

CONSULTATION

Response Document



**Environmental Impact Assessment regime and Habitats Regulations -
enabling powers**

18th March 2024

Introduction to CIEEM

The Chartered Institute of Ecology and Environmental Management (CIEEM), as the leading membership organisation supporting professional ecologists and environmental managers in the United Kingdom and Ireland, welcomes the opportunity to comment on this consultation.

CIEEM was established in 1991 and has over 7,000 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute has led the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge sharing through events and publications, skills development through its comprehensive training and development programme and best practice through the dissemination of technical guidance for the profession and related disciplines.

CIEEM is a member of:

- Scottish Environment Link
- Wildlife and Countryside Link
- Northern Ireland Environment Link
- Wales Environment Link
- Environmental Policy Forum
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network
- Greener UK
- Irish Forum on Natural Capital (working group member)
- National Biodiversity Forum (Ireland)
- The Environmental Science Association of Ireland

CIEEM has approximately 740 members in Scotland who are drawn from across the private consultancy sector, NGOs, government and SNCOs, local authorities, academia and industry. They are practising ecologists and environmental managers, many of whom regularly provide input to and advice on land management for the benefit of protected species and biodiversity in general.

This response was coordinated by Members of our [Scotland Policy Group](#).

We welcome the opportunity to participate in this consultation and we would be happy to provide further information on this topic. Please contact Jason Reeves (CIEEM Head of Policy) at JasonReeves@cieem.net with any queries.

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

Question 1

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

No

Question 2

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

Yes

Question 3

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

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

We have contributed to and support [ScotLINK's response](#) to this consultation, as we share many of the views therein expressed. Through this response we wish to make some additional comments.

CIEEM agree with ScotLINK that proposed powers are unnecessary for the reasons outlined. We also wish to emphasise that the exclusion of electricity works from a consultation on EIA is a major omission. This is not only due to the scale and pace of these works across Scotland, but also due to the links with other EIA regimes that are included in the consultation. For example, marine licensing would be required for at least some, if not all, offshore wind farms that require connection to onshore transmission infrastructure.

Question 4

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

No

Question 5

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

Yes

Question 6

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

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

As the consultation information notes, a number of amendments have already been made to the 1994 Regulations over the years, with the 2019 Continuity Act allowing for continued alignment with EU direction of travel. The procedure for HRA still works and is informed by case law. It does not require a wholesale overhaul.

Furthermore, the 2019 Planning Act also provides, through NPF4 Policy 4, a mechanism for ensuring that HRA for European Sites is required for any development that could affect such sites, whether EIA is required or not (as has always been the case).

Engagement with Westminster on UK-wide sites would be a more effective use of time and resources than seeking additional enabling powers.

Finally, neither of the scenarios provided actually explain why additional enabling powers would be required; in fact, these scenarios demonstrate how existing powers can effectively be used. With the shift on biodiversity strategy in Scotland towards nature networks, the focus really should be on use of existing powers to designate or add features within Scotland to ensure that sites can be protected with sufficient regard for the effects of climate change that are noted in this consultation document. Notably, a key practical aspect of HRA that already delivers in this regard is the focus on structure, function and supporting processes of qualifying habitats and/or of habitats that support qualifying species- this aspect of HRA already factors in changes that could be caused by climate change.

The key issues with effective implementation of HRA are around the knowledge, skills and capacity of consenting authorities, not the Regulations themselves. The capacity of Local Authority staff needs to be considered. We know from a survey of Local Planning Authority (LPA) staff¹ that current ecological resource or expertise is a concern with regards the delivery of NPF and Positive Effects for Biodiversity, with 22% of respondents stating that they have no current ecological resource or expertise available. Lack of

¹ <https://cieem.net/survey-of-scottish-local-planning-authority-capacity-highlights-risk-to-delivery-of-npf4/>

enforcement staff to ensure compliance was also identified as a high or very high risk to the ability of LPAs to implement NPF and Positive Effects for Biodiversity.

Part 4 - Impact assessments

Question 7

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

Unsure

Question 8

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

Unsure

Question 9

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

Unsure

Question 10

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

Unsure

Question 11

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

Yes

Question 12

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

Other – Please explain

We note that for Habitat Regulations Imperative Reasons of Over-riding Public Interest (IROPI) can apply; where it can not be ascertained that a plan or project will not adversely affect the integrity of a European site, and there are no alternative solutions, a plan or project can only proceed if there are imperative reasons of overriding public interest for doing so (regulation 49 of the Habitats Regulations)².

Where a priority habitat could be affected, imperative reasons of overriding public interest are limited to those reasons outlined in regulation 49. These must relate to human health, public safety, beneficial consequences of primary importance to the environment, or any other imperative reason of overriding public interest subject to the opinion of the Scottish Ministers.

Where a plan or project is to proceed for imperative reasons of overriding public interest Scottish Ministers have a duty to secure any compensatory measures necessary to ensure the overall coherence of the UK site network is protected (regulation 53 of the Habitats Regulations).

Question 13

Do you have any further comments you wish to add?

Please provide any further comments.

We refer to, and support, ScotLINK's response to this question.

² [https://www.nature.scot/professional-advice/planning-and-development/environmental-assessment/habitats-regulations-appraisal-hra#:~:text=Where%20it%20can%20not%20be,49%20of%20the%20Habitats%20Regulations\).](https://www.nature.scot/professional-advice/planning-and-development/environmental-assessment/habitats-regulations-appraisal-hra#:~:text=Where%20it%20can%20not%20be,49%20of%20the%20Habitats%20Regulations).)