statement on pre-application engagement](#), HES will provide advice on matters such as mitigation measures in relation to designated assets within HES' remit and the information necessary to support the application. HES will also provide information regarding non-designated assets and historic landscapes via [Canmore](#) and [HLAmap](#). At the post-consent stage, HES will advise on mitigation where it relates to scheduled monuments and hence requires scheduled monument consent.
18. As well as the designated assets listed above, local authorities' advisors provide advice, comment and information regarding:
  - a. Category B and C listed buildings;
  - b. Conservation areas; and
  - c. Non-designated assets such as non-scheduled archaeological assets, non-inventory historic gardens and designed landscapes, historic landscapes, non-listed buildings of architectural or historic interest.

## Screening Report

19. Section [C.1](#) of the Handbook provides general guidance on screening.
20. Requests for a screening opinion should, where possible, identify whether the proposal may adversely affect landscapes and sites of historical, cultural or archaeological significance.

## Preliminary Contact and Liaison

21. Section [C.3](#) of the Handbook provides general guidance on preliminary contact and liaison.
22. Given the stated aims of [SPP](#) with regard to the historic environment and its near ubiquitous nature, it is likely to be a key consideration in the design process, especially where designated heritage assets are involved. Applicants are therefore advised to engage with HES as early as possible where nationally important designated assets are potentially affected. HES will respond to pre-application consultations within 21 days.
23. As noted in the [Key Agencies Group's joint statement on pre-application engagement](#) for national and major developments, experience has demonstrated that pre-application engagement is always most effective when led by planning authorities.

## Scoping Report

24. Section [C.4](#) of the Handbook provides general guidance on scoping.
25. Effective scoping is key to the production of a cultural heritage assessment that is focussed on the potential significant impacts of the proposal and provides sufficient and proportionate information for these impacts to be understood. Provision of sufficient information at this stage will assist consultation bodies in providing meaningful responses with regard to information requirements, key concerns and mitigation.

26. The Cultural Heritage section of the Scoping Report should, as far as possible:
  - a. identify the relevant national and local policies and guidance;
  - b. summarise the available baseline information;
  - c. set out the scope of further baseline studies and surveys to be undertaken;
  - d. identify the likelihood of significant impacts and potential mitigation measures;
  - e. identify areas of uncertainty regarding the proposal, its potential impacts or the baseline that will necessitate further pre-application consultation;
  - f. identify additional supporting information to be presented, such as visualisations;
  - g. set out the proposed assessment methodology.
27. Appropriate study areas should be proposed for the gathering of data. These will be determined by a number of factors including the location, type and scale of proposal. In respect of setting impacts, the application of rigid study areas based on distances may not always be helpful. This approach can lead to large numbers of assets being unnecessarily considered by the assessment, leading to an unwieldy and excessively long EIA chapter. Conversely, the application of study areas that are too narrow can exclude assets that should be included in the assessment. Study areas must therefore be applied with discretion, and it will be helpful at the scoping stage to identify those assets that the assessment will focus upon. Techniques that can help with the identification of an appropriate study area include Zone of Theoretical Visibility (ZTV) analysis. Although ZTV analysis may not be helpful in more built up areas, it can give an indication of the likely visibility of a proposal thereby allow assist in the identification of an appropriate study area.
28. Where there is scope for cumulative effects to arise, the scope of the cumulative assessment should be identified as far as reasonably practicable. This may include the types of cumulative impact (see [Box Ap1. Info.2](#)) and the schemes to be considered.
29. HES will at this stage, as far as possible:
  - a. identify the likely key concerns and, where possible, mitigation measures;
  - b. identify likely requirements in terms of supporting information;
  - c. confirm acceptability or otherwise of the proposed approach to baseline data gathering and assessment.

## Baseline Studies

30. Section [C.6](#) of the Handbook provides general guidance in relation to baseline studies.
31. Appropriate baseline data is essential to the identification and assessment of impacts and the development of mitigation measures as it provides an objective basis for all that follows. The requirements for the baseline will vary from project to project, but, as a guide, the baseline will:
  - a. Identify heritage assets within the proposal site;
  - b. Identify heritage assets in the surrounding area that may be affected by the proposal as a result of change within their setting;
  - c. Where appropriate, consider the potential for previously unrecorded archaeology to be affected by the proposal;
  - d. Describe the value and cultural significance of the potentially affected assets, and where relevant the contribution of setting to that cultural significance.

32. The first phase of the baseline study will be desk-based and will draw upon Historic Environment Scotland databases, including [Canmore](#) and [HLAmap](#), Historic Environment Records (HERs), and documentary and specialist sources as appropriate. In addition to desk-based data gathering, site visits will generally be necessary in order to establish baseline conditions and to gain a full understanding of the relevant assets and their setting. Data may also be gathered regarding previous ground disturbance, topography and other factors affecting archaeological potential. Depending on the results of this work, further baseline studies may be necessary, such as archaeological evaluation, historic building recording or research.
33. When gathering baseline data regarding setting it is important that setting is not drawn too tightly. Based on [Managing Change in the Historic Environment: Setting](#) (HES 2016) the following should be identified/recorded:
- a. current landscape or townscape context, including land use, form and scale of neighbouring structures;
  - b. views to, from and across or beyond the asset;
  - c. key vistas both designed and fortuitous;
  - d. the prominence of the historic asset in views throughout the surrounding area;
  - e. aesthetic qualities, both designed and fortuitous;
  - f. general and specific views including foregrounds and backdrops;
  - g. views from within an asset outwards over key elements in the surrounding landscape, such as the view from the principal room of a house, or from a roof terrace;
  - h. relationships with other features, both built and natural; and
  - i. non-visual factors such as historical, artistic, literary, place name, or scenic associations, intellectual relationships (e.g. to a theory, plan or design), or sensory factors
- In addition, dynamic and sequential views when approaching or moving around the asset may be relevant to its cultural significance. This is particularly likely to be the case in relation to extensive assets, such as designed landscapes and battlefields, where dynamic and sequential views may be key to an appreciation of design or the role of topography in events, for example.
34. The above list concentrates on aspects of setting that contribute positively to cultural significance, but the baseline survey should also gather information regarding detracting factors and neutral aspects of setting.
35. This is a non-exhaustive list and not all of the above will apply in all instances. The use of a fieldsheet, possibly drawing upon the results of desk-based research, may be helpful in order to guide structured recording of the setting and as an aide memoire. Such structured recording will assist in the production of a robust assessment.

## Baseline Reporting

36. The baseline report will generally:
- a. Identify designated and non-designated heritage assets within the proposal site;
  - b. Identify relevant heritage assets in the surrounding area;
  - c. Provide an appropriately detailed narrative of the known history of the proposal site;
  - d. Where appropriate, identify the potential for previously unrecorded archaeology;
  - e. Identify areas of uncertainty and biases or gaps in the data.
  - f. Describe the cultural significance and value of relevant assets,
  - g. Where relevant, describe the setting of assets and the contribution of setting to cultural significance.

37. The baseline may be presented in full in the EIA Report chapter or summarised in the chapter and presented in full in a technical appendix as appropriate. The latter has the advantages of resulting in the production of a standalone, neutral report that is suitable for archiving and allowing the Cultural Heritage chapter to focus on the impact assessment.
38. The baseline should seek to synthesise and present the available information in a logical way describing the history of the proposal site and, where relevant the surrounding landscape. It should describe the cultural significance of the relevant assets and identify their value as established by the designation process or, on a case by case basis for non-designated assets. Generally, this will be considered in terms of local, regional, national and international value. The value of designated assets should be established by their designation, which forms an integral part of the baseline situation. The identification of value of non-designated assets should be undertaken in a transparent fashion taking account of HER data, and relevant guidance, in particular designation criteria. Where the assessor considers that an asset no longer merits its designation or has changed to such an extent that this may affect the assessment, either HES should be consulted and an appropriate approach agreed or a formal request for the designation to be reviewed should be lodged with HES' Designation Team. Both approaches are separate from the baseline study, which is intended to describe the situation 'as is'.
39. Where appropriate, the baseline report should discuss the archaeological potential of the proposal site with reference to factors such as the distribution of known archaeology, topography and previous landuse or ground disturbance.
40. Cultural heritage assets may have strong emotional or other associations for individuals or groups. Such associations pose difficulties for the objective assessor; they may not be readily identifiable, change over time or have little basis in historical fact. Nevertheless, such associations may be an important part of an asset's cultural significance and therefore should be identified in the baseline study as far as reasonably practicable. Where subjective statements relating to aspects such as aesthetic experience, emotions and expectations of the visitor are made, the assumptions underpinning them should be clearly set out and areas of uncertainty highlighted.

## Predicting the Impacts

41. Section [C.7](#) of the Handbook provides general guidance on predicting impacts.
42. In the context of cultural heritage impact assessment, the receptors are the heritage assets and impacts will be considered in terms of the change in their cultural significance. Proposals may result in beneficial impacts, for example where they actively preserve the asset's fabric or remove a negative element of the asset's setting, or adverse impacts, for example where the cultural significance of an asset is degraded by the loss of fabric or inappropriate change in its setting. Change in the setting of an asset may be entirely neutral in terms of the resultant change in the asset's cultural significance, but this will rarely be the case where the actual fabric is affected.
43. When considering setting impacts, visual change should not be equated directly with adverse impact. Rather the impact should be assessed with reference to the degree that the proposal affects those aspects of setting that contribute to the asset's cultural significance.

44. [Box C.7.Info.1](#) of the Handbook provides a list of types of impact; the following are the principal impact types affecting the historic environment:
- a. **Direct Physical Impacts**

These occur where the physical fabric of the asset is removed or damaged as a direct result of the proposal, eg removal of archaeological deposits as a result of the excavation of foundation trenches. Such impacts will generally result from the construction phase and will be permanent.
  - b. **Indirect Physical Impacts**

These occur where the fabric is lost or preserved as a result of the proposal even though the asset lies at a remove from the proposal. Examples include damage to walls as a result of vibration from piling operations or blasting, the degradation of waterlogged deposits as a result of dewatering and changes in currents resulting in increased/decreased erosion. Such impacts may result at any stage of development and are likely to be permanent.
  - c. **Setting Impacts**

These are generally direct and result from the proposal causing change within the setting of a heritage asset that affects its cultural significance or the way in which it is understood, appreciated and experienced. Such impacts are generally, but not exclusively, visual, occurring directly as a result of the appearance of the proposal in the surroundings of the asset. However, they may relate to other senses or factors, such as noise, odour or emissions, or historical relationships that do not relate entirely to intervisibility, such as historic patterns of landuse and related historic features. Also, setting impacts may occur indirectly at some remove from the proposal, for example as a result in changes in traffic. Such impacts may occur at any stage of a proposal's lifespan and may be permanent, reversible or temporary (these terms should be defined in the EIA Report). There may be diurnal or seasonal variations, which should be identified and considered in the assessment.
  - d. **Cumulative Impacts**

Cumulative impacts can relate to the physical fabric or setting of assets. They may arise as a result of impact interactions, either of different impacts of the proposal itself or between the impacts of other projects, or additive impacts resulting from incremental changes caused by the proposal together with other projects already in the planning system or allocated in a Local Development Plan.

## Box Ap1.Info.2

## Key information

### Cumulative Impacts

Cumulative impacts may occur in a variety of ways and may affect the fabric and/or setting of the asset in question. They may be considered to fall into two categories, additive and synergistic.

### Additive Impacts

The magnitude of the combined impacts equals the sum of the individual impacts. Examples are given below.

Residential Proposal A removes 50% of a cropmark enclosure and Residential Proposal B removes the remaining 50%, resulting in complete loss rather than partial preservation. The cumulative impact occurs as a result of the proposals in combination. Such loss may also occur incrementally as a result of multiple developments.

Residential Proposal A is seen from the front of a historically isolated lodge and Residential Proposal B is seen from the rear. The cumulative impact results from the proposals being seen sequentially rather than in combination.

### Synergistic Impacts

The magnitude of the combined impacts is greater than the sum of the individual impacts or the combined impacts interact to give rise to a new impact. Examples are given below.

