

National Planning Improvement



National Planning Hub:

Environmental Impact Assessment Training Capacity Building Programme

EIA Scoping:

Establishing the basis for an effective and efficient EIA

Welcome & Agenda



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AGENDA

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

10.35am - **EIA Scoping** – *Establishing the basis for an effective and efficient EIA*

11.15/20am - **Live Q&A Session**

11.30 - 45am - Close



SCREENING

The PA's decision as to whether the proposal needs an EIA.

Not all development proposals require EIA, in fact the majority of Scotland's planning applications do not need to undergo EIA, instead considering environmental and community issues through the regular planning system. However, those projects that are considered likely to have significant effects on the environment are required to undergo EIA. The term used for this process of identifying which projects require an EIA and those that don't is known as screening.

In some cases the need for EIA is already determined and a planning officer will not need to undertake additional activity, such as those projects that meet or are above a description set out in Schedule 1 of the EIA Regulations, or in the case where a developer chooses themselves to submit an EIA Report alongside their application.

In other cases, however, the PA will need to determine whether they need to identify whether the project needs to be screened and if so then produce a screening opinion by considering whether the developer's proposal is likely to have significant effects on the environment. The type of proposal that requires a screening opinion is known as a schedule 2 development.

The resources below (diagrams, article slide deck and recording) provide the capacity building NPH materials related to EIA screening.

SCHEDULE 2 DEVELOPMENT

Schedule 2 developments require screening by the planning authority in order to remove the EIA regulations prohibition for granting consent for EIA development [defined in Regulation 3]. In effect, the screening opinion either identifies the EIA Regulations do not apply or that

National Planning Hub

Hydrogen

Housing

Environmental Impact Assessment
(EIA) ^

Introduction

Screening

National Planning Hub

www.planninghub.scot

Growing EIA
learning content
on NPH Website



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.



EIA Scoping

*Establishing the basis for an
effective and efficient EIA*

Today's EIA Learning Objectives

Provide planning officers with a core understanding of the:

- role of scoping in EIA and how this stage has crucial links to delivering a proportionate EIA Report,
- duties and effective practices in producing a PA's scoping opinion – following a developer scoping request, and
- how the scoping process links to the wider assessment activities the developer's consultants undertake to produce the EIA Report that will be submitted alongside their application.

The session also provide tips and advice on EIA scoping and highlights relevant guidance.



