POLICY NOTE

THE MASTERPLAN CONSENT AREA SCHEME (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2024

SSI 2024/366

The above instrument is to be made in exercise of the powers conferred by sections 40, 252 and 275 of the Town and Country Planning (Scotland) Act 1997[1], section 1(1) of UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021[2] and all other powers enabling them to do so.

The instrument is subject to affirmative procedure.

In accordance with section 5(2) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, this instrument has been laid in draft for the approval of the Scottish Parliament.

The instrument provides detailed provisions relating to undertaking an Environmental Impact Assessment (EIA) where required, when preparing a Masterplan Consent Area Scheme.

Policy Objectives

1. The purpose of these Regulations is to ensure the planning authority granting development consent for a particular project within a Masterplan Consent Area scheme makes its decision in full knowledge of any likely significant effects on the environment. An Environmental Impact Assessment (EIA) helps to ensure the importance of the predicted effects, and the scope for avoiding or reducing any adverse effects, are properly understood before a decision is made.

2. The Regulations integrate EIA procedures with the requirements and procedures relating to the making of Masterplan Consent Area schemes under sections 54A to 54F and Schedule 5A of the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Masterplan Consent Areas) (Scotland) Regulations 2024 (MCA Regulations 2024). Supplementing the planning process in this way will provide a more systematic method of assessing the environmental implications of developments likely to have significant environmental effects.

3. The requirements within these Regulations reflect assimilated law, formally known as the EIA Directive, which seeks to define, clarify, and expand upon aspects of the Assessment process, on the basis of minimal additional regulatory burden, whilst ensuring protecting of the environment.

Masterplan Consent Area Scheme EIA Regulations

4. The Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 ("the EIA Regulations") set out the Environmental Impact Assessment (EIA) requirements relevant to when preparing a Masterplan Consent Area Scheme.

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[1] https://www.legislation.gov.uk/ukpga/1997/8/contents
[2] https://www.legislation.gov.uk/asp/2021/4/contents

5. The EIA Regulations are laid and made alongside The Town and Country Planning (Masterplan Consent Area) (Scotland) Regulations 2024 and The Planning (Scotland) Act 2019 (Commencement No. 14) Regulations 2024, and all are due to come into force on the same day 5 December 2024.

PART 1 Introductory

Citation and commencement.

6. Regulation 1 sets out details of citation and commencement.

Interpretation

7. Regulation 2 covers interpretation and defines various terms used within the regulations and how expressions and references are to be understood.

Prohibition on making a masterplan consent area scheme without an environmental assessment

8. Regulation 3 prohibits the making a masterplan consent area scheme without an environmental impact assessment, when such an assessment is required.

Environmental impact assessment

9. Regulation 4(1) - (5) sets out what an environmental impact assessment comprises, including the process of preparing, and publication of an EIA Report and matters to be assessed.

10. Regulation 4(6) allows for a multi-stage approach to be taken, when the environmental effects of the MCA itself cannot be fully scoped out at this earlier stage.

Environmental Impact Assessment Report

11. Regulation 5(1) sets the requirements of an EIA report.

12. Regulation 5(2) covers scoping opinions or scoping directions, and requires that where such an opinion is issued the EIA must be based on it and include information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment.

13. Regulation 5(3) requires account to be taken of other relevant assessments.

14. Regulation 5(4) requires the EIA report to be prepared by competent experts and accompanied by a statement outlining their relevant expertise or qualifications.

PART 2 Determining whether environmental impact assessment is required

Part 2 of the EIA Regulations set out how to determine whether a proposed development is EIA development.

15. Regulation 6(1) and (2) sets out the events that can determine whether the proposed development is EIA development, these being the adoption by the planning authority of a screening opinion or Scottish Ministers making a screening direction, to the effect that the proposed development is EIA development, or the preparation of an EIA report by the planning authority or Scottish Ministers.

16. Regulation 6(3) set out that the Scottish Ministers have powers to make a screening direction around whether the proposed development is EIA development.

17. Regulation 6(4) provides Scottish Ministers the power to direct that the Regulations do not apply in relation to a particular proposed development, where its sole purpose is to respond to a civil emergency and compliance with these Regulations would have an adverse effect on that purpose. Regulation 6(5) sets out the requirement for Scottish Ministers to send a copy of the direction to the planning authority.

18. Regulation 6(6) provides the Scottish Ministers with a power to direct that these Regulations do not apply in relation to a development, where the Regulations would have an adverse effect on that purpose of the proposed development. Regulation 6(7) requires Scottish Ministers to consider whether another form of assessment would be appropriate before making a direction under Reg 6(6). Regulation 6(7) also sets out what Scottish Ministers must do when they issue such a direction including sending a copy to the planning authority and making the details available to the public.