Coastal Protection Scheme A in combination with Port Proposal A results in a change in the sediment regime along the coast, resulting in erosion and ultimately loss of coastal heritage assets that would be unaffected by either scheme in isolation.

Wind Farm Proposal A occupies part of a panoramic view from a listed building but its distance results in it having a negligible impact. Wind Farm Proposals B, C and D are similarly distant and would likewise have a negligible impact individually. However, taken together they will result in the panorama being dominated by turbines despite their distance from the viewer, leading to a substantially greater magnitude of impact.

Road Proposal A near a Picturesque designed landscape results in traffic noise and vehicle movement being experienced from parts of the landscape. Residential Proposal B can be glimpsed from other parts and Commercial Proposal C is glimpsed from other parts. Individually the proposals have a minor impact upon the designed landscape, but experienced sequentially as one moves through the designed landscape they result in an all-pervasive sense of modern intrusion that is at odds with its design principles, resulting in a substantially greater impact.

45. Significant impacts may arise as a result of ancillary aspects of the proposal, eg temporary infrastructure, such as construction compounds and access tracks, and service trenches, and from mitigation measures such as habitat management and landscaping planting. A full understanding of all stages of the proposal is therefore necessary.
46. Some impacts will change over time within a particular phase of the proposal's lifespan. For example, screening incorporated into the proposal as mitigation may only become effective over time, regeneration of vegetation in reinstated areas may take several years or there may be ongoing change in the landscape, perhaps as a result of forestry operations. Where this is the case, sufficient information should be presented for this to be understood; dialogue with other disciplines, in particular the landscape architect, and, where appropriate, visualisations illustrating change over time will help ensure that this development is fully understood. The information presented should be proportionate to the potential impact; proportionality will most readily be achieved through pre-application engagement with the consultation bodies and competent authority.

47. The historic environment is subject to a wide range of processes that result in its condition being dynamic rather than static. Consequently, the impact should be considered with reference to the do-nothing scenario, which will identify on-going processes that are affecting the fabric or setting of the asset.
48. Cultural heritage impacts will rarely be quantifiable. As such, the assessment of impact magnitude will be led by professional judgement. It is important that this assessment process is presented transparently. Generally, a narrative approach will allow the assessor to set out their reasoning more clearly than a tabulated approach. However, in some instances the latter will be appropriate in view of the need for proportionality in the assessment. Guideline criteria will assist in the consistent and transparent application of professional judgement. Appendix 1 Figure 1 provides an example.

**Appendix 1 Figure 1 – Example of Scale of Magnitude of Changes to the Historic Environment**

| Magnitude          | Guideline Criteria  |   |
|--------------------|---|---|
|                    | Adverse   | Beneficial  |
| <b>Substantial</b> | Changes to the fabric or setting of a heritage asset resulting in the complete or near complete loss of its cultural significance, such that it may no longer be considered a heritage asset. | Preservation of the asset in situ where it would be completely or almost completely lost in the do-nothing scenario.  |
| <b>Moderate</b>    | Changes to the elements of the fabric or setting of the heritage asset that contribute to its cultural significance such that this is substantially altered.                                  | Changes to key elements of the asset's fabric or setting that result in its cultural significance being preserved, where they would otherwise be lost, or restored. |
| <b>Slight</b>      | Changes to the elements of the fabric or setting of the heritage asset that contribute to its cultural significance such that this is slightly altered.                                       | Changes that result in elements of the asset's fabric or setting that detract from its cultural significance being removed.   |
| <b>Negligible</b>  | Changes to fabric or setting that leave significance unchanged.   |   |

## Assessing the Significance of Cultural Heritage Impacts

49. Section [C.8](#) of the Handbook provides general guidance on assessing impacts.
50. As with other EIA disciplines, the significance of impacts is determined with reference to a range of factors, including:
- The asset's value (sensitivity);
  - The degree of change in its cultural significance resulting from the proposal (magnitude of impact);
  - The duration or frequency of the impact; and
  - The likelihood of the impact occurring.
51. Where an impact is deemed to be reversible, as opposed to temporary, this should be highlighted, but should not be factored into the assessment of significance.
52. The asset's value will be established at the baseline stage and in general its sensitivity for the purposes of impact assessment will follow directly from this. As there may be circumstances where other factors come into play, the relationship between value and sensitivity should be clearly articulated in the assessment. Appendix 1 Figure 2 provides an example of guideline criteria.



**Appendix 1 Figure 2 – Example of Scale of Sensitivity of Historic Environment Receptors**

| Sensitivity   | Guideline Criteria  |
|---------------|---|
| <b>High</b>   | Assets valued at an international or national level, e.g. World Heritage Sites, scheduled monuments, Category A listed buildings, Inventory gardens and designed landscapes, Inventory battlefields, historic marine protected areas, some conservation areas and non-designated assets that meet the relevant criteria for designation in the opinion of the assessor.<br><br>Category B or C-listed buildings where the existing designation does not adequately reflect their value, in the opinion of the assessor. |
| <b>Medium</b> | Assets valued at a regional level, e.g. Category B listed buildings, some conservation areas and non-designated assets of similar value in the opinion of the assessor.<br><br>Category C-listed buildings where the existing designation does not adequately reflect their value, in the opinion of the assessor.  |
| <b>Low</b>    | Assets valued at a local level, e.g. Category C listed buildings, some conservation areas and non-designated assets of similar value in the opinion of the assessor.  |

53. The determination of impact significance is a matter of professional judgement and the justification for the assessment of impact significance must be set out clearly. Matrices are frequently used in order to guide professional judgement and allow a degree of consistency across disciplines within the EIA Report. Where they are used, care must be taken to ensure that they are not applied in a mechanistic fashion or in a way that obscures the reasoning behind the assessment. [Figure 7](#) of the Handbook provides an example of such a matrix.

## Mitigation

54. Section [C.9](#) of the Handbook provides general guidance on mitigation.
55. The EIA Report must include a description of the mitigation measures that have been incorporated or will be implemented. In order of preference, mitigation measures in relation to cultural heritage impacts will generally include:
- a. Avoidance measures**  
These completely prevent impacts from occurring and are generally achieved at the site selection or design stage. Examples include locating the proposal so that it does not affect key views and designing the proposal to preserve archaeology in situ. Measures employed during the construction phase, such as fencing off heritage assets to prevent accidental damage, are also assigned to this category.
  - b. Reduction measures**  
These reduce the magnitude of adverse impacts and are again generally implemented at the design stage. Examples include the setting the proposal back from an asset to reduce its visibility in a key view or the development of an engineering solution to reduce the impact of foundations upon archaeological deposits.
  - c. Compensatory or offsetting measures**  
Where an impact has not been avoided the impact may be offset. Most commonly this will involve a programme of archaeological works to offset its physical loss. The degree to which such measures mitigate physical loss of fabric will depend on the asset in question.

## Box Ap1.Info.3

## Key information

### Programme of Archaeological Works

A programme of archaeological works will comprise a suite of works intended to allow for the appropriate recording of an asset to offset its physical loss. The works will generally be staged in order to allow the significance of the asset, in particular its potential as a source of archaeological data, to inform the scope of works.

The programme of works will generally comprise:

- evaluation such as geophysical survey and trial trenching
- excavation or other detailed recording
- reporting and assessment followed by further analysis as appropriate
- publication in a specialist or popular journal where appropriate
- other measures to allow popular access to the results of the works such as interpretation boards or online resources may be appropriate

It should be noted that a programme of works can only ever offset the physical loss of the asset; it cannot be considered, in the strictest sense, to mitigate the impact or to constitute a beneficial impact as the asset itself is still lost. The degree to which recording may offset the physical loss of the asset will depend on the specific asset. For example, recording may almost completely offset the impact upon a buried archaeological feature with no surface expression, the cultural significance of which relates largely to its value as a potential source of archaeological data. In contrast, the loss of a structure, the cultural significance of which relates to its architectural interest and appearance in the landscape, will be offset to a lesser degree by recording.

56. Where cultural heritage mitigation measures have been incorporated in the site selection or design process these should be clearly identified in order that they may be taken into account when considering the impacts and the suitability of any further mitigation measures proposed.
57. In addition to mitigation measures, enhancement measures may be offered by the applicant, for example the proposal may allow for improved access to an asset or include measures to stabilise an asset, that is otherwise unaffected by the proposal. These are distinct from the above and must be considered as separate issues.

## Monitoring

58. Where appropriate, measures for the monitoring of mitigation measures and the proposal should be presented to ensure that mitigation is enacted effectively and that the actual impacts are consistent with the predicted impacts. This is particularly the case in relation to measures such as fencing off and planting of screening vegetation, where effectiveness may vary depending on factors such as the quality of work and rates of growth.

## Considering the EIA Report

59. Section [D.9](#) and [D.10](#) of the Handbook provide general guidance on the evaluation of the EIA Report.
60. As a guide the following will aid in the evaluation of the EIA Report:
  - a. Does the report identify all the potential receptors that may be subject to significant impacts?
  - b. Does the report provide sufficient and proportionate information to understand the cultural significance of the affected assets and the potential impacts upon them at all stages of the proposal's lifespan?
  - c. Have sufficient visualisations been provided?
  - d. Is the assessment transparent and reasoned?
  - e. Are mitigation measures well thought through, achievable and effective?
  - f. Can residual impacts be reduced further through proportionate mitigation measures?

### Appendix 2: Landscape and Visual Impact Assessment

For information on the assessment of landscape and visual impacts of wind energy developments please visit SNH's website: [www.snh.org.uk](http://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 experience it. 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, Routledge (3rd edition) 2013 (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.gov.uk/publications-data-and-research/publications/search-the-catalogue/publication-detail/?id=295>.

Other SNH publications relevant to the assessment of landscape and visual impacts are available from our website. They include topics such as onshore and offshore wind farms, hydroelectric schemes, aquaculture, and wild land:

- a. The Siting and Design of Aquaculture in the Landscape: Visual and Landscape Considerations: <http://www.snh.org.uk/pubs/detail.asp?id=113>;
- b. Guidance on Landscape/Seascape Capacity for Aquaculture: <https://www.nature.scot/sites/default/files/2017-07/Publication%202008%20-%20Guidance%20on%20Landscape%20Seascape%20Capacity%20for%20Aquaculture.pdf>
- c. Visualisations for Aquaculture: draft guidance note: <https://www.nature.scot/sites/default/files/2017-09/Guidance%20Note%20-%20Visualisations%20for%20aquaculture.pdf>
- d. Guidance on Hydroelectric Schemes and the Natural Heritage 2015: <https://www.nature.scot/sites/default/files/2017-06/A1521095.pdf>
- e. Offshore Renewables – guidance on assessing the impact on coastal landscape and seascape Guidance for Scoping an Environmental Statement March 2012 <https://www.nature.scot/sites/default/files/2017-07/A702206%20-Offshore%20Renewables%20-%20guidance%20on%20assessing%20the%20impact%20on%20coastal%20landscape%20and%20seascae%20-%20Guidance%20for%20scoping%20an%20Environmental%20Statement%20-%202013%20March%202012.pdf>
- f. Siting and Designing Wind Farms in the Landscape: <https://www.nature.scot/siting-and-designing-wind-farms-landscape-version-3a>
- g. Assessing Cumulative Impacts of Onshore Wind Energy Developments (2012);
- h. Minerals and the Natural Heritage in Scotland's Midland Valley: <http://www.snh.gov.uk/publications-data-and-research/publications/search-the-catalogue/publication-detail/?id=110>
- i. Visual Representation of Windfarms: Guidance SNH 2017. <https://www.nature.scot/sites/default/files/2017-07/A2203860%20-%20Visual%20representation%20of%20wind%20farms%20-%20Guidance%20-%20Feb%202017.pdf>

SNH's website also includes links to Scotland's Landscape Character Assessment. <https://www.nature.scot/professional-advice/landscape-change/landscape-character-assessment>. The national dataset currently consists of a series of reports, as pdf links or as hard copies. These are being reviewed and a web-based interactive map and descriptions of landscape character types will be available later in 2018.

