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THE ENVIRONMENTAL IMPACT ASSESSMENT
(SCOTLAND) REGULATIONS 1999

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Circular

Scottish Planning Series

PLANNING CIRCULAR 8 2007

**The Environmental Impact
Assessment (Scotland)
Regulations 1999**

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Important Note: In the interests of brevity and conciseness, SPPs do NOT repeat policy across thematic boundaries. Each SPP takes as read the general policy in SPP 1 and highlights the other SPPs where links to other related policy will be found. The whole series of SPPs should be taken as an integral policy suite and read together.

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INTRODUCTION

- 1 This Circular gives guidance on the Environmental Impact Assessment (Scotland) Regulations 1999¹ (Scottish Statutory Instrument 1999 No 1) (referred to in this Circular as “the Regulations”). The Regulations implement Council Directive No. 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (the EIA Directive), as amended by Council Directive No. 97/11/EC and Article 3 of Council Directive 2003/35/EC in so far as it applies to development under the Town and Country Planning (Scotland) Act 1997. The Regulations apply to:
 - a) projects which require planning permission in response to an application under Part III of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) as amended by the Planning etc. (Scotland) Act 2006, (Part II of the Regulations);
 - b) certain trunk road projects, comprising construction and improvement which are authorised under the Roads (Scotland) Act 1984 (Part III of the Regulations);
 - c) drainage works authorised under the Land Drainage (Scotland) Act 1958 (Part IV of the Regulations).
- 2 This Circular amends and replaces guidance previously contained in Circular 15/1999. The revisions have been made to take into account recent amendments to the Regulations and to provide updated guidance in light of an emerging body of EIA case law². Further, practical guidance is contained in Planning Advice Note (PAN) 58 on Environmental Impact Assessment published in 1999. It is our intention to update PAN 58 in due course, and the Regulations and this Circular take precedence over the advice in that PAN.
- 3 The main part of the Circular concerns development under the Town and Country Planning (Scotland) Act 1997. Guidance on trunk road projects and land drainage projects is contained in Annex E and Annex F respectively. Corresponding provisions for development subject to planning control, trunk road projects and drainage works have been made in England, Wales and Northern Ireland.
- 4 Guidance on procedures for projects which are the subject of private legislation through the Scottish Parliament is available online via the Scottish Parliament’s web pages³. The Transport & Works (Scotland) Act 2007, which received Royal Assent on 14 March 2007, enables approval for certain transport projects to be achieved through Ministerial order, replacing the use of Private Bills to authorise transport projects. Procedures for projects which are granted consent under other legislation are the subject of separate legislation and guidance issued by the Scottish Government, relevant UK Government departments or agencies.

1 As amended by SSI 2002/324, 2003/331, 2003/341, 2004/332, 2006/270, 2006/614, and 2007/268

2 The interpretation of the EIA Directive and of the Regulations has been considered by the courts on a number of occasions; whilst cases referred to are English court cases, given the similarities in the EIA regimes north and south of the border, they are relevant to the operation of the EIA Regulations in Scotland.

3 http://www.scottish.parliament.uk/business/bills/billguidance/gprb-1.htm#2_293



- 5 The Circular is intended as a guide. It should be read in conjunction with the Regulations themselves. Where guidance is offered on the interpretation of the legislation, it should be borne in mind that only the Courts can definitively interpret the law authoritatively.

THE EIA DIRECTIVE

- 6 Council Directive 85/337/EEC had an implementation date of 3 July 1988. Directive 97/11/EC, which amends Directive 85/337/EEC, had an implementation date of 14 March 1999. It extended the range of development to which the Directive applies and made a number of important changes to environmental impact assessment (EIA) procedures. The Directive has been further amended by Article 3 of Directive 2003/35/EC, known as the 'Public Participation Directive', which aligns EIA requirements more closely with the public participation provisions of the Aarhus Convention⁴.
- 7 The Directive's main aim is to ensure that the authority giving the primary consent (the 'competent authority') for a particular project makes its decision in the knowledge of any likely significant effects on the environment. The Directive therefore sets out a procedure that must be followed for certain types of project before they can be given 'development consent'. This procedure – known as Environmental Impact Assessment (EIA) – is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing any adverse effects, are properly understood by the public and the relevant competent authority before it makes its decision.
- 8 Projects of the types listed in Annex I to the Directive must always be subject to EIA. Projects of the types listed in Annex II must be subject to EIA whenever they are likely to have significant effects on the environment. A determination of whether or not EIA is required must be made for all projects of a type listed in Annex II.
- 9 Where EIA is required, there are three broad stages to the procedures:
 - a) the developer (defined by the Directive as 'the applicant for authorisation for a ... project..') must compile detailed information about the likely main environmental effects. To help the developer, public authorities must make available any relevant environmental information in their possession. The developer can also ask the 'competent authority' for their opinion on what information needs to be included. The information finally compiled by the developer is known as an 'Environmental Statement' (ES).
 - b) the ES (and the application to which it relates) must be publicised. Public authorities with relevant environmental responsibilities and the public must be given an opportunity to give their views about the project and ES.

⁴ United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in decision making and Access to Justice in Environmental Matters, known as the 'Aarhus Convention'.

- c) the ES, together with any other information, comments and representations made on it, must be taken into account by the competent authority in deciding whether or not to give consent for the development. The public must be informed of the decision and the main reasons for it.

TOWN AND COUNTRY PLANNING – PART II OF THE REGULATIONS

10 The Regulations apply to development in Scotland:

- a) for which an application for planning permission is received by a planning authority or which is referred to the Scottish Ministers for determination; or
- b) which is carried out under permitted development rights; or
- c) which is the subject of a planning enforcement notice issued under Section 127 of the 1997 Act; or
- d) which is carried out under permission granted by a simplified planning zone scheme or enterprise zone order;
- e) which is likely to have significant environmental effects in other European Economic Area States (regulations 40 and 41);
- f) for which an application for a review of mineral permission under Sections 8, 9 or 10 of the 1997 Act is received by a planning authority (see paragraph 144);
- g) for which an urgent application (for Crown development) is made to the Scottish Ministers under Section 242A of the 1997 Act (see paragraphs 171-172).

With effect from 1st April 2007 (and subject to the transitional arrangements contained in the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007⁵), new fish farms or modifications to existing farms within the 3-mile limit of UK territorial waters adjacent to Scotland will require planning permission and developers must submit an application for planning permission to the relevant planning authority. Further information and background on the relevant legislative changes, including the insertion of relevant thresholds into Schedule 2 of the Regulations concerning intensive fish farming in marine waters, is contained in Circular 1/2007.

- 11 The Regulations must be interpreted in the context of the Directive itself. Neither the Directive nor the Regulations determine whether consent can or should be granted and it is for the planning authority or the Scottish Ministers, as the case may be, to determine an individual application. Planning authorities already have a well established general responsibility to consider the environmental implications of developments which are subject to planning control. The Regulations integrate the EIA procedures into this existing framework of planning authority control. These procedures provide a more systematic method of assessing the

⁵ S.S.I 2007/268



environmental implications of developments that are likely to have significant effects. While only a small proportion of development will require EIA, it is stressed that EIA is *not* discretionary. If significant effects on the environment are likely, EIA is required.

- 12 Where the EIA procedure shows that a project will have an adverse impact on the environment, it does not automatically follow that planning permission must be refused. It remains the task of the planning authority to judge each planning application on its merits within the context of the Development Plan, taking account of all material considerations, including the environmental impacts.
- 13 For developers, EIA can help to identify the likely effects of a particular project at an early stage. This can produce improvements in the planning and design of the development; in decision making by both parties; and in consultation and responses thereto, particularly if combined with early consultations with the planning authority and other interested bodies during the preparatory stages. In addition, developers may find EIA a useful tool for considering alternative approaches to a development. This can result in a final proposal that is more environmentally acceptable, and can form the basis for a more robust application for planning permission. The presentation of environmental information in a more systematic way may also simplify the planning authority's task of appraising the application and drawing up appropriate planning conditions, enabling swifter decisions to be reached.

The Legal Framework and Terminology

- 14 In this Circular, **Environmental Impact Assessment (EIA)** refers to the whole process by which environmental information is collected, publicised and taken into account in reaching a decision on a relevant planning application.
- 15 Applications for planning permission for which EIA is required are referred to in the Regulations and the Circular as '**EIA applications**'. Subject to any direction by Scottish Ministers, an application is, or would be, an EIA application if:
 - a) the relevant planning authority has notified the applicant in writing that EIA is required; or
 - b) the applicant submits a statement which they refer to as an Environmental Statement for the purposes of the Regulations.
- 16 Development that falls within a relevant description in Schedule 1 of the Regulations always requires EIA. Such development is referred to in this Circular and the Regulations as '**Schedule 1 development**'.
- 17 Development of a type listed in Schedule 2 to the Regulations which:
 - a) meets one of the relevant criteria or exceeds one of the relevant thresholds listed in the second column of the table in Schedule 2; or

b) is located wholly or in part in a 'sensitive area' as defined in regulation 2(1);
is referred to in this Circular as '**Schedule 2 development**'.

- 18 Regulation 3 prohibits the granting of planning permission for:
- a) Schedule 1 development; or,
 - b) Schedule 2 development likely to have significant effects on the environment because of factors such as its nature, size or location, unless the EIA procedures have been followed.
- 19 For all Schedule 2 development (including that which would otherwise benefit from permitted development rights), the planning authority must make its own formal determination of whether or not EIA is required (referred to in the Regulations and this Circular as a '**Screening Opinion**'). This may be done before any planning application has been submitted (regulation 5) or after (regulation 7). In making this determination, the planning authority must take into account the relevant "selection criteria" in Schedule 3 to the Regulations (Annex A to this Circular). The applicant may appeal to Scottish Ministers for a '**Screening Direction**' where a planning authority adopts a screening opinion that EIA is required (regulation 6). The planning authority must make all screening opinions and directions available for public inspection (regulation 20).
- 20 Where EIA is required, information must be provided by the applicant in an **Environmental Statement (ES)**. This document (or series of documents) must contain the information specified by regulation 2(1) and in Schedule 4 of the Regulations. Regulation 10 allows developers to obtain a formal opinion from the relevant planning authority on what should be included in the Environmental Statement ('a **Scoping Opinion**'). Under regulation 12, certain public bodies (defined in regulation 2(1) as '**the consultation bodies**') must, if requested, make information in their possession available to the developer for the purposes of preparing an ES.
- 21 Regulation 13 sets out the procedures which must be followed by the applicant when submitting a planning application with an ES, and by planning authorities or Scottish Ministers in publicising it. Regulation 14 details the consultation arrangements where an ES is received by the planning authority. Similar procedures apply where an ES is submitted to Scottish Ministers (regulation 16). In all cases, applicants must also make a reasonable number of copies of the ES available to the public (regulation 17), and may make a reasonable charge for them (regulation 18). Although the submission of an ES is not subject to statutory time limits, every effort should be made to submit it within a reasonable time scale. Until it is submitted, the application cannot be determined except by refusal.
- 22 For EIA applications, the period after which an appeal against non-determination may be made is extended to 4 months (regulation 45).

- 23 Where a statement has been submitted which does not contain all the required information, the planning authority, Scottish Ministers or reporter (references in the Regulations to Scottish Ministers include a reporter where one has been appointed to consider an application or appeal) must ask the applicant or appellant (as the case may be) to supply further information (regulation 19). This information, and any other substantive information provided voluntarily by the applicant and relating to the ES, must be publicised in the same way as the statement itself.
- 24 When determining an EIA application, the planning authority, Scottish Ministers or reporter must inform the public of their decision and the procedures for challenging its validity (regulation 21). See paragraph 133 for further information.
- 25 Regulation 47 makes consequential and miscellaneous amendments to the provisions of:
- a) s26 of the Town and Country Planning (Scotland) Act 1997;
 - b) the Town and Country Planning (Use Classes) (Scotland) Order 1997⁶;
 - c) the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (GDPO)⁷; and
 - d) the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (GPDO)⁸
 - e) the Public Gas Transporter Pipe-Line Works (Environmental Impact Assessment) Regulations 1999⁹

Electronic Communications

- 26 The Town and Country Planning (Electronic Communications) (Scotland) Order 2004 came into force on 28 July 2004. The Order inserted general amending provisions into the Regulations, and into planning legislation generally, to allow for the use of electronic communications in carrying out certain procedures within the planning system. Further information and guidance can be found in Circular 3/2004¹⁰ and in PAN 70¹¹.

6 S.I. 1997/3061, as amended by S.I. 1998/1196 and S.S.I. 1999/1

7 S.I. 1992/224, as amended by S.I. Nos. 1992/2083, 1993/1039, 1994/2585, 1994/3293, 1996/467, 1997/749 and S.S.I. 1999/1, S.S.I. 2000/179, S.S.I. 2001/245, S.S.I. 2003/1, S.I. 2003/2155, S.S.I. 2004/332

8 S.I. 1992/223, as amended by 1992/1078, 1992/2084, 1993/1036, 1994/1442, 1994/2586, 1994/3294, 1996/252, 1996/1266, 1996/3023, 1997/1871, 1997/3060, 1998/1226 and S.S.I. 1999/1, S.S.I. 2000/2040, S.S.I. 2001/266, S.S.I. 2003/341, S.I. 2003/2155, S.S.I. 2004/332, S.S.I. 2006/270

9 S.I. 1999/1672

10 Circular 3/2004; The Town and Country Planning (Electronic Communications) (Scotland) Order 2004

11 PAN 70; Electronic Planning Service Delivery

ESTABLISHING WHETHER EIA IS REQUIRED

SCHEDULE 1 AND SCHEDULE 2 DEVELOPMENT

- 27 Generally, it will fall to planning authorities in the first instance to consider whether a proposed development requires EIA. For this purpose they will first need to consider whether the development is described in Schedule 1 or Schedule 2 to the Regulations (see figure 1):

Schedule 1 development

Development of a type listed in Schedule 1 always requires EIA.

