



EIA Transposition Team  
Scottish Government  
Area 2H South  
Victoria Quay  
Edinburgh  
EH6 6QQ

[EIAConsultation2016@gov.scot](mailto:EIAConsultation2016@gov.scot)

31 October 2016

Dear Sir / Madam,

**Consultation on Environmental Impact Assessment: amending Scottish Environmental Impact Assessment Regulations to Transpose Directive 2014/52/EU<sup>1</sup>**

Thank you for the opportunity to comment on this consultation.

**The Chartered Institute for Archaeologists**

The Chartered Institute for Archaeologists (ClfA) is the leading professional body representing archaeologists working in the UK and overseas. We promote high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provide a self-regulatory quality assurance framework for the sector and those it serves.

ClfA has over 3,300 members and around 80 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors. ClfA is a member of the Built Environment Forum Scotland (BEFS), a network organisation that brings together non-governmental organisations and professional bodies that work with Scotland's built environment.

This response has been drafted with the help of ClfA's Scottish Group has over 250 members practising in the public, private and voluntary sector in Scotland.

**Environmental Impact Assessment: amending Scottish Environmental Impact Assessment Regulations to Transpose Directive 2014/52/EU**

**General**

Environmental impact assessment (EIA) is a key mechanism for the management and protection of the historic environment in Scotland, not only for designated historic assets but also for those assets which are not designated and for which EIA provides a crucial (and in some cases the only) safeguard.

As such, ClfA is concerned to see that the current levels of protection and oversight provided by EIA are maintained and where appropriate improved and welcomes the transposition of Directive 2014/52/EU in this regard. Transposition should, if possible, be done in such a way as to ensure the continued operation of these provisions regardless of the United Kingdom's membership of the European Union.

**Question 1. Do you agree with proposals to provide for a coordinated rather than joint procedure?**

1.1 Yes. There is always the risk, when merging individual assessments into a single assessment, that specific environmental considerations may not be fully addressed.

**Question 2. What would the regulatory impact be if legislation was introduced which required that no construction of any EIA development should take place until any relevant operational permits or consents required under the Habitats and Birds Directives, Water Framework Directive, the Industrial Emissions Directive, or the Waste Framework Directive had been granted?**

2.1 No comment.

**Question 3. Do you have any further comments on the changes proposed to implement articles 1 and 2 of the EIA Directive?**

3.1 No comment.

**Question 4. Will you have to change your current practice to take account of the risk of major accidents?**

4.1 Accounting for the impact of potential major accidents on the historic environment will add to the workload of those preparing historic environment / cultural heritage sections of EIA reports. However, the additional requirements should not be unduly onerous and will make assessments more robust.

**Question 5. Do you consider that our approach to transposition of information to be assessed appropriately implements the requirements of the Directive?**

5.1 Yes. ClfA particularly welcomes the identification of '*material assets, cultural heritage and the landscape*' in the Directive and draft regulations.

**Question 6. Will you have to change your current practices to meet the new screening requirements?**

6.1 No comment.

**Question 7. Are you content with the current timescales for providing a screening opinion?**

7.1 Yes, save that care needs to be taken to ensure that longer timescales do not in practice produce slower determinations than are strictly necessary.

**Question 8. Do you consider that our approach to transposition of screening appropriately implements the requirements of the Directive?**

8.1 There is concern that an opportunity has been missed in producing revised regulations to introduce a more even-handed approach to screening for Schedule / Annex II projects in relation to historic assets with archaeological interest. Such assets are to be found both above and below ground, but in places the draft regulations focus exclusively on above-ground works, ignoring the potential harm caused to assets with archaeological interest by below-ground works.

8.2 Thus, for instance, the draft Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 identify as Schedule 2 development '*an electric line installed above ground*' with given characteristics, but take no account of the impact of similar lines installed below ground.

8.3 Where cables are laid underground such cabling can extend for several hundred miles involving ground disturbance far in excess of that involved in other development identified, for example, in Schedule 2 of the draft Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (where 0.5 hectares is in a number of instances used as a threshold). Furthermore, underground cables are also classed as permitted development under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (see Part 13, Class 40: Electricity Undertakings). Consequently, formal assessment and consent, either through the EIA regulations or the planning process, is often not required.

**Question 9. Will you have to change your current practice to prepare a reasoned conclusion?**

9.1 No comment.

**Question 10. Do you consider that our approach to transposition of requirements concerning the content of the EIA report appropriately implements the Directive?**

10.1 No comment.

**Question 11. Do you consider that our approach to transposition of scoping appropriately implements the requirements of the Directive?**

11.1 It would be helpful (through regulation, guidance or some other means) to articulate the need for targeted, bespoke scoping as opposed to a more formulaic, 'cut and paste' response.

**Question 12. Do you consider that our approach to transposition of assessment quality and expertise appropriately implements the requirements of the Directive?**

12.1 No.

12.2 ClfA welcomes the introduction of requirements for the developer to ensure that reports are prepared by competent experts and for competent authorities to have, or have access to, appropriate expertise.