## Box Ap2.Advice.1

## 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. [Box Ap2.Practice1](#) 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.
3. In particular, EIA for landscape and visual impact assessments should include:
  - a. Screening a project to see if it should be subject to assessment.
  - b. Scoping of the assessment.
  - c. Pre-application discussions and consultation.
  - d. Description of development/proposal.
  - e. Baseline studies.
  - f. Identify impacts at each stage of the project, predict magnitude, durations, etc.
  - g. Mitigation.
  - h. Assess magnitude, duration etc. of residual impacts.
  - i. Assess significance of residual impacts.
  - j. Presentation of findings.
  - k. Consultation.
  - l. Analysis and reporting.
  - m. Decision.

## Box Ap2.Info.1

## Key information

### 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

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.

## Box Ap2.Practice1

## Good EIA Practice

### 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

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.
7. However, human perceptions of place also include things that cannot be seen but which add to the appreciation of places; these are:
  - a. feelings generated by other senses – touch, hearing, smell, taste;
  - b. feelings generated by a knowledge of the place (its cultural and historical associations with people, events, etc.);
  - c. 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:
  - a. natural and semi-natural features and processes;
  - b. the use and management of the land by people now;
  - c. the result of the historical use and management of the land;
  - d. the cultural associations; and
  - e. 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:
  - a. an essential part of our natural heritage resource base;
  - b. a reservoir of archaeological and historical evidence;
  - c. an environment for plants and animals, the condition of which directly affects biodiversity conservation;
  - d. a resource that evokes sensual, cultural and spiritual responses essential to human wellbeing;
  - e. a recreational resource providing enjoyable health benefits;
  - f. an important part of our quality of life, not least as the habitat/environment in which we live.
12. Change 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 is essential to achieve environmental sustainability, having regard to the European Landscape Convention, see [http://www.coe.int/t/dg4/cultureheritage/heritage/Landscape/default\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/heritage/Landscape/default_en.asp)  
The EIA process is an important contribution to improving and informing decisions that may affect landscape and visual amenity. The 1:50,000 scale national programme of Landscape Character Assessments (see: <https://www.nature.scot/professional-advice/landscape-change/landscape-character-assessment>) is also an important basis for consideration of likely landscape and visual effects. SNH's responses to EIA will be built upon the foundations provided by the individual Landscape Character Assessments.
13. 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 personal responses to landscapes.



## Landscape and Visual Effects

14. 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:

- a. Landscape components.
- b. Landscape character – regional and local distinctiveness, tranquillity, wildness, etc.
- c. Special interests e.g. 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.

15. 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.

## Components of the Landscape

16. The components of landscape and the influences on those components are fundamental to our appreciation of landscape character and its distinctiveness.

The components of the landscape are its features and characteristics. The landscape includes:

- a. Visible, physical, objective, tangible components, e.g. landform, buildings.
- b. Land cover, including different types of vegetation.
- c. The influence of human activity.

These can include non-visible components e.g. tranquillity, remoteness, wildness, sound and cultural associations; and intangible components such as scale, pattern, colour etc.

17. Landscape Impact Assessment would build on the relevant 1:50,000 LCA report to describe the baseline landscape (paragraph 5.12, GLVIA3). In order to structure the approach to observation and description, it is useful to have a Fieldsheet 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.

## Physical Features and Characteristics

18. The physical features and characteristics can be grouped under 4 broad headings or categories (See Example Fieldsheets 1 and 2).

| Box Ap2.Info.2  | Key information |
|---|-----------------|
| <p>The physical components of landscape</p> <ul style="list-style-type: none"> <li>• Landform (See Example <a href="#">Fieldsheet 1</a>)</li> <li>• Land Cover and Land Use (See Example Fieldsheets 1 and 2)</li> <li>• Linear Features (See Example <a href="#">Fieldsheet 2</a>)</li> <li>• Single Point Features (See Example Fieldsheet 2).</li> </ul> |                 |

19. These broad categories can be subdivided (See Example Fieldsheets 1 and 2). For example:
- Land Use and Land Cover divided into:
- a. water;
  - b. forestry, woodland and trees;
  - c. agriculture, fields and boundaries;
  - d. settlements;
  - e. other land uses.
20. All of these components are: real, physical, measurable, tangible–touchable as well as visible.
21. 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.
22. 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.
23. 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

24. 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:
- a. visible, spatial characteristics that cannot be touched but can be seen (e.g. colour or pattern);
  - b. characteristics that relate to our other senses, such as hearing, smell, taste (e.g. sounds odours and scents);
  - c. 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](#)).

## Box Ap2.Info.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)

25. 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.
26. 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.
27. 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.
28. 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.
29. For example, removing field boundaries will change the scale and openness. Mineral operations may change texture, colour, scale, balance, form, line, movement and sound.
30. These must, therefore, be important components in landscape character and need to be considered in landscape assessment.

## Landscape Change

31. 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.
32. 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.
33. 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

34. 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.
35. 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.
36. 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.
37. 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.
38. 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](#).

39. 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.,
  - a. landscape – that is there now;
  - b. people that are there now; and
  - c. “impacts” – the changes that the landscape and the people would experience.
40. 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.,
  - a. Specific landscape components e.g. shoreline, hill or river
  - b. Areas of distinctive character
  - c. Valued landscapes such as local beauty spots or specific viewpoints
  - d. Historic, designed landscapes
  - e. People – residents, workers, travellers
41. Reference should be made to the full range of types of impacts shown in [Box C.7.Info.1](#) 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.

42. [Section C.8](#) of the Handbook considers the assessment of the significance of impacts. Essentially this depends, amongst other things on:
  - a. the type of impact;
  - b. the magnitude or scale of the impact;
  - c. duration whether it is a permanent or temporary impact;
  - d. 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).
43. 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 [Fieldsheet 4](#) and [Fieldsheet 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).
44. 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.
45. 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.
46. 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.
47. 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.
48. 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 wellreasoned justification for assessment.
49. For each impact a level of significance can be assigned, such as major, moderate or low or negligible adverse or beneficial effect.
50. Similarly a fieldsheet/checklist can be used for assessing the Visual Impacts.

51. 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 EIA Report

See Sections [D.9](#) and [D.10](#) of the Handbook

52. 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?
53. 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.

| <b>Box Ap2.Practice.2</b>  | <b>Good EIA Practice</b> |
|--|--------------------------|
| <p>Useful Tests to Apply to Environmental Statements in respect of Landscape and Visual Impact Assessments</p> <ul style="list-style-type: none"> <li>• Does the EIA Report contain fair/accurate/appropriate illustrations?</li> <li>• Is there a Map showing relevant Zones of Theoretical Visibility (ZTV) and is it clear what they relate to and how they were compiled?</li> <li>• Are there before and after illustrations such as artist's impressions, sketches, photomontage or computer aided montages or overlays?</li> <li>• Are viewpoints fair and typical and comprehensive of relevant views?</li> <li>• Are maps diagrams and illustrations clear and is the text clear and unambiguous?</li> <li>• Are options or alternatives adequately considered?</li> <li>• Are mitigation measures adequately described and are their effects assessed?</li> <li>• Are residual effects clearly identified and if so could they be further reduced at reasonable cost?</li> </ul> |                          |

## Appendix 2: EXAMPLE FIELDSHEET 1 - DESCRIPTION

|   |                         |                        |                       |                |
|---|-------------------------|------------------------|-----------------------|----------------|
| <b>Location</b>   |                         |                        |                       |                |
| <b>Viewpoint</b>  |                         |                        |                       |                |
| <b>Date</b>   |                         |                        |                       |                |
| <b>Visible, physical components of landform, its features and characteristics</b> |                         |                        |                       |                |
| 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   |                         |                        |                       |                |
| <b>Land cover and land use - water</b>  |                         |                        |                       |                |
| Sea   | Sea loch                | Intertidal             | Mud/sand              | Delta          |
| Estuary   | Loch                    | Lochans                | Pools                 | River          |
| Whitewater  | Burn                    | Drain/ditch            | Canal                 | Waterfall      |
| Reservoir   |                         |                        |                       |                |
| Notes   |                         |                        |                       |                |
| <b>Land cover and land use – forestry, woodland and trees</b>                     |                         |                        |                       |                |
| Coniferous plantation   | Mixed plantation        | Broadleaved plantation | Seminatural woodland  |                |
| Tree clumps/copses  | Shelterbelts/tree lines | Roadside tree belts    | Policy/parkland trees |                |
| Hedgerow trees  | Notable single trees    |                        |                       |                |
| Notes   |                         |                        |                       |                |
| <b>Land cover and land use - agriculture</b>                                      |                         |                        |                       |                |
| Arable  | Horticulture            | Intensive livestock    | Ley grassland         |                |
| Permanent pasture   | Unimproved grassland    | Rough hill grazing     | Moorland              |                |
| <b>Animals:</b>   | Cattle                  | Sheep                  | Pigs                  |                |
|   | Poultry                 | Horses                 | Deer                  |                |
| Notes   |                         |                        |                       |                |
| <b>Land cover and land use - fields and boundaries</b>                            |                         |                        |                       |                |
| 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         |                        |                       |                |
| <b>Field size</b>   | Very large              | Large                  | Medium                | Small          |
| Notes   |                         |                        |                       |                |

## Appendix 2: EXAMPLE FIELDSHEET 2 - DESCRIPTION

|  |                    |                   |                              |                      |
|--|--------------------|-------------------|------------------------------|----------------------|
| <b>Location</b>                              |                    |                   |                              |                      |
| <b>Viewpoint</b>                             |                    |                   |                              |                      |
| <b>Date</b>                                  |                    |                   |                              |                      |
| <b>Land cover and land use - other uses</b>  |                    |                   |                              |                      |
| 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 |
| Industrial                                   | Warehousing        | Airfield          | Retail                       | Utilities            |
| Notes  |                    |                   |                              |                      |
| <b>Land cover and land use - Settlements</b> |                    |                   |                              |                      |
| Nucleated                                    | Scattered          | Linear            | Unplanned                    | Model/planned        |
| Traditional                                  | Modern             | Mixed             | Frequent                     | Infrequent           |
| Absent                                       | Town               | Village/township  | Hamlet                       | Sprawling            |
| <b>Steadings:</b>                            | Regular            | Irregular         | Absent                       | Frequent             |
|  | Infrequent         | Small             | Medium                       | Large                |
|  | Traditional        | Modified          | Extended                     | Converted            |
| Notes  |                    |                   |                              |                      |
| <b>Dominant Building Materials</b>           |                    |                   |                              |                      |
| Stone colour                                 | Brick colour       | Render/colourwash |                              |                      |
| Tile roof colour                             | Slate roof colour  | Stone roof colour |                              |                      |
| Notes  |                    |                   |                              |                      |
| <b>Linear Features</b>                       |                    |                   |                              |                      |
| Motorway                                     | Main road          | B roads           | Minor Roads                  | Tracks               |
| Bridleways/paths                             | Drove roads        | Hill tracks       | Derelict/operational railway |                      |
| Embankments                                  | Cuttings           | Power lines       | High Voltage                 | Low voltage          |
| Rivers/watercourses                          | Overhead telephone | Pipelines         | Coast/shoreline              |                      |
| Notes  |                    |                   |                              |                      |
| <b>Single point features</b>                 |                    |                   |                              |                      |
| Church                                       | Castle             | Ruin              | Folly / Obelisk              | Wind turbine         |
| Cairn  | Bridge             | Large house       | Steadings                    | Signs                |
| Mast/transmitter                             | Industrial site    | Tips/bings        | Quarry/mine                  | Quarry buildings     |
| Notes  |                    |                   |                              |                      |