General provisions relating to screening

19. Regulation 7(1) sets out that when making a determination, a planning authority or the Scottish Ministers, must consider the type of development against the selection criteria and any available and relevant assessments.

20. Regulation 7(2) sets out the content of a screening opinion or screening direction, including any proposed mitigation measures for a negative screening decision.

21. Regulation 7(3) sets out the publishing requirements of a screening opinion for a planning authority.

22. Regulation 7(4) enables the Scottish Ministers to make a screening direction if requested to do so or at their own volition.

23. Regulation 7(5) and 7(6) set out the powers that the Scottish Ministers can direct that a particular development is EIA, even if it does not meet the usual criteria for such development.

<u>PART 3 Preparation of environmental impact assessment reports</u>

Part 3 of the EIA Regulation covers scoping opinions and the procedures to facilitate the preparation of EIA reports.

Scoping opinions

24. Regulation 8(1) sets out that either a planning authority or the Scottish Ministers may adopt a scoping opinion.

25. Regulation 8(2) sets out that a planning authority or the Scottish Ministers may not adopt a scoping opinion until they have consulted the appropriate bodies.

26. Regulation 8(3) confirms a later screening opinion or direction supersedes the terms of an earlier one.

Procedure to facilitate preparation of EIA reports

27. Regulation 9(1) & (2) sets out the need for certain organisations to provide any information they have that a planning authority or the Scottish Ministers, in certain cases, consider relevant to the preparation of an EIA report.

28. Regulation 9(3) makes it clear that a request under Regulation 9(1) must include the information necessary to identify the land and the nature and purpose of the proposed development.

29. Regulation 9(4) & (5) – Sets out the grounds for non-disclosure under the Environmental Information (Scotland) Regulations 2004 or the Environmental Information Regulations 2004.

30. Regulation 9(6) sets out that a reasonable charge may be set for making information available.

<u>PART 4 Publicity and notification of environmental impact assessment reports</u>

Notification of EIA Report

31. Regulation 10(1) & (2) sets out the notification requirements that a planning authority or the Scottish Ministers must provide neighbouring landowner, lessee or occupier and in what form it must take.

Publication of EIA report

32. Regulation 11(1) - (4) sets out what the planning authority are required to do to publish notice of the EIA report.

Consultation on EIA report

33. Regulations 12 (1) - (3) sets out the consultation requirements and the bodies the planning authority are required to consult.

Copy of EIA report for the Scottish Ministers

34. Regulations 13 sets out what the planning authority are required to provide if the Scottish Ministers call-in the MCA scheme.

Proposed masterplan consent area scheme for EIA development called in by the Scottish Ministers

35. Regulations 14 (1) - (4) sets out the procedures that need to be followed if the Scottish Ministers call-in the MCA scheme without an EIA Report and then request one from the planning authority.

Availability of copies of EIA report

36. Regulation 15 (1) - (3) sets out the need to state where copies of the EIA report can be accessed, and provides that a reasonable charge can be levied for a copy of the EIA report.

PART 5 Additional Information

Additional information and evidence relating to EIA reports

37. Regulation 16(1) - (2) sets out, should the need for additional information arise to reach a reasoned conclusion about environmental effects, the procedure the planning authority or the Scottish Ministers are required to follow.

Publication of additional information

38. Regulation 17(1) sets out the procedures that must be revisited should additional information be received. Regulation 17(2) sets out exemptions where Regulation 17(1) does not apply.

PART 6 Availability of directions etc. and notification of decisions

Availability of opinions, directions etc. for inspection

39. Regulation 18(1) - (4) sets out the type of documents that must be made available for inspection, both online and at an office of the planning authority and on the register.

Decision notice

40. Regulations 19(1) - (5) sets out the requirements around what a decision notice must include when made or altered by a planning authority or the Scottish Ministers.

Monitoring measures

41. Regulation 20(1) – (4) sets out the requirements for a planning authority or the Scottish Ministers, as the case may be, to consider whether it would be appropriate to require monitoring measures. Regulation 20(2) sets out the policy criteria that they would use to gauge whether monitoring measures would be appropriate.

Notification of decision

42. Regulation 21(1) to (3) sets out the notification requirements of a decision, where a planning authority make a masterplan consent area.

PART 7 – Special cases

Marine fish farming

43. Regulation 22(1) to (5) provides certain modifications to the application of the Regulations when being considered in relation to marine fish farm development.

Development in Scotland likely to have significant effects in an EEA State

44. Regulation 23(1) to (7) sets out the notification requirements that must be followed, if a development proposal is likely to have a significant environmental impact on an EEA state.

