

# Development Management Practice Note

PRACTICE NOTE

9B

## Screening projects for Environmental Impact Assessment (EIA)

December 2023

## Contents

Preamble .....	2
1. Introduction: The role of screening within EIA .....	3
2. Screening within the EIA Regulations .....	4
2.1 Projects that always require EIA – Schedule 1 .....	6
2.2 Projects that may require EIA – Schedule 2 .....	6
2.3 The Screening Determination Process for Schedule 2 Development .....	8
2.4 Assistance in Determining the Presence of Significant Effects – Schedule 3 .....	10
2.5 Non-standard Screening Approaches .....	10
3. Compliance Risks in undertaking the Screening Process .....	12
3.1 Key Procedural Risks .....	12
3.2 Important EIA Case Law Relevant to Screening .....	15
4. Practical Steps in Screening a Schedule 2 Development .....	17
4.1 Step 1: Identifying whether a proposed development is a Schedule 2 Development .....	17
4.2 Step 2: Identifying if significant effects may occur and recording reasons for that conclusion ..	18
4.3 Step 3: Issuing the Screening Determination and making it available for public inspection.....	22
4.4 The role of screening templates and checklists .....	23
5. Considering Transboundary Effects in EIA Screening .....	24
6. Further Reading and Key References .....	26
Appendix 1: Improving Regulatory Clarity requesting and making a Screening Determination .....	27

## Preamble

**This Development Management Practice Note (DMPN) is not intended to replace the need for careful judgement by planning authorities (PAs) and those involved in environmental impact assessment (EIA) screening as part of the wider planning process. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation and case law referred to in this document and any subsequently emerging case law or legislative change. If any discrepancy or conflict exists between the practice note and the law, the provisions of the law will prevail.**

This DMPN is intended to assist PAs and users of the land use planning system understand the regulatory procedural requirements and legal principles relating to determining whether a proposed development is required to undertake EIA. The note deals with both procedures and good practice. The note does not introduce any legislative change nor amend existing regional policy. The emphasis is very much on advice to support informed decision-making but where the practice note touches on legislative requirements and/or legal principles which apply these are highlighted.

The process for determining whether a proposed development requires an EIA is the responsibility of the relevant PA and is commonly termed “screening” or “EIA screening”. Under the **Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017**<sup>1</sup> (“the EIA Regulations”) all projects that are considered likely to have significant effects on the environment constitute *EIA development* and must follow the EIA procedures before planning permission or any subsequent consent can be lawfully granted. Under the EIA Regulations, EIA development is defined as:

- Schedule 1 development under the EIA Regulations;
- Schedule 2 development under the EIA Regulations likely to have significant effects on the environment by virtue of factors such as its nature, size or location; or
- development directed as being EIA development by the Department under regulation 3(1)(a) of the EIA Regulations.

This practice note addresses a range of areas which may be useful for a planning authority<sup>2</sup> (PA) to understand in relation to the management of EIA development:

- the content of the EIA Regulations as they relate to screening;
- the compliance risks that need to be managed when undertaking screening;
- how to identify Schedule 2 development and whether significant environmental effects might be considered likely;
- communicating screening determination findings, including via the public register;
- the possible role of screening templates; and
- good practice tips for effective EIA screening.

Developers and other stakeholders will find it useful to understand more about the effective management processes PAs will apply in relation to the EIA screening of proposed developments.

---

<sup>1</sup> S.R.2017 No.83 (as amended)

<sup>2</sup> Where ‘planning authority’ or ‘PA’ appears in this Practice Note it refers primarily to a council acting in its role as local planning authority. However, dependent upon the particular circumstances of an individual case the function of planning authority may in practice also be fulfilled by the Department for Infrastructure or the Planning Appeals Commission.

## 1. Introduction: The role of screening within EIA

1.1 Screening is the initial activity undertaken as part of the environmental impact assessment (EIA) process required by the **Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017** (“the EIA Regulations”). The role of screening is to determine whether or not a project is EIA development and therefore whether an EIA is required.

1.2 Planning authorities (PAs) – district councils (“councils”), the Department for Infrastructure (“the Department”) and the Planning Appeals Commission (PAC) – are legally prohibited from granting planning permission, or subsequent consent, for EIA development unless an environmental impact assessment has been carried out in respect of that development<sup>3</sup>. As such, a PA must be able to effectively identify proposed developments and subsequent applications (e.g. reserved matters and discharge of conditions) that meet or exceed the definitions, descriptions, thresholds and criteria in the EIA Regulations, and determine whether those that meet the definition of a Schedule 2 development are likely to have significant effects on the environment. This is the essence of the EIA screening process.

1.3 As Schedule 1 developments are defined in Regulation 2 as EIA development then in the majority of cases a PA’s screening determinations will relate to Schedule 2 developments. Consequently, this Practice Note focusses mainly on that area of Schedule 2 screening.

1.4 The key sections of this Practice Note cover:

- Screening within the EIA Regulations (Section 2);
- Compliance risks in undertaking the Screening Process (Section 3);
- Practical steps in screening a Schedule 2 development (Section 4);
- Considering transboundary effects in EIA screening (Section 5).

1.5 The remainder of the Practice Note provides information on:-

- Further reading and references on EIA matters (Section 6); and
- An informal consolidation of regulation 8 of the EIA Regulations covering only those elements related to screening (Appendix 1)<sup>4</sup>.

---

<sup>3</sup> Regulation 4 of the EIA Regulations.

<sup>4</sup> As advised in the Preamble, the Practice Note is not intended as a source of definitive legal advice and the actual legislation and extant case law will prevail.

## 2. Screening within the EIA Regulations

2.1 The delivery of effective EIA screening involves a combination of the correct application of regulatory procedures and the exercise of the PA's professional judgement. As such, it is essential for planning officers to have a sound understanding of which parts of the EIA Regulations are relevant to the screening process.

### Understanding key screening terminology – Regulation 2

2.2 This section highlights some of the key screening terminology defined in regulation 2 of the EIA Regulations.

Note: In this section the use of *italic* text indicates direct quotation from regulation 2 of the EIA Regulations and underlining indicates that the underlined term is separately discussed within this section.

#### **“EIA development”**

“EIA development” means -

(a) Schedule 1 development;

(b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location; or

(c) directed as such under regulation 3(1)(a)<sup>5</sup>.

In relation to screening, identifying that an application is *EIA development* is one of two possible outcomes of the screening process, the other being that the development is not EIA development; either way this is a “screening determination”.

#### **“Screening determination”**

“Screening determination” has the meaning given to it by regulation 8(1)(a) –, that is “*a determination as to whether a proposed development is or is not EIA development*”.

This covers all of the decision-making under regulation 8(1)(a).

The majority of screening determinations in practice relate to Schedule 2 development which is discussed further in Section 2.3 below.

#### **“Schedule 1 development”**

“Schedule 1 development” means development, other than exempt development, of a description mentioned in Schedule 1.

For screening purposes, a development proposal that meets a definition set out in Schedule 1 of the EIA Regulations is within the definition of “EIA development”, see above. Section 2.1 below provides further advice in relation to Schedule 1 development.

#### **“Schedule 2 development”**

“Schedule 2 development” means development, other than exempt development, of a description mentioned in column 1 of the table in Schedule 2 where:

(a) any part of that development is to be carried out in a sensitive area; or

(b) any applicable threshold or criterion in the corresponding part of column 2 of that table is respectively exceeded or met in relation to that development.

Note: the definition of exempt development as set out in regulation 2, is set out below.

Schedule 2 of the EIA Regulations sets out a broader list of development types that have the potential to lead to significant environmental effects. Further details of the types of development and the applicable thresholds and criteria included in Schedule 2 are set out in Section 2.2 below.

<sup>5</sup> Regulation 3(1) The Department may direct that –

(a) A particular development of a description described in column 1 of the table in Schedule 2 and which does not meet the conditions in sub-paragraph (a) and (b) of the definition of “Schedule 2 development” is EIA Development;

PAs must correctly identify development applications that meet the definition of *Schedule 2 development* and, where they do so, then undertake a screening determination process in order to complete the screening determination in accordance with regulation 8.

**“Sensitive area”**

*“Sensitive area” means any of the following-*

- a) an area of special scientific interest, that is to say, land so declared under Article 28 of the Environment (Northern Ireland) Order 2002;*
- b) an area of outstanding natural beauty, that is to say, an area so designated under Article 14(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;*
- c) a National Park, that is to say, an area so designated under Article 12(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;*
- d) a property appearing on the World Heritage List kept under Article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage;*
- e) a scheduled monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995;*
- f) a European Site within the meaning of regulation 9 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995.*

The presence of a proposal for *development, other than exempt development*, of a description mentioned in column 1 of the table in Schedule 2 within a *sensitive area* immediately determines that the proposal is *Schedule 2 development*.

**“Selection criteria”** means the criteria set out in Schedule 3

A PA must take into account the selection criteria when carrying out a screening determination process to determine whether a development proposal that meets the definition of Schedule 2 development is EIA development. The content of Schedule 3 and its selection criteria are discussed further in Section 2.4 below.

**“Subsequent application”**<sup>6</sup> means an application for approval of a matter where the approval:

- a) is required by or under a condition to which a planning permission is subject; and*
- b) must be obtained before all or part of the development permitted by the planning permission may be begun.*

The need to screen development proposals for EIA is therefore not limited to initial applications for planning permission. The EIA Regulations also require the screening of *subsequent applications* that are linked to any initial permission granted.

The screening process applied to subsequent applications depends on whether the original planning application was EIA development and was accompanied by an Environmental Statement. Further details of this are provided in Section 2.5 below.

**“Exempt development”**

*“Exempt development” means development in respect of which the Department has made a direction under regulation 3(1)(b) or 3(1)(c) or the Secretary of State has made a direction under regulation 62 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.*

---

<sup>6</sup> A typographical error in the EIA Regulations means that the numbering of (g) and (h) should read (a) and (b).

## 2.1 Projects that always require EIA – Schedule 1

Schedule 1 of the EIA Regulations identifies different types and scales of development that are always considered to be EIA development (other than exempt development). In addition to the specific 23 development types listed in Schedule 1, a 24th category is included which relates to a change or extension to a development of any of the other categories listed in the Schedule, where the change / extension itself meets the relevant Schedule 1 threshold.

Development, other than exempt development, that meets a description set out in Schedule 1 is EIA development, as defined by regulation 2. However, a PA can be required to deliver a screening determination if regulation 8(1)(a) is triggered. In the majority of cases applicants are likely to be aware that their proposal is Schedule 1 development – and thus EIA development.

