

Enabling powers for Scotland's Environmental Impact Assessment Regimes & Habitats Regulations

Analysis of Consultation Responses

November 2024

Table of Contents

Terminology and Abbreviations	3
Executive Summary	4
Introduction	12
Section A: Environmental Impact Assessments (EIAs)	16
Section B: The 1994 Habitats Regulations	25
Section C: Impact assessments.....	33
Appendix 1: Consultation Questions.....	40
Appendix 2: List of organisational respondents	47

Terminology and Abbreviations

This report contains some terminology and abbreviations relating to the consultation. While these are explained when first introduced in the main report, lists of relevant abbreviations can be found below:

Abbreviations relating to the consultation:

BRIA	Business and Regulatory Impact Assessment
EIA	Environmental Impact Assessment
EOR	Environmental Outcome Reports
EQIA	Equality Impact Assessment
EU	European Union
GDPR	General Data Protection Regulation
HRA	Habitats Regulation Assessment
ICIA	Island Communities Impact Assessment
ICES	International Council for the Exploration of the Sea
ICO	Information Commissioner's Office
NGO	Non-Governmental Organisation
RIF	Respondent Information Form
SEA	Strategic Environmental Assessment
UK	United Kingdom

Executive Summary

Introduction

This report provides an analysis of responses to the Scottish Government consultation on “Enabling powers for Scotland's Environmental Impact Assessment regimes & Habitats Regulations”. This public consultation ran from 18 March 2024 to 13 May 2024.

We sought views on proposed enabling powers that would better allow for future amendments to Scotland’s Environmental Impact Assessment (“EIA”) regimes and the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”). These are key legislative frameworks which underpin environmental protection and assessment processes. The proposed enabling powers would help replace powers lost as a result of the UK’s exit from the European Union (“EU”), and would help ensure the relevant legislation can remain fit for purpose in future in order to support delivery of our net zero and biodiversity goals.

The consultation featured thirteen questions covering:

- Support for the Scottish Government’s rationale for seeking enabling powers which would better allow future amendments in relation to the EIA regimes (Q1-3)
- Support for the Scottish Government’s rationale for seeking enabling powers which would better allow future amendments to the 1994 Habitats Regulations (Q4-6)
- Impacts on the costs and burdens placed on businesses, the public sector and voluntary sector (Q7-8)
- Effect on Island Communities (Q9-10)
- Impacts on People with Protected Characteristics (Q11-12)
- Any further comments (Q13)

About the respondents and responses

The consultation received a total of 41 submissions, comprising of 30 responses to the consultation via Citizen Space and 11 received via email.

Of the 41 responses that were received to the consultation, a significant majority were submitted by respondents representing organisations (73%), with the remaining 26% identifying as individuals

Of the responses where the respondent identified as responding on behalf of an organisation (30), there were three environmental NGOs (Non-Governmental Organisations), eight consultancy and professional representative bodies, two from marine food production, one from terrestrial food production, four from local authorities, five from public bodies and seven from the renewable energy sector.¹

Support for the Scottish Government's rationale for seeking enabling powers which would better allow future amendments in relation to the EIA regimes (Q1-3)

Overall a majority (59%) of all respondents agreed with the Scottish Government's rationale for seeking the enabling powers. Only 7% of all respondents did not agree with the rationale, however a significant number were either unsure (2%), provided other views (17%) or did not answer the closed question (15%).

A majority of 56% of all respondents agreed that there should be limitations on how Scottish Ministers can use the enabling powers being sought to better allow amendments to the EIA regimes. 17% disagreed that there should be limitations whilst, again, a significant number were unsure (10%), provided other views (5%) or did not answer the closed question (12%).

Key themes and issues raised by respondents included:

Rationale for the enabling powers

- Many comments focused on the Scottish Government's rationale for the enabling powers.
- Some respondents provided further detail outlining their support for the proposed enabling powers, suggesting it is essential that the

¹ Organisations were not able to select their own categorisation in response to the consultation. These categories were applied to organisational responses by the Scottish Government during analysis.

Scottish Government has the necessary powers to ensure that legislation remains fit for purpose.

- Some respondents who did not agree with the Scottish Government rationale raised issues with the level of detail and clarity provided in the consultation. Some suggested there was a lack of exploration of the use of existing powers.

Public Consultation and Stakeholder Engagement

- The most common concern amongst respondents related to the levels of scrutiny which would be afforded to future amendments in relation to the EIA regimes. Many of the respondents expressed that there should be public consultation on any future amendments.

Environmental Standards

- There was concern amongst some respondents that the environmental protections offered by the EIA regimes could be weakened by future amendments. Some suggested limiting the enabling powers in such a way that there could be no reduction in the level of environmental protection or that they could be used only to strengthen environmental law and its application in Scotland.
- A few respondents specifically suggested that limitations should be achieved through inclusion of a “non-regression” clause or test.
- However, there was also some recognition that flexibility and adaptability was necessary and could provide benefits to environmental standards.

Scottish Parliamentary Procedures

- Respondents provided some differing views regarding the legislative procedures necessary for appropriate Scottish Parliamentary scrutiny of any amendments made using the proposed enabling powers in future.

Periodic review of the enabling powers

- Some respondents suggested that it would be necessary to conduct a periodic review of the powers in order to ensure they remain fit for purpose in continually evolving circumstances.

Consistency across legislative regimes

- Some respondents were concerned that the enabling powers could lead to divergence between inshore and offshore and with wider UK and/or EU regimes. Some of these respondents views on this applied to the EIA regimes and the 1994 Habitats Regulations.

Support for the Scottish Government's rationale for seeking enabling powers which would better allow future amendments to the 1994 Habitats Regulations (Q4-6)

An overall majority of 63% of all respondents agreed with the Scottish Government's rationale. Again, only 7% of all respondents did not agree the with rationale and a significant number were either unsure (5%), provided other views (12%) or did not answer the closed question (12%).

A smaller overall majority of 51% agreed that there should be limitations on how Scottish Ministers can use the enabling powers being sought to better allow future amendments to the 1994 Habitats Regulations. 17% disagreed that there should be limitations whilst, again, a significant number were unsure (10%), provided other views (7%) or did not answer the closed question (15%).

Key themes and issues raised by respondents included:

Rationale for the enabling powers

- Again, many comments focused on the Scottish Government's rationale for the enabling powers.
- Some respondents provided further detail outlining their support for the proposed enabling powers. This included the suggestion that being able to amend the regulations will help address the nature and climate crises by making the legislation fit for purpose in the 21st century.
- Some respondents who did not agree with the Scottish Government rationale raised issues with the level of detail and clarity provided in the consultation. It was suggested that the consultation offered insufficient specific detail on the nature or necessity of reforms or on how the enabling powers may be used. It was suggested that existing powers should be sufficient.

Public Consultation and Stakeholder Engagement

- The most common concern, expressed firmly by many respondents, was that there should be a robust public consultation on any future amendments to the 1994 Habitats Regulations. It was also highlighted again that this process should also be subject to appropriate impact assessments.

