Environmental Impact Assessment: The new Directive and how it will affect planning

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We are a leading environmental planning, landscape architectural and ecological consultancy caring for our clients, the environment and the future.

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Multi-disciplinary approach

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- Project Options Appraisals
- Planning Applications
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Memberships / accreditations

- Landscape Institute registered practice
- IEMA ‘Quality Mark’ registered, in respect of EIA services
- Chartered Institute of Ecology and Environmental Management
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- Construction Skills Certification Scheme (CSCS) registered
- ISO 9001 accredited
Selected Clients
Selected Clients
Selection of project locations
Selection of project locations
Office Location

- World Heritage City of Bath
- Company located in city for over 25 years
- Easily Accessible

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20 years experience of:  
• EIA Coordination, Screening, Scoping,  
• Environmental Statements,  
• ES Reviews  
• Environmental Reports for Planning applications  
• SEA/SA, HRA
Environmental Impact Assessment: The new Directive and how it will affect planning

• What is EIA

• Current Law and Practice (EU and UK)

• The revised EIA Directive (and how it will change EIA)

• How the new Directive could affect planning

• What next?

• Any Questions
What is EIA?

- A formal procedure which provides information to local authority planners, other regulators and authorising bodies, interested parties and the general public about certain proposed developments and their likely effects on the environment;

- before projects are given permission,

- so that the implications are known and taken account of in decision-making; and

- so measures can be taken to avoid or mitigate harmful effects, and to enhance positive effects, as part of the proposals (influencing design)
What is EIA: Origins

- Introduced: USA National Environmental Policy Act 1969
- Informal EIA in 1970s UK North Sea Oil developments
- 1985 EC Directive (revised)
- Implemented from 1988 in UK
- Used across the world – national Governments and funding sources (e.g. World Bank)
The purpose of EIA is to protect the environment by ensuring that a local planning authority when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision making process’

Planning Practice Guidance (PPG) on EIA

What is EIA?  
Main purposes/ benefits

- **Environmental protection:**
  - better to avoid or reduce environmental pollution or nuisances at sources, rather than subsequently trying to counteract their effects.

- **Sustainable development**
  - Need for development to meet human needs, development creates a wide range of environmental impacts, so how can we predict, avoid and minimise these?

- **Encourages public participation in decision-making:**
  - better information improves transparency;
  - those affected by development are informed, consulted, can participate in decisions affecting their environment;
  - can allay public concerns and the fear of unknown.
What is EIA?
Main purposes/ benefits

- **Improves design and planning:**
  - decision making bodies can obtain sufficient information about environmental effects of certain developments;
  - environmental effects taken into account at early stages of decision-making;
  - consideration of alternative approaches;
  - allows developers to minimise their environmental risks;
  - helps ‘design out’ harmful impacts and manage risks of harm;
  - leads to less damaging development?
What is EIA?
Main criticisms

- **Burdens on developers and Local Authorities?**
  - 2006 Barker Review
  - Government Ministers’ statements (Pickles, Osborne)
  - ‘information submitted with a planning application should make it quite clear what the environmental impacts would be’?
  - Costly for developers and LPAs?
  - Too many EIAs? Too much EIA Screening Opinions?
    - “raise the thresholds” – **EIA Regs amended 2015**
  - Delays development consents? “streamline EIA”
  - Too much information in ESs?
    - “limit the paperwork”
    - Avoid unnecessary elaboration
    - Better scoping!
  - New EIA Directive (2012 proposal) ‘interfering with planning system’
What is EIA?
Review of effectiveness

- EU review of effectiveness 2009:

  - Benefits outweigh costs:
  - adds small proportion to project costs, mostly <1% investment costs, but varies;
  - environmental implications taken into account in project and approval decision-making;
  - improved project design;
  - improved decision-making;
  - better information disclosure;
  - more public involvement, more transparency,
  - greater social acceptance of decisions;
  - smoother processes;

  - All dependent on high quality information in EIA

  - which can be improved…
Current EIA Law and Practice: EU Directives

- First EIA Directive 1985
  - revised 1997, 2003, 2009,
  - consolidated 2011
  - amended April 2014 after 5 year review and EC proposal 2012

- Why needed in EU?
  - **Harmonisation of principles:**
    - Directive sets minimum requirements,
    - which Member States can add to
Current EIA Law and Practice: UK law

Town & Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended):