Schedule 1 covers a broad range of development types from power stations, chemical works, major transport, pipeline and water resource infrastructure through waste disposal and quarrying to intensive agriculture and industrial plants. The critical issue is whether the proposed development meets, or exceeds, the thresholds and or criteria included in the relevant description within Schedule 1, for example:

*Schedule 1 - 17.*

*Installations for the intensive rearing of poultry or pigs with more than—*

*(a) 85,000 places for broilers or 60,000 places for hens;*

*(b) 3,000 places for production pigs (over 30 kg); or*

*(c) 900 places for sows.*

It should be noted that on occasions a PA may receive an application that is close to, but below, the threshold set out in Schedule 1. An example of such an occasion is discussed below - a proposal for an intensive pig rearing facility with places for 850 sows. In such circumstances the development would be *Schedule 2 development* (as the trigger in Schedule 1(17)(c) is *900 places for sows*) and require a further screening determination process to determine whether that development is EIA development. Given that the size of the proposal is close to the automatic *EIA development* trigger set for a *Schedule 1 development* of the same type, the PA would need to pay close attention to its scale in making its judgement on whether the proposal is likely to lead to significant environmental effects.

It is important to note that it is the scale and capacity of the proposed development, as related to the relevant Schedule 1 criteria, which is used to determine whether a proposal is Schedule 1 development. To continue the example from above, an application for a pig rearing farm with an average operation of 700 sows, but a maximum capacity of 1000 sows, would be classed as a Schedule 1 development as the project – if consented – would have places for more than the 900 sows threshold set out in Schedule 1.17.

It is also worth noting that an application under Section 54 of the Planning Act (Northern Ireland) 2011 (*Permission to develop land without compliance with conditions previously attached*) that was originally a Schedule 1 development, and thus EIA development, remains so within this process. This is the case as a Section 54 application is necessarily for the same development as the previously granted permission. Thus, the Section 54 application must be subject to the requirements of the EIA process, including being accompanied by an Environmental Statement. Section 2.5, below, provides further discussion of Section 54 applications and the EIA screening process.

## 2.2 Projects that may require EIA – Schedule 2

Schedule 2 of the EIA Regulations includes a table with 12 broad categories of development. The table also includes a 13th category that relates to any change or extension to either a development listed in the other 12 categories of Schedule 2, or a development of a type listed in Schedule 1 (*other than a change of extension within paragraph 24 of that schedule*). The 13th category in Schedule 2 also applies to proposals of a type set out in Schedule 1 where the development is exclusively or mainly for testing new methods or products and will not be used for more than 2 years<sup>7</sup>.

<sup>7</sup> Schedule 2(13)(c) of the EIA Regulations

The broad development categories in Schedule 2 are:

- 1) Agriculture and aquaculture
- 2) Extractive industry
- 3) Energy industry
- 4) Production and processing of metals
- 5) Mineral industry
- 6) Chemical industry
- 7) Food industry
- 8) Textile, leather, wood and paper industries
- 9) Rubber industry
- 10) Infrastructure projects
- 11) Other projects
- 12) Tourism and leisure
- 13) Changes or extensions or those of a description under 13(c)

Unless in a *sensitive area*, just because a proposed development is of a type in the Schedule 2 table does not mean it is automatically a *Schedule 2 development* and thus require a screening determination. This is because the Schedule 2 table includes a second column that sets out specific thresholds and criteria for each sub-category of development type, which a proposal must meet / exceed for it to be a *Schedule 2 development*.

PAs must be able to accurately identify potential *Schedule 2 development* proposals so that they can be subjected to the screening determination process. This requires a good understanding of both part **(a)** and **(b)** in the definition for Schedule 2 Development (above).

Whether development meets the first aspect of the definition for Schedule 2 Development **(a)** (above) is relatively straightforward. Is the development proposal for *development, other than exempt development, of a description mentioned in column 1 of the table in Schedule 2 and is any part of that development to be carried out in a sensitive area* (see definition and discussion below)? If the answer to both questions is positive, then the development is *Schedule 2 development* and the full screening determination process for Schedule 2 development must be carried out, unless the developer has already voluntarily submitted an Environmental Statement alongside their application.

The question of whether development meets the second aspect of the definition – **(b)** any applicable threshold ... – is more involved. The PA must firstly identify if the proposed development is of *a description mentioned in column 1 of the table in Schedule 2* (which is not exempt development) and, if so, assess whether it meets or exceeds *any applicable threshold or criterion in the corresponding part of column 2 of that table in relation to that development*. In some cases - such as a multi-use urban development – the PA may consider that a proposal meets more than one of the descriptions listed in Schedule 2. This is not problematic, but, may mean that more than one threshold or set of criteria apply. In other cases, the PA may not be able to easily define which development type a proposal fits within – for example solar energy project projects are not specifically listed under Schedule 2(3). As determined by EIA case law<sup>8</sup>, a PA should apply a broad interpretation of the provisions of Schedule 2, and not dismiss a proposed development from the need for screening simply because it is not an exact match with the wording in the Schedule. Sections 2.3, 3.2 and 4.2 provide further advice and guidance on this important area.

The majority of the thresholds and criteria included in Schedule 2 relate to the scale of the spatial development proposal, often setting a threshold based on *floorspace* of the *area of the works*. Beyond this a small number of sub-categories have thresholds related to their proposed height, or distance from controlled waters, while others have criteria specific to the nature of the development within a sub-category.

---

<sup>8</sup> Kraaijeveld (Dutch Dykes) Case C-72/95



It is important for planning officers to maintain their awareness of the range of development categories and related thresholds and criteria included in Schedule 2, so they are able to identify proposals that may be Schedule 2 development and thus require a further screening determination process before a screening determination is made.

Further detail on identifying and classifying Schedule 2 development can be found in Section 4.2 of this Practice Note, with information on understanding how case law relates to the interpretation of Schedule 2 categories set out in Section 3.2.

### 2.3 The Screening Determination Process for Schedule 2 Development

Where the PA is required to carry out a screening determination process, for a planning application or subsequent application, before a screening determination is made the standard procedure to be followed is provided for in regulation 8 (or via regulations 12, 14, 16 and 34, as relevant) of the EIA Regulations. It should be noted, however, that there are also some non-standard situations that PAs must be aware of - such as subsequent applications where an ES was previously submitted – these are set out and discussed in Section 2.5.

Regulation 8 sets out the details of two different pre-application EIA processes that a developer can voluntarily request, as below and discussed in Box 2.4:

- The first is a screening request from the developer to the PA, which will lead to a screening determination indicating whether the proposed development is, or is not, EIA development.
- The second is a scoping request from the developer to the PA, who will then produce a *scoping opinion* on the detail and content of the Environmental Statement the developer is required to submit alongside their application.

#### Box 2.4: Distinguishing between screening and scoping

It is important for PAs, developers and wider stakeholders to distinguish between the separate EIA processes of screening and scoping.

- **Screening is** – the part of the EIA process which determines whether an EIA is required for a particular project.
- **Scoping is** - the activity of identifying the scope and level of detail of the information to be provided in the Environmental Statement to be submitted with an EIA application, once a decision has been taken that an EIA is required (i.e. once a positive screening decision has been made).

Efficiencies can be made by using the information related to the screening determination in the scoping process. This could be part of the evidence to help scope the content and detail of a developer's Environmental Statement, as set out in a PA's scoping opinion. Further to this, during the pre-application process the developer has the option of jointly requesting a screening determination and scoping opinion from the PA. Further advice on how this process operates is set out in Part 2 d) of the PA's production of a screening determination, below.

The remainder of this section summarises the relevant parts of regulations 8, 12 and 14 in relation to the process followed for a pre-application screening request. It should, however, be recognised that the process a PA follows to produce a screening determination is the same where they are required to screen potential *EIA development*, for example under regulations 12, 14, 16 and 34, which cross-reference and incorporate the core procedural requirements of regulation 8 in relation to screening determination processes required by them in the following situations:

- 12 – Application which appears to require determination as to need for EIA;
- 14 – Subsequent application where environmental information not previously provided;
- 16 – Application referred to the Department under Section 29 without an Environmental Statement; and
- 34 – Unauthorised EIA Development, determination as to need for Environmental Statement, etc. [Note: The Department has produced Development Management Practice Note 9A on Unauthorised EIA Development, which should be reviewed when handling such cases.]

Beyond the above, there are a small number of circumstances where non-standard situations may arise which require consideration. Details and advice in relation to this are set out in Section 2.5, including subsequent applications where the original planning permission had an Environmental Statement submitted.

The advice set out below (Parts 1-3) provides a summary of the regulation 8 procedural requirements as they sequentially occur when a developer makes a pre-application screening request and the PA produces the resulting screening determination.

### Part 1: The developer's screening request (voluntary)

- a) Before applying for either planning permission or subsequent consent a developer has the option of making a written request to the PA to determine whether their proposed development is or is not *EIA development*. [Regulation 8(1)(a)]
- b) In relation to such a request the developer is required to provide certain information to the PA relating to the, its location, related environmental sensitivities and likely environmental effects. The content of this information varies between a screening request related to a planning application [Regulation 8(3)(a) to (d)] and that related to a subsequent application [Regulation 8(6)(a) to (c)], with the former containing a more detailed list of information and the latter ensuring clear reference is made to previous/related planning permission. This detail can be found in the EIA Regulations, as referenced above, and is also set out in Appendix 1 of this Practice Note.
- c) In addition to the above a developer making a screening request can identify any features of their proposed development, and any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment, and to include these in their screening request. [Regulation 8(4)]

### Part 2: The PA's production of a screening determination

**Before starting:** If the PA does not consider it has been provided with sufficient information by the developer (via Part 1 b) above) to make its screening determination, it must write to the developer setting out the additional information required. [Regulation 8(11)]

