

National Planning Improvement



National Planning Hub:
Environmental Impact Assessment Training Capacity Building Programme

How EIA links with...

Section 42, Other Assessments, and Other Consent Regimes

Welcome & Agenda



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AGENDA

10.30am – Welcome & Agenda, NPH EIA Training Programme and Housekeeping

10.35am – **How EIA links with:** Section 42, Other Assessments, and EIA in other consent regimes

11.20/25am - ***Live Q&A Session***

11.30 - 45am - Close



National Planning Hub

www.planninghub.scot

Growing EIA learning content on NPH Website

Live: Homepage *EIA course* + *Introduction to EIA, Screening, Scoping* with more on the way incl: EIA Glossary, EIAR to consent decision...

SCOPING

SCOPING OPINION

National Planning Hub

Hydrogen

Housing

Environmental Impact Assessment (EIA) ^

Introduction

Screening

Scoping

Case Studies

Events

Useful Links

News, Media and Blogs

Within EIA scoping is a process that is intended to consider the environmental issues that may be relevant to the proposed development and focus the attention of the developer's assessment on those that are considered likely to lead to significant effects on the environment. Ultimately it is about identifying the scope (coverage) of the developer's EIA Report (EIAR), which should present all the information needed to enable consultees to appreciate the proposal's environmental risks and opportunities and allow the planning authority to progress its examination of the application and environmental information without the need for (or delay generated by) a supplementary information request.

Scoping is therefore a process that is led by the developer and the EIA consultants and environmental topic specialists ('competent experts') that they contract to deliver the EIA Report. However, the developer and their consultants would be foolish to operate alone, when the planning authority, EIA consultation bodies and other parties will have a perspective on the environmental risks and opportunities related to the proposal and are also likely to hold useful environmental data and information that could aid their assessment. As such, it is common practice for the developer's EIA consultants to undertake pre-application engagement to gather relevant information from wider parties.

The EIA Regulations recognise this good practice and provide a formal process for it in the form of the opportunity for a developer to make a scoping request to a planning authority, who are then required to produce a scoping opinion. Developer's are not mandated to make a scoping request with Regulation 17 of the 2017 EIA Regulations making it clear this is voluntary. However, if they do choose to make such a request it must be accompanied by core information about the proposed development, receiving environment and initial information on significant effects [Regulation 17(2)(a) to c].

The formal duties required of a planning authority to producing a scoping opinion – following a developer request – are summarised in the section below. Further details are available in the slides and recording of NPH EIA Webinar 4, at the bottom of this page, and via the links to relevant Scottish Government EIA guidance.

Planning officers are required to produce a scoping opinion, if the developer of an EIA development makes a formal scoping request under Regulation 17(1).

The first activity a planning officer should do is confirm that the developer's request is valid – that it covers the regulatory minimum and is considered 'sufficient' to enable them to develop a scoping opinion. In most cases this check will be able to be completed quickly and conclude the request is valid, so the planning officer will quickly move onto the second formal activity in scoping opinions, which involves consulting the consultation bodies and other public bodies considered relevant (see page one of the diagram below). Beyond the activities above, the key duty of a planning officer at scoping is to develop the planning authority's own opinion on the scope and level of detailed they expect to see in the developer's forthcoming EIA Report. The findings of this activity will be written up as the core of the scoping opinion – covering environmental topics to be addressed, data / methodological approaches – with any responses from the consultation with public bodies adding detail to this write up (and ideally their full response being appended / provided alongside the authority's scoping opinion).



Reviewing the Influence of the NPH: Environmental Impact Assessment (EIA) Capacity Building Training Programme

EIA Capacity Building

By completing this survey, you help us to understand the initial influence of the NPH EIA training programme and identify whether further EIA capacity building / support activities are needed across Scotland's planning authorities. The findings you provide here will be compared with a similar **EIA baseline knowledge survey** that you may well have completed last Oct/Nov.

The survey is expected to take less than 5 minutes to complete.

www.surveymonkey.com/r/NPHEIAResults

Takes 5mins - please complete by 20 March



Housekeeping

- Your microphone and camera have been disabled for this session.
- Please be aware we are recording today's session – to be shared on NPH EIA webpage with slides.
- Any Q+A will be excluded from the recording, so feel free to ask questions without worry.

Q&A



Q&A

- EIA questions for the speaker will be posed in the *Live Q&A* at the end of the presentation.
- If you want to ask a question, use the **MS Teams Q&A** function at any time during the session.
- Click on the Q&A now to see the questions being asked as we go along
- We will read questions out on your behalf.

