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Guide to environmental impact assessment for agricultural, land drainage and irrigation projects

Environmental Rights Centre for Scotland

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Contents

1. Introduction 1
2. What is an environmental impact assessment? 2
3. Environmental impact assessment jargon 2
4. EIAs and agricultural, land drainage and irrigation projects 3
5. When is an EIA necessary? 3
5.1 Which projects must be screened? 3
5.2 Screening opinions 4
6. What happens when an EIA is carried out? 5
6.1 Scoping opinions 5
6.2 EIA report requirements 6
7. Public participation requirements 6
8. The consultation bodies 7
9. EIA decision notice 7
10. Common problems relating to EIAs and how to address them 8

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.

Environmental impact assessment ('EIA') is a process that is meant to carefully consider the impacts of a proposed development before it occurs.

This is a guide to the law on environmental impact assessments for agricultural, land drainage and irrigation projects.

This guide 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 on 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 project and then sends it to the relevant decision-making authority. That information is intended to allow the decision-maker to better understand the potential impacts of a proposed development before deciding whether it should go ahead.

EIA is often described as a 'tool not a rule'. It does not require a public body to reach a certain decision, instead it is a process which is meant to result in a public body 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 Rural Payments & Inspections Division ("RPID") in fulfilment of the legal duty to carry out an EIA.
- **Screening** – an assessment made by RPID on whether an EIA is required.
- **Scoping** – an assessment made by RPID on what an EIA should cover.

4. EIAs and agricultural, land drainage and irrigation projects

The Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 ('the 2017 Regulations')[i] govern EIAs in respect of agriculture, land drainage and irrigation projects.

The Scottish Government's Rural Payments & Inspections Division ('RPID') is responsible for implementing the 2017 Regulations. RPID receives and responds to requests for screening and scoping opinions, and makes decisions on projects which require an EIA.

5. When is an EIA necessary?

5.1 Which projects must be screened?

Screening is the process of assessing whether an EIA is required for a project.

A farmer or a developer must obtain a screening opinion from RPID if they wish to begin or carry out any of the following:

- A project which involves the use of uncultivated land or semi-natural areas for intensive agricultural purposes;[ii]
- A project involving irrigation;[iii]
- A restructuring project in a sensitive area of any size;[iv] or

- A restructuring project outside a sensitive area which equals or exceeds any of the following thresholds:[v]
    - For restructuring projects involving addition or removal of any field boundary: 6 km, with a maximum removal of 0.5 km of hedge or drystone dyke and a maximum addition of 1 km of vehicle track.
    - For restructuring projects involving an area of land: 200 hectares.
    - For restructuring projects involving the addition, removal or redistribution of a volume of earth or other material in relation to land: 5,000 cubic metres.

If a project meets or exceeds the thresholds, a screening opinion must be obtained from RPID.

5.2 Screening opinions

A screening opinion is RPID's assessment on whether an EIA is required for a project.

Applications for screening opinions must include:

- A plan identifying the land;
- A description of the project's physical characteristics and location;
- A description of the aspects of the environment likely to be affected;
- A description of any likely significant effects which the proposed project may have on the environment, specifically resulting from residues, emissions or waste, and the use of natural resources.[vi]

When adopting a screening opinion, RPID must consider all information provided by the applicant, the 'selection criteria' in Schedule 2 which apply to the project and the results of any relevant assessment.[vii]

A screening opinion must be accompanied by a written statement of the main reasons for the conclusion reached by RPID, with reference to the Schedule 2 criteria.[viii]

If the conclusion is that an EIA is not required, then the screening opinion must be accompanied by a statement which explains how proposed measures will prevent significant adverse effects on the environment.[ix]

Screening opinions must be available for public inspection. RPID publish screening opinions on their website.

6. What happens when an EIA is carried out?

If an EIA is required, the developer must prepare and submit an 'EIA report' along with their application for consent.[x]

A developer may request a scoping opinion,[xi] which is RPID's assessment on the information which should be included in the EIA report.

6.1 Scoping opinions

A scoping opinion cannot be adopted until the relevant consultation bodies have been consulted.[xii] The relevant consultation bodies are:

- Historic Environment Scotland;
- Scottish Natural Heritage;
- The Scottish Environment Protection Agency; and
- Other public bodies which, according to RPID, are likely to have an interest in the project due to the specific environmental responsibilities or the regional competencies held by the public body.[xiii]

Before adopting a scoping opinion, RPID must take the following factors into account:

- The specific characteristics of the project, including its location and technical capacity;
- The specific characteristics of the project of the type concerned; and

- The environmental features likely to be affected by the project.[xiv]

6.2 EIA report requirements

EIA reports must include:

- A description of the project;
- A description of the project's likely significant environmental effects;
- A description of features and measures planned to avoid, prevent, reduce and, if possible, offset likely adverse environmental effects;
- A description of reasonable alternatives studied, along with an indication of the main reasons for the option chosen;
- A non-technical summary of the information above; and
- Any additional relevant information specified in Schedule 3 of the 2017 Regulations relevant to the specific characteristics of the project or of the type of project in question and to the environmental features likely to be affected;[xv]

Where a scoping opinion has been issued, the EIA report must be based on that opinion.[xvi]

The EIA report must be prepared by 'competent experts'. EIA reports must include a statement from the applicant outlining the relevant expertise or qualifications of such experts.[xvii]

7. Public participation requirements

Members of the public have the right to express their views on EIA projects, by making 'representations' to RPID.

RPID must notify the public when they receive any applications for consent for EIA projects. Once RPID receives an EIA report, they must publish a notice which includes the following information:

- A description of the application and the project to which the EIA report relates;
- A statement that the project is subject to environmental impact assessment;
- A statement that the EIA report is available for inspection free of charge and where it can be accessed;
- Information on how copies of the EIA report may be obtained;
- State the cost of a copy of the EIA report;
- Information about how and by what date representations may be made; and
- Explanation of the nature of possible decisions to be taken in relation to the application and provide details of the authority by whom such decisions are to be taken.[xviii]

The notice must be published on the application website, in the Edinburgh Gazette, and in a newspaper circulating in the locality in which the project is situated.[xix]

The public must be given at least 30 days to submit comments to RPID.[xx]

8. The consultation bodies

In addition to consulting the public, RPID must send a copy of the EIA report to the following consultation bodies for their views:[xxi]

- Historic Environment Scotland;
- Scottish Natural Heritage;
- The Scottish Environment Protection Agency.[xxii]

9. EIA decision notice

RPID must decide whether to grant consent within 6 months from the date of the application, unless another time period is agreed with the applicant.[xxiii]

When a decision is reached, RPID must publish a 'decision notice' which includes:

- A description of the project;
- The terms of the decision whether to grant consent for the project;
- The mains reasons and considerations on which the decision is based;
- Information about the arrangements made to ensure the public has had the opportunity to participate;
- A summary of the environmental information;
- Information about how to challenge the decision; and
- If the decision is to grant consent, then the notice must include:
    - Any conditions to which the decision is subject;
    - A reasoned conclusion on the significant effects of the project on the environment;
    - A description of any mitigation measures; and
    - A description of any monitoring measures.[xxiv]

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, including:

- Consent is granted for an EIA project, without the required EIA being carried out;
- Failure on the part of RPID to make documents available for public inspection, such as screening opinions;
- Screening opinions being adopted without adequate reasons;
- A scoping opinion has been issued but it has failed to identify the main impacts of the development;

- The public participation and consultation requirements have not been met. For example, a failure to publish the EIA report or notify the relevant individuals and consultation bodies;

- 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.

If you have concerns about the EIA process, we recommend that you take legal advice as early as possible.

Please note that **there is a very short time limit for starting legal action**. Legal action must be started within three months of the date of any decision or omission by RPID.

You can also make a complaint to RPID in writing to raise your concerns with them. You can do so by following the complaints procedure describe on their website. Alternatively, you can write to one of their offices listed on this link.

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 .

References

[i] The Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017.

[ii] Ibid, Regulation 6.

[iii] Ibid, Regulation 7.

[iv] Ibid, Regulation 8(2)(a). Sensitive areas are sites of special scientific interest, land in respect of which a nature conservation order has been made, special areas of conservation, special protection areas and national scenic area (regulation 2(1)).

[v] Ibid, Regulation 8(2)(b).

[vi] Ibid, Regulation 10(1).

[vii] Ibid, Regulation 12(1).

[viii] Ibid, Regulation 12(2)(a).

[ix] Ibid, Regulation 12(2)(b).

[x] Ibid, Regulation 16.

[xi] Ibid, Regulation 14.

[xii] Ibid, Regulation 14(4).

[xiii] Ibid, Regulation 2(1).

[xiv] Ibid, Regulation 14(5).

[xv] Ibid, Regulation 16(2).

[xvi] Ibid, Regulation 16(3).

[xvii] Ibid, Regulation 16(5).

[xviii] Ibid, Regulation 17(1)(b).

[xix] Ibid, Regulation 17(3).

[xx] Ibid, Regulation 17(2)(f).

[xxi] Ibid, Regulation 17(1)(a).

[xxii] Ibid, Regulation 2(1).

[xxiii] Ibid, Regulation 22(1).

[xxiv] Ibid, Regulation 22(3).