Environmental Standards

- Despite a majority of respondents agreeing with the rationale for enabling powers, there was, again, significant concern amongst some respondents that the environmental protections offered by the 1994 Habitats Regulations could be weakened by future amendments.
- This included suggestions that limits should be in place so that enabling powers are used by Ministers to maintain and strengthen, but not weaken, the 1994 Habitats Regulations. Again, a few respondents specifically suggested that limitations should be achieved through inclusion of a “non-regression” clause or test.
- However, there was also significant recognition that flexibility and adaptability was necessary and could provide benefits to environmental standards. It was suggested that they could be used to deliver improved environmental outcomes and help ensure Scotland keeps pace with wider developments in environmental law and standards.

Scottish Parliamentary Procedures

- Respondents tended to repeat their views here regarding the legislative procedures necessary for appropriate Scottish Parliamentary scrutiny of any amendments.

Consistency across legislative regimes

- Some respondents again expressed concern that the enabling powers could lead to divergence between inshore and offshore and with wider UK approaches to the 1994 Habitats Regulations.
- Some respondents had stated that their responses in relation to the EIA regimes also applied to the 1994 Habitats Regulations.
- Respondents again suggested that the potential for divergence should be considered in Impact Assessments produced as part of an amendments process.

Impacts on the costs and burdens placed on businesses, the public sector and voluntary sector (Q7-8)

Opinions regarding the impacts of both the proposed enabling powers in relation to Scotland's EIA regimes and the 1994 Habitats Regulations on businesses, the public sector and voluntary sector were more mixed but fell broadly in line across the closed questions related to each.

More respondents agreed (39% for EIA regimes, 34% for the 1994 Habitats Regulations) that the proposed enabling powers in relation to Scotland's EIA regimes and the 1994 Habitats Regulations will not impact directly or indirectly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations, than did not (17% for both).

Across both questions, many respondents responded that they were unsure, had other views or did not answer the closed question.

Key themes and issues raised by respondents included:

Potential impacts directly or indirectly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations

- For both the EIA regimes and the 1994 Habitats Regulations, more respondents agreed that the enabling powers themselves were not likely to result in any immediate impact directly or indirectly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations. However, some respondents did highlight potential impacts as a result of future use of the powers.
- Some respondents therefore suggested that in advance of any future change or amendment, a Business Regulations Impact Assessment ("BRIA") and other relevant impact assessments should be undertaken to consider any potential consequences. Respondents were also careful to note that this should be subject to consultation and engagement with relevant stakeholders.
- Some respondents also thought that the enabling powers could allow for legislative changes to be implemented that could have a beneficial impact on businesses.

Lack of detail

- A few respondents felt there was not enough detail provided at this stage to assess whether or how the enabling powers could have impacts on businesses, the public sector, voluntary and community organisations.

Effect on Island Communities (Q9-10)

More respondents agreed (34% for EIA regimes, 32% for the 1994 Habitats Regulations) that the proposed enabling powers would not have any effect on an island community that is different from the effect on other communities, than did not (7% for EIA regimes, 5% for the 1994 Habitats Regulations).

More respondents chose to provide no answer to these closed questions than any other in the consultation (24%) and those respondents did not provide further comments in the free text fields.

Key themes and issues raised by respondents included:

Potential Effects on Island Communities

- A few respondents suggested that, although the proposed enabling powers themselves will not likely have any effect on an island community that is different from the effect on other communities, there may be effects to consider when the powers are used. They suggested that this was another important reason for full consultation in advance of the powers being used and that this should include appropriate assessments.

Lack of detail

- A few respondents raised that they felt there was not enough detail provided at this stage to assess whether or how the enabling powers could have any effect on an island community that is different from the effect on other communities.

Impacts on People with Protected Characteristics (Q11-12)

Many more respondents agreed (49% for EIA regimes, 40% for the 1994 Habitats Regulations) that the proposed enabling powers in relation to the EIA regimes will not have any impact on people with protected characteristics, than did not (2% for EIA regimes, 3% for the 1994 Habitats Regulations).

Across both questions many respondents responded that they were unsure, had other views or did not answer the closed question. All respondents who chose not to answer these closed questions also provided no written comments in the free text boxes.

Key themes and issues raised by respondents included:

Potential Impacts on People with Protected Characteristics

- Respondents provided fewer comments to these questions than any others in the consultation. A few respondents suggested that, although the proposed enabling powers themselves will not likely have any impact on people with protected characteristics, there may be impacts to consider when the powers are used.
- They suggested that this was another important reason for full consultation in advance of the powers being used and that this should include appropriate equality impact assessments, including engagement with relevant representative organisations, to ensure changes to the rules take account of the needs of various groups within society.

Lack of detail

- A few respondents again raised that they felt there was not enough detail provided at this stage to assess whether or how the proposed enabling powers in relation to the EIA regimes and the 1994 Habitats Regulations will not have any impact on people with protected characteristics.

Introduction

This report provides an analysis of responses to the Scottish Government consultation on “Enabling powers for Scotland's Environmental Impact Assessment regimes & Habitats Regulations”. This public consultation ran from 18 March 2024 to 13 May 2024.

Policy Context

We sought views on proposed enabling powers that would better allow for future amendments to Scotland’s Environmental Impact Assessment (“EIA”) regimes and the Conservation (Natural Habitats, &c.) Regulations 1994 (“the 1994 Habitats Regulations”).

Our EIA regimes and the [Conservation \(Natural Habitats, &c.\) Regulations 1994](#)² (“the 1994 Habitats Regulations”) are key legal frameworks underpinning environmental protection and assessment processes in Scotland, on land and at sea (out to 12 nautical miles (nm)).

The [European Communities Act 1972](#)³ (“the 1972 Act”) provided enabling powers for Scottish Ministers to make and amend legislation for the purpose of implementing EU obligations. The 1994 Habitat Regulations and the EIA regimes were originally made and then subsequently amended using the powers in the 1972 Act. However, following the UK's withdrawal from the EU, the 1972 Act was repealed and these powers have been lost.

There are some existing powers available to Scottish Ministers to amend relevant legislation. These powers can only be exercised for specific, or limited purposes and do not provide the flexibility that may be required in future to ensure the legislation remains fit for purpose. Additionally, some of these available powers are expected to 'sunset' at a given date, meaning they will only be available for a limited time.

² [Conservation \(Natural Habitats, &c.\) Regulations 1994](#)

³ [European Communities Act 1972](#)

The consultation

The consultation set out information and questions relating to the EIA regimes, the 1994 Habitats Regulations and the Scottish Government approach to impact assessments for these proposals.

The consultation contained thirteen questions – three open and ten closed, each with an open “other” field to provide further comments. The questions covered:

- Support for the Scottish Government’s rationale for seeking enabling powers which would better allow future amendments in relation to the EIA regimes (Q1-3)
- Support for the Scottish Government’s rationale for seeking enabling powers which would better allow future amendments to the 1994 Habitats Regulations (Q4-6)
- Impacts on the costs and burdens placed on businesses, the public sector and voluntary sector (Q7-8)
- Effect on Island Communities (Q9-10)
- Impacts on People with Protected Characteristics (Q11-12)
- Any further comments (Q13)

Appendix 1 contains a complete list of the consultation questions.

