

National Planning Improvement



National Planning Hub:
Environmental Impact Assessment Training Capacity Building Programme

EIA Reports: From Developer Submission to Consent Decision

Welcome & Agenda



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AGENDA

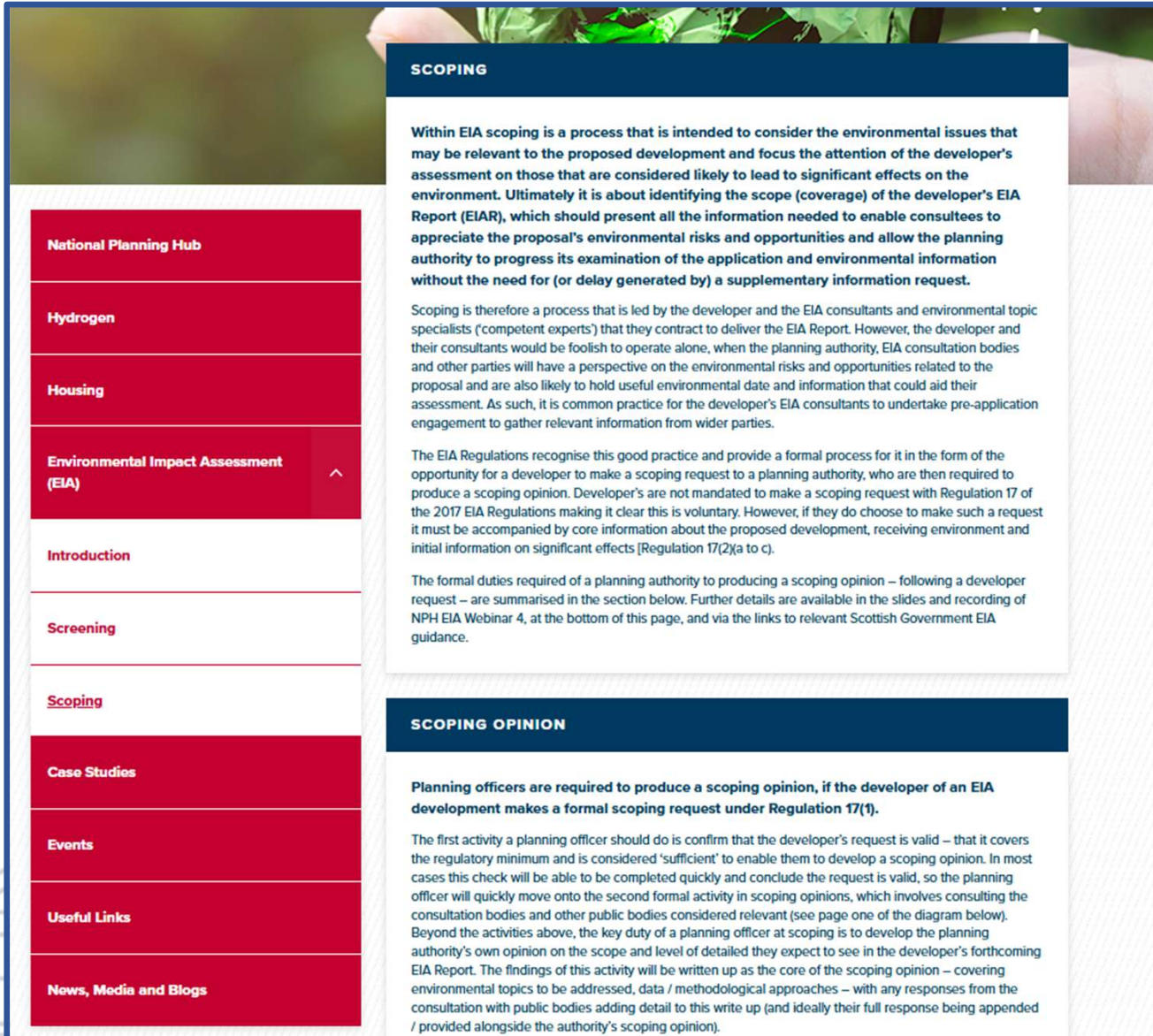
10.30am – Welcome & Agenda, NPH EIA Training Programme and Housekeeping

10.35am - **EIA Reports** – *From Developer Submission to Consent Decision*

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

11.30 - 45am - Close





SCOPING

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.

