

Briefing Note: The New EIA Regulations 2017



On the 16th May 2017, a new set of EIA Regulations came into force, transposing the 2014 amended EIA Directive into UK law. Brexit does not affect this – the UK remains a member of the European Union until exit negotiations have concluded, and therefore is bound to implement the Directive.

The Government has taken a practical approach, adopting only the minimal change necessary to comply with the Directive. The EIA process as we know it will not fundamentally change. The key amendments involve more front-loading at the screening and scoping stages, with the intention of fewer EIAs overall and more proportionate assessment. Marginal EIA development is therefore likely to benefit most from the new Regulations, with greater opportunity to avoid full EIA. The changes however, will see increased responsibility and pressures on planning authorities, which is likely to come at the expense of the developer (e.g. with increased requests for the appointment of external consultants on behalf of the planning authority and programme delays).

Guidance will be of critical importance to help clarify the intention of some of the changes. DCLG has indicated the online Planning Practice Guidance on EIA will be updated shortly. We have summarised the key amendments to the Regulations below.

More detailed screening

The 3 week timeframe for receiving a screening opinion remains, however the changes introduce a 90 day limit for any extension of time, to be agreed in writing. There is a risk some planning authorities may interpret this limit as an acceptable period of time, which could significantly impact development planning programmes, particularly for borderline EIA schemes. The changes also place an obligation on the developer to provide specific, detailed information to

the LPA at the screening stage, including mitigation measures to avoid significant impacts. A scheme will therefore need to be reasonably progressed at the screening stage, and early mobilisation of project teams will be necessary to provide technical input/justification to the screening request. Tracking proposed mitigation measures from screening through to project delivery will be particularly important where no EIA is required.

Scoping opinion binding

Scoping remains voluntary but once a request has been made for a scoping opinion, the Environmental Statement (ES) must be “based on” that opinion. It is current good practice for the ES to comply with

a scoping opinion, however, this change highlights the importance of early scoping discussions with the planning authority to help guide reasonable and proportionate assessment requests.

EIA as an ‘umbrella process’ with expanded scope

The potential scope of the EIA is now broader, with a change in the emphasis of certain assessments and the introduction of new topics including human health, climate change, and the assessment of the vulnerability of the project to risks of major accidents and/or disasters (likely to be more relevant to major infrastructure projects). We can therefore expect the integration of elements of health impact assessment

within EIA, together with climate change adaptation and mitigation and carbon neutrality for larger schemes. A lack of precedent for such assessments could lead to new avenues for potential challenge, at least initially, and there is potential for the ES to become more complex and less proportionate.

Consideration of alternatives

The new Regulations strengthen the requirement to describe alternatives, and also require a “*comparison*” of environmental effects when providing the main reasons for selecting the chosen option. This provision could present an avenue for challenge, as without

proper assessment of alternatives it will be difficult to make a fair comparison. Guidance will be important to clarify the intention of this provision.

Monitoring of significant effects post-consent

The new Regulations require authorities to determine procedures for the “*monitoring of significant adverse effects on the environment*”, as identified in the ES. The decision to grant development consent will also need to include monitoring measures, where appropriate. The requirement needs to be ‘proportionate’ and existing

monitoring arrangements may be used if appropriate (e.g. planning conditions). There is however, a risk of additional burden and cost for developers, particularly for moderate-scale development.

LPA to determine competency for ES preparation and review

The ES must be prepared by “*competent experts*”, as determined by the LPA, and the LPA must also ensure that it has, or has access to, sufficient expertise to review the ES. Without clear definition however, the term is subjective and could present a new avenue for

legal challenge. The [EIA Quality Mark](#) from the Institute of Environmental Management and Assessment (IEMA), which Quod has been awarded, demonstrates competency in ES preparation.

EIA and HRA to be co-ordinated

DCLG has proposed ‘co-ordinated’ rather than ‘joint’ procedures between EIA and Habitat Regulations Assessment (HRA), where projects are subject to both. A co-ordinated approach between EIA and HRA is

typically undertaken as good practice, therefore the implications of this change are expected to be minimal.

Consultation timeframes

The new minimum timeframe for public consultations on the ES has increased from 21 days (28 days for infrastructure projects) to “*no shorter than 30 days*”.

This timeframe applies to both new applications and the submission of further environmental information.

Up-to-date reasoned conclusion

Decision notices need to be up to date based on the latest evidence and must also include mitigation measures and environmental conditions. Planning authorities must ensure that mitigation and monitoring

are identified and carried through to consent. It will be important to ensure that this obligation is fulfilled, particularly with regards to subsequent applications, such as reserved matters.

The new EIA Regulations apply to all new EIA development coming forward, unless a scoping opinion request, or on ES has been submitted before 16th May 2017.

For further advice on how the new regulatory regime might affect your project and practical support on steps to take, please contact [Karen Muldowney](#) and [Elin Fradgley](#) of [Quod's Environmental Planning Team](#).