## Appendix 2: EXAMPLE FIELDSHEET 3 - DESCRIPTION

|   |                  |                    |            |                 |
|---|------------------|--------------------|------------|-----------------|
| <b>Location</b>   |                  |                    |            |                 |
| <b>Viewpoint</b>  |                  |                    |            |                 |
| <b>Date</b>   |                  |                    |            |                 |
| <b>Components of landscape experience – visible/spatial characteristics</b> |                  |                    |            |                 |
| 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     | Sinuuous        |
| BALANCE   | Harmonious       | Balanced           | Discordant | Chaotic         |
| MOVEMENT  | Dead             | Calm               | Active     | Busy            |
| PATTERN   | Random           | Organised          | Planned    | Formal          |
|   | Indistinct       | Irregular          | Regular    | Geometric       |
| MANAGEMENT  | (Semi) Natural   | Derelict/disturbed | Tended     | Manicured       |
| <b>Components of landscape experience – other senses</b>                    |                  |                    |            |                 |
| SOUND   | Silent           | Quiet              | Disturbed  | Noisy           |
| SMELL   | Fresh            | Agricultural       | Coastal    | Industrial      |
| OTHER   |                  |                    |            |                 |
| Notes   |                  |                    |            |                 |

## Appendix 2: EXAMPLE FIELDSHEET 4 - ASSESSMENT

|  |                            |                                 |                                |
|--|----------------------------|---------------------------------|--------------------------------|
| <b>Location</b>                        |                            |                                 |                                |
| <b>Viewpoint</b>                       |                            |                                 |                                |
| <b>Date</b>                            |                            |                                 |                                |
| <b>Proposal</b>                        |                            |                                 |                                |
| <b>Landscape receptors</b>             | <b>Sensitivity</b>         | <b>Impact</b>                   | <b>Significance of impact</b>  |
| <b>What will be affected?</b>          | <b>How important is it</b> | <b>What will the effect be?</b> |                                |
| 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            |                                 |                                |
| <b>Aspects of landscape experience</b> |                            |                                 |                                |
| 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 |

## Appendix 2: EXAMPLE FIELDSHEET 5 - ASSESSMENT

|                                 |                                 |  |                                |
|---------------------------------|---------------------------------|--|--------------------------------|
| <b>Location</b>                 |                                 |  |                                |
| <b>Viewpoint</b>                |                                 |  |                                |
| <b>Date</b>                     |                                 |  |                                |
| <b>Proposal</b>                 |                                 |  |                                |
| <b>Visual receptors</b>         | <b>Sensitivity of viewpoint</b> | <b>Impact: e.g. visual intrusion / obstruction</b> | <b>Significance of impacts</b> |
| 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 |

### Appendix 3: 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 best practice approach published by the Chartered Institute of Ecology and Environmental Management (CIEEM). They are the Guidelines for Ecological Impact Assessment in the United Kingdom: Terrestrial, freshwater and Coastal 2nd ed) dated January 2016 at: [https://www.cieem.net/data/files/Website\\_Downloads/Guidelines\\_for\\_Ecological\\_Impact\\_Assessment\\_2015.pdf](https://www.cieem.net/data/files/Website_Downloads/Guidelines_for_Ecological_Impact_Assessment_2015.pdf)- and the Guidelines for Ecological Impact Assessment in Britain and Ireland: Marine and Coastal dated 2010 at: [https://www.cieem.net/data/files/Resource\\_Library/Technical\\_Guidance\\_Series/EcIA\\_Guidelines/Final\\_EcIA\\_Marine\\_01\\_Dec\\_2010.pdf](https://www.cieem.net/data/files/Resource_Library/Technical_Guidance_Series/EcIA_Guidelines/Final_EcIA_Marine_01_Dec_2010.pdf) refers to this guidance as the 'EcIA'. (Please note that both these Guidelines are in the process of being amalgamated into one comprehensive set.)

SNH supports the use of the Guidelines as a good quality standard and to help provide consistency in the EIA process. An overview of these guidelines is detailed below.
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, and in 2010 Guidelines for Ecological Impact Assessment in the United Kingdom
3. CIEEM 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 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:
  - a. Promote a scientifically rigorous and transparent approach to Ecological Impact Assessment (EcIA).
  - b. Provide a common framework to EcIA in order to promote better communication and closer cooperation between ecologists involved in EcIA.
  - c. Provide decision-makers with relevant information about the ecological impacts associated with a project, positive and negative.
6. With the purpose of:
  - a. Ensuring structured ecological input at all stages of project design and implementation.
  - b. Obtaining best possible outcomes for biodiversity resulting from changes in land use and developments.
  - c. Improving the effectiveness of current EcIA practice on five key fronts through:
    - i. identifying and evaluating ecological features;
    - ii. characterising and quantifying impacts and assessing their significance;
    - iii. minimising negative impacts and maximising positive outcomes through the project design process
    - iv. identifying legal and policy implications and their consequences for decision making; and
    - v. identifying the role of stakeholders in achieving maximum benefits for biodiversity

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 (as Public Bodies in Scotland) have a duty under section 1 of the Nature Conservation (Scotland) Act 2004, to have regard to the conservation of biodiversity, especially those habitats and species of recognised importance in national strategies and local Biodiversity Action Plans, and which frequently occur widely throughout Scotland and outwith designated areas, see for example: <http://www.legislation.gov.uk/asp/2004/6/contents>

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: <https://www.nature.scot/professional-advice/safeguarding-protected-areas-and-species/protected-species/legal-framework/habitats-directive-and-habitats-regulations/european>
8. The EclA 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, CIEEM again emphasise that although described in this staged way, it is important to recognise that EclA is, like the whole EIA process, an iterative process, with early stages (notably project design and scoping) often revisited as the assessment proceeds.
9. In order to promote the methodologies set out by CIEEM and to avoid unnecessary duplication, this Appendix refers to the guidelines and provides links to each of the main EIA stages.
10. Chapter 2 of both the terrestrial and marine CIEEM guidelines refer to scoping procedures at: [https://www.cieem.net/data/files/Website\\_Downloads/Guidelines\\_for\\_Ecological\\_Impact\\_Assessment\\_2015.pdf](https://www.cieem.net/data/files/Website_Downloads/Guidelines_for_Ecological_Impact_Assessment_2015.pdf) and <http://www.cieem.net/screening-and-scoping> respectively.
11. 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.
12. Chapter 3 of the terrestrial, freshwater and coastal guidelines explains about the importance of establishing a baseline to enable the decision maker to determine how conditions will change in light of the effects of a project. It is the predicted baseline conditions at the time the project will be implemented that dictates the baseline against which the impact of the proposal should be assessed. The baseline conditions for each ecological feature should be described clearly, objectively and succinctly using figures and plans where necessary. Where an extensive amount of survey data has been generated, this can be provided as appendices.
13. Chapter 4 of the terrestrial guidelines and Chapter 4 of the marine guidelines deal with the concept of ecological 'valuation', which is the assignment of values and importance to ecological features and resources, including those that have been designated for their nature conservation interest. These discussions are found at: [https://www.cieem.net/data/files/Website\\_Downloads/Guidelines\\_for\\_Ecological\\_Impact\\_Assessment\\_2015.pdf](https://www.cieem.net/data/files/Website_Downloads/Guidelines_for_Ecological_Impact_Assessment_2015.pdf) and <http://www.cieem.net/determining-value>.
14. Like this Handbook, the CIEEM guidelines adopt the concept of 'significance' in the EclA process. This subject is discussed in Chapter 5 of the terrestrial guidelines and Chapter 5 of the marine guidelines at: [https://www.cieem.net/data/files/Website\\_Downloads/Guidelines\\_for\\_Ecological\\_Impact\\_Assessment\\_2015.pdf](https://www.cieem.net/data/files/Website_Downloads/Guidelines_for_Ecological_Impact_Assessment_2015.pdf) and <http://www.cieem.net/impact-assessment>. 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.

15. There are differences in the various criteria currently used for determining whether ecological impacts are significant and decisions are often subjective. The CIEEM 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 CIEEM 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 6 of the terrestrial guidelines and Chapter 6 of the marine guidelines provide 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: [https://www.cieem.net/data/files/Website\\_Downloads/Guidelines\\_for\\_Ecological\\_Impact\\_Assessment\\_2015.pdf](https://www.cieem.net/data/files/Website_Downloads/Guidelines_for_Ecological_Impact_Assessment_2015.pdf) and <http://www.cieem.net/mitigation-compensation-and-enhancement>.
17. Chapter 7 of the terrestrial guidelines and Chapter 7 of the marine guidelines set 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: [https://www.cieem.net/data/files/Website\\_Downloads/Guidelines\\_for\\_Ecological\\_Impact\\_Assessment\\_2015.pdf](https://www.cieem.net/data/files/Website_Downloads/Guidelines_for_Ecological_Impact_Assessment_2015.pdf) and <http://www.cieem.net/consequences-for-decision-making>.
18. The CIEEM guidelines summarise the EclA 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 this Handbook)

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 the CIEEM guidelines.

## Scoping

(See Section [C.4](#) of this Handbook)

21. CIEEM 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). See also <http://www.cieem.net/general-survey-advice>.
22. It is recommended that all ecologists should ensure that scoping:
  - a. obtain information about the project from the project proposer or their engineers/designers;
  - b. identify any particular environmental aims or objectives of the project;
  - c. liaise with other environmental specialists to enable consistent assessment across environmental disciplines;
  - d. identify stakeholders and establish a consultation strategy;
  - e. establish the zone(s) of influence of the proposed activities (area(s) over which ecological features may be affected by the biophysical changes caused by the proposed project and associated activities) or identify the need for modelling to determine the zone(s) of influence (see Box 9) – this can be an iterative process following further research and survey;
  - f. carry out a desk study and site visit to assess likely issues and concerns and to identify habitats and species populations which may be exposed to change as a result of the proposed activities – this should include the full distribution or extent of any ecological features which overlap with the zone of influence;
  - g. identify designated sites within the zone of influence;
  - h. identify data gaps and agree details of proposed survey and research methodologies, including temporal; and spatial considerations – note that this does not preclude requests from stakeholders for further information at a later stage of the EclA;
  - i. determine criteria for selecting ecological features to be included in the assessment, based on their importance (Chapter 4);
  - j. identify relevant legislation, regulations, policies and plans and review their requirements;
  - k. identify all relevant conservation objectives, including any specific objectives for designated sites;
  - l. identify (as far as possible) the need for other consents, in addition to planning permission e.g. European protected species licences or water abstraction licences;
  - m. identify information required to determine the baseline ecological conditions, including environmental trends, management activities, completed developments and development for which consent has been or is likely to be granted;
  - n. identify the factors likely to affect habitats, species and ecosystems, including the structure and function of relevant ecosystems and habitats and the conservation status of relevant habitats and species;
  - o. evaluate experience gained and outcomes of relevant previous projects;
  - p. identify other projects/proposals that could result in significant cumulative effects;
  - q. consider options with the developer and project team for changes in location, siting, phasing and design where significant effects are likely;
  - r. identify opportunities for mitigation and enhancement, including protecting and enhancing ecological networks (Chapter 6); and



- s. continue to refine the scope, 'scoping out' (excluding) potential effects that are no longer considered likely to be significant (providing justification) and addressing newly identified effects that are likely to be significant.

## Pre-application consultations

23. Under the provisions of the Town and Country Planning (Scotland) Act 1997: <http://www.legislation.gov.uk/ukpga/1997/8/contents> and the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 <http://www.legislation.gov.uk/ssi/2013/155/contents/made> pre- application consultations are compulsory for national developments and major developments other than applications for the development of land without complying with conditions subject to which a previous planning permission was granted. These consultations provide an early and effective opportunity to ensure that all avoidance, mitigation, compensation and enhancement measures are fully explored and integrated into the project.

## Impact assessment

(See Sections [C.6](#), [C.7](#) and [C.8](#) of this Handbook)

24. The EclA team (i.e. including the proposer's, competent authority's and other relevant ecologists) should consider impacts from all phases of the proposal including construction, operation, maintenance, closure and any decommissioning stages of any project (see [Figure 3](#) in this Handbook) and in particular:
- a. determine the importance of ecological features affected, through survey and/or research;
  - b. assess impacts potentially affecting important features;
  - c. characterise the impacts by describing their extent, magnitude, duration, reversibility, timing and frequency;
  - d. identify cumulative impacts; and
  - e. identify significant effects of impacts in the absence of any mitigation.
25. Importantly the CIEEM guidelines list the aspects of ecological structure and function to consider when predicting impacts and effects including:
- a. **Available resources**
    - i. territory – hunting/foraging grounds, shelter and roost sites, breeding sites, corridors for migration and dispersal, stop-over sites;
    - ii. food and water (quantity and quality);
    - iii. soil minerals and nutrients; and
    - iv. solar radiation and gaseous resources.
  - b. **Environmental processes**
    - i. flooding, drought, wind blow and storm damage, disease, eutrophication, erosion, deposition and other geomorphological processes, fire and climate change.
  - c. **Ecological processes**
    - i. population dynamics – population cycles, survival / reproduction rates, competition, predation, seasonal behaviour, dispersal / genetic exchange; and
    - ii. vegetation dynamics – colonisation, succession, competition, and nutrient-cycling.

