

INTERIM ADVICE NOTE 126 /09

ENVIRONMENTAL IMPACT ASSESSMENT: Reporting of Determination and Publication of Notices

Summary

Guidance for screening projects for Environmental Impact Assessment is provided in DMRB Volume 11, SECTION 2, Part 3 (HD47/08). This IAN supplements HD47/08 by providing additional guidance for the determination process. The requirements for notifications in accordance with The Highways Act 1980 (as amended) are also detailed.

Instructions for Use

This document replaces CHE Memo 71/99 – Revision 1 (CHE Memo 71/99 – Revision 1 is withdrawn). It should be read in conjunction with DMRB Volume 11, SECTION 2, Part 3 (HD47/08) – Screening a Project.

Table of Contents

Introduction	3
Background	3
Scope	3
Purpose	4
Mandatory sections	4
Equality Impact Assessment	4
Risk Assessment	4
Implementation	4
Definitions and abbreviations	4
Feedback	4
Determination	5
Process	5
Reporting the Determination	5
Notice of Determination	6
Other Notices	7
Notice of Environmental Statement	7
Notice of decision whether / not to proceed with a project following publication of an Environmental Statement	7
Where to publish each Notice	8
Enquiries	8
Annexes	10
ANNEX A	Record of Determination (template)
ANNEX B	Guidance for completing the Record of Determination
ANNEX C	Specimen Notice of Determination
ANNEX D	Specimen Notice of the Environmental Statement
ANNEX E	Specimen Notice of Decision Whether To / Not To Proceed

1. Introduction

1.1 Background

Design Manual for Roads and Bridges (DMRB) Volume 11, Section 2, Part 3 (HD 47/08) – Screening of Projects for Environmental Impact Assessment, (published in August 2008) made the application of a screening process mandatory for all trunk road projects. HD 47/08 provides guidance for the screening of trunk road projects and applies to all Highways Agency roads and those belonging to the Devolved Administrations. This Interim Advice Note (IAN), which replaces CHE Memo 71/99 – Revision 1, supplements guidance given in HD 47/08 to cover the Highways Agency procedure for the determination process, and only applies to England. It should be read in conjunction with HD 47/08.

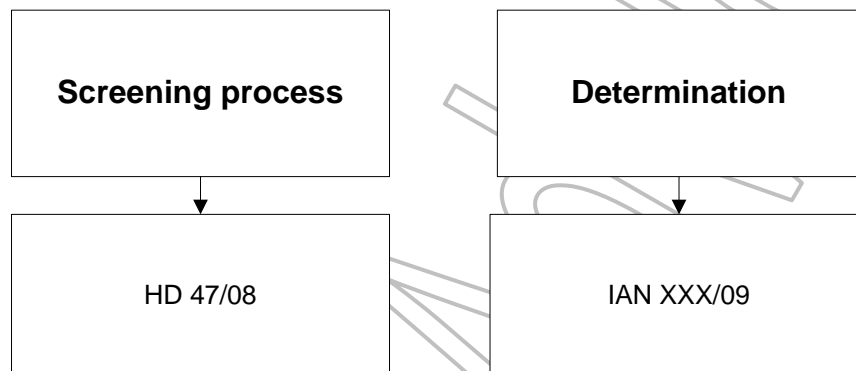


Figure 1 – Relationship between HD 47/08 and IAN XXX/09

DMRB Volume 11, Section 2, Part 6 (HD 48/08) - Reporting of Environmental Impact Assessments (published in August 2008) refers to amendments to Highways Act 1980 Section 105b which requires projects which produce an Environmental Statement (ES) to:

1. Publish a Notice of the Environmental Statement; and,
2. Publish a Notice on whether to proceed or not.

Consequently, this IAN contains common guidance on these two aspects.

1.2 Scope

The guidance contained within this Interim Advice Note (IAN) is applicable to projects:

- For which a Determination is necessary. These are Annex II relevant projects as defined in Volume 11, SECTION 2, Part 3 – Screening (HD47/08); or,
- Which need to undertake a statutory Environmental Impact Assessment (EIA) and publish an Environmental Statement (ES). These may be Annex I or Annex II projects.