PART 8 – Alteration of a Masterplan Consent Area Scheme

45. Regulation 24(1) – (3) states the need to consider any EIA requirements for a modifications or alterations to an existing MCA.

PART 9 – Miscellaneous

Electronic communications – general, deemed agreement, withdrawal of consent to use electronic communications and service of notice etc.

46. Regulations 25 to 28 set provisions on the use of electronic communications in relation to the Regulations.

Application to Court of Session

47. Regulation 29 extends the proceedings for questioning the validity of Scottish Ministers or a planning authority to prepare an MCA without an EIA.

Directions as to whether development is EIA development

48. Regulation 30 sets out the scope of the powers of the Scottish Ministers with regards whether development is EIA development.

Competent authority – avoidance of conflict of interest

49. Regulation 31(1) – (2) sets out the required steps to avoid 'conflicts of interest' where the planning authority or the Scottish Ministers consider the making of a masterplan consent area scheme and the duties required in these Regulations.

Co-ordination of assessments

50. Regulation 32(1) – (2) states there is a need to coordinate, when required, any EIA and Habitats Regulation Assessment requirements.

PART 10 – Amendments

Amendment of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017

51. Regulation 33 (1) – (2) sets out an amendment to the definition of 'multi-stage' condition' in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.

Schedule 1

52. Sets out the selection criteria for screening of schedule 2 development.

Schedule 2

53. Sets out the information for inclusion in an environmental impact assessment report.

Schedule 3

54. Provides the information to be contained within a notice regarding an EIA to owner, lessee or occupier of neighbouring premises.

Statements required by UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

55. The necessary statements under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 are contained in the Annex to this policy note.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

56. The Scottish Ministers have made the following statement regarding children's rights.

57. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

58. The Regulations contain provisions to align the process for making a masterplan consent area scheme with processes in the EIA Directive. The Regulations align with the provisions of EU law, and there is a strong presumption to maintain the statutory requirements of EIA within the development of masterplan consent areas.

Consultation

59. A public consultation on the draft Town and Country Planning (Masterplan Consent Areas) (Scotland) Regulations 2024 and the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 ran from 28 February 2024 to 22 May 2024. The consultation included the draft Regulations and specific questions about the various proposals within the draft Regulations, covering the different stages of MCA preparation process and the EIA requirements.

60. A total of 50 responses were received in relation to the EIA Regulations. These were from planning authorities, key agencies and other public sector bodies, development, property and land management bodies and agents, the third sector, professional and

representative bodies as well as communities and individuals. A Summary of Responses report[3] provides a summary of common themes submitted to the consultation and some key points raised. It includes a full list of those who responded and who agreed to the release of their details. The full responses have been published online[4] for all those organisations and individuals who gave permission to do so.

61. Over half of respondents to the EIA Regulations were supportive of the draft Regulations with 52% either strongly agreeing or agreeing to the draft Regulations. Conversely nearly a quarter, 24% disagreed or strongly disagreed with the draft Regulations themselves. In terms of comments received through the consultation, only a few were technical in nature that would result with specific changes to the draft EIA Regulations.

62. Many of the comments received were reflective, raising points around; resources, including the financial cost, the burden falling on planning authorities and not developers, uncertainty of how requirements around EIA could be met in the absence of a detailed plan, which could lead to potential shortcoming, transparency issues and potential delays. Although these are important and reflect a wide spectrum of stakeholders, it is something that can be addressed in guidance, to support the implementation of the EIA Regulations.

63. The technical points that resulted in changes to the EIA Regulations, included:
    - why some entries in the draft Regulations only referred to planning authorities, rather than planning authorities and the Scottish Ministers
    - whether the wording in Regulation 22(5) should refer to Masterplan Consent Areas rather than planning permission.

Impact Assessments

64. The consultation paper contained Impact Assessments[5]. The following impact assessments or relevant screening were undertaken:

    - Business Regulatory Impact Assessment (BRIA) – Partial
    - Child Rights and Wellbeing Impact Assessment (CRWIA) - screening
    - Data Protection Impact Assessment (DPIA) – consultation only
    - Equalities Impact Assessment (EQIA) - screening
    - Fairer Scotland Duty (FSD)
    - Islands Communities Impact Assessment (ICIA) - screening
    - Strategic Environmental Assessment (SEA) – pre-screening

Outputs from the Assessments

65. The draft EIA Regulations provide procedural detail around preparing an EIA for a MCA, if required. As the MCA Scheme EIA Regulations can be considered procedural, they have screened out of most of the impact assessments, as the impacts of the MCA Regulations and policies have already been considered through previous assessments for

[3] https://www.gov.scot/ISBN/9781836016809
[4] https://consult.gov.scot/local-government-and-housing/masterplan-consent-areas-regulations-consultation/
[5] https://www.gov.scot/publications/impact-assessments-town-country-planning-masterplan-consent-areas-scotland-regulations-2024-masterplan-consent-area-scheme-environmental-impact-assessment-scotland-regulations-2024/

the 2019 Planning Act. Further details of this and the assessments themselves are set out in the Impact Assessments paper published alongside the consultation paper. Environmental effects from the future MCAs and the need for impact assessments, would be considered by the relevant planning authority or the Scottish Ministers when being prepared.