Technical issues

- Any technical issues should also be raised in the Chat function.



How EIA links with...

- *Section 42 applications*
- *Other Assessments*
- *Other Consent Regimes*

Today's EIA Learning Objectives

Provide planning officers with a core understanding of the:

- How EIA relates to Section 42 applications, common areas of confusion and opportunities for pragmatism,
- Links, distinctions and potential for efficiencies where EIA and other forms of environmental assessment / appraisal are all required to be undertaken in relation to a planning application, and
- Breadth of EIA's roles across other development consent regimes and how planning authorities interact with the EIA process when they are a consultee, rather than the decision-maker.



REFRESHER

Environmental Impact Assessment (EIA)

A decision-support tool applied **before** determining planning permission for those developments *likely to have significant effects on the environment...*

A **legislative requirement** – applied across UK's development consent processes, including planning system.

Applies a more rigorous approach to environmental assessment for the projects that pose a greater risk to the environment and communities.



Section 42 and EIA Development



REFRESHER

Section 42

Section 42 applies where a development with an existing consent is seeking a new consent **but with different conditions from those attached to a previous permission** for the same development.



Granting a Section 42 = Award of a new Consent

SG Planning Circular 3/2022 Appendix H:

- *"Unless legislation states otherwise, the statutory requirement on applications for planning permission and planning permission in principle apply... to applications under section 42 for planning permission or for planning permission in principle."*

and

- **"4. Requirements set out in other legislation apply as for any application for planning permission and include, for example, the requirements of Habitats Regulations and *the provisions of the EIA Regulations.*"** *[Emphasis added]*



REFRESHER:

EIA's *Prohibition to Grant Consent*

T&CP EIA (Scotland) 2017 Regulations **prohibit grant of planning permission** / multi-staged consent [i.e. *Approval of Matters Specified in Condition*] **to development that require an EIA unless...** an ***Environmental Impact Assessment*** has been carried out.

A successful Section 42 application = a new consent

Therefore, the PA must deliver across the **regulatory definition of EIA.**

Failing to deliver EIA's regulatory due process carry the risk of an EIA related **Judicial Review** of any consent awarded...



Section 42 & EIA

Which aspects of EIA apply?

In short... **The full requirements of the EIA Regulations 2017 apply!**

This includes:

- **Screening** - if the s42 relates to a Schedule 2 Development
[Mandatory EIA if it is a Schedule 1 development]
- **Opportunity** developer **Scoping Opinion** (despite s42 removing wider pre-app engagement)
- **Developer** must submit an **EIA Report** alongside s42 application
- **PA** led **consultation, examination** (?supplementary information?) and integration of **reasoned conclusions on significant environmental effects** in consent decision.



Section 42 & EIA Screening

- **IF the Original consent related to an *EIA development*:**
 - EIA screening likely to be needed **but** given the development is unchanged (only conditions will be altered) very unlikely a S42 application could reasonably be found not to require EIA ...
 - **NOT same as multi-stage screening** [i.e. *Approval of Matters Specified in Condition*] - cannot simply look at prior EIAR and consider whether sufficient / whether request supplementary info.
- **IF PA screened original consent **not** requiring EIA and *Schedule 2 Development***
 - PA will **need to produce a screening opinion specific to the S42 application** – this is needed to ensure EIA Regulation 3's prohibition to grant consent is removed...
 - Can make use of previous screening **BUT** need to consider whether changed conditions would have significant environmental implications and whether wider context has materially changed?



Section 42 & EIA

From submission to consent decision

“Requirements set out in other legislation apply as for any application for planning permission and include... the provisions of the EIA Regulations.” Apdx H SG Circ 3/2023

Thus PA must deliver all of Regulation 4’s definition of EIA, including:

- preparation of an EIA report by the developer
- the carrying out of consultation, publication and notification
- examination by the PA of the information in the EIA report and any other environmental information
- the reasoned conclusion by the PA on the significant effects of the development on the environment
- the integration of that reasoned conclusion into the decision notice



Section 42 & EIA

Expectation regarding a S42 EIA Report

What is an acceptable EIAR in these circumstances?

- Section 42 EIA Report must **itself** meet requirements of:
 - EIA Regulation 5 and
 - Relevant aspects of Schedule 4
- **May** be able to re-submit **same EIAR as original consent** **HOWEVER, PA must consider:**
 - **Proposed S42 changes to conditions** - do they relate to environment? If so, is prev EIAR accurate?
 - **How much time has passed...** May require updates (EIAR+Addendum) baseline, other projects
REMEMBER: PA's significance conclusion must be up to date at point of consent.