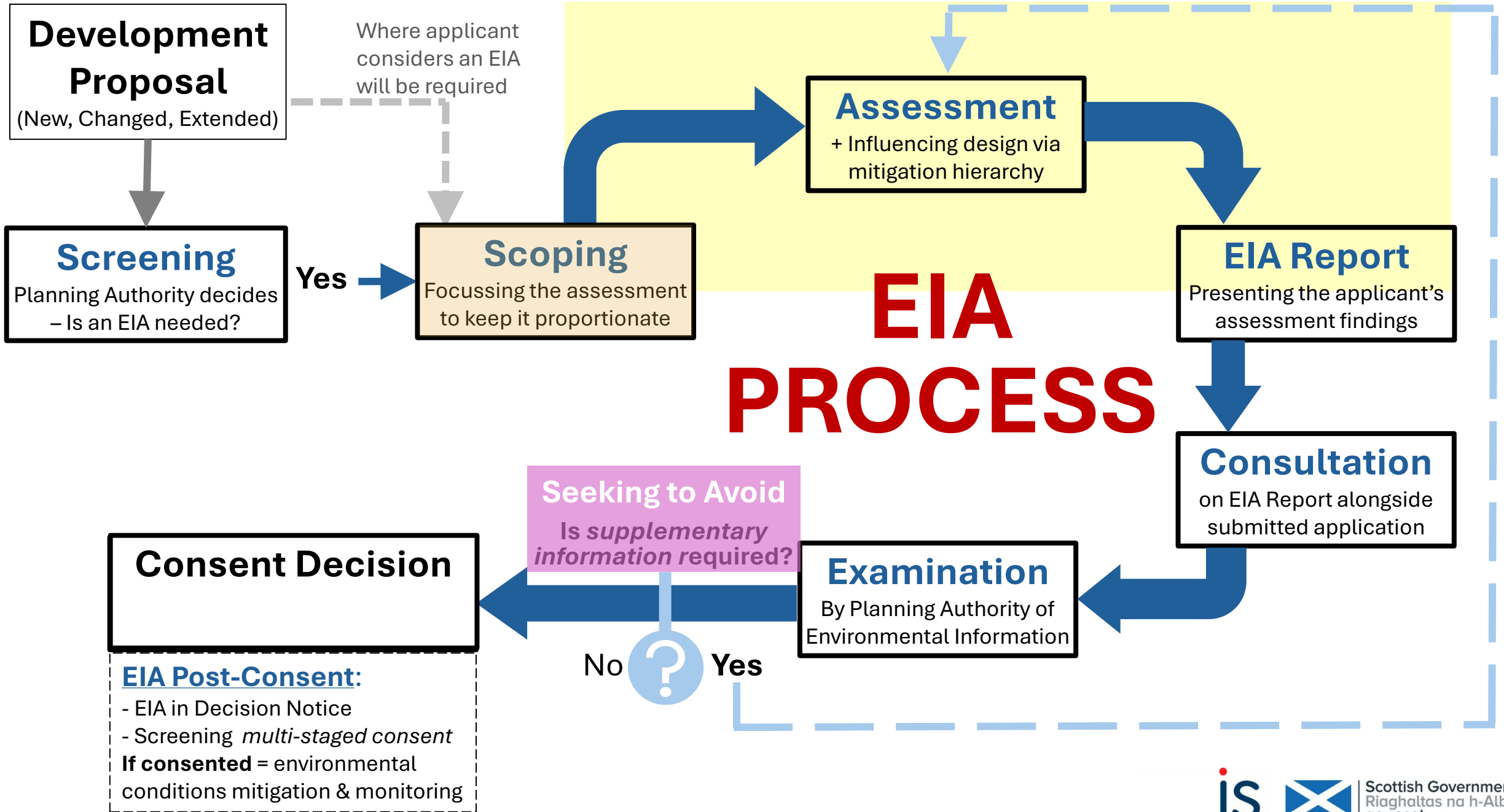
Environmental Impact Assessment (EIA)

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.





Getting EIA Scoping right is **IMPORTANT**

Proportionate EIAR and efficient consenting

Unlike screening (Web 3) and ensuring a PA's significance conclusions are considered in the consent (Web 5), **EIA scoping** is far **more about enabling an effective EIA Report** that provides the information needed **and avoiding delay**.

Scoping is intended to focus the developer's assessment work on risks / opportunities related to environmental factors (topics) with **significant effects**.

There are some formal procedures for the planning authority (PA) within EIA scoping, which result from a ***scoping request*** and lead to a ***scoping opinion***.



EIA Scoping Practice **vs** Regulatory *Scoping Request* & *Opinion*

Scoping is a process through which an EIA becomes **focussed on the significant environmental effects** related to each proposal the tool is applied to.

SCOPING PRACTICE: A *developer led* process related to producing their EIA Report, to ensure it contains information to efficiently & effectively set out significant (and non-significant) effects and discuss the significant effects with any related design features / measures to avoid, prevent, reduce, or compensate such effects.

REGULATORY SCOPING: A voluntary process triggered at the developer's discretion; once initiated by a *scoping request* the EIA Regulations set out formal procedures and timescales the PA should undertake to produce their EIA *Scoping Opinion*.



Scoping Practice – Developer & their EIA Consultants

Once it is clear a proposal is EIA development the developer is required to use **competent experts** to prepare their EIA Report. As such, developer's hire EIA consultants (coordinators and topic experts) to undertake this work.

Beyond initiating the regulatory EIA scoping procedure (*issuing scoping request to PA*) a developer's EIA consultants have multiple other ways to help scope their work:

- **Pre-application engagement:** with PA and consultation bodies (e.g. SEPA, HES, NatureScot)
- **Scoping workshops / websites:** with the above / wider groups / public
- **Environmental data / research:** Online information and wider sources
- **Professional Body / Sector guidance** on approaches to effective assessment

A formal *Scoping Request* is just one of many tools used to scope an EIA (Report).



