### Consideration of alternatives

The Town and Country Planning (EIA) Regulations 2017 came into force in May 2017 and introduced what at first appear to be subtle changes to the requirements to consider alternatives in paragraph 2 of Schedule 2. However, when the revised requirements Regulations are considered further, are the changes more fundamental?

The 2017 EIA Regulations, as with previous 2011 Regulations, do not require alternatives to be considered. However, where the applicant has considered alternatives, there is a requirement to describe the alternatives considered in the Environmental Statement. As all EIA practitioners will be aware, there is always an alternative to a development proposal, not least the ‘do nothing scenario’, and therefore to suggest that no alternatives have been considered by the applicant has long since been rejected as a stance that can be taken by successful Environmental Statements. Thus, the changes in the 2017 EIA Regulations will be applicable to most, if not all, EIA development.

The changes to the requirements to consider alternatives in the 2017 EIA Regulations can be considered as two elements:

- An expansion of the alternatives to be considered, and
- A requirement to compare environmental effects.

The previous 2011 EIA Regulations required an Environmental Statement to include “an outline of the main alternative studied by the applicant”.

The 2017 EIA Regulations expand this to require “a description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics”.

The expanded range of alternatives – development design, technology, location, size and scale – that are required to be described will for many EIA practitioners already be best practice. This is, however, clearly a more onerous requirement than the previous 2011 Regulations.

The requirement has also been changed from ‘main alternatives’ to ‘reasonable alternatives’, which could be considered by some to narrow the alternatives that are required to be considered, excluding extreme or unreasonable alternatives. It may, however, just lead to further debate as to what are ‘reasonable alternatives’.

The regulations do appear to narrow the consideration of alternatives by defining that they should be “relevant to the proposed project and its specific characteristics”, however, this depends upon whether a broad or narrow view is taken to what is ‘relevant’ to the project and its characteristics. Careful and considered justification will, therefore, be needed when establishing what are ‘reasonable alternatives’ and which are ‘relevant’.
Allied to this, the previous requirement in the 2011 EIA Regulations to include “an indication of the main reasons for the choice made, taking into account the environmental effects”, has been expanded to require “an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects”.

On one hand, some may suggest that the revised wording changes little, however, on the other hand some may consider the requirement for a “comparison of the environmental effects” to be a fundamental change from the previous requirement. The Government’s updated Planning Practice Guidance does not provide any further advice on this issue; simply reiterating the requirements in Schedule 2 of the EIA Regulations.

The revised wording certainly suggests a more detailed assessment will be required to compare the environmental effects of alternatives, how detailed this comparison will need to be is yet to be seen. Most opponents of development proposals are likely to consider a full assessment of alternatives is required, however, developers are unlikely to accede to this easily. Practitioners and developers will therefore be left to consider, and in due course test, how onerous the revised requirement will be in practice. Developers are likely to seek to limit detailed assessment and comparison of environmental effects of alternatives unless absolutely necessary. Or perhaps it will simply further the debate as to what are ‘reasonable alternatives’.

The changes to the requirements to consider alternatives brought about by the 2017 EIA regulations certainly provide a topic for debate and could present a key challenge to developments where alternatives are not given careful consideration.

This is, however, nothing new with many previous developments falling foul for not giving proper consideration of alternatives. As always, there is no one size fits all solution and inevitably there will continue to be different approaches to the consideration of alternatives. Only time will tell whether the expanded requirement for a comparison of environmental effects will fundamentally change the consideration of alternatives in EIA.


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