A word on “**Comparative**” EIA Reports

If the developer submits an “comparative” / abridged EIA Report – e.g. no baseline due to cross reference to original consent’s EIAR – **but submitted S42 EIAR itself fails to meet EIA’s regulatory definition of an EIA Report = Compliance Risk & acceptance of such EIAR places PA at risk...**



Section 42 & EIA

Sources of Advice

Scottish Government

Planning circular 3/2022: *Development Management Procedures*

Wider UK (for contextual relevance)

- **Northern Ireland:** DMPN 9B: EIA Screening (Page 11: EIA & Sect54 applications)
- **England:** Govt Guidance Re: Section 73 applications (under the heading Do the Environmental Impact Assessment Regulations apply?)



How EIA's sometimes...

Links (overlaps) with other assessments



Breadth of Environment in EIA

Environmental Factors in EIA Regulations:

- **Population**
 - **Human Health**
 - **Biodiversity**, in particular species + habitats under Habitats & Birds Directives
 - **Land**
 - **Soil**
 - **Water**
 - **Air**
 - **Climate**
 - **Material assets**
 - **Cultural heritage**
 - **Landscape**
- And interaction between the above



Multiple sources for other forms Environmental Assessment / Appraisal

Other forms of environmental assessment / appraisal may be required for projects often driven by:

- **Legislation:** Habitat Regulation Assessment (HRA), Water Framework Regulations (WFD), Designated sites, etc.
- **Policy:** From within NPF4 or within the PA's own policies within its LDP, etc

Where EIA is required, many 'other assessments' can be brought with it's process, generating efficiency; however, some have their own requirements for separate reporting, e.g. Habitats Regulation Assessment (HRA) or Appropriate Assessment.



EIA and...

Habitats Regulation Assessment (HRA)

/ Appropriate Assessment



EIA & HRA Links...

Co-ordination of the two Assessments

- **EIA Regulation 53 Co-ordination of assessments**
 - Where an EIA development also requires a Habitats Regulation Assessment, the PA must ensure the HRA and EIA are coordinated, where appropriate.
- **EIA Regulation 5(4) Developer's EIA Report**
 - To avoid duplication of assessments, account is to be taken of the available results of other relevant assessments in preparing the EIA report.

As a minimum would be expecting to see consistency of findings between the EIAR and shadow HRA in relation to effects on SAC / SPA.



EIA and HRA (/Appropriate Assessment)

Similarities and Differences...

Similarities: In scope of application (Projects), both forms of IA and have some overlap of process terminology (e.g. start with Screening)

Beyond this the tools have distinct differences:

HRA Differences

- Specific to certain habitats (SPA, SAC and Ramsar) and species
- 4 Stages: Screening > Appropriate Assessment > Alternative Options > IROPI
- More distinct use of **Precautionary Principle** (e.g. no mitigation @ screening)
- **Absolute test** – no planning balance (greater basis on scientific evidence)
- **HRA has its own terminology**
 - **Adverse effect on integrity undermining conservation objectives** of site **vs** EIA's significance
 - **In-combination effect vs EIA's cumulative effects**



EIA and...

NPF4 Climate Policy



Assessing Projects in relation to Climate Change

Driver = **NPF4 Policy 2**

- **Policy 2** “...proposals will be sited and designed to:
 - **minimise lifecycle GHG emissions** as far as possible; and
 - **to adapt to current and future risks** from climate change...”
- A substantial “new” policy focus when NPF4 was launched

EIA Driver

- EIA Regs, **Schedule 4, Para 5 (f)** “**the impact of the project on climate** (for example the nature and magnitude of GHG emissions) and the **vulnerability of the project to climate change**”



Consideration of Climate Change

Approaches of NPF4 & EIA

NPF4 Approach = Planning Guidance Climate Mitigation & Adaptation

- **Requested from PAs (and wider) - guidance on implementing Policy 2**
- **Produced by Scottish Government + Expert working group incl: HoPS**

EIA Approach = IEMA (now ISEP) EIA & CC Guides

- Significance remains core **but** meaning for GHG and CCR&A needs thought
- Guidance has been available for >10 years, and has been updated



