

Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

ENVIRONMENTAL
Standards Scotland
Ìrean Àrainneachdail na h-Alba

[REDACTED]
Freedom of Information Officer
foi@environmentalstandards.scot
0808 1964000

[REDACTED]
25 November 2025

Dear [REDACTED],

Response to information request – partial disclosure – ESS.IR.019

I am writing in response to your original email of 28 October 2025, and subsequent email of 4 November 2025 requesting information under the Freedom of Information (Scotland) Act 2002 (FOISA). The information you requested is as follows:

“In April 2024, ESS published an informal resolution report in respect of the outcome of representation IESS.23.022. The report states that the Scottish Government’s Rural Payments and Inspections Division (RPID) has indicated that it will introduce new guidance for staff which would contain flowcharts and processes. The report states that ESS will continue to monitor implementation of this agreed action (para 4.5 of the informal resolution report).

Does ESS hold a copy of this guidance, please? If so, would you be able to send this to me, please? ”.

As the information you have requested is ‘environmental information’ for the purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), we are required to deal with your request under those Regulations. We are applying the exemption at section 39(2) of the

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Freedom of Information (Scotland) Act 2002 (FOISA), so that we do not also have to deal with your request under FOISA.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption, because there is no public interest in dealing with the same request under two different regimes. This is essentially a technical point and has no material effect on the outcome of your request.

Our response

ESS does hold a copy of the guidance requested and a copy has been included in the email along with this letter, attachment 20240530 – Case Information – EIA Internal Guidance – Revised 2024 – IESS.23.022.pdf.

The EIRs allow a Scottish public authority to withhold information in response to a request, where one or more exemptions listed in the EIRs applies. While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you requested. Two exemptions of the EIRs apply.

- Regulation 10(4)(e) of the EIR applies because the information is internal communications for the purposes of the EIR. This exemption applies to the whole document.
- Regulation 10(5)(b) of the EIRs applies because the information is subject to legal professional privilege. This exemption does not apply to the whole document.

These exemptions are both subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the

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information outweighs the public interest in applying the exemptions. We have applied this test cumulatively. We have found that, on balance, the public interest lies in favour of disclosing the majority of the document. However, we have found that that the public interest lies in favour of upholding the exemptions in respect of three sentences within Paragraph 1.5 of document.

To provide you with as much information as possible, the documents attached have been redacted to remove the exempt information, while leaving the rest of the information in place. This redacted is marked in the text.

I hope that this information is helpful. Please let me know if we can provide any further assistance.

Right to seek a review

While we believe we have complied with your information request in full, if you are unhappy with this response to your request under EIRs, you may ask us to carry out an internal review of the response by writing to:

Mark Roberts
Chief Executive Officer
Environmental Standards Scotland
Thistle House
91 Haymarket Terrace Edinburgh
EH12 5HD
Email: foi@environmentalstandards.scot

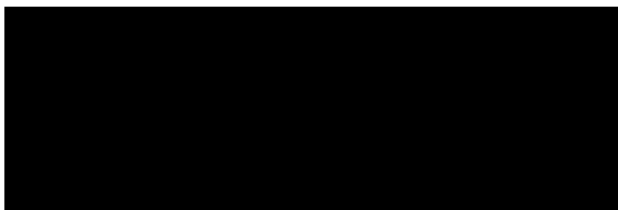
Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter.

We will issue a full response to your request for review within 20 working days of receiving it.

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Yours sincerely,



Freedom of Information Officer

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SCOTTISH INTERNAL GUIDANCE ON

ENVIRONMENTAL IMPACT ASSESSMENT (EIA) FOR

PROJECTS FOR THE RESTRUCTURING, DRAINAGE AND IRRIGATION OF RURAL LAND HOLDINGS AND USE OF UNCULTIVATED LAND AND SEMI-NATURAL AREAS FOR INTENSIVE AGRICULTURAL PURPOSES

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

SGRPID
Agriculture & Rural Economy Directorate

INTRODUCTION

1. The Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 came into force 16 May 2017 and supersede the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 which in turn superseded the EIA (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002. The Regulations cover two aspects of the EU EIA Directive and apply rules under which certain projects for the restructuring of rural land holdings are subject to the EIA process and the use of Uncultivated Land and Semi-Natural Areas for intensive agriculture purposes. The application form, explanatory leaflet, guidelines, the Regulations and additional information can be accessed from SGRPID's EIA web page:- [Rural Payments and Services - EIA](#)
2. The Regulations derive from the Scottish Government's commitment to implement EU requirements on potential environmental effects on land use change. In 1999 Scottish EIA Regulations were introduced for work subject to the terms of the Town and Country Planning procedures and also Forestry proposals. SGRPID's aim is to seek wherever possible to operate the requirements of the Regulations in co-operation with land managers, farmers and crofters and also with any bodies, such as NatureScot, SEPA or Historic Environment Scotland.
3. Close working relationships with the bodies mentioned above, and also any other organisations which may be required to comment on applications are also recommended to promote a spirit of co-operation in implementing the legislation. This Guidance is intended to help staff in area offices operating the Regulations on the ground.
4. The details of EIA applications require under the legislation to be placed on a public register, along with associated screening and consent decisions. Only sufficient information to commit relevant information to the public register will be required from area offices.
5. This guidance outlines the processes and procedures to follow once we receive an application or complaint but, in addition, staff may find it helpful to refer to the relevant sections in the Regulations.
6. The guidance on public website Rural Payments and Services - [Rural Payments and Services - EIA](#) – explains what type of work falls under EIA and when a farmer should apply to RPID for a screening decision. Staff should read that to understand when EIA applies.
7. Staff should contact Dumfries Area Office for guidance on cases whilst experience in the subject increases.

1 SCREENING

This chapter describes the screening process and the criteria to be applied when determining whether a project needs to be subjected to an Environmental Impact Assessment (EIA). It should be read in conjunction with the selection criteria set out in **Annex H** and in the published guidelines (see web page given in Introduction).

1.1 Informal Enquiries

It is important to note that an applicant only breaches the above Regulations when a project is undertaken without first obtaining a screening opinion. There is nothing illegal in farmers choosing to make their own decisions on whether EIA is required. The EIA Regulations are only breached if a farmer's incorrect interpretation results in a project being carried out illegally.

SGRPID staff in local area offices will periodically receive queries from farmers relating to the interpretation of the Regulations and EIA procedures. Care should be taken in answering these queries as poor advice could lead to an individual undertaking works that lead to the Regulations being breached and enforcement action taken. In particular, staff should be wary of giving firm advice on what may be partial or inaccurate information.

Under the Regulations, applicants are entitled to seek a formal screening decision from SGRPID on whether a specific proposal requires EIA. Such a decision should only be provided upon receipt of a formal request submitted application form and supporting documentation e.g. a clear location map. It follows that SGRPID staff should not provide a screening decision on the basis of a verbal request or incomplete information. Also the screening decision needs to be confirmed in writing. A written decision can only be given in response to a formal application.

In advising an applicant of their right to seek a screening decision, SGRPID staff should ensure that the individual is aware of the consequences of making such a screening request. The applicant should be advised of the procedures, consultations and time scales associated with screening. Also the individual needs to be made aware that should SGRPID decide that an EIA is required no further action can be taken until a full Environmental Assessment is prepared for the project, considered by SGRPID and statutory and other appropriate consultees and a formal decision reached as to whether consent can be given. It also needs to be made clear to the applicant that in such circumstances a project must not proceed unless and until consent has been granted

1.2 Formal Screening Request

1.2.1 Verification of Screening Request

Upon receipt of a formal application for screening, the local SGRPID office should check that the application form has been fully completed and that sufficient information has been provided to accurately identify the land affected by the proposed project. If not, the outstanding points

should be referred back to the applicant for answers. The application for a screening opinion must be accompanied by:-

- (a) a plan sufficient to identify the land;
- (b) a description of the project, including in particular—
 - (i) a description of the physical characteristics of the whole project and, where relevant, of demolition works;
 - (ii) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (c) a description of the aspects of the environment likely to be significantly affected by the project; and
- (d) a description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from—
 - (i) the expected residues and emissions and the production of waste, where relevant;
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.

The information above is to be compiled taking into account, where relevant the selection criteria set out in Schedule 2; and the available results of any relevant assessment.

An application for a screening opinion may also be accompanied by a description of any features of the project, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment.

The local office should:

- Check the accuracy of the application using RP&S and whatever other means available.
- Obtain information on surface vegetation and land use as available.
- Obtain information on statutory and other environmental designations affecting the land and also those occurring within 500m of the project boundary.
- Note queries relating to potentially conflicting information, incomplete or inaccurate data that needs to be resolved with the applicant before a decision can be made or finalised.

The application and data can then be assessed to determine whether the project is of a type that is covered by these Regulations, and if so whether it will *have significant effects on the environment* such that EIA is required. This is achieved by applying the following tests in sequential order.

Test 1 - Is the project covered by The Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017

Test 2 - If yes, does the project involve any of the following:

- Uncultivated land or semi-natural areas for intensive agricultural use
- Sensitive land
- Irrigation
- Drainage/restructuring above the relevant thresholds

All explained in the guidance [Environmental Impact Assessment guidance \(ruralpayments.org\)](https://ruralpayments.org/)

Test 3 - If so, do the proposed agricultural operation(s) constitute a project under the Regulations?

Test 4 - If yes, will the project have *significant environmental effects*?

In applying the last test SGRPID should take into account any responses made by statutory consultees. Where consultees use third parties to give their views it is the responsibility of the consultee to verify their support for these views and ensure that they are presented in clear and unambiguous terms. SGRPID should only accept views submitted on the consultees headed paper. Guidance on who to consult is given in paragraph 1.4.2 and **Annex A**.

1.2.2 Test One – Do the EIA Regulations Apply?

Different EIA Regulations apply to different types of projects. These Regulations do not apply to the following types of projects:

- Projects that require planning permission such as construction of agricultural buildings for intensively rearing livestock. - separate EIA Regulations apply to this.
- Forestry projects (planting or removing trees) – **see Annex B**.
- Bracken control, muirburn and other burning, as part of a normal management cycle in accordance with good farm management practice.
- Specific control of injurious weeds under the Weeds Act 1959.

Projects on land within SGRPID's agri-environment schemes do fall within the Regulations. However, EIA aspects of projects within these schemes will be covered as part of the normal scheme approval.