- a) Time available to make a screening determination<sup>9</sup>: The PA normally has 4 weeks to make a screening determination, which can be extended up to 90 days (see regulation 8 (8)) if agreed in writing between the PA and applicant. In exceptional circumstances the PA can use powers to extend the period further but to do so must comply with the requirements set out in regulation 8(10).  
A planning officer undertakes the screening determination as part of their role in the PA - further advice on this is provided in Section 4. In making this determination the planning officer must ensure they have sufficient information (regulation 8(11)), which may include information provided by the applicant, or the results of other environmental assessments (where relevant – see regulation 8(7)(b)). In addition, the officer must take account of the *selection criteria* (set out in Schedule 3 of the EIA Regulations). Where the planning officer considers sufficient information has not been provided by the applicant, they must request it by notifying the applicant in writing (regulation 8(11)). Making a screening determination is the responsibility of a relevant PA. While a PA may feel that in certain circumstances it would be desirable to have input from specific stakeholders to inform its determination, there is no statutory requirement under the EIA Regulations to undertake any consultation during screening.
- b) Once the PA has made its screening determination, it must produce a written statement alongside the determination giving the main reasons as to why it concluded that the proposed development is, or is not, EIA development. This statement must make reference to relevant *selection criteria*, from Schedule 3. Where the PA's screening determination finds the proposed development is not EIA development as a result of design features / mitigation measures that act to avoid or prevent what might otherwise have been a significant adverse effect, this must be clearly explained in the written statement.
- c) The PA sends a copy of the screening determination and written statement to the applicant, and where the determination was made by the Department, it is also required to provide a copy to the council whose district the proposed development would fall within. At this point in the process the PA is also required to make available at the same place as the register copies of: the determinations, statement of reasons, the relevant request, and the documents which accompanied it. This requirement is specified by regulation 44(1)(a). [Regulations 8(14), (15) and (9) plus 44(1)(a)]
- d) [Only in the case of joint screening and scoping requests] When a PA determines that a proposed development is *EIA development* and they had received a joint screening and scoping request from the developer, the PA should immediately move on to developing its *scoping opinion* on the content and detail of the Environmental Statement, following the scoping related procedural steps in regulation 8. [Regulation 8(16)]

<sup>9</sup> Going beyond the 4-week screening timeframe (or longer as agreed) does not remove the need for a PA to deliver a screening determination or remove regulation 4's prohibition on the grant of consent for EIA development without EIA. See Section 3.1 for further details on this important compliance issue.

### Part 3: The developer's response to a PA screening determination finding that their proposed development is EIA development

[Mandatory if the developer wishes to proceed with the proposed development]

- a) The developer must, within 4 weeks from the receipt of a positive screening determination (i.e. that EIA is required), write to the PA indicating whether they accept the determination - and will submit an Environmental Statement – or that they do not accept the determination and will seek a hearing before the Planning Appeals Commission (PAC). [Regulation 8(19) and (20)]

For further detail on reading regulation 8's screening related requirements see Appendix 1. This provides an informal consolidation of Regulation 8's wording as it relates to the screening determination process, which is set out in the same sequence as the above advice.

#### 2.4 Assistance in Determining the Presence of Significant Effects – Schedule 3

The screening determination carried out by a PA as to whether a Schedule 2 development is or is not EIA development hinges on whether the proposed development is likely to have significant effects on the environment. A decision as to whether the impacts caused by a proposed development's construction or operation are likely to have significant effects on the environment requires a judgement based on evidence.

As such, the EIA Regulations do not seek to define set thresholds as to when a significant effect should be deemed to occur, but instead provide the PA with a range of *selection criteria* – set out in Schedule 3 – which must be taken into account where relevant in making a screening determination.

It is important to recognise that even if the PA judges that only one specific aspect of the environment is likely to be significantly affected by the proposed *Schedule 2 development*, that finding would lead to the proposal being determined to be *EIA development*. As such, planning officers need to have a clear understanding of the content and use of the *selection criteria* included in Schedule 3 of the EIA Regulations. The remainder of this sub-section identifies and explains the main structure and content of Schedule 3, with advice on how planning officers should use it in making their judgements.

The *selection criteria* presented in Schedule 3 (which should be considered in full) cover three areas:

1. The first criterion lists general **characteristics of development**.
2. The second criterion lists general environmental sensitivities related to the **location of development**.
3. The third criterion lists **characteristics of the potential impacts**.

#### 2.5 Non-standard Screening Approaches

There are a limited number of circumstances where the process for determining whether a proposed development requires EIA operates differently to that described in Section 2.3, above. These 'non-standard' approaches to screening arise as a result of specific circumstances relevant to the proposed development in question and are discussed below:

- **When the developer disagrees with the PA's screening determination and a hearing is held before the PAC.** In these circumstances the PAC will convene a hearing and provide the developer with the opportunity to set out their reasoning as to why they disagree with the PA's positive screening determination (i.e. EIA is required). Following the hearing the PAC will provide a report with its conclusions to the PA, who must then determine whether to confirm, amend or withdraw the screening determination it previously issued. If the result of any amendments made by the PA led to a change in the outcome of their previous screening determination (i.e. from EIA is required to EIA is not required), this change would need to be fully justified in the written statement that accompanied the amended determination. If the PA withdraws its existing screening determination related to the proposed Schedule 2 development, it still would be required to issue a new screening determination before it could lawfully determine the consent of the proposed development. [See regulation 45]
- **Considering a *subsequent application* where an Environmental Statement was previously provided by the developer.** Where an EIA development gained planning permission and a subsequent application is submitted to be determined, the normal screening determination process does not apply. Instead, the PA considers the *subsequent application* by reviewing whether the existing environmental information (i.e. the developer's Environmental Statement, any further / other information, and the responses from statutory bodies and the public) submitted in relation to the original planning permission is sufficient to identify any likely significant effects related to the specific details set out in the subsequent application. If the PA considers the existing environmental information is sufficient, it must use the reasoned conclusions on significant environmental effects in determining whether to award subsequent

consent. If it does not consider the existing environmental information is sufficient to identify the likely significant environmental effects of the details set out in the subsequent application, the PA must use its powers to request from the developer further information to be added to their existing Environmental Statement, as previously submitted, set out in regulation 21. [Regulations 13 and 21 and additional publicity requirements – see Part 6 of the EIA Regulations]

- **Screening unauthorised development to determine if it is *unauthorised EIA development*.** Procedurally the screening determination process used in these circumstances is the same as that set out in Regulation 8, and Regulation 34 does in fact apply by cross reference to relevant aspects of the former. However, case law<sup>10</sup> has identified considerable additional complexity in these circumstances and, as a result, a PA needs to apply a far greater degree of precaution when screening an unauthorised development for EIA. Further to this, there is an expectation within the EIA Regulations that the PA *will consider the exercise of their enforcement functions* alongside the retrospective application of its EIA duties. [Regulations 31, 32, 33 and 34]

**NOTE: PAs are advised to ensure they refer to the Department’s separate *Development Management Practice Note 9A on Unauthorised EIA Development* when screening unauthorised development to determine whether EIA is or is not required.**

- **Screening related to Section 54 applications - *Permission to develop land without compliance with conditions previously attached*.** A Section 54 application seeks to gain a new planning permission for the same development as previously consented, but with one, or more conditions, removed. As such, it is necessarily an application for the same development as the previously granted permission. Thus, if an original application was determined to be EIA development, then a Section 54 application would also be EIA development, on the basis that it is for the same development which was previously confirmed to be EIA development. This is the case even in the absence of a formal screening determination for the Section 54 application. It may be concluded that a fresh screening determination is not required in these circumstances, because: a) the development has already been confirmed to be EIA development [as per Regulation 6]; and b) a Section 54 application is necessarily for the same development. However, an applicant is not precluded from seeking a screening determination nor is a PA precluded from carrying out a screening determination in relation to the Section 54 application.

A PA must also consider, in terms of Section 54 applications, the situation where the original application’s screening determination (of a Schedule 2 development) found that EIA was not required **due to** the presence of measures that would avoid or prevent one or more significant adverse effects. As a Section 54 application seeks to gain a new permission without compliance with previously attached conditions, there is a risk that providing consent for it could remove those conditioned design features / environmental mitigation measures that formed the basis of the original application’s negative screening determination. In such circumstances the Section 54 application would trigger the need for a new screening determination. PAs should therefore be particularly careful in considering the screening of Section 54 applications and whether a fresh screening determination is required where they previously determined EIA was not required.

- **When the PA is also the developer.** Part 7 of the EIA Regulations indicates that where a council is also the applicant (alone or jointly) Regulation 8 does not apply and thus it / its agent cannot seek a pre-application screening request. As such, the PA should undertake the screening determination process of a council application / subsequent application for Schedule 2 development upon receipt of that application, under regulation 12(1) / 14(1) of the EIA Regulations. In such circumstances a PA should ensure “*appropriate administrative arrangements to ensure that there is a functional separation*” as detailed in regulation 43 (Objectivity and bias).
- **Where development is proposed to be taken forward under Permitted Development rights.** There are provisions under the Planning (General Permitted Development) Order (Northern Ireland) 2015<sup>11</sup>, which remove the need to submit an application for planning permission for specified works. It is essential to note that EIA development is specifically precluded from the use of permitted development rights. Engagement with the relevant PA should inform whether permitted development rights do apply or whether the

<sup>10</sup> Details of relevant case law related to unauthorised EIA development are set out within the Department’s Development Management Practice Note 9A: Unauthorised EIA Development

<sup>11</sup> S.R.2015 No.70

development is EIA development.

- **Where the Department for Infrastructure issues a direction that a particular development is EIA development.** Regulation 3(1)(a) of the EIA Regulations provides the Department for Infrastructure with the power to direct that any development of a type listed in Column 1 of Schedule 2, but outside of a *sensitive area* and below the relevant thresholds or criteria is EIA development.

### 3. Compliance Risks in undertaking the Screening Process

#### 3.1 Key Procedural Risks

1. A screening determination must be made where:

(a) an applicant makes a request under regulation 8(1)(a); or

(b) it appears to the PA:

- (i) that an application for planning permission is a Schedule 1 or a Schedule 2 application, a screening determination has not been made, and the application is not accompanied by an Environmental Statement (regulation 12); or
- (ii) a subsequent application in relation to Schedule 1 or Schedule 2 development has not itself been the subject of a screening determination, is not accompanied by an Environmental Statement and the original application was not accompanied by an Environmental Statement (regulation 14); or
- (iii) on an application referred to the Department under regulation 29 on the basis that proposed development is likely to have significant effects on the environment in another EEA State, the application is a Schedule 1 or a Schedule 2 application, a screening determination has not been made or in the case of a subsequent application was the subject of a determination before planning permission was granted to the effect that it is not EIA development, and the application is not accompanied by an Environmental Statement (regulation 16); or
- (iv) that matters constituting a breach of planning control (regulation 34) comprise Schedule 1 or a Schedule 2 development.

2. A PA shall not grant planning permission or subsequent consent for EIA development unless an environmental impact assessment has been carried out in respect of the development.

