



Each case is unique and must be considered on its merits. It is for the person appointed to determine the case to satisfy him/herself that the application of the practice contained in this note is appropriate to the circumstances of the case. A reporter who intends to depart from the guidance should advise his/her SGL so issues emerging can be considered for future case work.

Guidance note:	Determining the need for environmental impact assessment (EIA) and the making of screening directions in planning cases
Relating to:	Planning permission applications and appeals only
	<p>This note does not apply to consenting regimes other than town and country planning (such as those under the Electricity Act 1989, sections 36 and 37, or under the Transport and Works (Scotland) Act 2007). It is relatively unlikely that reporters would be involved in EIA screening in respect of such consenting regimes.</p>
Back-ground / legislative and policy framework :	<p>The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (as amended) (referred to below as “the 2017 EIA regulations”) provide the legal framework for screening of planning applications and appeals. The following provisions are particularly relevant for reporters:</p> <ul style="list-style-type: none"> • Part 2 – determining whether environmental impact assessment is required, particularly regulations <ul style="list-style-type: none"> ○ r 6 - EIA development ○ r 7 – general provisions relating to screening ○ r 10 – requests for screening directions of the Scottish Ministers • Part 3 – procedures concerning applications for planning permission, particularly regulations <ul style="list-style-type: none"> ○ r 13 application or appeal to the Scottish Ministers without prior screening, ○ r 14 EIA application referred to the Scottish Ministers without an EIA report, and ○ r 15 appeal to Scottish Ministers without an EIA report. <p>Note also regulation 2(7), which delegates to reporters the statutory role of Scottish Ministers under the regulations in respect of an application for planning permission or appeal in relation to which the reporter has been appointed.</p> <p>Circular 1/2017: the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 describes generally the process for establishing whether EIA is required. Figure 1 on page 7 provides a flowchart of the process to establish whether a proposed development requires EIA and paragraphs 24 to 45 describe the process. This guidance note focuses on matters specific to reporters.</p> <p>Environmental impact assessment is a requirement of (retained¹) European Union law as well as of domestic law.</p>

¹ After the date of the UK’s exit from the European Union

	<p>The EU law requirement for the UK to have a system of environmental impact assessment is set out in directive 2011/92/EU on environmental impact assessment (the EIA Directive). A number of amendments to the EIA Directive were made by directive 2014/52/EU². These had to be implemented by 16 May 2017. A number of changes in domestic law therefore came into effect on this date to reflect these amendments.</p> <p>The EU Commission has produced the following relevant guidance:</p> <ul style="list-style-type: none"> • EIA guidance – screening (2017) • Interpretation of the definitions of project categories in annex I and II of the EIA Directive (2015)
Terms used	<p>In the 2017 EIA regulations and in the circular, the applicant or appellant for planning permission and also the prospective applicant seeking a screening opinion or direction is referred to as “<u>the developer</u>”. For consistency’s sake, the same terminology is used in this note. Four templates have been created in CMS for notices and directions in the context of appeals, and the term “appellant” is used in those. These templates will have to be modified where the reporter is dealing with a planning application called in by Scottish Ministers.</p> <p>For the term “environmental impact assessment”, the abbreviation “<u>EIA</u>” is used throughout this note.</p> <p>The following other terms are used in this note:</p> <p><u>EIA application</u> is an application for EIA development</p> <p><u>EIA development</u> is either (a) any development falling within a description in schedule 1 of the relevant EIA regulations or (b) schedule 2 development (as defined below) that is likely to have a significant effect on the environment.</p> <p><u>EIA report</u> is a report prepared by the developer in accordance with the 2017 TC&R EIA regulations.</p> <p><u>Negative screening direction</u> (or opinion) is often used to mean a screening direction (or opinion) that EIA is not required (this is jargon, not a statutory term)</p> <p><u>Positive screening direction</u> (or opinion) is often used to mean a screening direction (or opinion) that EIA is required (this is jargon, not a statutory term)</p> <p><u>Schedule 1 development</u> means development listed in schedule 1 of the 2017 EIA regulations. A “schedule 1 application” means an application for such development.</p> <p><u>Schedule 2 development</u> means development falling within a description in column 1 of schedule 2 of the 2017 EIA regulations (a) any part of which is</p>