To clarify the position land subject to and within the terms of an on-going agri-environment scheme would not be eligible for conversion to intensive agriculture as this would run counter to the agri-environment scheme contract which binds the producer to managing the land in a certain way to meet environmental objectives. Hence no separate EIA uncultivated application is necessary as the situation is addressed under the agri-environment scheme contract. An exception to this could include an AECS application for a water irrigation system, which may require an EIA depending on the circumstances explained in the AECS staff guidance. Intensification proposals for land which has been in an agri-environment scheme but is no longer so because the contract period has come to an end will however require completion of an EIA uncultivated application.

1.2.3 Test Two - Type of Land Involved

A project is subject to these Regulations if the land involved is either uncultivated or a semi-natural area. The Regulations do not define uncultivated land or semi-natural areas but as a working guide, the intention is to apply these EIA requirements to the types of land identified in the published guidelines and repeated in **Annex C**. The three main groupings that might apply are:

1. Heath, Moorland and Unimproved grassland.
2. Scrubland (but not woodland or forestry-see **Annex B**).
3. Wetlands including marsh, fen, open water, watercourses, saltmarsh, ditches bogs and ponds.

A project is also subject to these regulations if it is on 'Sensitive Land'. (See online guidance)

A project, on improved land out with a Sensitive area, is still subject to these regulations in certain circumstances explained in the online guidance.

1.2.4 Test Three - Nature of Agricultural Operations

The Scottish EIA Regulations define ‘project’ as “a project which the Scottish Ministers have decided is likely to have a significant effect on the environment by virtue of factors such as its nature, size or location”

The list at **Annex D** indicates the types of projects that SGRPID considers fall within this definition and which will therefore be subject to the EIA procedures. **This is an illustrative list which will be reviewed in the light of experience.**

The online public guidance and flow diagrams should also be referred to [Environmental Impact Assessment guidance \(ruralpayments.org\)](https://ruralpayments.org) It provides more detail on the types of project that require a screening decision so should be read in conjunction with tests 3 and 4.

1.2.5 Test Four - Deciding whether there is likely to be significant effects on the environment

SGRPID must not grant consent for an EIA project under these Regulations unless an environmental impact assessment has been carried out in respect of that project, and in carrying out such assessment the SGRPID must take the environmental information into account.

Neither the EC Directive nor the Regulations define the term “*likely to have significant effects on the environment*” and ultimately the Courts will have to decide in cases of unresolved dispute. Schedule 2 of the Regulations sets out selection criteria for a screening decision which, must be taken account of in deciding whether a project is likely to have a significant effect on the environment. Schedule 2 is reproduced as **Annex H** attached.

The selection criteria should be applied in a consistent way and the factors to be taken into account in applying them will include the following:

- Whether the land, or land likely to be affected by the proposal, is subject to any environmental designation (or is proposed for such designation). This may include:
 - ☐ a Natura 2000 site,
 - ☐ National Scenic Area,
 - ☐ National Nature Reserve, local nature reserve, or
 - ☐ Site of Special Scientific Interest (SSSI).
- The current level of biodiversity on the land and whether it is:
 - ☐ Classified as a Priority Habitat within the UK Biodiversity Action Plan (relevant habitats are listed at **Annex F**),
 - ☐ Is in the process of reversion to such a habitat, or
 - ☐ Is known to contain wildlife covered by a Species Action Plan under the BAP.
- Whether there are archaeological or other historic features such as:

- Scheduled Monuments,
 - Sites listed in the Historic Environment Scotland/NatureScot Inventory of Gardens and Designed Landscapes,
 - Other historic landscape features such as archaeological sites, earthworks or land associated with Listed Buildings.
- The potential impact of the project on countryside character and cultural landscape, taking account of land characterisation approaches developed by NatureScot.
- Any important environmental considerations such as an isolated pocket of a particular habitat type or for protection of water resources.
 - Potential effects on pollution (including air and water quality), soil erosion or flood protection. These effects may arise beyond the land on which the project is proposed.

In addition each case must be determined on its merits having regard to the following principles:

- The extent of the impact in terms of the geographical location and/or the size of the population affected. Because of the cumulative impact arising from a series of projects consideration should be given to the extent of impact covered by this and other projects carried out within the locality by both the applicant and others. The damage to any BAP Priority Habitat should be considered as significant.
- The impact on other states, namely its effect on land and populations in Scotland and neighbouring EU states. While extremely unlikely, this is a requirement of the Directive and as it sits in retained EU Law and best be considered in the context of effect on England, or setting a precedent.
- The magnitude and complexity of the impact. Projects that cause major changes or knock-on effects to ecosystems are more likely to have significant environmental effects.
- The probability of the impact. There must be a reasonable likelihood of significant effects occurring. Where adverse effects are likely to have serious effects then an environmental statement should be required.
- The duration, frequency and reversibility of the impact. Effects that are temporary and can readily be reversed are unlikely to require EIA. In contrast effects that are likely to require a generation or more to rectify are likely to be deemed to be significant subject to the effects being of sufficient extent, magnitude and probability (see also 2.5.3)

1.2.6 Special circumstances

Croft land/common grazings

In crofting areas where renewal of permanent grassland may take place over longer periods than elsewhere, particular care should be taken especially when land changes hands either within a tenancy or otherwise. If reseedling or fertilising has not taken place for some years, and if the

croft has been extensively stocked, croft “arable” may need to be considered under the Regulations.

Under the Crofting Agricultural Grants Scheme (CAGS) certain activities such as reseedling, liming, fertilising and drainage are potentially eligible for grant aid. These are all cited as comprising a “relevant project” under the EIA Regulations. To help crofters avoid inadvertently infringing the legislation, every effort should be made to ensure crofters are aware of the existence of the Regulations. The Crofting Commission has already agreed to assist in this. Where necessary it should be made clear to potential CAGS applicants that the this EIA Regulation does not open up areas of croft land to improvement which were previously ruled out using the criteria in Section 17 of the Agriculture Act 1986.

Fencing of common grazings following an apportionment does not in itself put in train EIA procedures. However ground improvement works and any significant increase in stocking density may do. Against this background when considering and reporting on apportionment and all other regulatory case work staff should again ensure that crofters and potential new crofters are aware of the EIA agriculture legislation. The Crofting Commission should also be consulted when considering screening decisions relating to land in the crofting counties.

Game bird cover

We receive enquiries involving the ploughing and sowing of uncultivated land to provide cover for game birds. There has been some discussion on this and although the breeding and keeping of game birds is not an agricultural activity and cultivating and harvesting the cover crop is not intended, the fact that ploughing takes place points very much to intensification of the land. Against this background it has been concluded that in both legal and practical terms such proposals do come under the EIA uncultivated Regulations and procedures.

1.3 It is anticipated that following consultation with relevant consultation bodies (e.g. NatureScot, SEPA, Historic Environment Scotland etc) an EIA report will most likely be required where any of the following circumstances apply:

1.3.1 European Sites

Where a project, either directly or indirectly, is likely to have a significant effect on a European protected site for nature conservation – these are Special Areas of Conservation (SACs) designed under the EC Habitats Directive, and Special Protection Areas (SPAs) classified under the EC Birds Directive. Collectively these sites make up the Natura 2000 network across the European Union. Further guidance on the implication of these Directives can be obtained through the Scottish Government website (www.scotland.gov.uk/library3/nature/habd-00.asp).

An appropriate assessment and associated environmental statement will be necessary where:

- The scale and effects of the project are likely to have a significant effect on the *integrity* of the site or the conservation interests within the site; and
- The proposed works are not connected with, or necessary for, the management of the site.

For this purpose, the *integrity* of a site is significantly affected where the European Natura conservation interests for which the site has been designated are damaged or changed such that over the longer term it cannot either:

- sustain the habitat or complex of habitats, and/or
- sustain the levels of population of species, for which the site was originally classified.

In practice, EIA will normally be required for projects affecting such sites. Regulation 15 (3) to (9) of S.S.I. 2006/582, about consent decisions, stresses the importance of European sites and the need to ensure their integrity.

NB. Projects that are planned outwith a European site should be judged under the same criteria where they have a potential to have an environmental effect within a European site. For example, projects that enrich the nutrient content of streams or groundwater that will affect the ecology of a European site, or drainage works that may cause an alteration to the hydrology of a wider area.

1.3.2 SSSIs and NNRs

Projects affecting Sites of Special Scientific Interest (SSSIs) and National Nature Reserves (NNRs) that are not European sites will require EIA where operations are likely to:

- Significantly undermine the longer term survival on site of any habitat, species, geological or physiographical feature of **national** importance (Section 29 of the Wildlife and Countryside Act 1981 refers), and/or
- Change the attributes of the site to such a degree that if the project is carried out, then the site will no longer merit SSSI status. Key attributes for this purpose are as follows:

Naturalness: lack of human modification.

Diversity: range and richness of species present.

Typicalness: how well it typifies the characteristics of the habitat type.

Size: in terms of its ability to sustain populations of key species.

Rarity: as a measure of scarcity of species and habitat type.

NB. Projects that occur outside such a site should be judged by the above criteria where they would affect a designated site. For example, projects that enrich the nutrient content of streams or groundwater that will affect the ecology of a designated site, or drainage works that may cause an alteration to the hydrology of a wider area.

1.3.3 National Scenic Areas

EIA is required where a project will sufficiently affect the character or appearance of the countryside such that it is likely to significantly affect public enjoyment. Examples include projects that would:

- Introduce or significantly expand intensive agriculture into wilderness areas where vistas are comprised almost entirely of moorland and heath.
- Significantly alter or remove features of acknowledged historic, landscape, tourist or recreational importance and/or significantly damage their settings.
- Significantly reduce areas of semi-natural vegetation.

1.3.4 Historic Features

Archaeological remains and historic features are a finite and non-renewable resource that need to be preserved. Projects that are likely to cause significant damage to features of more than local importance will require EIA.

The possible need for EIA should be considered where projects significantly and adversely affect the following features or their settings.

- Scheduled Monuments (SM) within the meaning of the Ancient Monuments and Archaeological Areas Act 1979,
- Sites listed in the Historic Environment Scotland/NatureScot Inventory of Gardens and Designed Landscapes,
- Property appearing on the World Heritage List,
- Registered landscapes of historic interest,
- Archaeological sites, earthworks and land associated with Listed Buildings.

For advice on archaeological sites contact should preferably be made through the Local Authority Archaeological Services or, where information is not available, Historic Environment Scotland. If a scheduled ancient monument is involved, go direct to Historic Environment Scotland.

1.3.5 Non-Statutory Sites

Assessment of non-statutory sites and undesignated land may also lead to the need for EIA. This may be, for example, where there is:

- Firm evidence of the existence of features of conservation, landscape, or amenity value that need to be conserved that are of more than *local* importance; and,
- A project is likely to significantly affect them.

