2017 Changes to the EIA Regulations – What you need to know

23 February 2017, 12:00 – 12:45

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Send us your questions during the webinar

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Your questions go straight to the presenters.
What is Environmental Impact Assessment?

- A process involving 5 key stages
  - Screening.
  - Scoping.
  - Environmental Statement.
  - Planning application and consultation.
  - Decision.

- It’s purpose is to protect the environment by ensuring significant effects of proposal are taken into consideration in decision making.
European Context

- 2012 European Commission adopted proposal for a new Directive to “lighten the administrative burden and make it easier to assess the potential impacts, without weakening existing environmental safeguards”.
- According to the European Commission the amended Directive will simply the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation, and lighten unnecessary administrative burdens. It also improves the level of environmental protection, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term.
UK Context

UK Context


- Wales TBC.
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Amendments made by the Directive are summarised as:

- The addition of a definition of the environmental impact assessment process - Article 1(2)g;
- Changes to the circumstances in which a project may be exempt from the requirements of the Directive – Articles 1(3);
- Introduction of Joint and/or Coordinated procedures for projects which are subject to the Habitats or Wild Birds Directives as well as the EIA Directive – Article 2(3);
- Changes to the list of environmental factors to be considered as part of the environmental impact assessment process – Article 3;
- Clarification of the options for screening and amendments to the information which is required and the criteria to be applied when screening projects to determine whether the Directive applies – Article 4, Annex IIA and Annex III;
- Amendments to the information to be included in the environmental statement – Article 5 and Annex IV;
- A requirement for environmental statements to be ‘based on’ a scoping opinion, where one is issued – Article 5(2);
- The use of competent experts - Article 5(3);
- A requirement to inform the public of projects electronically - Article 6(2) and 6(5);
- A new article elaborating on information to be given in decision notices and the decision making procedures – Article 8a;
- Monitoring significant adverse effects - Article 8a(4);
- A new Article requiring the avoidance of conflicts of interest – Article 9a;
- The introduction of penalties for infringements of national provisions – Article 10a.
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- **Brexit**
  - Does not for the time being affect obligation to implement and apply EU law
  - Outcome of exit negotiations will determine what arrangements apply in future to EU legislation.

- **5 key areas of change**
  - Screening.
  - Scoping.
  - Assessment.
  - EIA Quality and Decision Making.
  - Monitoring.
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- Screening
  - More standardised information.
  - Description of measures intended to avoid or prevent what might otherwise have been significant adverse effects on the environment.
  - These new measures are incorporated into existing screening procedures.
  - Amended criteria / thresholds (in proposed Schedule 3) must be taken into account by LPA.
  - If LPA determine that EIA not required, they must identify features including proposed actions / measures in the development proposal which led to that decision.
  - Maximum 90 day time period for determination.
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- Scoping
  - Competent Authority must issue a scoping opinion on scope and level of detail required in ES if request to do so, taking into account the information provided by the developer in the characteristics of the project and its likely impact on the environment.
  - ES should be based on most recent scoping opinion so far as development remains materially the same as the development proposed which was subject to the opinion.
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**Assessment**
- Assessment should be of likely significant effects of the project on the environment.
- Assess vulnerability of project (including operational impacts) to risks of major accidents and/or disasters that are relevant to the project, including those caused by climate change.
- Where project is simultaneously subject to assessment under the EIA Directive and Habitats and/or Wild Birds Directive, a co-ordinated approach will be carried out co-ordinating separate assessments.
- The LPA will be responsible for co-ordinating.
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- EIA Quality and Decision Making and Monitoring
  - Minimum information requirements codified.
  - ES must include statement that it has been prepared by a competent person / person with sufficient expertise.
  - Competent authority (LPA) to determine if a person has sufficient expertise.
  - LPA must also use competent person / person with sufficient expertise to examine the ES.
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- LPA decision on a planning application must include
  - Reasoned conclusion.
  - Environmental conditions including description of any features of the project and/or measures envisaged to avoid, prevent, reduce or offset significant adverse effects on the environment, as well as, where appropriate monitoring measures.
  - A decision to refuse must state the main reasons for refusal.
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Send us your questions
2017 Changes to the EIA Regulations – What you need to know

