



Scotland Against Spin

The alliance for all opposed to National Wind Energy Policy

European Commission's proposed changes to the EIA Directive

EIA DIRECTIVE SEMINAR: 4TH FEBRUARY 2013

Scotland Against Spin questionnaire response
16th April 2013

We are grateful for the opportunity afforded to discuss the EU Directive seminar papers and to respond to the Scottish Government on the proposed changes. We have studied the papers provided.

Scotland Against Spin fulfils a number of roles as a representative of communities, as an NGO and, with the encouragement and approval of the Scottish Government, now as an EIA stakeholder.

Throughout the document the word significant is used and our interpretation of that word is that it simply means important. The use, misuse, overuse or underuse of this word is endemic in environmental assessment. How it is interpreted is a key to successful environmental assessment.

We would also highlight the use of the word "major" on slide 4 of the EU Directive seminar visuals. Were the word "major" to be used, our understanding is that this could exclude substantial local development. We are quite sure that is not the intention but would like clarification on this point.

Our comments are in italics.

Please address any queries to Graham Lang, Chair, Scotland Against Spin
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EIA Current Practice

1. The European Commission has announced proposals for amending the EIA Directive. What are your key priorities for an amended EC Directive?

i) *That EIAs are objective and accurate - that their authors are properly independent (which is not the case if they are selected, managed and paid by the developer) and their scrutiny and assessment by planning officers and statutory and non-statutory consultees are properly resourced, thorough, well informed and not constrained by narrow policy direction from the centre.*

ii) *That EIAs are requested by CAs where necessary – in our experience at the moment all screening decisions we see are delegated decisions allowing the planning officer a degree of discretion. This is reasonable subject to the officer's*

experience. The inevitable outcome is that some applications that should have an EIA do not and this gives rise to statutory consultees or indeed the CA requesting further information. A precautionary approach should be taken.

iii) That third parties are allowed input into the screening and scoping stages as they may well have knowledge of potential environmental impacts that CAs are unaware of. Local knowledge is important and should be sought.

EIA Costs

2. The European Commission's impact assessment of proposals^[1] estimates average EIA costs for developers equate to 1 % of the total project cost, or approximately € 41,000 per EIA (roughly £34,000 at current exchange rates).

We would be surprised if EIA work associated with a wind farm development was as low as 1% of the project costs. That would mean that the EIA process on a £15 million wind farm development would be £150,000.

We hear a wide range of figures relating to the costs of wind farm EIAs ranging from £200/500K. Community Windpower recently told SAS that their average EIA cost was around of £250K.

Screening

3. The European Commission has proposed changes to article 4 and a new Annex IIA. The changes are proposed to:

- ensure EIA is only undertaken for projects likely to have significant environmental effects, and
- to avoid unnecessary burden for small-scale projects.

Do you agree the EC proposals will achieve these aims?

We wish to see significant environmental effects properly assessed but do not want to see EIA being an unnecessary burden on small scale projects.

4. Do any new financial or other burdens arise from the proposed changes to article 4 / new Annex IIA.?

The main new costs will arise from verification arising from other Union legislation.

Our understanding of this is that the changes refer to where an application will not require an EIA and has been screened accordingly although provision is made at Point (c) for an EIA being required. An interesting change is that while, at present, a determination period can only be extended with the agreement of the applicant, under the proposed alteration the statutory time period can be extended, given satisfactory justification, by the CA. We think that is fair and reasonable.

5. The proposed changes to article 4 and the new Annex IIA would introduce new information requirements to be met by developers at screening stage. Is this type of information currently available to developers

- a) pre-application?
- b) when an application for development consent is made?

Developers may balk at this but they should not be taking high cost applications forward unless they have done enough homework on environmental impacts to be confident that these will not make the application unacceptable. In other words responsible developers will already have this information (one reason they might not is because they believe some environmental impacts, even if very bad, would not prevent consent - this is sometimes the case with landscape and visual impacts with onshore wind farms, and marine environmental impacts with offshore wind farms - because of a political imperative to see consent for such applications. But this is a weakness of the larger planning system, not EIAs.

Scoping

6. Draft changes to article 5 would place scoping on a mandatory footing for the first time, requiring the competent authority to include a scoping opinion with all positive screening decisions.

a) In your experience, which of the following statements best reflects current scoping practice? (please circle)

- *We circle Scoping often takes place*

Generally, in our experience of wind farm applications and in the case of some smaller clusters and individual turbines, if there is a requirement for an EIA the applicant will request a scoping opinion from the LPA. In the cases they do not the applicant claims that their experience of the issues to be addressed is such that a scoping opinion is unnecessary. They know the boxes to tick. However using such experience as a surrogate for a scoping opinion has led to problems in the past where exceptional issues have been missed and this results in subsequent delay while undertaking the necessary work. Including a scoping opinion with a screening decision would serve to reduce the time taken between a screening decision and an application. Scoping strikes us as largely a repetitive process with the same issues applying to all proposals with few variables that should be easily picked up through the process by the CA. It often takes an unreasonably long time for a CA to issue a scoping opinion and we think on balance it may be preferable to issue a scoping opinion at the same time as a screening decision.

b) Do you agree the scoping opinion should be issued alongside the screening opinion?

