

SCOTTISH MINISTERS TO TRANSPOSE EU DIRECTIVE ON EIA INTO NATIONAL LAW

A CONSULTATION SEEKING THE PUBLIC'S VIEWS ON DETAILED PROPOSALS FOR TRANSPOSING THE ENVIRONMENTAL IMPACT ASSESSMENT (EIA) DIRECTIVE AND DRAFT UPDATED EIA REGULATIONS IS OPEN UNTIL 31ST OCTOBER .

When the European Union published a new Directive on Environmental Impact Assessment (EIA) in 2014 (EU 2014/52), Member States had until 16th May 2017 (three years) to transpose it into domestic law. However, in the wake of the Brexit vote to leave the EU there has been speculation as to whether the UK would update the EIA Regulations.

Given that EU law will apply for at least two years after formal proceedings to leave through invocation of Article 50 of the Treaty of European Union (known as the Lisbon Treaty), there could be legal implications if the UK devolved authorities failed to update their EIA Regulations. Formal exit proceedings are not expected to take place until autumn this year which could see the UK under EU law until late 2018 at least.

This matter had been the subject of speculation until earlier this month, when the Scottish Ministers published a consultation document to seek the public's views on their detailed proposals for transposing the EIA Directive and draft updated EIA Regulations. The consultation is open until 31st October this year and relates to eight consenting regimes for which EIA applies:

- Agriculture
- Energy
- Forestry
- Land Drainage
- Planning
- Marine
- Transport and Works Projects
- Trunk Roads

In summary, the changes comprise:

- Replacing the term "Environmental Statement" with "Environmental Impact Assessment Report"
- A minor change to provision for exempting projects affecting national defence or civil emergency response from EIA
- Requiring a joint or coordinated procedure for EIA, Habitat Regulations Assessment (where European designated ecological sites are affected) and permitting
- Exempting certain national projects - such as major infrastructure - from the consultation requirements of the Directive (they have their own requirements for consultation)
- Clarification that EIA should only focus on likely significant effects on the environment
- Introduction of human health, climate change mitigation and adaptation and risk of major accidents/disasters into the scope of EIA
- Changes to the screening process to allow an applicant to take into account evidence from other assessments already completed under EU law and mitigation measures designed into a project to avoid significant effects
- A maximum timeframe of 90 days for issuing a Screening Opinion
- The requirement to state the reasons for approval or refusal when a consenting decision is made
- Clarification of what should be included in an EIA Report including that where a Scoping Opinion has been sought, the EIA Report must be "based on" the Opinion
- Requirement for competent experts to prepare and review the EIA Report

- Allowance for the Member State to decide which organisations shall be statutory consultees
- Introduction of a requirement for the EIA Report to be made available to the public via electronic means
- Introduction of a new timeframe for consulting the public on the EIA Report, which is no less than 30 days
- Requirement for a consenting decision to include requirements for mitigation and monitoring significant adverse effects
- Requirement for consenting decisions to be up-to-date
- Provision for avoiding conflict of interest including where the consenting authority is also the developer
- Provision for Member States to introduce penalties for not complying with EIA legislation

If a project is screened or scoped before 16 May 2017 it will be subject to the existing EIA Regulations.

As Institute of Environmental Management and Assessment (IEMA) Quality Mark assessors, our team at Barton Willmore will be responding to the consultation to promote the need for streamlining the EIA process to reduce the administrative burden on developers and authorities. It remains to be seen whether England and Wales will follow suit and publish their draft EIA Regulations for consultation. We will be monitoring the situation and publish an update in due course.



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