Ben Stansfield MRTPi
Head of EIA
February 2017
Agenda

- EIA Directive – Key Changes - What you need to know
  - Screening
  - Scoping
  - Assessments
  - EIA Quality and Decision Making
  - Monitoring

- Summary and Conclusions

STATUTORY INSTRUMENTS

2017 No.
TOWN AND COUNTRY PLANNING
The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

Made
Laid before Parliament
Coming into force

The Secretary of State has been designated(a) for the purposes of section 2(2) of the European Communities Act 1972(3) in relation to measures relating to the environment.

The Secretary of State is in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 71A(1)(d) of the Town and Country Planning Act 1990(c), and having taken into account the selection criteria in Annex III to Council Directive 2011/92/EU(ec), makes the following Regulations:

PART 1
General

Citation, commencement and application

1.—(1) These Regulations may be cited as the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and shall come into force on 16 May 2017.

(2) Subject to paragraph (4), these Regulations shall apply in relation to England only.

(3) Paragraphs (2) and (6)(a) of regulation 35 shall not apply to the Isles of Scilly and, in relation to the Isles of Scilly, the reference in paragraph (8) of that regulation to paragraph (6) of that regulation shall be construed as a reference to paragraph (6)(b).

(4) Regulations 63 to 65 shall apply in relation to Scotland, Wales and Northern Ireland respectively(a).

(a) S.I. 2010/501.
(b) 1972 c.69.
(c) 1990 c.58.
(d) S.I. 2010/501 was inserted into the Town and Country Planning Act 1990 by section 15 of the Planning and Compensations Act 1990 (p.14), and was amended by S.I. 2011/1064.
(f) Regulation 65 of 65 refers to the Secretary of State's power to direct that the Regulations shall not apply to developments that constitute or form part of a project having national dimension to its site purpose. The decision as to whether a direction should be made in respect of projects situated in the devolved administrations will be taken by the Secretary of State.
Implications of the proposed amendments

- More detailed Screening Opinion requests

- Fewer Environmental Statements

- Delay in Screening Opinion requests?
  - Screened prior to 16 May 2017 to follow 2011 Regulations
  - Screened on / after 16 May to follow new 2017 Regulations
Scoping

Implications of the proposed amendments

- More detailed Scoping Opinion requests [Poll]

- More proportionate Environmental Statements?

- Rush of Scoping requests prior to 16 May 2017
  - Scoping request / ES submission prior to 16 May 2017 to follow 2011 Regulations
  - Scoping request / ES submission on / after 16 May to follow new 2017 Regulations

- ES now to be ‘based on’ the scoping opinion where provided
  - Most recent scoping opinion to be considered
Assessments

Implications of the proposed amendments

- More expansive ES’s
  - New topics to be assessed within ES’s

- More proportionate ES’s
  - Information ‘reasonably’ required

- Consideration of major accidents and natural disasters
EIA Quality and Decision Making

Implications of the proposed amendments

• Competent Expert / Sufficient Expertise
  – Not required for Screening or Scoping
  – Expertise to be set out in the ES
  – LPA to determine

[Poll]

• Resources

• Terminology
Monitoring

Implications of the proposed amendments

• Avoid duplication – use of existing measures

• Scope of monitoring measures

• Cost implications

• Resource implications
Summary and Conclusions

- Front Loading
- Timing of submissions
- Costs
  - More detailed screening and scoping
  - Additional assessment topics
  - Monitoring
- Resources
- Legal challenges
  - Competent expert
  - Reasonable alternatives
  - Information reasonably required
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Contact us after the webinar if you have any questions or need support

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Our services include:
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• Environmental statement reviews
• Strategic advice
• Environmental permitting
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• Due diligence
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• preparing and submitting planning applications, appeals and High Court challenges.
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