See above. There are cases where it would be work and time wasted where the requirement for a full EIA might render the proposal unattractive to the applicant. This would only apply to very small development proposals. The applicant can of course appeal the screening opinion.

7. Do you have any comments on the proposed changes to article 5(2)?

Third parties should be allowed input into the screening and scoping stages as they may well have knowledge of potential environmental impacts that CAs are unaware of. Local community councils and local interest groups representing residents should be invited to take part in the selection process for viewpoints for visualisations and selection by desktop studies should be discontinued.

It is unrealistic and much too vague to require the CA to determine reasonable alternatives when screening/scoping reveals unacceptable environmental impacts. It

is not for CAs to do the applicant's job and design an appropriate scheme for them. Scoping advice should be the cornerstone of the preparation of the applicant's environmental information. There would be costs of course and given the paltry sum paid in Scotland to the CA when lodging these development applications it would be unreasonable to consider the funding should be born by the CA.

Publicity

8. Changes are proposed to article 6 of the Directive concerning the timeframes for public consultation. Do you have any comments on the proposed changes to article 6?

We consider that interested third parties should have the opportunity to comment on environmental information provided with the application for 90 days from when the EIA is publically available and at all stages in the planning process when new information is provided by the applicant.

EIA Quality: (Accredited experts)

9. To guarantee completeness and quality of Environmental Statements /Reports, the EC proposes that statements should in future be either

- prepared by an accredited expert on behalf of the developer, or
- verified by an accredited expert and/or committee of national experts.

a) Do you agree the proposals will achieve the EC aim of improved EIA quality? Please give reasons where possible:

Key will be the degree of control the developer can exercise over the accredited expert and his report. At the moment experts who carry out EIAs although nominally independent are not. He who pays the piper calls the tune. This is why EIAs never come up with significant environmental impacts that are unacceptable and yet at appeal significant environmental impacts are frequently cited when an appeal is dismissed and rarely is this challenged. In all cases irrespective of significant effects the proposal is deemed acceptable. Sometimes the firm carrying out the EIA is even owned by the same people who own the developing company (eg Atmos Consulting is almost entirely owned by West Coast Energy).

b) What financial, administrative or other new costs do you anticipate? Please give details where possible:

c) Are you aware of any existing models or examples which demonstrate how a system of accredited experts might work in practice?

We like the concept of verification by an accredited expert and/or committee of national experts. Our only experience is one occasion where a CA has submitted the EIA for a wind farm development to the Institute of Environmental Management and Assessment. This is a check on EIA methodology but also considers conclusions and the assessment of significant effects. Issues were reported to the CA so there was a check on the quality of the EIA by an independent examiner.

EIA Quality: (General)

10. Additional changes proposed to article 8 of the Directive include:

1. New information requirements when a Competent Authority ('CA') grants development consent.
2. New requirement to consider modifications to a project where significant adverse effects are identified.
3. New requirement for the CA to verify information in the environmental report is up to date before an decision to grant or refuse development consent is taken.
4. New requirement for the CA to take account of other EC assessments, before it concludes its Environmental Impact Assessment of the project.
5. New timescales for the CA to conclude its environmental impact assessment of the project.

Do you have any comments on any of the above proposed changes?

1. *Who requires the "new information"? New information should be fed into the planning determination process and not bolted on after the CA grants consent.*
2. *The application having passed through Screening and Scoping should, at the time of the application, have assessed the significant effects and the benefits of the development in a full EIA. At that stage the application must be determined as submitted and to make any material alterations to it would require a new application. If the development is refused the applicant has two choices: appeal the decision or make a fresh application.*
3. *Any new information such as changes to national and local development plan policies would be taken into account in the CA determination report as would any new advice from statutory consultees and it should be a matter of routine to check that.*
4. *If EC assessments are made available to CAs as they are published that should be manageable - otherwise this would be burdensome on CAs.*
5. *Since all wind farm applications run over the statutory time period for assessment and determination, sometimes by a factor of 4 or 5, would it not be rational to increase the time period to something experience would dictate is more realistic?*

EIA Quality: (Monitoring)

11. The EC proposes a new mandatory requirement to undertake monitoring (of projects with significant adverse environmental effects), with the purpose of assessing the implementation and effectiveness of mitigation and compensation measures.