Schedule 2 development

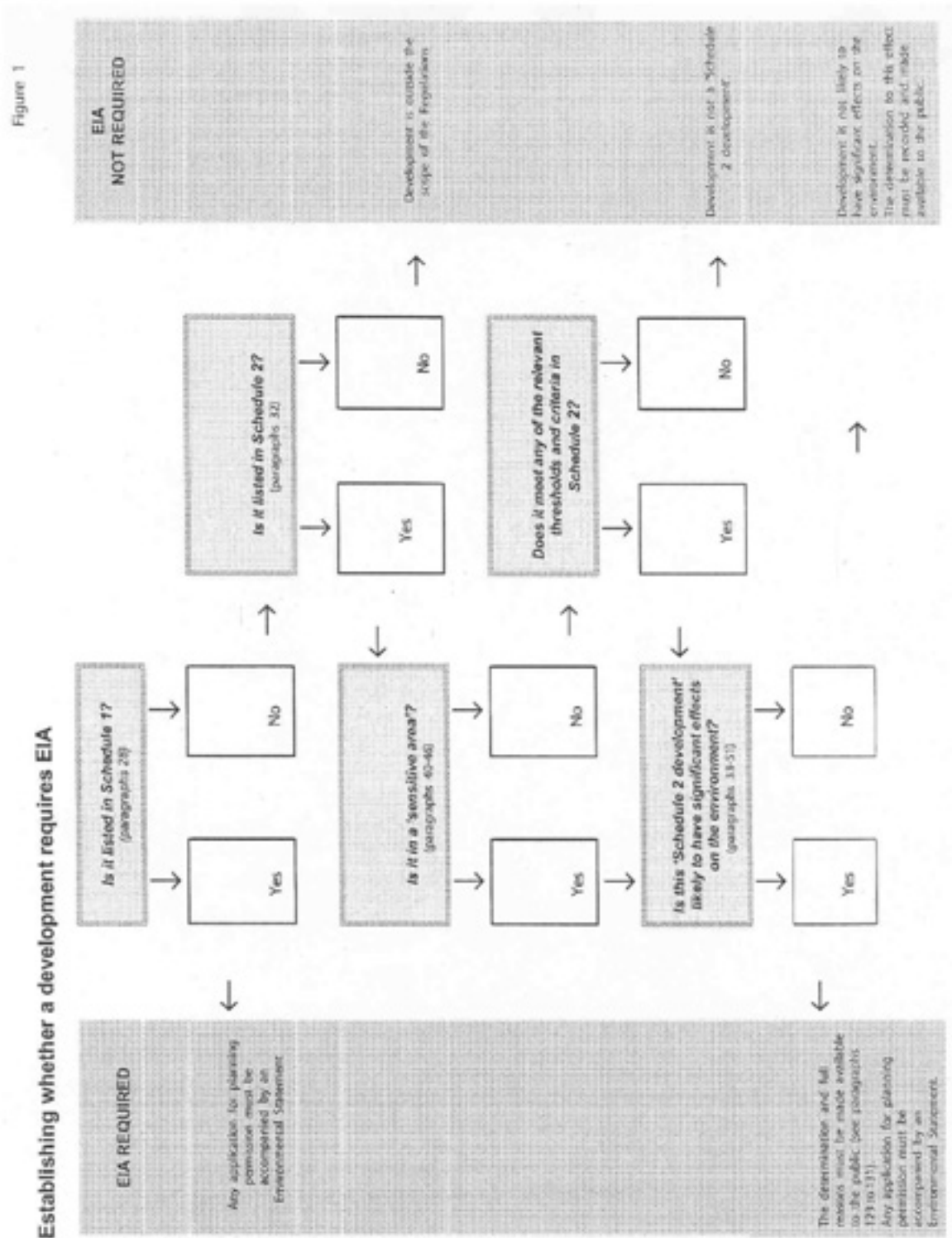
Development of a type listed in Schedule 2 requires EIA if it is likely to have significant effects on the environment by virtue of factors such as its size, nature or location.

Changes or extensions to Schedule 1 or Schedule 2 developments

Changes or extensions to Schedule 1 or Schedule 2 developments which may have significant effects on the environment also fall within the scope of the Regulations. Where the change or extension is of a type listed in Schedule 1 and where the change or extension itself meets any thresholds or description set out in that schedule, it constitutes a Schedule 1 development and EIA is always required. Otherwise, and if the change or extension *may* have significant adverse effects on the environment and is listed in Schedule 1 or in column 1 of Schedule 2, it is considered to be a Schedule 2 development. A screening opinion or direction is then required on whether the development is likely to have significant effects on the environment.

- 28 In determining whether a particular development is of a type listed in schedule 1 or 2, planning authorities should have regard to the ruling of the European Court that the EIA Directive has a "wide scope and broad purpose". The fact that a particular type of development is not specifically identified in one of the Schedules does not necessarily mean that it falls outside the scope of the Regulations. In particular, authorities should be aware that "urban development" in paragraph 10(b) of Schedule 2, embraces residential development (houses and flats) as well as what might be regarded as development of a more obviously urban nature. It should also be borne in mind that, in this context, the term "urban" applies not only to development which is to be sited in an already existing urban area. It could apply to development proposed for out of town or even rural areas which might have an urbanising effect on the local environment. This might be the case for example, where the development will bring a significant increase in the amount of traffic in that area (e.g. an out of town shopping complex).

Figure 1: Establishing whether a proposed development requires EIA



- 29 The wide scope of the EIA Directive should also be noted in connection with the paragraph headings in Schedule 2 to the Regulations. For example, paragraph 10, which amongst other things includes urban development and industrial estate development, is headed "Infrastructure projects". In the case of *Goodman and another v Lewisham Borough Council* [TLR 21/2/03] the planning authority took the view that a storage and distribution facility did not constitute Schedule 2 development. The court, however, stated that "The examples of urban development projects set out in paragraph 10 (b) of the Regulations demonstrate that in this instance 'infrastructure' goes wider, indeed far wider, than the normal understanding, as quoted to us from the Shorter Oxford Dictionary, of "the installations and services (power stations, sewers, roads, housing, etc) regarded as the economic foundations of a country.'" The case also referred to the decision in the case of *Kraaijveld* (ECJ C- 72/95,1-5403) where it was stated that "The wording of the directive indicates that it has wide scope and a broad purpose." In this connection it is important to consider the scope and purpose of a project, and not simply its label.

IDENTIFYING SCHEDULE 2 DEVELOPMENT

- 30 Schedule 2 development is development of a type listed in Schedule 2 which:
- a) is located wholly or in part in a 'sensitive area' as defined in regulation 2(1) (see paragraph 39); or
 - b) meets one of the relevant criteria or exceeds one of the relevant thresholds listed in the second column of the table in Schedule 2.
- 31 Development which does not exceed the thresholds or meet the criteria in the second column of the table in Schedule 2 and which is not wholly or partly in a "sensitive area" as defined in regulation 2(1), is not Schedule 2 development and therefore does not require EIA. Development which does not exceed the thresholds or meet the criteria in Schedule 2 but is in or partly in a "sensitive area", is Schedule 2 development but will require EIA only if it is screened as being **likely** to have **significant** effects on the environment. However, there may be circumstances in which development of a type listed in column 1 of Schedule 2 that does not fall under a. or b. in paragraph 30 above might give rise to significant environmental effects. In those exceptional cases, Scottish Ministers can use their powers under regulation 4(8) (see paragraph 83) to direct that EIA is required.

THE NEED FOR EIA FOR SCHEDULE 2 DEVELOPMENT

General considerations

- 32 The planning 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"¹². In each case, the basic question to be

¹² Planning authorities may also receive applications for Schedule 1 development without an environmental statement, or receive requests for "screening opinions" for development which is Schedule 1 development or is neither Schedule 1 development nor Schedule 2 development. In the any of these cases the Regulations require that a "screening opinion" be adopted.



asked is: 'Would this particular development be likely to have significant effects on the environment?'

- 33 The Regulations reflect the requirement in the Directive to determine whether the proposed development is likely to have significant effects on the environment by virtue of factors such as "its nature, size or location". The word "or" suggests that EIA may be required by reason of just one of these factors. That certain types of development can be likely to have significant environmental effects solely because of their characteristics is evidenced by the mandatory requirement for EIA for all types of development listed in Schedule 1, regardless of where they are to be located. Similarly, whilst there is no corresponding list of locations for which EIA is mandatory regardless of the type of development proposed, there must be a presumption that certain locations are of such a type that EIA will be required for any development there.
- 34 For many types of development, perhaps the majority, it will be necessary to consider the characteristics of the development in combination with its proposed location in order to identify the potential for interactions between a development and its environment and therefore determine whether there are likely to be significant environmental effects. In determining whether a particular development is likely to have such effects, authorities must take account of the selection criteria in Schedule 3 to the Regulations (reproduced at Annex A to this Circular). Three categories of criteria are listed:
- Characteristics of the development
 - Location of the development
 - Characteristics of the potential impact
- 35 Consideration of the third of these categories is designed to help in determining whether any interactions between the first two categories (i.e. between a development and its environment) are likely to be significant. Planning authorities may wish to consider using some form of checklist as an aid to this determination. Some authorities have developed their own. The European Commission have published guidance on screening and scoping which includes such checklists (<http://europa.eu.int/comm/environment/eia/home.htm>) comprising a series of questions related to each of the selection criteria. As a further example, a possible checklist has also been included at Annex B to this Circular.
- 36 There is no requirement to use such checklists or other screening aids, but there are two advantages in doing so. Not only do they provide a systematic approach to the process of screening, which should make for a more considered and balanced screening opinion. They also provide documentary evidence that screening has been carried out and a record of the basis on which the opinion was reached, in the event that a decision is subsequently questioned or challenged in the courts. Whether or not such screening aids are used, planning

authorities should always ensure that they retain some evidence that screening has taken place.

- 37 It is 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 development gives rise relevant to this determination, unless the substance of opponents' arguments reveals that there are likely to be significant effects on the environment.
- 38 As indicated above, in some cases, the scale of a development 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 development proposed and those in which Scottish Ministers may wish to exercise their power to "call in" an application for their own determination¹³. However, there is no presumption that all called in applications require EIA, nor that all EIA applications will be called in.

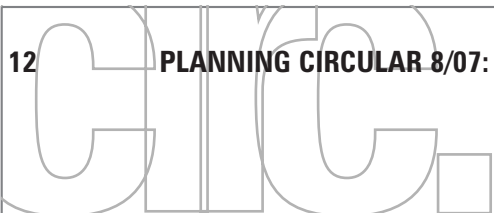
Development in environmentally sensitive locations

- 39 The relationship between a proposed development and its location is a crucial consideration. For any given development proposal, the more environmentally sensitive the location, the more likely it is that the effects will be significant and will require EIA. Certain designated sites are defined in regulation 2(1) as 'sensitive areas' and the thresholds/criteria in the second column of Schedule 2 do not apply there. All developments of a type listed in Schedule 2 to be located in such areas must be screened for the need for EIA. These are:

- Sites of Special Scientific Interest
- Land subject to Nature Conservation Orders
- International Conservation Sites
- National Scenic Areas
- World Heritage Sites
- Scheduled Monuments
- National Parks.

- 40 Special considerations apply to all of these sensitive areas, especially those which are also international conservation sites, such as classified and proposed Special Protection Areas under the Wild Birds Directive 79/404/EEC and designated and candidate Special Areas of Conservation under the Habitats Directive 92/43/EEC. In practice, the likely environmental effects of Schedule 2 development will often be such as to require EIA if it is to be located in or close to sensitive sites. Whenever planning authorities are uncertain about the significance of a development's likely effects on a sensitive area, they should consult the relevant statutory consultee such as Scottish Natural Heritage or Historic Scotland. Other agencies and bodies may have relevant information and can be consulted if it is thought this would be helpful.

¹³under section 46 of the 1997 Act.



- 41 For any Schedule 2 development, EIA is more likely to be required if it affects the special character of any of the other types of “sensitive area” listed above. However, it does not follow that every Schedule 2 development in (or affecting) these areas will automatically require EIA. In each case, it will be necessary to judge whether the likely effects on the environment of that particular development will be significant in that particular location. Any views expressed by the consultation bodies (see paragraph 102) should be taken into account, and authorities should consult them in the cases where there is a doubt about the significance of a development’s likely effects on a sensitive area.
- 42 In certain cases other statutory and non-statutory designations which are not included in the definition of ‘sensitive areas,’ but which are nonetheless environmentally sensitive, may also be relevant in determining whether EIA is required, such as local landscape or biodiversity designations. In the case of the latter, Local Biodiversity Action Plans will be of assistance in determining the sensitivity of a location.
- 43 In considering the sensitivity of a particular location, regard should also be given to whether any national or internationally agreed environmental standards are already being approached or exceeded. Examples include air quality, drinking water and bathing water. Where there are local standards for other aspects of the environment, consideration should be given to whether the proposed development would affect these standards or levels.
- 44 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 development should be allowed. Industrial development involving emissions which are potentially hazardous to humans and nature may fall in to this category. So occasionally, may other types of development which are proposed for severely contaminated land and where the development might lead to more hazardous contaminants escaping from the site than would otherwise be the case if the development did not take place.
- 45 The Regulations do not alter the relationship between authorities’ planning responsibilities and the separate statutory responsibilities exercised by local authorities and other pollution control bodies under pollution control legislation. However, they do strengthen the need for appropriate consultations with the relevant bodies at the planning application stage. Advice on the role of the planning system in controlling pollution is set out in Planning Advice Note (PAN) 51 “Planning, Environmental Protection and Regulation”.
- 46 Given the range of Schedule 2 development, and the importance of location in determining whether significant effects on the environment are likely, it is not possible to formulate criteria or thresholds which will provide a universal test of whether or not EIA is required. The question must be considered on a

case-by-case basis. The fundamental test to be applied in each case is whether *that* particular type of development and its specific impacts are likely, in *that* particular location, to result in significant effects on the environment.

Reaching a screening opinion: proposed remediation measures

- 47 In reaching a screening opinion as to whether there are likely to be significant effects on the environment, planning authorities should be cautious of the extent to which the opinion takes account of proposed remediation measures, even where these are intended to be the subject of conditions attached to the planning permission. The courts may quash a permission where EIA has not been required on the grounds that any significant adverse effects could be offset by appropriate conditions. (*Roao Lebus v South Cambridgeshire DC* [2003 2PLR5]). In such a case, the court has held, the safer course is to require EIA and enable the proposed remediation measures to be included in the Environmental Statement, so that they can be made available to the statutory consultation bodies and the public for comment and taken into account by the authority when determining the planning application.
- 48 The extent to which proposed remediation measures may be taken into account for screening purposes depends on the facts in each case. Some measures may be so well established that they have become routine and need not be discounted when considering the likelihood of significant environmental effects. In a case of any complexity, however, it should not be assumed that the measures would be successfully implemented (*Gillespie v First Secretary of State and Bellway Urban Renewal* [TLR 7/4/2003]).

Applying the guidance to individual development

- 49 In general, each application (or request for a screening opinion) should be considered for EIA on its own merits. The development should be judged on the basis of what is proposed by the applicant.
- 50 In determining whether significant effects are likely, planning authorities should have regard to the cumulative effects of the project under consideration together with any effects from existing or approved development. Generally, it would not be feasible to consider the cumulative effects with other applications which have not yet been determined, since there can be no certainty that they will receive planning permission. However, there could be circumstances where 2 or more applications for development should be considered together. Such circumstances are likely to be where the applications in question are not directly in competition with one another so that both or all of them might be approved, and where the overall combined environmental impact of the proposals might be greater or have different effects than the sum of the separate parts. The consideration of cumulative effects is different in principle from the issue of multiple applications which need to be considered together.



Multiple applications

- 51 For the purposes of determining whether EIA is required, a particular planning application should not be considered in isolation if, in reality, it is properly to be regarded as an integral part of an inevitably more substantial development¹⁴. In such cases, the need for EIA must be considered in respect of the total development. This is not to say that all applications which form part of some wider scheme must be considered together. In this context, it will be important to establish whether each of the proposed developments could proceed independently and whether the aims of the Regulations and Directive are being frustrated by the submission of multiple planning applications.

Changes or extensions to existing or approved development

- 52 Development which comprises a change or extension requires EIA only if the change or extension is likely to have significant environmental effects. However, the significance of any effects must be considered in the context of the existing development. For example, even a small extension to an airport runway might have the effect of allowing larger aircraft to land, thus significantly increasing the level of noise and emissions. 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.
- 53 It should be noted that the applicant can be asked to provide an Environmental Statement only in respect of the specific development he has proposed, though the statement will need to address not only direct, but also indirect and cumulative effects of the development. Any wider implications would be for the planning authority to consider, although it is open to the applicant to assist the planning authority by supplying any additional information relevant to this consideration. Further guidance on the content of Environmental Statements is given in paragraphs 89-90.