EIA Scoping

FORMAL PROCESS – Scoping in the EIA Regulations

PART 4 of the EIA Regulations covers Preparation of EIA Reports

Regulation 17 (within Part 4) sets out the formal PA scoping procedures

The process is as follows:

- **Developer** makes an EIA **Scoping Request** to PA = **Voluntary: “...may request...”**
Request triggers formal procedures for PA = Reg 17(4), (5) & (6)

PA must:

- **Consult - consultation bodies** (defined in Reg 2) + others if relevant: HSE, Office Nuclear Regulation, + any other public body PA considers have interest due Env.
- **Take into account information provided by developer**, esp: dev, location, Env, effects
- **Produce and issue Scoping Opinion within 35 days** (or longer as agreed)
- **Make Scoping Opinion available on Public Record** [Reg 28]



EIA Scoping - **FORMAL PROCESS**

Developer's Scoping Request

The **Developer** making a request **must** provide:

- Description of ***location of development***, incl: **plan** sufficient to identify the land;
- brief description of the ***nature and purpose of the development*** and of its ***likely significant effects on the environment***; and
- such other information or representations as the person making the request may wish to provide or make.

Likely receive far more – **Scoping Report** – but not formally required

PA role on receipt:

Check the above provides '*sufficient information*' to adopt a *Scoping Opinion*, if not request from developer within 21 days.

EIA Scoping - FORMAL PROCESS

Planning Authority's **Scoping Opinion** - ACTIVITY 1

Having confirmed the *request* provides 'sufficient information'

PA moves to producing **its Scoping Opinion**.

Seek information > **Form Opinion** > **Communicate Opinion**

ACTIVITY 1: **Seek Information:**

- PA **must** Consult
 - **consultation bodies** (i.e. Reg 2: Adjoining PA, NatureScot, SEPA, HES, Scottish Water)
 - Following *if relevant*: HSE, Office Nuclear Regulation, + any other public body the PA considers have interest due to "*their specific environmental responsibilities or local and regional competencies.*"



EIA Scoping - FORMAL PROCESS

Planning Authority's **Scoping Opinion** – ACTIVITY 2

Seek information > **Form Opinion** > Communicate Opinion

ACTIVITY 2: **FORM - SCOPING OPINION**

- PA **must** take account of *information provided by developer*, esp: details about characteristics of proposed development's, its location, technical capacity and likely impacts on the environment.
- In addition, PA should
 - take account of any responses received from those it consulted [under Activity 1].
 - Gain views from any internal “consultees” (e.g. Ecology, Heritage, etc)
- Produce **PA's Opinion** of **its** expectations on the **scope + detail of developer's EIA Report**.



EIA Scoping - FORMAL PROCESS

Planning Authority's **Scoping Opinion** – ACTIVITY 3

Seek information > Form Opinion > **Communicate Opinion**

ACTIVITY 3: **COMMUNICATE SCOPING OPINION**

1. Send it to the developer!

2. Make Publicly available... [EIA Regulation 28 = *Availability of opinions for inspection*]

The pa must make copies of **Scoping Opinion** available for inspection on a website **and** at all reasonable hours at an office of the PA where the register may be inspected (must remain so available for a period of two years).



Timings related to Scoping and Environmental data provision beyond scoping



EIA Scoping - **FORMAL PROCESS**

Timings - related to Scoping Opinions

21 days – For PA to check whether developer scoping request includes ‘sufficient information’ and if not – notify developer of this

35 days* – For PA to adopt a *Scoping Opinion* ± issue a copy to the developer

* Can be ‘longer period’ where agreed in writing with the developer

After 35 days(/ agreed ‘longer period’) – *Developer* has option to request Scottish Ministers produce a *Scoping Direction*

2 years – Minimum time Scoping opinion publicly available (Register & website)



When can a developer make a Scoping Request?

Normally a developer will make Scoping Request before submitting their planning application [Note: can be **joint with screening request**].

HOWEVER... IF the proposal was not identified as *EIA Development* before submission of the application, the developer is still entitled to seek a Scoping Opinion under Regulation 17 - to inform the content of their EIA Report.

In theory – Multiple Scoping opinions could be requested by developer (e.g. proposal significantly changes) / issued by PA but process for this is unclear...
Reg 17(12): “A later scoping opinion supersedes the terms of an earlier scoping opinion”



Beyond Scoping via Regulation 19

Provision of Environmental Information / Data:

Where the developer intends to submit an EIA Report it can inform the **PA** of its plans to do so.