- a) Do you agree the proposals will achieve the EC's aim?

Cynics would say the problem is that if the developer does the monitoring, he will have a strong incentive to play down or suppress environmental impacts which could lead to further costs (eg through compensation or mitigation). Any monitoring to be

worthwhile has to be objective, robust and independent - and all information collected has to be made public.

b) Are there any existing monitoring provisions in place which might meet the draft EC requirements?

There may be, and certainly should be, some 24-hour monitoring of noise from turbines introduced by consent conditions but at the time of writing we are unaware of any.

c) Do any financial, administrative or other new costs arise in implementing this proposal? To whom would these costs fall?

Any costs should be funding provided by the EU and the Scottish Government should provide core funding to CAs.

Co-ordination: ('One-stop-shop')

12. The EC is proposing a new mandatory requirement to ensure co-ordination or joint operation of the EIA with the environmental assessments required under other relevant EC legislation (e.g the IPPC, Habitats and SEA Directives). Do you think this joint or co-ordinated approach to environmental assessment and consenting would benefit your business/organisation?

We strongly support this joint or co-ordinated approach. We note that The Industrial Emissions Directive entered into force in January 2011 and had to be transposed into national legislation by Member States by 7 January 2013 so it is now law throughout the EU.

It is EU legislation so we would assume that non-compliance would be open to a legal challenge.

13. Do you agree with the proposal that this requirement for a 'one-stop-shop' approach should be mandatory for all occasions where assessments are required under more than one directive?

It should be mandatory to comply fully with EU legislation.

14. Do any new financial, procedural or administrative burdens arise, where a single authority is appointed to co-ordinate the EC assessments?
Please give details:

In this context we do not understand what is meant by a 'single authority.'

15. Do any cost savings or other benefits arise where a single authority is appointed to co-ordinate the EC assessments?

In this context we do not understand what is meant by a 'single authority.'

16. If there was to be a single authority appointed to co-ordinate in cases of multiple EC assessments, should a particular authority always be the one appointed to that lead role?

In this context we do not understand what is meant by a 'single authority.'

Environmental Topics (Article 3)

17. The EC has proposed changes to Article 3 of the Directive to

- Improve consistency (including with SEA), and
- to integrate 'new' environmental issues (including climate change, biodiversity and disaster risks) into the assessment.

Do you foresee any issues in implementing the proposed changes?

Please provide further details where applicable:

We would like to see the text from Annex IV included in the proposed amended version of Article 3: the direct and indirect significant effects c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances and the elimination of waste.

EIA screening / selection criteria (Annex III)

18. The EC has proposed changes to Annex III of the Directive to

- Clarify screening criteria, and
- Improve coverage of environmental topics.

Do you have any comments on the proposed changes to Annex III?

In the amended version we would like to see at (i) the risks to human health (e.g. due to water contamination or air pollution) expanded to include the emission of pollutants, noise, vibration, light, heat and radiation.

Environmental Topics (Annex IV)

19. Annex IV of the Directive concerns the items to be considered in the environmental report. The main changes introduce additional information requirements concerning:

- the assessment of reasonable alternatives, and
- the description of aspects related to new environmental issues (including climate change, biodiversity and disaster risks, use of natural resources).

a) Do you agree the inclusion of the new EIA topics in draft amended Annex IV?

Yes

b) Do you agree the proposed requirement to assess reasonable alternatives?

In some EIAs there is a section devoted to alternatives to justify the choice of a particular site. This is invariably a "Hobson's Choice" situation and in the end the site selected is the site selected and will come forward as an application. The main criteria is land availability and another developer may have an agreement to develop a better site in the study area which is why many unsuitable sites in planning terms and in the decisions of reporters to dismiss appeals come forward.

Additional material by an SAS member

Article 3 (page 3) EIA Directive Review

What are the principles behind making the proposed changes?

(a) Is the primary concern really to protect human health with robust and protective guidance to ensure fair play for the public?

It would be unfortunate if any new 'guidance' given appeared to remain slanted in favour of short-term economic interests against the logic of applying the precautionary principle in order to protect our natural environment from further potential damage.

If the health of the land, soil, water and air are not fully protected then protection for human health and a healthy biodiversity become irrelevant as their health depends entirely on having a relatively quiet and undisturbed environment in order for nature to flourish.

The possible/probable adverse environmental effects of the growing numbers and changing nature of wind turbines on the whole living environment should not be underestimated.

Every form of electrical generation and distribution creates un-natural electromagnetic fields. These fields are not visible so are not an obvious threat although within the industry it has been known for many years that health issues are associated with constant low level exposure. Today it is known that living near a sub-station can affect the health of those living nearby.