STAGES AT WHICH SCREENING MAY BE CARRIED OUT

- 54 The determination of whether or not EIA is required for a particular development proposal can take place at a number of different stages:
- a) the applicant may decide that EIA will be required and submit a statement which he refers to as an Environmental Statement for the purpose of the Regulations with the planning application (paragraphs 57-59);
 - b) the developer may, before submitting any planning application, request a screening opinion from the planning authority (paragraphs 60-63). If the

¹⁴Judgement in the case of *R v Swale BC ex parte RSPB* (1991) 1 PLR 6

developer disputes the need for EIA (or a screening opinion is not adopted within the required period), the developer may apply to Scottish Ministers for a screening direction (paragraphs 64-65). Similar procedures apply to permitted development (paragraphs 66-70);

- c) the planning authority may determine that EIA is required following receipt of a planning application (paragraphs 72-75). Again, if the applicant disputes the need for EIA, the applicant may apply to Scottish Ministers for a screening direction (paragraph 76);
- d) the determinations at b) and c) also apply in relation to urgent applications (for Crown Development) made directly to the Scottish Ministers (see paragraph 172 below);
- e) Scottish Ministers may determine that EIA is required for an application that has been called-in for their determination or is before them on appeal (paragraphs 77-82);
- f) Scottish Ministers may direct that EIA is required at any stage prior to the granting of consent for particular development (paragraphs 83-84).

- 55 Applicants should bear in mind that if the need for EIA only arises after the planning application has been submitted, consideration of the application will be suspended pending submission of an Environmental Statement (regulation 45(2)(b)).

Procedures prior to submission of a planning application

- 56 Developers are advised to consult planning authorities as early as possible where EIA might be required, particularly where the proposed development would otherwise benefit from permitted development rights. It will generally be helpful for developers to be aware of the concerns of planning authorities and pollution control bodies well before a planning application is submitted. To provide some certainty for the developer, they can apply formally for a 'screening opinion' (regulation 5) from the planning authority before making a planning application. A valid planning application may be made without prior recourse to this procedure, but developers should bear in mind that any informal view from an authority has no legally-binding effect.

Environmental Statement submitted 'voluntarily'

- 57 Applicants may decide for themselves (in the light of the Regulations, the guidance in this Circular, and any discussions with the planning authority) that EIA will be required for their proposed development. The applicant may, therefore, submit a statement with a planning application without having obtained a screening opinion to the effect that one is required.



- 58 If an applicant expressly states that they are submitting a statement which they refer to as an Environmental Statement (ES) for the purposes of the Regulations, the application is an EIA application (regulation 4(2)(a)) and must be treated as such by the planning authority. Exceptionally, where an authority is of the view that the application to which the statement relates is clearly not one which they would have determined to be an EIA application, they may ask Scottish Ministers for a direction on the matter (see paragraphs 85-86).
- 59 Occasionally, the applicant may not have made it clear that the information submitted is intended to constitute an ES for the purposes of the Regulations. In such cases, the planning authority should adopt a screening opinion (if they have not already done so), in accordance with the procedures in regulation 7 (see paragraphs 72-75). If the planning authority determines that it is an EIA application, it is open to the applicant to ask for the information already submitted to be treated as the ES for the purposes of the Regulations, or to submit the specified information in a new statement. If the authority's opinion is that EIA is not required, the information provided by the applicant should still be taken into account in determining the application if it is material to the decision.

Obtaining a screening opinion from the planning authority (regulation 5)

- 60 Before submitting an application for planning permission, developers who are in doubt whether EIA will be required may request a screening opinion from the planning authority (regulation 5(1)). The request should include a plan indicating the proposed location of the development, and a brief description of the nature and purpose of the proposal and its possible environmental effects, giving a broad indication of their likely scale.
- 61 On receipt of a request, the authority should consider whether the proposed development is either Schedule 1 development or Schedule 2 development that is likely to have significant effects on the environment by virtue of factors such as its nature, size or location, taking into account the selection criteria in Schedule 3 (Annex A) (regulation 4(5)). The developer should normally be able to supply sufficient information about the development to enable the planning authority to form a judgement and give a ruling on the need for EIA. However, where the authority considers that it needs further information, the developer should be asked to provide it (regulation 5(3)). Authorities should bear in mind that what is in question at this stage is the broad significance of the likely environmental effects of the proposal. This should not require as much information as would be expected to support a planning application. Very exceptionally, authorities may also wish to seek advice from one or more of the consultation bodies or non-statutory bodies.
- 62 The planning authority must adopt its screening opinion within three weeks of receiving a request. This period may be extended if the authority and developer so agree in writing. When adopting an opinion that EIA is required, the authority must state the full reasons for their conclusion clearly and precisely (regulation 4(6)). The Scottish Ministers consider that there is no similar requirement within

the EIA Directive where the authority decides that EIA is not required, but equally there is no bar on an authority from providing reasons if it wishes to do so. It is likely that were such information to be requested under The Environmental Information (Scotland) Regulations 2004¹⁵ or the Freedom of Information (Scotland) Act 2002 it would require to be released. A copy of the screening opinion must be sent to the developer (regulation 5(5) and 4(6)) and, where applicable, will help him to prepare the ES by indicating those aspects of the proposed development's environmental effects which the authority considers to be likely to be significant (see also paragraphs 94-97).

- 63 Where a planning authority adopts a screening opinion, a copy of the relevant documents must be made available for public inspection for 2 years at the place where the planning register is kept. If a planning application is subsequently made for the development, the opinion and related documents should be transferred to Part 1 of the register with the application (regulation 20).

Applying to Scottish Ministers for a screening direction (regulation 6)

- 64 Where the planning authority's opinion is that EIA *is* required and the developer disagrees, or where an authority fails to adopt any opinion within three weeks (or any agreed extension), the developer may ask Scottish Ministers to make a screening direction (regulation 5(6)). The request must be accompanied by all the previous documents relating to the request for a screening opinion, together with any additional representations that the developer wishes to make. The developer should also send a copy of the request and any representations to the planning authority, which has 2 weeks to make its own further representations.
- 65 Scottish Ministers should make a screening direction within 3 weeks from the date of receipt of the request, or such longer period as they may reasonably require. Where they direct that EIA is required, the direction must be accompanied by a clear and precise statement of their full reasons (regulation 4(6)). They must send copies of the direction to the developer and to the planning authority (regulations 6(5) and 4(9)), which must ensure that a copy of the direction is made available for inspection with the other documents referred to in paragraph 64 above (regulation 20).

PERMITTED DEVELOPMENT

- 66 The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (GPDO) grants a general planning permission (usually referred to as permitted development rights – PDRs) for various specified types of development. Guidance on the Order is contained in The Scottish Office Environment Department Circular 5/92, which should be read in conjunction with the provisions set out below in paragraphs 67-70.
- 67 Although many permitted development rights concern development of a minor, non-contentious nature such as development within the curtilage of a dwelling house, minor operations, temporary buildings and uses, and small business

¹⁵ SSI 2004/520



developments, there are some that could fall within the descriptions in Schedules 1 or 2 and might be likely to have significant environmental effects.

- 68 The provisions of the GPDO (insofar as they relate to Schedule 1 or Schedule 2 development) are amended (regulation 47(4)) so that:
- a) Schedule 1 development is not permitted development. Such developments always require the submission of a planning application and an Environmental Statement.
 - b) Schedule 2 development does not constitute permitted development unless the planning authority has adopted a screening opinion to the effect that EIA is not required. Where the authority's opinion is that EIA *is* required, permitted development rights are withdrawn and a planning application must be submitted and accompanied by an Environmental Statement.

These requirements do not apply to certain types of permitted development, described in paragraphs 167-170.

- 69 A request for a screening opinion in relation to permitted development should be made in accordance with the provisions which apply to requests for a pre-application screening opinion set out in regulation 5 (see paragraphs 60-63). There are similar rights to request Scottish Ministers to make a screening direction if a developer disagrees with an opinion that EIA is required, or where the planning authority fails to adopt any opinion within 3 weeks (or such longer period as is agreed in writing). Such requests should be made in accordance with the procedures in regulation 6 (see paragraphs 64-65). Requests to the planning authority for a screening opinion can be made alongside any "prior notification" which may be required under the particular PDR.
- 70 Planning authorities should be on the lookout for work being carried out under PDRs to ensure that the developer has obtained a screening opinion, where necessary, that EIA is not required.

EFFECT OF SCREENING OPINIONS AND SCREENING DIRECTIONS

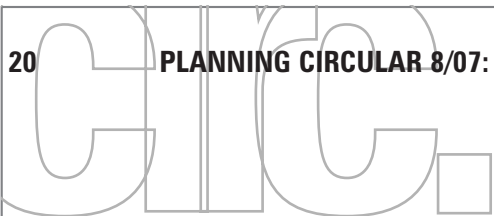
- 71 There may, exceptionally, be cases where a screening opinion has been issued but it subsequently becomes evident that it needs to be changed. This is most likely to be after a negative screening opinion has been issued and new evidence comes to light. If that evidence indicates that EIA is required, the planning authority must not ignore it, but could seek to persuade the applicant to voluntarily carry out an assessment and to submit an ES in accordance with the Regulations (see paragraphs 57-59). Alternatively, it may ask Scottish Ministers to issue a screening direction. A direction by Scottish Ministers, whether it agrees or disagrees with the authority's screening opinion, is determinative.

PLANNING APPLICATION NOT ACCOMPANIED BY AN ENVIRONMENTAL STATEMENT

Initial consideration by planning authority (regulation 7)

- 72 When a planning authority receives a planning application without an accompanying Environmental Statement, if there appears any possibility that it is for Schedule 1 or Schedule 2 development, they should check their records for any screening direction, or any pre-application screening opinion they may have adopted. Where no screening opinion or direction exists, the planning authority must adopt such an opinion. If the authority needs further information to be able to adopt an opinion, the applicant should be asked to provide it.
- 73 Where the planning authority's opinion is that EIA is not required, a screening opinion to that effect should be adopted and placed on Part 1 of the planning register with the planning application within three weeks of the receipt of the application (regulations 7 (1) and 20(1)). The application should then be determined in the normal way.
- 74 However, where the authority's opinion is that EIA is required, they must notify the applicant within 3 weeks of the date of receipt of the application, giving full reasons for their view clearly and precisely (regulations 7(2) and (3) and 4(6)). The 3 week period may be extended if the applicant and the authority so agree in writing. A copy of the notification should be placed on Part 1 of the planning register with the application (regulation 20(1)(e)). For monitoring purposes, authorities are also asked to send a copy to Scottish Ministers¹⁶.
- 75 An applicant who still wishes to continue with the application must reply within 3 weeks of the date of such a notification. The reply should indicate the applicant's intention either to provide an Environmental Statement or to ask Scottish Ministers for a screening direction. If the applicant does not reply within the 3 weeks, the application will be deemed to have been refused. No appeal to Scottish Ministers is possible against such a deemed refusal. If the applicant does reply to the notification, the authority should suspend consideration of the planning application (unless they are already minded to refuse planning permission because of other material considerations, in which case they should proceed to do so as quickly as possible). The 4 month period after which the applicant may appeal against non-determination of the planning application does not begin until an Environmental Statement has been submitted. If Scottish Ministers direct that no such Statement is required the normal 2 month period applies, but the period begins to run at the date of the direction.

¹⁶ Copies can be sent to; Planning Decisions Division, The Scottish Government, 2-H Victoria Quay, Edinburgh EH6 6QQ.



Application to Scottish Ministers for a screening direction (regulations 7(4) and 7(7))

- 76 An applicant requesting a screening direction from Scottish Ministers (see paragraph 75 above), must include a copy of the planning application together with all supporting documents and correspondence with the planning authority concerning the proposed development. The same procedures apply to such requests as apply to requests for a screening direction prior to the submission of a planning application (see paragraphs 64-65 above).

Called-in application not accompanied by an Environmental Statement (regulation 8)

- 77 When an application for planning permission is called in for determination by Scottish Ministers (under section 46 of the Town and Country Planning (Scotland) Act 1997) and it is not accompanied by an Environmental Statement, Scottish Ministers will consider whether it is for permission for Schedule 1 development or for Schedule 2 development for which EIA is required and, where necessary, make a screening direction.
- 78 If Scottish Ministers direct that EIA is required, the applicant and the planning authority will be notified accordingly. There is no appeal against such a notification. An applicant who wishes to continue with the application must reply within three weeks of such a notification, stating that an Environmental Statement will be provided. Otherwise, at the end of the three week period, Scottish Ministers will inform the applicant that no further action will be taken on the application. Where the applicant indicates that an Environmental Statement will be provided, Scottish Ministers will notify the consultation bodies (see paragraph 105) accordingly.
- 79 If Scottish Ministers conclude that EIA is not required, and there has been no previous screening opinion to that effect, they shall make a screening direction to that effect and send a copy to the planning authority, which must ensure that the direction is placed on the planning register (regulation 20(1)(b)).
- 80 Regulation 2(5) allows a reporter appointed to consider a called-in application to carry out the role of Scottish Ministers under Regulation 8.

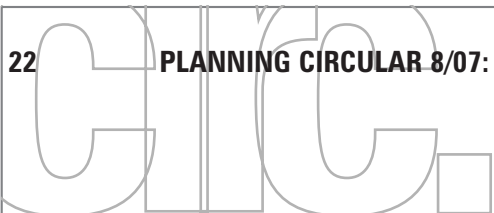
Appeal not accompanied by an Environmental Statement (regulation 9)

- 81 On receipt of an appeal made under section 47 of the 1997 Act which is not accompanied by an Environmental Statement, Scottish Ministers will consider whether the proposed development is a Schedule 1 development or a Schedule 2 development for which EIA is required. Where necessary, they will make a screening direction. If Scottish Ministers direct that EIA is required, the appeal will not be determined (except by refusing permission) until the appellant submits an Environmental Statement. Scottish Ministers may direct that EIA is required at any time before an appeal is determined.
- 82 The procedures set out in paragraphs 77-80 above apply to appeals as they apply to called-in applications.

SCOTTISH MINISTERS' GENERAL POWER TO MAKE DIRECTIONS

- 83 Scottish Ministers are empowered to make directions in relation to the need for EIA (regulations 4(7) and 4(8) and article 16 of the GDPO). Such directions will normally be made in response to an application from a developer who is in dispute with the planning authority about whether EIA is required (see paragraphs 64-65). However, Scottish Ministers also have a number of wider powers:
- a) Scottish Ministers may make a screening direction for any particular development of a type listed in Schedule 1 or Schedule 2 to the Regulations at any time prior to consent being granted, even where no application for a direction has been made to them (regulation 4(7)). They may also make a screening direction in relation to development permitted under the General Permitted Development Order. A direction may be issued as a result of information submitted to Scottish Ministers by members of the public or other third parties that suggests that a particular proposed development requires EIA, even though neither the planning authority nor the applicant take that view.
 - b) Planning authorities themselves may, exceptionally, draw Scottish Ministers' attention to a particular development which, although of a type listed in Schedule 2 does not constitute Schedule 2 development for the purposes of the Regulations. Scottish Ministers have powers to direct that such development is EIA development (regulation 4(8)).
 - c) Scottish Ministers may direct (under article 16 of the GDPO) that EIA is always required for particular classes of development. Any such general directions will be notified to all planning authorities.
 - d) Scottish Ministers may make a direction under regulation 4(4) exempting a particular project, as specified in the direction, from the application of the regulations. Such exemptions may be made in exceptional cases in accordance with Article 2(3) of the Directive. Article 1(4) of the Directive also provides that projects serving national defence purposes may be exempted on a case by case basis, if compliance with EIA would have an adverse effect on those purposes. Since national defence is a reserved matter for the UK Government, the power to exempt such developments from the requirements of the regulations is provided through a UK wide provision in regulation 22 of the Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2006¹⁷.
- 84 Before making a direction under regulation 4, Scottish Ministers will normally give the planning authority and applicant the opportunity to make representations. Any direction will be copied to the applicant (where known) and the planning authority, which must make a copy of any direction available for public inspection. Where Scottish Ministers have used any of these powers to direct that EIA is required for an application which is before a planning authority, the authority must write to the applicant within 7 days of receiving the copy of the screening direction to tell him that an Environmental Statement is required (regulation 7(3)). The procedures of regulation 7(4)-(6) (see paragraph 76) then apply.