Aim of this report

This report presents a robust and systematic analysis of the material submitted in response to the consultation.

Approach to the analysis

The analysis seeks to identify the most common themes and issues. It does not report on every single point raised in the consultation responses. All responses, where the respondent has given permission for their comments to be published will be made available on the Citizen Space website.

Equal weighting has been given to all responses. This includes the spectrum of views, from large organisations with an international, national or UK remit or membership, to individuals’ viewpoints.

Tables demonstrating a breakdown of the number of responses to each question are included at the beginning of each section. This analysis

report quotes and paraphrases some of the comments received. However, this does not indicate that these comments will be acted upon or given greater credence than others.

In line with qualitative reporting practices, phrases such as ‘many’, ‘several’ or ‘some’ have been used to indicate the volume of responses in relation to the particular points or themes discussed. Here, ‘most’ can be understood as the majority of respondents, ‘many’, ‘several’ or ‘some’ as a smaller subset of respondents, and ‘a few’ as a minority of respondents. Phrases like ‘one respondent’ or ‘one participant’ are used where a respondent raised pertinent points that summarised, or contrasted, the views of others.

Key themes in each section have been organised based on their frequency raised over all consultation responses.

Comment on the transferability of the consultation findings

As with all consultations, the views submitted in this consultation are not necessarily representative of the views of the wider public. Anyone can submit their views to a consultation, and individuals (and organisations) who have a keen interest in a topic – and the capacity to respond – are more likely to participate in a consultation than those who do not. This self-selection means that the views of consultation participants cannot be generalised to the wider population. For this reason, the main focus in analysing consultation responses is not to identify how many people held particular views, but rather to understand the range of views expressed and the reasons for these views.

About the respondents and responses

The consultation received a total of 41 submissions, comprising of 30 responses to the consultation via Citizen Space and 11 received via email. There were no blank or duplicate responses so all 41 responses were deemed valid and included in the analysis.

Of the 41 responses that were received to the consultation, a significant majority were submitted by respondents representing organisations (73%), with the remaining 26% identifying as individuals (see Table 1 below).

Table 1: Type of respondent

Respondent type	Total	%
Individual	11	26%
Organisation	30	73%
Total	41	100%

Of the responses where the respondent identified as responding on behalf of an organisation (30), there were three environmental NGOs (Non-Governmental Organisations), eight consultancy and professional representative bodies, two from marine food production, one from terrestrial food production, four from local authorities, five from public bodies and seven from the renewable energy sector (see Table 2).⁴

Table 2: Category of organisational responses⁵

Respondent type	Total
Environmental NGO	3
Consultancy / Professional Representative Body	8
Food Production – Marine	2
Food Production – Terrestrial	1
Local Authority and Community Group	4
Public Body	5
Renewables	7
Total	30

⁴ Organisations were not able to select their own categorisation in response to the consultation. These categories were applied to organisational responses by the Scottish Government during analysis.

⁵ Full list of organisational respondents can be found in Appendix 2

Section A: Environmental Impact Assessments (EIAs)

Support for the Scottish Government's rationale for seeking enabling powers which would better allow future amendments in relation to the EIA regimes set out in the consultation (Q1-3)

Context

Environmental Impact Assessment (EIA) is a systematic means of assessing the significant effects of a proposed project or development on the environment, seeking mitigation where possible to avoid, reduce or offset adverse effects and ensure that decision makers are aware of these effects before consent can be given.

We sought views on whether Scottish Ministers should have enabling powers which would better allow future amendments to EIA regimes for which the Scottish Parliament has legislative competence. This would provide the ability to ensure that the regimes remain fit for purpose in future and do not effectively become frozen in time.

We also sought views on whether limitations should be placed on these powers, and what those limitations should look like. A key consideration highlighted in the consultation was the ability to ensure the appropriate balance between providing flexibility to amend the EIA regimes to make important improvements and/or adapt to future circumstances, whilst ensuring they continue to effectively underpin environmental protection and assessment processes in Scotland.

Balance of Opinion for the Scottish Government's Rationale for seeking the enabling powers

Overall a majority (59%) of all respondents agreed with the Scottish Government's rationale for seeking the enabling powers in closed responses to Question 1. Only 7% of all respondents did not agree with the rationale, however a significant number were either unsure (2%), provided other views (17%) or did not answer the closed question (15%).

Some respondents who provided no answer to the closed question provided views in the open text fields. Many respondents who agreed or

disagreed with the Scottish Government's rationale also provided additional views in the open text fields.

Amongst organisational responses, a smaller majority of 53% agreed with the rationale and 10% did not. The remaining were either unsure (2%), provided other views (20%) or chose not to answer the closed question (15%) (see Table 3). There were significantly more comments provided by organisational responses.

In response to Question 2, a majority of 56% of all respondents agreed that there should be limitations on how Scottish Ministers can use the enabling powers being sought to better allow amendments to the EIA regimes. 17% disagreed that there should be limitations whilst, again, a significant number were unsure (10%), provided other views (5%) or did not answer the closed question (12%).

Open text fields for both Questions 1 and 2 provided a space for respondents to expand on their answer where they selected "Other". Many respondents chose to provide additional views in these fields regardless of their response to the closed question.

Question 3 was an open question asking "Do you have views on how we can set the scope of/limits on these enabling powers?"

Views provided by respondents in the open text fields for Questions 1 to 3 tended to cover all three questions and so have been analysed together when identifying common themes and issues. Where comments referred to a specific question this has been reflected in the analysis.

Table 3 – Question 1: Do you agree with the Scottish Government's rationale for seeking enabling powers which would better allow future amendments in relation to the EIA regimes set out in this consultation?

Respondent type	Yes	No	Unsure	Other	No Answer
Individual	8 (73%)	0 (0%)	0 (0%)	2 (9%)	11 (18%)
Organisation	16 (53%)	3 (10%)	1 (3%)	4 (20%)	30 (13%)
Total	24 (59%)	3 (7%)	1 (2%)	7 (17%)	6 (15%)

Table 4 – Question 2: Do you agree there should be limitations on how Scottish Ministers can use the enabling powers being sought to better allow amendments to the Environmental Impact Assessment (EIA) regimes?

Respondent type	Yes	No	Unsure	Other	No Answer
Individual	4 (36%)	3 (27%)	2 (18%)	1 (9%)	1 (9%)
Organisation	19 (63%)	4 (13%)	2 (7%)	1 (3%)	4 (13%)
Total	23 (56%)	7 (17%)	4 (10%)	2 (5%)	5 (12%)

Key Themes and Issues Raised

Rationale for the enabling powers

Many comments focused on the Scottish Government's rationale for the enabling powers. Some respondents provided further detail outlining their support for the proposed enabling powers, suggesting it is essential that the Scottish Government has the necessary powers to ensure that legislation remains fit for purpose.