• EIA Regs in place since 1988, then 1999 as amended, 2011, amended 2015

• for England (Wales, Scotland, NI have own)

• for Town & Country Planning (other Regs for other regimes, e.g. Infrastructure Planning (EIA) Regs)
UK (England) Guidance on EIA:

- Planning Practice Guidance (PPG) on EIA
  
Current EIA Law and Practice: EIA statistics

  - 501 ESs received
    - less than Germany, Spain (>1000), France, Poland (>4000)
    - No accurate information on number of EIA screening decisions
  - 14% rise since 2013/14,
  - 56% rise since 2011/12
  - ESs required for <0.1% of the 473,866 planning applications submitted
Current EIA Law and Practice: EIA statistics: SW

- Few Local Planning Authorities deal with many ESs / year: e.g. in SW:
  - Cornwall: 15
  - B&NES, Wiltshire: 9
  - Forest of Dean, N Devon, S Glos: 4
  - Taunton Deane, E Devon, Mid Devon, W Dorset, Tewkesbury: 3
  - W Devon, Stroud, Purbeck, Gloucester: 2
  - Bristol, Cheltenham, Exeter, Sedgemoor, N Somerset, Torbay, Dartmoor NP, Exmoor NP: 1
  - all others 0

*(excludes County Councils)*
Current Law and Practice: 
EIA process overview:

Main LPA roles in EIA:

- **Screening**: is EIA required?
- **Scoping**: what should ES include?
- Liaison with applicants’ EIA team
- **ES submission**
  - Public consultation
  - ES Review?
  - Further information required?
- **Determine** the planning application, conditions/obligations
- Post-decision: monitoring/ enforcement
Current EIA Law and Practice:  
UK law: Screening

Screening = Deciding if EIA is required for a development project

- **Screening Opinion: Developer requests, and Local Authority provides:**
  - Schedule 1 mandatory EIA
  - Schedule 2, ‘minimum thresholds’
    - e.g. urban development (including housing, business parks, shopping centres, cinemas, warehousing)

- ‘Sensitive areas’ (all must be screened): World Heritage Sites (e.g. City of Bath), National Parks, AONBs, SSSIs, Scheduled Ancient Monuments

- Minimal information required (Screening Report?)

- Must consider ‘Schedule 3 considerations’:
  - **Characteristics of development**
  - Location of development
  - Characteristics of the potential impact
Selection criteria for screening Schedule 2 development

1. The characteristics of development must be considered having regard, in particular, to -
   - (a) the size of the development;
   - (b) the cumulation with other development;
   - (c) the use of natural resources; (d) the production of waste; (e) pollution and nuisances;
   - (f) the risk of accidents, having regard in particular to substances or technologies used.

2. The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to -
   - (a) the existing land use;
   - (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
   - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
     - (i) wetlands; (ii) coastal zones; (iii) mountain and forest areas; (iv) nature reserves and parks;
     - (vi) areas in which the environmental quality standards laid down in EU legislation have already been exceeded;
     - (vii) densely populated areas;
     - (viii) landscapes of historical, cultural or archaeological significance.

3. The potential significant effects of development must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to—
   - (a) the extent of the impact (geographical area and size of the affected population);
   - (b) the transfrontier nature of the impact;
   - (c) the magnitude and complexity of the impact;
   - (d) the probability of the impact;
   - (e) the duration, frequency and reversibility of the impact.
Current EIA Law and Practice: UK law: Screening

Screening = Deciding if EIA is required for a development project

- Multi-stage consents
- Changes and extensions

- Timing of Screening Opinion – request before application? how long before?

- No consultation required

- 3 weeks timescale

- LPA must give reasons for not requiring EIA (if asked)

- Is the development ‘likely to have significant effects on the environment’?

- Screening Directions from Sec of State (i.e. appeal) – anyone can ask
April 2015: EIA Regs amended to raise thresholds for urban developments:

- Government perceived problem: time & cost of unnecessary Screening Opinions

- Final regulations took account of consultation feedback:
  - risk of ignoring that ‘high rise’ development on small sites could still result in significant environmental effects
  - resulted in a numerical dwelling threshold being included.

