EIA Quality Mark

Article

Amended EIA Regulations 2017 - Key Issues affecting Planning Consultancies and their Clients

| EIA is often a key part in major planning applications, which can have many implications for developers, particularly in relation to often-pressurised timescales and budgets. Pegasus Group, as a leading EIA practitioner, are therefore aware it is vital that clients understand as early as possible the EIA requirements a specific project may entail. Since the amended EU Environmental Impact Assessment (EIA) Directive (2014/52/EU) and the need for this to be transposed into UK legislation by 16th May 2017, it is more important than ever for clients to be clear on how the forthcoming amended EIA Regulations 2017 may affect their projects. |
| In commercial timescales, having this level of detail at this stage may cause potential problems in progressing proposals. |

**Screening Opinion Timescales**

Amendment: The draft Regulations retain the 21-day timescale for LPA to provide their Screening Opinion, despite the suggested 90-day period in the Directive. Currently, the 21 day period can be (and often is) extended through written agreement- it is proposed to limit this to 90 days (and also Secretary of State Directions, although there will be provision for extension in exceptional circumstances).

In practice: The likelihood is to expect more requests for extensions from LPA, particularly where Screening Requests have provided increased amount of information to avoid EIA.

**Topics to be considered within EIA**

Amendment: Topics to be considered within an ES have been amended/expanded to include:

- Human health
- Biodiversity (replacing fauna and flora)
- Effects from major accidents and disasters
- Climate (e.g. greenhouse gas emissions, impacts relevant to adaption)
- Alternatives: increased to include “an indication of the main reasons for selecting the chosen option, including a comparison of environmental effects”.

In practice: As best practice, the above topics are already considered in Pegasus ESs where required. It is however important to remember that, as always, the ES should only focus on the pertinent issues with emphasis on the “likely significant” effects.

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| Requesting Screening Opinions |
| Amendment: More information is to be provided within a request for a Screening Opinion from the LPA. This includes measures envisaged to avoid significant adverse effects i.e. mitigation. The selection criteria for screening Schedule 2 development also states that the possibility of effectively reducing the impact should be considered when deciding whether EIA is required. |
| In practice: The screening process is likely to be a more significant task than is often currently undertaken at present through the submission of a ‘screening report’. It provides the opportunity to ‘front load’ the assessment and commit to ‘thought out’ mitigation at the screening stage in the order to negate the need for EIA. |

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In practice: As best practice, the above topics are already considered in Pegasus ESs where required. It is however important to remember that, as always, the ES should only focus on the pertinent issues with emphasis on the “likely significant” effects. |
With respect to alternatives, such information is often already included within ES, however it is important to acknowledge that it is still only necessary to consider the “reasonable alternatives studied by the developer”.

**Scoping Opinion**
Amendment: If a Scoping Opinion is requested from the LPA (this remains voluntary), the ES must be based on the resulting Opinion. The LPA’s Opinion must consider the specific characteristics of the project in question and the likely impact on the environment. This latter point is supposed to improve the quality of Scoping Opinions and ensure consultees consider information before justifying requirements.

In practice: Whilst this may assist in improving the quality of Scoping Opinions and assist in narrowing down the scope of assessments to key issues, there is equally the potential to request onerous requirements, which would be mandatory. How any scoping opinion can be ‘challenged’ or ‘contested’ is not clear.

**Preparation of ES**
Amendment: ESs must be prepared by ‘competent experts’ and demonstrate how this has been met. Decision makers (i.e. LPA) must also ensure they have ‘necessary skills in house’.

In practice: There is no definition for a ‘competent expert’; however, it is likely that the IEMA Quality Mark plays a key role within this, resulting in more practices enrolling.

It is also a possibility that LPA may need to sub contract out the reviewing of ESs, should the decision maker have insufficient expertise, resulting in increased work for planning consultancies and EIA practitioners.

**Consultation Period**
Amendment: ES consultation period increases from 21 to no less than 30 days (infrastructure planning regime from 28 days to 30 days).

In practice: Given the determination period for ES applications is far longer than this time, it is unlikely to have significant impact on clients’ timescales.

However, this could have implications for clients if further information (e.g. ES addendum) is required to be submitted and consulted upon in a limited timescale, for example before an application may be heard at planning committee.

**Monitoring**
Amendment: Requirement for significant adverse effects to be monitored.

In practice: This is likely to be dealt with through planning conditions and obligations, with longer-term work potentially required. There is however, no detail on how this will be audited or enforced.

**Decision Making and Decision Notices**
Amendment: Where consent is granted, LPA notices must include: “reasoned conclusions” for their decision; the environmental conditions, and; the measures to avoid, prevent, reduce or offset significant adverse effects (and potentially monitoring measures). Any decision must also be made on what is ‘up to date’ information at the time a final decision is taken.

In practice: This could potentially give rise to an increased number of requests by the LPA to provide updated environmental information by the virtue of time passing during the determination period. This is a real threat to those long term strategic projects whose determination is delayed, often through no fault of the client. This is a potential issue that may result in numerous ES addendums.

Until these Regulations are commonly in use and tested through legal cases, there will always be some uncertainty in how these may impact on the work undertaken by planning consultancies and the implications to their clients. Of course, further uncertainty looms as the country awaits to see how the Brexit negotiation may further impact UK legislation in due course.

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