SCOPING OPINION

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).

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...



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.



Examining the EIA Report

PA managing the process from developer submission to consent decision

Today's EIA Learning Objectives

Provide planning officers with a core understanding of the:

- Regulatory requirements around EIA Report + considering this at validation
 - Key compliance activities + sequencing in managing an *EIA development* application post-submission,
 - How to approach the examination of an EIAR and the related consultation responses, and
 - Role of *additional information* and the use of a your powers to request *supplementary information*
- + Advice on EIA related PA activities communicating the consent decision.



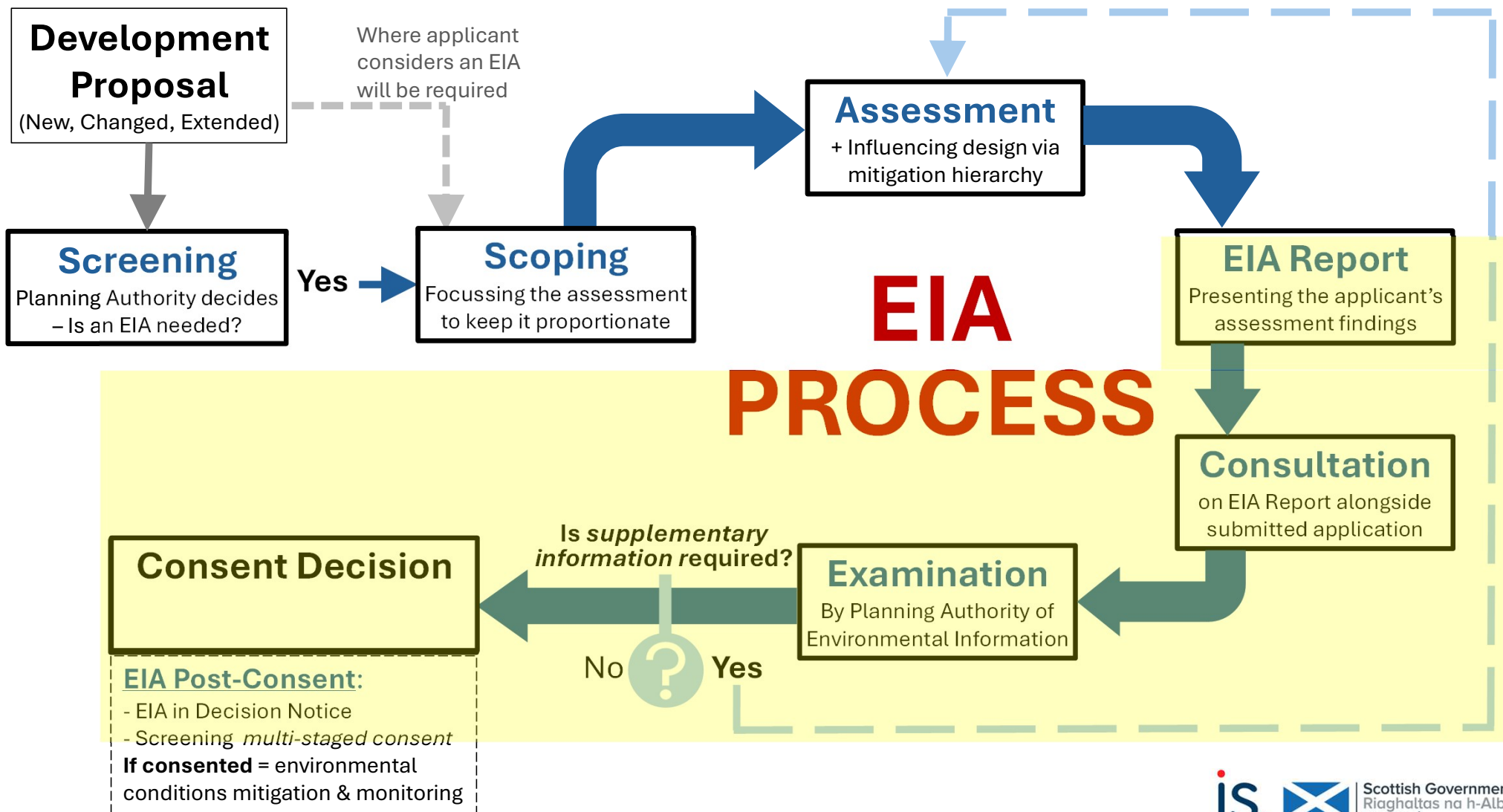
Environmental Impact Assessment (EIA)