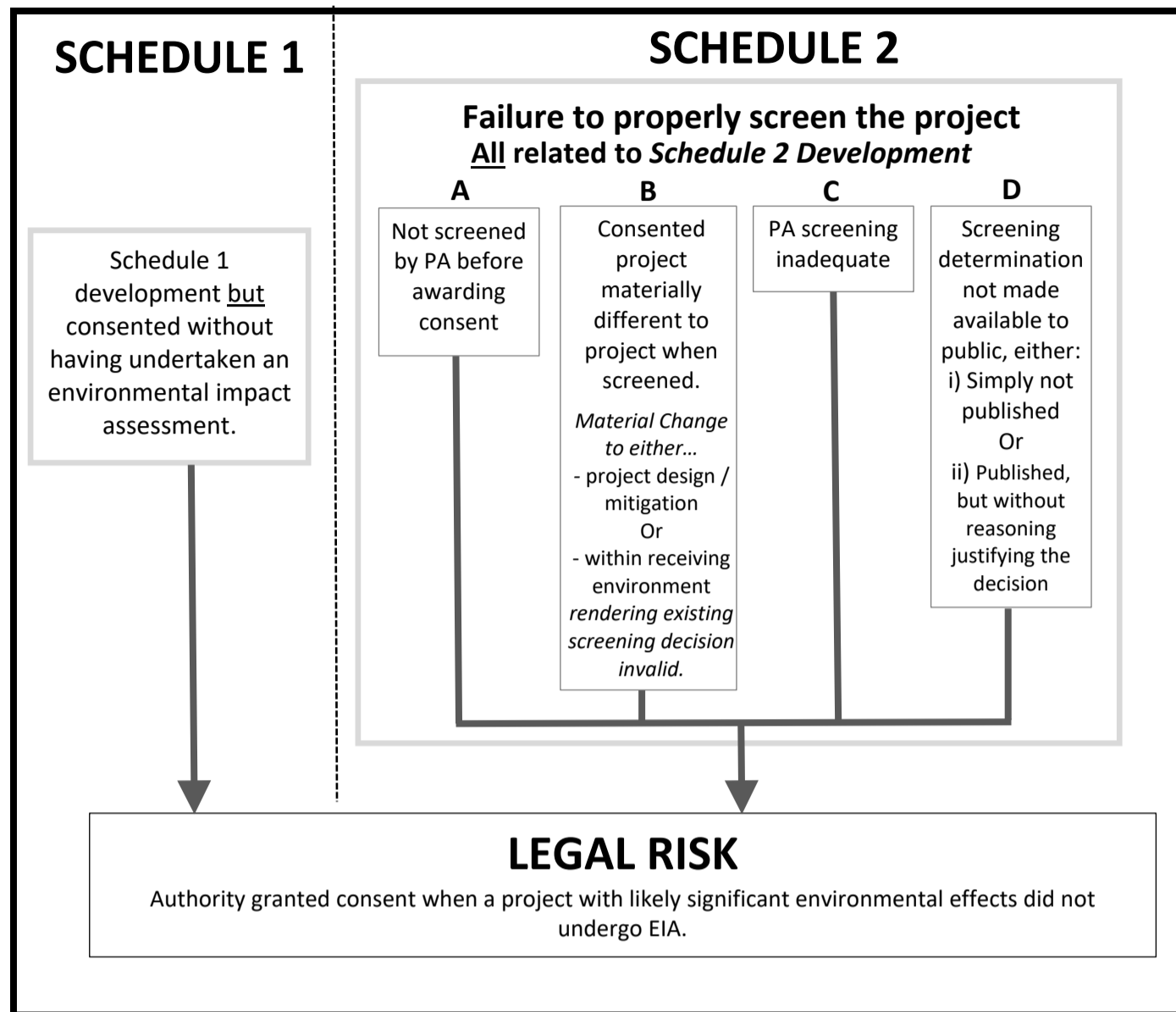
Non-compliance with either of these two fundamental requirements will render any consent granted or enforcement notice issued by a PA vulnerable to successful legal challenge on grounds of a failure in relation to the EIA Regulations, on the basis, for example, of breach of regulation 4 or failure to comply with other specific procedural provisions relating to identification of EIA development.

In relation to consideration of whether Schedule 2 Development is likely to have significant effects on the environment there are four main (not exhaustive) instances in which a PA is at particular risk of making a procedural error.

These are listed below, outlined on Figure 3.1, and discussed:

- A. Where it fails to screen for likely significant effects on the environment in an appropriate case before granting consent;**
- B. Where material differences in an application arise, or relevant circumstances surrounding an application change, between screening determination and project consent;**
- C. Where there are substantive inadequacies in a screening determination, for example: unreasonable exercise of judgement, a tick box approach to consideration, inadequate record of reasoning, etc; and**
- D. Where there has been a failure to make the screening determination and associated documents publicly available for inspection**

**Figure 3.1:** Diagram of the main risks of legal challenge related to the EIA screening process



**Failure to screen for likely significant effects on the environment (See A in Figure 3.1)**

If consent has been granted without the PA having undertaken the required screening and without environmental impact assessment, if the development is subsequently found to be EIA development, the consent could be successfully challenged on the basis of breach of regulation 4 (as well as other potential procedural errors).

While the Courts are not required to quash the planning consent granted despite such a failure, the lack of an EIA screening determination for a consented Schedule 2 development provides a clear basis for a legal challenge that is likely to be upheld by the Courts and results in a significant risk of a consent being quashed. As such, where a planning authority fails to screen a Schedule 2 development, it generates a clear risk of successful legal challenge. In addition to financial and reputational harm. More importantly such a failure poses a risk to the environment.

**Material differences arising between a pre-application screening determination and project consent (See B in Figure 3.1)**

There is no limitation on how much time can pass between an applicant seeking a pre-application screening determination, under regulation 8(1)(a), and the actual application for planning permission or subsequent consent. During this period, the applicant may make changes to the proposed development, or new information about the environment may become available that could change the risks posed to it by development. Where such changes occur, the PA should consider whether the information related to the development or the environment has changed to the degree that it materially affects the validity of the PA’s existing screening determination made in response to a pre-application request. Where the PA considers the change(s) to be material it should produce a new screening determination specific to the current context of the application seeking consent.

Material changes to the development. For example, in the time between receiving the pre-application screening determination and the submission of the actual application, the ambition or design of the development may have substantially changed leading to an increased risk in the likelihood of significant environmental effects occurring.

**Material changes in the receiving environment.** For example, new information identifying the presence of a protected species / heritage feature at the site, or the designation of a new protected area in the vicinity of the proposed development. This situation may be more likely when a considerable time has passed (e.g. multiple years) between the PA issuing a pre-application screening determination related to the development proposal and the submission of its actual application for consent.

It is good practice, where a screening determination has been issued prior to receiving a planning application, for planning officers to ensure their file notes indicate whether the received application generally aligns to the description of the development and environment previously used to make their screening determination.

PAs might not review every screening determination immediately prior to the related application's consent decision, however, they are expected to be aware that material changes to either the development or the receiving environment can alter the validity of the judgement contained within an existing screening determination and to proceed accordingly.

Where a planning officer believes that changes to the development or the receiving environment may constitute a material change, the PA should consider re-screening the proposal. This is permissible in line with the PA's over-arching duties under regulation 4. The planning officer should ensure they make note of such consideration or relevant discussions in relation to same in the case file. Where the PA decides that a material change has occurred and that the application will require re-screening they should inform the developer and produce a new screening determination in line with the relevant regulatory requirements, see Sections 2.3 and 2.5.

There may be occasions where a developer's screening request indicates that specific design features / mitigation measures will be part of a proposal to avoid likely significant effects and the PA relies on this to justify a negative screening determination. However, if such features are not included in the developer's later application, the PA must consider whether this is a *material change* that means their original screening determination is no longer valid and the proposal should be re-screened. [For further detail on this area, see Section 4.2]

**Substantive inadequacies in a screening determination, for example: unreasonable judgement, tick box, inadequate reasoning, etc.** (See C in Figure 3.1)

The EIA Regulations place responsibility on a PA for making a judgement on the presence or absence of likely significant environmental effects within the screening determination process. This provides a planning officer with the obligation to apply their professional skills in reviewing the evidence available to them to make that judgment. Regulation 8(11) requires the PA to request further information if required to enable this judgment. The consideration of likely significance requires the exercise of judgment and while this does involve the use of discretion there are boundaries to the discretion afforded a decision-maker in exercising their judgment.

Like all planning decisions, the judgement made within an EIA screening determination is expected to be reasonable and rational. As such, the judgement presented in a PA's screening determination is expected to be rational and based upon appropriate evidence. The PA should fully consider the substantive evidence of environmental risks from a development proposal. Failure to do so or ignoring such evidence and, as a result, determining that EIA is not required carries the risk of successful challenge.

Screening determinations are often written up and presented using a screening template (see Section 5). There is, however, no requirement under the EIA Regulations requiring the use of such a template. A PA should ensure that whatever form a screening determination takes, template or not, it must contain sufficient information and provide an understanding of the evidence considered to allow the reader to understand the planning officer's judgements and determination.

**Failure to make the screening determination and associated documents publicly available for inspection.** (See D in Figure 3.1)

Regulation 44 of the EIA Regulations requires that the PA's screening determination, their statement of reasons, the applicant's relevant request, and the documents which accompanied it, are made available for public inspection.

This is important not only to ensure compliance with the requirements of the EIA Regulations but also to support public engagement in environmental decision making (as required by the Aarhus Convention<sup>12</sup> to which the UK is a signatory) and to support confidence in the wider planning system.

### 3.2 Important EIA Case Law Relevant to Screening

As discussed above, given a PA's screening determination is a formal decision resulting from a regulatory procedure it is open to being challenged through the courts. Over the years common themes and principles have emerged from previous legal challenges that PAs should be aware of when discharging their EIA screening duties. This may develop further over time.

This section sets out three important themes that have regularly arisen in challenges to the EIA screening process. They are, understanding:

- The meaning of the term 'project';
- That EIA should be applied with 'a broad scope and wide purpose'; and
- The risk of 'project-splitting'.

#### **What is a project?**

The EIA Directive defines a project<sup>13</sup> (Article 1(2)(a)) as:

- *the execution of construction works or of other installations or schemes;*
- *other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.*

While the detail of related case law is not appropriate for this Practice Note, key issues that PA should be aware of in relation to considering whether a proposed development may need to be subject to a screening determination are as follows:

- Demolition works<sup>14</sup> – for example to prepare a site for a future proposed development – can either on their own, or as an associated activity with a future development proposal, be considered to be a project that needs screening for EIA.
- Construction works<sup>15</sup> should be broadly interpreted to include refurbishment / renovation activities, particularly related to renewal of infrastructure, where physical works are required to deliver the intended outcome. However, the courts have indicated that the renewal of an existing operational consent / permit for a site, where it is not associated with works or interventions to the site's physical nature, should not be considered to be construction.