Other examples include;

- Wildlife conservation and biodiversity: (See sections following about “European Protected Species” and “Biodiversity and the Wider Countryside”).
- Projects that will remove or significantly alter features of more than local importance including landscape, amenity features and their settings. This applies where major changes to their character or appearance significantly detracts from their intrinsic value and public enjoyment.

1.3.6 European Protected Species

Careful consideration needs to be given to the need for EIA where land contains a European protected plant or animal species (see **Annex E** or the Scottish Government website giving Natura Guidance);

A project is likely to require EIA where:

- There is evidence of the presence of a European Protected Species;
and,
- The project is likely to damage or disturb populations of that species, and/or animals, breeding or resting places, within its natural range. An assessment should be made within the surrounding 1km grid square.

1.3.7 Biodiversity and the Wider Countryside

Under the EC Habitats and Birds Directive's, Government is required to endeavour to ensure that land use, planning and development policies seek to maintain the ecological coherence of European sites by ensuring features of the landscape that are of qualifying importance to wild fauna and flora are properly managed. This includes linear features such as ponds and hedges and pockets of semi-natural and natural habitat that act as stepping stones that are essential for the migration, dispersal and generic exchange of the species and habitats identified within the Directives. These, however, need not receive the same level of scrutiny in relation to the European Directive obligations if outwith Natura sites, and if projects are not likely to have a significant effect within designated sites.

1.3.8 Small Projects

The possibility that a small project, for example to fill in a pond or cultivate the corner of a field, might be regarded as significant if rare species were present.

NB You must ensure that uncultivated land lacking any BAP designation is given appropriate consideration under the Scottish EIA Regulations. The absence of BAP status should not be regarded as signalling that the area concerned is of less environmental significance. All the tests applying to designated land should also be applied in full to non-designated areas.

1.3.9 Cumulative Effects

Over the years as agriculture has developed and production has intensified some practices have adversely affected biodiversity in parts of rural Scotland. Whereas individual projects may have appeared to have only marginal effects, their combined effect can be considerable.

In screening projects it is important to consider not only the effect of an individual project but the cumulative effect of other projects carried out locally by both the applicant and other farmers. For example, a series of similar small projects in an area could, cumulatively over time, have a significant effect on pollution, wildlife or landscape.

Hence, the first screening request for a project to improve a few hectares of a semi-natural area may not be deemed to have significant environmental effect. However, a point may be reached at which any further projects will require EIA as the combined effects will be deemed to have a significant environmental impact.

The same may apply to some subsequent requests by the same applicant and vigilance is required to prevent individuals from seeking to bypass the EIA Regulations by intensifying land incrementally via a number of small bites over a period of years.

1.3.10 Mitigation

SGRPID will take into account the effects of any mitigating measures planned by applicants to reduce environmental damage in deciding whether EIA is required. Thus a project that does not include mitigating measures may require EIA whereas a similar project may not require

EIA if mitigating measures are sufficient to ensure that significant environmental effects are unlikely. More detail on this is set out in 2.6 below.

1.4 Consultation

1.4.1 When to Consult

In making a screening decision, Regulation 9(2) allows that SGRPID may seek comments from such consultation bodies as it sees fit (see **Annex A**). Thus SGRPID has a measure of discretion.

Consultation should take place in **all** circumstances where initial consideration of an application against any of the 4 tests detailed in Section 1.3 produces any difficulties particularly where possible potential for significant environmental effects are identified. Early consultation with NatureScot in particular may be required in relation to test 2 (type of land) and test 4 (potential for significant effects). This is important to ensure that SGRPID properly evaluates all the issues involved. It also ensures that advice can be obtained from NatureScot and other bodies which have been consulted in any subsequent scoping exercise and to protect the applicant's right to obtain relevant information from these bodies if an Environmental Statement is required.

Early consultation is also recommended in any borderline cases and where there is any doubt. Consultation need not occur where it is clear that significant environmental effects are unlikely. Good relations should be built with consultee bodies at a local level to agree generally where SGRPID will consult.

1.4.2 Who to Consult

The relevant consultation bodies are set out in **Annex A** and might be regarded as covering the following interests:

<u>Area of interest</u>	<u>Body</u>
European sites, SSSIs, NNRs and protected species	NatureScot and SEPA.
Other conservation and wildlife matters	NatureScot, SEPA (and RSPB)
NSAs	
	NatureScot, SEPA & Local Authorities.
Landscape, recreation and amenity	NatureScot and Local Authorities.
Historic features and archaeological sites	Historic Environment Scotland and LAs.

1.4.3 Procedures

Consultations with statutory consultees should be made in writing using the standard consultation letter and accompanied by copies of all relevant information supplied by the applicant (for example signed application form and map). The letter should draw attention to any inaccuracies in the information of which SGRPID is aware and should clearly define any issues on which SGRPID requires specific advice or comments.

1.4.4 Making a Screening Decision

In arriving at a screening decision it is important to bear in mind that applicants have a right of appeal and that all decisions and how they are reached are potentially subject to appeal or judicial review. It should also be remembered that interested groups (i.e. environmental bodies and land owner or producer organisations) may monitor implementation of the EIA Regulations and seek to take action if, in their opinion, SGRPID is applying it too leniently or too strictly.

It is therefore important that decisions are made in an objective and systematic manner with reasons properly documented. The likelihood of a project being environmentally significant should be made using the criteria previously mentioned in this chapter and after taking into account all responses from statutory and other consultees.

In arriving at a final decision it is important that any screening opinion from statutory consultees should be subject to careful consideration. Where SGRPID is minded to accept a statutory consultee's recommendation, it is important that SGRPID should satisfy itself that the recommendation is supported by sound and relevant reasoning sufficient to withstand public scrutiny. In circumstances where the reasoning is not evident then the matter should be discussed with the consultee who should be asked to detail any additional advice in writing.

In cases where SGRPID consider that a different view is justified to that recommended by a consultee then discussion should take place with the consultee to identify the precise issue(s) that are causing a divergence of views and why. In most circumstances this should lead to common agreement being achieved. Where this is not achieved the SGRPID case officer should send full details of the application and the recommended course of action to the relevant Area Office Principal Agricultural Officer. Further escalation is to the relevant Deputy Head of Area Offices and Head of Area Offices.

1.5 Responding to Applicants

Unless an alternative deadline has been agreed with an applicant **SGRPID is statutorily required to provide an applicant with a screening opinion as soon as possible but not within 90 days** of receiving the request for its opinion. This opinion should be:

- Notified in writing to the applicant using the appropriate standard letter (see **Annex J**). This letter should include full reasons for the decision.
- Notified to those consultation bodies that are likely to wish to be informed of it.
- Full details should be notified to Area office Business Support Team in order to enter the information in the public register as required by Regulation 7(7)(b) of the EIA Regulations.

Where SGRPID consider that due to exceptional circumstances relating to the nature, complexity, location or size of the project it is not practicable to adopt a screening opinion within the period of 90 days beginning with the date of receipt of the application, SGRPID may extend that period by notice in writing given to the person who made the application. This notice must state SGRPID's justification for the extension and specify the date by which they are to adopt a screening opinion pursuant to the application. SGRPID must, if they consider that they have not been provided with sufficient information to adopt a screening opinion, notify in writing the person who made the application of the points on which they require further information.

In borderline cases, in order to be able to give approval at screening, it is suggested the applicant is approached to see if they would modify their proposals in order to negate any the environmental impact which might be identified from their original application (see also mitigation at 2.6).

When making a determination as to whether a project is an EIA project, SGRPID must in all cases take into account all of the information provided by the applicant.

Where SGRPID adopt a screening opinion that screening opinion must be accompanied by a written statement giving, with reference to the selection criteria set out in schedule 2 as are relevant to the project, the main reasons for their conclusion. Where the screening opinion is to the effect that the project is not an EIA project, the written statement must state any features of the project or proposed measures envisaged to avoid or prevent significant adverse effects on the environment. A copy of the screening opinion and written statement must be sent to the applicant as soon as possible after adopting a screening opinion.

[REDACTED TEXT – "Exception applied under Regulations 10(4)(e) and 10(5)(b) of the EIRs]

If this presents any difficulties RPID senior management will be very happy to advise.

1.6 Appeals

If SGRPID decides a proposal is a project (screening), refuses consent to a project, or imposes conditions before a project can begin, the applicant has the right to appeal within 3 months. Work on a project may not begin while an appeal is pending.

The Regulations allow Scottish Ministers discretion to determine the appeals procedure in individual cases. Scottish Ministers may decide the appeal, or appoint someone to decide it on their behalf by written representations, informal hearing, or inquiry allowing the appellant to be heard if they so request. The form of appeal process will be set in discussion with the appellant. Section 4 below provides more information on appeals.

1.7 Enforcement

Information on issues relating to Offences, Stop Notices, Penalties, Reinstatement, Powers of Entry and Default is set out in 5.1 to 5.6.

2 SCOPING

2.1 Introduction

This Chapter should be read in conjunction with Regulations 13, 14 & 15 of the S.S.I.

No person may begin or carry out an EIA project without first obtaining consent from SGRPID.

After obtaining a screening decision (that has determined that the proposal is a “project”) and before applying for consent, the applicant **may** request SGRPID to give an opinion as to the information to be provided in the environmental statement (ES). This ES will need to be submitted before any further action can proceed.

In preparing an ES an applicant is entitled to seek scoping advice from SGRPID on the aspects that should be covered. He/she may also request relevant environmental information that will be helpful in preparing their ES from SGRPID and other consultation bodies. All are obliged to provide any relevant non-confidential information in their possession and may make a reasonable charge to cover the cost of making this data available.

It is the purpose of this chapter to:

- Describe the procedures to be followed when giving scoping advice and providing environmental information.
- Outline general requirements relating to the preparation of an ES.
- Provide guidance for use by SGRPID staff when providing project specific 'scoping advice' on the issues to be covered by an ES and on the depth of analysis required.

Before preparing an ES the applicant should also be made aware of what it is and its purpose. An ES is best described as a report that summarises the significant environmental effects of a proposal in order that the applicant, SGRPID, consultation bodies and other interested parties can accurately assess the impact of the proposal on the environment. It is needed to enable a decision on whether, or not, the project should be allowed to proceed. An ES can also identify whether proposals can be amended to minimise any significant or adverse environmental effects.

2.1.1 Guiding Principles

Annex G provides guidance on the preparation of Part 1 and Part 2 of an ES and sets out the range of issues that should be covered. It is however left to the discretion of the applicant to decide what level of coverage is given to each. The underlying aim should be to identify the potential environmental impacts and clarify ways to avoid or minimise environmental damage.