This IAN should be read in conjunction with DMRB Volume 11, SECTION 2, Part 3 – Screening (HD47/08).

1.3 Purpose

The purpose of this IAN is to help project teams achieve a consistency of approach in respect of the legal requirements of Determination and publication of notices, and to ensure there is transparency in the process of Determination and that judgements have a sound basis.

1.4 Mandatory sections

Sections of this document containing requirements are identified by being contained in boxes. These requirements must be complied with or a prior agreement to a Departure from Standard must be obtained from the Overseeing Organisation. The text outside boxes contains advice and explanation.

1.5 Equality Impact Assessment

This IAN promotes consistency of Highways Agency internal procedures and provides guidance to ensure legislation is complied with. Any adverse or beneficial impacts that result from the introduction and adoption of this guidance are not expected to discriminate against any defined group in society. No equality impact assessment has been carried out in the development of this Standard as it is not considered relevant.

1.6 Risk Assessment

This IAN promotes consistency of Highways Agency internal procedures and provides guidance to ensure legislation is complied with. Any adverse or beneficial impacts that result from the introduction and adoption of this guidance are not expected to result in implications for health and safety. No risk assessment has been carried out in the development of this Standard as it is not considered relevant.

1.7 Implementation

This IAN must be used forthwith on all projects for the assessment of motorway and all-purpose trunk roads except where the procurement of works has reached a stage at which, in the opinion of the Highways Agency, its use would result in significant additional expense or delay progress (in which case the decision must be recorded).

This document replaces CHE Memorandum 71/99 – Revision 1. It should be read in conjunction with DMRB Volume 11, SECTION 2, Part 3 (HD47/08) – Screening of a Project.

1.8 Abbreviations

CHE Memo	Chief Highways Engineer Memorandum
DMRB	Design Manual for Roads and Bridges
EIA	Environmental Impact Assessment
ES	Environmental Statement
HA	Highways Agency
IAN	Interim Advice Note
NoD	Notice of Determination
RoD	Record of Determination
SIS	Standards Improvement System

1.9 Feedback

Attention is drawn to the requirements of DMRB Standard GD 03/08 to generate feedback reports to help improve the performance of standards.

2. Determination

2.1 Process

The process for screening a project is set out in Volume 11, Section 2, Part 3 (HD47/08) – Screening a Project for Environmental Impact Assessment. The screening process requires a Determination on the need for statutory Environmental Impact Assessment (EIA) to be made for Annex II relevant projects. The requirements for Determination are provided in Steps 3 and 4 of HD 47/08 and should be referred to in the first instance when undertaking a Determination.

2.2 Reporting the Determination

Reporting of the Determination is undertaken via the production of a Record of Determination (RoD). A template is provided in Annex A. Project teams must use this template in reporting the Determination.

Guidance for completion of the RoD is included in Annex B.

2.2.1 Technical review of the RoD

In the first instance, the draft RoD should be issued to the relevant Network Services (NetServ) Environmental Advisor for technical review. A turnaround period of 10 working days should be allowed for the initial review and for each subsequent review. If the submitted RoD is not considered to be fit-for-purpose then it will be returned to the project team for amendment.

2.2.2. Signing off the Determination

The Determination is a decision made on behalf of the Secretary of State. The Department for Transport (DfT) has agreed that the decision can be delegated to the Highways Agency but that it must be done in a manner separate from the preparation of the technical information and the RoD. For this reason the final RoD must be signed by the HA Project Manager / Project Sponsor and the Secretary of State's nominee before the Notice of Determination (NoD) can be published.

It is the responsibility of the NetServ Environmental Advisor to forward the final RoD to the Project Manager / Project Sponsor for initial sign-off and then to the Secretary of State's nominee for sign-off. A turnaround period of 10 working days should be allowed for the Secretary of State's nominee sign-off of the RoD.

Project teams should allow for the Determination process in project programmes to ensure that sufficient time is allowed for the necessary outputs and the challenge period. Figure 2 below provides an overview of the determination process as required by HA internal procedures. It should be read in conjunction with Figure 1.2 in HD 47/08.

Refer to Figure 2 overleaf for a flowchart showing the process of reporting the Determination.