- 2011 Regs:
  - 0.5 hectare exclusive threshold in screening EIA for all urban developments (outside ‘sensitive areas’)

- 2015 Regs raised thresholds:
  - for residential development: to 5 ha
    - or 150 or more dwellings,
    - including where there is up to 1 ha of non-residential urban development;
  - for other urban development: to 1 ha; and
  - for industrial estate development: to 5 ha.
Current EIA Law and Practice: UK law: Screening

“Careful now”

- Poor application of EIA Screening requirements is a rich seam for legal challenges by objectors (including rival developers) …
- … many permissions quashed.

- Ensure correct procedures followed.
  - Consider all relevant effects, e.g. cumulative effects
  - Cannot rely on topic reports being submitted instead
  - Take account of mitigation?
  - Key question = **Is the development likely to have significant effects on the environment?**
Current EIA Law and Practice: UK law: Scoping process

**Scoping** = deciding the information to be included in ES:

- **Scoping Opinion can be requested** (voluntary)
  - main effects, scope of issues, methods, assumptions, can be defined and agreed

- minimal information required (as Screening); more (Scoping Reports) can be submitted

- LPA has 5 weeks, with statutory consultation

- Scoping Opinions are not binding… but LPA can request further information

- **Evidence review 2006**: Scoping Opinions sought in 50% of EIAs, mainly with reports;
  - Benefits include:
    - better focused and quality EIAs, wider consultation,
    - reduces need for ‘further information’ to be requested later
    - can reduce size of ESs

- **Scoping Directions**: binding, and little used
Current EIA Law and Practice: Preparing the ES

- **ES preparation:**
  - Developer’s team prepares ES
  - Design development/iteration
  - Consider alternatives
  - Consultation

- **ES must include...**
  - EIA Regs, Schedule 4 parts 1 & 2
  - description of development,
  - outline of the main alternatives considered by applicant
  - data necessary to assess main effects of the development on the environment
  - a description of the mitigation measures
  - **Non-Technical Summary**
  - Consider …
Current EIA Law and Practice:
UK law: ES preparation

Current EIA Regulations require assessment of following, if likely to be significantly affected:

- **Topics:**
  - Flora, fauna
  - Landscape
  - Air, Water, Soil
  - Climatic factors
  - Material assets, including architectural and archaeological heritage
  - population
  - Inter-relationships between above

- **Effects:**
  - Direct, indirect, secondary, cumulative
  - Positive and negative
  - Short, medium, long term, permanent and temporary

- **ESs often include:**
  - Traffic / transport
  - Noise
  - Socio-economic, health?
Current EIA Law and Practice: ES submission and post-decision

• **ES submission:**
  - **Statutory consultation**
  - Public have 21 days to comment
  - LPAs has 16 weeks (not 8 or 11) to determine
  - **LPA can request ‘further information’** to ‘complete’ ES
  - Applicant can also voluntarily provide additional info
  - No requirement to undertake or commission a Review of ES adequacy
  - **LPA must consider ES and representations in decision.**

• **Post-decision:**
  - **No requirement** in EIA Regs to secure mitigation or monitor effects
  - Guidance: can use planning conditions, S106 to secure mitigation measures; various EMP arrangements can be entered into
  - LPA enforcement of commitments?
The revised EIA Directive: Origins

EU 5 year review of effectiveness (2009):

- **Benefits of EIA outweigh costs**

- **EIA is largely effective but needs improvements on:**
  - Coordination with other assessments
  - Screening
  - Scoping
  - Topics EIA covers – biodiversity, climate change
  - Considering alternatives
  - Public participation and timescales
  - Quality control
  - Monitoring

- Emphasised quality of outcomes, not just process
The revised EIA Directive: Timeline

**Directive 2014/52/EU**

‘amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment’

- **2010:** EU consultation on issues and options, including ‘25th Anniversary’ Forum
- **Consultation:** UK made most comments (via IEMA)
- **March 2014:** Agreement – compromise approved by full Euro Parliament
- **Transposition by Member States due in May 2017**

- **2012:** European Commission proposed new EIA Directive: ‘a comprehensive overhaul’
- **Negotiation –** Commission, Parliament, Council of Ministers: (some aspects dropped due to objections)
- **Council of Ministers approval... new Directive approved April 2014**
Revised Directive: ‘Evolution not revolution’

New requirements for EIA across EU:

1. Screening process strengthened
2. Scoping will be more binding
3. Broader scope of environmental impacts (topics and types of impacts) need to be considered
4. ‘Cumulative Effects’ and ‘alternatives’ defined
5. LPAs to ‘examine’ EIA Reports
6. ‘Competent experts’ required
7. Mitigation measures to be ‘secured’
8. Monitoring can be required
9. Member States to impose penalties for infringements
Revised Directive: Did not include...

