Brexit: The future for EIA

The result of the European Union (EU) referendum last month has triggered a wave of uncertainty concerning Britain’s influence on global issues such as trade, business and immigration. However, other areas of concern centre around the future of environmental protection and legislation within the UK and specifically the application of Environmental Impact Assessment (EIA) within the planning process.

We are living in uncertain times. In this article we look at why EIA is an effective tool that should continue to improve planning decisions and the delivery of sustainable development, whatever future relationship the UK negotiates with the EU.

**History and Purpose of EIA**

Since the early 1970s, environmental policies have developed within the EU and have led to the implementation of EU Directives which have been transposed into UK law. The first EIA Directive was influenced by EIA in the USA, which dates back to the 1969 National Environmental Policy Act (NEPA). EU law on EIA was introduced to ensure that the environmental implications of major development decisions are taken into account before the consenting decision is made. The UK has been a key player in the development of environmental protection law, including EIA within the EU.

**The Trading Options**

The UK’s relationship with the EU could take many forms. This is relevant to the economy, but also to the environment.

At one end of the scale, the UK could remain part of the European Economic Area (EEA), which brings together all EU member states as well as three of the European Free Trade Association states (Iceland, Lichtenstein and Norway).

By agreeing to the customs and rules of the EEA, all members benefit from the relevant EU legislation which is integrated into the EEA agreement and ensures the uniform application of laws relating to the Single Market. If Britain took this route it would still gain access to the Single Market and would still be subject to the majority of the environmental *acquis communautaire* suggesting that the status quo would prevail, with some exceptions.

At the other end of the scale the UK could enter into a free trade agreement with Europe, which could come with fewer obligations than EU/EEA membership. International environmental agreements should remain in place but certain EU Directives may not, depending on the outcome of negotiations. It may be that trade agreements require EIA to be undertaken for certain projects, particularly those affecting European interests.

**The Future of EIA**

In the immediate aftermath of last month’s referendum, the legislative positioning of the UK with regards to environmental protection is yet to be confirmed. Following invocation of Article 50, negotiations will begin with a view to agreeing the political positioning of the UK within two years. In the short to medium term, the application of EIA is unlikely to change, the UK EIA Regulations still apply and a new Act of Parliament would be required to repeal them. However, the 2014 EU EIA Directive is now unlikely to be transposed into UK law. In the longer term, what will not change is the understanding that EIA, when applied correctly, remains an effective tool in the planning process. The process allows for an independent assessment of environmental effects which is not clouded by developer bias. It ensures that effects are addressed under one umbrella, facilitating a more collective approach to mitigation and considering other committed developments when assessing effects.
Developments informed by EIA tend to be more sustainable and benefit from efficiencies with respect to multifunctional spaces – for floodwater attenuation, biodiversity enhancement, recreation and climate change adaptation, for example. It leads to better projects and better decisions. We may see a change to process. Perhaps it is an opportunity to re-focus EIA only on those projects that are likely to give rise to significant effects and consider how it can add even more value to new developments rather than increase the burden, time and cost on developer, determining authority and statutory consultee.

1 Acquis Communautaire covers the treaties, EU legislation, international agreements, standards, court verdicts, fundamental rights provision and horizontal principles in the treaties such as equality and non-discrimination. All member states must obey and accept the full Acquis.

Hannah Bedding, Environmental Planning Team, Barton Willmore, July 2016.