Some respondents who did not agree with the Scottish Government rationale raised issues with the level of detail and clarity provided in the consultation. Some suggested there was a lack of exploration of the use of existing powers in the consultation and thought that this made it difficult to assess whether further enabling powers were necessary.

For example, one respondent highlighted that the consultation sets out that amendments can already be made in relation to the EIA regimes for specific or limited purposes, but doesn't set out what these are.

Other respondents pointed to the existing powers flagged in the consultation document which they believe could be used to make the administrative changes described in the consultation, at least in the immediate term.

Two respondents suggested that the simplest way to achieve the changes described in the consultation would be to extend the duration of the keeping pace powers in the 2021 Continuity Act until 2031, as made possible by Section 4 of that Act.

Some respondents also thought that the examples provided in the consultation covered only relatively "small" and administrative amendments. There was concern amongst these respondents that too little detail was provided regarding how the powers may be used for any larger scale reform.

Two respondents suggested that any changes to the EIA regime legal requirements should be made via primary legislation, in order to provide clarity about the changes, the purpose of any changes and ensure appropriate levels of parliamentary scrutiny.

Public Consultation and Stakeholder Engagement

The most common concern amongst respondents regarded the levels of scrutiny which would be afforded to future amendments in relation to the EIA regimes.

Many of the respondents expressed that there should be public consultation on any future amendments. These views were found especially amongst those who agreed with the Scottish Government rationale but included some others. They were also expressed across the variety of individuals and organisational categories.

Key comments included that:

- Amendments should only be made following a transparent and open dialogue with public and interested parties.
- Any proposed changes to any of the EIA regulations must be supported by full public consultation for all EIA regimes.
- only after proper and full consultation with those potentially impacted by projects and/or developments.
- ensure the scope retain the crucial function of publication to seek the views of interested parties and the public, specifically the local communities most directly affected.

Reasons given for this were:

- to ensure there are no unintended consequences of the changes
- to ensure stakeholders are kept aware and fully engaged with the EIA process.
- to ensure compliance with Article 8 of the Aarhus Convention, which sets out the rights of the public to participate in the preparation of executive regulations.

Respondents also suggested that part of this should include direct engagement of relevant stakeholders.

The Town and Country Planning process was highlighted by a respondent as an existing example of the type of robust public consultation process which could be adopted for future amendments related to other EIA sectors.

Environmental standards

Despite a majority of respondents agreeing with the rationale for enabling powers, there was a significant concern amongst some respondents that the environmental protections offered by the EIA regimes could be weakened by future amendments.

Some respondents suggested limiting the enabling powers in such a way that there could be no reduction in the level of environmental protection. Others further suggested that the enabling powers are used only to strengthen environmental law and its application in Scotland.

These views were shared particularly amongst Public Bodies and Environmental NGOs. Some highlighted the climate emergency and biodiversity crisis, as well as large scale developments which are being brought forward, such as offshore wind, as reasons for the necessity of this.

A few respondents specifically suggested that this limit should be achieved through inclusion of a “non-regression” clause or test.

Suggestions for conditions a “non-regression” clause or test could require to be met included:

- Scottish Ministers can make regulations under the powers if they are satisfied that:
 - the regulations do not reduce the level of environmental protection provided by the EIA Regime or the 1994 Habitats Regulations.
 - there is no reduction in opportunity for scrutiny or to challenge assessments
 - there is no loss of transparency in EIAs
- Scottish Ministers lay before Parliament and publish a statement explaining why they are satisfied that this non-regression test has been met.
- Scottish Government devises and publishes a method of evaluating a non-regression test
- EIAs fully take into account the climate impact of a plan or development including the direct, indirect, secondary, cumulative, and transboundary effects.

- Scottish Ministers seek independent expert advice that a non-regression test has been met, including from bodies such as Environmental Standards Scotland and NatureScot.

However, in line with the majority of closed responses agreeing with the rationale for Scottish Government seeking the enabling powers, there was also some recognition, including amongst some of the respondents with concerns, that flexibility and adaptability was necessary and could provide benefits to environmental standards. It was suggested that they would allow for practical improvements, an opportunity for better alignment across the regime, address the need for greater administrative flexibility and efficiency and make amendments that are appropriate to future circumstances.

One respondent also flagged specific issues or developments which could be addressed in amendments, such as erroneous omissions in legislation which are weakening environmental protections, project types included in the schedules for new technologies e.g. battery storage, solar and to reflect developments in renewables more fully.

Scottish Parliamentary Procedures

Respondents provided some differing views regarding the legislative procedures necessary for appropriate Scottish Parliamentary scrutiny of any amendments made if using the proposed enabling powers in future.

A few respondents proposed a requirement that any secondary legislation brought forward under the enabling powers is subject to the affirmative procedure in order to provide appropriate Parliamentary scrutiny.

Another respondent suggested that minor amendments could be made by negative procedure, whereas wider-ranging amendments should be subject to greater Parliamentary scrutiny than that offered by the negative procedure.

Periodic review of the enabling powers

Some respondents suggested that it would be necessary to conduct a periodic review of the powers in order to ensure they remain fit for purpose in continually evolving circumstances.

Some respondents suggested that it might be necessary to introduce an independent review body or make use of existing independent bodies to regularly review and provide guidance in order to

In response to Question 2, one respondent commented that there should be limitations to enabling powers to recognise a separate function for periodic and independent review of EIA information requirements, particularly to adapt to changing circumstances wrought by climate change and biodiversity loss.

Other suggestions included setting “sunset clauses” on the enabling powers to ensure their relevance and effectiveness is reviewed after a predefined period of time; or the introduction of a requirement for Ministers to lay a report before Parliament every three years outlining how the powers have been used.

Consistency across legislative regimes

Some respondents were concerned that the enabling powers presented a potential divergence between inshore and offshore and with wider UK and/or EU regimes. Some of these respondents views on this applied to the EIA regimes and the 1994 Habitats Regulations.

Respondents suggested that the potential for divergence should be considered in Impact Assessments produced when proposals are made for use of the powers in future. Specific potential impacts highlighted included:

- Creation of obstacles to delivery of projects required for energy transition
- Additional burden in developing internal policy, governance, data management and systems etc., ultimately impacting customer bills

There was also acknowledgement amongst some respondents that the current legal framework is already fragmented and the enabling powers could provide opportunity for better streamlining and alignment.

One respondent suggested that the powers should apply to as wide a range of the regimes as lies within Scottish competence to help ensure consistency. Another respondent specifically highlighted the UK Government’s plans to replace EIAs with a system of EORs as an opportunity to align to deliver overall synergies and environmental benefit.

One respondent suggested that any process to make amendments must seek to harmonise and streamline regulations, and remove unnecessary duplication. There were also suggestions that there is a need for greater

legal clarity in this space and that guidance could decrease the chances of misalignment and any consequent impact on developers.

Several respondents flagged the Electricity Works (Environmental Impact Assessment (Scotland) Regulations 2017, in particular, as an area where there would be risks of divergence with the wider EIA regimes, or indeed where there would be opportunities to standardise documentation across regimes. These respondents were dissatisfied that the Electricity Works (Environmental Impact Assessment (Scotland) Regulations 2017 were not part of this consultation.