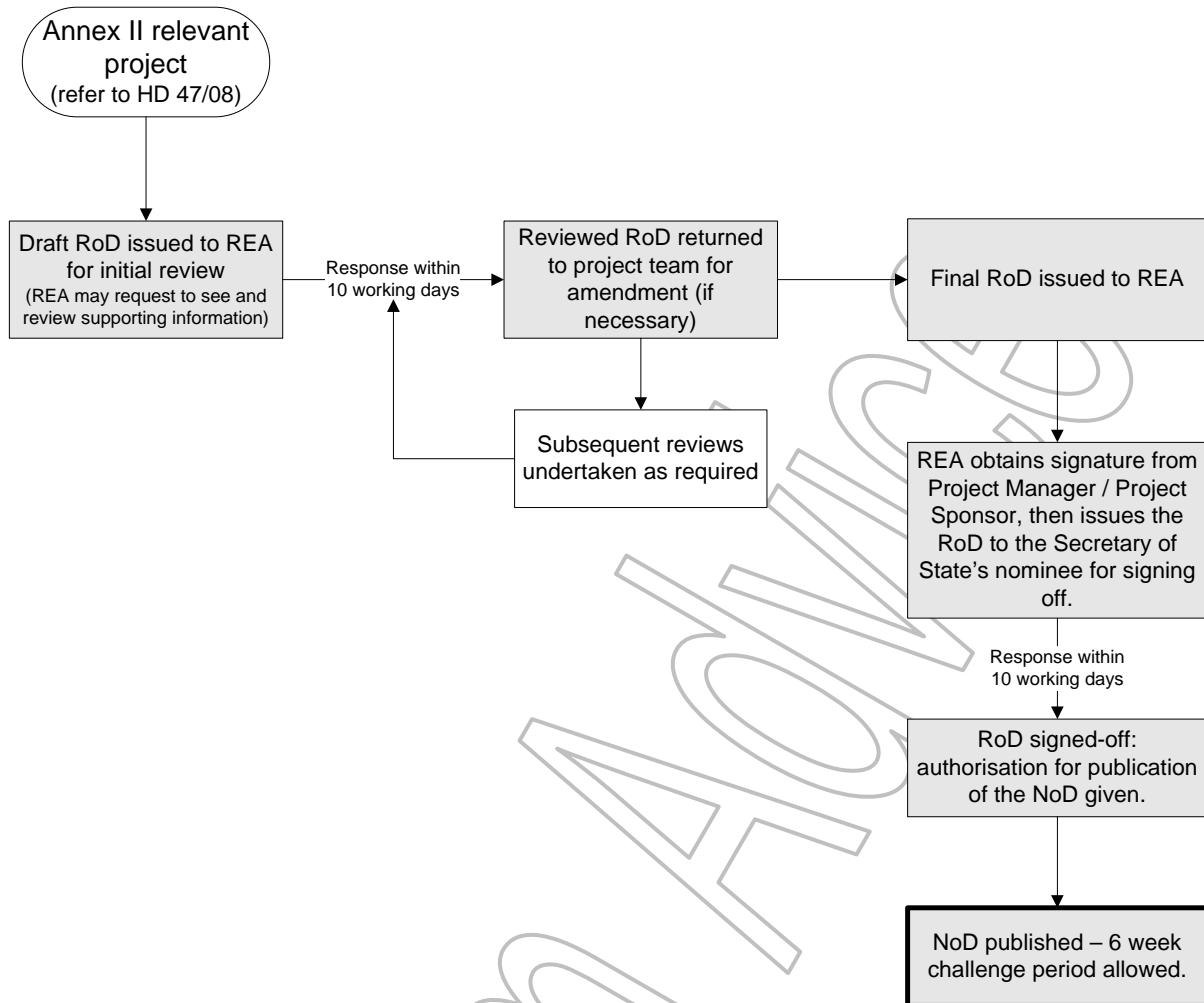


Figure 2 – The process for reporting the Determination

2.3 Notice of Determination (NoD)

The approval of the RoD gives authorisation for project teams to produce and publish the Determination decision as required by Section 105B of the Highways Act 1980 (as amended). This is referred to as the NoD. Project teams must use the template provided in Annex C.

