Environmental Impact Assessment (EIA)

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Environmental Impact Assessment

Introduction


• CIF 16 May 2017

• Brexit
Environmental Impact Assessment: Europe's View

**General objective**: adjust the EIA Directive in order to

- correct identified and persisting shortcomings.
- reflect ongoing environmental and socio-economic priorities and challenges.
- align with the principles of smart regulation.
- reflect the ECJ case-law.
Environmental Impact Assessment: Europe's View

Specific and Operational objectives of the revision

Introduce and/or strengthen the quality related elements of the EIAD
• Specify the content and justification of the screening decision
• Specify the content and justification of the EIA report and the final decision
• Adjust the EIAD to the new environmental challenges

Enhance policy coherence and synergies with other EU/international law and simplify procedures
• Streamline environmental assessments
• Specify time-frames for the various stages of the EIA process
Environmental Impact Assessment: Regulations in Wales

- The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017
- The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017
- The Environmental Impact Assessment (Forestry) (England and Wales) (Amendment) Regulations 2017
- The Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017
- The Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017
- The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017
- Transport related
Screening

Increased role of developer in screening

- description of likely significant environmental effects
- description of proposed mitigation measures
- .....taking into account available results of any ‘relevant assessment’ [SEA/HRA/Seveso .....?]
Screening

Time period for screening:

• 21 days
• What about extensions of time?
• When does it start?
The screening opinion must:

**take into account**
- The information provided by the developer
- the available results of other environmental assessments (e.g. SEA, Hazardous Substances)
- Schedule 3 as relevant to the development.

**must state**
- the main reasons for the conclusion with reference to the relevant criteria listed in Schedule 3
- if a proposed development is not EIA development state any features of the proposed development and measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.
Screening cont…

Screening opinion - Schedule 3 differences

Characteristics of development
1. The characteristics of development must be considered having regard, in particular, to—
   (a) the size and design of the development;
   (b) the cumulation with other existing development and/or approved development;
   (c) the use of natural resources, in particular land, soil, water and biodiversity;
   (d) the production of waste;
   (e) pollution and nuisances;
   (f) the risk of major accidents and/or disasters relevant to the development concerned, including those caused by climate change, in accordance with scientific knowledge;
   (g) the risks to human health (for example due to water contamination or air pollution).
Screening cont…

Location of development
2. The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to—
(a) the existing and approved land use;
(b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
(c) the absorption capacity of the natural environment, paying particular attention to the following areas—
(i) wetlands, riparian areas, river mouths;
(ii) coastal zones and the marine environment;
(iii) mountain and forest areas;
(iv) nature reserves and parks;
(v) European sites and other areas classified or protected under national legislation;
(vi) areas in which there has already been a failure to meet the environmental quality standards laid down in Union legislation and relevant to the project, or in which it is considered there is such a failure;
(vii) densely populated areas;
(viii) landscapes and sites of historical, cultural or archaeological significance.
Types and characteristics of the potential impact

3. The likely significant effects of the development on the environment must be considered in relation to criteria set out under paragraphs 1 and 2, with regard to the impact of the development on the factors specified in regulation 4(2), taking into account—

(a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
(b) the nature of the impact;
(c) the transboundary nature of the impact;
(d) the intensity and complexity of the impact;
(e) the probability of the impact;
(f) the expected onset, duration, frequency and reversibility of the impact;
(g) the cumulation of the impact with the impact of other existing and/or approved development;
(h) the possibility of effectively reducing the impact.
Screening cont...

Main changes

- human health?

- Existing and approved development

- Risks of major accidents and or/ disasters (Question: What are likely to be relevant to TCPA projects?)

- Measures to reduce/remove the impact
Consultation

Additional requirements

• public shall be informed electronically [and by public notices]. - Where the developer and LPA undertake publicity

• Changes to the public notification criteria

• relevant information shall be electronically accessible to the public.

• time-frame for consulting (including statutory consultees) - 30 days.
Expertise

• An environmental statement must:

  - be prepared by persons who in the opinion of the relevant authority, have sufficient expertise to ensure the completeness and quality of the statement;

  - contain a statement by or on behalf of the applicant or appellant describing the expertise of the person who prepared the environmental statement;

• The competent Authority shall:

  - ensure that it has, or has access as necessary to, sufficient expertise to examine the EIA report.

(Only applies to the ES, not screening/scoping)
Making the decision

Consideration of whether planning permission should be granted. The CA, must:
(a) examine the environmental information;
(b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, their own supplementary examination;
(c) integrate that conclusion into the decision as to whether consent is to be granted; and
(d) if planning permission or subsequent consent is to be granted, consider whether it is appropriate to impose monitoring measures.

The reasoned conclusion must be up to date when the determination is made;
Making the decision – monitoring conditions

When considering whether to impose a monitoring measure under paragraph you must:
(a) if monitoring is appropriate, consider remedial action;
(b) ensure that the type of parameters and the duration are proportionate to the nature, location and size of the proposed development and the significance of its effects; and
(c) avoid duplication of monitoring, and whether monitoring arrangements required under Union legislation are more appropriate than imposing monitoring measures.
What the decision must include

Decision to grant development consent:

• the reasoned conclusion;

• any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.

Decision to refuse development consent

• main reasons for the refusal.
Co-ordinated procedures

The competent authority must ensure that the Appropriate Assessment and the EIA are co-ordinated

EIA and HRA Co-ordination
Fundamental distinction between EIA and Habitats Regulations Appraisal (HRA) - procedure and decision

But, similarities in process – screening, information provided by the applicant.

Question
How could you co-ordinate the processes?
Transitional provisions

- Where an applicant has requested a scoping opinion, or submitted an environmental statement before 16 May the application, appeal, or enforcement action will continue under the 2016 Regulations.

- Where an applicant has requested a screening opinion, one has been adopted before the before 16 May Parts 1 and 2 of the 2016 Regulations continue to apply, with Parts 3 to 7 and 9 to 13 of the 2017 Regulations also applying.