This article introduces what commitments presented in an Environmental Impact Assessment Report (EIAR) (referred to as the Environmental Statement outside of Scotland) are, what happens upon planning permission being granted and how they are enforced during the project’s lifecycle. For simplicity, this article uses a hypothetical 10 turbine wind farm in Scotland with a nameplate generating capacity of 40 MW as an example. Nevertheless, the principles discussed are transferrable across different Environmental Impact Assessment (EIA) regulations and across the UK.

In the example posed, EIA is a statutory requirement as classified under Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (EIA Regulations). Schedule 4 of the EIA Regulations sets out what information should be included in an EIAR, including a description of the likely significant effects of the development on the environment. Furthermore, Schedule 4(7) states the requirement for EIAR to propose mitigation measures and monitoring arrangements throughout the project lifecycle. This statutory requirement forms the basis for presenting commitments in the EIAR.

Such commitments might include, for example, restricting wind turbines across a site to different tip heights, agreeing Construction Method Statements (CMS) or producing a site-specific Habitat Management Plan (HMP) in advance of construction starting.

When planning permission is granted those commitments, without which the project would be deemed unacceptable, are normally taken forward by the consenting authority and enforced as consent conditions attached to the consent. Conditions can be non-suspensive and require, for example, compliance with the EIAR throughout the project lifecycle. Conditions can also be suspensive and require to be satisfied prior to the commencement of the activity it relates to. Specific commitments can be captured in such a condition, for example the HMP. It is the responsibility of the project Owner to produce the requisite documentation. Following written satisfaction by the consenting authority, the Owner must ensure the actions documented are undertaken. A CMS may deal with the construction phase only whilst an HMP will often include requirement for periodic reporting throughout the project’s operation and formation of an HMP Group including stakeholders and consultees of interest.
Regular reviews of the HMP’s progress provides opportunity for methods to be updated in response to success or failure of habitat management, thereby ensuring that significant adverse effects on the environment are offset.

Project owners need to ensure that commitments are communicated across delivery teams as the project evolves and changes hands between planning project managers, construction project managers and asset managers. Most consenting authorities have planning enforcement teams but may lack the resource required to monitor the compliance of a project with its planning and environmental obligations. Planning permissions may therefore include planning conditions for the requirement of an Environmental Clerk of Work (ECoW) and/or a Planning Monitoring Officer (PMO) to be involved during the construction and decommissioning stages, sometimes even operational stage of projects. Under these circumstances, the Owner is required to appoint an independent and suitably qualified environmental consultant to assist the consenting authority in monitoring compliance. The ECoW would be appointed to monitor specifically ecological and hydrological commitments made in the EIAR and the PMO appointed to oversee in a more general sense compliance with the terms of the deemed planning permission and conditions attached to the consent. These involve desk-based reviews, regular site visits and reporting to the consenting authority.

In the author’s view, both roles should aim to facilitate compliance by identifying potential issues in advance and ensuring through liaison with the Owner, that these are dealt with at an early stage thereby preventing significant adverse effects from occurring.

In summary, commitments made at the outset of a project and documented in an EIAR are identified under the EIA Regulations to mitigate potential significant adverse effects. Some commitments may be short lived during the construction stage or be long term requirements over the lifetime. Both can be enforced through consent conditions. The Owner’s adherence to such commitments is generally monitored by the consenting authority but increasingly is being delegated to specialised contractors. Communication is paramount; ensuring such commitments are understood by the different people managing a project through its lifetime for significant effects to be avoided.


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