2.3.1 Challenges to the Determination Decision

As the Determination is a decision of the Secretary of State, the ultimate challenge is judicial review. The process set out is designed to protect the HA against this possibility. The period in which a judicial review application may be made is not later than three months (12 weeks) after the date of publication of the NoD. However, legal advice has confirmed that this period may be reduced to 6 weeks. Where a Determination is 'Yes to EIA' then the 6-12 weeks is not really an issue. In the case of 'No EIA' Determination then nothing should be done to prejudice the Secretary of State's position should representations be received. It is a matter for the Project Manager / Project Sponsor on a project by project basis to decide to what extent they might continue preparation work during this period.

3. Other Notices

3.1 Introduction

The following Notices are used when EIA is statutory and an Environmental Statement is required. They apply to Annex I or Annex II projects.

3.2 Notice of Environmental Statement

Section 105B of the Highways Act 1980 (as amended) states that:

“Notice of the environmental statement must be published so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express their opinion before the Secretary of State decides whether to proceed with the construction or improvement to which the assessment relates.”

The Notice period also provides Statutory Environmental Bodies (SEBs) with opportunity to comment.

Publication of the NoD should be no later than publication of the Notice of the Environmental Statement and the Environmental Statement (refer to Figure 3), and a six week public commentary period (as a minimum), dated from the publication of the Notice, should be allowed. Project teams must use the template for the Notice of Environmental Statement given in Annex D.

3.3 Notice of decision whether / not to proceed with a project following publication of an Environmental Statement

Section 105B of the Highways Act 1980 (as amended) states that:

“When the Secretary of State has decided whether to proceed with the construction or improvement for which an environmental impact assessment has been made, he must publish his decision together with a statement confirming that he has complied with subsection (5) [of Section 105B of the Highways Act 1980 (as amended)] and describing the right under Section 105D (1) to challenge the validity of the decision, and must make available to the public documents containing-

- a) the content of the decision and any conditions attached thereto;*
- b) the main reasons and considerations on which the decision is based;*
- c) where his decision is to proceed with the construction or improvement, a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project; and*
- d) information about the consultation carried out in compliance with this section and section 105C, the representations received on consultation, and any changes made as a result of those representations.”*

The Highways (Assessment of Environmental Effects) Regulations 1999 amended the Highways Act 1980 Part VA Section 105B to require that the decision whether or not to proceed with a project following publication of an Environment Statement is published. Project teams must use the template for this Notice given in Annex E.

This Notice should not be published until the Notice of Environmental Statement comment period is complete. A six week period, from publication of the Notice, should be allowed in accordance with Section 105D of the Highways Act 1980 (as amended).

3.4 Where to publish each Notice

The Regulations require that each Notice (as applicable) is published in:

- The London Gazette;
- At least one local newspaper circulating in the area within which the proposed project for the construction or improvement of the highway is situated; and
- If the HA uses a website for the publication of information about a project that is subject to EIA, on that website.

Figure 3 overleaf provides a summary of the publication of notices.

4. Enquiries

For queries regarding this IAN please contact:

David Hinde
Senior Environmental Advisor

Postal address: Highways Agency
Ash House
Falcon Road
Sowton Industrial Estate
Exeter
EX2 7LB