Proposals in 2012 Euro Commission proposal not included in Directive, due to objections:

- Combining Screening and Scoping (making Scoping mandatory and binding)
- No minimum Screening thresholds (Screening every development?)
  - E. Pickles, Communities Secretary 2012: this “would represent a significant additional burden for developers and competent authorities“
- Set timescales for consultation & decision-making
  - Interference with planning system?
- Mandatory EIA for unconventional gas development
- ‘Ecosystem services’
- Requirement to assess ‘least environmentally impacting option’ as an alternative
- Compulsory accreditation of EIA competent experts
- Mandatory coordination / joint procedures with other EU environmental assessments, e.g. HRA, SEA, WFD (now voluntary)
Screening process ‘strengthened’:

- When Screening Opinion is requested,
- **Screening Reports** must be submitted,
- to include **more information** about the development, the environment and the likely effects; including for waste, emissions, and natural resources;
- Screening Opinions must be:
  - **explained fully**:
    - state main reasons with reference to Annex III criteria
    - specify the features of project and/or mitigation measures envisaged (if avoid EIA, which must be retained in the final development proposals)
  - within 90 days
Revised Directive:
1: Screening

Current EIA Regulations requirements (Reg 5):
- ‘Request for Screening Opinion must be accompanied by:
  - (a) a plan sufficient to identify the land;
  - (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
  - (c) such other information or representations as the person making the request may wish to provide or make.’

New Directive requirements (Annex 2A):
- Information to be provided by the developer:
  - 1. A description of the project, including in particular: (a) a description of the physical characteristics of the whole project and, where relevant, of demolition works; (b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.
  - 2. A description of the aspects of the environment likely to be significantly affected by the project.
  - 3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from: (a) the expected residues and emissions and the production of waste, where relevant; (b) the use of natural resources, in particular soil, land, water and biodiversity.
  - 4. The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.’
Revised Directive:
2: Scoping

Scoping ‘more binding’:

- EIA Reports (ESs) to be based on any Scoping Opinion given by the competent authority.
- Requesting a Scoping Opinion will remain voluntary
- Clearer requirements for assessment of impacts of projects in a number of areas ...
Revised Directive: 2: Scoping

- Directive 2014/52/EU requires assessment of a **broader scope** of the factors likely to be significantly affected by the project:
  - Population and **human health**,  
  - **Biodiversity**,  
  - **land**, soil (e.g. organic matter, erosion, compaction, sealing),  
  - **water** (e.g. hydromorphological changes, quality and quantity),  
  - **air**, climate (e.g. greenhouse gas emissions, impacts relevant to adaptation),  
  - material assets, cultural heritage, and the landscape  
  - ...

What is the environment?  
“Everything that isn’t me”
Revised Directive: 3: Topics for inclusion

- Description of the likely significant effects resulting from:

  - construction and existence of the project, **including demolition**;
  - use of natural resources and biodiversity, **considering the sustainable availability of these resources**;
  - emission of pollutants, noise, vibration, light, heat, radiation, creation of nuisances, and **disposal and recovery of waste**;
  - **risks** to human health, cultural heritage on environment, e.g. due to **accidents or disasters**;
  - impacts on climate (e.g. nature and magnitude of greenhouse gas **emissions**) and **vulnerability of project to climate change**;
  - the technologies and substances used;
  - cumulative effects.
Cumulative effects:

- specifically defined as those arising from the development with other existing and/or approved projects (could narrow scope);

- but also taking account of any existing environmental problems (related to areas of particularly environmental importance likely to be affected, and use of natural resources (could widen scope).
Revised Directive:  
4: Cumulative effects and Alternatives

Alternatives:

• Requires assessment of ‘reasonable’ alternatives studied by the developer, and the main reasons for selecting the chosen option,
• including a comparison of the environmental effects,
• for example:
  • alternative designs,
  • alternative technologies,
  • alternative locations, sizes and scales of development; and
• the ‘do nothing’ scenario
  (evolution of likely evolution of the baseline (current) environmental conditions without the development)
Revised Directive: 5 & 6: LPA and experts roles

- Environmental Statements called ‘EIA Reports’.

