

# EIA REGULATIONS 2017 ADOPTED

## NEW REGULATIONS WILL COME INTO FORCE ON 16TH MAY .

Following a period of consultation, the much-anticipated Town and Country Planning (Environmental Impact Assessment) Regulations 2017 were laid before Parliament on 19th April. As planned, the new Regulations will come into force on 16th May. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 will apply to the nationally significant infrastructure planning regime.

### Transitional Arrangements

The first thing to note is that the publication of the Regulations confirms the position on transitional arrangements. Requests for an EIA screening opinion submitted before 16th May 2017 will be considered under the screening provisions of the existing EIA Regulations. However, for development requiring EIA, the current EIA Regulations will continue to apply if a request for a Scoping Opinion or an Environmental Statement has been submitted before 16th May 2017 (i.e. screening is not enough).

### Headline Changes from Draft Regulations

The key change to the draft regulations as a result of this consultation exercise has been an amendment to the requirement for the consenting authority to ensure it is satisfied as to the competency of experts - the adopted regulations places this duty upon the developer. 'Competent expert' has not been defined in the regulations, but it is anticipated that further guidance on this may come from updates to Planning Practice Guidance in due course. Environmental Statements will be required to be accompanied by a statement setting out the relevant expertise or qualifications of experts used. Another change not present in the draft is a reduction in the threshold from 5ha to 0.5ha above which screening for EIA is required for industrial estate projects. This was not expected and contacts at the Institute of Environmental Management and Assessment (IEMA) are contacting DCLG to find out the reason for reverting to the lower threshold.

### Key requirements

With the exception of the changes explained above, the adopted regulations do not contain any surprises and the changes are as anticipated. To recap, the key changes are as follows :

- No change to screening thresholds, but more information will need to be provided within a request for a Screening Opinion. The possibility of effectively reducing an impact has been added as a

consideration for deciding whether EIA is required.

- The introduction of co-ordinated procedures for projects which are subject to assessment under Directive 92/43/EEC4 ("the Habitats Directive") or under Directive 2009/147/EC5 ("the Wild Birds Directive") and the EIA Directive.
- The three-week timescale has been retained for receiving a Screening Opinion. The new regulations limit an extension of time to 90 days, unless under exceptional circumstances in which case this can be extended.
- The list of environmental factors to be considered as part of the EIA process has been updated. The term 'human being' has been replaced by the term 'population and human health'; the term 'fauna and flora' has been replaced by 'biodiversity' and there is a new requirement to consider, where relevant, the effects on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters (including climate change).
- Where a scoping opinion has been sought, an Environmental Statement must be based on the most recent scoping opinion or direction issued.
- The requirements for considering alternatives within the Environmental Statement have increased to include "an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects".
- The consultation period for a submitted Environmental Statement has been increased from 21 to no less than 30 days. (for the Infrastructure Planning Regime, the 28-day period has increased to 30 days).
- Decision notices to grant consent must include the "reasoned conclusion" for the decision and consider whether it is appropriate to impose monitoring measures. A new article elaborating on information to be given in decision notices and during the decision-making procedures has been added to the regulations.
- The term "Environmental Statement" has been retained.

Please get in touch if you need advice on how best to approach the change in Regulations.



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