Email: David.Hinde@highways.gsi.gov.uk
Tel: (01392) 312510 or GTN 1365 2510

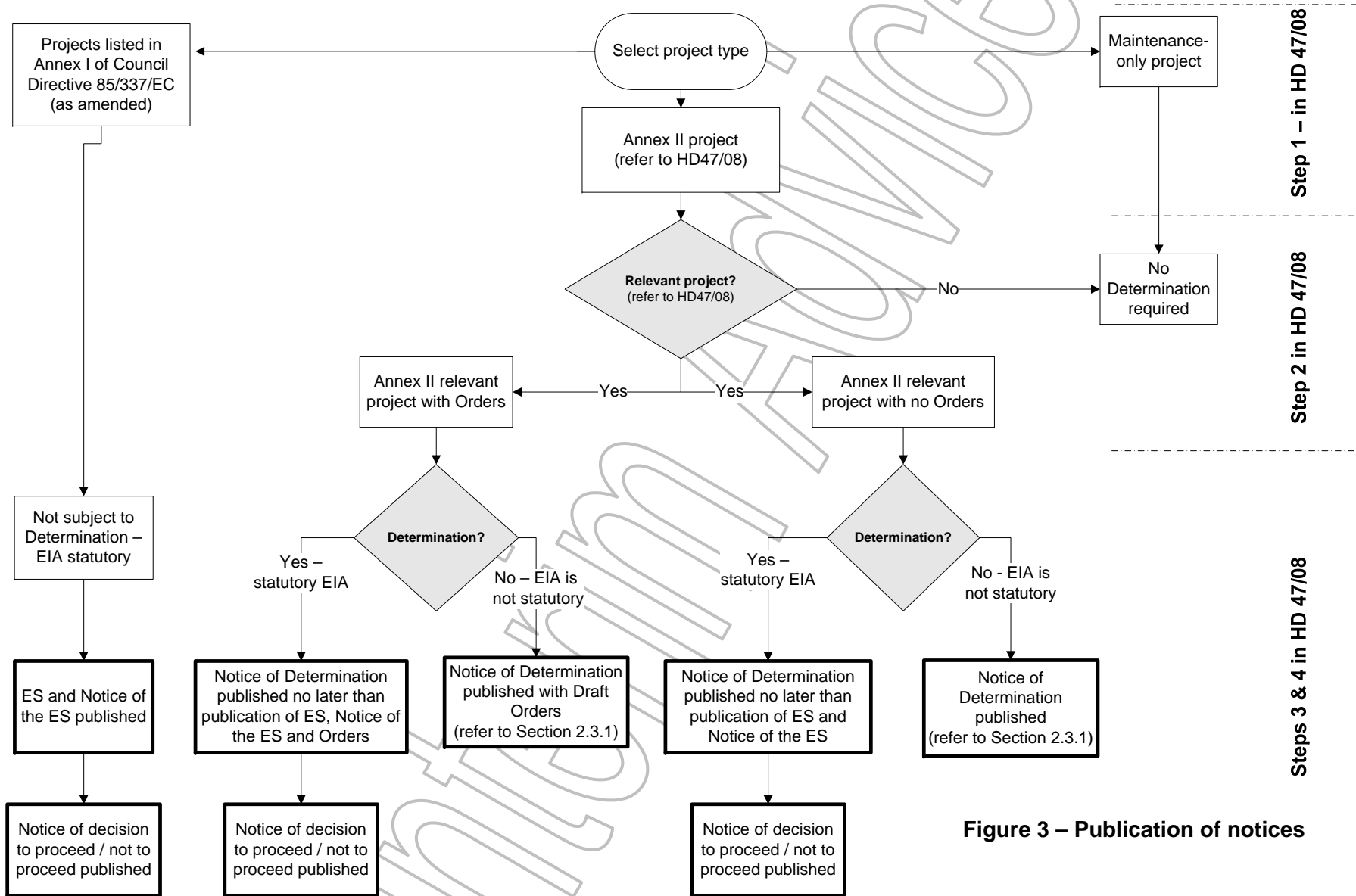


Figure 3 – Publication of notices

**ANNEX A: Record of Determination
Annex II relevant projects**

Name of project:		Location (including national grid reference):
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Qualifying criteria for Annex II relevant project:

Improvement element of project is >1ha	Project is located within 'sensitive' area	Other with potential for significant effect (e.g. adjacent to sensitive site)
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A. Description of project:

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B. Description of local environment, including statutory and non-statutory designations:

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C. Summary of main environmental effects of project:

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D. Details of extent of environmental impact assessment work undertaken and summary of any consultation undertaken with the statutory consultation bodies (including English Heritage, Natural England, the Environment Agency, and any other public authority which has environmental responsibilities):

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E. Determination decision, statement of case in support of this decision:

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File references of supporting documentation for future reference:

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I have determined, following discussions with the Highways Agency's Environmental Advisor that a statutory Environmental Impact Assessment is/is not required for this project.