¹⁷SI 2006/3295



EIA AND OTHER TYPES OF ENVIRONMENTAL ASSESSMENT

- 85 There are a number of other European Community Directives which require the assessment of effects on the environment. For example:
- (a) developments which will affect a Special Protection Area designated under the Wild Birds Directive²¹ or Special Area of Conservation designated under the Habitats Directive¹⁹ must be subject to an assessment of those effects in accordance with the Conservation (Natural Habitats &c.) Regulations 1994²⁰;
 - (b) most major industrial developments will require a permit under the Pollution Prevention and Control (Scotland) Regulations 2000, as amended (the PPC Regulations) which flow from the Integrated Pollution Prevention and Control Directive²¹ (similar arrangements apply at present under the IPC regime (Part I of the Environmental Protection Act 1990)). Specifically, applicants for PPC permits are required to provide a description of any foreseeable significant effects of emissions on the environment and human health; and,
 - (c) Certain establishments, which have the potential to cause a major accident hazard involving dangerous substances, require a consent under the Control of Major Accident Hazards Directive²².
 - (d) The "Strategic Environmental Assessment" (SEA) Directive²³ which is given effect in Scotland through the Environmental Assessment (Scotland) Act 2005. The Act came into force on 20 February 2006 and repealed the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004, in force prior to the Act. The Act requires an environmental assessment of certain plans and programmes, including all new and replacement structure and local plans.
- 86 These requirements and EIA are independent of each other in that the requirement for one does not mean another automatically applies. The individual tests set out in each system still apply. However, there are clearly some links between them and developers will benefit from identifying the different assessments required at an early stage and co-ordinating them to minimise undesirable duplication where more than one regime applies. Advice on planning and EIA issues with regard to the Habitats Regulations is contained in The Scottish Office Environment Department Circular 6/1995 (updated June 2000), National Planning Policy Guideline (NPPG) 14 on Natural Heritage and Planning Advice Note 60: *Planning for Natural Heritage*. The links between the Town and Country Planning system and environmental regulation are dealt with in PAN 51 (Planning, Environmental Protection and Regulation).

18 Directive 79/409/EEC

19 Directive 92/43/EEC

20 S.I. 1994/2716

21 Directive 96/61/EC (as amended)

22 Directive 96/82/EC (as amended)

23 Directive 2001/42/EC,

PROCEDURES WHEN EIA IS REQUIRED

PREPARATION AND CONTENT OF AN ENVIRONMENTAL STATEMENT

General requirements

- 87 It is the applicant's responsibility to prepare the Environmental Statement (ES). There is no statutory provision as to the form of an ES. It may consist of one or more documents but it must constitute a 'single and accessible compilation'. (*Berkeley v SSETR* (2000) [WLR 21/7/2000 p420]). It must contain the information specified in Part II, and such of the relevant information in Part I of Schedule 4 to the Regulations (reproduced in Annex C to this Circular) as is reasonably required to assess the effects of the project and which the applicant can reasonably be required to compile (see definition of environmental statement in regulation 2(1)). Whilst every ES should provide a full factual description of the development, the emphasis of Schedule 4 is on the 'main' or 'significant' environmental effects to which a development is likely to give rise. Other impacts may be of little or no significance for the particular development in question and will need only very brief treatment to indicate that their possible relevance has been considered.
- 88 Where alternative approaches to development have been considered, paragraph 4 of Part II of Schedule 4 now requires the applicant to include in the ES an outline of the main alternatives, and the main reasons for his choice. Although the Directive and the Regulations do not expressly require the applicant to study alternatives, the nature of certain developments and their location may make the consideration of alternative sites a material consideration. In such cases, the ES must record this consideration of alternative sites. More generally, consideration of alternatives (including alternative sites, choice of process, and the phasing of construction) is widely regarded as good practice, and resulting in a more robust application for planning permission. Ideally, EIA should start at the stage of site and process selection, so that the environmental merits of practicable alternatives can be properly considered. Where this is undertaken, the main alternatives considered must be outlined in the ES.
- 89 The list of aspects of the environment which might be significantly affected by a project is set out in paragraph 3 of Part I of Schedule 4, and includes human beings; flora; fauna; soil; water; air; climate; landscape; material assets, including architectural and archaeological heritage; and the interaction between any of the foregoing. Paragraph 4 of Part I of Schedule 4 indicates, among other things, that consideration should also be given to the likely significant effects resulting from use of natural resources, the emission of pollutants, the creation of nuisances and the elimination of waste. In addition to the direct effects of a development, the ES should also cover indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects. These are comprehensive lists, and a particular project may of course give rise to significant effects, and require full and detailed assessment, in only one or two respects.



- 90 The information in the ES must be summarised in a non-technical summary (paragraph 5 of Part II of Schedule 4). The non-technical summary is particularly important for ensuring that the public can comment fully on the ES. The ES may, of necessity, contain complex scientific data and analysis in a form which is not readily understandable by the lay person. The non-technical summary should set out the main findings of the ES in accessible plain English.

Compiling an Environmental Statement

- 91 It is the applicant's responsibility to prepare the ES. As a starting point, applicants may like to study the advice produced by this Department in Planning Advice Note 58 on Environmental Impact Assessment. Other sources of advice may also have some relevance in Scotland including the Department for Communities and Local Government's good practice guide²⁴, a revised draft of which was recently the subject of a public consultation exercise.
- 92 There is no obligation on the applicant to consult anyone about the information to be included in a particular ES. However, there are good practical reasons to do so. Planning authorities will often possess useful local and specialised information and may be able to give preliminary advice on those aspects of the proposal that are likely to be of particular concern to the authority. The timing of such informal consultations is at the developer's discretion; but it will generally be advantageous for them to take place as soon as the developer is in a position to provide enough information to form a basis for discussion. The developer can ask that any information provided at this preliminary stage be treated in confidence by the planning authority and any other consultees.
- 93 It will normally also be helpful to an applicant when preparing an ES to obtain information from the consultation bodies (paragraph 103). Where a developer has formally notified the planning authority that an ES is being prepared (see paragraphs 102-104) the planning authority will inform each of the consultation bodies of the details of the proposed development and that they may be requested to provide relevant, non-confidential, information. Non-statutory bodies also have a wide range of information and may be consulted by the developer.

Provision to seek a formal opinion from the planning authority on the scope of an ES ("scoping") (regulation 10)

- 94 Before making a planning application, a developer may ask the planning authority for their formal opinion on the information to be supplied in the ES (a "Scoping Opinion"). This provision allows the developer to be clear about what the planning authority considers the main effects of the development are likely to be and, therefore, the topics on which the ES should focus.
- 95 The developer must include the same information as would be required to accompany a request for a screening opinion (see paragraph 60), and both requests may be made at the same time (regulation 10(2) and (5)). A developer may also wish to submit a draft outline of the ES, giving an indication of what he

²⁴Environmental Impact Assessment: A guide to good practice and procedures. Available online via www.communities.gov.uk

considers to be the main issues, to provide a focus for the planning authority's considerations. If the authority considers that it needs further information to be able to adopt a scoping opinion, the developer should be asked to provide it. The authority must consult the consultation bodies (see paragraph 103) and the developer before adopting its scoping opinion.

- 96 The planning authority must adopt a scoping opinion within 5 weeks of receiving a request (or, where relevant, of adopting a screening opinion – regulation 10(5)). This period may be extended if the authority and developer so agree in writing. As a starting point, authorities should study the definition of environmental statement in regulation 2(1) and Schedule 4 to the Regulations (see Annex C) and the guidance elsewhere in this Circular (paragraphs 87-90). In addition, authorities may find it useful to consult other published guidance, such as the European Commission's "Guidance on Scoping"²⁵.
- 97 The scoping opinion must be kept available for public inspection for 2 years (with the request including documents submitted by the developer as part of that request) at the place where the planning register is kept. If a planning 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 (regulation 20).

Request to Scottish Ministers for a scoping direction (regulation 11)

- 98 There is no provision to refer a disagreement between the developer and the planning authority over the content of an ES to Scottish Ministers (although on call-in or appeal Scottish Ministers will need to form their own opinion on the matter). However, where a planning authority fails to adopt a scoping opinion within 5 weeks (or any agreed extension), the developer may apply to Scottish Ministers for a scoping direction (regulation 10(7)). This application must be accompanied by all the previous documents relating to the request for a scoping opinion, together with any additional representations that the developer wishes to make. The developer should also send a copy of the request and any representations to the planning authority, who are free to make their own additional representations.
- 99 Scottish Ministers must make a scoping direction within 5 weeks from the date of receipt of a request, or such longer period as they may reasonably require. They must consult the consultation bodies and the developer beforehand. Copies of the scoping direction will be sent to the developer and to the planning authority, which must ensure that a copy is made available for inspection with the other documents referred to in paragraph 97 above.

Effect of a scoping opinion or direction

- 100 An ES 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 planning authority or Scottish Ministers, a statement which does not

²⁵Guidance on EIA; Scoping June 2001. Available online at www.europa.eu.int/comm/environment/eia/eia-support.htm



cover all the matters specified in the scoping opinion or direction will probably be subject to calls for further information under regulation 19 (see paragraphs 122-123).

- 101 The fact that a planning authority or Scottish Ministers have given a scoping opinion or scoping direction does not prevent them from requesting further information at a later stage under regulation 19. Where Scottish Ministers have made a scoping direction in default of the planning 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.

Provision of information by the consultation bodies (regulation 12)

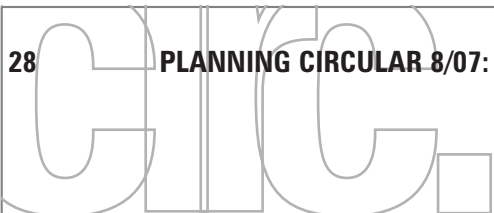
- 102 Under The Environmental Information (Scotland) Regulations 2004²⁶, public bodies must make environmental information available to any person who requests it. The Regulations supplement these provisions in cases where a developer is preparing an ES. Under regulation 12, once a developer has given the planning authority notice in writing that he intends to submit an ES, the authority must inform the consultation bodies, and remind them of their obligation to make available, if requested, any relevant information in their possession. The planning authority must also notify the developer of the names and addresses of the bodies to whom they have sent such a notice. The notification to the planning authority must include similar information to that which would be submitted if the developer were seeking a screening opinion under regulation 5 (see paragraph 61).
- 103 The consultation bodies are:
- a) any adjoining planning authority, where the development is likely to affect land in their area;
 - b) Scottish Natural Heritage;
 - c) Scottish Water;
 - d) The Scottish Environment Protection Agency;
 - e) The Health and Safety Executive;
 - f) The Scottish Ministers;
 - g) other bodies designated by statutory provision as having specific environmental responsibilities and which the planning authority or Scottish Ministers, as the case may be, considers are likely to have an interest in the application.
- 104 The consultation bodies are only required to provide information already in their possession. There is no obligation on the consultation bodies to undertake

research or otherwise to take steps to obtain information which they do not already have. Nor is there any obligation to make available information which is not required to be disclosed under the Environmental Information (Scotland) Regulations 2004, although a decision to withhold particular information must be carefully considered under the terms of those regulations. Further information and guidance is available at www.scotland.gov.uk/Publications. The consultation bodies may make a reasonable charge reflecting the cost of making available information requested by a developer.

SUBMISSION OF EIA APPLICATIONS AND INITIAL PUBLICITY PROCEDURES

Publicity before submission of environmental statement (regulation 13)

- 105 When an applicant or appellant submits an environmental statement to a planning authority or Scottish Ministers, he must also notify those with an interest in neighbouring land to that on which the proposed development would take place, of the availability of the statement. The form of notification is specified in Schedule 5 to the Regulations and the process should, when the environmental statement is submitted at the same time as the planning application, be combined as far as possible with the neighbour notification requirements under Article 9 of the GDPO. In these cases the time limit for representations will effectively be 4 weeks.
- 106 On receipt of the environmental statement, the planning authority must advertise the statement in the local press and the Edinburgh Gazette and the applicant must pay the cost of the advertisement. The notices published must:
- a) state that a copy of the statement and of any other documents submitted with the application will be available for inspection by the public and give the address (and where available website address) where the documents can be inspected free of charge;
 - b) give an address in the locality where copies of the statement may be obtained; state that a copy may be obtained there while stocks last; and, state the amount of any charge to be made for supplying a copy; and
 - c) state the date by which any written representations about the application should be made to the planning authority. This date must be at least 4 weeks after the date on which the notice was published; and
 - d) note that the possible decisions relating to a planning application are to;
 - Grant planning permission without conditions
 - Grant planning permission with conditions
 - Refuse permission
- 107 The application should not be determined before the end of the 4 week period for written representations to be made.



Copies of Environmental Statement for the consultation bodies

- 108 The planning authority must consult the consultation bodies (see paragraph 103). The applicant must provide one copy of the statement for each of the consultation bodies without charge. The applicant may either send a copy of the statement, together with a copy of the related planning application, and associated plan(s), direct to the bodies concerned, or may send copies of the statement to the planning authority for onward transmission (see paragraph 113)). Alternatively, and in keeping with the provisions of The Town and Country Planning (Electronic Communications) (Scotland) Order 2004²⁷, a single copy may be submitted electronically to the planning authority for onward transmission, provided it satisfies the provisions of that Order. In practice, it will be sensible for the applicant and planning authority to agree prior to submission of the application how the copies of the statement will be distributed.
- 109 A charge reflecting the reasonable costs of printing and distribution may be made for any extra copies of the statement requested by any of these bodies.

Additional publicity

- 110 Applicants are encouraged to publish the non-technical summary (which must be included in every ES) as a separate document, and to make copies available free of charge so as to facilitate wider public consultation. Applicants and planning authorities may also wish to make further arrangements to make details of the development available to the public.

Submission of planning application with environmental statement

- 111 When submitting a statement which he refers to as an Environmental Statement with a planning application, the applicant should send to the planning authority all the documents which must normally accompany a planning application, together with the requisite fee (which is not affected by the fact that an Environmental Statement is required). In addition, the applicant must submit:
- a) 5 copies of the statement (3 will be for onward transmission to Scottish Ministers);
 - b) the certification required by Regulation 13(3);
 - c) a note of the name of every body to whom the applicant has already sent or intends to send a copy of the statement under the procedures described in paragraph 110; and
 - d) such further copies of the statement as are needed to allow the planning authority to send one to the other consultation bodies (see paragraph 110).
- 112 Applicants must also make a reasonable number of copies of the ES available to the public, either free of charge or at a reasonable cost, reflecting printing and distribution costs (regulations 17 and 18). Planning authorities and applicants may

wish to consider whether these copies should be held at the authority's offices, and whether the authority's staff should collect any charges for those copies on behalf of the applicant.