**d. Human influences**

- i. animal husbandry; cutting, burning, mowing, draining, irrigation, culling, hunting;
- ii. excavations, dredging, ground profiling;
- iii. ploughing, seeding, planting, cropping, fertilising, pesticides, herbicides;
- iv. pollution; introduction of exotics, weeds and genetically modified organisms;
- v. disturbance from public access, pets.

**e. Historical context**

- i. natural range of variation over recorded historical period and
- ii. irregular perturbations beyond normal range (e.g. very infrequent storm events).

**f. Ecological relationships**

- i. food webs, predator-prey relationships, herbivore-plant relationships, herbivore-carnivore relationships, adaptation, and dynamism.

**g. Ecological role or function**

- i. decomposer, primary producer, herbivore, parasite, predator, keystone species.

**h. Ecosystem properties**

- i. fragility and stability, carrying capacity, productivity, community dynamics;
- ii. connectivity;
- iii. source/sink;
- iv. numbers in a population or meta-population, minimum viable populations;
- v. sex and age ratios;
- vi. patchiness and degree of fragmentation; and
- vii. ecological coherence.

**i. Other environmental influences**

- i. air quality;
- ii. hydrology and water quality; and
- iii. nutrient status and salinity.

26. 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.

## Evolution of project design and mitigation

(See Sections [C.9](#) and [C.10](#) of this Handbook)

27. This stage should:
  - a. consider alternative location(s) or layouts for the proposed development;
  - b. identify mitigation measures and explain their likely success;
  - c. identify opportunities for enhancement;
  - d. design and agree monitoring strategy and monitoring of mitigation performance with the competent authority (and, in some cases, consultees); and
  - e. provide sufficient information for mitigation measures to be implemented effectively, e.g. through an Environmental management Plan (EMP).
28. 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 this Handbook)

29. The final EclA report (or for EIAs, the Environmental (Impact) Statement) should clearly set out all the ecological information necessary for a robust decision to be made. Key aspects include a description of the following:
  - a. ecological baseline and trends if the project were not to go ahead;
  - b. criteria used to evaluate ecological features;
  - c. criteria used to assess the significance of impacts of the project;
  - d. justification of methods used;
  - e. the identification of likely impacts (positive and negative) on ecological features together with an explanation of the significance of their effects
  - f. mitigation, compensation and enhancement measures;
  - g. legal and policy consequences;
  - h. a note of any key data that were unavailable or missing; and
  - i. a presentation of any analytical techniques used and the analysis itself.

## Follow-up and monitoring

(See [Part E](#) of this Handbook)

30. This stage should:
  - a. confirm the implementation of conditions/planning agreements;
  - b. audit predicted impacts against the actual situation; and
  - c. take measures to rectify unexpected negative impacts and ineffective mitigation, compensation, enhancement measures.

31. The following definitions are used for the terms 'impact' and 'effect':
- a. **Impact** – Actions resulting in changes to an ecological feature. For example, the construction activities of a development removing a hedgerow.
  - b. **Effect** – Outcome to an ecological feature from an impact. For example, the effects on a dormouse population from loss of a hedgerow.

### Appendix 4: 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 often 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 5](#).

## References

3. Reference is made here to the following publications:
  - a. Prosser, C., Murphy, M. & Larwood, J. (2006) Geological conservation: a guide to good practice. English Nature, Peterborough:  
<http://publications.naturalengland.org.uk/file/84039>
  - b. 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
  - c. HR Wallingford (2000). A Guide to Managing Coastal Erosion in Beach/Dune Systems. Scottish Natural Heritage, Perth:  
<https://www.snh.scot/beach-dunes-guide-managing-coastal-erosion-beach-dune-systems>
  - d. Hoey, T.B. et al. (1998). Engineering Methods for Scottish Gravel Bed Rivers. Scottish Natural Heritage Review, No. 47
  - e. Scottish Natural Heritage 2008. Scottish Fossil Code. Scottish natural Heritage, Perth:  
<https://www.snh.scot/scottish-fossil-code-leaflet>
  - f. Wilson R.C.L. (Ed), (1994). Earth Heritage Conservation. The Geological Society in association with The Open University, Milton Keynes
  - g. Scotland's Geodiversity Charter 2018-2023. <http://scottishgeodiversityforum.org/charter/>

## Importance of Geodiversity Considerations in Environmental Impact Assessment

4. Geodiversity (Earth heritage) considerations are an essential element of the EIA process and any significant impacts on geodiversity features and sites must be included in an EIA Report.
5. Annex III of the [EIA Directive](#), and Schedules in all of the EIA regulations, require that an EIA Report 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. Schedules in all of the EIA regulations also specify that an EIA Report may include, by way of explanation or amplification, information on, inter alia:
  - a. the nature and quality of materials to be used in production processes;
  - b. the type and quantity of expected pollutants including pollution of soils and water;
  - c. 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. 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.
8. 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

9. 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.
10. 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.6](#), [C.7](#) and [C.8](#) of the Handbook

11. 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 2](#) below. For each category, examples of potential impacts are given.

**Appendix 4 Table 1: Geodiversity Site Classification and Conservation Objectives Relevant to EIA**

| Classification                     | Sites Types                                       | Conservation Objectives  |
|------------------------------------|---|--|
| <b>Integrity Sites</b>             | 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 |  |
| <b>Finite Sites</b>                | Unique/finite mineral or fossil sites             |  |
|                                    | Old mine dumps/bings                              |  |
|                                    | Underground mines and tunnels                     |  |
|                                    | Buried interest                                   |  |
| <b>Exposure or Extensive Sites</b> | Buried interest                                   |  |
|                                    | 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                 |  |



**Appendix 4 Table 2: Potential Impacts on Geodiversity Sites**

| Indirect/<br>Direct | Type  | Example  | Timescale              | Reversibility       | Comments                             |
|---------------------|---|--|------------------------|---------------------|--------------------------------------|
| <b>Direct</b>       | Loss  | Landtake from site or feature                          | Permanent              | Irreversible        | Usually adverse<br>can be cumulative |
|                     | Removal   | Mineral extraction from geological feature e.g. a kame | Permanent              | Irreversible        | Usually adverse<br>can be cumulative |
|                     | Fragmentation                                       | Partial removal of features                            | Permanent              | Irreversible        | Usually adverse,<br>often cumulative |
|                     | Burial  | Burial by landfill material of quarry or cutting       | Permanent              | Irreversible        | Usually adverse                      |
|                     | Obscuring/<br>covering                              | Afforestation over geological features                 | Long-term              | Reversible          | Usually adverse<br>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 system                           | River engineering works/ flood defences                | Permanent or long-term | May be irreversible | Usually adverse<br>can be cumulative |
|                     | Changes to coastal process                          | Coast protection works                                 | Permanent or long-term | May be irreversible | Usually adverse<br>can be cumulative |
| <b>Indirect</b>     | 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<br>can be cumulative |
|                     | Changes to coastal processes                        | Coast protection works                                 | Permanent or long-term | May be irreversible | Usually adverse<br>can be cumulative |
|                     | Obstructing access                                  | Closure of paths to geological features                | Various timescales     | Usually reversible  | Usually adverse                      |
|                     | Enhancing access                                    | Provision of access and/ or interpretation             | Various timescales     | Usually reversible  | Usually beneficial                   |
|                     | Obscuring views of geological and landform features | Afforestation  | Long-term              | Reversible          | Usually adverse<br>can be cumulative |
|                     | Changes to setting and context                      | Built development                                      | Permanent              | Irreversible        | Usually adverse<br>can be cumulative |

## Project Types Particularly Relevant to Geodiversity Conservation

See Sections [C.4](#), [C.7](#), [C.8](#) and [C.9](#) of the Handbook

12. Almost any project type that may be subject to the EIA procedures could potentially affect geodiversity interests. However, experience indicates that particular project types frequently have significant implications for geodiversity and frequently raise specific issues in the EIA process. These are summarised in Table 3.

**Appendix 4 Table 3: Projects Frequently Resulting in Significant Impacts on Geodiversity (excluding soil impacts covered in [Appendix 5](#))**

| Project Type   | Site Types Potentially Affected  |
|--|--|
| <b>Mineral Extraction</b>  | Inland natural outcrop, river and stream sections, landforms, river systems and other geomorphological sites (both static and active), , old mines and tunnels, caves and karst, unique mineral and fossil sites, mineral waste dumps.   |
| <b>Landfill/landraise</b>  | Active and disused quarries, pits, cuttings, mines and tunnels, static and active geomorphological sites, caves and karst, unique mineral and fossil sites,.   |
| <b>Mineral Restoration</b>   | Rock and sediment 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.  |
| <b>Coast Protection</b>  | Natural coastal processes including erosion and accretion, coastal features including dunes, beaches, cliffs and shore platforms, rock exposure in coastal cliffs and foreshore.   |
| <b>Flood Prevention</b>  | River systems, natural lochs, rock and sediment exposures in river cliffs and stream sections, natural coastal processes including erosion and accretion, coastal features including dunes, beaches, cliffs and shore platforms, rock exposure in coastal cliffs and foreshore.  |
| <b>River Engineering</b>   | River systems, natural lochs, rock and sediment exposures in, river cliffs and stream sections, .  |
| <b>Land Drainage</b>   | River systems, natural lochs, rock exposures in river cliffs and stream sections, natural coastal processes including erosion and accretion, coastal features including dunes, beaches, cliffs and shore platforms, rock and sediment exposure in coastal cliffs and foreshore.. |
| <b>Coastal Reclamation</b>   | Natural coastal processes including erosion and accretion, coastal features including dunes, beaches, cliffs and shore platforms, rock and sediment exposure in coastal cliffs and foreshore.  |
| <b>Hydro Schemes/Reservoirs</b>  | Active and disused quarries, natural lochs, river systems and rock and sediment exposures in stream sections and river cliffs.   |
| <b>Coastal Development e.g. marinas, barrages and built developments</b> | Natural coastal processes including erosion and accretion, coastal features including dunes, beaches, cliffs and shore platforms, rock and sediment exposure in coastal cliffs and foreshore.  |
| <b>Afforestation</b>   | Rocks and sediment exposed in inland outcrops and stream sections and other exposure site types, buried interest, landforms, geomorphology (both static and active), and river systems.  |

| Project Type   | Site Types Potentially Affected   |
|--|---|
| First Cultivation of Uncultivated Land               | Static and active geomorphological sites, river systems, inland outcrop and stream sections, buried interest.   |
| Other Land Management Changes                        | Can affect run off, rates of erosion and accretion, sediment supplies, river systems and rocks and sediment exposed in stream sections.   |
| Dredging   | Natural coastal processes including erosion and accretion..   |
| Major industrial/Housing or other urban developments | Inland natural outcrop, river and stream sections, landforms, river systems and other geomorphological sites (both static and active), old mines and tunnels, caves and karst, unique/finite mineral and fossil sites, mineral waste dumps. |
| Transport infrastructure                             | Inland natural outcrop, river and stream sections, landforms, river systems and other geomorphological sites (both static and active), old mines and tunnels, caves and karst, unique mineral and fossil sites, mineral waste dumps, soils  |

13. Other typical pressures and impacts on geodiversity 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 geodiversity resource, [Figure 3](#) of the Handbook and [Section C.7](#) highlight these life stages.