- Public have more time to comment (30 days)

- EIA Reports must be prepared / verified by ‘competent experts’. *(who include/exclude?)*

- Competent authorities need to:
  - have (or have access to) **sufficient expertise** to ‘examine’ the EIA Report, and
  - make their own reasoned conclusions on the environmental effects of development.

- Conflict of interest:
  - If competent authority is both developer and decision-maker, a functional separation must be set up.
Revised Directive:
7: Securing mitigation

• **Mitigation measures:**

• **EIA Reports:**
  – explain the extent to which significant adverse effects are avoided, prevented, reduced or offset (construction and operation).
  *(continuing from Screening stage)*

• **Authorities to:**
  – **secure mitigation measures**, including elements of development design and other measures, e.g. through conditions

• **Member States:**
  – **must ensure** these are implemented by developer.

*‘Keeping a promise’*
Revised Directive:
8: Monitoring & 9: penalties

• **Monitoring:**
  • EIA Reports must:
    – define arrangements for monitoring of any mitigation measures and significant adverse environmental effects, where appropriate, e.g. post-project appraisals.
  • Decision notices must:
    – describe any appropriate monitoring measures and any environmental conditions of permission
  • What, and for how long, shall be ‘proportionate to the nature, location and size of the project and the significance of its effects…’
  • Existing monitoring arrangements may be used

• **Infringements:**
  • Member States to define ‘effective, proportionate and dissuasive’ penalties
Brockworth, Gloucestershire

NPA were appointed by a consortium of developers to promote the site through local plan enquiry to change the former airfield site allocation from B8 to mixed use residential for around 2000 homes, a primary school, 7 POS, 2 local centres.

NPA contributed to:

- Environmental Statement
- EcIA, Biodiversity mitigation and monitoring plans for
  - SSSI & Veteran Tree Management
  - Offsite Barn Owl habitat & site management
- Tree works and vegetation management
- LVIA, masterplan inputs, Landscape Architecture
- Sustainable Drainage Strategy
- Highway schemes
- Public liaison

Project Details:
Client: Westbury / Bovis / Barratt / Persimmon
Partners: Trench Farrow PM / WSP / Peter Brett Associates / Barton Wilmore Partnership
Revised Directive: EIA process overview:

Main LPA roles in EIA:

- **Screening**: review Report, explain Opinion
  - Track design/mitigation if EIA not required
- **Scoping**: more binding
- Liaison with applicants’ EIA team
- **EIA Report submission**
  - Public consultation
  - **Examine EIA Report**
  - Further information required?
  - Determine the planning application
- **Secure mitigation**
- **Post-decision: monitoring/enforcement**
How could the new Directive affect planning?

Greater roles for Planning Authorities and planning consultants in EIA?

• **Greater EIA expertise:**
  - Developers’ EIA Reports to be prepared by ‘competent experts’ – who?
  - LPAs need sufficient expertise to examine EIA Reports – in-house or external?

• **Greater effort in EIA Screening:**
  - Reports: more information up front…
    - will Screening Opinions be requested later?
  - Opinions – full explanations
  - Check design/mitigation commitments are retained if EIA avoided

• **More powers in Scoping:**
  - Scoping Opinions more binding
    - will they be requested less often? can help reduce workload…

• **Wider range of environmental issues and impacts to consider:**
  - human health, land take, vulnerability to accidents & disasters
  - resource use: energy, waste
  - climate change: emissions, vulnerability
How could the new Directive affect planning?

- More ‘reasonable alternatives’ to assess, ‘do nothing’

- Cumulative effects:
  - existing/approved projects, + existing environmental problems

- Decision-making:
  - LPAs make reasoned conclusions on EIA Report, consultations and own examinations
  - Need to track design and mitigation measures from screening to implementation

- Post-decision
  - LPAs secure mitigation for significant environmental effects (planning conditions / S106 agreements)
  - Developers ensure the required mitigation is implemented
  - Monitoring of significant effects and mitigation?
    - Post-project appraisal / regular management / reporting by developer

- Avoid conflicts of interest if consenting body is applicant

- UK penalties for infringements: tbc
What next?

• UK EIA Regs:
  – Government consultation/s due late Spring 2016
  – need to transpose amended Directive 2014 by May 2017

• NPPF: Planning Practice Guidance (PPG) would be updated

• IEMA / RTPI own guidance needed?
Thanks for listening!
Any Questions?
No?
SUPER!
Any questions?

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