Wind Turbines are often sited next to mobile phone masts and broadcasting relay masts. No one can be sure what the synergistic effects are with the inevitable scatter of radio signal.

The rapidly growing number of wind turbines for the generation of electricity being installed in the countryside has introduced a new industrial element together with the accompanying emissions of noise, enhanced electromagnetic fields and an increase in non-ionising radiation sources which were not present before. There is a growing body of evidence that cumulative low level exposure to them are likely causes for chemical intolerance, neurodegenerative disease and immune impairment. This is an increasing problem for the insect and animal population too.

Distribution systems need to be carefully controlled in order to avoid power surges, ground currents and the creation of unwanted harmonics which are known to be harmful to human health.

Whether the turbines are linked into the national grid or the local distribution system, robust suitable protective filters need to be installed and kept in good working order. This is necessary to avoid problems with harmful harmonics being inadvertently created on household wiring and other damage possibly being done to the local environment.

Noise pollution is usually defined as "unwanted or disturbing sound" and is widely recognised as contributing to ill health and sleep deprivation.

Today's wind turbines are large industrial structures designed along the same lines as jet engines. The sounds they emit are tonal in nature and have a pulsed beat

which, together with a broadband range of frequencies, are having a very disturbing effect on a growing number of people.

The compressed sound waves create changes to the ambient air pressure in just the same way as a jet engine flying overhead does. Jets fly away and the annoying effects go with them – turbines remain static so there is no escaping them. They are in effect giant static fans giving off the same disturbing frequencies as air conditioning fans which are the cause of many complaints in urban situations.

These industrial changes to the ambient atmosphere in the countryside are felt by skin, hair, feathers, and foliage. Only time will tell what the full effects on our natural environment and food production will be.

Flicker from this growing number of turbines, especially when there are a variety of sizes and types in a small area, can be very disturbing to the both the visual and auditory senses. Some are lit with a red light at night: this can introduce a 'strobe light' effect into an otherwise relatively dark environment.

The new generation of turbines are being fitted with smart technology and linked into the industrial internet. This enables the turbines to adjust themselves so that they beat and work in unison for efficiency. This will inevitably increase the overall effects of the low frequencies.

The possibility of adverse effects of low-frequency noise on health and well-being caused by long-term exposure should be taken very seriously.

At present there is a great deal of pressure to find 'radar mitigation solutions' in order to free up more areas for wind development. New and enhanced radar systems are being installed and a number of new light induced technologies are to undergo trials both in the countryside and at sea. What the long-term consequences for the environment and health will be are very far from certain as natural sunlight is nature's energy source.

Strong environmental impact assessments are key to safeguarding human health and biodiversity.

Useful links:

Environmental Noise and Health in the UK: a report by the Ad Hoc Expert Group on Noise and Health (PDF, 1.2 MB)

www.euro.who.int/en/what-we-do/health-topics/environment-and-health/noise/publications/2009/night-no...

[WHO recommends setting night noise limits at 40 - European ...ec.europa.eu/environment/integration/research/newsalert/pdf/202na3.pdf](http://ec.europa.eu/environment/integration/research/newsalert/pdf/202na3.pdf)

www.noiseandhealth.org/article.asp?issn=1463-1741;year=2010;volume=12;issue=47;spage=61;epage=63;aul...

www.aef.org.uk/downloads/Health_impacts_of_aircraft_noise.pdf

[1403: PACE endorses the precautionary principle for EMF | EMFacts
...www.emfacts.com/2011/05/1403-pace-endorses-the-precautionary-principle-for-emf/](http://www.emfacts.com/2011/05/1403-pace-endorses-the-precautionary-principle-for-emf/)

[WHO | What are electromagnetic fields? - World Health Organization
www.who.int/peh-emf/about/WhatisEMF/en/index1.html](http://www.who.int/peh-emf/about/WhatisEMF/en/index1.html)

[Electromagnetic Fields And How They Affect Our Health | Collective...
www.collective-evolution.com/2013/01/06/electromagnetic-fields-and-how-they-affect-our-health/](http://www.collective-evolution.com/2013/01/06/electromagnetic-fields-and-how-they-affect-our-health/)

www.epa.gov/air/noise.html

[Alternative energy: Is it plane? | The Economist
www.economist.com/node/12551574](http://www.economist.com/node/12551574)

[Sources and effects of low-frequency noise—\[The Journal of the ...
link.aip.org/link/?JASMAN/99/2985/1](http://link.aip.org/link/?JASMAN/99/2985/1)

*Casella Stanger report on low frequency noise for DEFRA Noise Programme 2001.
Department of the Environment, Northern Ireland, Scottish Executive, National
Assembly for Wales*