**Appendix 4 Table 4: Pressures and Impacts on Geodiversity Features, Systems and Habitats (excluding soil impacts covered in Appendix 5)**

| Pressure  | Examples of on-site impacts   | Examples of off-site impacts on active process systems and habitats   |
|---|---|---|
| <b>Mineral extraction (Includes pits, quarries, opencast, extraction from rivers, dunes and beaches).</b> | Destruction of landforms, rock outcrops, and sediment records. Disruption of natural processes. 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 erosion. Disruption of drainage network (impacts on runoff).  |
| <b>Restoration of pits quarries</b>   | Loss of rock, or sediment exposures. Loss of natural landforms. May have positive benefits in creating new accessible sections.   | Changes in drainage regime leading to changes in active system river or (less commonly) coastal processes.  |
| <b>Landfill</b>   | Loss of rock, or sediment exposures. Loss of natural landforms.   | Contamination of water courses. Contamination of groundwater. Redistribution of waste on beach/dune systems.  |
| <b>Commercial and industrial developments</b>   | Large scale damage, obscuring and disruption of surface and sub-surface features including both rock exposures, and landforms.  | Changes to geomorphological processes downstream, arising from channelisation or water abstraction.   |
| <b>Transport infrastructure</b>   | Negative effects from land-take, obscuring or removing rock exposures, disruption of landforms, 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, arising from constraints such as channelisation. During construction phase: contamination of watercourses; changes in sediment supply to active process systems, leading to deposition or erosion; disruption of drainage network (impacts on runoff). |
| <b>Coast protection</b>   | Loss of coastal rock or sediment exposures. Destruction of active and relict landforms. Disruption of natural processes   | Changes to sediment circulation and processes downdrift.  |
| <b>River management/ engineering</b>  | Loss of rock or sediment exposures. Destruction of active and relict landforms. Disruption of active processes.   | Changes to sediment movement and processes downstream. Change in process regime.  |

| Pressure  | Examples of on-site impacts   | Examples of off-site impacts on active process systems and habitats  |
|---|---|--|
| <b>Afforestation</b>  | Loss of visibility of landforms, and rock or sediment exposures. 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   |
| <b>Agriculture</b>  | Landform damage through ploughing, ground levelling and drainage.   | Changes in run-off response times arising from drainage. Episodic soil erosion leading to increased sedimentation and chemical contamination in lochs and river systems. |
| <b>Other land management changes (e.g. drainage, dumping, construction of tracks)</b> | Degradation of exposures and landforms.   | Changes in run-off and sediment supply. Drying out of wetlands through local and distal drainage.  |

**Appendix 4 Table 4: Pressures and Impacts on Geodiversity Features, Systems and Habitats (excluding soil impacts covered in [Appendix 5](#))**

| Pressure   | Examples of on-site impacts  | Examples of off-site impacts on active process systems and habitats   |
|--|--|---|
| <b>Recreation (Infrastructure, footpath development, use of all-terrain vehicles).</b> | Physical damage to small-scale landforms and soils. Stabilisation and other works to secure public safety. Safety works obscuring outcrop.   | Ground disturbance resulting in increased sediment supply to watercourses.  |
| <b>Soil erosion</b>  | Deterioration of landforms.  | Enhanced sedimentation in streams and lakes. Changes in water chemistry.  |
| <b>Climate change: changes in temperature and precipitation</b>                        | Changes in active system processes including coastal, river and freeze-thaw processes. Changes in system state (reactivation or fossilisation). Erosion of features due to increased flooding or storminess. Obscuring of features by or changes in vegetation levels. Drying out of palaeoenvironmental record sites (peat bogs) under dryer/hotter conditions. | 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). |
| <b>Climate change: sea-level rise</b>  | Changes in active coastal system processes Changes in coastal landforms. Obscuring of coastal rock exposures by drowning.  | Changes in wider patterns of erosion and deposition. Increased flooding.  |

## Assessing Significance of Geodiversity Impacts

See [Section C.8](#) of the Handbook

14. Where effects on key geodiversity resources are likely to occur specialist advice is essential. Generally, SNH are likely to consider impacts on geodiversity to be significant where, either alone or in combination with other projects, the project would lead to:
  - a. adverse or beneficial impacts on geological/geomorphological features notified in an SSSI, or on systems and processes relating to these;
  - 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 adverse or beneficial impacts on geodiversity features in Geological Conservation Review (GCR) Sites or on geodiversity features that have been designated, or could merit designation, at a local authority level; or
  - d. major constraints on or improvements to access to or interpretation of an SSSI with one or more notified geological/geomorphological features.
15. 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.

### Appendix 5: 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 Geological Conservation Review (GCR) produced by the UK's Joint Nature Conservation Committee has identified those sites of national and international importance needed to show all the key scientific elements of the geological and geomorphological features of Britain. This includes a range of paleosoil and active geomorphological sites associated with specific soil types (machairs and coastal dunes systems, regoliths soils, alluvial soil along river system) (see Appendix 3: Geodiversity (Earth Heritage) Impact Assessment). The first site notified on the basis of its current soils cover was a Regionally Important Geological and geomorphological Site (RIGS) in Anglesey, Wales in 2004, and further discussion for the development of a network of soils sites across the UK, based on the RIGS (Regionally Important Geological and Geomorphological Sites) approach started in 2012 by the British Society of Soil Science. At present no site has been identified in Scotland where they are also referred as local geodiversity sites.
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). The role of soils in delivering ecosystems services and environmental goods is now widely acknowledged.
3. The Scottish Soil Framework (SSF), published in 2009, provides links to the body of policy and guidance in place in Scotland providing some direct or indirect protection of soils in wider countryside. The principal aim of the SSF is to “[promote the sustainable management and protection of soils consistent with the economic, social and environmental needs of Scotland”. Following on the SSF recommendations, a comprehensive State of Scotland's Soil Report was published in 2011. It, among other things, sets out the drivers and pressures that affect the state of the soil and highlights seven threats to soil functions including contamination, erosion and landslides and compaction. The SSF also lead to the creation of Scotland's soils website part of Scotland Environment website (<http://soils.environment.gov.scot/>) to provide access to data and information about the soils of Scotland and the development of the soil monitoring action plan for Scotland (<http://soils.environment.gov.scot/soils-in-scotland/soil-monitoring/>).

## Importance of Soil Considerations in Environmental Impact Assessment

4. Soil considerations (for example impacts on organic matter, erosion, compaction, sealing) are an essential element of the EIA process and any significant impacts on soils (properties and functionality) should be included in an EIA Report.
5. Annex IV of Directive 2014/52/EU ([the EIA Directive](#)), requires that an Environmental impact Assessment Report (EIA Report) must include a description of the project, including a description of the main characteristics of the operation phase of the project such as the nature and quantity of materials and natural resources used, including soils. Similarly, the description should also provide an estimate of expected residues and emissions such as soil and subsoil pollution. The EIA must consider aspects of the environment likely to be significantly affected by the development, including, soil (for example organic matter, erosion, compaction,



sealing). It also required a description of the likely significant environmental effects of the project resulting from inter alia, the use of natural resources, in particular land, soil, water and biodiversity.

6. Where significant adverse effects are identified, the EIA Report must include a description of mitigation measures.
7. Thus, soils can and should be included in an EIA Report 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.
8. In absence of specific regulation for soil protection in European and UK law 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. 2017 UK Forestry Standard section 6.6 forest and soil), GAEC cross compliance, pollution control GBR rules).
9. Although there is no one-size-fits-all soil protection policy for Scotland, there is a range of policies and legislation that gives some additional protection to some aspects of soil and influences how our soils are managed. For example soil is specifically mentioned in relation to the application of sewage sludge on agricultural land regulation, principally on the basis of soil acidity and toxic metal concentrations in sludge and the receiving soil. Consideration for soil as a carbon repository is also integral many policy and regulations relevant to activities on Scotland's peatland. The [National Planning Framework](#) recognises Scotland's carbon rich soil as a key asset to protect. Areas of carbon rich soil, deep peat and priority peatland habitats are recognised in the setting of windfarm strategic planning. [The National Peatland Plan \(2015\)](#) also enhances the protection of Scotland peatlands soils and promotes action towards restoring this unique resource. The value of certain soil type and soil functionality as natural heritage features of national importance is considered by SNH when considering the impact of development proposals. ([Soils of National Conservation Importance in Scotland, 2016](#))

## Soil Functions

10. For assessment purposes, soils can be considered to have following general functions (see [State of soil, 2011](#)):
  - a. growing food and trees
  - b. filtering water
  - c. controlling the rate at which rain water reaches watercourses
  - d. storing carbon and exchanging greenhouse gases with the air
  - e. supporting valuable habitats, plants and animals
  - f. preserving cultural and archaeological heritage
  - g. providing raw materials
  - h. providing a platform for building on
11. These functions can be linked to the concept of ecosystem goods and services and natural capital 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

12. 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.

## Sources of Information

See Sections [C.4](#), [C.5](#) and [C.6](#) of the Handbook

13. 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. The new Scotland soil website (SSW) has become a hub for soil information in Scotland.
14. It links to the work of the Scottish soil monitoring Action Plan which provides details of key policies, legislation and guidance (<http://soils.environment.gov.scot/resources/soil-protection/>) which may require soil information as part of their development and implementation and link to possible source of soil information as used in various monitoring activities in Scotland (<http://soils.environment.gov.scot/soils-in-scotland/soil-monitoring/>).
15. SSW also provides access to soil and soil derived maps, spatial data and their interpretation (<http://soils.environment.gov.scot/maps/>), The information is mostly provided as coarse scale (1:250,000 scale to 1:25,000), it include three main types of soil maps available on this website as well as point data relating to specific locations where soils have been sampled and analysed for a range of properties:
  - a. Soil maps show the distribution of soils across the land.
  - b. Capability maps classify land based on the potential for what it could grow and how well it could grow it. These take into account soils, climate and landscape.
  - c. Thematic maps show the distribution of a specific soil property such as soil organic matter content.
  - d. Point data are data that relate to soils at a specific location (from national scale survey).
16. The website is maintained and developed as part of Scotland's Environment web access and updated to include new soil information as it become available.
17. 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.
18. There is, however, a particular scarcity of data in urban and peri-urban areas (with the exception of Glasgow conurbation BGS urban survey), 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.

19. 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.

## References

20. Useful sources of soil information for EIA have been collated under Scotland's soil website (part of Scotland Environment web) - <http://soils.environment.gov.scot/> including:
- a. Visualisation and download information for a range of soil maps and soil data
    - i. Soil maps show the distribution of soils across the land. Soil maps were originally produced by field surveyors who walked over the landscape, looking at the soils and other features such as vegetation, and drew boundaries between different soil types. Mapping methods have evolved over time, and now make use of techniques such as aerial photography and satellite-based Global Positioning Systems (GPS).
    - ii. Capability maps classify land based on the potential for what it could grow and how well it could grow it. These take into account soils, climate and landscape. Capability maps are available for both agriculture and forestry.
    - iii. Thematic maps show the distribution of a specific soil property such as soil organic matter content.
    - iv. Point data are data that relate to soils at a specific location. At these points, soils have been described, sampled and later analysed for a range of properties. The point data maps show where the soils were sampled and selected properties of interest.
  - b. Information about other sources of soil data under the soil monitoring section <http://soils.environment.gov.scot/soils-in-scotland/soil-monitoring/>
  - c. Information on key policies, legislation and guidance relevant to soil under <http://soils.environment.gov.scot/resources/soil-protection/>
  - d. Resources for land managers and developers (<http://soils.environment.gov.scot/resources/land-managers-planners-and-developers/>) also provide:
    - i. Links to supporting guidance relevant to soil in development management and EIA
    - ii. Information on tool kits / soil surveying and how to develop skill set / seek expert advice
  - e. Resources for other land managers
    - i. Forests and woodlands - <http://soils.environment.gov.scot/resources/land-managers-planners-and-developers/>
21. Other publications referred to in this section included:
- a. Staff Guidance on National Interest Issues - Soils of National Conservation Importance in Scotland – update 28 / 07/ 2016 – <https://www.nature.scot/sites/default/files/2017-06/A465864.pdf>
  - b. National Peatland Plan working our future (2015) <https://www.snh.scot/climate-change/taking-action/carbon-management/restoring-scotlands-peatlands/scotlands-national-peatland-plan>

