The consequences of the EIA Regulations changes in May 2017

**Introduction**
The Environmental Impact Assessment (EIA) Regulations May 2017 have wide ranging consequences for those submitting planning applications for large scale developments. The key changes are as follows:

**Screening**
The information required at the screening stage has been extended so that screening requests to Local Planning Authorities (LPAs) will be required to include the following:

(a) a plan sufficient to identify the land;

(b) a description of the development, including in particular—
   i. a description of the physical characteristics of the development and, where relevant, of demolition works;
   ii. a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;

(c) a description of the aspects of the environment likely to be significantly affected by the development;

(d) to the extent the information is available, a description of any likely significant effects of the proposed development on the environment resulting from—
   i. the expected residues and emissions and the production of waste, where relevant; and
   ii. the use of natural resources, in particular soil, land, water and biodiversity; and

(e) such other information or representations as the person making the request may wish to provide or make, including any feature of the proposed development or any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Importantly, Clause (e) is a key change to the screening process. It enables developers to demonstrate that a project does not constitute EIA development by outlining proposed mitigation measures, which would prevent any significant adverse effects on the environment. If a LPA concludes that a proposed development is not EIA development, then the screening opinion should describe any mitigation measures upon which their decision is based. A subsequent planning application should then incorporate those mitigating measures.

The thresholds for Schedule 1 and 2 have not been changed and the standard 3 week timescale for a LPA to issue a screening opinion remains. However, the 2017 Regulations provide a new provision for this to be extended by up to 90 days, or as may be agreed in writing. These requirements mean that the Screening Request needs to be supported with appropriate levels of supporting information.

**Scoping**
The 2017 Regulations state that where a scoping opinion has been requested, the submitted Environmental Statement (ES) must be “based on the most recent scoping opinion or direction issued (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion or direction)”.
This is a new requirement that means applicants will need to work closely with LPAs to ensure the scope of the EIA is appropriate and proportionate. Furthermore, material changes to a scheme are likely to require a new scoping request and ignoring this may result in the ES being deemed invalid by the LPA.

**Transitional Arrangements**
If a scoping request or an ES has been submitted prior to the 16th May 2017, the 2011 Regulations will continue to apply.

**Cumulative Assessment**
Cumulative impacts are now defined as “existing and/or approved” projects, but there is no guidance on the proximity or other characteristics of these projects. We use the Scoping Report to suggest to the LPA which sites should be included in the Cumulative Assessment. We have prepared a Cumulative Impacts Summary table that enables the list of agreed sites to be compared. This does however require the sub consultant team to be aware of the planning characteristics of a wide range of projects in the vicinity of the proposal.

**Expertise**
The 2017 Regulations now state that an ES must “be prepared by persons who in the opinion of the relevant authority or the Secretary of State, as appropriate, have sufficient expertise to ensure the completeness and quality of the statement”. Furthermore, the 2017 Regulations state that an ES needs to contain a statement by, or on behalf of the applicant, setting out how the expertise requirement has been complied with.

We work with a wide range of sub-consultants in the preparation of EIAs, requiring them to have relevant qualifications and experience to prepare the topic chapters of an ES.

The introduction to our EIAs include an explanation of the qualifications of our staff and summarises how we appoint the sub consultants for each chapter.

*Adrian Keal, Nexus Planning, January 2018.*