As such, in considering whether a 'project' requires screening for EIA, PAs must be aware that in some cases activities that might otherwise be considered to be permitted development (see reference to screening of permitted development in Section 2.5), may not have that status unless a screening determination has been undertaken and led to a negative finding such that EIA is not required.

#### **Broad scope and wide purpose**

Many court rulings have consistently supported the position that the application of EIA should be considered to have a broad scope and a wide purpose<sup>16</sup>. What this means is that a PA cannot ignore the need to screen a proposed development for EIA simply because it appears on first consideration not to exactly or closely align to any of the descriptions listed in Schedules 1 and 2.

Considering how residential / housing development should be considered in terms of EIA screening provides a useful example:

The terms residential and housing are not found in the descriptions set out across Schedule 1 or 2 of the EIA Regulations. They are regularly screened for EIA where they qualify as *Schedule 2 development* by PAs under Schedule 2 10(b):

*"Urban development projects, including the construction of shopping centres and car parks".*

<sup>12</sup> UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. For further information, see: <https://unece.org/environment-policy/public-participation/aarhus-convention/introduction>

<sup>13</sup> The European Commission has published a number of useful guides:

- *Interpretation of definitions of project categories of annex I and II of the EIA Directive* (2015)

- *Environmental impact assessment of projects Rulings of the Court of Justice of the European Union* (2022)

<sup>14</sup> As in the Case of R (on the application of Save Britain's Heritage) v Secretary of State for Communities and Local Government and another [2011] EWCA Civ 334

<sup>15</sup> As in Case C-142/07 *Ecologistas en Acción-CODA* [2008] ECR I-6097

<sup>16</sup> As in Case C-72/95 *Kraaijeveld* (Dutch Dykes)



Whilst this definition does not specifically state that it covers residential development, it is clearly established in practice that residential developments can have potentially significant effects on the environment and should be screened for EIA when they qualify as Schedule 2 development.

Further to the above, while the Schedule 2(10)(b) category is termed ‘urban development’ where such developments are proposed in non-urban areas they could still have an urbanising effect on the local area. Examples could include a proposed residential development on the edge of a small village or the development of an out-of-town supermarket or shopping centre.

Further examples, although non exhaustive, include:

- Solar farms / solar energy projects are not listed under sub-sections (a) to (k) of Schedule 2 (3), however, they are considered to be “energy projects” and thus would fall within the overall category.
- Desalination projects for the production of potable water are not listed in Schedule 2, but are likely to be considered to be ‘infrastructure projects’, and thus could be considered under Schedule 2(10).
- Recycling, composting and reuse facilities should be considered within Schedule 2 (11)(b) as the facilities are designed to manage and handle materials that are considered to be waste under the legal definition of waste.

Where a proposed development is of a type that does not clearly fall within a specific type of development described in column 1 of the table in Schedule 2 of the EIA Regulations, but the PA determines that it does fall into one or more of those types of development, it must be clear as to which type of development it is considered to fall within as this will dictate which threshold or criteria to apply in deciding whether to produce a screening determination.

### **Project-splitting**

Project splitting (sometimes also referred to as ‘salami-slicing’) is where a single development proposal that is above the relevant Schedule 2 thresholds or criteria is split into two, or more, smaller projects that individually sit below the threshold with the consequence that a project that should have been screened within the EIA Regulations becomes multiple smaller projects that fall outside the scope of the EIA Regulations.<sup>17</sup>

Addressing the issues of correct project identification is a matter of judgement for a PA based on the available evidence. Challenges may arise where a developer takes an incremental approach to development e.g. getting permission for an initial development and then later seeking permission for the development of an adjacent site. Further, it is also possible that unrelated applicants come forward with similar types of development in a similar geographic area at the same time, with each proposal falling below the Schedule 2 thresholds. Such situations might not necessarily be considered to be project-splitting, however, a PA needs to be vigilant to correctly apply the EIA requirements in relation to cumulative impacts. [Schedule 3(3)(g)]

The most obvious form of project-splitting is where a developer has sought planning permission on a site before and then returns with a smaller application / set of applications (below the Schedule 2 thresholds). This occurred in the case of proposed works at Carlisle Airport<sup>18</sup> where the developer’s original planning application was screened by the PA and found to require EIA. That application was withdrawn before determination and later a smaller – sub-EIA threshold project was brought forward, along with plans to use permitted development rights to undertake some of the works set out in the original application. The ruling found that the development proposal had been the subject of project-splitting in order to avoid the obligations under the EIA Regulations.

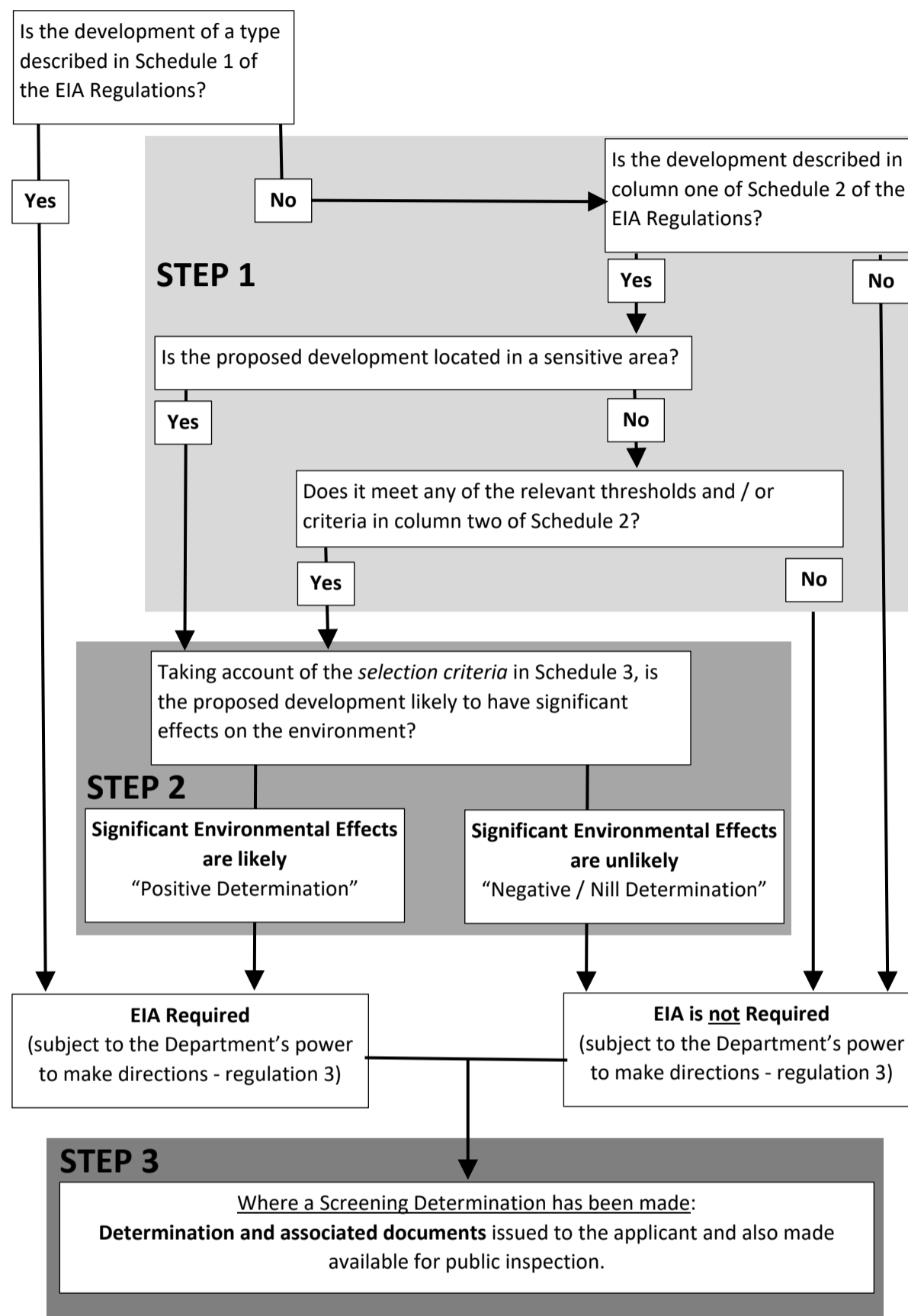
Potential instances of project-splitting however may be less obvious than this and care should be taken in identifying what might constitute project splitting and to ensure the proper application of the EIA regulations in relation to cumulative impacts.

<sup>17</sup> Relevant Cases include: R v Swale BC ex parte RSPB (1991) 1 PLR 6; R (Candlish) v Hastings BC (2005) EWHC 1539; and Baker v Bath and North East Somerset Council (2009) EWHC 595.

<sup>18</sup> Brown v Carlisle City Council [2010] EWCA Civ 523

## 4. Practical Steps in Screening a Schedule 2 Development

**Figure 4.1:** Screening flow-diagram presenting the three practical steps for Schedule 2 development



### 4.1 Step 1: Identifying whether a proposed development is a Schedule 2 Development

This section of the Practice Note provides practical advice on how to undertake the three steps required to produce a compliant screening determination, as set out in Figure 4.1. The advice in this section should be considered alongside both information on interpreting the EIA regulations related to screening set out in Section 2, and the discussion of compliance and case law presented in Section 3.

This sub-section is specifically focussed on those applications that meet the definition of a *Schedule 2 development*, as this will be the majority of PA activity related to making screening determinations.

As such, the first thing a PA must establish is whether the proposed development falls within a description in Column 1 of Schedule 2 to the EIA Regulations. This is the case whether the PA is undertaking a screening determination:

- before receiving an application – based on a developer’s screening request;
- alongside a live planning application, before determining consent;
- in relation to a subsequent application;

- where an application is referred to the Department under Section 29 – without an Environmental Statement; or
- where determining the need for an Environmental Statement in relation to an unauthorised development.

The PA will not need to take any further action in relation to producing a screening determination in relation to Schedule 2 development if the applicant has voluntarily submitted a document they term an Environmental Statement alongside their application – having not previously received a screening direction. The proposal is then *EIA development* and no further screening action is needed by the PA.