- **PA** must then notify the **Consultation Bodies (CBs)** + *any other public body* and developer of each others contact details
- **PA** and **CBs** then have duty to engage in consultation with developer to ID and provide info relevant to the preparation of the EIAR, if requested to do so.

Developer request treated as **Info Request under Env Info Regs 2004**

PA / CB may make a '**reasonable charge**' for making relevant info available



What should be in a Planning Authority Scoping Opinion?



PA's Scoping Opinion

What question is your Scoping Opinion answering?

Partly depends on – **When / What the developer is asking...**

- **What might be relevant to this EIA?**

Scoping request is (probably) very early in developer's design process and no / little EIA consultancy work has occurred.

- **What should the EIA Report focus on?**

Well timed, developer is (hopefully) seeking to create joint understanding on what is relevant to get to a proportionate EIA Report

- **Do you agree with developer's proposed EIA scope?**

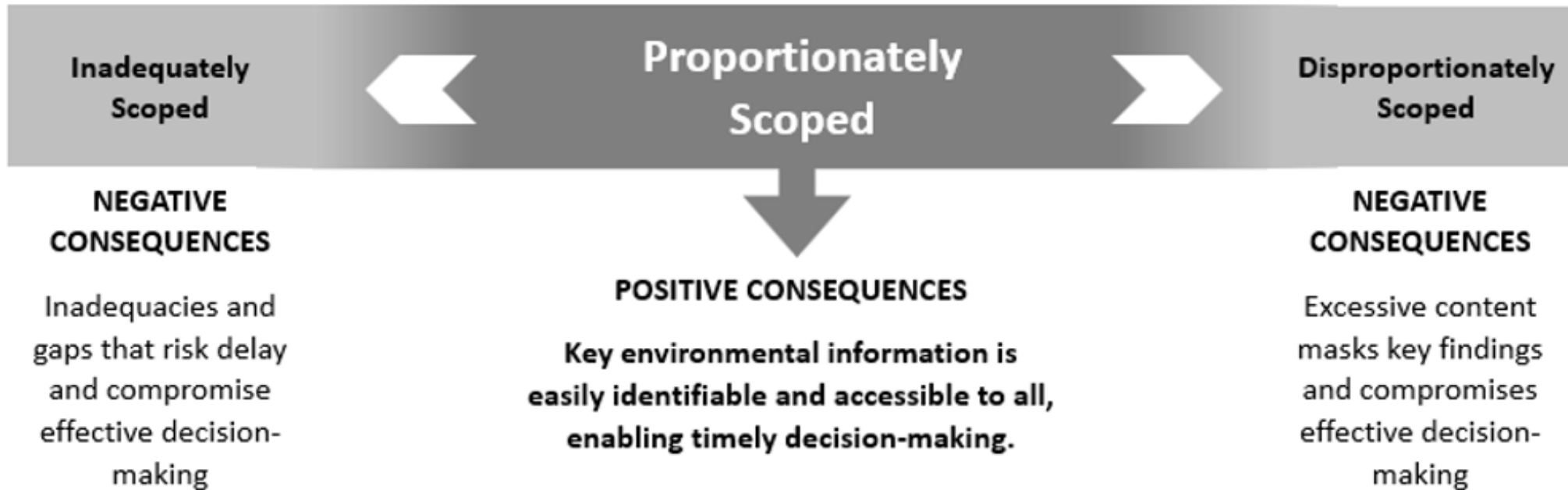
Design likely well advanced with substantial EIA consultancy work initiated, often set out in a long scoping report.



Scoping Spectrum

PA's Scoping Opinion

Seeking a Proportionate Scope



Source:
DfI Northern Ireland
DMPN 9C:
EIA Scoping
(Forthcoming)



PA's Scoping Opinion

What to include in your PA Scoping Opinion?

As a minimum include:

- **Your views [Opinion] on what EIAR should cover!** Significant issues, method & data sources, gaps / uncertainties you expect to be resolved, etc.
ADVICE: Draw across evidence you have but avoid an “*We agree...*” list.
- **Summarised key messages from consultees as support to PA opinion**
ADVICE: You should append / provide full responses but avoid making your PA' *Opinion* a cut and paste of consultee comments.