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.





Managing EIA application is **IMPORTANT** Compliant & timely consenting and effective delivery

Like (Web 3 - screening) the PA has multiple formal duties to undertake in managing an ***EIA development*** from developer submission through to post-consent decision communications.

This is the **crunch point** to ensure **PA's forms** its **reasoned conclusion** of the proposed development's ***significant effects*** on the environment and ***integrates*** these ***into the actual consent decision***-making process.

While there are numerous formal procedures for the PA we also need to seek to make effective and timely decisions – **extended to 4 months for EIA** (vs 2).



EIA: Regulatory Teeth

Prohibition to Grant Consent

Whilst the EIA is decision-support it does have one key set of teeth...

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.

Meeting the requirements of the **regulatory definition of EIA** is therefore a critical element of a planning officer's activities in managing such an application and the related decision-making as to whether consent is awarded / not.

As such, failings in delivery of EIA's regulatory due process carry the risk of an EIA related **Judicial Review** of any consent awarded.



T&CP EIA (Scotland) Regulations 2017

Legal definition of EIA

[Reg 4(1)(a-e)]

An EIA is a process consisting of—

- a) Preparation of an EIA report by the **developer**;
- b) Carrying out consultation, publication & notification (Parts 5 & 6 + 10 as relevant).
- c) Examination by **PA** (/ Scottish ministers) of information presented in ***EIA report*** **and** any other ***environmental information***.
- d) Reasoned conclusion by **PA** (/ Scottish Ministers) on the significant effects of the development on the environment, taking account of examination (and own supplementary examination - where appropriate).
- e) Integration of reasoned conclusion into the decision notice (as Regulation 29).



The EIA must...

Consider likely significant effects across:

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

Interactions between the above + changes to due to major accidents / disasters and cumulative effects with other projects (consented / built)

Note: Noise, Transport, Socio-economics, etc are not *Factors* under EIA Regulations, their inclusion in an EIAR or your examination is fine BUT the work should always tie any *significance conclusion* to an effect on a receptor relevant to one/more of the above.



Receipt of an EIA Development application and Checking what the developer terms an EIA Report meets the EIA Regulatory requirements



EIA Application - FORMAL PROCESS

Planning Authority - Initial Activities

As a PA there are two key actions on receipt of an application

PA's Two EIA ACTIVITIES to validate an EIA application

1. Is it EIA development? + 2. Does EIAR meet Regulatory Requirements?

ACTIVITY 1: Is it EIA Development?

- If PA previously screened **AND** EIA was required the developer's application must include an EIAR within its documents to be accepted.
- If PA **not** previously screened **AND** application is for *Schedule 2 development* then PA must screen it and produce a *screening opinion*:
 - **IF screening opinion** indicates EIA is required applicant will need to prepare and submit EIAR to enable application to progress.



EIA APPLICATION VALIDATION

ACTIVITY 2: PA check **Developer's EIA** meets Regulatory Requirements?

PA ensure EIA meets minimum Regulatory content [**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 info specified in **Schedule 4** relevant to the specific characteristics of the development and to the environmental features likely to be affected.



EIA REPORT: Schedule 4 of the EIA Regulations

SCHEDULE 4 Regulation 5
INFORMATION FOR INCLUSION IN ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

1. A description of the development, including in particular:

- (a) a description of the location of the development;
- (b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases.

