

**The Scottish  
Government's  
compliance with the  
duty to make  
agricultural EIA  
documents available  
for inspection.**

**Case reference IESS.24.040**

February 2025

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# 1. Executive summary

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1.1 The Rural Payments and Inspections Division (RPID)<sup>1</sup> is the Scottish Government agency responsible for payment of environmental land management scheme grants and oversight of the Environmental Impact Assessment (EIA) process for agricultural projects. These projects include proposals to irrigate or drain farmland, 'improve' grassland by cultivation into productive grazing, or to 'restructure' farmland by the removal or redistribution of soil.

1.2 Works of this nature have the potential to cause damage to ecosystems, landscapes and habitats and may therefore require approval before commencing. The EIA process is a tool used to evaluate any significant effects of these projects and to determine if they can go ahead.

1.3 Scottish Ministers must by law make available for inspection any documents received, issued and adopted in connection with completed EIAs. Public accessibility must be facilitated via the application website and via physical records held on the premises of the appropriate government department, in this case RPID.

1.4 Environmental Standards Scotland (ESS) received a representation raising concerns that RPID was non-compliant with this duty, in that not all relevant documents were made available for inspection on RPID's application website (the 'EIA register').

1.5 On reviewing the evidence, ESS determined that RPID was not compliant with its statutory duty to make the relevant agricultural EIA documents available for inspection and accordingly invited it to take the necessary measures to achieve compliance.

1.6 For the reasons set out in this report, ESS considers that the measures taken by RPID to achieve full functionality of the EIA register on its website are reasonable and bring the EIA register into compliance with legal requirements. ESS accordingly considers that informal resolution has been achieved.

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<sup>1</sup> [Rural Payments and Services](#)

## 2. Background

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2.1 [The Agriculture, Land Drainage and Irrigation Projects \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#) ('the 2017 Regulations') set out the requirements which landowners and officials must follow in respect of the making and handling of applications for development on agricultural land, in the context of environmental protection.<sup>2</sup>

2.2 The 2017 Regulations apply to any 'project' in Scotland, which includes the execution of construction works and other interventions in the environment such as irrigation and drainage works. Projects covered by the 2017 Regulations have the potential to cause environmental harm by disturbing underground archaeology, habitats and wildlife and causing the loss of sensitive plant habitats and species which support valuable ecosystems. These projects also have the potential to impact on characteristic or unique landscapes, given the scale at which intensification, drainage or irrigation can occur.<sup>3</sup>

2.3 The EIA process involves several steps, as summarised below:

- screening – RPID determine if consent is needed for a project, advising the applicant by providing a screening opinion. These must be produced by officials as soon as possible, but no longer than 90 days since the request unless there are exceptional circumstances
- scoping – RPID determine the issues that must be covered as part of the consent application and EIA report, advising the applicant by providing a scoping opinion. These must be produced by officials within 35 days of the

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<sup>2</sup> The 2017 Regulations implement [Directive 2011/92/EU](#) of the European Parliament (as amended by [Directive 2014/52/EU](#)) which requires an assessment of the likely significant effects of certain projects on the environment before a development consent can be granted.

<sup>3</sup> RPID's oversight of this process was previously considered by ESS. RPID agreed to implement measures to improve how it implemented the requirements of the 2017 Regulations. See case Reference - [IESS.23.022](#).

request, unless further information is required, or a longer period is 'reasonably required'

- consent – RPID assess (and consult on) the consent application and EIA report to decide whether to grant consent for the project

2.4 Regulation 21 of the 2017 Regulations places a requirement on Scottish Ministers to make available for inspection (for a period of two years) documents associated with the EIA process, including:

- screening opinions
- scoping opinions
- directions given by Scottish Ministers related to where EIA would hinder response to a civil emergency, or where EIA may be incompatible with the outcomes required
- EIA reports and any additional information
- statement of reasons accompanying any of the above

### 3. The representation

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3.1 ESS received a representation alleging RPID was failing to comply with its statutory duty concerning the way in which information required under Regulation 21 of the 2017 Regulations was presented. The representation stated that the EIA register on RPID's website did not include documents relating to applications or decisions made under the 2017 Regulations.

3.2 The outcome sought in the representation was to ensure that RPID's online EIA register contains all the documents that are required by Regulation 21 of the 2017 Regulations, in particular EIA screening opinions.

3.3 ESS considered this case to be within its remit, due to the following factors:

- the representation related to a public authority – RPID as the responsible Scottish Government agency
- the representation related to environmental law – the 2017 Regulations
- RPID's approach to making information available for inspection may constitute a failure to comply with the requirements of the 2017 Regulations

3.4 ESS also considered the matters raised fell within its 'significance criteria' as the representation suggested long standing non-compliance with legal duties which could undermine public confidence.

## 4. ESS' consideration

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4.1 Public registers are important repositories of information because they provide consistency, integrity and a canonical, authoritative account of specific information held in a single location.