Also useful to:

- **Advise developer follow-up with Consultees** (e.g. Not responded / Lack clarity)
- Approach to EIA Report structure to enable efficient examination (see later tips)



Challenge to PA **EIA *Scoping Opinion?***



PA Scoping Opinion

Challenge to a PA Scoping Opinion?

KEY MESSAGE - Different to Screening Opinion (Webinar 3)

Developer's opportunity to seek a Scoping Direction (via Scottish Ministers) **only** triggerable based on PA failing to issue Scoping Opinion by 35-day* dadeline.

- No developer or third-party rights to a direction IF disagree with PA scoping opinion

Why?

- Requesting scoping opinion is voluntary
- PA's Scoping opinion is non-binding "*EIAR must be **based on** that scoping opinion*" [Reg5(3)]
- PA retains right to require **additional information** related to EIAR [Reg 17(11)]

Direct **legal challenge** of EIA scoping opinion not possible - would have to link to an **awarded consent** at which point challenge focuses on EIA procedural failings.



Scoping Opinion **Guidance** and **Hints & Tips**



GUIDANCE – Government & Statutory Body

Over-arching

- Government - **Circular 1/2017** The T&CP (EIA) (Scotland) Regulations 2017
- Government - **PAN 1/2013** Environmental Impact Assessment
- Historic Environment Scotland & NatureScot - **EIA Handbook 3rd Edition**

Sectoral

- NatureScot – Guidance: Assessing the cumulative landscape and visual impact of onshore wind energy developments
- NatureScot – Guidance: Assessing the cumulative impacts of onshore wind farms on birds



EIA Scoping

GUIDANCE – Professional Body

ISEP (formerly IEMA)

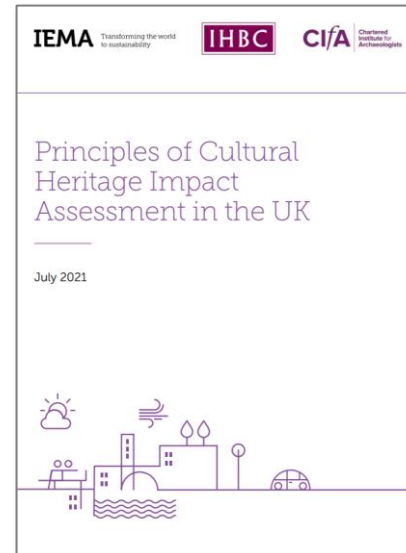
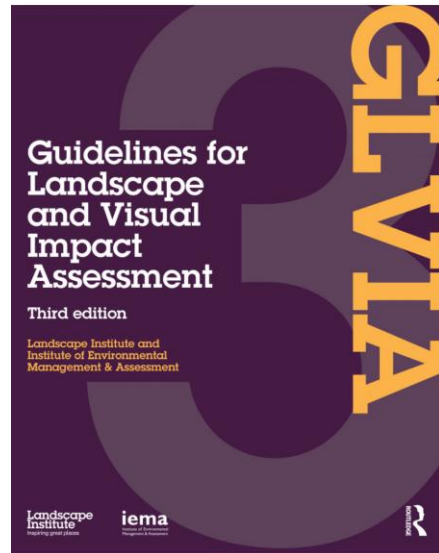
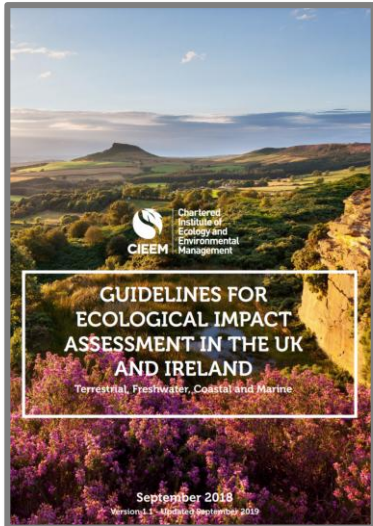
Huge catalogue of EIA related guidance - mainly behind Member login...