Signature Project Manager / Project Sponsor:

Dated:

Authorisation to publish Notice of Determination:

Signature NetServ Director / Secretary of State's Nominee:

Dated:

ANNEX B: Guidance on the completion of the Record of Determination

The following table (Table 1) should be used to ensure that a completed Record of Determination is fit-for-purpose. It should be used by those drafting a Record of Determination and by Network Services Regional Environmental Advisors in their review of a submitted Record of Determination. For hybrid projects, the RoD should record information relating to the new construction or improvement element of a project only (i.e. maintenance works are excluded from any Determination and should not be recorded here).

(It should be noted that the purpose of the RoD is to record the Determination decision and its justification. The information provided in the RoD allows the Secretary of State's nominee to place the Determination decision in context. The RoD should be based on an appropriate level of environmental assessment, but it is not the purpose of the RoD to repeat that assessment, which is why the RoD is limited to two sides. However, project teams should note that reviewers, including NetServ Environmental Advisors or the Secretary of State's Nominee, may ask for sight of any supporting assessments.)

Table 1: Guidance for completion of the Record of Determination

General
<p>The RoD should be written in a clear concise manner, and limited to two sides in length. It may be accompanied by a Location Plan. (The RoD should be rejected if it is more than 2 sides in length, excluding the Location Plan).</p> <p>Under the heading 'Qualifying criteria for the Annex II relevant project', the qualifying criteria for the Annex II relevant project should be indicated by ticking the appropriate box.</p>
A. Description of project
<ul style="list-style-type: none"> • The project description should be concise and written using non-technical language. • The project description should include the main elements of any new construction or improvement works only. • (For hybrid projects it is only necessary to include new construction or improvement works, maintenance works should be excluded.) • The project description should include the size (in hectares) of the project. • (For hybrid projects, the size of the project should include new construction or improvement works only. Maintenance works should be excluded from the calculation. This may require project teams to make a judgement.) • A Location Plan may be provided.
B. Description of local environment
<ul style="list-style-type: none"> • Ensure that a brief description of the surrounding environment is given. • Ensure sensitive sites* are specifically identified and their proximity to the project described. • Ensure that a summary of other statutory and non-statutory environmental designations is given, with a brief indication of their proximity to the project.
C. Summary of main predicted environmental effects
<ul style="list-style-type: none"> • A summary of the main predicted environmental effects (either beneficial or adverse) that would result from project implementation should be provided. This needs to include whether effects are likely to be permanent, temporary, direct, indirect, secondary, cumulative, short, medium or long-term, positive or negative. This should include an indication of their potential significance. • The summary should be consistent with the results of supporting environmental assessment, clearly aligned with the assessment topics required by DMRB guidance, and with an indication of key mitigation assumptions clearly spelt out.
D. Details of extent of environmental impact assessment undertaken and summary of consultation
<ul style="list-style-type: none"> • A summary of the environmental impact assessment undertaken should be included. • A summary of consultation with the Statutory Environmental Bodies (including nil responses) should be given? (This should not include desk study requests.) This should record any disagreements that any SEBs have with the Determination decision. It is important that where there are disagreements that the Nominee is aware of these when considering whether to sign off the RoD. A brief description of how comments have been addressed should be included.
E. Determination decision, statement of case in support of this decision
<p>The Determination screening decision should be justified, clearly stating whether the project being considered has been determined (with regard to Annex III criteria) should be made subject to an EIA or not. (It will be rejected if the reasons why it should or should not be subject to an EIA are not set out.)</p>

* As defined in Section 105A of the Highways Act 1980 (as amended)

Annex C: SPECIMEN NOTICE OF DETERMINATION

[Insert name of project]

ENVIRONMENTAL IMPACT ASSESSMENT NOTICE OF DETERMINATION IN ACCORDANCE WITH SECTION 105 B (1) OF THE HIGHWAYS ACT 1980 (AS AMENDED)

The Secretary of State for the Department for Transport gives notice that *[he/she]* has determined that the proposal *[Briefly describe project and location (including national grid reference)]* which is a relevant project within the meaning of Section 105A (1) of the Highways Act 1980 (as amended) *[is/is not]* to be made subject to Environmental Impact Assessment in accordance with Part VA of the Highways Act 1980 (as amended) and EC Directive 85/337/EEC (as amended).