Section B: The 1994 Habitats Regulations

Support for the Scottish Government’s rationale for seeking enabling powers which would better allow future amendments to the 1994 Habitats Regulations (Q4-6)

Context

The [1994 Habitats Regulations](#)⁶ are the main piece of legislation which transpose the requirements of the [EU Habitats Directive](#)⁷ and elements of the [EU Birds Directive](#)⁸ in Scotland, on land and in territorial waters (0-12nm from the coast). Separate versions of the legislation apply in England and Wales and to certain reserved matters on land and in territorial waters (the [Conservation of Habitats and Species Regulations 2017](#)⁹), and to Scottish offshore waters (beyond 12nm from the coast) (the [Conservation of Offshore Marine Habitats and Species Regulations 2017](#)¹⁰). Only the 1994 Habitats Regulations would be covered by the proposed enabling power.

We sought views on whether Scottish Ministers should have powers which would better allow future amendments to the 1994 Habitats Regulations. This would provide the ability to ensure that the regulations remain fit for purpose in future and do not effectively become frozen in time.

We also sought views on whether limitations should be placed on these powers, and what those limitations should look like. A key consideration highlighted in the consultation was the ability to ensure the appropriate balance between providing flexibility to amend regulations to make important improvements and/or adapt to future circumstances, whilst

⁶ [1994 Habitats Regulations](#)

⁷ [EU Habitats Directive](#)

⁸ [EU Birds Directive](#)

⁹ [Conservation of Habitats and Species Regulations 2017](#)

¹⁰ [Conservation of Offshore Marine Habitats and Species Regulations 2017](#)

ensuring they continue to effectively underpin environmental protection and assessment processes in Scotland.

Balance of Opinion for the Scottish Government's rationale for seeking enabling powers which would better allow future amendments to the 1994 Habitats Regulations

Responses to the closed Questions 4 and 5 fell broadly in line with responses to Questions 1 and 2.

An overall majority of 63% of all respondents agreed with the Scottish Government's rationale in closed responses to Question 4. Again, only 7% of all respondents did not agree with the rationale and a significant number were either unsure (5%), provided other views (12%) or did not answer the closed question (12%).

Again, many respondents provided additional views in the open text fields regardless of their response or lack of response to the closed question.

Amongst those who agreed with the rationale, the proportion of organisational and individual responses were roughly in line. However, 10% of organisational respondents did not agree, with none of the individuals responding this way. Again, there were also significantly more comments provided by organisational respondents.

In response to Question 5, a smaller overall majority of 51% agreed that there should be limitations on how Scottish Ministers can use the enabling powers being sought to better allow future amendments to the 1994 Habitats Regulations. Similarly to Question 2, 17% disagreed that there should be limitations whilst, again, a significant number were unsure (10%), provided other views (7%) or did not answer the closed question (15%).

Question 6 invited respondents to "Please provide examples and any information which you think would be useful to support your views" in an open text field.

Views provided by respondents in the open text fields for Questions 4 to 6 tended to cover all three questions and so have been analysed together when identifying common themes and issues. Where comments referred to a specific question this has been reflected in the analysis.

Table 5 – Question 4: Do you agree with the Scottish Government’s rationale for seeking enabling powers which would better allow future amendments to the 1994 Habitats Regulations?

Respondent type	Yes	No	Unsure	Other	No Answer
Individual	7 (64%)	0 (0%)	1 (9%)	2 (18%)	1 (9%)
Organisation	19 (63%)	3 (10%)	1 (3%)	3 (10%)	4 (13%)
Total	23 (63%)	3 (7%)	2 (5%)	5 (12%)	5 (12%)

Table 6 – Question 5: Do you agree there should be limitations on how Scottish Ministers can use the enabling powers being sought to better allow future amendments to the 1994 Habitats Regulations?

Respondent type	Yes	No	Unsure	Other	No Answer
Individual	3 (27%)	4 (36%)	2 (18%)	1 (9%)	1 (9%)
Organisation	18 (60%)	3 (10%)	2 (7%)	2 (7%)	5 (17%)
Total	21 (51%)	7 (17%)	4 (10%)	3 (7%)	6 (15%)

Key Themes and Issues Raised

Similar themes were identified in responses to Questions 4 to 5 as to those identified in Question 1 to 3. Respondents often referred back to their answers given to Questions 1 to 3, indicating that their views were applicable to enabling powers which would better allow future amendments in relation to both the EIA regimes and the 1994 Habitats Regulations.

These themes are drawn out again in the analysis below as well as any unique themes and issues which were found only in responses relating to the rationale for seeking enabling powers which would better allow future amendments to the 1994 Habitats Regulations.

Rationale for the enabling powers

Again, many comments focussed on the Scottish Government's rationale for the enabling powers. As with the proposed powers relating to the EIA regimes, some respondents provided further detail outlining their support for the proposed enabling powers. For example, a respondent noted their recognition and support for the principle that there needs to be flexibility within the 1994 Habitats Regulations. It was also noted that being able to amend the regulations will help address the nature and climate crises by making the legislation for the National Site Network in Scotland fit for purpose in the 21st century, and allow continued administrative improvements, improving public sector efficiencies.

Similarly, some respondents who did not agree with the Scottish Government rationale raised issues with the level of detail and clarity provided in the consultation. It was suggested that the consultation offered insufficient specific detail on the nature or necessity of reforms, and lack of detail on how the enabling powers may be used. As with the EIA regimes, it was suggested that existing powers should be sufficient.

Some respondents also thought that the examples provided in the consultation covered only relatively "small" and administrative amendments. There was concern amongst these respondents that too little detail was provided regarding how the powers may be used for any larger scale reform.

Two respondents suggested that any changes to the 1994 Habitats Regulations should be made via primary legislation, in order to provide clarity about the changes, the purpose of any changes and ensure appropriate levels of parliamentary scrutiny. Reasoning given for this included the criticality and effectiveness of the 1994 Habitats Regulations in safeguarding Scotland's biodiversity and the potential for unintended consequences on ecological systems. It was suggested that significant reform of the 1994 Habitats Regulations is unnecessary and that the focus should be on effective implementation.

A respondent also noted the existing derogations process under the 1994 Habitats Regulations.

Public Consultation and Stakeholder Engagement

As with the questions relating to the EIA regimes – and with some respondents referring back to those responses – the most common concern, expressed firmly by many respondents, was that there should be a robust public consultation on any future amendments to the 1994 Habitats Regulations. This would be in order to provide an appropriate level of transparency and opportunity for relevant stakeholders and the wider public to comment on and participate in the changes. It was also highlighted again that this process should also be subject to appropriate impact assessments.

These views were found especially amongst those who agreed with the Scottish Government rationale for seeking the enabling powers but included some others. They were also expressed across the variety of individuals and organisational categories.

Environmental Standards

Despite a majority of respondents agreeing with the rationale for enabling powers, there was, again, significant concern amongst some respondents that the environmental protections offered by the 1994 Habitats Regulations could be weakened by future amendments.