- 113 On receipt, the planning authority is required to treat a planning application submitted with a statement referred to by the applicant as an ES in the same way as any other planning application, with the following additional requirements:
- a) carry out the publicity exercise described in paragraph 105 above;
 - b) copies of the statement and application must be sent to those of the consultation bodies that have not received one direct from the applicant;
 - c) 3 copies of the statement and a copy of the application must be sent to Scottish Ministers;
 - d) the statement must be placed on Part 1 of the planning register. Any related screening or scoping direction or opinion given under the pre-application procedures should also be placed on the register.

Environmental Statement submitted after a planning application

- 114 Where an applicant is submitting an ES which relates to a planning application that has already been submitted, the procedures are essentially the same as described in paragraphs 105-113 above.

CONSIDERATION OF EIA APPLICATIONS

- 115 The planning authority should determine the planning application within 4 months from the date of receipt of the statement, instead of the normal 2 months from the receipt of the planning application (regulation 45). The period may be extended by written agreement between the authority and the applicant. Where the planning authority has not determined the application after 4 months or any agreed extension, the applicant may appeal to Scottish Ministers on the grounds of non-determination.
- 116 The planning application may not be determined until at least 4 weeks after the last date on which a consultation body was served with a copy of the statement (regulation 14(3)). Where an EIA application is not submitted with a statement and the applicant indicates he proposes to provide one consideration of the application is suspended until the statement is received.

Adequacy of the Environmental Statement

- 117 Planning authorities should satisfy themselves in every case that submitted statements contain the information specified in Part II of Schedule 4 to the Regulations (see Annex C) and include all the relevant information set out in Part I of that Schedule that the applicant can reasonably be required to compile. To avoid delays in determining EIA applications, consideration of the need for further information and any necessary request for such information should take place as early as possible in the scrutiny of the planning application.



118 It is important to ensure that all the information needed to enable the likely significant environmental effects to be properly assessed is gathered as part of the EIA process. If tests or surveys are needed to establish whether there are likely to be significant effects, the results of these should be taken into account in deciding whether planning permission should be granted. If the full environmental information as defined in Regulation 2(1) is not taken into account due to the inadequacy of the Environmental Statement, any planning permission granted runs the risk of being quashed. (See the case of *R v Cornwall CC ex parte Hardy* [2001 JPL 786, where a condition attached to a planning permission required, on the advice of environmental bodies, surveys to be carried out to obtain information on the likely effects on protected species. The permission was quashed on the grounds that the outcome of the surveys, and any necessary mitigation measures, should have been included in the Environmental Statement, enabling the public to comment and the competent authority to take account of the information in determining the application).

Provision of further information (regulation 19)

- 119 Where the required information has not been provided the authority must use its powers under regulation 19 to require the applicant to provide further information concerning the relevant matters set out in Schedule 4. Any information provided in response to such a written request must, in accordance with regulation 19(2), be publicised, and consulted on, in a similar way to the document submitted as an ES. The provisions of regulation 19 are without prejudice to the more general powers planning authorities have to request further information to enable them to deal with a planning application under article 13 of the Town and Country Planning (General Development Procedure Order) 1992, as amended.
- 120 Where an applicant has voluntarily submitted additional information relating to the environmental statement which is of a substantive nature, that information must now be treated in the same way as information required by the planning authority. Such additional information should be advertised, sent to the consultation bodies, and taken into account in reaching a decision on the application.
- 121 The period of 4 months referred to in paragraph 115 continues to run while any correspondence about the adequacy of the information in a statement is taking place (unless the information in the statement is not sufficient for it to constitute an “environmental statement”, in terms of the definition in regulations 2(1)), and the applicant’s right of appeal against non-determination at the end of that period (or any agreed extension) is not affected. A planning application is not invalid purely because an inadequate ES has been supplied nor because the applicant has failed to provide further information when required to do so under regulation 19. However, if the applicant fails to provide enough information to complete the ES the application can be determined only by refusal (regulation 3).

Further information provided for a public inquiry

- 122 Scottish Ministers may use regulation 19 to request further information for the purposes of a local inquiry under the 1997 Act²⁸. By virtue of regulation 19(2), if the request specifically states that the further information is to be provided for such purposes, the publicity and consultation procedures in regulations 13, 14 and 16 to 18 do not apply. Rather, such information, together with any other information provided voluntarily by the applicant for the purposes of a local inquiry, will be regulated by the Rules relating to the submission of evidence to public local planning inquiries. These Rules already require material provided by the applicant to be publicised appropriately. Further details of procedures relating to public inquiries are contained in The Scottish Office Development Department Circular 17/1998.

Verification of information in an Environmental Statement

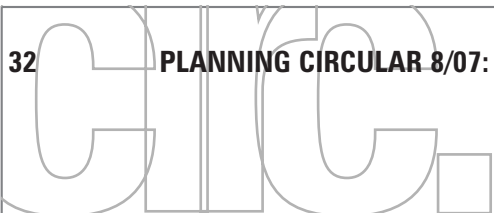
- 123 Regulation 19(3) empowers Scottish Ministers or a reporter (in writing) to require an applicant or appellant to produce such evidence as they may reasonably call for to verify any information in the ES.

Scottish Ministers' consideration of effects on other countries (regulations 40 and 41)

- 124 Planning authorities are required to send copies of Environmental Statements and related planning applications to Scottish Ministers and this enables them to consider whether the proposed development is likely to have significant effects on the environment of any EC Member State, or any other country that has ratified the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention)²⁹. This will also enable Scottish Ministers to respond promptly if a country asks for information about a particular development.
- 125 Developments that are likely to have significant effects on the environment of another country will be rare in Great Britain. However, should such developments occur in Scotland, Scottish Ministers must send information about the development to the government of the affected country, and invite them to participate in the consultation procedures. At the same time, Scottish Ministers will publish a notice in the Edinburgh Gazette giving details of the development and any available information on its possible transboundary impact. In any such case, Scottish Ministers will direct (under article 17 of the GDPO) that planning permission may not be granted until the end of such time as may be necessary for consultations with that government.
- 126 Where the environment in Scotland is likely to be significantly affected by a project in another EC Member State, Scottish Ministers will liaise (via the UK Government) with that country to agree how Scotland and its public are to be consulted so that they may participate fully in that country's EIA procedure.

²⁸including local inquiries held into planning appeals arising under section 47 of that Act and into planning applications referred to Scottish Ministers under section 46 of the Act

³²Available at www.unece.org/env/eia/eia.htm



DETERMINING THE PLANNING APPLICATION

127 Before determining any EIA application, the planning authority, Scottish Ministers or a reporter as the case may be, must take into consideration the information contained in the Environmental Statement (ES), including any further information required by the authority or any other information provided voluntarily by the applicant, any comments made by the consultation bodies, and any representations from members of the public about environmental issues. Where a planning authority proposes to grant planning permission for an EIA application, The Town and Country Planning (Notification of Applications) (Scotland) Direction 2007 requires such applications to be notified to Scottish Ministers. Further guidance on the notification of Planning Applications is contained in Circular 5/2007.

Securing mitigation measures

- 128 Mitigation measures proposed in an ES are designed to limit any negative environmental effects of a development. Planning authorities will need to consider carefully how such measures are secured, particularly in relation to the main mitigation measures specified in the decision to grant planning permission (paragraph 136).
- 129 Conditions attached to a planning permission may include mitigation measures. However, a condition requiring the development to be “in accordance with the Environmental Statement” is unlikely to be valid unless the ES was exceptional in the precision with which it specified the mitigation measures to be undertaken. Even then, the condition would need to refer to the specific part of the ES rather than the whole document.
- 130 A planning condition may require a scheme of mitigation for more minor measures to be submitted to the planning authority and approved in writing before any development is undertaken. However, planning conditions should not duplicate other legislative controls. In particular, planning authorities should not seek to substitute their own judgement on pollution control issues for that of the bodies with the relevant expertise and the statutory responsibility for that control. Advice on planning conditions is contained in The Scottish Office Development Department Circular 4/1998 and the Addendum issued in April 1999. Advice on the links between the Town and Country Planning system and environmental regulation are dealt with in PAN 51 (Planning, Environmental Protection and Regulation).
- 131 Another possible method of securing mitigation measures is through planning agreements³⁰, which are enforceable by the planning authority. Detailed guidance on the use of such agreements is contained in The Scottish Office Development Department Circular 12/1996.
- 132 In addition, developers may adopt environmental management systems such as the Eco-Management and Audit Scheme (EMAS) to demonstrate implementation of mitigation measures and to monitor their effectiveness.

³⁰made under section 75 of the Town and Country Planning (Scotland) Act 1997

Publicising determinations of EIA applications (regulation 21)

- 133 When the planning authority has determined an EIA application, it must notify Scottish Ministers in addition to the normal requirement to notify the applicant. The authority must also publish a notice in the local press; where that authority maintains a website for advertising applications they may also wish to publish the notice on that site. The notice should give the content of the determination, state that the documents relating to the determination will be open to inspection by the public and give the address where the documents can be inspected free of charge (see paragraph 134 below). Where Scottish Ministers have or a reporter has determined an EIA application or issued an 'intentions letter', they will send a copy of their determination to the local authority for them to publicise.
- 134 A copy of the decision, including any conditions imposed, should be kept in the same place as the planning register with such other documents as contain:
- a) the main reasons and considerations on which the decision is based, including information about the participation of the public; and
 - b) where permission has been granted, a description of the main measures to avoid reduce and, if possible, offset the major adverse effects of the development; and,
 - c) information about the right to challenge the validity of the decision and the procedures for doing so.

With regard to paragraph c) above this should include a note of the main means of challenge available, which in respect of any statutory means of challenge under the 1997 Act, will depend on whether or not the EIA application is determined by the planning authority, the Scottish Ministers or a reporter. When it is the planning authority which makes the determination, usually the reference would be to section 47 of the 1997 Act although the provisions of regulation 7(5) have to be borne in mind; when it is the Scottish Ministers or a reporter then this is likely to be by reference to section 239 of the 1997 Act. However, each case must be considered with regard to its own set of circumstances and the appropriate reference should be inserted accordingly. In addition to any statutory means of challenge, the availability of proceeding with a petition for judicial review of the determination would need to be mentioned. In all of these scenarios the statement should also provide information about the general circumstances of application and where further information on such means of challenge and the procedures for these can be found (such as the Scottish Courts service³¹ or through the Citizens Advice Bureau).

- 135 The requirement to make available the main reasons and considerations on which the decision is based now applies equally to cases where planning permission is granted and where it is refused. In practice, authorities may find that this requirement is met by the relevant planning officer's report to the Planning Committee.

³¹ Further information on judicial review procedure can be obtained by contacting the Scottish Courts Service, Petition Department, Court of Session, Parliament House, Edinburgh EH1 1RQ (Tel: 0131 240 6747).



SPECIAL CASES

MULTI-STAGE CONSENTS

Outline Planning Permission

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

Reserved Matters Applications

137 The ruling in case *Commission v UK* has nevertheless made it clear that there may be circumstances in which an authority is obliged to carry out EIA even after OPP has been granted. This is because it is not possible to eliminate entirely the possibility that it will not become apparent until a later stage in the multi stage consent process that the project is likely to have significant effects on the environment. In that event account will have to be taken of all the aspects of the project which have not yet been assessed or which have been identified for the first time as requiring assessment.

138 Chapter 6A of the Regulations³² contains provisions applying EIA requirements to reserved matters applications in a similar way as they would apply to an outline application or to an application for full planning permission. Where procedures differ an explanation as to the key changes is given in paragraphs 141-143 below.

Submission of reserved matters application

139 In submitting an application for approval of reserved matters, applicants should ensure that sufficient information is included to enable the authority to identify the original OPP.

³²As inserted by The Environmental Impact Assessment (Scotland) Amendment Regulations 2007 (S.S.I 2007/484)

Provision to supersede earlier screening opinions or directions

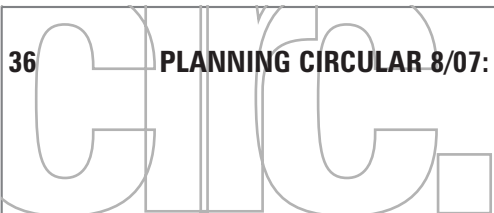
- 140 Where an application for approval of reserved matters is made to an authority without an ES (and where a pre-application screening opinion or direction has not been adopted in connection with that application), the authority must again consider whether the application before them relates to a project for Schedule 1 or Schedule 2 development. In these instances the authority must adopt a screening opinion even where a negative screening opinion or direction has previously been adopted in connection with the project – whether at outline stage or in relation to a separate reserved matters application previously determined. Provision is made such that a screening opinion or direction adopted in these circumstances shall supersede the terms of an earlier opinion or direction.

Revised or Updated Environmental Statements

- 141 Where an ES has previously been submitted in connection with the project, the applicant or appellant may choose to submit a revised or updated statement with the application for approval of reserved matters, whether as a fully updated statement or in the form of an addendum to the existing ES. In such instances the publicity and consultation provisions of the Regulations will apply as appropriate. The authority or the Scottish Ministers may, notwithstanding whether an ES has been revised or updated in this way, require in writing the submission of such supplementary information as is reasonably required to give proper consideration to the likely environmental effects of the project. In considering whether supplementary information is required, the authority must examine the adequacy of the ES for the project as a whole in light of those matters which are now before them for approval. See paragraphs 117 – 118 for further guidance on the adequacy of statements. In practice, where sufficient information has been supplied at outline stage the need for supplementary information should be minimised. Once again, the usual publicity and consultation requirements apply in relation to any supplementary information provided. Where an ES is either submitted for the first time, revised or updated, or where supplementary information is supplied, the authority should also ensure that a copy of the original OPP and supporting documents are made available for public inspection alongside the ES.

Mitigation measures

- 142 Where, exceptionally a planning authority or the Scottish Ministers are required to take into account new environmental information in determining an EIA application for multi-stage consent, regulation 3A makes express provision such that the authority or the Scottish Ministers may impose conditions in granting approval which relate not only to the subject matter of the application but to the project as a whole. Conditions relating to issues that go beyond the application under consideration should only be imposed where they are necessary in ensuring mitigation of newly identified impacts of the project on the environment. In this matter this Circular supersedes guidance contained in paragraph 42 of Annex A to Circular 4/1998 ('The Use of Conditions in Planning Permissions).



Changes to the Planning System

- 143 The Scottish Government has proposed changes to OPP which it intends to replace with a system whereby applications may be made for 'planning permission in principle' with provision for new procedures for the subsequent approval of matters specified in conditions. In that event the requirements of the Directive and of the ECJ ruling in relation to multi-stage consents will continue to apply. Any amendments to the Regulations necessary to ensure that the need for EIA is considered fully at all stages of that new consent process will be made as required.

ROMP APPLICATIONS

- 144 The Environmental Impact Assessment (Scotland) Amendment Regulations 2002³³ ("the ROMP Regulations") came into force on 23 September 2002. They set out the procedures to be followed specific to considering the environmental effects associated with applications for the review of old mineral permissions ("ROMP applications") under Schedules 8, 9 and 10 of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"). Further information and guidance on procedures for ROMP applications is contained in Circular 1/2003.

DEVELOPMENT BY PLANNING AUTHORITIES (REGULATIONS 22 TO 26)

- 145 The Planning etc. (Scotland) Act 2006 (Consequential Provisions) Order 2007³⁴ discontinued the Notice of Intention to Develop (NID) procedure with effect from 1 April 2007; the effect being that from that date local authorities must apply for planning permission for their own developments where relevant. By consequence, the Order also revoked Regulations 22 to 26 of the (EIA) Regulations, as a result of which developments by planning authorities will now, wherever necessary, be subject to the same EIA procedures as any private development. Further guidance on the 2007 Order can be found in Circular 3/2007.