4.2 Freely available information on EIAs, in the context of the 2017 Regulations, helps the public and relevant authorities understand the possible environmental effects of projects and to inform the decision-making process. In turn, this allows for greater transparency and accountability of public authorities.

4.3 This is specifically recognised in the Aarhus convention<sup>4</sup> which sets out that 'in the field of the environment, improved access to information and public participation in decision-making enhances the quality and the implementation of decisions, contributes to public awareness of environmental issues, gives the public the opportunity to express its concerns and enables public authorities to take account of such concerns'.

4.4 Lastly, the provision of information on public registers allows for compliance with other legislative requirements to be determined, for example the timescales required for producing screening and scoping opinions.

4.5 Following assessment of the representation, ESS approached RPID to discuss the concerns raised. RPID confirmed that it was aware of the concerns raised and was making progress on improving the functionality of the application website to ensure compliance with Regulation 21 of the 2017 Regulations. However, at that point no date for completion had been set.

4.6 Following these discussions and on reviewing the evidence, ESS considered that RPID was not compliant with the requirements of Regulation 21 of the 2017 Regulations as not all necessary EIA documents were available for inspection on the application website. Additionally, the lack of timescale for full functionality was important as, without a defined end point, the full disclosure of the required

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<sup>4</sup> The United Nations Economic Commission for Europe [Convention](#) on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

information, and therefore compliance with Regulation 21 of the 2017 Regulations, could not be guaranteed.

4.7 In ESS' view, the failings identified were within RPID's ability to rectify and there was no immediate risk of significant harm to the environment or human health. In light of this, ESS invited RPID to resolve matters informally.

## 5. Informal resolution

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5.1 Informal resolution is the process of agreeing effective remedial actions with the relevant public authority to resolve identified issues, without the use of formal enforcement measures. ESS considers that informal resolution is often more expedient, cost-effective and results in better environmental outcomes.

5.2 Following ESS' invitation, RPID agreed to work with ESS to take the necessary actions to achieve compliance. To this end, RPID provided an implementation plan to ESS, which set out the actions it would take to ensure compliance with a target completion date of no later than 15 November 2024.

5.3 Upon completion of the implementation plan by RPID, ESS reviewed the application website and sought further clarification of the availability of information under two sections where the Regulation 21 information was not clearly available:

- Under Regulation 21 (2)(b) “direction given under regulation 3(3) or (4)” i.e. direction given where any project solely for the purpose of responding to a civil emergency may be hindered by compliance with the regulations, RPID confirmed that initial draft versions of the website register contained a section for this information. However, the likelihood of this scenario occurring was considered to be low and so this section was removed to present the register in as user-friendly and streamlined manner as possible. RPID confirmed that at present it held no information in this category, but committed to including it should they issue a direction under this regulation
- Under Regulation 21(2)(f) “Statement of reasons”, RPID agreed to amend its decision proforma to include a specific section headed ‘Statement of reasons for decision’

5.4 ESS is satisfied that the work undertaken by RPID will allow the public access to, and inspection of, the relevant agricultural EIA documents on the application website and therefore deliver compliance with the requirements of Regulation 21 of the 2017 Regulations. Accordingly, ESS considers that informal resolution has been achieved.

## 6. Conclusion

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6.1 The purpose of EIA is the protection of valuable habitats, species and landscapes from activity which has the potential to cause damage. The 2017 Regulations exist to ensure that agricultural drainage, irrigation or intensification projects which could impact these features are properly considered and managed. Without proactive oversight and governance, fragile and unique environmental characteristics can be permanently erased.

6.2 The ability to demonstrate publicly that appropriate decisions are being made by officials allows the public to engage with the oversight process at a local level. This transparency also builds trust in decision making and improves the accountability of Scottish public bodies.

6.3 RPID accepted at an early stage that its website did not have the functionality to fully comply with the requirements of Regulation 21 of the 2017 Regulations. Accordingly, RPID agreed a timescale with ESS to take the actions required to remedy this and achieve measurable compliance.

6.4 Following the actions taken by RPID, ESS considers that informal resolution has been achieved in that:

- relevant information will be available for inspection and publicly accessible on RPID's website, as required by the 2017 Regulations
- transparency of the application and consenting process will be improved, in turn increasing public awareness of potentially impactful activities
- the public will be able to inform decision-making and are empowered to participate in matters which could affect them
- the availability of the full range of information on decisions relating to environmental impacts of drainage, irrigation or other agricultural projects covered by the 2017 Regulations can be measured objectively for compliance

6.5 To date, ESS has received a number of representations concerning public authorities' compliance with their duties to maintain public registers of environmental information. In light of the similarities of ESS' findings in this connection and the importance of public registers in facilitating effective access to environmental information, ESS intends to undertake a broader assessment of how Scottish public

authorities implement their legal obligations in this area. This work will commence in summer 2025.

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