#### **Is it located in a sensitive area?**

The next activity the PA should undertake is to identify whether any part of the proposed development’s redline boundary overlaps with any part of a *sensitive area* as defined in the EIA Regulations, that is:

- Area of Special Scientific Interest (ASSI);
- Area of Outstanding Natural Beauty (AONB);
- National Park;
- World Heritage Site;
- Scheduled Monument; or
- European Site – Special Area of Conservation (SAC), or Special Protection Area (SPA)<sup>19</sup>.

Where the proposed development – of a type listed in Schedule 2 - overlaps a *sensitive area* the PA is expected to proceed to the next stage of screening determination to confirm whether it is or is not EIA development. Move to the advice set out in Step 2 presented in Section 4.2 below.

#### **Does it meet or exceed any of the relevant thresholds / criteria in Schedule 2?**

Where the proposed development is located wholly outside a *sensitive area*, the PA must continue to determine if it is a Schedule 2 development. In these circumstances the PA must move on to identify the thresholds and criteria set out in the second column of Schedule 2 of the EIA Regulations that are relevant to the development type(s) that align with that proposed.

As discussed in Section 2.2, in most cases it will be relatively quick and easy for a planning officer to associate a development proposal with the relevant project type/s and the related thresholds / criteria and make a comparison:

- Where the proposed development meets or exceeds any of the relevant thresholds or criteria it is Schedule 2 development and the PA is required to produce a screening determination.
- Where the proposed development is below the relevant thresholds and criteria it is outside of definition of Schedule 2 development and no further action is required by the PA before completing its screening determination. The PA should clearly record this finding.

In some cases, a proposed development will have multiple components that mean it meets the definition of more than one of the development types listed in Schedule 2. For example, works related to a marina development could include dredging activities, residential and commercial development and renewable energy components. In these circumstances, the proposal should be checked against all the relevant thresholds and criteria and where any one is met / exceeded the PA should treat it as Schedule 2 development and produce a screening determination.

#### **4.2 Step 2: Identifying if significant effects may occur and recording reasons for that conclusion**

The PA’s activities during Step 2 involve interpreting and evaluating information related to the proposed development and its location leading to a conclusion on whether significant effects on the environment would be likely to result if it were consented. The conclusion will dictate the PA’s screening determination and there are only two possible outcomes, as indicated at the bottom of Figure 4.1. The two conclusions are:

- 1) The PA considers the proposal is likely to have significant environmental effects and thus is classed as *EIA development* and **EIA is required.**
- 2) The PA considers the proposal is not likely to have significant environmental effects and thus is not *EIA development* and **EIA is not required.**

<sup>19</sup> See Section 2 for the full definition of sensitive areas from the EIA Regulations and the links to the related legislation.

A planning officer should review the information available and come to a reasonable conclusion based on evidence from the information reviewed. This will be informed by an understanding of what constitutes an impact, effect and significant effect, as well as the role design features and mitigation measures can play in reaching their conclusion.

### **Identifying the information needed to make an effective screening determination**

The core information should be provided by the developer – either within their screening request, or as part of the information set out in their application for planning permission or subsequent consent. Part 1b) of Section 2.3 of this Practice Note indicates the parts of regulation 8 that define what the developer must submit in relation to a screening request, planning application or subsequent application - this is set out in regulation 8(3) (regulation 8(6) for subsequent applications) and can be found in the Appendix to this Practice Note. If the PA considers that any of this information about the proposed development, its location and likely environmental effects is missing, or so limited as to be inadequate, regulation 8(11) requires the PA to notify the applicant in writing of the particular points on which additional information is required and the screening process is paused until receipt of that additional information.

In making a screening determination a PA must take into account such of the selection criteria (as appear in Schedule 3) as are relevant to the proposed development. This should inform the review the information from the developer and all other information they consider relevant in relation to making their screening determination. It can be helpful to begin to note key activities – in construction and operation – that might pose risk of larger scale impacts, as well as identifying any particularly sensitive environmental receptors that the development's impacts are likely to interact with and have consequence for.

Beyond the information from the developer the planning officer should seek to identify whether any previous environment assessments (see regulation 8(7)(b)) are available related to the proposed location of the development, and / or relevant environmental receptors they are considering in the screening process. Where such assessments exist, they shall be taken into account by the PA in making the screening determination. Such assessments may have been produced as a result of the Local Development Plan's Strategic Environmental Assessment (SEA), previous development application on / close to the proposed site, or assessments related to environmentally vulnerable sites in the vicinity.

The final decision by the PA must be based on evidence and/or information that is objectively verifiable, evidenced and recorded.

### **Understanding key concepts - Impact, Effect, Significant Effect, Likelihood, Environmental Factors**

In making a screening determination a planning officer must think through the activities associated with the proposed development and how these might interact with the environment to generate positive and / or negative impacts and make a judgement as to whether they consider any of those impacts to be a significant impact. In essence the screening determination is an impact assessment based on the evidence available to the PA. A clear understanding of some of the key terms used in the impact assessment process is important:

- An **impact** is a change caused by a development.
- An **effect** is the consequence of that impact to the environment, or more commonly a specific receptor within the environment, e.g. a habitat, species, view, community.
- A **significant effect** sits within a sub-group of the effects identified, as not all effects identified will be significant. The evaluation is based on evidence drawn from characteristics of the development, the receiving environment and the characteristics of the potential impact (e.g. the three categories of *selection criteria* set out in Schedule 3). There is no set definition of significance in EIA screening, as such, the determination of the significance of an effect is a reasoned, evidenced based judgement by the PA.

### **Determining whether an environmental effect should be considered to be significant**

In making a screening determination the PA is seeking to identify the main impacts of the development proposal, consider the effects of these impacts on relevant receptors and make a judgement as to whether any of the effects are significant.

Impacts can be generated by any stage of the development process - from construction, through operation, to any decommissioning – so the PA needs to have sufficient information on the anticipated activities associated with the core stages of a proposal's development.

Having developed a sound understanding of activities that are a potential source of impacts, to identify effects the PA needs to establish that there is an environmental receptor that is likely to be affected and that a pathway exists between the source and the receptor – that will enable the impact of the activity to reach the receptor resulting in an effect.

## **SOURCE > PATHWAY > RECEPTOR**

Using a 'source > pathway > receptor' approach in their thinking can therefore help planning officers efficiently sort through the details and stages of a proposed development's activity and understand potential key connections with environmental receptors.

The screening determination should not require the PA to undertake its own studies. The core evidence and information should come from the developer's screening request, or documents within their application. The other forms of information and evidence used in this process are discussed earlier in this section. It is important to remember that a developer is required to provide certain details – set out in regulation 8(3)(a) to (d) – and if key information is missing the PA must use regulatory powers to ask for more information.

The PA is also required to consider the *selection criteria* set out in Schedule 3 of the EIA Regulations. The interaction between the selection criteria under the first two categories in Schedule 3 - characteristics of development and location of development – will aid the PA's 'source > pathway > receptor' thinking to identify associations between the development and different receptors. The interaction between the second and third categories – location of development and characteristics of the potential impact – will help the PA understand details about the sensitivity of the receiving environment and associate these with the details of the impacts in terms of magnitude, frequency, reversibility, etc. However, a PA must ensure they consider all criteria and relevant interactions within or between first, second and third categories.

As such, making a screening determination is about a planning officer identifying and understanding interactions between the proposed development and the environment and considering if any of these are likely to be significant. In addition to considering whether the environmental effects likely to occur from the proposed development are significant on their own, the PA is expected to give consideration to whether significant effects could occur cumulatively with other developments.

*"The likely significant effects of the development on the environment shall be considered... taking into account - ... (g) the cumulation of the impact with the impact of other existing and/or approved development."* Schedule 3 of the EIA Regulations

As such, the PA must give consideration as to whether the environmental receptors that they anticipate being affected by the proposed development have already been affected by existing development – in construction / operation - or are going to be affected by approved developments that have not yet begun. Where the PA considers this to be the case, they should determine whether the cumulation (interaction) of the proposed developments effects on top of the existing / proposed development/s effects are sufficient that they judge that the combined effect on the environmental receptor is significant.

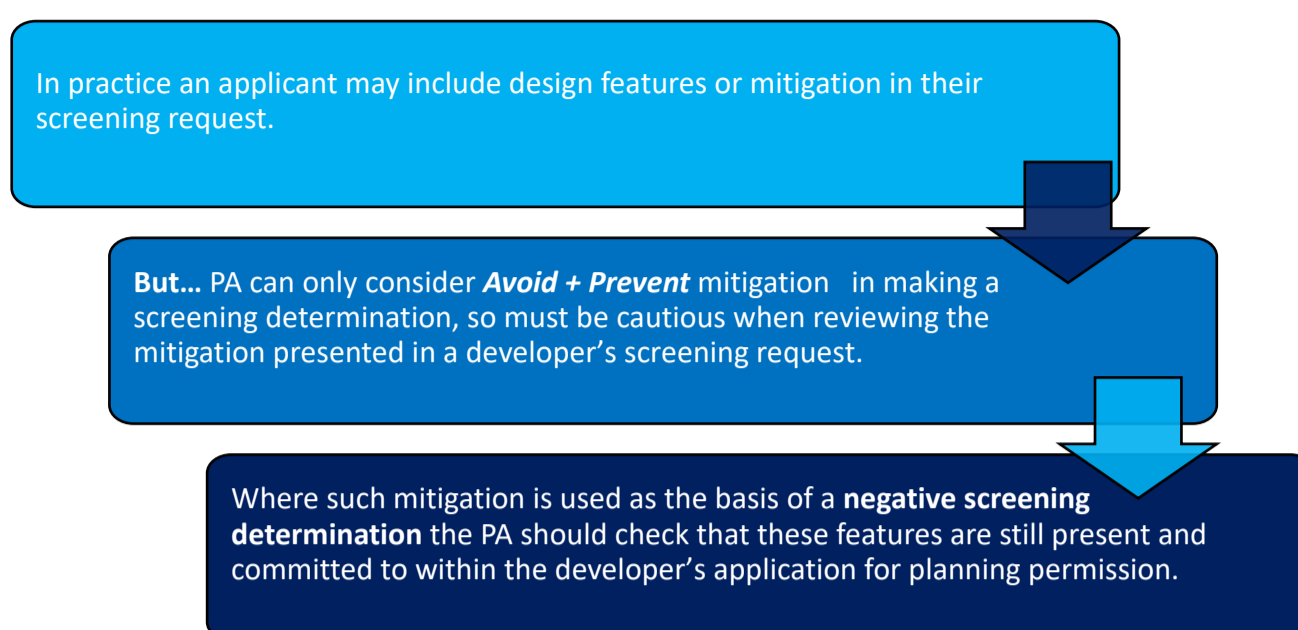
### **The role design features / mitigation measures can play in a screening determination**

The extent to which design features inherent within the development, or additional mitigation measures may be taken into account in reaching a screening determination, depends on the facts of each case. However, the key rule a PA must remember is that such features / measures can only be considered in making a screening determination if they will lead to a significant effect being avoided or prevented, as set out in regulation 8(15). Box 4.2a, overleaf, provides a diagrammatic outline of some of the challenges that may emerge in relation to the consideration of mitigation in a screening determination.