12.3 However, proposed transposition of these requirements leaves open to doubt the definitions of a 'competent expert' and sufficient expertise. Such doubt is most effectively dispelled by the use of accreditation mechanisms (such as those provided in an archaeological context by ClfA's accredited membership grades<sup>2</sup> and registered organisations scheme<sup>3</sup>). Ideally, these should be embedded in the regulations transposing the Directive, but if this does not occur, they should be clearly identified in supporting guidance.

**Question 13. Do you consider that our approach to transposing consultation and publicity appropriately implements the requirements of Directive?**

13.1 Yes, save that there is concern that requirements to consult with local authorities may be undermined by the financial pressure on such authorities and their continuing loss of historic environment expertise.

13.2 Notwithstanding the above concern, the Institute welcomes the identification of Historic Environment Scotland as a main statutory consultee.

**Question 14. Do you feel that the current arrangements for informing the public meet your needs?**

14.1 No comment.

**Question 15. Do you consider that the regulations meet the requirements of the Directive concerning the information to be included in the development consent?**

15.1 Yes.

**Question 16. What administrative changes are likely to be required to implement new provisions on the content of decision notices?**

16.1 No comment.

**Question 17. Do you consider that our approach to transposition of monitoring in the regulations implements the requirements of the Directive?**

17.1 Yes, provided that in each case (and particularly where regulations relate to activities outside the planning process or other consenting processes that have their own enforcement mechanisms):

(1) the framework for monitoring and enforcement is clearly set out and can be implemented in practice

(2) the competent authority has sufficient resources and expertise (or access to expertise) in place to ensure that any monitoring agreed as part of an EIA is delivered.

**Question 18. Will you have to change your current practices to meet the new monitoring requirements?**

18.1 No comment.

**Question 19. Do you consider that our approach to transposition for decisions appropriately implements the requirements of the Directive?**

19.1 Yes.

**Question 20. Do you consider that our approach to conflict of interest appropriately implements the requirements of the Directive?**

20.1 Yes.

**Question 21. Do you agree with proposals to introduce penalties and sanctions for knowingly or recklessly providing false information should be applied across all eight EIA regimes?**

21.1 Yes.

**Question 22. Do you consider that our approach to transitional arrangements appropriately implements the requirements of the Directive?**

22.1 No comment.

**Question 23. Do you have any comments on the proposal by the forestry regime to increase the afforestation threshold for non-sensitive areas from 5 hectares to 20 Hectares?**

23.1 Given the concerns expressed at paragraphs 8.1 to 8.3 above, ClfA is similarly concerned about the proposal to increase this threshold from 5 hectares to 20 hectares.

23.2 The afforestation of up to 20 hectares of land without an appropriate level of assessment / evaluation agreed through a formal consent process would potentially have a significant negative impact upon as yet unidentified buried archaeological remains. Without such assessment / evaluation the precise extent and seriousness of that impact upon the historic environment in Scotland is unquantifiable.

**Question 24. Do you have any comments on the proposal by the marine regime to adopt the thresholds used by the planning regime where they are relevant to marine developments?**

24.1 No comment.

**Question 25. Do you have any comments on the new provisions on multi stage consents?**

25.1 No comment.

**Question 26. Do you currently use EIA guidance? If so please provide further details.**

26.1 No. As a professional body ClfA does not use EIA guidance, but many of its members do.

**Question 27. Is there any particular area or regime where you feel that guidance would be helpful?**

27.1 If accreditation mechanisms to define competence and expertise are not to be embedded in regulations as suggested above, this should be clearly and comprehensively dealt with in guidance.

**Question 28. Do you think that the proposals presented might impact on people differently depending on characteristics such as age, disability, gender, race, religion or belief, sexual orientation, gender identity or children's rights and wellbeing?**

28.1 No comment.

**Question 29. What do you consider are the likely costs and benefits arising from the changes outlined in this consultation paper? (Please specify which of the Scottish EIA regimes your comments refer to.)**

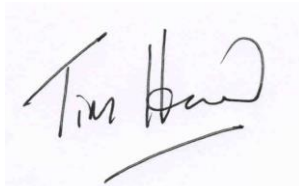
29.1 In the short term, changes to working practices may involve additional cost, but in the longer term provisions such as a requirement to use accredited expertise should produce significant savings and benefits.

**Question 30. Do you have any comments on the Draft Partial Business Regulatory Impact Assessment?**

30.1 No comment.

If there is anything further that I can do to assist please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tim Howard', with a horizontal line underneath.

Tim Howard LLB, Dip Prof Arch  
Senior Policy Advisor

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<sup>1</sup> [https://consult.scotland.gov.uk/eia-transposition-team/transposition-of-environmental-impact/consult\\_view](https://consult.scotland.gov.uk/eia-transposition-team/transposition-of-environmental-impact/consult_view)

<sup>2</sup> <http://www.archaeologists.net/regulation/accreditation>

<sup>3</sup> <http://www.archaeologists.net/regulation/organisations>