Many EIA related decisions have been overturned by the courts due to failure by the Local Planning Authority (LPA) to comply with the procedural requirements of the EIA Regulations. The Regulations are still, however, acknowledged by many planning officers as among the least studied pieces of legislation in the planning system.

In 2008 the Planning Officers Society (POS) published a Practice Note for EIA which noted that, for many planners, EIAs relate only to large developments and therefore planners in the public sector only very infrequently need to be aware of the Regulations. Today, whilst the inexperience of some LPAs may still be a factor in regulatory failure, probably the most pressing problems are caused by reduced resources, tight deadlines and lack of technical support. Continuing cuts to LPA resources since the POS’s Practice Note means that, in many authorities, a point has been reached where officers struggle to deliver basic planning functions. While most support Government’s objectives to streamline processes, many consider that effective delivery of LPA functions in EIA will be hindered by lack of resources.

**Deadlines and delegated authority**

Delegated officers are responsible for delivering properly informed screening and scoping opinions within the EIA regulatory period of 3 and 5 weeks respectively (unless otherwise agreed in advance in writing). Whilst the POS states ‘it will usually be best practice if a properly trained validation team initially considers the need for an EIA as part of carrying their validation checks,’ limited resources inevitably necessitate prioritisation of workload to planning officers. Where responsibility for adopting a Screening Opinion rests with an individual officer, a delayed start to the process increases the pressure on the officer to meet the deadline. In many instances this leads either to deadlines being missed, or procedural errors made in the rush to meet deadlines.

Errors ranging from absent dates or signatures to irrationality and inconsistency of the adopted opinion with subsequent decisions have provided generous case law for legal challenge of EIA procedures.

**The balance between Screening and Scoping**

Although the formal Screening Opinion of the authority must be reached within 21 days, there is currently no mandatory requirement to consult key consultees. Many LPAs have established protocols to ensure that consultee responses are received in time to inform the Opinion but, where the consultees also have limited resources; they cannot guarantee that technical comments will be made within the required period. Planning Officers do not always have the expertise or experience to make a judgement on specific issues that must be considered within an EIA Screening. Without a mandatory consultation requirement, ‘protocols’ for strict timescales cannot be enforced, leaving the planning officer to either delay the process while waiting for consultee responses, or attempt a decision without full information.

There is similarly no mandatory requirement for an applicant to seek an EIA Scoping Opinion, nor is this anticipated in transposition of EU Directive 2014/52/EU. On receipt of a Scoping Request, there is, however, a regulatory requirement for the LPA to consult statutory consultees and provide a Scoping Opinion within 5 weeks, and statutory consultees are obliged to respond to the LPA request to inform a Scoping Opinion.

This position appears counter intuitive in the context of balance in the hierarchy of importance between Screening, which establishes the need for EIA, and Scoping, which identifies the content. Both elements of the process are equally important to the LPA having the right information to reach a properly informed position from which to determine the planning application.
The statutory context of scoping inevitably focusses LPA resources more on this stage of the process than on screening, which carries the greater risk of legal challenge and is subject to a shorter timetable for decision.


Transposition of the new EIA Directive (2014/52/EU) may reduce imbalance with a Screening determination period ‘…not exceeding 90 days…’ (Article 4, paragraph 6). Conversely, transposition of mandatory pre-submission of EIA Screening reports could frontload review of potentially unwieldy Screening Requests on LPAs.

At this stage this is all rather speculative. Transposition, required by 2017, is not anticipated before 2016, and delivery may vary across devolved administrations. Genuinely streamlining of EIA processes needs procedural errors to be minimised. This requires parity of the Screening and Scoping processes, in both timescales and mandatory consultation, and the resources to deliver.

*Tim Pearce, Senior Planner – The Landmark Practice*

*Tim is a Chartered Town Planner with extensive Local Government development management and urban regeneration experience*

*August 2015*