2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment (the "baseline scenario") and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of relevant information and scientific knowledge.

4. A description of the factors specified in regulation 4(3) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the development on the environment resulting from, inter alia:

- (a) the construction and existence of the development, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

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The description of the likely significant effects on the factors specified in regulation 4(3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project including in particular those established under Council Directive 92/43/EEC3 and Directive 2009/147/EC.

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to legislation of the European Union such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under paragraphs 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the EIA report.

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EIA Regulations 2017 Schedule 4

Provides more on the potential detail that may be relevant in terms of the:

- Development
- Environment
- Types of effect



DEVELOPER'S EIA Report

Other Compliance Requirements

[EIA Reg 5(3)(4)+(5)]

Linking back any *Scoping Opinion* [Reg5(3)]

- EIAR 'based on' latest Scoping Opinion – non-binding...
- Good Practice: If developer received Opinion + deviates from it, EIAR should explain this.

Avoidance of Duplication [Reg5(4)]

- EIAR can cross-ref to other 'relevant assessments', which includes seeking co-ordination of EIA and HRA by PA (EIAR findings should be **consistent** with any shadow HRA report).

Competent Experts [Reg5(5)]

- Developer must use Competent Experts to produce EIA Report (EIAR)
- EIAR must be accompanied by a statement explaining how above has been met – commonly Appendix of concise CVs for each factor lead / EIAR chapter author



PA activities after validating an EIA application

- EIAR Consultation & Notices
- Creating the *Environmental Information*



EIA APPLICATION – CONSULTATION & NOTICES

What needs to be done by PA?

ACTIVITY 3: Notices, Publication & Consultation on application + its EIA Report

3a) Notice of EIA application to those on ‘neighbouring land’

3b) Publication of EIA Report

3c) Consultation on EIA Report

ACTIVITY 3a)

Notice of EIA application to those on ‘neighbouring land’

- Where premises situated on ‘neighbouring land’ PA must send notice
- **Notice** to comply with **Schedule 5** of EIA Regulations 2017



EIA APPLICATION – CONSULTATION & NOTICES

ACTIVITY 3b) Publication of EIAR

PA Must organise publication of EIAR Notice on:

- **Application website** (website maintained by PA – defined **Reg 2**)
- **The Edinburgh Gazette**
- A **Newspaper** circulating in locality of proposed development

Note: Developer pays PA's costs of Gazette and Newspaper notice [**Reg 21(4)**]

Notice to cover **Reg 21(2)(a to h)** requirements:

- Proposed dev + application, is EIA development, EIAR available free of charge (times & where), how get EIAR copy & cost, how make representations & closing date, public participation arrangements [incl: how PA handle *additional information*], set nature of possible consent decisions by PA re: the application.



EIA APPLICATION – CONSULTATION & NOTICES

ACTIVITY 3c) EIAR Consultation – How, Who and for How long?

ACTIVITY 3c) PA Must

How: **Send copy EIAR Scottish Ministers, Consultation bodies, Other bodies** (as below)

Who? Consult on EIAR and Application with

- **Consultation bodies**
- **Other bodies (as relevant):** HSE, Office Nuclear Regulation, + other public body PA considers interest due “*specific environmental responsibilities or local and regional competencies*”
- **Public & interest parties** - **via Notice** + publication on Part 1 Register, on application website and at PA office

How long? **Minimum of 30 days +1**

- **Day after** last date notice is published (**Public**) / EIAR sent (**CBs + Other Bodies**)



The *Environmental Information* – which a PA must Examine

The outcome of the PA undertaking ACTIVITIES 3a + 3b + 3c is that it creates the...

Environmental Information

The term is defined in **Regulation 2**, as:

- EIA report submitted in respect of the proposed development
- Any *additional information* submitted in respect of the development
- Any representations made by any consultation body / other public body consulted in respect of the development
- Any representations duly made by any other person about *the* environmental effects of the development



Additional Information + what a PA must do with it

Additional information

Component of ***Environmental information*** that may arise after EIAR submitted to PA.