Any comments about this notice should be sent to the Highways Agency at the address given below. Any comments should be made as soon as possible and received by the Highways Agency by close of play on *[Insert date at least six weeks after publication of the notice]*.

Further information on the project and about this notice may be obtained from

[Insert name and contact phone number]

or from

[Insert address]

or from

[Insert E-mail address]

[Signature of HA representative]

[Insert name of signatory]

Highways Agency

Annex D: SPECIMEN NOTICE OF THE ENVIRONMENTAL STATEMENT

[For projects with Orders, the Notice of an Environmental Statement can be published in the same Notice as the draft Highways Act Orders]

[Insert name of project]

**ENVIRONMENTAL IMPACT ASSESSMENT
NOTICE OF ENVIRONMENTAL STATEMENT IN ACCORDANCE WITH SECTION 105 B
OF THE HIGHWAYS ACT 1980 (AS AMENDED)**

The Secretary of State for the Department for Transport is considering implementing a project for *[Briefly describe nature of project and location (including national grid reference)]*. This project is subject to Environmental Impact Assessment in accordance with Part VA of the Highways Act 1980 (as amended) and EC Directive 85/337/EEC (as amended). Therefore the Secretary of State gives notice that he/she has published an Environmental Statement.

Copies of the Environmental Statement may be inspected free of charge at *[Insert an address located in the area in which the project is proposed to be situated]* and at *[Insert an additional address as applicable]* during business hours. *[An electronic copy of the Non-Technical Summary is published on-line at www.highways.gov.uk. Copies of the Environmental Statement may be obtained from the Highways Agency at the address given below at a cost of £xx per copy].*

Any comments about the project and/or the Environment Statement should be made in writing to the Secretary of State at the address given below and should arrive with the Secretary of State no later than *[Insert closing date of comment period, which should be at least six weeks from the date of first publication of the notice]*.

The Secretary of State will take all written comments into consideration before deciding whether or not to proceed with the project with or without modifications.

Further information about the project, the Environmental Statement, or this notice, can be obtained from:

[Insert name and contact phone number]

or from

[Insert address]

or from

[Insert E-mail address]

[Signature of HA representative]

[Insert name of signatory]

Highways Agency

Annex E: SPECIMEN NOTICE OF DECISION WHETHER TO/NOT TO PROCEED

[For projects with Orders, the decision to proceed follows the publication of the draft Highways Act Orders and any Public Inquiry]

[Insert name of project]

**ENVIRONMENTAL IMPACT ASSESSMENT
NOTICE OF DECISION [TO/NOT TO] PROCEED IN ACCORDANCE WITH SECTION 105
B (6) OF THE HIGHWAYS ACT 1980 (AS AMENDED)**

The Secretary of State for the Department for Transport hereby gives notice that he/she has considered the above named Environmental Statement [and the written comments made in response to its publication] and has decided *[to/not to]* proceed with the project.

Copies of the Environmental Statement, the decision letter [including any conditions, the reasons and considerations behind the decision *[Insert any other items deposited]*] have been deposited at the Highways Agency where they are open to inspection free of charge at all reasonable business hours. Copies may be purchased from the Highways Agency at *[Enter address of HA office(s) (usually Project Team office or local office closest to location of project)]* priced £xx per copy. A copy may also be found on-line at www.highways.gov.uk *[this sentence should only be included if the project team has made the Environmental Statement available at www.highways.gov.uk]*.

ANY PERSON AGGRIEVED by the decision taken to proceed following the publication of the Environmental Statement and the comments thereon who desires to question its validity, or the validity of any provision in it, may apply to the High Court within 6 weeks from the date of first publication of this notice, on the grounds that:

- it is not within the powers of the Highways Act 1980, or
- any requirement of that Act or of regulations made under that Act has not been complied with in relation to that decision,

On such an application, the Court may suspend or quash that decision or any provision in it.

[The paragraph (above) may be deleted where the decision is not to proceed]

Further information about the project, the Environmental Statement, the decision or about this notice can be obtained from

[Insert name and contact phone number]

or from

[Insert address]

or from

[Insert E-mail address]

[Signature of HA representative]

[Insert name of signatory]

Highways Agency