Financial Effects

66. A Business and Regulatory Impact Assessment (BRIA) has been completed. Some of the consultation responses to the partial BRIA highlighted concern about the capacity of planning authorities and key agencies to resource the implementation of MCA schemes. It was also noted that without the ability for planning authorities to recoup costs it may be difficult for planning authorities to financially justify establishing an MCA and undertaking an EIA within their area. No further information to assist with quantitative costing of these Regulations was provided.

67. The BRIA notes for the MCA Regulations and the EIA Regulations that the Scottish Government considering the scope for discretionary charging, allowing planning authorities to choose if they wish to recoup some of their costs of preparing a MCA scheme. A parallel consultation has sought views on scope for discretionary charging by planning authorities to support MCAs.

68. The BRIA highlights that the Scottish Government also intends to promote a collaborative approach to the production of MCA schemes, with planning authorities working in partnership with those who will benefit from the certainty of the MCA scheme (including developers, investors, and business interests). The regulations and future guidance will strike a balance between the need for clarity to support implementation, and flexibility to allow for best practice to evolve as MCA schemes are made.

Scottish Government
Directorate for Local Government and Housing
September 2024

Annex
Statements required when using section 1(1) of UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

Statement explaining: (a) the instrument or draft, (b) why, in the Scottish Ministers' opinion, there are good reasons for making the provision contained in the instrument or draft, (c) the law before IP completion day which is relevant to the provision, and (d) the effect (if any) of the provision on retained EU law.

This statement relates to the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024. The Regulations require those preparing a Masterplan Consent Area to undertake, when required, an Environmental Impact Assessment (EIA). The Regulations align with the EU provisions around EIA and with the Scottish Government's strong presumption to maintain the statutory requirements around EU Laws.

Statement explaining the effect (if any) of the instrument or draft on: (a) the Convention rights within the meaning of section 1 of the Human Rights Act 1998, and (b) other human rights contained in any international convention, treaty or other international instruments ratified by the United Kingdom.

The Minster for Public Finance, Ivan McKee, has made the following statement "In my view the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 do not have any effect on Convention rights within the meaning of section 1 of the Human Rights Act 1998 or any human rights contained in any international convention, treaty or other international instruments ratified by the United Kingdom.".

Statement: (a) as to whether the instrument or draft amends, repeals or revokes any provision of equality legislation, and (b) if it does, explaining the effect of each such amendment, repeal or revocation.

The Minster for Public Finance, Ivan McKee, has made the following statement "In my view the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 do not amend, repeal or revoke any provision of equality legislation.".

Statement to the effect that, in relation to the instrument or draft, the Scottish Ministers have, so far as required to do so by equality legislation, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Minster for Public Finance, Ivan McKee, has made the following statement "In my view, in relation to the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024, the Scottish Ministers have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

Statement explaining the effect (if any) of the instrument or draft on: (a) rights and duties relating to employment and health and safety, (b) matters relating to consumer protection, so far as it is within devolved competence (within the meaning of section 54 of the Scotland Act 1998) for the instrument or draft to have any such effect

This is not applicable to the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024.

Statement: (a) as to whether, in relation to the instrument or draft, the Scottish Ministers have consulted: (i) such persons appearing to them to be representative of the interests of local authorities, (ii) any other person, and (b) if they have, setting out details of the consultation that they carried out

The statement as to whether, in relation to the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024, Scottish Ministers have consulted such persons appearing to them to be representative of interests of local authorities and any other persons has been made in the policy note under the section on consultation.

Statement setting out the likely financial implications of the provision contained in the Draft

The statement setting out the likely financial implications of the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 has been made in the policy note under the section on financial effects.

If the instrument or draft (a) is laid before a policy statement is published under section 6(1), (b) is laid during the period beginning with the day on which a copy of a revised policy statement is laid before the Scottish Parliament under section 7(1) and ending with the day on which the revised policy statement is published under section 6(2) or (3)(b)(i), or (c) contains provision that involves using the power under section 1(1) in a way that is not in accordance with the policy statement published under section 6, a statement explaining why, in the Scottish Ministers' opinion, there are good reasons for laying the instrument or draft at that time or, as the case may be, for using the power in that way

This is not applicable to the Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024.