It is important to recognise that just because a developer may propose a raft of mitigation measures, this does not mean that there will be no likely significant effects.

In relation to the key rule above, the PA should have regard to the amount of information available, the precautionary principle and the degree of uncertainty in relation to the environmental impact. Where the developer proposes design features or mitigation measures "*envisaged to avoid or prevent*" the PA should act cautiously in seeking to rely on these as the basis for a screening determination that the proposed development is not EIA development. Particularly, but not exclusively, where such design features or measures are novel or untested, or without sufficient evidence.

#### Box 4.2a



#### Step 2 – Summary

The PA's focus in Step 2 is to identify if there is a likely significant effect on the environment that would result from the proposed development. The identification of a single likely significant environmental effects by the PA is sufficient to trigger the classification of a proposed development as EIA development. Whether the PA identifies none, one, or more likely significant environmental effects in their screening determination, the conclusions they have reached must be justified with an explanation of its reasoning and the evidence behind this.

In making a screening determination, the PA should play close attention to developer's reference to significance and associated mitigation set out in their screening request, or within the application documents. In relation to this, the PA should only ever consider applicant proposed design features or mitigation measures that will avoid / prevent effects occurring, which would otherwise have been likely to have significant effects on the environment. Where design features / mitigation measures are used as the basis for a conclusion that significant environmental effects are unlikely to occur, the written statement within the PA's screening determination must justify and explain the evidence and reasoning behind the judgement.

In its screening determination the PA must record that it has considered the selection criteria set out in Schedule 3 and it must also ensure that consideration has been recorded.

Box 4.2b, overleaf, provides some advice to PAs for effective EIA screening, and it should be noted that a good practice screening determination should always seek to:

- Concisely deliver clarity in communicating the determination (EIA is / is not required) and the thinking behind this conclusion.
- Provide a fair, careful and thoughtful explanation of its conclusion, which ideally enables those who read it to agree with the finding, but as a minimum ensures they understand its reasoning.
- Deliver EIA, where found to be required, that is efficient, effective and transparent, so that the process helps to reduce risks associated with the proposed development.

**Box 4.2b:** Advice for Delivering an Effective Screening Determination

To deliver an effective approach to screening planning officers should consider the following:

- **If in doubt screen it!** – If it is unclear or there is doubt about whether the proposed development qualifies as a *Schedule 2 development* it is advisable to make a screening determination.
- **Apply your professional planning skills to deliver reasonable judgements.** The EIA Regulations do not require PAs to consult in making their screening determination. In general officers should be able to make screening determinations based on the evidence and the application of their professional skills, experience, reasoning, and judgement.
- **It is all about the presence / absence of likely significant effects.** The EIA Regulations only require the identification of one likely significant effect to trigger the need for EIA, but you must be able to support your conclusion with reasoning. Read all information provided for context, but avoid being distracted from the key question - *Do you consider that significant effects on the environment are likely to result from the development?*
- **Judgements on significance must be evidence based.** PAs should seek to objectively review the evidence available and make a reasonable judgement on whether the development is likely to have significant effects to the environment. A screening determination must be reasonable on the basis of the evidence.
- **If you lack relevant details - ask the developer for more information.** The EIA Regulations set out a list of information the developer is required to provide the PA to enable their screening process. If the developer fails to provide the required information, A PA must use the powers under regulation 8(11) to halt the screening process until the additional information is supplied.
- **Set out clear reasons in writing up your decision.** A screening determination is the PA's formal conclusion on whether it considers likely significant environmental effects will occur as a result of a proposed development. The determination needs to be supported by a written statement that provides clear reasons for its conclusions based on the evidence that the planning officer has reviewed. The screening determination and written statement can be provided in a single document but both elements must be fully satisfied within it.

#### 4.3 Step 3: Issuing the Screening Determination and making it available for public inspection

Before issuing a screening determination the PA should ensure that it is satisfied with the written statement that explains the conclusion as to whether *EIA is or is not required*. The statement should confirm it has considered the selection criteria in Schedule 3 of the EIA Regulations and it should set out its reasonable judgement based on the evidence available to the PA.

Step 3 involves the PA ensuring that its screening determination is provided to the developer and made available to the public.

The first aspect is easy to achieve with the screening determination and the accompanying written statement explaining its conclusions being sent to the developer. Where the developer has submitted the screening request / application by electronic communications then the PA can reply providing the screening determination via email. If the developer has provided a written request via the post, or they have given notice that they no longer agree to use electronic communications related to their application under regulation 46(1)(c) then a postal response should issue. Once completed the screening determination should be sent to the developer in a timely manner, within the 4 weeks, or longer period agreed with the developer, as discussed in Part 2 of Section 2.3.

Where the Department has produced the screening determination, it must also send a copy, including the written statement justifying its conclusion, to the relevant council/s where the proposed development would be situated.

The second aspect of step 3 is ensuring that the screening determination, including the written statement justifying its conclusion, is made publicly available. This requirement risks being unintentionally overlooked by PA as it is not set out in the regulatory screening process established by regulation 8, but is found in regulation 44.

While the task may be administrative in nature, and not under the direct control of the planning officer who made the screening determination, it is no less a part of the regulatory requirements of delivering a compliant screening determination. A failure to comply with the requirement will place the PA and the related application at risk of procedural failure, as set out in Figure 3.1. As such, PA must ensure that this final element of their screening process is not overlooked.

#### 4.4 The role of screening templates and checklists

Templates and checklists related to the EIA screening process are common. They are designed to assist the PA in making screening determinations by setting out useful information in relation to the issues that should be considered and providing a record of their review of the evidence. Local and/or central Government generated screening checklists and templates exist in each of the UK nations and EU screening checklists were produced in 2017 guidance from the European Commission (see Section 6 for further details and links). Planning officers are not required to use an EIA screening template. It can, however, provide an effective way of structuring their thoughts, setting out their reasoning and can be used to record and present the PA's screening determination. Equally PAs are free to develop their own EIA screening templates, or can use other means – e.g. case notes - to retain a record of screening determinations and the written statement giving the main reasons for the conclusion reached.

Given that the use of a “template” is a legally acceptable way to carry out and record a screening determination, it is important to recognise any such example should be grounded on all of the statutory selection criteria in schedule 3 to the EIA Regulations, not some of them or parsed versions of them. With respect to any screening template to be used by a PA, it should pose the broad questions:

- (a) Is the proposed development *Schedule 2 development*? and, if so
- (b) Is the proposed development likely to give rise to significant effects on the environment by virtue of factors such as its nature, size or location?

With respect to (b) this question requires consideration in particular of all the selection criteria in Schedule 3. As the question is one for planning judgment it is not enough simply to record that the selection criteria have been taken into account. It is essential that the screening template requires the PA to record their opinion as to whether the development is likely to give rise to significant effects on the environment and to set out a summary of their reasons for this opinion. The completed template should therefore record the PA's overall judgment and their brief reasons for that judgment.

The degree of detail that is needed in completing such a template depends on the facts of each given case; as such, a tick box approach to completing a template is very unlikely to prove acceptable and should be avoided. The more complex the proposed development or the environmental considerations that it raises, the more detailed the explanation needed to justify a negative screening determination.

Where the screening template is also intended to be used as the PA's written statement giving the main reasons for that conclusion the form of the template should enable a reader to readily understand:

- the decision made;
- that the PA has taken account of all the selection criteria;
- the extent to which the selection criteria apply to the development under consideration; and
- why the PA has reached its conclusion that the development is or is not likely to have significant effects on the environment.

In all cases, however, the PA must produce a screening determination with a summary written statement of the reasons for its conclusion around whether significant environmental effects are likely or unlikely, as discussed in Sections 4.2 and 4.3.



## 5. Considering Transboundary Effects in EIA Screening

As indicated at Section 2.2, once it has been determined that a proposed development is Schedule 2 development it requires a screening determination either at pre-application stage (via a screening request) or when an application/subsequent application has been submitted to the PA. Section 4 of this guidance sets out the practical steps in the screening process. One such step is to establish if the proposed development is likely to have a significant effect on the environment taking account of the selection criteria in Schedule 3 of the EIA Regulations.

All parties involved in EIA recognise that significant environmental effects can occur beyond the boundary of a proposed site, sometimes at a considerable distance. In light of this, it should also be apparent that such effects on the environment would not be removed and cannot be ignored because they are likely to occur beyond a jurisdictional boundary. This concept is well established and understood where a Schedule 2 development is proposed close to the boundary of another council - the risk of likely significant environmental effects in land within the other council's area would be considered by the planning officer undertaking the screening determination. This principle of considering whether a Schedule 2 development is likely to have significant environmental effects outside of a council's boundary also applies where such effects would be beyond the boundaries of Northern Ireland.

Within the EIA process such effects are termed **transboundary environmental effects**. Where the need for EIA has been established, and the developer has submitted an Environmental Statement, the EIA Regulations have specific procedures as to how such transboundary effects are considered. During the screening process for Schedule 2 developments, however, the statutory responsibility to consider whether transboundary significant environmental effects are likely to occur lies solely with the PA making the screening determination.

The EIA Regulations integrate this requirement into the screening criteria set out in Schedule 3, which must be considered when making a screening determination. The third criterion lists general *characteristics of the potential impact* that should be considered in determining whether the effect on the environment likely to result from an impact generated by the proposed Schedule 2 development is, or is not, significant. Paragraph 3(c) states that one such characteristics is "*the transboundary nature of the impact*". As such, whether there is a risk of likely significant effects on the environment occurring beyond Northern Ireland is a factor that should be considered when a PA screens any Schedule 2 development.

In terms of assessing the potential impacts of a proposed development, both the developer<sup>20</sup> and the PA should consider whether or not a proposed development is likely to have significant effects on the environment beyond the boundaries of the state in which it is geographically located i.e. transboundary effects. This expectation aligns with legal obligations under international law as set out in the ESPOO Convention on EIA in a Transboundary Context (United Nations, 1991), which the UK ratified in 1997<sup>21</sup>. As the United Nations Economic Commission for Europe (UNECE) aptly states "*environmental threats do not respect national borders*"<sup>22</sup>.

