



1. **The addition of a definition of the environmental impact assessment process**

The DCLG state that: "In our view the definition reflects existing practice". Nonetheless, DCLG have incorporated the EU definitions of the EIA process into their proposed regulations. This definition now includes human health as well as other recognisable EIA 'chapters', however it is not a comprehensive list which may raise more questions than it answers as to the content expected. For example, cultural heritage is listed as is landscape whereas transport is not. However, this is not a prescriptive or limiting list that should cause issue, as Article 5(1) of the EU Directive provides a catch all (amongst other guidance) that: "information to be provided by the developer shall include at least... a description of the likely significant effects of the project on the environment" whereby all normal EIA chapters would still be required to fulfil this expectation. **Therefore, it is likely the description of the process may assist planning performance agreements defining stages or ensuring consistency of approach in EIA and it remains that detail is again always to be resolved through each Screening (see points 4 and 5 below) and / or Scoping exercise.**

2. **Changes to the circumstances in which a project may be exempt from the requirements of the Directive.**

DCLG has proposed that projects which have defence as their sole purpose and those that have the response to civil emergencies as their sole purpose may be exempt from EIA. **This may not affect EIA or Planning practice particularly but may have an impact for affected parties who expect a process of EIA to clearly set out mitigation for effects of development.**

3. **Introduction of Joint and/or Coordinated procedures for projects which are subject to the Habitats or Wild Birds Directives as well as the EIA Directive.**

DCLG has proposed co-ordinated rather than joint procedures and will only include the Habitats and Wild Birds Directives, rather than taking the option of also co-ordinating with other Directives such as the Water Framework Directive, Strategic Environmental Assessment Directive and the Industrial Emissions Directive. They have also not yet indicated who will be the co-ordinating authority and who will assign the co-ordinating authority.

However, in practice this may not affect EIA or Planning practice to any great extent, as EIA is usually already closely co-ordinated with Habitat Regulations Assessment when both are required.



4. **Changes to the list of environmental factors to be considered as part of the environmental impact assessment process.**

THE DCLG consultation states: "The 2014 Directive clarifies that the assessment should be of likely significant effects of the project on the environment". The underline is their emphasis and in doing so, clearly highlights the view that less than significant effects may not necessarily be included. Equally more focus is made on addressing species protected under the Habitats and Wild Birds Directives. It is not considered that this would mean that only such species should be addressed, as the reworded UK regulations include the requirement to assess 'biodiversity' as a whole.

The Directive sets out Additional Matters including biodiversity, climate, land and human health, vulnerability of the project to major accidents or disasters. The Government's consultation confirms that these matters have been introduced to UK regulations. **There is some potential for this to increase the length of Environmental Statements. However other proposed changes highlight the need to focus only on significant effects, screening will become more detailed and several of these 'new' topics are already standardly included in EIAs, so overall it is hoped that ESs will become leaner.**

5. **Clarification of the options for screening and amendments to the information which is required and the criteria to be applied when screening projects to determine whether the Directive applies.**

The EU proposed changes include screening Opinion Requests (is the development EIA or not?) to be 'comprehensive' e.g. with additional supporting information to be provided and the Screening decision may now take up to 90 days to decide.

The DCLG have stated their preference is to maintain the current mandatory 21 days for a decision by authorities unless agreed in writing, with the 90 days taken as a maximum.

This will mean more 'up front' work will be needed before EIA is submitted, particularly because there will need to be more certainty from developers about proposals before proceeding and potentially, early modelling and/or assessment to gain that certainty. However, this also potentially benefits developers in that it should therefore be possible at this early stage to demonstrate that a development, by reducing the impact through mitigation, may avoid EIA by 'front loading' such commitments.



6. **Amendments to the information to be included in the environmental statement.**

The DCLG believe that this is mostly a renaming of all of the issues that should already be included in an environmental statement and the amendments do not constitute a change that may affect the existing EIA requirements on developers or determining bodies (see points 1 and 4 above).

7. **A requirement for environmental statements to be 'based on' a scoping opinion, where one is issued.**

Scoping is still voluntary. However, the EIA must adhere to the received Scoping Opinion if scoping is undertaken. If the final assessment does not follow the Scoping opinion, it would not be compliant with the Directive.

Likely implications: more information to be front loaded to the Screening (see above) and/or some developers may avoid Scoping with consequent difficulties in agreeing suitable content.