SIMPLIFIED PLANNING ZONES (SPZS) AND ENTERPRISE ZONES (EZS) (REGULATIONS 27 AND 28)

- 146 No EIA development can be granted planning permission by the adoption or approval of an SPZ or through the designation or modification of an EZ. This applies equally to permission granted under existing schemes and to new ones.
- 147 Schedule 2 development may be included in SPZs and EZs and can be granted permission by them providing the particular development has been the subject of a screening opinion or direction that its is not EIA development.

33 SSI 2002/324

34 SSI 2007/176

DEVELOPMENT WHICH IS THE SUBJECT OF A PLANNING ENFORCEMENT NOTICE (REGULATIONS 29 TO 39)

- 148 The regulations provide for EIA of development which is the subject of a planning enforcement notice³⁵ (regulation 30). Where such development requires EIA, it is referred to in this Circular and the Regulations as 'unauthorised EIA development'.
- 149 An appeal against a planning enforcement notice³⁶ ('an enforcement appeal') could, if successful, result in the grant of planning permission³⁷. Regulation 29 prohibits Scottish Ministers (references to Scottish Ministers include the reporter appointed to consider any appeal against an enforcement notice) from granting planning permission for unauthorised EIA development unless EIA has first been carried out.
- 150 Neither the need to provide an ES nor the facility to seek a direction from Scottish Ministers (paragraph 155) should be allowed to delay the enforcement appeal process. If the recipient of an enforcement notice wishes to appeal against it, any appeal must be received by Scottish Ministers before the effective date specified in the notice.

Determining whether EIA is needed

- 151 When deciding to take enforcement action, the planning authority must consider whether the particular development is either Schedule 1 development or Schedule 2 development and, if so, adopt a screening opinion.
- 152 Where the planning authority determines that EIA is required, they must serve a 'regulation 30 notice' with the enforcement notice. The regulation 30 notice must include the authority's full reasons for their screening opinion. A model regulation 30 notice is attached to this Circular at Annex D. The planning authority is required to send a copy of the regulation 30 notice to Scottish Ministers³⁸ and to the consultation bodies.
- 153 A recipient of a regulation 30 notice may apply to Scottish Ministers for a screening direction. The application must be accompanied by a copy of the notice, a copy of the enforcement notice and any additional representations the applicant wishes to make. A copy of the application and the additional representations (if any) should be sent to the planning authority. If Scottish Ministers consider that further information is needed before a screening direction can be made, the applicant must provide it within a specified time period (regulation 31(c)). No screening direction will be made until the information is provided. However, any delay in providing additional information will not affect the period for compliance with the enforcement notice or extend the period for submitting an enforcement notice appeal.

³⁵ issued under section 127 of the 1997 Act.

³⁶ under section 130 of the 1997 Act

³⁷ under section 133(1) of the 1997 Act

³⁸ Send the copy notice to the Scottish Government Directorate for Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR.



- 154 Scottish Ministers will notify the applicant and the planning authority of the screening direction (regulations 31(d) and 4(9)). If they direct that EIA is required, the screening direction must be accompanied by a clear and precise statement of their full reasons (regulation 4(6)) for so doing. If they direct that EIA is not required, they will also send a copy of their direction to the consultation bodies (regulation 31(e)).

Enforcement appeal not accompanied by an Environmental Statement

- 155 On receipt of an enforcement appeal without a statement referred to by the appellant as an Environmental Statement, Scottish Ministers will consider whether the appeal relates to unauthorised EIA development. If they determine that it does, they will send a copy of their screening direction to the appellant and planning authority within 3 weeks of receiving the appeal (or such longer period as they may reasonably require), giving the full reasons for their conclusion. The appellant will be required to submit the specified number of copies of an ES within a period stipulated by Scottish Ministers. If the appellant fails to do so by the due date, both the application deemed to be made by Section 130 of the 1997 Act and any appeal under ground (a) in Section 130(1) of the Act will lapse. Scottish Ministers will then notify the appellant and planning authority in writing accordingly.
- 156 If the appellant has already submitted an ES for the purpose of an appeal under Section 47 of the 1997 Act, which relates to the same development as the enforcement appeal and the 2 appeals are to be determined at the same time, the ES already provided will be regarded as supporting both appeals.

Provision of information

- 157 The planning authority and the consultation bodies are required, if requested, to provide to the person who has been served with a regulation 30 notice any information (other than "confidential" information under The Environmental Information (Scotland) Regulations 2004) which is relevant to the preparation of an ES (paragraphs 102-104).

Procedure where Scottish Ministers receive an Environmental Statement

- 158 On receipt of a statement, Scottish Ministers will send a copy to the planning authority and consultation bodies, and advise them that the statement will be taken into consideration in determining the deemed planning application and ground (a) appeal, if any, and that they may make representations.

Publicity for Environmental Statements

- 159 When the planning authority receive a copy of a statement from Scottish Ministers, they are required by regulation 37(1) to publish a notice in a local newspaper which states the name of the appellant and the address or location of the land, and advises members of the public where and when the ES may be inspected, the closing date for inspection and the arrangements for making representations. The authority must also send a certified copy of the newspaper notice to Scottish Ministers as soon as practicable after publication (regulation 37(2)).
- 160 Anyone wishing to comment should do so in writing to Scottish Ministers within 14 days of the closing date for public inspection of the statement. The deemed application or ground (a) appeal will not be determined by Scottish Ministers until the period has elapsed.
- 161 The planning authority are required to make every regulation 30 notice, any screening direction received from Scottish Ministers, every notice received by the authority from Scottish Ministers under regulations 31(d), 33(4) and 34(d) and every ES received by the authority under regulation 35 available for public inspection for 2 years or until particulars of the notice or direction are entered into Part II of the appropriate register.

Further information and evidence respecting Environmental Statements

- 162 Scottish Ministers may require an appellant who has submitted a statement which he refers to as an ES to provide further information, within a specified period. The information provided will be copied to the planning authority and consultation bodies. If the appellant fails to provide the information required within the time specified, the deemed application and ground (a) appeal, if any, shall lapse. Scottish Ministers will then notify the appellant and the planning authority in writing.
- 163 The arrangements for publicity for further information are the same as those for the Statements (see paragraphs 161-163), by virtue of regulations 36(2) and 37. Where an applicant has voluntarily submitted additional information relating to the environmental statement which is of a substantive nature, that information must now be treated in the same way as further information required by the planning authority. Such additional information should be advertised, sent to the consultation bodies, and taken into account in reaching a decision on the application.
- 164 The procedures for development which is likely to have significant effects on the environment of another EEA State (paragraphs 124-126) apply, with necessary modifications, to unauthorised EIA development (regulation 39).



PERMITTED DEVELOPMENT (EXCEPTIONS TO THE TOWN AND COUNTRY PLANNING EIA PROVISIONS) (REGULATION 47(3), (4), (5), (6))

- 165 The provisions described in paragraphs 68-72 do not apply to development within the following classes in Schedule 1 to the General Permitted Development Order (GPDO):
- a) Part 7 (forestry buildings and operations);
 - b) Class 26 of Part 8 (development comprising deposit of waste material resulting from an industrial process);
 - c) Part 11 (development under local or private acts or orders);
 - d) Class 39(1)(a) of Part 13 (development by public gas transporters);
 - e) Class 58 of Part 17 (development by licensees of the Coal Authority);
 - f) Class 64 of Part 18 (deposit of mining waste).
 - g) Class 73 of Part 26 (development by the Scottish Ministers as roads authority).
- 166 Development is also excluded which consists of the carrying out of drainage works to which Part IV of the Regulations applies.
- 167 Development permitted under Class 29(1)(a) and (b) of Part 11 is excluded by virtue of Article 1.5 of the Directive, which states that the Directive shall not apply to projects the details of which are adopted by a specific act of national legislation. As an exemption this is, under Community law, to be construed narrowly. Accordingly, development of a nature or in a location that was not specifically designated in the relevant Act or order (see Part 11, Class 29) is subject to the procedures in paragraphs 66-70.
- 168 Development permitted under Part 7, Class 29(1)(c) of Part 11, Class 39(1)(a) of Part 13 and Class 73 of Part 26 is the subject of alternative consent procedures to which separate Regulations apply. Development permitted under Class 26 of Part 8, Class 58 of Part 17 and Class 64 of Part 18 is excluded as it concerns projects begun on or before 1 July 1948, before the date on which the Directive came into operation.
- 169 Development which comprises or forms part of a project serving national defence purposes may be exempted on a case by case basis, if compliance with EIA would have an adverse effect on those purposes. See paragraph 85(d) for further information.

CROWN DEVELOPMENT

170 Crown immunity was removed from planning control on 12 June 2006 following commencement of section 90 of the Planning and Compulsory Purchase Act 2004. That Act inserted new section 241A into the Town and Country Planning (Scotland) Act 1997 which provides that the provisions of that Act bind the Crown. As a result the Crown is now required to obtain planning permission for its development and the provisions of the EIA Regulations apply accordingly.

Urgent crown development

171 As part of the removal of Crown immunity from planning control, special provision has been made for development which is of national importance and is required urgently. Where the appropriate authority responsible for Crown land certifies that a development meets those criteria the application for planning permission can be made directly to the Scottish Ministers. The Town and Country Planning (Application of Subordinate Legislation to the Crown) (Scotland) Order 2006³⁹ applies the Regulations to the Crown subject to modifications to apply the requirements of the Regulations to these urgent applications made directly to Ministers. In particular pre-application requests for screening and scoping can be made to the Scottish Ministers in these urgent cases and there are requirements to pass screening and scoping decisions to the relevant planning authority to be kept alongside the register. The guidance in this Circular relating to screening will be applied to these urgent applications as it would to a called-in application or appeal to be determined by the Scottish Ministers.

PREVIOUS CIRCULARS CANCELLED OR AMENDED

172 This Circular supersedes Scottish Executive Development Department Circular 15/1999. Guidance on procedures for projects which are the subject of private legislation through the Scottish Parliament is available online at http://www.scottish.parliament.uk/business/bills/billguidance/gprb-1.htm#2_293. The Transport & Works (Scotland) Act 2007, which received Royal Assent on 14 March 2007, enables approval for certain transport projects to be achieved through Ministerial order, replacing the use of Private Bills to authorise transport projects. Procedures for projects which are granted consent under other legislation are the subject of separate legislation and guidance issued by the Scottish Government, relevant UK Government departments or agencies. In addition, Circulars 1/2003 and 3/2003 should be read in light of the updated guidance in this Circular and guidance contained in paragraph 42 of Annex A to Circular 4/1998 ('The Use of Conditions in Planning Permissions) is superseded in the case of EIA applications only, by paragraph 142 of this Circular.

³⁹ SSI 2006/270



FURTHER COPIES AND ENQUIRIES

- 173 Enquiries about the content of this Circular should be addressed to Cara Davidson, Planning Modernisation and Co-ordination, Area 2-H, Victoria Quay, Edinburgh EH6 6QQ (Telephone 0131 244 1476; e-mail: cara.davidson@scotland.gsi.gov.uk). Further copies and a list of current planning circulars may be obtained online at www.scotland.gov.uk/Topics/Planning/PolicyLegislation/Circulars or by telephoning 0131 244 7543.

ANNEX A

SELECTION CRITERIA FOR SCREENING SCHEDULE 2 DEVELOPMENT

This is a reproduction of Schedule 3 of the Regulations (see paragraphs 19 and 38 above).

1 Characteristics of development

The characteristics of development must be considered having regard, in particular, to:

- a) the size of the development;
- b) the cumulation with other development;
- c) the use of natural resources;
- d) the production of waste;
- e) pollution and nuisances;
- f) the risk of accidents, having regard in particular to substances or technologies used.

2 Location of development

The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to:

- a) the existing land use;
- b) the relative abundance, quality and regenerative capacity of natural resources in the area;
- c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under Member States' legislation; areas designated by Member States pursuant to Council Directive 79/409/EEC on the conservation of wild birds⁴⁰ and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora⁴¹;
 - (vi) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
 - (vii) densely populated areas;
 - (viii) landscapes of historical, cultural or archaeological significance.

⁴⁰ O.J. No. L103, 25.4. 1979,p.1.

⁴¹ O.J. No. L 206, 22.7.1992, p.7



3 **Characteristics of the potential impact**

The potential significant effects of development must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to:

- a) the extent of the impact (geographical area and size of the affected population);
- b) the transfrontier nature of the impact;
- c) the magnitude and complexity of the impact;
- d) the probability of the impact;
- e) the duration, frequency and reversibility of the impact.

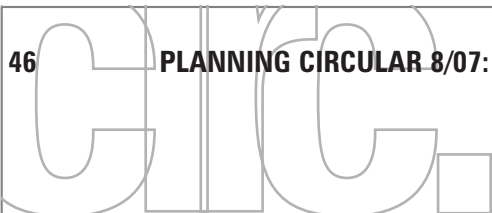
ANNEX B

GUIDANCE ON SCREENING

The items on this checklist are only indicative. Planning authorities and developers should consider the particular circumstances of each application to ensure that all the characteristics of the development and its location are taken into account.

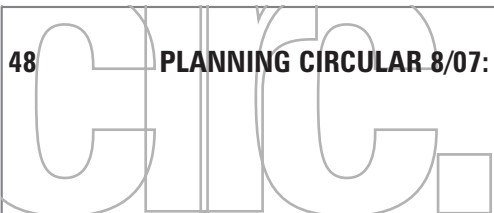
SCREENING CHECKLIST (Action see paragraph 35)

1 CHARACTERISTICS OF THE DEVELOPMENT	Yes/no Briefly describe
(a) Size of the development	
Will the development be out of scale with the existing environment?	
Will it lead to further consequential development or works (e.g. new roads, extraction of aggregate, provision of new water supply, generation or transmission of power, increased housing and sewage disposal)?	
(b) Cumulation with other development	
Are there potential cumulative impacts with other existing development or development not yet begun but for which planning permission exists?	
Should the application for this development be regarded as an integral part of a more substantial project? If so, can related developments which are subject to separate applications proceed independently?	
(c) Use of natural resources	
Will construction or operation of the development use natural resources such as land, water, materials or energy, especially any resources which are non-renewable or in short supply?	
<ul style="list-style-type: none"> • land (especially undeveloped or agricultural land)? • water? • minerals? • aggregates? • forests and timber? • energy including electricity and fuels? • any other resources? 	



<p>(d) Production of waste</p>	
<p>Will the development produce wastes during construction or operation or decommissioning?</p> <ul style="list-style-type: none"> • spoil, overburden or mine wastes? • municipal waste (household and/or commercial)? • hazardous or toxic wastes (including radioactive)? • other industrial process wastes? • surplus product? • sewage sludge or other sludges from effluent treatment? • construction or demolition wastes? • redundant machinery or equipment? • contaminated soils or other material? • agricultural wastes? • any other solid wastes? • liquid or solid wastes in suspension? 	
<p>(e) Pollution and nuisances</p>	
<p>Will the development release pollutants or any hazardous, toxic or noxious substances to air?</p> <p>Emissions from:</p> <ul style="list-style-type: none"> • combustion of fossil fuels from stationary or mobile sources? • production processes? • materials handling including storage or transport? • construction activities including plant & equipment? • dust or odours from handling of materials including construction materials, sewage & waste? • incineration of waste? • burning of waste in open air (e.g. slash material, construction debris)? • any other sources 	
<p>Is there a potential risk from:</p> <ul style="list-style-type: none"> • leachates? • Escape of wastes or other products/by-products that may constitute a contaminant in the environment? 	