In response to Question 5, one respondent specifically suggested that limits should be in place so that enabling powers are used by Ministers to maintain and strengthen, but not weaken, the 1994 Habitats Regulations.

This was echoed by some other respondents. Specific suggestions included that:

- safeguards should be built in to prevent dilution of the current standards which could include that changes in protected areas would only be allowed where designations were to be enhanced or protected areas enlarged
- the enabling powers should only be for the purposes of maintaining and enhancing the function of the 1994 Habitats Regulations, including keeping pace with wider developments in environmental law and standards.

- a clear process for individual citation changes in protected areas should be complemented by a wider framework for ensuring adequate conservation across the network.

Again, a few respondents specifically suggested that limitations should be achieved through inclusion of a “non-regression” clause or test.

Conditions suggested for this were repeated for those suggested in relation to the EIA regimes in Questions 1 to 3, including requirements for Scottish Ministers to lay before Parliament and publish a statement explaining why they are satisfied that this non regression test has been met.

Some additional conditions suggested included that:

- all negative impacts on European sites are fully compensated-for;
- legal protection for all species currently listed in the 1994 Habitats Regulations is maintained or strengthened.

However, in line with the majority of closed responses agreeing with the rationale for Scottish Government seeking the enabling powers, there was also significant recognition, including amongst some of the respondents with concerns, that flexibility and adaptability was necessary and could provide benefits to environmental standards. It was suggested that they could be used to deliver improved environmental outcomes and help ensure Scotland keeps pace with wider developments in environmental law and standards.

A respondent acknowledged it would be difficult to define any limitations of what the enabling powers could cover, and this could introduce further inflexibility that was intended to be removed by the enabling powers. In particular they highlighted how setting out limitations to how the power to amend the 1994 Habitats Regulations could be used could inadvertently bump up against the power in section 1 of the UK withdrawal from the European Union (Continuity) (Scotland) act 2021 (“the Continuity Act”). They pointed out that the Continuity Act also sets out obligations on Scottish Ministers to apply the four environmental principles when proposing new legislation (section 14) and that this should provide confidence that amendments to the 1994 Habitats Regulations will maintain the relevant environmental protections.

One respondent commented that allowing for boundaries of designated sites to be changed, allowing for the removal as well as addition of

designated features, and allowing for the inclusion of features that are not already protected or present would all be positive in supporting delivery of the Scottish Biodiversity Strategy and climate change adaptation.

Another highlighted that enabling powers offered an opportunity to provide a much clearer and coherent legal framework for what the 1994 Habitats Regulations require and how they fit with other legal provisions. Whilst another suggested that it could improve environmental standards by making legislation specifically for the National Site Network to make it more effective. They also highlighted that the ability to implement administrative improvements as and when they are identified could help improve public sector efficiencies.

Some responses from renewables organisations agreed that a wider range of powers would allow sites to be monitored, managed, and adapted to meet environmental challenges and help deliver offshore wind capacity necessary to meet 2045 targets.

Scottish Parliamentary Procedures

Respondents tended to repeat their views here regarding the legislative procedures necessary for appropriate Scottish Parliamentary scrutiny of any amendments.

A few respondents proposed a requirement that any secondary legislation brought forward under the enabling powers is subject to the full affirmative procedure in order to provide appropriate parliamentary scrutiny.

Another respondent suggested that minor amendments could be made by negative procedure, whereas wider-ranging amendments should be subject to greater Parliamentary scrutiny than that offered by the negative procedure.

Consistency across legislative regimes

Some respondents again expressed concern that the enabling powers presented a potential divergence between inshore and offshore and with wider UK approaches to the 1994 Habitats Regulations. Some respondents had stated that their initial response to the EIA regimes their views on this applied to the EIA regimes and the 1994 Habitats Regulations.

Respondents again suggested that the potential for divergence should be considered in Impact Assessments produced as part of an amendments process.

There was also acknowledgement that the current legal framework is already fragmented. One respondent suggested that this offered an opportunity to provide a much clearer and coherent legal framework for what the 1994 Habitats Regulations require and how they fit with other legal provision.

Section C: Impact assessments

Impacts on the costs and burdens placed on businesses, the public sector and voluntary sector (Q7-8)

Balance of opinion

Opinions regarding the impacts of both the proposed enabling powers in relation to Scotland’s EIA regimes and the 1994 Habitats Regulations on businesses, the public sector and voluntary sector were more mixed but fell broadly in line across the closed questions related to each.

More respondents agreed (39% for EIA regimes, 34% for the 1994 Habitats Regulations) that the proposed enabling powers in relation to Scotland’s EIA regimes and the 1994 Habitats Regulations will not impact directly or indirectly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations, than did not (17% for both).

Across both questions, many respondents responded that they were unsure, had other views or did not answer the closed question.

Unlike Questions 1-6, all respondents who chose not to answer these closed questions also provided no written comments in the free text boxes. This was repeated in all remaining questions of the consultation.

Table 7 – Question 7: Do you agree with our assessment that the proposed enabling powers in relation to Scotland’s EIA regimes will not impact directly or indirectly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations?

Respondent type	Yes	No	Unsure	Other	No Answer
Individual	3 (27%)	4 (36%)	1 (9%)	2 (18%)	1 (9%)
Organisation	13 (43%)	3 (10%)	5 (17%)	4 (13%)	5 (17%)
Total	16 (39%)	7 (17%)	6 (15%)	6 (15%)	6 (15%)

Table 8 – Question 8: Do you agree with our assessment that the proposed enabling powers in relation to the 1994 Habitats Regulations will not impact directly or indirectly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations?

Respondent type	Yes	No	Unsure	Other	No Answer
Individual	2 (18%)	4 (36%)	2 (18%)	2 (18%)	1 (9%)
Organisation	12 (40%)	3 (10%)	5 (17%)	5 (17%)	5 (17%)
Total	14 (34%)	7 (17%)	7 (17%)	7 (17%)	6 (15%)

Key Themes

Potential impacts directly or indirectly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations

As stated above, more respondents agreed that the enabling powers in relation to Scotland’s EIA regimes and the 1994 Habitats Regulations were not likely to result in any immediate impact directly or indirectly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations. However, some respondents did highlight potential impacts as a result of future use of the powers. This view was shared particularly amongst those who did not agree in the closed responses to Questions 7 and 8.

Some respondents therefore suggested that in advance of any future change or amendment, a Business Regulations Impact Assessment (“BRIA”) and other relevant impact assessments to consider any potential consequences they may have on businesses, the public sector, voluntary and community organisations. Respondents were also careful to note that this should be subject to consultation and engagement with relevant stakeholders.