The Environmental Statement should be fit for purpose and as simple as possible. Given the variety of projects and locations that may be encountered, each project should be considered on its individual merits. However, the requirement to seek no more detail than is reasonably necessary applies in all cases. To avoid unnecessary delay in returning a statement for more detail or preparing statements well beyond need, there is benefit in all parties discussing at an early stage what is important for inclusion in the statement i.e. a scoping meeting. In providing

scoping advice SGRPID should not seek more information or investigation than is reasonably necessary for this purpose.

2.2 Options

If, as a consequence of screening, it is decided that a project requires EIA then the applicant has one of three courses of action.

- Submit an Environmental Statement to supplement the application.
- Abandon the project.
- Amend the project proposals to reduce its environmental affects and resubmit a fresh screening application. Procedures for this last option are the same as those in the screening chapter.

These three options need to be carefully explained to the applicant. In particular, the applicant needs to be made aware of the cost implications of preparing an ES (i.e. they fall to the applicant) and should be advised that, even with an ES, consent may not be granted. Essentially the greater the environmental effects then the less likely it will be for consent to be granted unless adequate mitigation measures are proposed.

NB. In providing advice SGRPID staff should seek to deter applicants from seeking consent for projects that are unlikely to succeed.

2.3 Scoping Procedures

2.3.1 Provision of Scoping Opinion

After obtaining a screening opinion that a project is an EIA project and before applying for consent for an EIA project, the applicant may request SGRPID to adopt a scoping opinion.

Verbal queries regarding what is entailed in preparing an EIA report may be answered in a general sense. **However, it should be made clear that formal scoping advice can only be provided upon receipt of written confirmation of the request for scoping on page 1 of the application form.** This must include a plan sufficient to identify the land; a brief description of the nature and purpose of the project and of its likely impact on the environment; and such other information or representations as the person making the request may wish to provide or make.

SGRPID will consider any information that has been previously submitted together with any already on file and consider whether there are any other matters on which information is required. It may also choose to seek written or verbal advice from statutory or other relevant consultation bodies.

If no further information is required then a written acknowledgement will be sent to the applicant advising that **a scoping opinion will be provided within 35 days (of either the request – or the provision of any additional information required).**

Alternatively, **if more information is required then SGRPID must request this within 28 days from the date of receipt of the request for scoping opinion.** This should describe the matters upon which the additional information is required.

The Scottish Ministers must not adopt a scoping opinion in response to a scoping request until they have consulted the consultation bodies. It may be sensible to set up a meeting of all interested bodies at which the Applicant can discuss the proposals.

Once all requested information has been provided SGRPID will forward the scoping request plus the additional information to the appropriate consultation bodies and any other relevant bodies. **Consultees have 28 days to respond.**

Before adopting a scoping opinion, SGRPID must take into account the specific characteristics of the particular project, including its location and technical capacity; the type of project and the environmental features likely to be affected by the project.

The Scottish Ministers must within the period of 35 days beginning with the date of receipt of the request or such longer period as they reasonably require, adopt a scoping opinion and send a copy to the person who made the request.

The response should:

- Describe information on the key issues on which the EIA report should focus attention.
- Provide advice on the level of investigation and information that should be provided.
- Advise the applicant of their right to seek any relevant environmental information from SGRPID and/or consultation bodies which have been involved in screening or scoping and advising them of any reference number that they should quote in correspondence.
- Provide a list of the names and addresses of consultation bodies from which this information may be sought.
- Advise that bodies may levy a reasonable charge on the applicant for any information requested.
- Provide advice on procedures for obtaining environmental information from SGRPID.
- Advise that SGRPID and consultation bodies reserve the right to seek additional information once an application for consent has been received. This will be restricted to aspects that need to be considered in determining an application for consent and that were missed during the scoping process.

2.3.2 Provision of Environmental Information

This Chapter should be read in conjunction with Regulation 15 and Schedule 3 of the S.S.I.

In response to requests for environmental information, SGRPID will only provide data that it holds itself and requests for this must be made in writing. SGRPID should give the applicant all reasonable assistance in completing the EIA report.

If a request is received for information that is held by another body then SGRPID should advise the applicant to contact the appropriate body direct.

An applicant who intends to submit an EIA report to the SGRPID under these Regulations may give notice in writing to SGRPID. This must include the information necessary to identify the land and the nature and purpose of the project, and must indicate the main environmental consequences to which the applicant proposes to refer in the EIA report.

Where SGRPID receive this notice they must; notify the consultation bodies in writing of the name and address of the applicant and of the duty imposed on those bodies to make information available to the applicant; and inform in writing the applicant of the names and addresses of the bodies notified.

SGRPID and any body notified in accordance must, if requested by the applicant, enter into consultation with the applicant to determine whether SGRPID or the body have in their possession any information which the applicant or they consider relevant to the preparation of the EIA report, and SGRPID or body must make any such information available to the applicant.. This does not require disclosure of information which the Scottish Ministers or any body notified may refuse to disclose under regulation 10(1) or 12(1) of the Environmental Information (Scotland) Regulations 2004(1); or are prevented from disclosing by regulation 11(2) or 13(1) of those Regulations. A reasonable charge reflecting the cost of making the relevant information available may be made by SGRPID or any body notified when making information available

Provision of information should be restricted to data that is relevant for preparing the EIA report. It should not include information that is confidential, 'commercial in confidence', or personal to a third party. (see S.S.I. Regulation 10(3) and (4)).

As appropriate, this information may include maps, diagrams, tables, text or numerical data. The applicant should indicate whether information is preferred in digital or paper format. Eventual provision will of course be dependent on the storage of the data held. Information provided may be specific to land that is either directly or indirectly affected by the project. It may also include contextual information that will enable the applicant to assess the environmental significance of a project in local and/or national terms. Information may also be provided on ways of mitigating environmental effects, e.g. SGRPID may have information on pertinent land management practices developed under agri-environment schemes.

2.3.3 Investigations and Surveys

Applicants should be encouraged to use appropriate techniques for collecting data and evaluating potential environmental effects, and the ES should describe the methods used and the information collected by each.

SGRPID and consultation bodies should safeguard against making overly rigorous demands and data should only be required that is **reasonably necessary** for determining what significant environmental effects occur and how they may be mitigated. Therefore it follows that detailed investigation and survey work should not be required where any of the following circumstances apply.

- A significant environmental effect is improbable either due to the minor nature of the environmental impact or the very low risk of a significant environmental effect occurring;

- Environmental information submitted to the applicant by SGRPID or environmental or other bodies is sufficient for identifying a likely environmental effect.
- The cost of investigation is unreasonable given the scale of the project proposed or the complexity of the issues involved. However, the applicant will need to both describe and consider the nature of the hazard and its potential environmental effects so far as data and current knowledge permits. Also the ES should draw attention to any limitations on such knowledge.

Also it is not appropriate to require an applicant to:

- Undertake systematic or detailed investigations to prove the existence, or otherwise, of specific fauna or flora unless the SGRPID or other consultation body has provided sound evidence indicating its probable existence. It is not valid to expect applicants to undertake speculative surveys at considerable expense on the off-chance that something of significance will be found.
- Undertake systematic or detailed investigation to verify the existence, or otherwise, of plants or fauna in cases where the applicant is prepared to assume its existence as fact and evaluates environmental effects accordingly. For example, it would be unnecessary to provide information on the existence, or otherwise, of a species that is known to be common within the locality and where as a consequence the impact of the project is not deemed to be environmentally significant.
- Verify matters of fact so long as the applicant does not dispute these facts when drawing up conclusions within the ES. For example, if a statutory body provides reasonable evidence of the existence of a protected species then an applicant should not be required to verify this so long as its existence is accepted as fact for purposes of evaluating environmental effects.
- Provide research or monitoring into the effects of a specific practice if sound evidence indicates that the practice is environmentally acceptable in similar circumstances elsewhere. For example, it would be unnecessary for an applicant to prove that certain levels of grazing or fertiliser application do not have significant environmental effects where they fall within limits deemed to meet environmental requirements by SGRPID or other appropriate statutory bodies.

2.4 Environmental Impact Assessment Report- General Requirements

2.4.1 Guiding Principles

An application for consent for an EIA project must be accompanied by an environmental impact assessment report (referred to in these Regulations as an “EIA report”), and such number of copies of the application as SGRPID may reasonably require.

2.4.2 Overall Format

An EIA report is a report prepared in accordance with the regulations and the applicant includes (at least):

- (a) a description of the project comprising information on the site, design, size and other relevant features of the project;
- (b) a description of the likely significant effects of the project on the environment;

(c) a description of the features of the project and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;

(d) a description of the reasonable alternatives studied by the applicant, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;

(e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and

(f) any other information specified in schedule 3 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.

The applicant should be advised that there is no set format for an EIA report provided it contains the above information. It is ultimately up to the applicant to decide how much information to provide. However, applicants will need to ensure that their EIA report is clearly written and well structured with information and conclusions set out in an orderly and systematic manner. A plan should also be included that clearly identifies the geographic location and boundaries of the site.

Where a scoping opinion is issued, the EIA report must be based on that scoping opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments in preparing the EIA report.

In order to ensure the completeness and quality of the EIA report the applicant must ensure that the EIA report is prepared by competent experts, and the EIA report must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of such experts.

2.4.3 Optional Matters

In determining an application for consent (see Chapter 3) SGRPID will need to balance the benefits to be derived from a project against its environmental effects. For this reason it is to the applicants advantage to set out the benefits to be achieved from the project and reasons why it is necessary.

Evidence that the applicant may seek to provide may include:

- Contribution of the project to the financial welfare of the farm business e.g. contribution to farm income or the continued economic viability of the holding or contribution to the local community.
- Animal health or welfare benefits.
- Number of jobs created or safeguarded, if any.
- Need for the project as part of a wider programme aimed at achieving overall environmental benefits, better waste management or reducing pollution.

2.5 Guidance on Amount of Detail Required in an EIA Report

2.5.1 Site Description and Baseline Information

For comparative purposes the key site characteristics of environmental significance need to be described. These should be assessed using approved techniques to produce baseline data covering current conditions. However, where site characteristics are known to be changing then information should also be collected to describe these changes. This is needed to enable future comparisons to be made of conditions with and without the project proceeding.

2.5.2 Context

Applicants need to be made aware that site assessment will indicate the environmental factors that are likely to be affected by a project and evaluation of data should attempt to indicate the nature and scale of changes that are likely to occur. However, a qualitative decision will then need to be made as to whether changes are environmentally significant and, if so, how significant.

This is not an arbitrary process and opinions will need to be justified objectively. Depending on circumstances comparisons with the following have validity in determining levels of significance:

- Legislative requirements and policy objectives;
- Relevant guidance on good practice e.g. acceptable management practices in 'like for like' situations pertaining to agri-environment schemes and pollution control;
- Critical limits in relation to pollution;
- Documented scientific research and analogous experience;
- Logical argument and expert opinion.