<p>Will the development cause noise and vibration or release of light, heat energy or electromagnetic radiation?</p> <ul style="list-style-type: none"> • from operation of equipment e.g. engines, ventilation plant, crushers? • from industrial or similar processes? • from blasting or piling? • from construction or operational traffic? • from lighting or cooling systems? • from sources of electromagnetic radiation (effects on nearby sensitive equipment as well as people)? • from any other sources? 	
<p>(f) Risk of accidents, having regard in particular to substances technologies used</p>	
<p>Will there be a risk of accidents during construction or operation of the development which could have effects on people or the environment?</p> <ul style="list-style-type: none"> • from explosions, spillages, fires etc from storage, handling, use or production of hazardous or toxic substances? • from events beyond the limits of normal environmental protection e.g. failure of pollution control systems? • from any other causes? • could the development be affected by natural disasters causing environmental damage (e.g. floods, earthquakes, landslip, etc)? 	
<p>Will the development involve use, storage, transport, handling or production of substances or materials which could be harmful to people or the environment (flora, fauna, water supplies)?</p> <ul style="list-style-type: none"> • use of hazardous or toxic substances ? • potential changes in occurrence of disease or effect on disease carriers (e.g. insect or water borne diseases)? • effect on welfare of people (e.g. change of living conditions) • effects on vulnerable groups (e.g. the elderly)? 	



(Other characteristics: potential physical changes (topography, land use, changes in waterbodies etc) from construction, operation or decommissioning of the development

- permanent or temporary change in land use, landcover or topography including increases in intensity of land use?
- clearance of existing land, vegetation & buildings?
- Peat land disturbance and/ or degradation leading to; carbon release, damage to habitats, affecting land stability or hydrology?
- creation of new land uses?
- pre-construction investigations e.g. boreholes, soil testing?
- construction or demolition works?
- temporary sites or housing for construction workers?
- above ground buildings, structures or earthworks including linear structures, cut & fill or excavations?
- underground works including mining or tunnelling?
- reclamation works?
- dredging?
- coastal structures (seawalls, piers)?
- offshore structures?
- production and manufacturing processes?
- facilities for storage of goods or materials?
- facilities for treatment or disposal of solid wastes or liquid effluents?
- facilities for long term housing of operational workers?
- new road, rail or sea traffic during construction or operation?
- new road, rail, air, waterborne or other transport infrastructure including new or altered routes and stations, ports, airports etc?
- closure or diversion of existing transport routes or infrastructure leading to changes in traffic movements?
- new or diverted transmission lines or pipelines?
- impounding, damming, culverting, realignment or other changes to the hydrology of watercourses or aquifers?
- stream crossings
- abstraction or transfers of water from ground or surface waters?
- changes in waterbodies or the land surface affecting drainage or run-off?

<ul style="list-style-type: none"> • transport of personnel or materials for construction, operation or decommissioning? • long term dismantling or decommissioning or restoration works? • ongoing activity during decommissioning which could have an impact on the environment? • influx of people to an area either temporarily or permanently? • introduction of alien species? • loss of native species or genetic diversity? • any other changes? 	
<p>2 LOCATION OF THE DEVELOPMENT</p>	
<p>(a) Existing land use</p>	
<p>Are there existing land uses on or around the location which could be affected by the development, e.g. homes, gardens, other private property, industry, commerce, recreation, public open space, community facilities, agriculture, forestry, tourism, water catchments, functional floodplains, mining or quarrying?</p>	
<p>Are there any areas on or around the location which are occupied by sensitive land uses e.g. hospitals, schools, places of worship, community facilities, which could be affected?</p>	
<p>Is the development located in a previously undeveloped area where there will be loss of greenfield land?</p>	
<p>(b) Relative abundance, quality and regenerative capacity of natural resources in the area</p>	
<p>Are there any areas on or around the location which contain important, high quality or scarce resources which could be affected by the development?</p>	
<ul style="list-style-type: none"> • groundwater resources • surface waters • forestry • agriculture • fisheries • tourism • minerals 	



(c) Absorption capacity of the natural environment	
Are there any areas on or around the location which are protected under international or national or local legislation for their ecological, landscape, cultural or other value, which could be affected by the development?	
<p>Are there any other areas on or around the location which are important or sensitive for reasons of their ecology</p> <ul style="list-style-type: none"> • wetlands, watercourses or other waterbodies • the coastal zone • mountains, forests or woodlands • nature reserves and parks 	
Are there any areas on or around the location in which species and habitats of Local Biodiversity Action Plan importance are present?	
Are there any areas on or around the location which are used by protected, important or sensitive species of fauna or flora e.g. for breeding, nesting, foraging, resting, overwintering, migration, which could be affected?	
Are there any inland, coastal, marine or underground waters on or around the location which could be affected?	
Are there any groundwater source protection zones or areas that contribute to the recharge of groundwater resources?	
Are there any areas or features of high landscape or scenic value on or around the location which could be affected?	
Are there any routes or facilities on or around the location which are used by the public for access to recreation or other facilities, which could be affected?	
Are there any transport routes on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected?	
Is the development in a location where it is likely to be highly visible to many people?	

<p>Are there any areas or features of historic or cultural importance on or around the location which could be affected?</p>	
<p>Are there any areas on or around the location which are already subject to pollution or environmental damage e.g. where existing legal environmental standards are exceeded, which could be affected?</p>	
<p>Is the location of the development susceptible to earthquakes, subsidence, landslides, erosion, flooding or extreme or adverse climatic conditions e.g. temperature inversions, fogs, severe winds, which could cause the development to present environmental problems?</p>	



CHECKLIST OF CRITERIA FOR EVALUATING THE SIGNIFICANCE OF ENVIRONMENTAL EFFECTS

The checklist below is for use in conjunction with the Screening Checklist in the first part of this Annex. It is based on the third section (Characteristics of the Potential Impact) of the 'Selection Criteria for Screening Schedule 2 Development' in Schedule 3 to the EIA Regulations. It is designed to help in deciding whether EIA is required based on the characteristics of the likely impacts of the development.

The Screening Checklist provided a list of questions to help in identifying where there are potential interactions between a development and its proposed location. The checklist below is designed to helping deciding whether those interactions are likely to be significant.

The following questions can be asked for each 'Yes' answer in the Screening Checklist, and the conclusion and reasons noted against the relevant answer. The questions are designed so that a 'Yes' answer will generally point towards the need for EIA and a 'No' answer towards EIA not being required.

CHARACTERISTICS OF THE POTENTIAL IMPACT	Yes/no Briefly describe
(a) Extent of the impact	
Will the effect extend over a large area?	
Will many people be affected?	
(b) Transboundary nature of the impact	
Will there be any potential for transboundary impact? (nb. Development which has a significant effect on the environment in another Member State is likely to be very rare. It is for the Scottish Ministers to consider whether there is likely to be such an effect in each case).	

(c) Magnitude and complexity of the impact	
Will there be a large change in environmental conditions?	
Will the effect be unusual in the area or particularly complex?	
Will many receptors other than people (fauna and flora, businesses, facilities) be affected?	
Will valuable or scarce features or resources be affected?	
Is there a risk that environmental standards will be breached?	
Is there a risk that protected sites, areas, features will be affected?	
(d) Probability of the impact	
Is there a high probability of the effect occurring?	
Is there a low probability of a potentially highly significant effect?	
(e) Duration, frequency and reversibility of the impact	
Will the effect continue for a long time?	
Will the effect be permanent rather than temporary?	
Will the impact be continuous rather than intermittent?	
If intermittent, will it be frequent rather than rare?	
Will the impact be irreversible?	
Will it be difficult to avoid or reduce or repair or compensate for the effect?	



ANNEX C

INFORMATION TO BE INCLUDED IN AN ENVIRONMENTAL STATEMENT

This is a copy of Schedule 4 of the Regulations (see paragraphs 87-90, 119-121 and 123 above)

PART I

- 1 Description of the development, including in particular -
 - (a) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;
 - (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;
 - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the development.
- 2 An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects.
- 3 A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
- 4 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,and the description by the applicant of the forecasting methods used to assess the effects on the environment.

- 5 A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
- 6 A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.
- 7 An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

PART II

- 1 A description of the development comprising information on the site, design and size of the development.
- 2 A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
- 3 The data required to identify and assess the main effects which the development is likely to have on the environment.
- 4 An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects.
- 5 A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.



ANNEX D

MODEL REGULATION 30 NOTICE

Important: This communication affects your property

The Environmental Impact Assessment (Scotland) Regulations 1999

REGULATION 30 NOTICE

- 1 This notice is served by *[name of Council ("the Council")]* under regulation 30 of the Environmental Impact Assessment (Scotland) Regulations 1999 in connection with the Council's enforcement notice, dated *[date of enforcement notice]*, issued in respect of:

.....
[insert description of alleged unauthorised development]

at
[insert address]

- 2 It is the Council's opinion that development to which the enforcement notice relates is
- either: 'Schedule 1 development' within the meaning of the Environmental Impact Assessment (Scotland) Regulations 1999 (i.e. [set out the description within Schedule 1 in which the unauthorised EIA development is deemed to fall]).*

or: 'Schedule 2 development' within the meaning of the Environmental Impact Assessment (Scotland) Regulations 1999 (i.e. *[set out the description within Column 1 of the table in Schedule 2 in which the unauthorised EIA development is deemed to fall and the relevant threshold or criterion in Column 2 of the table in Schedule 2 which is exceeded or met]*) which is considered likely to have significant effects on the environment for the following reasons:

- (a) *[complete as appropriate setting out clearly and precisely the full reasons why the development is considered likely have significant effects on the environment]*
- (b) *[complete as appropriate setting out clearly and precisely the full reasons why the development is considered likely have significant effects on the environment]*
- (c) *[complete as appropriate setting out clearly and precisely the full reasons why the development is considered likely have significant effects on the environment]*

3. Accordingly, subject to any direction from Scottish Ministers to the contrary, any appeal under s 130 against the enforcement notice must be accompanied by *[four copies of an Environmental Statement plus additional copies to comply with Regulation 35(2)]*. Please read the notes below for information about appeals, directions and Environmental Statements.

Dated:
[insert date of issue]

Signed:
[signature of officer authorised to issue regulation 30 notices]

NOTES

Appeals

If you wish to appeal against the *enforcement notice*, you must follow the instructions provided with that notice. Please remember that Scottish Ministers cannot consider your arguments against the enforcement notice if you fail to observe the time limit for appeal specified in that notice.

Directions

You may apply to Scottish Ministers for a direction as to whether the development requires the submission of an Environmental Statement.

Scottish Ministers will give their direction in writing and will send a copy of it to the Council.

Environmental Statements

An Environmental Statement is a document or series of documents prepared for the purpose of enabling Scottish Ministers to assess the likely impact on the environment of the development to which this notice relates.

General guidance about preparing environmental statements can be found in Planning Advice Note 58 on Environmental Impact Assessment. Other sources of advice may also have some relevance in Scotland, including the Department for Communities and Local Government’s good practice guide, available online at www.communities.gov.uk.

IMPORTANT: Please remember that an application for a direction in connection with this regulation 30 notice *does not* affect the time limit for appeal specified in the enforcement notice. Any appeal against that notice must be received by Scottish Ministers *before* the date specified in the enforcement notice as the date on which it takes effect.



ANNEX E

ENVIRONMENTAL IMPACT ASSESSMENT OF TRUNK ROAD PROJECTS

Introduction

E1 The purpose of this Annex E is to provide guidance on the provisions in the Roads (Scotland) Act 1984 relating to environmental impact assessment for road construction and improvement projects which were inserted by Part III of the Environmental Impact Assessment (Scotland) Regulations 1999 ("the 1999 Regulations") and have now been further amended by Part III of the Environmental Impact Assessment (Scotland) Amendment Regulations 2006 ("the 2006 Regulations"). The relevant provisions are Sections 20A, 20B, 55A, 55B and 151 and Schedule 1 of the Roads (Scotland) Act 1984 ("the 1984 Act"). The amendments to the 1984 Act implement Council Directive No. 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (the EIA Directive), as amended by Council Directive No. 97/11/EC and Article 3 of Council Directive 2003/35/EC in so far as it applies to trunk road development.

Trunk Road Projects Requiring Environmental Statements

E2 The 1984 Act (as amended) requires that Environmental Statements shall be prepared for certain trunk road projects, and apply to:

- the construction of a new trunk road; and/or
- a trunk road improvement project, whether or not this is to be taken forward by an order or scheme.

E3 The 1984 Act refers to Annex I and II projects, as identified by the Directive. Annex I projects are those for which an Environmental Statement is compulsory. Annex II identifies projects for which an Environmental Statement is to be prepared if a significant environmental impact is anticipated, by virtue of the project's size, nature or location.

E4 Trunk road projects which fall within Annex I are:

- the construction of motorways and express roads;
- construction of a new road of four or more lanes; or
- realignment and/or widening of an existing road of two lanes (or less) so as to provide four or more lanes – where the new or realigned road and/or widened section of road would be 10 km or more in a continuous length.

- E5 Annex II identifies road projects that do not fall within Annex I. Annex II projects are to be subject to screening, using criteria identified in the Directive (screening criteria are described more fully in Paragraphs E11/E12).
- E6 Changes or extensions to Annex I or Annex II trunk road projects also fall within the scope of the EIA requirements. This includes projects which have already been authorised, executed or are in the process of being executed. Where the change or extension itself would fall within Annex I, it constitutes an Annex I development and EIA is therefore required. Otherwise, it is considered to be an Annex II development and a screening determination will be required on whether the development is likely to have significant effects on the environment.

Approach to Environmental Impact Assessment (EIA)

- E7 The Trunk Road Directorates of Transport Scotland currently undertake environmental reviews of trunk road projects, using the advice contained in Volume 11 (Environmental Assessment) of the Design Manual for Roads and Bridges (DMRB). This advice provides guidance on the level of EIA required at the key stages in the development of a trunk road scheme. Where appropriate, the results of the EIA are reported in an Environmental Statement. Such EIA also takes cognisance of guidance provided by other government departments, such as the Department for Transport (DfT), and current best practice.
- E8 The Directive identifies the environmental factors to be considered in EIA:
- human beings, fauna and flora;
 - soil, water, air, climate and the landscape;
 - material assets and the cultural heritage; and
 - the interactions between the foregoing.
- E9 An interpretation of these factors is provided in Volume 11 of the DMRB. However, the DMRB should not be considered to be an exhaustive list in all cases. The environmental factors considered in an EIA will depend on the nature of the proposed project and the characteristics of the affected environment.

Screening

- E10 Directive 97/11/EC introduced a requirement for trunk road projects to be screened to determine whether the potential environmental impacts of the project will be such that an Environmental Statement will be required. Transport Scotland undertakes such screening and publishes the resulting "determination".
- E11 EIA is mandatory for Annex I projects. Screening of Annex II projects will be necessary to determine whether they are "relevant projects" as defined in section 20A(9) of the 1984 Act. Screening will be undertaken using the thresholds set out in that section, namely that the completed works including any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other such facilities or stores required during the construction period:



- exceed 1ha in area; or
- are situated in whole or in part in a “sensitive area”.