Potential impacts that were highlighted, and which could potentially be addressed in a BRIA and any other relevant assessment on future amendments or changes included:

- Any deviation between Scottish and UK Government approaches could place additional burden on affected businesses working across both regimes in developing internal policy, governance, data management and systems, which could ultimately impact customer bills.
- Obligations and burdens placed on land managers, businesses, the public sector and communities for restoration and the costs to be borne by them.
- Regulatory compliance costs, such as the resources needed to screen for, apply to, write, consult, and submit EIAs. It was suggested that any changes to compliance costs associated with EIA amendments could affect the financial viability of a project development and could also affect business investment confidence for developers and investors.
- Potential delays in project development and determinations through regulatory uncertainties or inconsistent interpretations of new requirements. It was highlighted that this was already an issue in some sectors, including aquaculture.

Some respondents also thought that the enabling powers could allow for legislative changes to be implemented that could have a beneficial impact on businesses. The renewables industry in particular was highlighted and the potential that amendments could enable a rapid deployment of renewables.

Lack of detail

A few respondents again raised that they felt there was not enough detail provided at this stage to assess whether or how the enabling powers could have impacts on businesses, the public sector, voluntary and community organisations. One respondent also suggested that it was not possible to assess this as the possible changes were not tightly enough defined.

Effect on Island Communities (Q9-10)

More respondents agreed (34% for EIA regimes, 32% for the 1994 Habitats Regulations) that the proposed enabling powers would not have any effect on an island community that is different from the effect on other communities, than did not (7% for EIA regimes, 5% for the 1994 Habitats Regulations).

Across both questions, a significant number of respondents responded that they were unsure (29% for EIA regimes, 32% for the 1994 Habitats Regulations). More respondents chose to provide no answer to these closed questions than any other in the consultation (24%) and those respondents did not provide further comments in the free text fields.

Table 9 – Question 9: Do you agree with our assessment that the proposed enabling powers in relation to Scotland’s EIA regimes will not have any effect on an island community that is different from the effect on other communities?

Respondent type	Yes	No	Unsure	Other	No Answer
Individual	3 (27%)	3 (27%)	3 (27%)	0 (0%)	2 (18%)
Organisation	11 (37%)	0 (0%)	9 (30%)	2 (7%)	8 (27%)
Total	14 (34%)	3 (7%)	12 (29%)	2 (5%)	10 (24%)

Table 10 – Question 10: Do you agree with our assessment that the proposed enabling powers in relation to the 1994 Habitats Regulations will not have any effect on an island community that is different from the effect on other communities?

Respondent type	Yes	No	Unsure	Other	No Answer
Individual	3 (27%)	2 (18%)	4 (36%)	0 (0%)	2 (18%)
Organisation	10 (33%)	0 (0%)	9 (30%)	3 (10%)	8 (27%)
Total	13 (32%)	2 (5%)	13 (32%)	3 (7%)	10 (24%)

Key Themes

Potential Effects on Island Communities

A few respondents again suggested that, although the proposed enabling powers in relation to Scotland’s EIA regimes and the 1994 Habitats Regulations will not likely have any effect on an island community that is

different from the effect on other communities, there may be effects to consider when the powers are used. They suggested that this was another important reason for full consultation in advance of the powers being used and that this should include appropriate assessments.

Potential effects on island communities that could result from future amendments were identified by some respondents. These included:

- Island businesses and communities in Scotland are especially vulnerable to climate change impacts, and may face more immediate threats from sea-level rise, coastal erosion, and extreme weather events.
- Circumstances specific to Island Communities by virtue of transport, infrastructure and local resources.
- Many island regions host a higher density of European designated sites (for example Special Areas for Conservation, and Special Protection Areas etc.). Any changes to the 1994 Habitats Regulations could therefore have disproportionate effects on areas with higher designations impact on nearby businesses and communities.
- One Renewables respondent pointed to potential issues in processing of applications and consulting on developments which could arise due to increasing number of proposals from developers within the island regions. They suggested that changes to the EIA regimes without full understanding of these potential issues could result in impacts to the Local Planning Authorities of Islands and the activities of developers.

Lack of detail

A few respondents raised that they felt there was not enough detail provided at this stage to assess whether or how the enabling powers could have any effect on an island community that is different from the effect on other communities. One respondent again suggested that it was not possible to assess this as the possible changes were not tightly enough defined.

Impacts on People with Protected Characteristics (Q11-12)

Balance of opinion

Many more respondents agreed (49% for EIA regimes, 40% for the 1994 Habitats Regulations) that the proposed enabling powers in relation to the EIA regimes will not have any impact on people with protected characteristics, than did not (2% for EIA regimes, 3% for the 1994 Habitats Regulations).

Across both questions many respondents responded that they were unsure, had other views or did not answer the closed question. All respondents who chose not to answer these closed questions also provided no written comments in the free text boxes.

Table 11 – Question 11: Do you agree with our assessment that the proposed enabling powers in relation to the EIA regimes will not have any impact on people with protected characteristics?

Respondent type	Yes	No	Unsure	Other	No Answer
Individual	6 (55%)	1 (9%)	2 (18%)	1 (9%)	1 (9%)
Organisation	14 (47%)	0 (0%)	6 (20%)	2 (7%)	8 (27%)
Total	20 (49%)	1 (2%)	8 (20%)	3 (7%)	9 (22%)

Table 12 – Question 12: Do you agree with our assessment that the proposed enabling powers in relation to the 1994 Habitats Regulations will not have any impact on people with protected characteristics?

Respondent type	Yes	No	Unsure	Other	No Answer
Individual	5 (50%)	1 (10%)	3 (30%)	1 (10%)	0 (0%)
Organisation	11 (37%)	0 (0%)	6 (20%)	5 (17%)	8 (27%)
Total	16 (40%)	1 (3%)	9 (23%)	6 (15%)	8 (20%)

Key Themes

Potential Impacts on People with Protected Characteristics

Respondents provided fewer comments to these questions than any others in the consultation. A few respondents again suggested that, although the proposed enabling powers in relation to Scotland's EIA regimes and the 1994 Habitats Regulations will not likely have any impact on people with protected characteristics, there may be impacts to consider when the powers are used.

They suggested that this was another important reason for full consultation in advance of the powers being used and that this should include appropriate equality impact assessments, including engagement with relevant representative organisations, to ensure changes to the rules take account of the needs of various groups within society.

One respondent specified that the 1994 Habitats Regulations could potentially impact on people with protected characteristics who work on sites where assessments are undertaken, if those who work on sites are forced to stop while assessments are taking place, as they may experience additional monetary impact.

Lack of detail

A few respondents again raised that they felt there was not enough detail provided at this stage to assess whether or how the proposed enabling powers in relation to the EIA regimes and the 1994 Habitats Regulations will not have any impact on people with protected characteristics. One respondent again suggested that it was not possible to assess this as the possible changes were not tightly enough defined.

Appendix 1: Consultation Questions

Question 1

Do you agree with the Scottish Government's rationale for seeking enabling powers which would better allow future amendments in relation to the EIA regimes set out in this consultation?

