RAPLEYS

NEWSLETTER: MAY 2017

Key revisions to the EIA Regulations for England explained

CONTACT

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The long awaited changes to the Environmental Impact Assessment Regulations come into force today. Rapleys reviews the key revisions proposed and what they mean for the development industry.

Following the EU Council's decision in 2014 to amend the 26 year old Environmental Impact Assessment (EIA) Directive, the Government undertook a consultation between December 2016 and February 2017 seeking views on the proposed changes to the Regulations.

The main purpose behind the changes is to improve the consistency and quality of the process and resultant Environmental Statements across the EU. Whilst the general process as we know it will not change, it will be more front loaded, potentially reducing the need for full EIA.

The key changes can be summarised as follows:

1. A new definition of the EIA process which could feed into project programmes for planning applications.
2. An enhancement of the screening process, which is now mandatory, with an emphasis on aspects of the environment to be significantly affected by development and the inclusion of mitigation measures at the screening stage. In reality, this has the potential to become a mini EIA, extending this particular obligation rather than streamlining it; however, it might also now improve the quality of the screening process which thus far, has been somewhat inconsistent within the UK planning system.
3. An opportunity for Local Planning Authorities to extend the 21 day mandatory deadline for Screening Opinions to 90 days, or an alternative period to be agreed in writing between both parties.
4. Inclusion of new or enhanced topic areas within Scoping Opinions including the replacement of flora/ fauna with 'biodiversity', climate change, land, cultural heritage and consideration of major accidents and/ or disasters (where necessary). Health impact assessments are also likely to be included within Scoping Opinions under 'population and human health'.
5. The EIA must adhere to the received Scoping Opinion, where Scoping is undertaken. If the final EIA does not follow the Scoping Opinion it would not be compliant with the Directive. This could lead to applicants revising Scoping Opinions to ensure they take account of subsequent changes, plus an increased risk of legal challenge where Scoping Opinions are not revised to reflect the EIA proposal.

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6. The introduction of monitoring measures for significant adverse effects – this may ultimately prove useful in determining the efficiency of the EIA process, however, this could also lead to more detailed conditions on decision notices and obligations within s106 Agreements. This could, in turn, add more risk and burden to developers with a need to ensure conditions comply with the tests in national policy and that monitoring is proportionate to the development proposed.

7. The use of competent experts to prepare the EIA submission for the developer and to examine it for the Local Planning Authority – although there is no actual definition or explanation as to what constitutes an 'expert'. Responsibility will be placed on the developer to employ competent experts and justify this in documentation alongside the Environmental Statement, whilst the consenting authority must ensure that sufficient expertise is available to review the documentation.

For any help with EIA process, from inception to delivery, please contact Sarah Smith, sarah.r.smith@rapleys.com or Jemma Cam, jemma.cam@rapleys.com.