Considering Climate Change Planning & EIA Relevant Resources

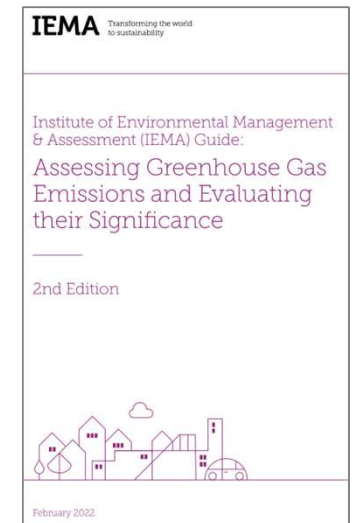
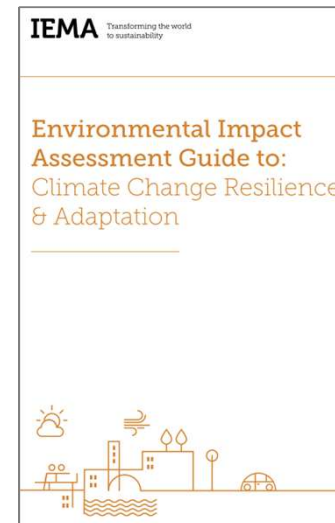
Scottish Government Riaghaltas na h-Alba gov.scot **NPF4 Planning Guidance Climate Mitigation and Adaptation**

- **June 2025: Guidance available here:** www.gov.scot/publications/npf4-planning-guidance-policy-2-climate-mitigation-adaptation/
- **3 Sept 2025: Planning Skills Webinar NPF4 Planning Guidance Climate Mitigation and Adaptation** www.youtube.com/watch?v=TKF5qSOXJlw

ISEP **EIA & Climate Change Guidance** Institute of Sustainability & Environmental Professionals

EIA Guide to:

- **2020: CC Resilience & Adaptation**
- **2022*: Assessing GHG & evaluating significance**
- ***2026 – Update to EIA & GHG coming soon...**



EIA and...

Strategic Environmental Assessment (SEA)

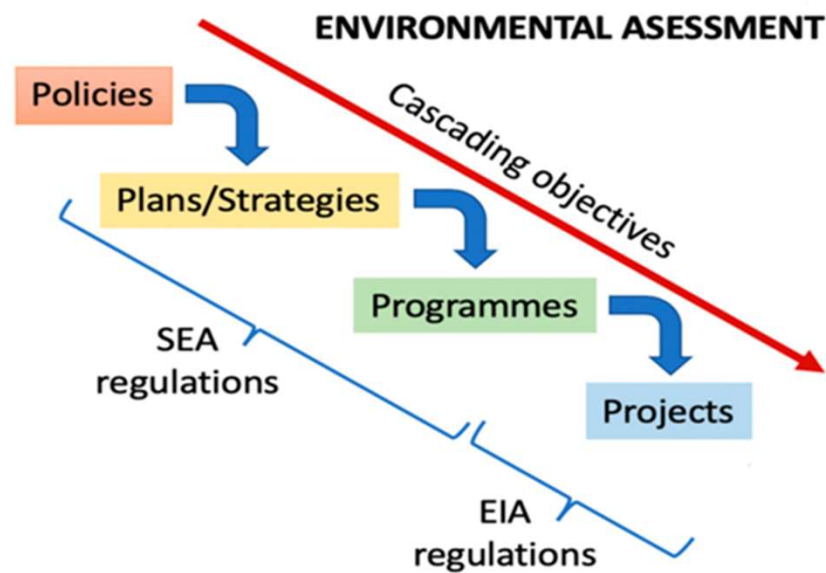


EIA's Links to Strategic Environmental Assessment (SEA)

SEA & EIA

Legislative tools that seek to apply impact assessment to different contexts within a planning framework.

“Siblings with different jobs”



EIA & SEA

Purpose and Basis for SEA

Strategic Environmental Assessment

= the assessment of certain plans & programme (PP) that pose risk to environment

- **Legislative basis:**
 - **PP is wholly within Scotland**
 - *Environmental Assessment (Scotland) Act 2005*
 - **Any part of PP within England / UK Waters**
 - England's "SEA Regulations": Statutory Instrument 1633, 2004



EIA & SEA

How SEA can link (prove helpful) in EIA

Where a **relevant** Plan / Programme (PP) has undergone SEA, prior to EIA application, it can prove particularly helpful in the following EIA activities:

- **EIA Screening:** The SEA of a Local Development Plan produces environmental findings related to allocated sites, may include ‘indicative’ screening for EIA.
- **EIA Scoping:** SEA of LDP / other plans define key environmental issues **and** can include environmental risk & opportunity info related to allocated sites.
- **Strategic Mitigation** – Helping define and set out deliver of environmental mitigation at scale, which EIA projects can then contribute.



EIA related to other consent regimes and The EIA roles planning officers play within them



Does EIA apply to other forms of consent?

In short – Yes

Multiple sets of EIA Regulations are applicable to Scotland each of which relates to a different form of consent.