Potential transboundary effects could materialise for example through air, land and water pathways. In the case of Northern Ireland, the nearest European Economic Area (EEA) member state is the Republic of Ireland (RoI)<sup>23</sup>, however, depending on the nature of the development, EEA areas other than the RoI could theoretically be impacted.

In evaluating whether transboundary effects are:

- a) likely to occur in relation to the impacts associated with a proposed Schedule 2 development; and, if so,
- b) whether the environmental consequences of those effects are considered to be significant;

a PA should consider a range of possible sources of information to inform its decision. This may include, but not be limited to, online data sources which can map key environmental features and information provided by the developer in line the requirements of regulation 8(3) of the EIA Regulations.

<sup>20</sup> As part of the information expected to be submitted by an applicant to satisfy Regulation 8(3) of the EIA Regulations

<sup>21</sup> Convention on Environmental Impact Assessment in a Transboundary Context, UNECE 1991 accessible here: <https://unece.org/environment-policy/environmental-assessment/text-convention>

<sup>22</sup> <https://unece.org/environment-policy/environmental-assessment>

<sup>23</sup> For ease of use this section will refer simply to RoI

The statutory responsibility for an EIA screening determination, and the consideration of any likely significant transboundary effect, rests solely with the relevant PA and there is no legislative requirement to formally consult any other body at the screening stage. However, in certain circumstances when considering potential transboundary effects, non-statutory engagement with relevant authorities in RoI, and any other bodies considered relevant by the PA, may help to inform and support a PA's screening determination.

If such circumstances arise it may be advisable for the PA to give consideration to:

- The distance of the proposed development to RoI;
- Using a 'source > pathway > receptor' approach as discussed in Section 4.2, especially to consider the potential indirect and/or cumulative effects of the proposed development as well as the likely direct effects e.g. the transboundary impacts arising from export of manure/waste generated from intensive agriculture developments to farms in RoI for land-spreading;
- Identify and assess other end use, other land-spreading, and confirm location in RoI of materials generated by the development in Northern Ireland and proposed end use methodology e.g. anaerobic digestion; and/or
- Whether the proposal will adversely affect the integrity of *any* designated site, not only designated sites that are within the jurisdiction where the development is to be located/proposed.

While not exhaustive, and not intended to be prescriptive, examples of transboundary impacts could include potential pollution events through hydrological links, emission release and visual intrusion of proposed development. As such potential engagement would be on a non-statutory basis, there is no prescribed process nor format for requests to, or responses from, an authority in RoI; or indeed with other bodies who may be in a position to provide relevant environmental information at the screening stage.

Any information received from a planning authority in the RoI, or other body, could be material and, if so, should inform the EIA screening determination. Importantly, all relevant issues and decisions should be appropriately documented.

Should it subsequently be determined by a PA that an application is an "EIA Application" and the PA considers it might have one or more significant transboundary effects in RoI, or elsewhere, then the provisions of Part 8 of the EIA Regulations would be engaged upon submission of the developer's Environmental Statement. In such circumstances, the PA would then be required to engage with the Department, which would co-ordinate consultation arrangements related to the application and its Environmental Statement with the relevant government department(s) in RoI.

## 6. Further Reading and Key References

### EIA Regulations

- S.R.2017 No.83 - The Planning (Environmental Impact Assessment) (Northern Ireland) Regulations 2017 (as amended) accessible here:

<https://www.legislation.gov.uk/nisr/2017/83/contents/made>

### Other Relevant Department for Infrastructure Development Management Practice Notes

- Practice Note 9A: Unauthorised EIA Development
- Practice Note 24: Section 54 Applications

### Examples of EIA Screening Templates and Checklists:

- Ministry of Communities and Local Government EIA Screening Template  
<https://www.gov.uk/government/publications/environmental-impact-assessment-screening-checklist>
- Scottish Government EIA Screening Checklist  
<https://www.gov.scot/publications/environmental-impact-assessment-screening-checklist/>
- European Union EIA Screening Checklists can be found on pages 51 – 59 within Environmental Impact Assessment of Projects - Guidance on Screening (EU, 2017), downloadable here:  
[https://ec.europa.eu/environment/eia/pdf/EIA\\_guidance\\_Screening\\_final.pdf](https://ec.europa.eu/environment/eia/pdf/EIA_guidance_Screening_final.pdf)

### Relevant Non-governmental EIA Guidance and Publications

- EIA Handbook 3<sup>rd</sup> Edition (Carroll, Fothergill, Murphy and Turpin, 2019), ICE Publishing
- Introduction to EIA 5<sup>th</sup> Edition (Glasson and Therivel, 2019), Routledge
- Delivering Proportionate EIA - A Collaborative Strategy for Enhancing UK Practice (Fothergill, 2017), IEMA
- Special Report - The State of EIA Practice in the UK (Fothergill, 2011), IEMA

## Appendix 1: Improving Regulatory Clarity requesting and making a Screening Determination (An informal consolidation of regulation 8 of the EIA Regulations)

### **DEVELOPER - Options available to a Developer around screening before submitting an application**

8.—(1) Subject to paragraphs (2) to (6), before applying for planning permission or subsequent consent, an applicant may request in writing the council or, as the case may be, the Department to— (a) make a determination as to whether a proposed development is or is not EIA development (a “screening determination”);

### **DEVELOPER - Information which must be submitted in seeking a Screening Determination**

#### ***- Related to an application for planning permission***

(3) When making a request for a screening determination, an applicant shall, taking into account so far as relevant the ***selection criteria*** and the available results of other environmental assessments required under Union legislation (other than legislation implementing the requirements of the Directive), provide the following information—

(a) a plan sufficient to identify the land;

(b) a description of the development, including in particular—

(i) a description of the physical characteristics of the whole development and, where relevant, of demolition works;

(ii) a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;

(c) a description of the aspects of the environment likely to be significantly affected by the development;

(d) to the extent the information is available, a description of any likely significant effects of the 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.

#### ***- Related to a subsequent application***

(6) A request for a screening determination ... in respect of a subsequent application shall be accompanied by—

(a) a plan sufficient to identify the land;

(b) sufficient information to enable the council or, as the case may be, the Department to identify any planning permission granted for the development in respect of which a subsequent application has been made; and

(c) the information referred to in paragraph (3)(c) and (d), but only to the extent that this relates to the likely significant effects on the environment which were not identified at the time that the planning permission was granted.

#### ***- On all occasions***

(4) The applicant, when making a request for a screening determination, may also provide a description of any features of the proposed development or any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

### **COUNCIL / DEPARTMENT – Producing a Screening Determination:**

#### **Powers to be used by a PA if developer does not submit sufficient information alongside their screening request**

(11) Where the council or, as the case may be, the Department considers that it has not been provided with sufficient information to enable it to respond to a request for a screening determination ..., it shall notify the applicant in writing of the particular points on which additional information is required, and the period for making the screening determination or for giving a scoping opinion shall not commence until receipt of that additional information.

#### **Time allowed to make a Screening Determination, and how to extend it**

(8) Subject to paragraph (11), the council or, as the case may be, the Department shall inform the applicant, in writing, of its screening determination within 4 weeks from the date of receipt of the request, or within such longer period, not exceeding 90 days beginning with the date of receipt of the request, as may be agreed in writing between the council or, as the case may be, the Department and the applicant.

(10) Where the council or, as the case may be, the Department consider that due to exceptional circumstances relating to the nature, complexity, location or size of the proposed development it is not practicable for the council or, as the case may be, the Department to make a screening determination within the period specified in paragraph (8), the council or Department may extend that period by notice in writing to the applicant giving reasons for that conclusion and the date when the screening determination may be expected.

#### **What must be considered in making a Screening Determination**

(7) Where the council or, as the case may be, the Department has to make a screening determination, it shall take into account—

- (a) any information provided by the applicant;
- (b) where relevant, the results of other environmental assessments carried out pursuant to Union legislation other than legislation implementing the requirements of the Directive; and
- (c) such of the **selection criteria** as are relevant to the proposed development.

#### **Written statement to be issued with a Screening Determination<sup>24</sup>**

##### **- Where EIA is required**

(14) If, in response to a request for a screening determination, the council or, as the case may be, the Department determines that the proposed development is EIA development, it shall provide with the screening determination a written statement giving the main reasons for that conclusion with reference to the relevant **selection criteria**.

##### **- Where EIA is NOT required**

(15) If, in response to a request for a screening determination, the council or, as the case may be, the Department, determines that the proposed development is not EIA development, it shall provide with the screening determination a written statement giving the reasons for that conclusion with reference to the relevant **selection criteria** and, where proposed by the applicant, state any features of the development and measures envisaged to avoid or prevent, what might otherwise have been, significant adverse effects on the environment.

#### **DEPARTMENT - Requirement when it issues a Screening Determination**

(9) The Department shall send a copy of its screening determination to the council in whose district the proposed development is to be situated.

#### **COUNCIL / DEPARTMENT - IF DEVELOPER requests Scoping Opinion alongside a screening request – The action and “indicative” deadline for producing a Scoping Opinion is as follows:**

(16) Where the council or, as the case may be, the Department makes a screening determination and the applicant has also requested a scoping opinion, the council or, as the case may be, the Department shall respond to the request for the scoping opinion within 6 weeks of the date of issue of its screening determination under paragraph (14) or such longer period as may be agreed in writing with the applicant.

#### **DEVELOPER - action required on receipt of a Screening Determination**

(19) Where, following receipt of a screening determination under paragraph (14), the applicant wishes to proceed with the proposed development, the applicant shall by notice in writing inform the council or, as the case may be, the Department that the applicant either—

- (a) accepts the council’s or, as the case may be, the Department’s screening determination and proposes to provide an Environmental Statement; or
- (b) does not accept the council’s or, as the case may be, the Department’s screening determination and proposes to seek a hearing before the Commission.

(20) The notice referred to in paragraph (19) shall be served on the council or, as the case may be, the Department within 4 weeks of the date of the screening determination.

---

<sup>24</sup> Note: Regulation 44 covers – Availability of information in relation to determinations, opinions, decisions, etc.



Department for  
**Infrastructure**

An Roinn

**Bonneagair**

Depairtment fur

**Infrastructure**

[www.infrastructure-ni.gov.uk](http://www.infrastructure-ni.gov.uk)

## **ENVIRONMENTAL GOVERNANCE**

### **Regional Planning Governance & Legislation Directorate**

Clarence Court

10 - 18 Adelaide Street

Belfast

BT2 8GB