

Environmental Impact Assessment (EIA)

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EIA Directive, originally made 1985, cleaned up and re-issued 2011 (**Directive 2011/92/EU**), amended again in 2014 (by **Directive 2014/52/EU**):

- applies throughout EEA (single market), unlike e.g. Habitats Directive (EU only)
- applies not only to developments which need planning permission in the UK, but also to agriculture, forestry, marine works, road schemes etc.
- applies to qualifying projects everywhere, not just in protected areas
- requires extra effort by developers and decision-makers.

Scottish EIA Regulations implementing the Directive in Scotland:

- EIA (Scotland) Regulations 1999: first piece of secondary legislation passed by the new Scottish Parliament, hence Scottish Statutory Instrument (SSI) 1999 No.1;
- Part 2 of 1999 Regs, covering planning, revoked and replaced by The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011;
- 2011 Regs replaced by the Town and Country Planning (EIA) (Scotland) Regulations 2017 (SSI 2017 No. 102), covering the 2014 amendments to the Directive.

Decision-maker: referred to in the Directive as “the competent authority”:

- in UK planning legislation = “the planning authority”
- in Scotland = either the local council or, for appeals or call-ins, the Sc. Government.

Qualifying projects: Directive (Article 4) says

1. *“projects listed in Annex I shall be made subject to [EIA]”*
2. *“for projects listed in Annex II, Member States shall determine whether the project shall be made subject to [EIA]. Member States shall make that determination through:*
 - a. *a case-by-case examination; or*
 - b. *thresholds or criteria set by the Member State.*

Member States may decide to apply both procedures referred to in points a. and b.”

Throughout the UK:

- both procedures are used,
- Annexes I and II are referred to as Schedules 1 and 2, and
- EIA development is defined as “*development which is either:*
 - a) *Schedule 1 development*
 - b) *Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location”.*

The “case-by-case examination” of Schedule 2 projects is the first preliminary step before EIA begins, referred to in UK as **screening**. In other words, for any project that qualifies as a Schedule 2 project, the planning authority has to decide whether or not it is “*likely to have significant effects on the environment by virtue of factors such as its nature, size or location*”. If so, it has to undergo EIA.

Can a housing project be a Schedule 2 project?

Annex II of the Directive includes the following broad category, with sub-categories:

“10. INFRASTRUCTURE PROJECTS

- (a) Industrial estate development projects;*
- (b) Urban development projects, including the construction of shopping centres and car parks;*
- (c) Construction of railways and intermodal transshipment facilities, and of intermodal terminals (projects not included in Annex I);*
- (d) Construction of airfields (projects not included in Annex I);*
- (e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);*
- (f) ...” etc.*

Member States can set their own thresholds for Annex II projects, and environmental matters are devolved, so Scotland has set slightly different thresholds to those in England.

Schedule 2 of the English regulations (SI 2017/571) transpose item 10(b) above as:

“Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas”, where

- “(i) the development includes more than 1 hectare of urban development which is not dwellinghouse development; or*
- (ii) the development includes more than 150 dwellings; or*
- (iii) the overall area of the development exceeds 5 hectares”.*

Meanwhile Schedule 2 of the Scottish regulations (SSI 2017/102) refers to:

“Urban development projects, including the construction of shopping centres and car parks, sport stadiums, leisure centres and multiplex cinemas”, where

“the area of the development exceeds 0.5 hectare”.

There is no minimum number of dwellings in Scotland, and the minimum area is 1/10 that for England, so clearly more projects of this type will be subject to EIA in Scotland than in England.

And Scottish Planning Circular 1/2017 <https://www.gov.scot/publications/planning-circular-1-2017-environmental-impact-assessment-regulations-2017/pages/3/>, sent to planning authorities as guidance on the 2017 Scottish regs, confirms that housing does qualify:

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