2.5.3 Permanence

In assessing change it is important that an EIA report differentiates temporary changes from those that are permanent. Also between those that are capable of being reversed and those that are not. Such factors may have a profound bearing on whether an environmental effect is considered to be significant. In general, temporary and reversible features are less likely to be significant than those that are permanent. However, this is not always the case and some temporary changes can have long term effects, e.g. temporary intervention may destroy a protected species so permanently eliminating it from a locality.

2.6 Mitigation and Compensatory Measures

Applicants should describe any measures that they intend to undertake to reduce specific environmental damage identified in carrying out their investigations. Details of such measures should include information on how damage will be reduced and include an assessment of residual levels of damage that remain once mitigation has occurred.

An applicant may also seek to highlight any compensatory measures that are carried out as part of the project to offset any environmental damage. Both environmental benefits and dis-benefits should be described. For example, an applicant may propose to manage riparian areas for wildlife as compensation for scrub removal elsewhere on site. Both may have implications

for wildlife but different species will be affected by each. Hence there may be no mitigation of adverse effects but there will be compensatory benefits. On the debit side there may also be piscivorous bird implications for fishing interests.

NB. For compensatory measures to be considered by SGRPID when determining an application for consent it is important that the proposed measures are:

- (i) clearly specified by the applicant, and
- (ii) when consent is granted the details are confirmed in the RPID's letter of approval.

Otherwise enforcement problems may arise

One way to circumvent such a problem would be to encourage the applicant to apply to join the AECS or if a signatory to an existing agri-environment scheme to seek to re-negotiate the terms of the agreement. This will not however enable anyone to circumvent the requirements of the EIA Regulations as agri-environment schemes are not exempt.

3 THE CONSENT PROCESS

This chapter should be read in conjunction with Regulations 11 to 16 and Schedule 4 of the SSI.

3.1 Introduction

Once the screening process has decided that a proposal is a project and subject to the EIA process, no work may be undertaken until the applicant confirms he/she wishes to proceed with an application for consent. At this point the applicant will need to prepare an EIA report. This report needs to be completed and submitted before any consideration of the consent process can proceed.

There is **no requirement** on applicants to go through the scoping process nor to seek a scoping opinion. Applicants may, if they wish, proceed immediately to the preparation and submission of an EIA report as part of their application for consent.

SGRPID should always encourage applicants to discuss the likely requirements for the EIA report with SGRPID and the consultation bodies. This will avoid unnecessary delay in having to return an EIA report for more detail or the preparation of detailed statements well beyond need.

3.2 Submission of Environmental Impact Assessment Report

The applicant should send copies of the EIA report to the local SGRPID area office where the main contact about the case will have been. The applicant should be informed of the number of copies required.

The EIA report should be fit for purpose and as simple as possible. On receipt of an EIA report it is up to SGRPID to decide (in consultation with statutory and other bodies as appropriate) whether or not sufficient information has been provided to assess the environmental effects of the project and to make a properly informed decision.

3.3 Consultation

On receipt of the application a copy including the EIA report must be sent to the relevant consultation bodies inviting representations to be submitted to SGRPID within 30 days from the date that they receive the application-see Regulation 17(1).

SGRPID in consultation with statutory and other relevant bodies should then decide whether the information provided is sufficient to assess the environmental effects of the project and to make a properly informed decision on whether, or not, to give consent for the project to proceed. If insufficient information has been provided then SGRPID may request the applicant to rectify the situation.

3.4 Publicity

In order to inform members of the public and give them the opportunity to make representations if they wish, arrangements should be made by area office staff for a notice to be published in a newspaper circulating in the locality of the land relevant to the application, as well as on the application website and in the Edinburgh Gazette. The notice must:

- describe the application and the project to which the EIA report relates;
- state that the project is subject to environmental impact assessment and, where relevant, state that it is likely to have significant effects on the environment in another EEA State;
- state that the EIA report is available for inspection free of charge and the times and places at which, and the means by which, the EIA report is available for inspection;
- state how copies of the EIA report may be obtained;
- state the cost of a copy of the EIA report;
- state how and by what date representations may be made (being a date within the period of 30 days beginning with the last date on which the notice is published);
- provide details of the arrangements for public participation in the decision making procedure including a description of how notice is to be given of any subsequent submission by the applicant of additional information and how representations in relation to that additional information may be made; and
- state 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.

The applicant must, at the time of submitting the report, pay the cost to be incurred by SGRPID in arranging publication of the notice. SGRPID must make copies of the report and other documents submitted with the application available for inspection on the application website.

3.5 Additional Information

In order to ensure the completeness and quality of the EIA report, SGRPID must (having regard in particular to current knowledge and methods of assessment) seek from the applicant supplementary information about a matter to be included in the EIA report in accordance with regulation 4(2) which in the opinion of SGRPID is directly relevant to reaching a reasoned conclusion on the significant effects of the project on the environment.

The applicant must provide the information, and such information provided is referred to in these Regulations as “supplementary information”.

Where additional information is provided, regulation 17 applies to the provision of such information as it applies to the submission of an EIA report as if references to the report were references to the additional information.

3.6 Projects in Scotland likely to have significant effects in an EEA State other than the United Kingdom (reg 19)

This regulation applies where it comes to the attention of SGRPID that a project proposed to be carried out in Scotland is an EIA project and is likely to have significant effects on the

environment in an EEA State other than the United Kingdom; or an EEA State other than the United Kingdom likely to be significantly affected by such a project so requests.

SGRPID must send to the EEA State, as soon as possible and no later than their date of publication in The Edinburgh Gazette, the particulars referred to below, and if they think fit, the following information; a copy of the application concerned (which includes the EIA report), and relevant information regarding the procedure under these Regulations, but only to the extent that such information has not been provided to the EEA State earlier. SGRPID must give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

The particulars referred to above are; a description of the project, together with any available information on its possible significant effect on the environment in another EEA State; and information on the nature of the decision which may be taken.

SGRPID must also arrange for the particulars and information and any additional information submitted by the applicant to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and ensure that those authorities and the public concerned are given an opportunity, before consent is granted, to forward to SGRPID, within a reasonable time, their opinion on the information supplied.

SGRPID must in accordance with Article 7(4) of the Directive enter into consultations with the EEA State concerned regarding, amongst other things, the potential significant effects of the project on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.

Where an EEA State has been consulted in accordance with paragraph (6), on the determination of the application concerned SGRPID must inform the EEA State of the decision and forward to it a copy of the decision notice.

3.7 Projects in another EEA State likely to have significant transboundary effects (reg 20)

Where SGRPID receive from an EEA State other than the United Kingdom pursuant to Article 7(2) of the Directive information which that EEA State has gathered from the developer of a project in that EEA State which is likely to have significant effects on the environment in Scotland, SGRPID must, in accordance with Article 7(4) of the Directive; enter into consultations with that EEA State regarding, amongst other things, the potential significant effects of the proposed project on the environment in Scotland and the measures envisaged to reduce or eliminate such effects. They must also determine in agreement with that EEA State a reasonable period, before consent for the project is granted, during which members of the public in Scotland may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive; and so far as they have received such information, notify the consultation bodies and the public concerned of the content of any decision of the competent authority of the relevant EEA State and in particular; any conditions attached to it; the main

reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and a description of the main measures to avoid, reduce and if possible, offset the major adverse effects that have been identified.

SGRPID must also arrange for the information referred to in the paragraph above to be made available, within a reasonable time, both to the authorities in Scotland which they consider are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Scotland; and ensure that those authorities and the public concerned in Scotland are given an opportunity, before consent for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied.

3.8 Availability of opinions etc. for inspection (reg 21)

Where any document mentioned in the paragraph below is received, issued or adopted by SGRPID, they must make copies of that document available for inspection on the application website and at all reasonable hours at an office of the Scottish Ministers where the documents may be inspected. The documents made available must remain so available for a period of 2 years.

The documents are any:

- (a) request under regulation 14(1);
- (b) direction given under regulation 3(3) or (4);
- (c) screening opinion;
- (d) scoping opinion;
- (e) EIA report and any additional information; and
- (f) statement of reasons accompanying any of the above.

3.9 The Consent Decision

In the light of the information contained within the EIA report (or any additional environmental information provided) and any representations received following the relevant public notices or from consultation bodies, **SGRPID may decide to grant or refuse the application on the basis of the likely effects of the project.** Any decision shall not be reached until the relevant time periods for consultation outlined above have expired, i.e. 42 days or the extra 28 days where additional information has been provided.

SGRPID must determine an application for consent for an EIA project as soon as reasonably practicable but in any event within the period of 6 months beginning with the date on which it receives the application; but may determine it within such other time period as may be agreed with the applicant.

Where an application for consent for an EIA project is determined by SGRPID the notification of the decision to be given to the applicant (referred to in these Regulations as “the decision notice”) must include the following information:

- (a) a description of the project;
- (b) the terms of the decision;
- (c) the main reasons and considerations on which the decision is based;
- (d) information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures; and
- (e) a summary of:
 - (i) the environmental information; and
 - (ii) the results of the consultations and information gathered pursuant to regulations 17, 18, and where relevant, regulations 19 and 20 and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 20, have been incorporated or otherwise addressed.

3.10 Granting Consent

If the decision is to grant consent the notification of the decision must include:

- any conditions to which the decision is subject
- the reasoned conclusion referred to in regulation 4(1)(d)
- a statement that the Scottish Ministers are satisfied that the reasoned conclusion is still up to date
- a description of any mitigation measures
- a description of any monitoring measures required under regulation 24
- information regarding the right to challenge the validity of the decision and the procedures for doing so.

If the project is to be granted consent, then that consent shall be given subject to the standard conditions below and any other conditions as may be determined with consultee bodies.

Every consent shall be granted subject to the following standard conditions as set out in Regulation 23 of the Regulations:

SGRPID must not grant consent for an EIA project which would involve doing anything which would be unlawful under regulation 39, 41 or 43 of the Habitats Regulations (which does not include anything for which a licence has been granted under regulation 44 of those Regulations).

The following points apply to a decision by SGRPID whether or not to grant consent for an EIA project which is likely to have a significant effect upon a European site (either alone or in combination with other projects) (referred to in those paragraphs as “a European site project”):

- SGRPID may grant consent for the European site project only if they have considered its implications for the European site and are satisfied that the European site project will not adversely affect the integrity of that site. The consideration of these implications

must involve an appropriate assessment of the implications of the European site project for the European site in view of the conservation objectives of the site.