- GHG, CC Adapt & Resilience, Env Noise, Health, Material Assets, *etc*
- Mitigation Hierarchy, Major Accidents & Disasters, Digital technology, AI, *etc*

Others Bodies

/

Joint with ISEP



Don'ts of EIA Scoping

Reflections on *ineffective* scoping practice

Thinking about the EIA's scope

- Avoid significant risk aversion (but there is a balance here)
- Avoid undue focus on 'gap filling' when a long Scoping Report is received (there is very likely 'fat' to be trimmed)

Writing the Scoping Opinion

- Lack of PA opinion / content led by *Cut & Paste* of consultation body views
- Poor use of language / vagueness

Communicating the PA's Scoping Opinion

- Avoid undue delay – the developer & consultants are still working!
- EIA Regulations **don't** require those PA consultees to repond...



EIA Scoping - Hints & Tips

Do's of EIA Scoping – More effective PA practice

Planning officer thinking for effective scoping:

- Scope topics **down** (more common than fully scoping **out**)
- Try to anticipate issues - plug uncertainties ahead of EIAR submission
- Topics & stakeholder links – a storyboard of environmental issues can help.

Let developer & EIA consultants know your key information needs from EIAR:

- How scoping opinion issues / gaps have been addressed – a helpful table before chapters
- 1-page key findings at the start of each topic chapter (significant effects & key mitigation)
- What do you want to see...? Have a discussion across your EIA experienced PA Team!



EIA Scoping

What happens after PA issues a Scoping Opinion?

Developer's assessment & EIA Report preparation



Developer: Assessment of proposal

The developer's EIA consultants will undertake the following:

- **Baseline** information gathering, analysis of trends (and modelling future baseline)
- **Assessment** of the proposal (and alternatives studied by developer)
 - Identifying direct and indirect impacts across construction, operation (and decommissioning)
 - Description of effects on environmental receptors including magnitude, frequency, sensitivity, etc
 - Evaluation of significance of effects to determine EIAR's significant effects findings
- **Iteration with project design** and development of mitigation measures (avoid, prevent, reduce, or offset) related to likely significant adverse effects
- **Re-assessment** of any revised project design and re-evaluation of significance following mitigation to generate **residual effects findings**
- **Write-up** of the above into an *EIA Report*



Developer: Preparation of the EIA Report (EIAR)

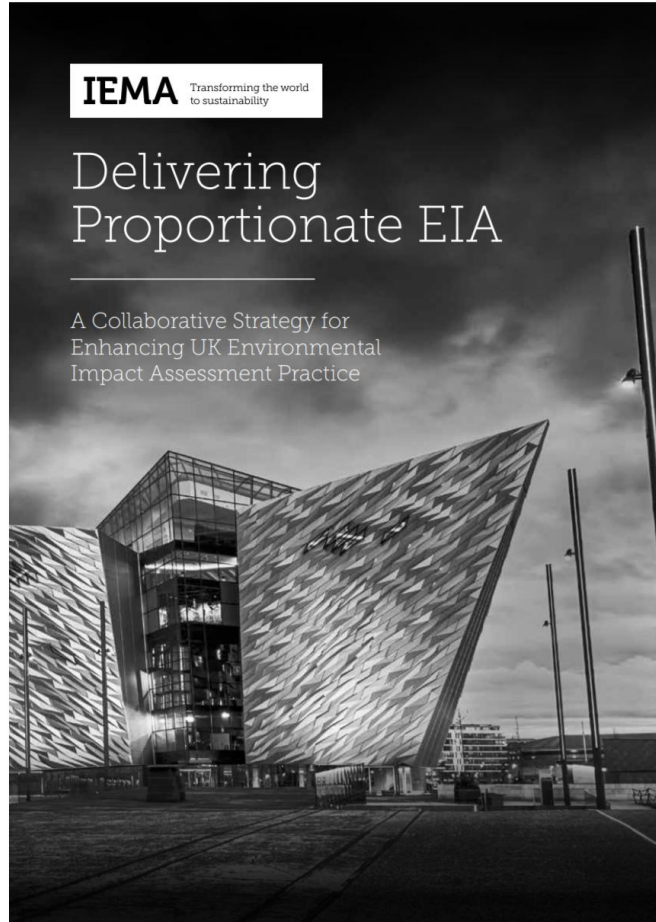
EIA Regulations define minimum EIAR content as [Reg 5(2)(a to f)]:

- the proposed development (site, design, size and other relevant info)
- the likely significant effects of the development on the environment
- Design features / mitigation measures (avoid, prevent, reduce, or offset) related to likely significant adverse effects
- the reasonable alternatives studied by the applicant, and an indication of the main reasons for the option chosen
- A non-technical summary of the above.
- Any other information specified in schedule 4 relevant to the specific characteristics of the development and to the environmental features likely to be affected.