² The EU Commission has provided an [informal consolidated version of the EIA Directive](#) as amended

	<p>proposed in a sensitive area or (b) exceeds the threshold in column 2 of schedule 2. A “schedule 2 application” means an application for such development.</p> <p>A <u>screening opinion</u> is a determination by the planning authority of whether EIA is required</p> <p>A <u>screening direction</u> is a determination made by the Scottish Ministers (or the reporter, in a case where a reporter is appointed) of whether EIA is required</p> <p><u>Sensitive areas</u> include national parks, world heritage sites (including the whole of the old and new towns of Edinburgh), national scenic areas, special areas of conservation, special protection areas, sites of special scientific interest, scheduled monuments, marine protected areas, and areas subject to a nature conservation order (but not conservation areas or policy designations such as areas of natural beauty, special landscape areas etc.)</p>
DPEA practice:	<p>1. EIA is a process required by law for certain developments. The process of determining whether EIA is required in respect of a development is known as “screening”. There may be circumstances in which a reporter must carry out the Scottish Ministers’ role by making a screening direction in respect of development that is the subject of an application (or appeal) before him or her. This section deals with when those circumstances arise and what a reporter must do.</p> <p><u>EIA development</u></p> <p>2. A proposed development is determined to be for EIA development if:</p> <ul style="list-style-type: none"> • The planning authority has adopted a screening opinion that the proposed development is EIA development; • The Scottish Ministers (or the reporter, in a case that is before a reporter) have made a screening direction that the proposed development is EIA development; or • The developer has submitted an EIA report (in which case there is no need for a screening opinion or direction). <p><u>Screening: introduction to requirements for the reporter</u></p> <p>3. A reporter must consider whether a case that is allocated to him or her and is not accompanied by an EIA report is nonetheless for EIA development. Given the tight statutory timescales in most cases for issuing a screening direction (discussed at paragraphs 25 and 31 below), it is important that a reporter considers this as a matter of priority.</p> <p>4. Applications for development falling within the descriptions and thresholds set out in schedule 1 of the 2017 EIA regulations require EIA. For development falling within a description in the first column of schedule 2, there is an element of judgement involved.</p> <p>5. On receiving a case, the reporter will check</p>

- whether the proposal is of a type listed in schedule 1³;
- whether the proposal is of a type listed in column 1 of schedule 2⁴ and if so,
 - whether it is located within a ‘sensitive area’⁵. If so, a screening opinion or direction is required.
 - whether it exceeds the relevant thresholds and criteria in the column 2 of schedule 2. If so, a screening opinion or direction is required.
 - whether a development of a description in schedule 2 is likely to have significant environmental effects even if it does not meet schedule 2 criteria or thresholds and is not in a sensitive area. In such a case, the reporter will make a direction that the particular development is EIA development (see regulation 7(5)).

6. Unless the last bullet above applies, a screening opinion should already have been given by the planning authority in an appeal case. It is also likely that a screening opinion will have been issued for a called-in application. The reporter will check whether the screening opinion is included in the appeal papers. It should be, since the planning authority response form (PARF) requests it is provided. If it is not, the reporter will request the planning authority to supply any screening opinion it has adopted and any information (such as any checklist) on which it was based.

7. It is important that the reporter gives any screening opinion a critical reading. If there is an evident flaw, then the reporter will consider whether a screening direction is required, even if no party to an application or appeal has raised the matter.