- If SGRPID are satisfied that, there being no alternative solutions, the European site project must be carried out for imperative reasons of overriding public interest (which, subject to the point below, may be of a social or economic nature), they may grant consent for the European site project, notwithstanding a negative assessment of the implications for a European site.
- Where a European site concerned hosts a priority natural habitat type or a priority species, the reasons must be either—
 - (a) relate to human health, public safety or beneficial consequences of primary importance to the environment; or
 - (b) other reasons which in the opinion of the European Commission are in the case of the site concerned imperative reasons of overriding public interest.
- Where consent is granted for a European site project notwithstanding a negative assessment of the implications for a European site, SGRPID must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 (as defined in the Habitats Regulations) is protected.
- Any consent for an EIA project granted must be subject to the conditions required by the point below and to such additional conditions as SGRPID may think fit.
- Every consent for an EIA project must be granted subject to conditions to the effect that:
 - (a) the consent shall lapse if the EIA project has not commenced (by the carrying out of a material act) within 1 year of the date on which it was granted;
 - (b) if the EIA project has not been completed (which, for these purposes, shall mean that works permitted by the consent have been carried out and completed and all changes in the use or level of use of the relevant land permitted by the consent have been implemented) within the period of 3 years beginning with the date on which the consent was granted, the consent shall expire and SGRPID may require operations or uses implemented pursuant to the consent to cease until they have granted further consent in accordance with subparagraph (d);
 - (c) the consent authorises the EIA project only as described in the application for consent for an EIA project, subject to any amendments approved by the Scottish Ministers, and any material change in the operations or uses so authorised shall require further consent in accordance with subparagraph (d);
 - (d) applications for further consent under conditions in sub-paragraph (b) or (c) must be subject to such of the requirements of these Regulations as the Scottish Ministers think fit.

In addition SGRPID may also insert specific conditions relating to the project arising out of consideration of the EIA report or from representations made by consulted bodies.

The consent decision should also make it clear that the land managers must separately seek and obtain any other statutory permission required related to the project.

A standard decision letter is available at Annex J.

Where an application for consent for an EIA project is determined by SGRPID and the decision is to grant consent, SGRPID must consider whether it is appropriate to require monitoring measures to be carried out.

When considering whether to require monitoring measures to be carried out, and the nature of any such monitoring measures, SGRPID must consider—

- whether monitoring measures are proportionate to the nature, location and size of the project and the significance of its effects on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring;
- in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation (other than legislation implementing the requirements of the Directive) or other legislation applicable in Scotland are more appropriate; and
- if monitoring measures are to be required, whether provision should be made to require appropriate remedial action.

“mitigation measures” means any features of the project and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment including any such features or measures required by virtue of a condition imposed on the grant of consent.

“monitoring measures” means measures requiring the monitoring of any significant adverse effects on the environment of the project including any such measures required by virtue of a condition imposed on the grant of consent for an EIA project.

Where SGRPID consider that it is appropriate to require monitoring measures they must do so. Where mitigation measures or monitoring measures are required, SGRPID must take steps to ensure that those measures are implemented.

SGRPID must not grant an application for multi-stage consent in respect of an EIA project unless an environmental impact assessment has been carried out in respect of that project and in carrying out such an assessment SGRPID must take the environmental information into account.

3.11 Application for multi-stage consent where EIA report previously provided (reg 27)

This regulation applies in relation to the consideration by SGRPID of an application for multi-stage consent where a report referred to by the applicant as an EIA report has previously been submitted by the applicant in relation to the project.

Where this regulation applies—

- (a) if it appears to the Scottish Ministers that the project, or the part of the project to which the application for multi-stage consent relates, as the case may be, may have significant effects on the environment that have not previously been identified and assessed; and
- (b) the applicant has not submitted additional information in respect of those effects together with the application for multi-stage consent, the Scottish Ministers must seek supplementary information from the applicant in accordance with regulation 18 in respect of such effects.

3.12 Notification of Decision

If consent is granted, then SGRPID will inform the applicant and all the consultation bodies, including persons to whom the application was sent, of the decision together with the full reasons and considerations on which the decision was based.

In addition, the public must be informed by way of notice in a newspaper circulating in the locality. The notice shall state where a copy of decision notice may be inspected. A copy of the decision notice must be available for public inspection on the application website and at all reasonable hours at SGRPID office where the documents may be inspected.

Other means considered reasonable in the circumstances may be used to inform the public if agreed with RPID Area Office senior colleagues.

3.13 Transborder Projects & Other Member States

In the case of a transborder project where the greater part of the relevant land is situated in Scotland, it is likely SGRPID will lead and consult the relevant English bodies, as appropriate, before making a screening or scoping decision or granting or refusing consent. Where the greater part of the land is in England, then the application should probably be subject to the equivalent Regulations applicable to England. However, with agreement by all parties, such a project may still fall to be considered under the Scottish Regulations

In certain cases, if requested by the relevant English authorities, SGRPID may agree that an application for a transborder project to which the Scottish Regulations would otherwise apply,

be subject only to the equivalent Regulations applicable to a project in England. Such cases should be referred to RPID Area Office senior colleagues.

The EIA Directives require the Department to consider whether a project will have significant effects on the environment of another Member State and this requirement is repeated in the Scottish Regulations. This is extremely unlikely but if such circumstances arise, contact Area Office senior colleagues for advice.

3.14 Special cases

Special rules relate to the granting of consent for a project that may have implications for a European site, which are set out in Regulation 15(5) to (9) of the EIA Regulations. As these cases are likely to be rare, these rules have not been paraphrased in this Chapter. Such cases should be referred to Area Office Business Support Team for advice on procedures.

Special rules relate to the granting of consent for a project which affects an SSSI. Again, these cases are likely to be rare and reference should be made to Area Office senior colleagues for guidance.

3.15 Change in status of land

Where land becomes a European site, after screening decision, consent stage and where the carrying out or completion of a project would be likely to have a significant effect on that site and would not be directly connected with or necessary for the management of the site, special arrangements come into effect as set out in Schedule 4 of the Regulations. It also covers any decision that a project is not a relevant project. In these situations, the requirements of Schedule 4 would need to be followed and the advice of Area office senior colleagues should be sought.

4 APPEALS

This guidance should be read in conjunction with Regulations 29 – 34, and Schedule 4.

4.1 General Provisions

Applicants may appeal:

- Where a person has applied for a screening decision and Scottish Ministers have decided it is a relevant project, or has deemed it to be so where the Scottish Ministers have not given a screening decision within the 35 day period (see Regulation 7(6)).
- Where a person has applied for consent which has been refused or granted subject to conditions, other than those required for all consents (see Regulation 23).
- Where a person has had a notice served upon them revoking SGRPID's decision or modifying the consent granted.
- Where a person has been served a notice requiring reinstatement works in accordance with paragraph 5 of Schedule 4.

The appellant must lodge an appeal within 3 months of receiving the decision stating:

- A description of the relevant decision.
- The grounds of appeal.
- Whether the appellant wishes the appeal to be in the form of a hearing, inquiry or by written representations.

The Area Office business support team will manage appeals using staff from outwith the Branch as necessary to reach independent assessments. This process will usually involve the following:

On receipt of a notice of appeal SGRPID will serve copies of the notice on appropriate consultees and those who previously made representations on the relevant decision and others that have a particular interest.

Persons wishing to make representations must notify SGRPID that they wish to do so within 21 days of having the notice of appeal served upon them.

Taking account of the appellants wishes, Scottish Ministers shall decide if the hearing is to be by a hearing, local inquiry or written representations, and notify the appellant and any persons that they may make representations in relation to the appeal. Scottish Ministers may appoint any person to determine the appeal in accordance with Schedule 5 of the Regulations, or may decide the appeal themselves.

For more information on the appeals process contact the Area Office Business Support Team.

4.2 Application to the Court by Person Aggrieved

At the end of the day, the whole process is subject to further appeal to the Sheriff Court by anyone aggrieved by the consent (or screening) decision. This includes consultation (non-statutory) bodies or a person who otherwise can show an interest in the decision-see Regulation 20.

An application to the Sheriff must be made by within 21 days from the date of notification of the appeal decision by Scottish Ministers. Such an application will not suspend any of the conditions. The Sheriff may set aside the decision or make an interim or other such order as may be thought fit.

5. ENFORCEMENT

This guidance must be read in conjunction with Regulations 22, 23 and 24.

5.1 Offences

Land managers are free to carry out normal farming actions and to decide themselves what may or may not be a project. It is important to note that an applicant only breaches the Regulations when a project is implemented without EIA consent. This may occur where a project uses either uncultivated land or semi-natural areas for intensive agricultural uses and has significant effects on the environment. Therefore there is nothing illegal in farmers choosing to make their own decisions on whether EIA is required. The Regulations are only breached if a farmer's incorrect interpretation results in a project being carried out illegally. An offence takes place only where works planned or attempted would be covered by the Regulations.

It is an offence to begin or carry out a “project” without first obtaining either a decision that the work is not a relevant project or a decision granting consent under these Regulations.

It is an offence not to comply with a condition of consent granted in accordance with the Regulations.

It is an offence to procure a particular decision under these Regulations by making false statements, or using documents or withholding information with intent to deceive.

5.2 Stop Notices

This guidance must be read in conjunction with Regulation 25.

Where it is evident that an offence has been committed under regulations 22, 23 or 24 and that to protect the environment from potential harm the work should stop at once, SGRPID (on behalf of Scottish Ministers) may serve a Stop Notice prohibiting all or part of the work.

A Stop Notice may be served on any person who appears to have an interest in the land or is engaged in any activity prohibited by the Notice. SGRPID may withdraw the Stop Notice by serving notice to that effect on the person served with the Stop Notice.

A Stop Notice must allow at least 24 hours for the person to comply with the Notice, except in an emergency (see Regulation 25(4)).

A standard Stop Notice for use in Scotland is attached at **Annex I** together with guidance on issue of Stop Notices.

The Stop Notice ceases to have effect:

- If a notice of withdrawal is served.
- If consent for the prohibited work is granted.

- If it is determined that the prohibited work is not a relevant project.
- If an order is made by the Sheriff in relation to an appeal.

An appeal against the stop notice may be made to the Sheriff within 21 days of its service. Such an appeal will not suspend the effect of the Stop Notice. The Sheriff may quash or affirm the stop notice and, if affirming it, may do so in its original form or with modifications.

The Area Office Business Support Team should be informed of any need to issue a Stop Notice and consulted on the practicalities of serving if any doubt arises.

5.3 Contravention of a Stop Notice

This guidance must be read in conjunction with Regulation 26.

