

Guide to Environmental Impact Assessments

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1. Introduction

The Environmental Rights Centre for Scotland (ERCS) aims to increase people's awareness of their environmental rights and to ensure that people can effectively exercise them.

The Environmental Impact Assessment ('EIA') is an important part of the planning process in Scotland. It is an assessment that is meant to carefully consider the impacts of a proposed development before it occurs.

This is a brief guide to the law on environmental impact assessment in Scotland. It is intended to inform members of the public, community groups and organisations to help them to engage in and understand the EIA process.

This is not a comprehensive guide to EIA law. ERCS provides free advice to individuals, community groups and organisations on environmental and related planning law - [please contact us through our website if you have a specific EIA-related query](#).

2. What is an environmental impact assessment?

An EIA is a process where a developer gathers certain information about the environmental impacts of a proposed development and then sends it to the relevant decision-making authority. That information is intended to allow the planning authority to better understand the potential impacts of a proposed development before making a decision on whether it should go ahead.

EIA is different from a strategic environmental impact assessment (SEA). SEA refers to a process used to assess the environmental impacts of major programmes and policies of public authorities, whereas an EIA assesses individual proposed developments.

EIA is often described as a ‘tool not a rule’. It does not require a planning authority to reach a certain decision, instead it is a process which is meant to result in a planning authority making more informed decisions.

One of the major flaws of the EIA process is that EIAs are carried out by developers. Developers have an interest in the development being built. To do an EIA properly takes time, costs money and can expose the potential harms which a development might cause. Sometimes developers might try to avoid doing EIAs entirely, or they may not carry out the process properly.

Some of the common problems that arise in relation to EIAs and how to address them are explained at the end of this guide.

3. Environmental impact assessment jargon

There are several terms often used in relation to EIA which are helpful to understand:

- **EIA** - the entire process of assessing the environmental effects of a development project.
- **EIA report** - the written material submitted to the local planning authority in fulfilment of the legal duty to carry out an EIA.
- **Screening** – an assessment made by the planning authority on whether an EIA is required.
- **Scoping** – an assessment made by the planning authority on what an EIA should cover.

4. The origins of EIA

The EIA process is derived from EU law, and [Directive 2011/92/EU](#) in particular.

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

[Regulations 2017](#) set out the rules for most EIAs in Scotland (they are often referred to as the ‘EIA Regulations’). The EIA Regulations remain in force notwithstanding that the UK is no longer an EU member state.

There is also [official guidance](#) on the interpretation of the EIA Regulations.

5. When is an environmental impact assessment needed?

Not all developments need an EIA. EIAs are only required for large developments with significant environmental impacts.¹

5.1 When EIAs are always required

For some large industrial developments, an EIA is always required. The list of types of developments where an EIA is always required is in [Schedule 1 of the EIA Regulations](#).

They are known as ‘Schedule 1 developments’. Schedule 1 includes:

- The construction of motorways and express roads;
- Waste disposal installations for the incineration, chemical treatment or landfill of hazardous waste;
- Installations for the intensive rearing of poultry or pigs with more than—
 - (a)85,000 places for broilers or 60,000 places for hens;
 - (b)3,000 places for production pigs (over 30 kg); or

- (c)900 places for sows;
- Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares; and
- Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

5.2 When EIAs may be required

For other significant developments there is a 3-step process to establishing whether they require an EIA:

- 1) Does the proposed development fall into one the categories in [Schedule 2 of the EIA Regulations](#)?
- 2) If the answer to question 1 is 'yes', does the proposed development:
 - a) exceed the relevant Schedule 2 threshold (these are listed in the right-hand column of Schedule 2)?, or
 - b) is it in a 'sensitive area' (sensitive areas include those with various forms of legal protection for their conservation status, such as sites of special scientific interest)?
- 3) If the answer to question 2 is 'yes', is the proposed development likely to have 'significant effects on the environment' by virtue of factors including its nature, size or location? The planning authority should also refer to the criteria in [Schedule 3 of the EIA Regulations](#).

If the answer to each of the three above questions is 'yes', then the development will require an EIA. While questions 1 and 2 are relatively straightforward questions of

fact, question 3 requires an element of judgement, and it can be difficult to argue that an EIA should be carried out. Decisions relating to question 3 are difficult to challenge in court.

Example of a development where an EIA may be required: a proposal for a housing development of 10 hectares in size to be located close to a nature conservation area (such as a site of special scientific interest).

This development would need an EIA if it was likely to have significant effects on the environment.

Several factors would need to be considered by a planning authority when deciding whether or not the development would be likely to have significant effects on the environment, including:

- The size and design of the housing development;
- The accumulated impacts if there are other developments in the area or other developments which have been approved but not built;
- Any waste that might be produced by the development; and
- The likely effect(s) of the development on the nearby nature conservation area.

6. What happens when an existing development is changed or extended?

Where the change or extension is of a type listed in [Schedule 1 of the EIA Regulations](#) and the change or extension would meet any of the thresholds or descriptions in that schedule, then it constitutes a Schedule 1 development and an EIA is required.

Where changes are made to a development listed in [Schedule 2 of the EIA Regulations](#) which either - (a) when considered with the existing development as a whole may result in significant adverse effects on the environment, or (b) meets the thresholds or criteria in column 2 of Schedule 2 - then an EIA may be required.

7. Who decides when an EIA is needed?

In all cases where the relevant criteria are met, a development will require an EIA and the planning authority will be prohibited from granting planning permission until an EIA is carried out.²

A developer can decide that an EIA is needed and carry out the process without asking the planning authority.