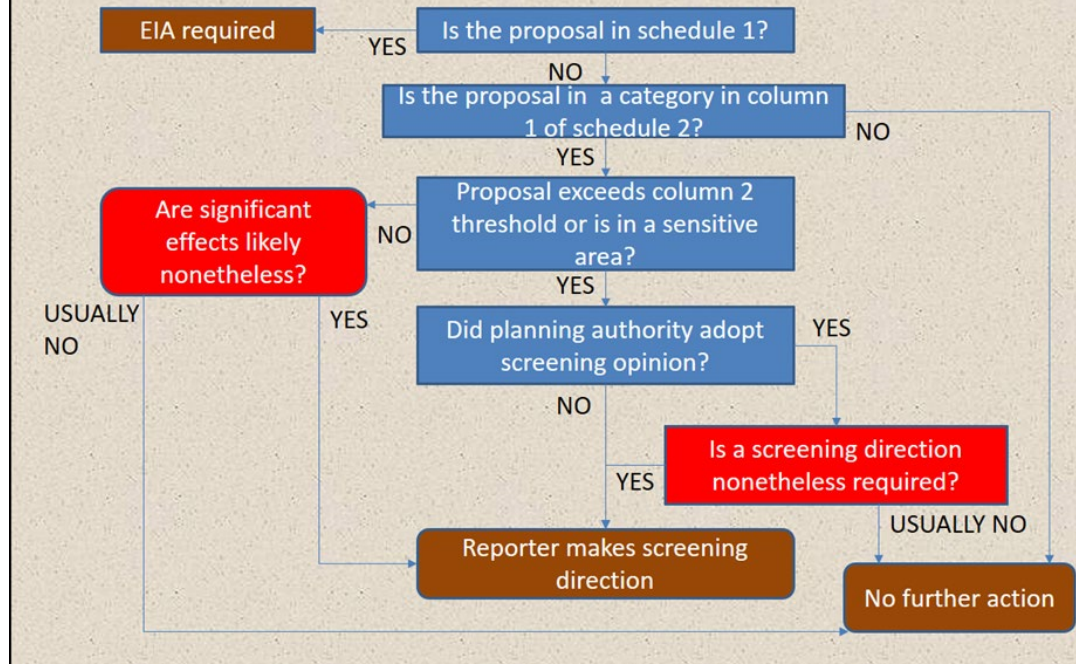
8. The following figure provides a summary of how a reporter will approach a new case where a requirement for screening comes into contemplation.

³ There can sometimes be doubt about whether development falls within the description either in schedule 1 or column 1 of schedule 2. The European Commission has issued [guidance](#) on interpretation of the descriptions in annex I and II of the Directive (from which the descriptions in schedule 1 and 2 of the domestic Scottish regulations are drawn). This includes discussion of caselaw of the Court of Justice of the European Union interpreting these descriptions. See particularly from page 18 onwards.

⁴ See note 3 above.

⁵ See Terms Used section in this note

Reporters' consideration of screening



In this figure, the red boxes represent reporter decisions in which a decision by the reporter to issue a screening direction would be relatively rare.

Situations in which a reporter gives a screening direction

9. When dealing with an application or appeal where no EIA report has been supplied, there are four possible situations in which the reporter might make a screening direction:

1. the planning authority has issued a screening opinion that the proposed development is EIA development, but the developer has referred the matter to Scottish Ministers for a screening direction;
2. the planning authority has not issued a screening opinion for a schedule 2 application;
3. the planning authority has issued a screening opinion that the proposed development is not EIA development, but a third party (or possibly the planning authority itself) has requested a screening direction; and
4. the planning authority has issued a screening opinion that the proposed development is not EIA development, but the reporter considers that EIA may be required.

10. Procedure in each of these four situations will be considered in more detail from paragraph 17 below. The following are common elements in the issue of any screening direction by a reporter:

- minimum information requirements for screening,

- selection criteria and other information to be taken into account in screening.

Minimum information requirements for screening (regulation 8(2))

11. In order to carry out screening, a reporter is required to have the following minimum information:

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

12. If a screening opinion has already been issued, then this minimum information should already be available, either in the developer's request for the screening opinion or in other formal correspondence before the issue of the screening opinion.

13. The reporter **must** seek from the developer any the minimum information that has not been provided (under regulation 13(3)). In order to do so, the reporter must give notice to the developer describing the information still to be provided. GN 21 - Template 1 – Further information required for Screening decision template is to be used for such a notice.