Contravention of a Stop Notice is an offence and a subsequent offence may be committed if compliance with the Notice is not undertaken. Area Office senior colleagues will seek advice from the SGLD where non-compliance with the terms of a Stop Notice occurs.

Contravention of a Stop Notice includes causing or permitting its contravention.

In proceedings for an offence under the Regulation the accused may use the following as a defence:

- That the stop notice was not served on the accused, and
- That the accused did not know, and could not reasonably have been expected to know, of its existence.

5.4 Reinstatement

This guidance must be read in conjunction with Regulation 27.

Where an offence has been committed, SGRPID may serve a reinstatement notice.

The notice is served upon the person believed to be responsible for committing the offence. Reinstatement will require that person to reinstate the land to the condition it was in before the project was started, and specify the period within which this must be carried out.

Where the previous condition of the land cannot be determined or where it is not possible to return the land to its previous condition, the notice can require such reinstatement works as are considered reasonable in the circumstances (after consultation with appropriate bodies if necessary). There is scope here to negotiate appropriate measures for reinstatement including compensatory measures on adjacent land. Such negotiations should be made in tandem with consultation bodies.

A person served with a reinstatement order may appeal within 21 days by way of a summary application to the Sheriff on the following grounds:

- That the notice or any requirement in the notice is not within the power conferred by the Regulations.
- That there is a material informality, defect or error in or in connection with the notice.
- That any of the requirements of the notice are unreasonable.

For the purposes of the time limit for bringing the appeal the making of the complaint will be treated as bringing the appeal. Where an appeal is made the reinstatement notice is suspended pending the result of the appeal. It is an offence to fail to comply with a reinstatement notice.

5.5 Powers of Entry and Default Powers

This guidance must be read in conjunction with Regulation 28.

Where there are reasonable grounds, SGRPID authorised staff may enter and inspect land or premises at any reasonable time to:

- Ascertain whether an offence under Regulation 22, 23, 24, 26 or 27 has been committed on or in connection with that land;
- Serve a reinstatement notice under Regulation 27 in respect of that land; or
- Exercise any functions under Schedule 4 (review of decisions and consents).

Any person in occupation or possession of the land or premises must give any reasonable assistance requested by the authorised person to enable him or her to undertake the specified work.

It is an offence to intentionally obstruct the authorised person from carrying out the specified work or to fail to render reasonable assistance when requested without reasonable excuse.

5.6 Offences by Bodies Corporate and Partnerships

In Scotland, if an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent of, or is attributable to, any person within that body or partnership, they, as well as the body or partnership, will be guilty of the offence and be subject to the appropriate proceedings.

BODIES TO BE CONSULTED ABOUT APPLICATIONS

Statutory Consultees¹:

NatureScot

Scottish Environment Protection Agency (SEPA)

Historic Environment Scotland² (HES)

Others:

Local Authorities are not Statutory Consultees. However, their advice should be sought whenever planning, social, cultural or community aspects of proposals arise.

Crofting Commission – for land within crofting counties

Bodies with specific interest or expertise (e.g. RSPB). Such bodies should be consulted where the relevant statutory body e.g. NatureScot suggests that wider involvement of interest or expertise would be appropriate.

Any other public authority, statutory body or organisation which has any interest or holds any information which might be relevant to the project.

¹ “Consultation Bodies” are defined in the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2006 (SSI No 582) as :

(a) NatureScot, established under section 1 of the Natural Heritage (Scotland) Act 1991;
(b) the Scottish Environment Protection Agency, established under section 20 of the Environment Act 1995; and
(c) any other bodies designated by statutory provision as having specific environmental responsibilities.

² Although not mentioned in the Regulations due to its status as an Agency, Historic Environment Scotland should be treated as a Statutory Consultee.

RELATIONSHIP WITH FORESTRY EIA REGULATIONS

The Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 (SSI 1999/43) require anyone carrying out a project involving afforestation or deforestation to obtain consent from the Scottish Forestry. Relevant projects include creating new woods and forests by planting trees on any type of land, or conversion of woodland to another type of land use.

In these cases the Scottish Forestry is the competent authority. An issue arises where the project involves removing **scrub** for the purposes of bringing the land into intensive agricultural use.

The definition of “scrub” has been agreed as land where at least 20% of any canopy cover comprises tree species and/or the following shrub species: -

- Blackthorn *Prunus spinosa*
- Hawthorn *Crataegus monogyna, laevigata*
- Hazel *Corylus avellana*
- Holly *Ilex aquifolium*
- Juniper *Juniperus communis*
- Bay willow *Salix pentandra*
- Grey willow *Salix cinerea*
- Eared willow *Salix aurita*
- Osier willow *Salix viminalis*
- Purple willow *Salix purpurea*

In such cases the Scottish Forestry will act as competent authority. Where **less** than 20% of land is scrub, the RPID will act as competent authority.

TYPES OF LAND COVERED

The Regulations do not define ‘uncultivated land and semi-natural areas’ but, as a working guide, the intention is to apply the EIA arrangements for the following types of land³. (‘Land’ here means a field or management unit, or part of it, where you can easily see the difference between improved and unimproved land).

Land Type	Land Typically Included	Tests To Determine
Unimproved Grassland, Heath and Moorland	• Coastal and floodplain marshes • Meadows and grazing pastures • Grassland with some tree cover, e.g. orchards, parkland, policies and wood pasture • Lowland and coastal heathland (including dry and wet heath) • Moorland (including bog) and rough grazing. • Machair • Other open or enclosed upland grassland	Land would be considered uncultivated if (1) it had less than 30% of ryegrass (<i>Lolium species</i>) and/or white clover (<i>Trifolium repens</i>) or other sown grass species indicative of cultivation; or (2) it has not been improved by management practices including liming or fertiliser To assist in determining whether the land is uncultivated using the above definition, the following guidance may be useful; Land has not been cultivated for around 12-15 years. The land has not been re-seeded, drained or ploughed within this time period.
Scrubland	See Annex B for definition	EIA procedures will apply where scrub is cleared or managed with an aim of converting to arable or stock farming including intensification of such an existing use.
Wetlands	• Open water • Watercourses • Saltmarsh • Ditches • Ponds • Lowland and blanket bogs • Fens and other wetlands	If the water table normally lies at or near the surface for part of the year.

The loss of BAP Priority Habitat should be considered as significant.

³ Land means a field or management unit, or subsection of such where there is a obvious visual delineation between improved and unimproved grassland

Assessment of Semi-Improved and Improved Grasslands

1. General

1.1 Assessment of grasslands is one of the most difficult areas involved with EIA assessment. Particular problems are likely to occur with wet grasslands, semi-improved grasslands, well-managed unimproved grasslands and hay meadows. The identification of grassland types is one of the most difficult botanical assessments in the field. Experience has also shown that remote identification (e.g. using aerial photography) of such land can be difficult and inconsistent. These types of grassland are likely to form the biggest “grey area” in EIA.

There are 2 main problems:

- Identifying whether grassland is semi-improved or unimproved
- Deciding the significance of it in EIA terms

1.2 The following procedure is recommended

- A sift of available maps and information can form the first stage of the assessment. A field visit to assess the need for EIA where the position is unclear.
- Liaison with consultation bodies, particularly NatureScot, to clarify issues not resolved by a field visit. Such bodies may have GIS based maps to aid consideration.

2. Outline of procedure for considering grassland issues

2.1 This procedure covers grassland issues only. Other factors such as designations and damage to landscape, historic features or amenity must be included.

2.2 A check of all environmentally relevant information should be made for the application area. This will include identification of designated areas (e.g. SACs, SSSIs), mapped information and aerial photography. NatureScot may be able to assist with GIS information.

2.3 If the check shows:

- a. **No** evidence of any semi-improved grassland or other grassland habitat and the project falls outside designated areas and will not significantly affect a nearby designated area. Then no further investigation should be needed and the project should not require EIA.
- b. **Any** evidence of semi-improved grassland or other habitat, whether the site occurs within a designated areas or not, then the application would be forwarded to **NatureScot** for further consideration as a further check may be appropriate. This will involve discussion with the applicant and consultee bodies and, as necessary, may be followed by a site visit to decide whether the project and site require an ES.

2.4 In the case of b. further consultation may be required with **NatureScot** to determine whether there are likely to be significant environmental effects necessitating EIA.

3. Detailed Guidance

3.1 This section gives more detailed guidance relating to the situation in 2.3b above whereby information indicates a designated area or evidence that a natural habitat or stage assumes the initial sift has identified the existence of a semi-natural habitat, a designated area or the likelihood of unimproved grassland. For illustrative purposes several scenarios are described.

3.2 *Scenario 1: The area is wholly or partly within a designated site*

All designated areas and sites carry the highest protection at European or UK level. Consultation with NATURESCOT specialists **must** be made in all cases and a site visit will only be necessary if there are out-standing queries following discussion. In sensitive and borderline cases where there is a difference of opinion then a joint site visit may need to be arranged with NATURESCOT.

3.3 *Scenario 2: The site is not designated but is known to contain a BAP priority habitat or species*

These sites are of National and European significance and similar procedures to scenario 1 should be adopted.

3.4 *Scenario 3: The site is wholly or partly within a Local Nature Reserve (LNR)*

These sites are of local significance. Administration is varied and could be run by, for example, the local authority, Wildlife Trusts or private individuals. Procedures should occur as per scenario 1 except that consultation should occur with a specialist representative of the managing body in all cases before a decision is made. If, following liaison, there is a reasonable possibility that EIA may be required then NATURESCOT should also be consulted before a decision is made.

3.5 *Scenario 4: The site is not designated and there is no information stating that the site contains a European or UK BAP protected species*

In cases where information suggests that land may contain a semi-natural grassland habitat or unimproved grassland and case details suggest that there is a strong possibility that EIA is likely to be needed, sufficient information will be required in order to make a screening decision. This should be obtained by discussion with the applicant, NATURESCOT and via a site visit.

In addition, the investigator should consult with Agri-Environment or NATURESCOT project officers where **affected land falls within one of the following** categories:

- a. The land is subject to a current agri-environment scheme agreement. This is to ensure that the project does not breach the management agreement.
- b. Land falls within an agri environment scheme agreement and the occupier has either applied to join the scheme but not accepted the agreement, or has left the scheme. In each case, a detailed farm plan should exist.

NATURE OF AGRICULTURAL OPERATIONS

The following list indicates the types of projects that SGRPID considers fall within this definition and which will therefore be subject to EIA procedures. This is an illustrative list that will be reviewed in the light of experience.