A developer can also ask the planning authority whether an EIA is necessary. The planning authority's view on this matter is known as a 'screening opinion'.³

It is also possible to request the Scottish Ministers to make a 'screening direction' on whether a development is an EIA development.⁴ A request for a screening direction can be made by any person. Any such requests will be considered on a case-by-case basis.

The person who requests a screening direction will need to explain why an EIA is needed and will need to offer relevant grounds for their request. Where a planning authority has already issued a screening opinion, the Scottish Ministers will consider whether the issues raised are sufficient to call that opinion into question.

Before making a screening direction, the Scottish Ministers will normally allow the planning authority and the developer the opportunity to comment. If a screening direction is issued, copies of the direction must be sent to the planning authority, the developer and the person who made the request.⁵

8. What should happen when an EIA is carried out?

An EIA must identify, describe and assess the direct and indirect significant effects of the proposed development (including operational effects of the proposed development where relevant) on the following factors:

- Population and human health;
- Biodiversity;
- Land, soil, water, air and climate; and
- Material assets, cultural heritage and the landscape.⁶

A developer must prepare an EIA report which includes a description of:

- The development;
- The likely significant effects of the development on the environment;

- The features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- The reasonable alternatives studied by the developer, and reasons for the option chosen;
- A non-technical summary of the above; and
- Any other information specified in [Schedule 4 of the EIA Regulations](#) relevant to the specific characteristics of the development and to the environmental features likely to be affected.⁷

The environmental report must be prepared by “competent experts”, and the report must contain a statement which explains their relevant expertise.⁸

The planning authority must take the EIA report into account when making its decision on whether to grant planning permission for the development.⁹

9. Public participation requirements

There are several legal requirements which are meant to ensure that members of the public are able to participate in EIAs. When a developer submits an EIA report, the planning authority must:

- Notify any owners/occupiers of any land which is adjacent to the boundary of the proposed development, and any other owners/occupiers within 20m of that boundary;¹⁰

- Publish certain details about the proposed development and the EIA on their website and in a local newspaper. The information to be published must include how and by what date representations may be made regarding the report and the development (at least 30 days' notice must be given) and the planning authority's arrangements for public participation in the decision making procedure;¹¹
- Make copies of the EIA report available for inspection free of charge online and at an office;¹² and
- Send a copy of the report to, and consult with, the relevant consultation bodies (e.g. NatureScot and SEPA).¹³

Members of the public can then use the EIA report to assist them to make representations to the planning authority as to whether or not the proposed development should be given planning permission. The planning authority must take any representations made about the effects of the development on the environment into account when making its decision as to whether to grant planning permission.¹⁴

10. Common problems relating to EIAs and how to address them

There are a number of common problems which can arise in the EIA process. These include:

- Planning permission granted for a development, without the required EIA being carried out;
- Where the planning authority has issued a 'scoping opinion' (which details the matters an EIA should cover), it has failed to identify the main impacts of a development;

- The public participation requirements have not been met. For example, a failure to publish the EIA report or notify the relevant individuals and consultation bodies;
- Major omissions in the environmental report. For example, a failure to identify “the reasonable alternatives” to the proposed development, failure to consider the human health impacts of a development, or the failure to provide a non-technical summary; and
- Issues with the quality of the environmental report.

It is always important to check whether an EIA was prepared by “competent experts”, whether appropriate methods were used (e.g. if there is reference to a ‘desktop survey’ being done, then it is possible that the site was not visited), and whether the baseline conditions have been properly identified against which the effects of the proposed development can be assessed.

There are review methods which can be used to critique the quality of an environmental report, such as the [‘Lee Colley review package’](#), or the [checklist published by the European Commission](#).

If you have concerns about the EIA process, you should first raise them with the relevant planning authority in writing. This could be done by writing to the relevant individual or department which is handling an application for planning permission, or using the planning authority’s complaints process (complaints processes should be available on their website).

If that fails to resolve the problem, then it may be necessary to take legal action against the planning authority. There are very short time limits for raising legal action in EIA related cases. The time limits are either six weeks or three months from the date of any decision or omission under challenge, depending on what is being

challenged. For this reason, taking legal advice at a very early stage is strongly advised.

If you have questions about an EIA, contact us. ERCS provides free advice to individuals, community groups and organisations on environmental and related planning law – [you can contact us by completing our online form](#).

11. Other useful resources

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

[Regulations 2017.](#)

[Planning Circular 1/2017: Environmental Impact Assessment regulations.](#)

References

¹ The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, Regulation 1 defines 'EIA development' as, "...development which is either — (a) Schedule 1 development; or (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location".

² Ibid, Regulation 3.

³ Ibid, Regulations 7 to 10.

⁴ Ibid, Regulation 7(4)(b).

⁵ Ibid, Regulation 7(6).

⁶ Ibid, Regulation 4.

⁷ Ibid, Regulation 5.

⁸ Ibid, Regulation 5(5).

⁹ Ibid, Regulation 4(1)(d) and Regulation 29.

¹⁰ Ibid, Regulation 20.

¹¹ Ibid, Regulation 21.

¹² Ibid, Regulation 21(5).

¹³ Ibid, Regulation 22.

¹⁴ Ibid, Regulation 3 requires that a planning authority must take environmental information into account when carrying out an EIA, and Regulation 1 defines environmental information as including, "any representations duly made by any other person about the environmental effects of the development".