What proposed environmental assessment changes mean?

Changes to environmental impact assessment rules could produce new burdens for councils and developers, James Alflatt predicts (Planning Magazine – Briefing – Published 10 February 2017).

**Why is government consulting on the environmental impact assessment (EIA) rules?**

The consultation is in response to the requirements of the revised EIA Directive, insofar as it applies to the planning system in England and the nationally significant infrastructure planning regime established by the Planning Act 2008. The revised directive came into force in May 2014 after being adopted by the European Parliament. All members of the EU are obliged to transpose its requirements into domestic law by 16 May 2017. The consultation closed on 1 February.

**What are the most significant proposed changes?**

The revisions increase the focus on mitigation and monitoring. When granting planning permission, decision-makers are required to include a wealth of new information concerning their consideration of environmental impacts. They must say how the likely significant effects of the project can be mitigated and include any monitoring measures required to offset these impacts. It is likely that councils will impose more mitigation and monitoring-related planning conditions and obligations on decisions.

The 2014 directive requires member states to have EIAs prepared only by ‘competent experts’.

This has been transposed by the UK government to ensure that authorities have access to sufficient expertise to examine the environmental statement report. The report must also now be prepared by persons who, in the opinion of the local authority, have sufficient expertise. When authorities screen projects to determine whether the directive applies, the government intends to strengthen the process by requiring an enhanced level of information from applicants. Decision-makers need to give a more detailed explanation of the reasons for a screening decision.

Scoping – where an applicant can ask a decision-maker for an opinion on the content of an EIA report – remains a voluntary process. But if it takes place, the environmental statement must be based on the latest opinion given.

**What impact will the changes have on local authorities?**

There will be an increased burden on authorities due to the requirements to have access to sufficient resources to examine the environmental statement report. Authorities will also have to make sure the reasoning behind their planning decisions is robust to ensure sufficient controls are in place for mitigating impacts, including post-consent monitoring.

**What impact will the changes have on the development industry and practitioners?**

For practitioners, there are probably no huge surprises.
Since the arrival of the directive, many of its requirements have already been incorporated into EIA processes as part of evolving good practice. However, the new regulations seek to be more prescriptive in implementing these requirements as mandatory. There is a clear drive to frontload the EIA process so that screening is more comprehensive. This would include describing any early environmental considerations and any proposed post-consent mitigation measures. All of this could increase the costs of EIA screening for many applicants.

**Are the changes likely to produce more environmentally beneficial proposals?**

The changes may see a greater emphasis on mitigating any possible significant environmental effects, which are often forgotten after planning decisions. However, with enhanced measures of control now required in decision making to ensure delivery of mitigation and monitoring, this should result in more environmentally sustainable proposals.

**Do the revisions give any insight into how the EIA regime may be recast after Brexit?**

No. The consultation document is very much ‘business as usual’. Only formal exit and the outcome of post EU negotiations will determine what arrangements apply in relation to the UK’s adherence to future EU legislation. Hard or soft Brexit, EIA will remain the subject of international conventions to which the UK is party. An exit from Europe does not remove the UK from such conventions and therefore the UK’s commitments to EIA will remain intact.

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**KEY FACTS**

- The government is consulting on transposing the EU’s 2014 amended EIA Directive into UK law
- Local authorities will have to use expert advice in preparation and examination of environmental statement reports and provide new information on predicted environmental impacts when determining applications.
- Developers could face increased costs of undertaking assessment because of more prescriptive requirements.

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