- **Cultivations** – including ploughing, rotovating, harrowing, tining, discing and reseeded.
- **Boundary changes** - above the thresholds explained in the public guidance [Environmental Impact Assessment guidance \(ruralpayments.org\)](https://ruralpayments.org/Environmental-Impact-Assessment-guidance)
- **Spreading soil or other material**, for example knowe removal
- **Applications** of pesticides, or fertiliser or lime in excess of existing routine application rates on semi natural/unimproved/sensitive land.
- **Drainage works** – new works including mole, tile, tunnel, subsoiling or other artificial drainage and moorland gripping. Routine maintenance, including renewal of existing mole drainage, is not covered.
- **Irrigation** - projects
- **Land reclamation** from estuary or other wetlands.
- **Modifications to watercourses** – to deepen, widen, straighten or otherwise improve an existing watercourse where these operations are intended to bring uncultivated land into intensive agricultural use. Routine maintenance is not covered. Watercourse includes any passage through which water flows.
- **Flood defences** – operations on embankments, structures or land that act as flood or coastal defences, and creation of new defences.
- **In-filling** ditches, ponds, pits, pools, marshes or historic earthwork features.
- **Operations' affecting historic or natural features** such as archaeological sites, hedgerows and other boundary features (other than routine maintenance) including drystone walls. Removal or replacement of boundary features will not be subject to EIA under these regulations unless part of a wider project to change the use of lands as defined in these guidelines.
- **Clearing vegetation or land** by physical removal, burning, application of herbicides, deliberate overgrazing or trampling or rooting by livestock in preparation for cultivation.
- **Introduction of livestock (including pigs and poultry) at intensive stocking rates**, or increasing stocking rates to intensive levels.

For other projects refer to [Environmental Impact Assessment guidance \(ruralpayments.org\)](https://ruralpayments.org/Environmental-Impact-Assessment-guidance)

EUROPEAN PROTECTED SPECIES⁴

<u>Animals⁵</u>	<u>Plants</u>
Bats, Horseshoe (all species)	Creeping Marshwort
Bats, Typical (all species)	Early Gentian
Beaver	
Common Otter	Fen Orchid
Dolphin (all species)	Floating-leaved water plantain
Dormouse	
Great Crested Newt	Killarney Fern
Large Blue Butterfly	Lady's Slipper Orchid
Natterjack Toad	Shore Dock
Otter	
Porpoise (all species)	
Sand Lizard	Slender Naiad
Smooth snake	Yellow Marsh Saxifrage
Sturgeon	
Turtle (Green, Hawksbill, Kemp's ridley, Leatherback & Loggerhead)	
Wild Cat	
Whale (all species)	

⁴ Source: Habitats Directive 92/43/EEC (OJ No L206,22.7.92 p.7) and implemented by Habitats Regulations (SI 1994/2716)

⁵ Excludes marine species

UK BAP PRIORITY HABITATS OCCURRING IN SCOTLAND RELEVANT TO THESE GUIDELINES

[NatureScot List](#)

Ancient and/or species – rich hedgerows	Mesotrophic lakes
Aquifer fed naturally fluctuating water bodies	Modiolus modiolus beds
Blanket bog	Mudflats
Coastal and floodplain grazing marsh	Mud habitats in deep water
Coastal saltmarsh	Native pine woodlands
Coastal sand dunes	Purple moor grass and rush pastures
Coastal vegetated shingle	Reedbeds
Eutrophic standing waters	Sabellaria alveolata reefs
Fens	Sabellaria spinulosa reefs
Limestone pavement	Saline lagoons
Lophelia pertusa reefs	Seagrass beds
Lowland calcareous grassland	Serpulid reefs
Lowland dry acid grassland	Sheltered muddy gravel's
Lowland heathland	Sublittorial sands and gravel's
Lowland meadows	Tidal rapids
Lowland raised bog	Upland calcareous grassland
Lowland wood pastures and parkland	Upland hay meadow
Machair	Upland heathland
Maerl beds	Upland mixed ashwoods
Maritime cliff and slope	Upland oakwood
	Wet woodland

INFORMATION FOR INCLUSION IN ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

1. A description of the project, including in particular—

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

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

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

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

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

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

- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

6. The description of the likely significant effects on the factors specified in regulation 4(3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project including in particular those established under the Habitats Directive and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(1).

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

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

9. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC(2) or Council Directive 2009/71/Euratom establishing a community framework for the nuclear safety of nuclear installations(3) or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of the Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

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

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

SELECTION CRITERIA FOR SCREENING DECISIONS

Characteristics of projects

1. The characteristics of projects must be considered with particular regard to—
 - (a) the size and design of the whole project;
 - (b) cumulation with other existing and/or approved projects;
 - (c) the use of natural resources, in particular land, soil, water and biodiversity;
 - (d) the production of waste;
 - (e) pollution and nuisances;
 - (f) the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;
 - (g) the risks to human health (for example due to water contamination or air pollution).

Location of projects

2. The environmental sensitivity of geographical areas likely to be affected by projects must be considered with particular regard to—
 - (a) the existing and approved land use;
 - (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) European sites and other areas classified or protected under national legislation;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

Types and characteristics of the potential impact

3. The likely significant effects of projects on the environment must be considered in relation to criteria set out in paragraphs 1 and 2 above, with regard to the impact of the projects on the factors specified in regulation 4(3) (environmental impact assessment), taking into account—
 - (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
 - (b) the nature of the impact;
 - (c) the transboundary nature of the impact;
 - (d) the intensity and complexity of the impact;
 - (e) the probability of the impact;

- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved projects;
- (h) the possibility of effectively reducing the impact.

(Area Office Letterhead)

Your ref:

Our ref:

Date:

STOP NOTICE

· THIS NOTICE IS A FORMAL NOTICE issued by The Scottish Ministers in exercise of its power contained in Regulation 41 of the Agriculture, Land Drainage and Irrigation Projects (Environment Impact Assessment) (Scotland) Regulations 2017 (“the Regulations”), copy enclosed/attached.

The Scottish Ministers consider that an offence has been committed under Regulation 37 of the Regulations (see Section 2 of this Notice) and it is expedient that the relevant activities referred to in Section 3 of this Notice, on the land described in Section 1, are stopped immediately.

- Section 1: The land included within the Project over which the stop notice is to take effect: - all land at LOCATION NAME registered with SGRPID under location code XXX/XXXX as per map included at Annex 1.
- Section 2: The activities comprising the Project referred to in section 3 are being carried out without the benefit of screening opinion.
- Section 3: The Project: Description of project for example: restructuring of fields, including scraping back soil to uncover knowes and rock, breaking up the rock, levelling the site/moving rock to other area’s then pulling the soil back across the levelled site.
- Section 4: What you are required to do: - The activities specified in Section 3 are prohibited and must stop immediately once this Notice takes effect.
- Section 5: The reason the stop notice has been served – Enter activities that have been carried out that need to stop without you having first obtained a screening opinion.
- Section 6: The stop notice will take effect DATE at TIME (at least 24 hours after stop notice is served)
- Section 7: If you contravene this stop notice that is an offence under section 42 of the regulations. A person guilty of an offence under this regulation is liable — (a) on summary conviction, to a fine not exceeding the statutory maximum; or (b) on conviction on indictment, to a fine.

· Section 8: You can appeal to a sheriff within 21 days beginning with the date of service of the notice – see reg 41(6).

Yours sincerely,

Principal Agricultural Officer

GUIDANCE ON ISSUE OF STOP NOTICES

When can they be issued?

- i. When the Department is satisfied that an offence has been committed under:
 - Regulation 22 - begin or carry out a project without first obtaining a decision that the project is a relevant project or a consent for a relevant project;
 - Regulation 23 - carry out any work in contravention of a condition of consent;
 - Regulation 24 – procuring a decision by (i) knowingly or recklessly making a statement which is false or misleading in a material matter or (ii) using any document which is false or misleading in a material matter particular with intent to deceive or (iii) withholding any material information with intent to deceive.

Note that the person on whom the stop notice is served may not be the person who is guilty of the offence under Regulation 24.

- ii. There must be potential harm to the environment and that the harm must be such that the work should cease immediately. This would normally be due to the location or designation of the site.

Given there is access to legal advice from the Office of the Solicitor to the Scottish Executive (OSSE), AREA OFFICE BUSINESS SUPPORT TEAM should be advised in all cases where serving of a stop notice is being considered.

What are the key factors to be taken into account?

- i. The officer must be satisfied that the land is uncultivated or semi-natural in accordance with the current guidance. However for restructuring projects any type of agricultural land can be used.
- ii. There is evidence that (a) the work has begun without a decision that the project is not a relevant project or a consent or (b) the work is in breach of a condition in the relevant consent or (c) the decision that the project is not a relevant project or to grant the consent for the project was procured by false information or deception.
- iii. The work on the land could cause potential harm to the environment and the harm is such that the work should cease immediately.

Who can issue?

The Regulations grant the power to serve a stop notice on behalf of Scottish Ministers. The power can be exercised by any official, on authority from the Department's Area PAO following consultation with senior staff in Pentland House. Outside bodies can not act on the Department's behalf.

How can it be served?

The notice must be in writing and cannot be emailed or sent by post to the person concerned. It must be served in person, and the person serving the notice requires to take a witness with him/her.

When should it be served?

Regulations 22 and 23 of the Regulations, which cover certain offences, require that work must have physically commenced before a stop notice can be served. (See paragraph 1 (a), (b) and (c) on page 2 of the stop notice.)

In circumstances where the Department has good information that work not subject to a valid screening decision or consent is planned, while a stop notice is not possible, the fact that a potential infringement of the Regulations is foreseen should be brought to the attention of the person intending to start the work.

Regulation 24, which also relates to offences, does allow for serving a stop notice where work is planned but has not yet begun where a screening decision or a consent has been obtained by giving false information or deception by the applicant. (See paragraph 1 (d) on page 2 of stop notice.)

Regulation 25(4) of the Regulations states that a stop notice should not come into effect until at least 24 hours after service of the notice, except in an emergency. It is envisaged that recourse to a stop notice by the Department will be an emergency situation requiring immediate compliance. This will however be a matter of judgement and each case must be decided taking account of all relevant factors. AREA OFFICE BUSINESS SUPPORT TEAM will be involved where a stop notice is being considered and can advise, taking account of Solicitor's Office advice as necessary.

Liability

Great care must be taken when dealing with the issue of stop notices. Damages could be payable if it were shown that the Department's officers had acted negligently in serving a stop notice on the basis of incorrect information and that the person upon whom the notice was served had suffered damage as a result.

The decision to serve a stop notice could also be appealed against or be subject of a complaint to the Scottish Public Services Ombudsman.

The risk of challenge will be greatly diminished if the Department act reasonably and responsibly.

Compensation

There is no requirement to compensate the owner/occupier where a stop notice is quashed, withdrawn or varied.

