EIA Quality Mark

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<th>Do UK EIA Regulations and Guidance Allow Long Distance Sewer Projects to Avoid EIA?</th>
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**Chris Rochfort, from Stantec, discusses examples from the water sector of a long-distance sewer, and whether such projects are still caught by the UK’s EIA Regulations, specifically since the withdrawal of Circular 02/99.**

Development undertaken by the UK statutory wastewater undertakers is often “permitted development”¹ for planning purposes, in the case of cross-country, long-distance sewers this is namely that the development is not above ground. Nonetheless, should such a project be considered “EIA development”, all permitted development rights are lost.

A cross-country sewer development has historically been considered Schedule 2 development under section 10(l) where the area of the development is ≥1ha. The longstanding guidance on EIA, Circular 02/99², clarified that 10(l) “long distance aqueducts” development included “water and sewerage pipelines.”

However, Circular 02/99 was withdrawn by Government on 7 March 2014, and this distinction is absent from its successor, the online Government Guidance³. This effectively allows proponents of sewer pipeline schemes to argue that they are not “aqueducts” and sit outside the remit of EIA. There remains potential to capture sewer development if it meets the requirements to be considered Schedule 2, 10(h) – which includes flood relief works – if it can be argued that the construction of the sewer is in response to sewer flooding.

Stantec acted as planning and environmental consultant on a recent sewer project for a UK sewerage undertaker and consulted the local minerals and waste planning authority in the form of an informal permitted development letter. This project was >1ha in size and >5km in length, thresholds that under the now withdrawn Circular 02/99 would have historically seen this project formally screened for EIA. The fact that the project sits outside the EIA regime (based on current guidance) was stated in the letter. However, the planning authority determined to screen the project for EIA in any event, stating that “While now out of date, [Circular 02/99] clarifies that water and sewage pipelines should be considered in a similar vein to oil/gas pipelines and long distance aqueducts, for screening purposes.” Whilst this planning authority did opt to screen the project, it could be argued that they were wrong to have done so, and it stands to reason that many authorities would not; and accept the interpretation of the consultant.

It would appear that, since the withdrawal of Circular 02/99 and its replacement by the online Government Guidance, the installation of a long-distance sewer has ceased to become EIA development with respect to Schedule 2, 10(l). One should consider whether it is really in the spirit of the EIA Directive for the installation of e.g. a 20km large-diameter cross-country sewer to avoid the need for screening (and potentially full EIA). Such a project would, therefore, only be subject to the non-planning consents⁴ regime and the self-policing internal procedures of those sewerage undertakers.
Taking into account what is stated in Article 2(a)\(^5\) one could question whether the UK exclusion of large sewer developments is consistent with the intention of the EIA Directive. It seems likely that the omission of major sewer projects is just an oversight associated with the transfer to online guidance on the gov.uk website, rather than a deliberate omission as part of as the simplifying of the planning guidance undertaken by the Coalition Government between 2010-16. This gap in UK practice may in future be resolved by it simply being reinstated into the guidance.

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\(^1\) Part 13, Class A and B of the Town & Country Planning (General Permitted Development) Order 2015 and see also the [Use Classes](https://www.gov.uk/guidance/environmental-impact-assessment).

\(^2\) Circular 02/99: Environmental Impact Assessment. Office of the Deputy Primary Minister (ODPM), March 1999

\(^3\) [https://www.gov.uk/guidance/environmental-impact-assessment](https://www.gov.uk/guidance/environmental-impact-assessment)

\(^4\) See the Planning Portal for [Non Planning and other consents](https://www.gov.uk/guidance/environmental-impact-assessment).

\(^5\) Article 2(a) of the EIA Directive states ‘1. Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment.'