- c. [Soils@Hutton - Soil and Natural Capital - http://www.hutton.ac.uk/research/themes/safeguarding-natural-capital/soilshutton](http://www.hutton.ac.uk/research/themes/safeguarding-natural-capital/soilshutton)
- d. UK Forestry Standard (2017) - [https://www.forestry.gov.uk/pdf/fcfc001.pdf/\\$file/fcfc001.pdf](https://www.forestry.gov.uk/pdf/fcfc001.pdf/$file/fcfc001.pdf)
- e. Regionally Important Geological and Geomorphological Sites - <http://wiki.geoconservationuk.org.uk/index.php5?title=RIGS>
- f. State of Scotland soil 2011 - <http://www.sepa.org.uk/media/138741/state-of-soil-report-final.pdf>

## Predicting Soil Impacts: Projects Likely to Give Rise to Impacts on Soils

See Sections [C.4](#), [C.7](#) and [C.8](#) of the Handbook

- 22. 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 any remediation and restoration efforts to return a soil to its previous condition and functionalities will be beyond reasonable mind. Where activities take place on carbon rich (peat and peaty) soil, any loss or disturbance of surface horizon will also lead to irreversible loss of soil carbon by exposing the threat of carbon oxidation or erosion. Oxidation of disturbed peat soil will contribute to increase pool of atmospheric greenhouse gases whereas dissolved and particulates carbon loss from soil erosion and runoff will impact on water and biodiversity quality.
- 23. 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:
  - a. urban planning and infrastructure development (included housing, SUDS, transport and power supply infrastructure, footpath development);
  - b. other developments such as landfill, sewage works, hazardous installations and industrial developments;
  - c. activities associated with the reclamation of contaminated and derelict land prior to development;
  - d. 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);
  - e. land drainage for improving land productivity or access to land;
  - f. mineral, gravel, sediment and peat extractions ;
  - g. archaeological, geological or soil excavations;
  - h. land and habitat creation, restoration and enhancement;
  - i. recreation (e.g. footpaths, sports facilities, park and greenfield);
  - j. land use changes associated with forestry;
  - k. land use changes associated with agriculture (including energy crops).
- 24. Some of these activities may not be subject to EIA depending on size of application or specific context. For detail in the Interpretation of definitions of certain project categories of annex I and II of the EIA Directive ([http://ec.europa.eu/environment/eia/pdf/cover\\_2015\\_en.pdf](http://ec.europa.eu/environment/eia/pdf/cover_2015_en.pdf))
- 25. Some of the main project types likely to give rise to impacts on soils in EIA on how it impacts on-site and off-sites on soil and the wider environment is illustrated in [Figure 1](#) below.

## Predicting Soil Impacts: Impacts on Soils

See Sections [C.4](#), [C.7](#) and [C.8](#) of the Handbook

26. The impacts of these projects on soil properties and soil processes are complex and may include amongst others:
- a. 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).
  - b. 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.
  - c. 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).
  - d. alteration of soil physical properties, including soil compaction and structural deterioration from heavy machinery, trampling and handling of soil.
  - e. increase in soil pollution loading, e.g. from heavy metals, organic compounds, industrial wastes, fertilisers and pesticides.
  - f. decline in soil fertility, e.g. removal of soil nutrients or decline in nutrient input sources.
  - g. loss of or change in biodiversity (both above ground vegetation and soil biodiversity), e.g. soil macrofauna, fungi and microbial communities. This may also include contamination by invasive species.
  - h. loss of organic matter. This may lead to increased dissolved organic carbon (DOC) in watercourses and increased emission of greenhouse gases.
  - i. homogenisation and loss of characteristic horizons, e.g. during stripping and storage of topsoil and subsoil in planning development.
  - j. damage to soil historical and archaeological value, including destruction or modification of palaeosoils 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).
  - k. other direct impacts on geodiversity features, including removal or alteration of parent material., especially when associated with dynamic systems (coastal and fluvial geomorphology)
  - l. loss or sealing (burial) of soil.
  - m. loss of soil water buffer and storage capacity relevant to control of water supply and flood control.
27. [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 Sections [C.9](#), and [D.7](#) of the Handbook

28. 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.
29. 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 is 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.
30. 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. Mitigation measures should consider how important soil properties these properties are to maintain the function soils considering:
- a. The soil physical characteristics of the whole profile including:
    - i. Soil texture
    - ii. Soil structure
    - iii. Soil horization (i.e. nature and arrangement of individual horizons)
    - iv. depth – both total and of individual horizons
    - v. soil stoniness
  - b. The soil chemistry surface and sub soil including:
    - i. organic matter content
    - ii. soil pH
    - iii. nutrient status
    - iv. salinity parent material characteristics
    - v. soil water regime – vertical drainage and runoff characteristics
    - vi. vegetation cover, especially peat forming communities
    - vii. slope gradient
  - c. The soil biological indicators (when appropriate).
31. 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.

**Appendix 5 Figure 1: Examples of Pressures and their Impacts on Soils**

| Pressure   | On-site impacts  | Off-site impacts   |
|--|--|--|
| <b>Reclamation of contaminated land</b>                  | Disposal of contaminants. Changes in chemistry. Lack of suitable quality soil.   | Leakage of contaminants to watercourses.   |
| <b>Location of developments</b>                          | Soil and carbon 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. |
| <b>Urban and infrastructure development</b>              | Soil loss or burial (sealing); contamination; structural damage.   | Ground and surface water contamination.  |
| <b>Land instability</b>                                  | Shrinkage/swelling of clays; compaction; erosion.  | Movement of soil off-site, landslide.  |
| <b>Land stabilisation (river and coastal protection)</b> | Nutrient flushed from newly flooded areas, soil water change, salinization.  | Reduced sediment yield, leading to erosion elsewhere, leaching of soil contaminant to water course.          |
| <b>Land drainage</b>                                     | Oxidation of organic matter; physical damage; soil water changes; effects on pH.   | Sedimentation of water courses. Changes to water chemistry.  |
| <b>Mineral extraction</b>                                | Loss of soil; physical damage; effects on biota; contamination; soil stripping and storage.  | Contamination of water courses. Changes to sediment load.  |
| <b>Archaeological and other soil excavations</b>         | Damage to palaeosols, soil palaeoenvironment records.  | Compound loss of historical landscape features   |
| <b>Land restoration</b>                                  | Problems associated with reinstatement of previous soil conditions, suitability of soil properties to support restored habitats.                 | Changes to water chemistry.  |
| <b>Recreation</b>  | Erosion; compaction; loss of organic matter.   |  |
| <b>Forestry</b>  | Erosion; changes to pH; changes to horizons; changes to soil water; effects on soil biota.   | Increased sediment yield. Pollution of surface water. Changes to run-off. Changes in water chemistry.        |
| <b>Agriculture</b>                                       | 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.                              |

### Appendix 6: Outdoor access impact assessment



## Introduction

Outdoor access can be undertaken for a variety of purposes including recreation, education, socialising, health benefits and travel from one place to another. SNH has a particular interest in recreational activities which:

- depend on or are inspired by the qualities of the outdoors – including natural places and wildlife, and;
- are informal, non-competitive and available
- to the general public, without the need for membership of groups or societies.

1. **The Land Reform (Scotland) Act 2003** established rights of responsible access to most land and inland water for outdoor recreation, and for some educational and commercial purposes, and further information can be found at <http://www.outdooraccess-scotland.com/>. Local and National Park authorities (known as “access authorities”) have powers and duties to uphold access rights. Public policy now places strong emphasis on promoting outdoor access and access rights are a material consideration in planning decisions. These interests are therefore an essential element of the EIA process and any significant impacts on outdoor access resources, such as paths or places used for recreation, must be included in an EIA Report.
2. The general assessment procedures described in the main text of this Handbook are relevant and applicable to outdoor access, which should be an integral consideration at every step in the process.
3. There are very close relationships between the likely effects of development on visual amenity (see [Appendix 2](#)) and on outdoor recreation. Schedules in the EIA regulations specify that an Environmental Statement may also include information on expected pollutants such as noise, vibration, light, heat, and radiation. This Appendix deals primarily with issues that arise when developments physically affect people’s ability to engage in outdoor recreation, rather than wider effects on the settings where recreation takes place - which can indirectly affect people’s enjoyment of the outdoors. Throughout the EIA process, impacts on outdoor recreation should be integrated with other assessments (including LVIA) to the extent that they may be relevant.
4. 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 the access authority considers that more information is required to assess such impacts, it should encourage the competent authority to require submission of this information.
5. Various types of development can provide opportunities to improve access provision in and around the site. Where significant adverse effects are identified, the Environmental Statement must include a description of mitigation measures (see below).

## Outdoor Access resources that are Relevant to Environmental Impact Assessment

See Sections [C.4](#), [C.6](#), [C.7](#) and [C.8](#) of the Handbook

6. The potential effects of a project on outdoor access will usually depend on the following main considerations:
  - a. the type of outdoor access that takes place in the area;
  - b. the nature of any formal provision for access, such as paths, or specific recreational attractions such as viewpoints, parks or popular destinations; and
  - c. the nature, scale, location and duration of the project.

7. In addition to direct impacts on the integrity of paths or places used for outdoor access, some projects could also affect the ease with which people can, in practice, use these resources (sometimes broadly referred to as accessibility). This includes, for example, the relative ease of access for different users who are included within access rights, such as people with disabilities, cyclists and horse riders, which largely depends on minimising any physical barriers or obstructions on the site. This may also include wider considerations such as impacts on people’s ability to get to and from a particular recreational destination (including car parking), and effects on the range and availability of recreation opportunities close to where people live.
8. Table 1 below summarises the types of outdoor access resources that are relevant to the EIA process.

**Appendix 6 Table 1: Outdoor Access Resources Relevant to EIA**

|                                 |   |
|---------------------------------|---|
| <b>Area based facilities</b>    | <ul style="list-style-type: none"> <li>– National Parks, Regional Parks, Country Parks</li> <li>– National Nature Reserves and Local Nature Reserves</li> <li>– Local open space and green infrastructure</li> <li>– Munros and other popular hills, beaches and other popular coastal areas, and other types of recreational attraction</li> <li>– Lochs and reservoirs used for water-based recreation</li> <li>– Places that are used or promoted for more specialised recreational activities such as surfing, diving or climbing</li> <li>– More generally, recreation can take place anywhere that access rights apply, although the level of use will clearly vary and may often be limited</li> </ul> |
| <b>Linear access facilities</b> | <ul style="list-style-type: none"> <li>– Core Paths and the wider paths network</li> <li>– Long distance routes, regional routes, National Walking and Cycling Network</li> <li>– Public rights of way</li> <li>– Rivers and canals</li> </ul>  |

9. Developments can affect people’s ability to enjoy outdoor recreation in a number of different ways, as shown in Table 2 below.

**Appendix 6 Table 2: Effects of Development on outdoor Recreation**

| Type of effect   | Implications  |
|--|---|
| Effects on the quality of the settings where recreation takes place. | These primarily include impacts on landscape as considered an earlier Appendix. Some of these wider values can be particular to certain recreational users, including a sense of solitude, challenge and hazard, or enjoyment of wildlife .                         |
| Direct effects on paths or places used for recreation.               | Restriction of access, barriers, physical constraints or limitations on the use of the site or facility, or even its loss.  |
| Specific effects on particular recreational activities.              | Restrictions or limitations on the kinds of recreation pursued, or in the ways in which they are practised, and limitations on specific recreations, for example by reduction in available space or loss of access for boat launching.                              |
| Foreclosure on options for future access development.                | Any of the above which might limit the development of future options to improve recreation opportunities for a community – including proposals in statutory plans or local access strategies or potential opportunities which have not been formalised in this way. |
| 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 which previously had more space for their own use.                                  |
| Effects on wider accessibility.                                      | Reductions in 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 cars).  |

## Types of Impact

See Sections [C.4](#), [C.7](#) and [C.8](#) of the Handbook

- All significant potential effects on outdoor access should be assessed. These are generally likely to fall into one or more of the types summarised in Table 3 below.