“Sensitive area” is defined in section 2(1) in Part II of the 1999 Regulations and includes:

Sites of Special Scientific Interest
land to which Nature Conservation Orders apply
international nature conservation sites
World Heritage Sites
Scheduled Monuments
National Scenic Areas
National Parks

- E12 If the project meets either of these conditions, it should then be screened using the criteria set out in Annex III of the Directive. Annex III identifies three broad criteria:
- the characteristics of the development;
 - the location of the project; and
 - the characteristics of the potential impact.
- E13 It is important to note that the thresholds/criteria for Annex II screening are intended to be used as sift criteria, rather than as absolute thresholds. In addition, not every trunk road project in or affecting the areas identified in Annex III will require an Environmental Statement. It will be necessary to review the likely significance of impact of that particular project in that particular location.
- E14 On the other hand, in certain cases statutory and non-statutory designations which are not included in the definition of “sensitive area”, but which are nonetheless environmentally sensitive, may also be relevant in determining whether EIA is required. It is also possible that a project may have a significant impact on an area of the environment not identified in Annex III. In such cases, the potential for impact will be identified and a determination made as to whether an Environmental Statement will be prepared.
- E15 There is a possibility that in certain circumstances a trunk road project may have effects in terms of Annex III, but not meet the initial threshold criteria as a relevant project falling within Annex II. For example, a trunk road project may have significant indirect effects where it is located adjacent to a sensitive area. In such cases, the potential for impact will be identified and a determination made as to whether an Environmental Statement will be prepared.
- E16 Information gathered during the DMRB assessments should be used in the screening process.

E17 Where a trunk road project may affect a Special Protection Area (SPA) and/or a Ramsar site and/or a Special Area of Conservation (SAC), an appropriate assessment may also require to be carried out, under the provisions of the Conservation (Natural Habitats etc) Regulations 1994.

The Environmental Statement

E18 Section 20A(7) and (8) of the 1984 Act identify the information which an Environmental Statement should ideally contain, highlighting that which shall be provided as a minimum.

E19 Annex IV of the Directive sets out the information required. This information should be provided where it is relevant to the specific characteristics of the project and of the environmental features likely to be affected by it. It should also be the case that it is reasonable for the information to be gathered, given current knowledge and methods of assessment.

E20 The minimum information to be provided comprises:

- a description of the project, comprising information on the site, design and size of the project;
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
- the data required to identify and assess the main effects which the project is likely to have on the environment;
- an outline of the main alternatives studied and an indication of the main reason for the option taken forward (taking into account the environmental effects); and
- a non-technical summary of the information mentioned in the preceding points.

E21 The non-technical summary should be published as a separate document, free of charge, to facilitate wider public consultation.

E22 The Directive requires that the main alternatives considered be outlined in the Environmental Statement, as well as an indication of the reason for the choice of the preferred option. Alternatives are routinely evaluated for their environmental effects in the early stages of project design, when decisions are made about routes and corridor options, using the key stages set out in the DMRB.

E23 Further information which is obtained after publication of the Environmental Statement, where the information is reasonably required to give proper consideration to the likely environmental effects of the proposed project, must now be treated in the same way as the Environmental Statement. Such additional information should be advertised and made available to the public and taken into account in the decision as to whether to proceed or not..



E24 Where a trunk road project does not fall within the scope of the Directive and an Environmental Statement is therefore not published, the procedures contained within Volume 11 of the DMRB are routinely followed and provide appropriate environmental information.

Consultations

E25. Section 20A(6) of the 1984 Act requires that consultation bodies are given an opportunity to express an opinion on the project and the Environmental Statement, before a decision is made on whether to proceed. These bodies comprise:

- the appropriate planning authority (including relevant National Park authorities), where the proposed project is likely to affect land in their area;
- Scottish Natural Heritage;
- the Scottish Environment Protection Agency;
- Historic Scotland; and
- other bodies designated by statutory provision as having specific environmental responsibilities.

E26 The existing procedures set out in Volume 11 of the DMRB require that these bodies are consulted during the course of project development, as well as after publication of the Environmental Statement. The DMRB also provides for the consultation of non-statutory specialist organisations where relevant to the project.

E27 Sections 20A(5) and 55A(5) of the 1984 Act also require that members of the public are to be given a reasonable opportunity to express an opinion on the trunk road project and/or Environmental Statement prior to a decision being made. This consultation period shall be not less than six weeks from the date of publication.

Publicity for Determination Notices/Environmental Statements

E28 Once the need for an Environmental Statement has been established this determination must be made available to the public. Where the determination is that an Environmental Statement is required, the Determination Notice will be published not later than the date when details of the project are published. This usually occurs in conjunction with publication of the Environmental Statement. Where the determination is that an Environmental Statement is not required, the Determination Notice shall be published in the Edinburgh Gazette and in at least one newspaper local to the area in which the trunk road project is situated. This should occur in conjunction with the notice of the draft order or scheme, where relevant. Where Scottish Ministers use a website for giving information to the public about trunk road projects then the notice shall also be published on that site.

E29 Where an Environmental Statement is published, publicity will be provided through publication of a notice in the Edinburgh Gazette and in at least one newspaper local to the area in which the trunk road project is situated. Where the Environmental Statement accompanies a draft order or scheme, the notices shall be conjoined. The notice should include details of where to inspect or how to obtain a copy of the Environmental Statement. Where Scottish Ministers use a website for giving information to the public about trunk road projects then the notice should include the website address and state that the environmental statement will also be published on that site.

Mitigation Measures

E30 Mitigation measures should be predicated on the principle that prevention of adverse impacts is preferable to corrective measures after the event, particularly in pursuit of cost-effectiveness and value for money. Accordingly, mitigation is intended to avoid, reduce and, where possible, remedy/offset significant adverse effects or enhance environmental benefits. The offsetting of adverse impacts may also include compensatory measures, where possible and of a relevant nature.

E31 Volume 11 of the DMRB states that mitigation measures should be incorporated into the design of a project as it develops. The full range of mitigation measures employed on a trunk road project should be identified and detailed in the Environmental Statement including, where appropriate, early decisions such as the choice of route and design measures such as changes to the horizontal or vertical alignment. Only those measures taken forward for environmental reasons should be included, rather than those which would be a matter of good design. The Environmental Statement may also identify opportunities for compensatory measures for cumulative impacts which could be taken forward in partnership with other organisations.

E32 Consideration should be given to how the mitigation measures identified in an Environmental Statement are to be secured. A Schedule of Environmental Commitments should be included in the Environmental Statement to provide a useful summary of the project's mitigation measures and identify their purpose(s). A suitable environmental management system should be adopted to demonstrate the implementation of mitigation measures and to monitor their effectiveness.

Effects on Member States

E33 Sections 20B and 55B of the 1984 Act include a requirement that, where it is considered that trunk road projects may have an effect on the environment in another Member State, that Member State will be notified and provided an opportunity to participate in the EIA process. Should the Member State wish to participate, it shall be provided with a copy of the Environmental Statement and shall be consulted. Information shall also be made available to members of the public and the consultation bodies within that Member State, and opportunity provided to express an opinion before any decision on the trunk road project is made.



The Decision to Proceed

- E34 Where an Environmental Statement accompanies a draft order or scheme, prior to making a decision to proceed or otherwise, the Scottish Ministers must take into consideration the information contained in the Environmental Statement and any opinion expressed by the consultation bodies and members of the public about environmental issues. Such consideration should also include additional environmental commitments made during the course of the consultation period and, should one be held, a Public Local Inquiry.
- E35 Where relevant, this shall also include opinions expressed by any Member State, their consultation bodies consulted under section 20B or 55B of the 1984 Act (see Paragraph E33) and any opinions expressed by a member of the public in that Member State.
- E36 Once the Scottish Ministers have made a decision regarding a project, they will notify the consultation bodies of the decision. The decision will be published in the press and any relevant website and the relevant documents setting out the decision will be open to inspection by the public. These documents will include:
- the content of the decision and any conditions attached to it;
 - the main reasons for the decision, including information about the participation of the public;
 - where the decision is to proceed with the project, a description of the main measures which will be taken to prevent, reduce and, if possible, offset any major adverse effects of the project; and
 - Information about the right to challenge the validity of the decision and the procedures for doing so. This should provide information about where further information on such means of challenge and the procedures for these can be found (such as the Scottish Courts service or through the Citizens Advice Bureau).
- E37 The requirement to make available the main reasons and considerations on which the decision is based applies in all cases, including those where the project will not be taken forward.

Transitional Provision for new Environmental Assessment requirements in 1984 Act

- E38 There are transitional arrangements for projects:
- for which an Environmental Statement was published before 1 February 2007, but for which no draft order or scheme was published;
 - for which a draft order or scheme was published before that date; or
 - where a draft order was not required and for which the works contract had been entered into before that date.
- E39 As a consequence some of the publication and notification requirements inserted in the relevant sections of the 1984 Act by the 2006 Regulations will not apply to such projects.

ANNEX F

CERTAIN LAND DRAINAGE PROJECTS UNDER THE LAND DRAINAGE (SCOTLAND) ACT 1958

Introduction

- 1 The Land Drainage (Scotland) Act 1958 (the Act) makes provision for the approval of works to improve the drainage of agricultural land or to prevent erosion or flooding. The Act, while it does not exclude individuals, is primarily aimed at groups of landowners who wish to co-operate in carrying out works affecting more than one property. Improvement schemes promoted under the Act invariably involve works of larger scale than is undertaken at any one time by individual farmers acting on their own.
- 2 Landowners must apply to Scottish Ministers for an Improvement Order, which authorises the work to be carried out, at agreed estimated costs. Orders may also make provision for the maintenance of the works and they may provide for the appointment of an Improvement Committee to administer the scheme. Before making an Improvement Order Scottish Ministers must satisfy themselves that the applicants' proposals are in the interests of agriculture in the area, that the works will be cost-effective and that there are no unresolved objections.
- 3 Part IV of the Environmental Impact Assessment (Scotland) Regulations 1999 (the 1999 Regulations) applies to drainage works which are likely to have significant effects on the environment by virtue of their nature, size or location and for which authority under the Act to execute these works is sought from the Scottish Ministers on or after 1 August 1999. The 1999 Regulations were amended with effect from 1 February 2007 by the Environmental Impact Assessment (Scotland) Amendment Regulations 2006 (the 2006 Regulations) to transpose Article 3 of European Commission Directive 2003/35/EC on Public Participation (the PPD). The PPD is concerned with the rights of the public to participate in the assessment of the environmental effects of certain projects likely to have significant effects on the environment.

Environmental information and environmental statements

- 4 In terms of the 1999 Regulations, Scottish Ministers may not make an improvement order authorising drainage works to which those Regulations apply unless they have taken into consideration environmental information in respect of the proposed works. "Environmental information" is defined in regulation 55(a) of the 1999 Regulations as amended by the 2006 Regulations to include an "environmental statement". In this respect the owner of agricultural land shall prepare an environmental statement which in terms of the 1999 Regulations must



contain the information specified in Part II and such of the relevant information in Part 1 of Schedule 4 to the 1999 Regulations as is reasonably required to assess the effects of the works and which the landowner can reasonably be required to compile. In terms of Part II of Schedule 4 the information to be provided comprises:

- a description of the works, comprising information on the site, design and size of the works;
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
- the data required to identify and assess the main effects which the works are likely to have on the environment;
- an outline of the main alternatives studied by the applicant for the Improvement Order and an indication of the main reasons for the option taken forward (taking into account the environmental effects); and
- a non-technical summary of the information mentioned in the preceding points.

5 Where the land affected by the proposed works is such that the 1999 Regulations apply and the area of the proposed works exceeds 1 hectare or the area or any part of it lies within an environmentally sensitive area then an environmental statement must be submitted with the application for an improvement Order under the Act. The environmental statement, any other documents submitted with the application and certain further information received by the Scottish Ministers as is set out in the 1999 Regulations as amended by the 2006 Regulations, must be advertised by the Scottish Ministers. Paragraph 6 below sets out the procedures for this. The 2006 Regulations redefined "sensitive area" in the 1999 Regulations to mean any of the following:

- land notified under sections 3(1) or 5(1) (sites of special scientific interest) of the Nature Conservation (Scotland) Act 2004;
- land in respect of which an order has been made under section 23 (nature conservation orders) of the Nature Conservation (Scotland) Act 2004;
- a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, & c.) Regulations 1994;
- an area designated as a National Scenic Area by a direction made by the Secretary of State under section 262C of the Town and Country Planning (Scotland) Act 1972;
- an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) of the National Parks (Scotland) Act 2000.

Procedures

- 6 The Act provides that, before an Improvement Order is made authorising drainage or river works to be carried out, Scottish Ministers shall advertise the proposals in the local press and shall make copies available for local inspection. They must also serve a copy of the draft order and notice of how to object on:
- all owners and occupiers of land in the improvement area; and
 - all owners and occupiers of other land on which drainage or protective works are proposed; and
 - any local authority or other statutory body (e.g. Scottish Environment Protection Agency (SEPA), Scottish Natural Heritage (SNH)) which, in Scottish Ministers' opinion, may be affected by what is proposed.
- 7 Where the environmental statement, other documents and any further information have to be advertised because the area is a sensitive area or exceeds 1 hectare (see paragraph 5 above) the same procedures apply.
- 8 The Act provides that if objections are lodged which cannot be resolved (this will include those made on environmental grounds) and are not withdrawn, Scottish Ministers will hold a public local inquiry before deciding whether to proceed with the proposed Improvement Order.

Effects on other Member States

- 9 The 2006 Regulations amended the 1999 Regulations to include a requirement that, where it is considered by the Scottish Ministers that an improvement order may have significant effects on the environment in another Member State, that Member State will be notified and provided an opportunity to participate in the Environmental Impact Assessment (EIA) process. Another Member State likely to be so affected can also request such involvement. The Member State is to be provided with a copy of the Environmental Statement and other specified information and be given the opportunity to participate further in the EIA process. Information may also be made available to members of the public and the consultation bodies within that Member State, and opportunity provided for such persons to express an opinion before any decision on the improvement order is made by the Scottish Ministers. There is also a requirement on the Scottish Ministers to consult the other Member State on the potential significant effects of the works on the environment and measures to reduce or eliminate such effects.
- 10 A further amendment to the 1999 Regulations has been made by the 2006 Regulations to include similar provision to cover projects in another Member State likely to have significant effects on the environment in Scotland.



The Decision to Proceed.

- 11 The Act requires that once the Scottish Ministers have made a decision to make an improvement order they must notify every owner of agricultural land situated within the proposed improvement area of the proposal to make the order. In addition once the Order has been made there are requirements to advertise that and the effects of it.

If the application is one to which Part IV of the 1999 Regulations apply, the decision regarding the application for an improvement order will be published in the press and the relevant documents setting out the decision will be open to inspection by the public. These documents will include:

- the content of the decision and any conditions attached to it;
 - the main reasons for the decision including, if relevant, information about the participation of the public;
 - where the decision is to proceed with the project, a description of the main measures which will be taken to prevent, reduce and, if possible, offset any major adverse effects of the drainage work; and
 - information on the right to challenge the decision and the procedures for doing so.
- 12 In terms of the 1999 Regulations Scottish Ministers will also be required to inform in writing the local authorities and other statutory bodies affected or likely to be concerned by the drainage works by reason of their specific environmental responsibilities including, the consultation bodies, of the decision and provide them with the same information referred to at paragraph 11. Similarly, where an EEA state has been consulted in accordance with paragraph 9, Scottish Ministers must inform the EEA state of the decision.

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