Selection criteria and other information to be taken into account in a screening direction

14. In making a screening direction, the reporter is required to take account of:

- Selection criteria set out in the 2017 EIA regulations' schedule 3;
- The information submitted to meet minimum information requirements; and
- The available results of any assessment or verification of effects on the environment carried out pursuant to national legislation which is relevant to the assessment of the environmental impacts of the proposed development. Examples of relevant assessments may include the strategic environmental assessment of the relevant local development plan, any environmental impact assessment carried out for a development of a similar type to that proposed in a similar location, or an appropriate assessment carried out in respect of the development plan.

15. In England and Wales, [planning practice guidance on environmental impact assessment](#) has been published. It includes an annex with [indicative criteria and thresholds](#) for determining whether a schedule 2 development is of a scale or type that is likely to have significant environmental effects. However, every case must be considered on its own facts.

16. There is no statutory requirement for a reporter to consult the consultation bodies (Scottish Natural Heritage, the Scottish Environment Protection Agency, Historic Environment Scotland, Scottish Water and, in some circumstances, the adjoining planning authority) on screening. Reporters will not normally do so.

The four possible situations in which the reporter might have to make a screening direction:

1. The developer requests a screening direction (regulation 10)

17. This first situation is unlikely to come before a reporter. Reporters' responsibility for screening directions is limited to appeals or applications for which they are appointed. However, it cannot be ruled out that such a situation will arise.

18. If a developer makes a request for a screening direction, it must be accompanied by:

- the request for a screening opinion;
- any request by the planning authority for further information to ensure minimum information requirements are met and any response from the developer;
- the planning authority's screening opinion and statement of reasons for it;
- any representations the developer wishes to make.

19. The developer's correspondence with the planning authority on screening should include all the statutory minimum information requirements. However, the reporter must still check that the requirements are met, and request further information from the appellant if they are not (GN21 - template 1 – Further information required for screening decision template is for such a further information request). The reporter may also request information from the planning authority if he or she considers the screening information provided is insufficient (regulation 10(3)(b)).

20. The developer must also send the planning authority a copy of the request for a screening direction. The planning authority has 14 days to respond. The reporter will take account of any planning authority response received.

21. The reporter must provide a screening direction within:

- 21 days beginning with the date of receipt of the request, or
- such longer period as is reasonably required, up to 90 days from the date of receipt of the request.

22. The reporter may by notice extend the period beyond 90 days if, due to exceptional circumstances relating to the nature, complexity, location or size of the proposed development, it is not practicable to adopt a screening direction within 90 days. The reporter's notice must specify the date by which the screening direction will be made and must give a justification for the extension. GN 21 - Template 2 – Notice of extension of screening time limit beyond 90 days is a template for such a notice.

23. The period of the time limit for making a screening direction does not begin to run until the reporter has received all the information required to be submitted by the developer as part of the request. In particular, if the reporter has issued a notice requiring submission of further information to meet the statutory minimum information requirements set out in regulation 8(2), the period of the time limit does not begin to run until all the information described in the notice has been submitted.

2. The planning authority has not issued a screening opinion for a schedule 2 application (regulation 13) (deemed request for screening direction)

24. If no EIA report (or environmental statement) has been submitted, the reporter is required to treat the submission of an appeal or application for schedule 2 development as a request for a screening direction.

25. If the minimum information requirements for a request (set out in regulation 8(2)) are not met in the information before the reporter, he or she must issue a notice (GN 21 - template 1 – Further information required for Screening decision template) seeking the information from the developer. The reporter may also request information from the planning authority if he or she considers the screening information provided is insufficient (regulation 10(3)(b)).

26. There is no requirement in law for the reporter to seek the views of any parties to an application or appeal. However, in some cases it may be appropriate for the reporter to seek the views of the developer, the planning authority and possibly other parties who have made relevant submissions, before determining whether to issue a screening direction. A reporter may wish to seek the views of one of the consultation bodies if it is party to the application or appeal, notwithstanding the guidance in paragraph 16 of this note.

27. The reporter is required to issue the screening direction within:

- 21 days beginning with the date of receipt of the application or appeal, or
- such longer period as is reasonably required, up to 90 days from the date of receipt of the application or appeal.