The term covers two specific forms of information (defined in Reg 2):

- ***Supplementary Information requested by the PA*** under Reg 26(2)
- Any other information provided by the developer which, in opinion of PA is substantive information about a matter to be included in EIA report in accordance with Reg 5(2)

PA requirements:

IF PA receives ***Additional Information*** **after** the original EIAR notices / publicity / consultation has **begun** the **PA must repeat** those steps again to enable representations



PA Examination of *Environmental Information*

- Examination
- Supplementary Information



The PA's **Examination** of *EIA report* and any other *Environmental Information*

[Reg 4(1)(c)]

Examination implies more than 'consideration' of pre-2017 EIA Regs

PA making a **thorough and detailed analysis** across the environmental evidence related to the proposed development.

Your examination's professional (planning) judgements =

A. Reasoned conclusion on significant environmental effects

B. IF minded to consent

= Mitigation / Monitoring measures re: significant adverse effects



EIA Examination

Reasoned Conclusion on Significant Effects

Your judgement of significance is fundamental to compliant & effective EIA

Planning officers should always:

- Make reasonable and rational judgements related to EIA
- Be able to justify your decisions based on the evidence available
- Consider across the opinions (EIAR + responses) and evidence
- Make the PA's formal decisions clear in decision process (Committee Report)

Ultimately = Applying your *existing* planning judgement skills in the context of EIA evidence



EIA Examination

Your Examination and *Sufficient Expertise*

[Reg 4(7)]

Your PA and **EIA** *Sufficient Expertise...*

The PA needs to have *'sufficient expertise'*, or access to such expertise, to examine EIA applications to come to its own reasoned conclusions on significant environmental effects.

Not defined further in EIA Regs...

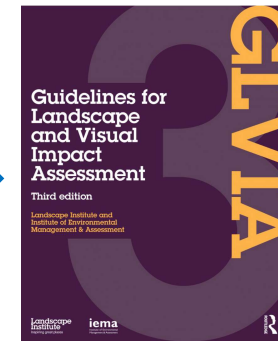
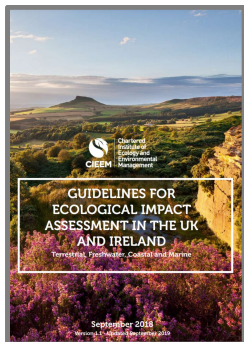
- Clearly less than Competent Experts who must produce EIA Report for developer.
- **ADVICE:** Understand EIA procedures & regulations + apply sound (planning) judgements



EIA Examination

Professional Body Practice Guidance

Professional body guidance often from ISEP (formerly IEMA) but also CIEEM, Landscape Institute and IHBC-CIfA provides good practice on assessment processes and *some* advice on significance judgements.



Professional body EIA guidance / advice catalogue includes:

- **Human Health** (+ Population, Noise), **Biodiversity** (+ Ecology, Noise), **Soil, Climate** (GHG, Adaptation & Resilience), **Material assets, Cultural heritage, Landscape** (+ Visual)
+ Mitigation Hierarchy, Major Accidents & Disasters, *etc*

Supplementary Information + when PA can request it

Supplementary information = Component of **Additional information** that PA may request from developer as part of its examination process.

PA has power to request developer submit **Supplementary Information** under Reg 26(2)

*“... about a matter to be included in the EIA report in accordance with regulation 5(2) which in the opinion of the [PA]... is **directly relevant to reaching a reasoned conclusion on the significant effects** of the development on the environment.” [Emphasis added]*

OUTCOMES - of above PA request:

- i. Developer **must** provide requested **Supplementary Information**
- ii. PA **must** repeat formal EIA Notices / Publicity / Consultation - as was conducted for developer's EIAR - providing various parties 30days +1 to each of the related parties.