AFTER EIA Scoping

EIA Practitioners: Proportionate EIA



“EIA that delivers valuable & accessible information that positively influences development design and consenting to the benefit of developers, communities and the environment”

[Fothergill et al, 2017 (ISEP – formerly IEMA)]

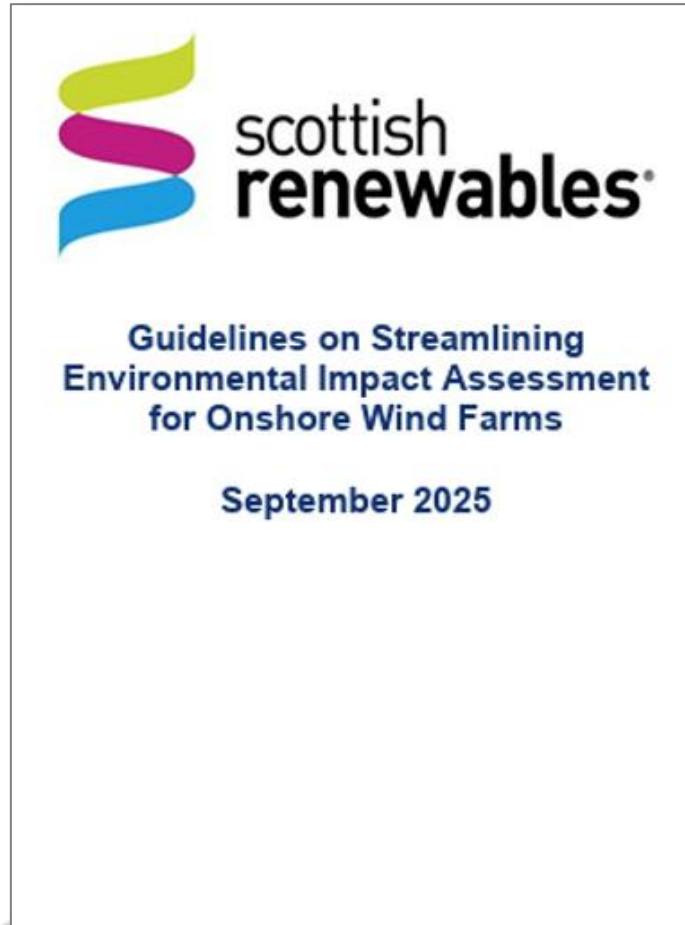
ISEP’s **Action Areas** to deliver more effective and proportionate

- **Enhancing People**
- **Improving Scoping**
- **Sharing Responsibility**
- **Embracing Innovation & Digital**



AFTER EIA Scoping

EIA Practitioners: Proportionate EIA Reports



*“... uses the EIA Scoping process to focus on **the real potential for significant effects**, taking into account project specific data and evidence from 30 years experience of wind farm development in Scotland...”*

*“... it is recommended that more efficient and effective **Scoping consultation** should be used to ensure that EIA Reports are not drafted on an over precautionary basis and that they are focused on any likely significant effects of a project.”*



EIA Scoping – Learning Review



Learning Review

EIA Screening - *Enhancing PO Confidence & Understanding*

Provide planning officers with a core understanding of the:

- role of scoping in EIA and its links to delivering a proportionate EIA Report,
- duties and effective practices in producing a PA's scoping opinion, and
- how the scoping opinion links to the assessment activities the developer's consultants undertake to produce the EIA Report.

Identified some tips and advice on EIA scoping and highlighted related EIA guidance.



EIA Training Capacity Building Programme

Next Steps

February & March

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

- **26 February – EIA applications from submission to consent decision**
- **12 March – PA & EIA wider linkages (Section 42, other EIA Regs, other Asts)**
- **26 March – Rochdale Envelope & Cumulative Effects + Course Summary**

ALSO – Please regularly check NPH webpages for new EIA articles, diagrams and other content.



National Planning Hub:
EIA Training Capacity Building Programme



Q&A

EIA Scoping – *Establishing the basis for effective & efficient EIA*

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EIA Scoping:

Establishing the basis for an effective and efficient EIA