What changes to the Scottish EIA Regulations 2017 should EIA Practitioners be aware of?

One challenge in running EIA projects throughout the UK is keeping abreast of regulatory changes in the devolved planning regimes. Thereupon recent award of a contract for design and EIA services for a new hydro scheme in the Highlands of Scotland, one of our first north of the border in over a year, we needed to weigh up the updated Scottish EIA regulations bought in in 2017 in order to advise the client on any potential implications.

Interestingly, the prospective client, in issuing a Request for Tender for EIA services, included no specification that the EIA would need to be conducted by ‘competent expert’, thereby not recognising the prospect that, should the competent authority so determine, an EIA may be challenged as a valid document for planning determination if the EIA provider is not regarded as a competent expert. Such a situation would prove to be both time delaying and costly, and this may play into the hands of individuals or groups minded to oppose new schemes who seek to challenge the competency of the EIA expert through Appeal or the High Court. But whilst some developers may still not be aware of the requirements of the new Regulations I feel it is incumbent upon us, as EIA Coordinators, to brief our clients on this requirement.

In satisfying this requirement, the duty is upon the developer to assure the determining authority that it is satisfied as to the competency of experts.

‘Competent expert’ is not defined in the regulations, and there is likely to be further guidance on this in due course, but the developer will need to be assured that it has instructed competent experts and should ensure that an EIA Report includes a developer statement detailing the competency of the expert.

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 transpose the 2014 amended Environmental Impact Assessment Directive into devolved planning law. The new Regulations came into force in May 2017 introducing several relatively minor changes to EIA requirements alongside laying out the transitional arrangements for schemes where an Environmental Statement had already been submitted or where a scoping opinion had been requested before the new regulations came into force.

One amendment made by Scottish Government not replicated in England and Wales is the alteration of the term Environmental Statement to EIA Report. Regulation 5 (1) specifies that an application for planning permission for EIA development “… must be accompanied by an environmental impact assessment report (EIA report).” A spokesperson for Scottish Government has explained to us that this alteration seeks to align the devolved Scottish regulation with the wording in the amended EU Directive. Although a relatively minor change it is one to get right so that clients and regulators are assured that the EIA provider is working to the new regulations. They may not be deemed competent experts otherwise!
Part 1, Regulation 5 (3) includes a new provision that where a scoping opinion is requested the EIA Report must be “based on” that opinion. However, scoping remains non-mandatory.

For Screening, the new Regulations differ slightly by inviting applicants to include in a Screening request “…a description of any features of the proposed development, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment.” The new regulations also clearly specify that the determining authority should issue a Screening Opinion within 21 days of a request, unless an extended timeframe is negotiated. There is however acknowledgement that larger, complex infrastructure projects may require a longer period of up to 90 days for the authority to adopt an opinion.

Schedule 4 now lists some altered environmental factors to be considered: “human being” is replaced with population and human health (4), “fauna and flora” is replaced by biodiversity (4) and there is a new requirement under 5. to account for the potential effects on the environment arising from the vulnerability of the development to the risks of major accidents and disasters as well as impacts from waste or use of natural resources, impacts on and resilience to climate change, and impacts on cultural heritage and landscape.

Upon planning submission, the competent authority must now be assured that they have, or have access as necessary to, sufficient expertise to examine the report (Part 1, Regulation 4 (7). They are also mandatorily required to publish information electronically for the first time and there is now a minimum timescale for consultation with the public of 30 days, which is a slightly extended period.

Upon determination of an application, competent authorities are required to include any reasoned conclusions into any Decision. Where there is a positive outcome, the authority must also prescribe any mitigation measures and monitoring requirements within the consent.


1 Part 1 Regulation 5 (5) (a)
2 Fortunately for all of us our IEMA accreditation should be sufficient to demonstrate our competency in conducting EIAs.

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