If the minimum information requirements have not been met, then these time limits run from the date on which the last of the minimum information requirements were met. There is a limited option to extend the time limit beyond 90 days, as described in paragraph 26 of this note.

3. A screening direction is requested by the planning authority or a third party (regulation 7(4)(b))

28. Formally, the reporter has discretion to decide whether or not to make a screening direction in response to a request from a person other than the developer. As regards the exercise by Scottish Ministers of this discretion, Circular 1/2017 paragraph 63 states:

“Some indication will ... be looked for to demonstrate that the person making the request has seriously considered the basis on which an EIA might be needed, and has offered relevant grounds for that request. Where a planning authority has previously issued a screening opinion, the Scottish Ministers will consider whether the issues raised are sufficient to call into question the validity of that screening opinion, and whether therefore a direction should be issued.”

29. If the reporter determines that a screening direction is to be issued, he or she must check whether the minimum information requirements are met. If they are not, he or she must issue a notice seeking the information from the developer.

4. The reporter considers EIA may be required notwithstanding a planning authority screening opinion that it is not (regulation 7(4)(a))

30. It is likely to be rare that a reporter would issue a screening direction if a negative screening opinion (that EIA is not required) has previously been issued and no other person has requested a screening direction. Should the reporter decide to issue a screening direction of his or her own volition, the procedure for doing so is the same as described in paragraph 33 of this note. If, having considered the requirement for EIA of his or her own volition, the reporter decides that EIA is not required, there is (of course) no requirement for the reporter to issue a negative screening direction. The reporter may, however, wish to issue a negative screening direction of his or her own volition in a case where it appears to him or her that there is a question about the validity of the planning authority's negative screening opinion.

Procedure in making a screening direction

31. The general procedure and considerations for a reporter in reaching a screening direction are described in circular 1/2017 figure 1 and paragraphs 28 to 46.

32. Having considered the matters set out in this note's paragraph 14, the reporter should then prepare a screening direction using GN 21 - template 3 – For use in making a negative screening direction (i.e. that EIA is not required) or GN 21 - template 4 – For use in making a positive screening direction (i.e. that EIA is required).

33. A screening direction can be made at any stage prior to the determination of an appeal if it becomes clear in the course of the appeal that EIA is required. This is so notwithstanding that time limits referred to at this note's paragraphs 25 or 31 have elapsed for issue of a screening direction following a request (or deemed request) for such a direction from the developer.

Making a screening direction – summary:

- The information supplied for screening by the developer must meet the minimum requirements (regulation 8(2)). If not, request additional information using a letter following GN 21 - template 1 – Further information required for screening .
- The reporter must also consider results of any assessment of effects on the environment that is relevant to assessing environmental impacts of the proposed development (such as in the strategic environmental assessment for the local development plan).
- If the developer requested a screening direction, the planning authority must have an opportunity to comment on the request (but not required for a deemed request).
- Consider the requirement for EIA using the selection criteria in schedule 3 of the 2017 T&CP EIA regulations, the information submitted by the developer, and any relevant assessments under other legislation.
- Time limits apply for issue of a screening direction:
 - if the developer requests a screening direction,
 - if an appeal for schedule 2 development is submitted (or application called in) without any previous screening opinion or direction having been issued (a deemed request for a screening direction).
- If the time limits apply, the screening direction must be made:
 - within 21 days from the request or deemed request, or
 - such longer period as is reasonably required, up to 90 days, or
 - in exceptional circumstances, a longer period. Use GN 21 - template 2 – Notice of extension of screening time limit beyond 90 days to give notice of this to the developer.
- For a decision that EIA is not required (negative screening), use GN 21 – template 3 – For use in making a negative screening direction (i.e. that EIA is not required)
- For a decision that EIA is required (positive screening), use GN 21 - template 4 – For use in making a positive screening direction (i.e. that EIA is required)

Procedure following the making of a screening direction that EIA is required

34. If an application is for EIA development and has been submitted without an EIA report (or an appeal relates to such an application) the reporter must give notice of this to the developer. The developer then has three weeks to write confirming that he or she will provide the EIA report.