Legislation that would be covered by the enabling powers

The enabling powers would apply to the following legislation, in relation to EIA only:

- i. [Marine Works \(EIA\) \(Scotland\) Regulations 2017](#)
- ii. [Town and Country Planning \(EIA\) \(Scotland\) Regulations 2017](#)
- iii. [Agriculture, Land Drainage and Irrigation Projects \(EIA\) \(Scotland\) Regulations 2017](#)
- iv. [Forestry \(EIA\) \(Scotland\) Regulations 2017](#)
- v. [Flood Risk Management \(Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts\) \(Scotland\) Regulations 2010](#)
- vi. [Transport and Works \(Scotland\) Act 2007](#) (in relation to EIA only)
- vii. [Transport and Works \(Scotland\) Act 2007 \(Applications and Objections Procedure\) Rules 2007](#) (in relation to EIA only)
- viii. [Roads \(Scotland\) Act 1984](#) (in relation to EIA only)
- ix. Schedule 3 of the [Harbours Act 1964](#) (in relation to EIA only)

Note: The proposed enabling powers would not cover the [Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#). Given that electricity generation is a reserved matter, an enabling power for these regulations needs to be transferred separately by the UK Government, which was done previously prior to EU Exit. The UK Government made a commitment to delivering this via a Scotland Act Order before the end of the current UK Parliament during the passage of the Levelling-up and Regeneration Act 2023.

Yes

No

Unsure

Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 2

Do you agree there should be limitations on how Scottish Ministers can use the enabling powers being sought to better allow amendments to the EIA regimes?

Yes

No

Unsure

Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 3

Do you have views on how we can set the scope of/limits on these enabling powers?

Please provide examples and any information which you think would be useful to support your views.

Question 4

Do you agree with the Scottish Government's rationale for seeking enabling powers which would better allow future amendments to the 1994 Habitats Regulations?

Yes

No

Unsure

Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 5

Do you agree there should be limitations on how Scottish Ministers can use the enabling powers being sought to better allow future amendments to the 1994 Habitats Regulations?

Yes

No

Unsure

Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 6

Do you have views on how we can set the scope of/limits on these enabling powers?

Please provide examples and any information which you think would be useful to support your views.

Question 7

Do you agree with our assessment that the proposed enabling powers in relation to Scotland's EIA regimes will not impact directly or indirectly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations?

Yes

No

Unsure

Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 8

Do you agree with our assessment that the proposed enabling powers in relation to the 1994 Habitats Regulations will not impact directly or indirectly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations?

Yes

No

Unsure

Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Island communities

Section 7 of the Islands (Scotland) Act 2018 states that a relevant authority – which includes Scottish Ministers – must have regard to island communities when carrying out its functions. Scotland's islands face particular challenges around distance, geography, connectivity and demography, so it is important that this is considered when developing the proposals in this consultation. It is also important that we ensure that the islands receive fair and equitable treatment and that policy outcomes are tailored to their unique circumstances.

As enabling powers give the Scottish Ministers the power to amend certain regulations in the future but do not in and of themselves amend any primary or secondary legislation, we believe that the powers we are consulting on will not have any effect on an island community which is significantly different from the effect on other communities. Any future use of the powers would be subject to public consultation and the appropriate impact assessments.

Question 9

Do you agree with our assessment that the proposed enabling powers in relation to Scotland's EIA regimes will not have any effect on an island community that is different from the effect on other communities?

Yes

No

Unsure

Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 10

Do you agree with our assessment that the proposed enabling powers in relation to the 1994 Habitats Regulations will not have any effect on an island community that is different from the effect on other communities?

Yes

No

Unsure

Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Equalities

The Equality Act 2010 provides a framework to ensure we address inequality for people with protected characteristics listed in the Act. These are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief

- Sex
- Sexual orientation

An Equality Impact Assessment (“EQIA”) is a tool to help to anticipate the needs of diverse groups when making decisions about projects, policy or service delivery, and helps us to meet our duties under the Act.

As enabling powers give the Scottish Ministers the power to amend certain regulations in the future but do not in and of themselves amend any primary or secondary legislation. We believe that the powers we are consulting on will not have any effect on people with protected characteristics. Any future use of the powers would be subject to public consultation and the appropriate impact assessments.

Question 11

Do you agree with our assessment that the proposed enabling powers in relation to the EIA regimes will not have any impact on people with protected characteristics?

Yes

No

Unsure

Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 12

Do you agree with our assessment that the proposed enabling powers in relation to the 1994 Habitats Regulations will not have any impact on people with protected characteristics?

Yes

No

Unsure

Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Environment

In Scotland, the Environmental Assessment (Scotland) Act 2005 requires public bodies including the Scottish Government, to assess, consult on, and monitor the likely impacts of plans, programmes and strategies they are preparing that are likely to have a significant impact on the environment. The assessment is known as a Strategic Environmental Assessment (“SEA”) and helps to better protect the environment and ensure the public are better informed when being consulted on proposals.

We have reached the opinion that the introduction of the proposed enabling powers themselves would not have a significant impact on the environment. Future use of the powers by Scottish Ministers could potentially have significant impacts on the environment (either positive or negative), and the requirement for Strategic Environmental Assessment would therefore need to be considered on a case-by-case basis. A [pre-screening report](#) to this effect has been prepared and submitted to the SEA Gateway.

Further comments

Question 13

Do you have any further comments you wish to add?

Please provide any further comments.

Appendix 2: List of organisational respondents

Organisation Name	Type of Organisation
Aberdeenshire Council	Local Authority and Community Groups
BlueFloat Energy and Renantis Partnership	Renewables
Cairngorms National Park Authority	Local Authority and Community Groups
Chartered Institute of Ecology and Environmental Management (CIEEM)	Consultancy and Professional representative body
Environmental Standards Scotland	Public Body
Game & Wildlife Conservation Trust	Consultancy and Professional representative body
Glasgow City Council	Local Authority and Community Groups
Historic Environment Scotland	Public Body
Invenergy	Renewables
Land Use Consultants (LUC)	Consultancy and Professional representative body
Law Society of Scotland	Consultancy and Professional representative body
Mott MacDonald Limited	Consultancy and Professional representative body
NatureScot	Public Body
National Farmers Union (NFU) Scotland	Consultancy and Professional representative body
Offshore Energies UK (OEUK)	Renewables

Perth and Kinross Council	Local Authority and Community Groups
Renewable Energy Systems Limited	Renewables
RenewableUK	Renewables
The Royal Society for the Protection of Birds (RSPB) Scotland	Environmental NGO
Salmon Scotland	Food Production – Marine
Scottish Environment LINK	Environmental NGO
Scottish Fishermen's Federation	Food Production – Marine
Scottish Land and Estates	Consultancy and Professional representative body
Scottish Organics Producers Association	Food Production – Terrestrial
Scottish Renewables	Renewables
Speyside Community Council	Local Authority and Community Groups
Scottish and Southern Electricity Networks (SSEN) Distribution	Renewables
Sustainable Inshore Fisheries Trust	Environmental NGO
The British Association for Shooting and Conservation	Consultancy and Professional representative body
The Metropolitan Glasgow Strategic Drainage Partnership	Public Body



© Crown copyright 2024



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83601-937-4 (web only)

Published by The Scottish Government, November 2024

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1519310 (11/24)

W W W . g o v . s c o t