The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (‘EIA Regulations’) were amended on 7 April 2015 to raise the thresholds above which some proposed developments (industrial estates, residential development, and other urban development) must be screened to determine whether an environmental statement is needed to inform a planning application.

The changed thresholds do not apply in sensitive areas, such as National Parks and Special Protection Areas. The Secretary of State can continue to issue a screening direction for any project, irrespective of whether it falls above or below the screening threshold, including in response to a third party request.

The new thresholds follow the ‘Technical Consultation on Planning’ (July 2014), from which the Government concluded that such changes were needed to cut ‘unnecessary bureaucracy’.

The changes will be welcomed by developers for whom the screening process may have seemed a needless burden. In practice, properly resourced and informed EIA screening aids rather than hinders effective delivery of planning.

### Effective Screening

The need for robust delivery of the Regulations in respect of EIA screening is both well understood and supported by case law. For an EIA to be effective, and the consenting process to be properly informed, screening should be based on the best scientific and other information available. In a period of public sector austerity, however, the capacity of receiving authorities to properly interrogate information supplied, whether by developers or third parties, is severely limited. Against this background, timely delivery of screening decisions, and the quality and accuracy of the decision, can be compromised.

The following case of a proposed renewable energy scheme demonstrates how good EIA practice, and delivery of development promoted by national and local policy, can be derailed by poorly informed EIA screening. The scheme is not identified for reasons of confidentiality.

Although the site itself is not located within an environmentally sensitive or vulnerable location, there are designated sensitive sites and heritage assets in the vicinity. When requesting the Screening Opinion in May 2013, the applicant identified the scheme as Schedule 2 development and provided
At present there is simply inadequate grid capacity in locations other than green field sites to support the large evidence of environmental conditions, including a detailed description and analysis of the potential for the development to have significant effects on sensitive receptors by virtue of factors such as its nature, size or location. Informed by the information provided, the Council issued a negative Screening Opinion in June 2013.

As the scheme progressed through pre application, site investigations to inform the emerging layout found evidence of archaeological interest in part of the site, and the scheme was reduced in size to avoid these assets. The application for the reduced scheme was submitted and processed, and in early November 2014 Council planning officers drafted their recommendation to Members to grant development consent. Throughout pre and post submission stages, a group of local residents had voiced vociferous objections to the principle of the development, publically stating that all measures to delay the planning process beyond the funding window for the scheme would be employed. A request for a Screening Direction was accordingly made to the Secretary of State in September 2014, citing the failure of the Council to properly consider the sensitivity of the local environment in reaching its negative screening opinion. No mention was made of the information submitted to inform the original screening request, nor was the applicant notified of the request to the Secretary of State. This became apparent only in late November 2014, when the Council notified the applicant that a Screening Direction had been made, and that an Environmental Statement was now required. Although the applicant swiftly sought a fresh Screening Direction, which in January 2015 overturned the earlier Direction, the scheme was sufficiently delayed in planning to miss the funding window on which it was based.

In essence, the EIA screening process was employed by objectors to circumvent the planning process. To avoid such challenge, prudent developers may now choose to seek a screening direction direct from the Secretary of State, regardless of whether the proposed development falls under the newly raised thresholds.

This article was written by Bernice Roberts, Principal Environmental Planner at The Landmark Practice, as a contribution to the EIA Quality Mark’s commitment to improving EIA practice, April 2015.