35. This procedure applies if the reporter has made a screening direction that an EIA report is required. GN21 - Template 4 – For use in making a

positive screening direction (i.e. that EIA is required) includes the required notice to the developer and request for confirmation that an EIA report is to be provided.

36. If the developer fails to respond within 21 days, he or she must be informed that no further action is being taken in respect of the appeal or application (regulation 14(5)). Although the regulations do not give further guidance, it may be possible to revive the appeal or application if the developer makes a late response confirming that an EIA report is to be provided (unless the reporter has dismissed the appeal in the interim – see paragraph 37 below).

37. If the reporter has made a screening direction that EIA is required, but the developer does not submit an EIA report, the reporter or Scottish Ministers are under no duty to deal with the application or appeal (regulation 14(5)). In such circumstances, planning permission may only be refused (regulation 14(6)). If a developer fails to confirm that an EIA report is being prepared or fails to provide this within a specified timescale, it would be open to the reporter to dismiss the appeal under section 48(8) of the 1997 Act (undue delay in the progress of an appeal) subject to the procedures set out in that subsection.

Special situations and common errors in screening

38. Note the following special situations:

- Applications under section 42 of the Town and Country Planning (Scotland) Act 1997: For the purpose of determining whether EIA is required, the cautious approach is to treat such an application as being for the development described (the formal position in planning law), not as an application for a change to or extension of a development authorised by the existing permission (although this might be the substantive effect). Therefore, it should normally be the development described that determines whether a section 42 application is for schedule 1 or schedule 2 development, and also, if for a schedule 2 development, whether it would have significant environmental effects⁶. A negative screening opinion or direction issued in respect of the application granted for the permitted development may still apply in respect of any section 42 application. The reporter should ensure a copy is available to him or her, and check whether its reasoning is up to date.
- An application for a change or extension to a schedule 1 development requires EIA if the change or extension itself exceeds a schedule 1 threshold;
- An application for any other change or extension to a schedule 1 development or to a schedule 2 development already authorised,

⁶ It may be that if the effect of grant of the section 42 application would be a permission that has only minor differences in its conditions from those attached to an existing permission, and those differences have little effect on the form or environmental effects of the development, this can safely be treated for the purposes of screening as a change to a permitted development.

executed or in the process of being executed requires screening if the change or extension may have significant effects upon the environment. It requires EIA if the change or extension is likely to have significant effects upon the environment;

- Applications for multi-stage consent have special rules, which are discussed in paragraphs 40 to 48 of this guidance. Reporters should be aware of these rules when dealing with applications or appeals in respect of consent sought under conditions of existing planning permission (including planning permission in principle).

39. There are a number of common sources of legal error in screening opinions received, a non-exhaustive list of which is set out below.

- Applications in “sensitive areas”⁷. The thresholds in column 2 of schedule 2 do not apply in sensitive areas: all developments of a type described in column 1 are subject to screening. The typical error is to apply the thresholds in column 2 of schedule 2 to development proposals (and thus eliminate them from consideration for EIA) before deciding whether they are likely to have significant effects.
- Urban development projects. Although the description in column 1 of schedule 2 says that these include construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas, they are not limited solely to developments falling within one of those descriptions. Housing developments and even flood-lit tennis courts can be urban development projects. Note that even small housing projects in sensitive areas may have to be treated as urban development projects and so screened.
- Treating a development as falling into one schedule 2 type when it might fall into several: for instance an energy-from-waste plant is not to be treated solely as an industrial installation for the production of electricity, but also as a waste disposal installation. If a development falls into any of the types in column 1 of schedule 2, the reporter must consider whether screening is required as set out in paragraph 5 of this note.
- Mitigation and screening: mitigation measures may be taken into account in reaching a screening determination that a proposed development will not be likely to have significant effects on the environment. The extent to which mitigation measures are taken into account depends upon the facts of the case: see paragraph 42 of circular 1/2017⁸. See also paragraph 43 as regards securing mitigation measures taken into account.

In order to avoid error, bear in mind the breadth of the EU legislation in terms of its scope and purpose in ensuring that projects which may have significant environmental effects are subject to assessment.

