

# Consultation Response

Time limits for enforcement  
action for unauthorised EIA  
development

July 2024



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## Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Planning Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government's consultation: *Time limits for enforcement action for unauthorised EIA development* (the "**Consultation**").<sup>1</sup> It has the following comments to put forward for consideration.

## Consultation Questions

### Proposed changes to legislation in Scotland

Question 1. Are you aware of any cases where an unauthorised EIA development has become immune from enforcement action under Section 124 of the Town and Country Planning (Scotland) Act? If yes, please give further information.

We have no specific comments to make.

Question 2. Do you agree enforcement time limits as set out in Section 124 of the 1997 Planning Act should be disapplied for unauthorised EIA development?

*Not sure*

We note the time limits for enforcement action as set out in Section 124 of The Town and Country Planning (Scotland) Act 1997. We also note the discussion in the Consultation regarding the potential issues in this context, for example at paragraph 2.1 which details that *"the requirement for enforcement action to be taken within a set period could theoretically give rise to a situation where a development, which should be subject to EIA procedures, becomes immune from enforcement action"*.

We consider it is not acceptable that there would be no Environmental Impact Assessment (**EIA**) where the whole of an EIA development proceeded without any planning permission and then became lawful development after the applicable time period, i.e. four or ten years.

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<sup>1</sup> [A consultation on time limits for enforcement action for unauthorised Environmental Impact Assessment development](#)



However, we note concern that the draft SSI contained in Annex A of the Consultation is potentially wide enough to prevent an EIA development with planning permission ever being lawful development if the development is built partly within the permission boundary and partly outside that boundary. It is unclear whether the whole or part of that development would fall within the description "carrying out without planning permission" in draft regulation 49A(1) and (2). This could lead to an unintended consequence where a relatively minor breach of the terms of a planning permission which actually undergone EIA would never be capable of being immune from enforcement action.

We are also concerned that regulation 49A(2) in effect introduces a requirement for screening for non-EIA development, because that is the only way a non-EIA development which might fall within Schedule 2 could claim immunity from any enforcement action.

[Questions 3. Do you have any comments on the draft SSI contained in Annex A of this consultation?](#)

Please refer to our comments above in response to question two.

## [Aarhus Convention Compliance Committee](#)

[Question 4. Do you have any comment on the circumstances in which planning authorities may retrospectively grant planning permission for unauthorised EIA development?](#)

We have no specific comments to make.

## [Impact assessments](#)

[Question 5. Do you agree with the findings of the impact assessments in Annex B of this paper or have any comments relating to these?](#)

We have no specific comments to make.

For further information, please contact:

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