Managing EIA Applications & Examination **Guidance** and **Hints & Tips**

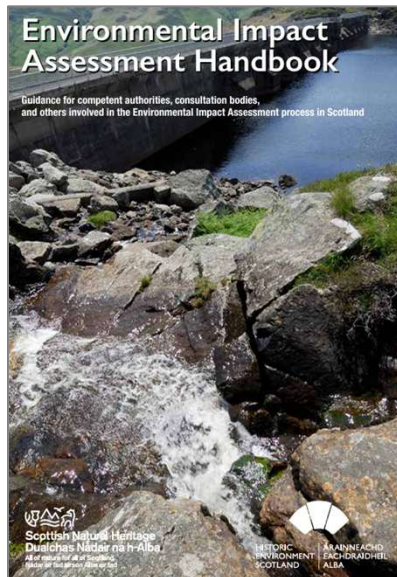


EIA Scoping

GUIDANCE – Government & Statutory Body

Over-arching

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



Wider Public Body Guidance

- Planning Inspectorate – **NSIP Advice Note 7: PINS**
“...considers that a good ES is one that:”



EIA Examination - Hints & Tips

Do's & Don'ts of effective PA practices

Effective planning officer thinking for examination:

- Start with understanding Non-Technical Summary **and** Development
- Examine all topic chapters **but prioritise** those with significant adverse effects findings and those that prove controversial (differing views EIAR **vs** Reps)
- Start with key findings for you as PA - start with significance conclusions and proposed mitigation measures.
- Work back into evidence only as far as needed to satisfy your judgements.

Don'ts of EIA Examination

- Don't wait for representations before starting to examine EIAR findings [Your Conclusions]
- Don't start at page 1 of EIAR and read from there to page 3664... [Find your Focus]
- Don't assume a *supplementary information* request is mandatory [Sufficient evidence]



EIA in the PA's Consent Decision

Integrating Planning Officer's reasoned significance conclusions in PA consent decision



PA Duties

EIA's role in consent decision

REMEMBER – EIA is a decision support tool BUT procedure must be delivered correctly to reduce risk of challenge

In all cases PA's reasoned conclusions on proposal's significant effects on the environment **must be** integrated into consent decision-making.

Within ***Committee Report***

- Application is EIA Development and PA has delivered compliance
- PA significance conclusions from examination of ***Environmental Information***
- **Must state PA's conclusions** are considered to be ***up-to-date*** @ **Decision**

If minded to consent = converting of mitigation into conditions



EIA's role in consent decision

EIA Mitigation > Planning Conditions

If expect decision will grant consent **PA must also:**

1. Seek to turn environmental design features & mitigation into **Conditions**
 - Sourced from: EIAR, consultee representations, PA's own judgement
 - **Wording of conditions** extremely important balancing Planning requirements (i.e. necessary, relevant to both planning and the development, precise, enforceable, reasonable) with ensuring retain intended environmental protections anticipated by EIA process...
2. Consider whether monitoring is needed related to **at least** the significant adverse effects



EIA information requirements on PA in the *Decision Notice*



PA's EIA duties

After decision-making

[Reg 29 & 31]

2017 EIA Regulations introduced requirement to...

- Make specific EIA info available within / alongside **Decision Notice**
 - Reasoned significance conclusion behind decision
 - Granted: Env conditions, Env design features, mitigation & monitoring, [consultation summary]
 - Refused: Just the reasons, incl: any driven by significant effects (and developer's ability to challenge)
- Placed a duty on PA's to **also inform** other parties and the public
 - Scottish Ministers, consultation bodies & other bodies consulted on EIAR
 - Public / others - Notice available for public inspection via website **or** local advertisement

NOTE: Where Scottish Ministers determine EIA application PA still responsible for above!



EIAR Submission to Consent Decision ***– Learning Review***



Learning Review

EIA Reports – *Enhancing Developer submission to Consent Decision*

Provide you with a core understanding of the:

- Regulatory requirements around EIA Report, esp @ validation
- PA Activities in managing an *EIA development* application post-submission
- What PA must examine and some good practice advice
- Role of *additional information* and *PA supplementary information* powers

+ EIA related PA activities @ decision and post-decision communication.



EIA Training Capacity Building Programme

Next Steps

February & March

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

- **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.





Q&A

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Thank You!