Multi-stage consents and screening

⁷ For a definition of “sensitive areas”, see the “Terms Used” section of this note.

⁸ [Circular 1/2017](#)

40. The definition of multi-stage consents and their interaction with EIA are dealt with in detail in paragraphs 138 to 150 of circular 1/2017.

41. An “application for multi-stage consent” is an application for approval, consent or agreement from the planning authority required by a “multi-stage condition”. That is a condition imposed on planning permission⁹, where such approval, consent or agreement must be obtained before all or part of the development permitted may be begun. Multi-stage conditions may appear in detailed planning permission as well as in planning permission in principle.

42. Significant effects that a development may have on the environment must be identified and assessed at the time of the principal decision. However, if those effects are not identified or identifiable at the time of the principal decision (the planning permission containing the multi-stage condition under which the application for multi-stage consent is made), assessment must be undertaken at a subsequent stage.

43. A reporter may have to address the following situations in dealing with an application or appeal for multi-stage consent:

- An application for multi-stage consent made under a condition of planning permission for which an EIA report has already been provided.
- An application for multi-stage consent made under a condition of planning permission for which an EIA report has not been provided.

EIA report has already been provided

44. In the first case (an EIA report has been provided in respect of the original application for planning permission), no screening is required: the application does relate to EIA development, and the reporter is required to take account of any EIA previously undertaken. If either the original planning permission or the EIA report previously submitted are not available, then the reporter will have to ask the developer for this information.

45. If it appears to the reporter that the development (the whole development, not just the part or aspect in respect of which the application for multi-stage consent is made) may have significant effects upon the environment not previously identified and assessed, the reporter must seek supplementary information from the developer in respect of such effects (if it has not already been provided with the application) (see regulation 33(2)).

EIA report has not already been provided

46. In the second case (an EIA report has not been provided), if it appears to the reporter that the application for multi-stage consent either relates to schedule 1 development or to schedule 2 development that may have significant effects on the environment, then the reporter must issue a

⁹ or on deemed planning permission, permission for urgent crown development, simplified planning zone scheme or enterprise zone scheme or a ROMP condition

screening direction in respect of the development to which the application for multi-stage consent relates.

47. The “development” here means the whole development, not just the part or aspect in respect of which the application for multi-stage consent is made. Take, for example, permission for a shopping centre granted subject to a condition that the roads layout must be approved before commencement of development. If, when the application for approval of the roads layout is made, it is found that there may be a significant impact upon residential amenity as a consequence of changes to traffic flow, then a screening direction would be required for the shopping centre (not just for the roads layout). If it is determined in screening that the shopping centre would be likely to have significant environmental effects, then EIA is required. It is possible, of course, that subsequent scoping for the EIA report would limit it to an assessment of impacts on residential amenity.

48. Rules on the minimum information required and on time limits for making of a screening direction are substantially the same as those set out above for an application for schedule 1 or schedule 2 development made without either an EIA report or negative screening opinion from the planning authority (see regulation 35(2)).

Screening: transitional arrangements

49. The provisions on screening in the 2017 T&CP EIA regulations apply to almost all applications and appeals a reporter is likely to deal with, including those where the application was made before 16 May 2017 (when the 2017 T&CP EIA regulations came into force).

50. A transitional arrangement applies if

- the developer requested a screening opinion or screening direction before 16 May 2017, and
- a screening opinion or screening direction was adopted following from that request (whether before or after 16 May 2017).

In such circumstances, if the reporter subsequently decides that he or she should issue a screening direction of his or her own volition or at the request of a third party¹⁰, then the reporter should apply the criteria in schedule 3 of the 2011 T&CP EIA regulations (not that of the 2017 T&CP EIA regulations) to that screening direction.

51. In practice, this transitional provision is only relevant where a negative screening opinion (or possibly screening direction) was issued following a request prior made prior to 16 May 2017. It is likely that reporters would only, at the time of writing of this note, encounter such cases rarely.

¹⁰ under 2017 T&CP EIA regulations, r 7(4) – see paragraphs 32 to 34 above