In addition, EIA Regulations that apply to UK waters or other UK nations can also have implications for Scottish planning authorities.

Example: Scottish PA may be required to be consulted as part of an EIA process being undertaken by English planning officers in an adjacent council.



Examples of “other” EIA regimes

- The **Electricity Works** (Environmental Impact Assessment) (Scotland) Regulations
- The **Marine Works** (Environmental Impact Assessment) (Scotland) Regulations
- The **Roads** (Scotland) Act 1984 (Environmental Impact Assessment) Regulations
- The **Transport and Works** (Scotland) Act 2007 (Environmental Impact Assessment) Regs
- The **Agriculture, Land Drainage and Irrigation Projects** (EIA) (Scotland) Regulations
- The **Forestry** (Environmental Impact Assessment) (Scotland) Regulations
- The **Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts)** (Scotland) Regulations
- The **Offshore Petroleum Production and Pipelines** (Assessment of Environmental Effects) Regulations
- + The **Masterplan Consent Area** Scheme (EIA) (Scotland) Regulations 2024



PA role in other EIA regimes*

As **Statutory Consultee** [*Also in T&CP EIA when you are adjacent PA]

- **?Screening..? Yes**, in some cases
 - **ElecW EIA Regs** ECU **must** consult PA who is **required** to give views in 3 weeks (/ longer period as Scottish Ministers determine).
 - **Role:** PA view on whether proposed development is EIA development / not.
- **Scoping - Yes**
 - PA commonly listed as a consultation body in *Interpretation* section of each EIA Regs
 - **Role:** PA view on environmental issues or relevance to proposed development, PA concerns / opportunities, indication of relevant environmental data you hold that may be of relevance.
- **EIA Report – Yes**
 - PA receive copy of EIAR & application and have set period to respond (varies between EIA Regs...)
 - **Role:** PA view on significant effects and whether proposed mitigation is suitable (/ alternatives), your views / confidence in environmental evidence that developer has provided.



PA roles in other EIA regimes

Being 1 of multiple consenting authorities...

Proposed developments don't always nicely fit in one PA boundary / within just one consenting regime... Examples:

- Long linear development – pipeline, road, rail line, some transmission lines
- Offshore wind farm with onshore infrastructure

EIA applies to *whole development* = multiple sets of EIA Regulations can apply

- **For Consenting** – PA focus remains on the planning application made to you
- **In terms of the EIA...**
 - Need to be aware of the ***whole development's significant environmental effects***
 - Often will mean scoping and EIAR including multiple issues (well) beyond PA's boundaries...



PA roles with other EIA regimes

Env risk of slipping between the cracks..?

EIA & Permitted Development rights (PDR)...

- PDR are not only about small-scale development & projects requiring EIA are **excluded** from PDR.
- If planned PDR work is **Schedule 2 development** it should gain PA EIA screening beforehand...

PDR, EIA and certain **Agricultural activities**...

Agriculture, Land Drainage and Irrigation Projects (EIA) (Scotland) Regulations 2017

- Brought in for agricultural intensification of uncultivated land / semi-natural areas, new irrigation, new drainage, restructuring of rural land holdings.
- EIA procedures are managed by Scottish Government's Rural Payments and Inspections Division (RPID)

BUT... this EIA system is 'stepped down' **IF** the agricultural project sits under planning system

- This EIA 'step down' also includes the use of **Agricultural PDR via Notification to the PA**.
- PA's EIA screening of Agricultural PDR must appreciate **whole project + look at env risks in entirety**
- SG is seeing increasing interest from both NGOs and public in this area.

EIA Links: Sect 42, Other Asts & Other Regimes ***– Learning Review***



Learning Review

How EIA links with...

Provide you with a core understanding of:

- How EIA applies in relation to Section 42 applications,
- The links between EIA and other environmental assessment / appraisal, highlighting distinctions and potential for efficiencies with HRA, NPF4's Climate Policy and SEA, and
- Outlines the breadth of EIA's application across other consent regimes and highlighted the role a PA is often asked to take in those EIA processes.



EIA Training Capacity Building Programme

Next Steps

March

Look out for more NPH EIA live online events – **Thursday 10.30am** on:

- **26 March: EIA Common Complexities (Rochdale & Cumulative) & Course Summary**

ALSO – Please undertake the review survey for this NPH EIA programme.

www.surveymonkey.com/r/NPHEIAReview

Takes 5mins - please complete by 20 March



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EIA Training Capacity Building Programme



Q&A

EIA: Links with Section 42, Other Asts + EIA in other consent regimes

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Thank You!