**Appendix 6 Table 3: Examples of Potential Outdoor Access Impacts**

| Type   | Example   | Timescale          | Reversibility        | Comments                          |
|--|---|--------------------|----------------------|-----------------------------------|
| <b>Loss/closure/<br/>extinguishment</b>              | Removal of land used for recreation by built development                                  | Permanent          | Usually irreversible | Usually adverse can be cumulative |
|  | Permanent closure of path at motorway   | Permanent          | Irreversible         |                                   |
|  | Temporary closure for mineral extraction  | Short-medium term  | Reversible           |                                   |
| <b>Diversion</b>                                     | 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           |                                   |
| <b>Reduction in amenity</b> (see Appendix on LVIA)   | Industrial plant/factory causes landscape/visual impact on section of long distance route | Permanent          | Irreversible         | Usually adverse can be cumulative |
|  | 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 |
| <b>Enhancement of amenity</b> (see Appendix on LVIA) | Golf course adjacent to a country park reclaims derelict land                             | Permanent          | Irreversible         | Usually beneficial                |
| <b>Obstructing access routes</b>                     | Closure of paths to e.g. Viewpoints and natural features                                  | Various timescales | Usually reversible   | Usually adverse                   |
| <b>Restriction on types of access</b>                | Construction of a golf course (access rights are restricted to crossing such areas)       | Various timescales | Usually reversible   | Usually adverse                   |
| <b>Enhancing access</b>                              | Provision of new recreational opportunities and/or interpretation                         | Various timescales | Usually reversible   | Usually beneficial                |
| <b>Changes to setting and context</b>                | Built development adjacent to Regional Park   | Permanent          | Irreversible         | Usually adverse can be cumulative |

## Types of project with particular relevance to outdoor access

11. Almost any project that is subject to the EIA procedures could potentially affect outdoor access. It is always important to be alert to these potential impacts, and experience indicates that particular types of project often raise specific issues. These are summarised in Table 4.

**Appendix 6 Table 4: Project Types and Related Potential Impacts**

| Project Type   | Potential Impacts  |
|--|--|
| Mineral Extraction                                     | Adverse effects on recreation from noise, dust, vibration and visual impact, and can require closure or diversion of paths for long periods of time.   |
| Landfill/landraise                                     | Adverse effects on recreation from noise, dust, smell and visual impact and can require closure or diversion of paths for medium periods of time.  |
| Flood Prevention                                       | Direct and indirect impacts on recreational amenity and can lead to permanent closure or diversion of paths.   |
| Windfarms  | Can change perception and amenity of both the area and paths through visual and noise impacts (for example on wild land qualities), access tracks can interfere with/or facilitate public access, general deterrent /attractor effects.    |
| Hydro Schemes/ Reservoirs                              | Can affect wild land qualities of remote areas, interfere with pre-existing access and adversely affect amenity of routes along rivers/loch sides. Can also affect existing water-based recreation in rivers and create new opportunities. |
| Marine renewable schemes                               | Effects on coastal access and amenity and outdoor activities relying on coastal or maritime locations.   |
| Power lines, masts and other pylons                    | Effects on valued landscapes especially in remote areas.   |
| Afforestation  | Can affect wild land qualities of remote areas, interfere with pre-existing access and adversely affect amenity of paths and recreational attractions in the uplands.  |
| Roads  | Major road proposals often sever access routes and may lead to extinguishment or diversion. Recreation in adjacent areas can be adversely affected by noise and visual intrusions.   |
| Major urban developments                               | Can reduce amenity value of popular places and increase pressures for use on other areas. Can lead to loss or diversion of paths.  |
| Rural industrial and statutory undertaker developments | Effects on valued landscapes, loss of rural character, inappropriateness in the setting, loss or division of paths, pollution.   |

## Assessing Significance of Outdoor Access Impacts

See Sections [C.7](#), [C.8](#) and [D.9](#) of the Handbook

12. Where effects on key outdoor access resources are likely to occur, specialist advice should be sought. These effects could be significant if, either alone or in combination with other projects already approved, the project would lead to:
  - a. permanent or long-term effects on resources on which enjoyment of the natural heritage depends;
  - b. effects on recreational resources that are of more than local use or importance, especially if that importance is national in significance;
  - c. major constraints on or improvements to access or accessibility to designated natural heritage sites;
  - d. where mitigation and/or compensatory or alternative recreational provision is considered to be inadequate.
13. The scale of prospective effects on recreation and access can be assessed using a range of criteria, not all of which will apply in any one circumstance. The main factors to bear in mind are as follows.

**Appendix 6 Table 5: Assessing the Scale of Effects on Outdoor Recreation and Access**

| Assessment Factor   | Commentary   |
|---|--|
| The magnitude of impacts on access, or on settings in which recreation takes place. | Direct physical effects may vary from complete loss of a resource to minor and/or marginal impacts. Visual or noise effects might be accommodated or open to mitigation in an urban edge setting, but much less acceptable or even beyond amelioration in remoter countryside.                     |
| The nature, intensity, frequency of occurrence or timing 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 increase over time.                                    | This is a precautionary point of reasonable anticipation of how effects might increase in scale over the years and thereby make mitigation ineffective.  |
| Scarcity value of the recreation resource on a wider strategic scale.               | 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 opportunity spectrum (ROS).                           | The recreation opportunity 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, and solitude and quiet enjoyment at the other. |

## Opportunities for Mitigation

See Sections [C.9](#), and [D.7](#) of the Handbook

14. Developments need not just create adverse effects on recreation, and new developments may provide opportunities either directly, as a consequence of new resources being created, or through the opportunity to manage or plan for better recreation provision. The nature of potential mitigation will depend on the predicted adverse effects described earlier, but some general issues to consider are summarised in Table 6 below.

**Appendix 6 Table 6: Mitigation Measures for Outdoor Access and Recreation**

| Measure   | Commentary   |
|---|--|
| Realignment of paths  | This can be a simple and very acceptable measure, provided that major diversions are 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 of new recreational resources                        | Alternative provision will be most acceptable if the overall benefits are perceived by users to outweigh the losses, and 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 limited or absent, perhaps resulting in conflict between users or impacts on the environment. However, new management regimes in any area where recreation is a significant use of land should be discussed with recreational interests. This will be particularly important when the development itself is controversial because of its projected effects on enjoyment of the natural heritage. |

### Appendix 7: 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). The introduction of the [Marine \(Scotland\) Act 2010](#) and the growth in offshore industries has resulted in increased consideration of marine impact assessment, but there are still occasions when 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. It should also be noted that our understanding of the marine environment is considerably less than that for the terrestrial environment. This can result in impact assessment methods and techniques evolving as our knowledge increases.

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: the main potential impacts, and project types particularly relevant to the marine environment
- D. provides general advice on assessing the significance of impacts on the marine environment

## References

Reference is made here to the following:

- A. CIEEM 2010, Guidelines for Ecological Impact Assessment in Britain and Ireland: Marine and Coastal, at: [http://www.cieem.net/ecia-guidelines-marine- \(currently being updated\)](http://www.cieem.net/ecia-guidelines-marine- (currently being updated))
- 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. The Scottish Government has published a draft Marine Scotland Licensing and Consents Manual Covering Marine Renewables and Offshore Wind Energy Development (October 2012) which includes guidance on the EIA process although the manual has yet to be finalised. Marine Scotland 2012, Draft Marine Licencing Manual for offshore renewables <http://www.gov.scot/Topics/marine/Licensing/marine/LicensingManual>
- D. Oil and Gas UK, Guidance for oil and gas activities: [https://oilandgasukenvironmentallegislation.co.uk/contents/topic\\_files/offshore/eia.htm](https://oilandgasukenvironmentallegislation.co.uk/contents/topic_files/offshore/eia.htm)
- 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. SNH, 2017 Guidance on Coastal Character Assessment: <https://www.nature.scot/coastal-character-guidance-report>
- G. SNH, November 2011, The siting and design of aquaculture in the landscape: visual and landscape considerations, SNH at: <http://www.snh.org.uk/pdfs/publications/heritagemanagement/marineaquaculture.pdf>
- H. Marine Biological Association of the UK, Marine Life Information Network (MarLIN), ongoing website at: <http://www.marlin.ac.uk>
- I. 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 Screening and Scoping for Marine Pen Fish Farming at: <http://www.sarf.org.uk/cms-assets/documents/29275-6854.eia-temp-screen-scoping-050608-n2.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. Schedules in the EIA regulations also specify that an EIA Report 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.”*
4. 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.
5. Thus, all marine interests can and should be included in an EIA Report 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

6. The potential effects of a project on marine interests will usually depend on two main considerations:
  - a. the type of marine interest
  - b. the type of project, including its nature, scale, location, duration
7. 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.

**Appendix 7 Table 1: Marine Site Designations Relevant to EIA**

| Designation  | Interest / purpose of designation   |
|--|---|
| Marine Protected Areas (MPAs)  | Designated by the Scottish Ministers under section 67 of the Marine (Scotland) Act 2010, there are 3 categories of MPAs; nature conservation MPAs, demonstration and research MPAs and historic MPAs. An area may be designated as a nature conservation MPA where the Scottish Ministers consider it desirable to do so for conserving flora or fauna or for conserving marine habitats (or types of such habitat) features of geological or geomorphological interest. An area may be designated as a demonstration and research MPA if the Scottish Ministers consider it desirable to do so for demonstration of sustainable methods of marine management or exploitation or research into such matters. An area may be designated as an historic MPA if the Scottish Ministers consider it desirable to do so for preserving a marine historic asset of national importance which is, or which they are satisfied may be, located in the area. |
| Natura Sites<br>SPAs and SACs including<br>(Marine SPAs and Marine SACs) | Comprising both terrestrial sites and marine sites these sites are protected under the EC Birds Directive and Special Areas of Conservation (SACs) under the EC Habitats Directive. Marine sites are those parts of Special Protection Areas (SPAs) under 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 .   |
| 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.   |
| 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.   |

## Types of Impact

8. All likely significant effects on marine / coastal interests should be assessed. Projects could affect the ecology, biology, geology, geomorphology, landscape and seascape, visual (both landscapes and seascapes), cultural and amenity value or accessibility of the marine / coastal 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 e.g. by the construction of barriers or causeways; or
  - c. Burial of marine flora and fauna by deposits on the sea bed; or
  - d. Potential collision risk to marine mammals, fish and birds from renewable devices
  - e. Increased disturbance due to vessel / helicopter activity related to marine developments during construction, operation and decommissioning.
  - f. Temporary or permanent displacement from preferred foraging areas or other key life cycle locations due to development activity
  - g. Loss of marine flora or fauna and disturbance to habitats caused by extraction of material from the sea bed; or
  - h. Visual intrusion caused by conspicuous and uncharacteristic structures detracting from visual amenity; or
  - i. Loss of small jetties or quays which facilitate quiet recreational enjoyment of coastal areas; or
  - j. Noise disturbance to birds e.g. from land based industrial activity or from increased use of powered boats; or
  - k. Noise disturbance to marine mammals and fish from seismic surveys; or construction activities such as piling and drilling.
  - l. Vibration disturbance to fish and marine mammals e.g. 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, e.g. 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.
9. 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.
10. 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 E.1](#) of the Handbook).

## Project Types Particularly Relevant to Marine Conservation

11. 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](#).

**Appendix 7 Table 2: Projects Frequently Resulting in Significant Marine Impacts**

| Designation   | 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 including managed realignment   | 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 e.g. 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, offshore wind, tidal stream 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.

## Assessing Significance of Marine Impacts

12. 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 r regionally or nationally or within a protected site as a result of the destruction or enhancement or widespread or extensive degradation or improvement of marine habitats, species populations or features.
13. 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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Any enquiries regarding this document should be sent to us at:

Historic Environment Scotland

Longmore House

Salisbury Place

Edinburgh

EH9 1SH

+44 (0) 131 668 8600

[www.historicenvironment.scot](http://www.historicenvironment.scot)

Scottish Natural Heritage

Great Glen House

Leachkin Road

Inverness

IV3 8NW

+44 (0)1463 725000

<https://www.nature.scot/>

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