However, the DCLG has included in the UK regulations that Scoping must be: "based on the most recent scoping opinion or direction issued (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion or direction)". **This has the consequence that some scheme change is permissible without necessarily the need for new or multiple scoping exercises to be undertaken.**

8. **The use of competent experts.**

DCLG state that: "Our initial view is that at present most decision makers either have persons with sufficient expertise within their planning or wider teams to examine the environmental statement, or could readily obtain access to such expertise". It is debatable whether sufficient expertise exists within Local Planning Authorities and other decision making bodies given the cuts that have taken place in public spending. However, such expertise can be readily obtained from the consultancy sector if necessary.

However, with regard to the preparation of EIA, DCLG also state: "We propose to include a requirement in the regulations that the environmental statement must be prepared by persons who in the opinion of the competent authority have sufficient expertise to ensure the completeness and quality of the environmental statement. This will be supported by a requirement for the environmental statement to include a statement setting out how the requirement for sufficient expertise has been met."



The outcome is that there will need to be a means by which authors will need to be 'verified' as having sufficient expertise beforehand than risk refusal of the EIA's suitability once written. There is no guidance on how this is to be achieved and whether it applies to every chapter author or the submitting body (e.g. a consultancy) only. This is a point that the DCLG have invited more comment on; it remains to be seen if the industry considers this an acceptable way forward.

9. A new article elaborating on information to be given in decision notices and the decision making procedures.

10. A new article requiring the avoidance of conflicts of interest.

It is not anticipated that these will result in any significant changes to existing practice.

11. Monitoring significant adverse effects.

DCLG state: "The decision to grant development consent should also now include, where appropriate, monitoring measures". **It is not anticipated that this will have a major effect in practice, as Planning Conditions, Legal Agreements and documents such as Environmental Management and Monitoring Plans already frequently include requirements for monitoring. Also, there is only a requirement for 'proportionate' monitoring and existing monitoring arrangements may be used if appropriate.**

12. The introduction of penalties for infringements of national provisions.

Member States must produce rules to address infringements to include penalties. DCLG have stated that "...our view is that the existing enforcement provisions in legislation are sufficient to meet the requirements of the Directive". They have not placed any further systems or scheme for penalties above and beyond the comprehensive matters available to authorities such as stop notices, breach of condition notices and opportunities through courts for injunctions. The revised UK EIA regulations do place a requirement on planning authorities in their enforcement functions to secure compliance in line with the requirements of the EU Directive.

Whether this is agreed by the EU as a sufficient interpretation remains to be seen, it is notable that the DCLG asks for more opinion on this in its consultation so it may be revisited depending on the confidence gained through the consultation process.



Consideration of the differences between the EU Directive and the UK position.

Overall, there appear likely to be changes that provide opportunity to 'front load' environmental information and make a clearer case for the content of EIA which ultimately may be beneficial to developers and determining authorities alike.

What remains to be seen is if the EU determine that the interpretation and selective inclusion of the EU Directive to UK regulations is appropriate or sufficient, particularly given the very clear 'minimal approach' taken by the DCLG. For example, matters not explicitly dealt with by the DCLG consultation and proposed revised EIA regulations range in importance as follows:

- The DCLG propose to retain the term 'Environmental Statement' rather than use the EU Directive term 'Environmental Impact Assessment Report'.
- Increasing the consultation period for submitted EIA applications from 21 to 30 days.
- The DCLG have not strictly stated that uncertainties associated with the selection of preferred alternatives should be included. The DCLG suggested revised regulation text notes that uncertainties involved for forecasting or evidence methods should be described, but this is a subtle difference to demonstrating a full feedback review of the overall proposed development has been made, an often forgotten core point of EIA.
- The proposed UK regulations have in places included 'interpretation' rather than full adoption of EU Directive text or creation of explicit EIA procedures (see points 7, 11, 13 and above for example). It is currently unclear if the EU will agree with this approach and the European Commission can and has issued legal action over infringements if it decides member state regulations are inadequate.

In summary, the key proposed changes include a requirement for more detail in screening and scoping, the use of 'experts' to draft documentation and more of a focus on 'significant effects'. Where proposed developments are on the borderline of requiring EIA, developers may benefit from increased ability to screen the development out from EIA by providing details of proposed mitigation.

In the short term, a key matter is how confident Local Planning authorities will be after the EU deadline in making Screening and Scoping decisions and you may wish to get these completed sooner rather than later, before 16 May 2017. However, there are both advantages and disadvantages associated with carrying out EIA under the existing and new regulations and it is worth considering these. The screening / scoping process can then be either delayed or accelerated to select the most appropriate regime. If you feel you may be affected by these matters or need more advice on the implications for your future proposals in 2017, please do not hesitate to contact us at eia.wyg.com.

The DCLG are currently considering the consultation process feedback. We will update this advice accordingly when they publish their considerations.