



Campaign to Protect  
Rural England

## Environmental Impact Assessment Explained

*Environmental Impact Assessment (EIA) can help ensure the environmental implications of new development are fully explored before planning decisions are made. It does this in a systematic and transparent manner and should lead to less environmentally damaging developments, and unacceptable proposals going back to the drawing board.*

On 14 March 1999 new regulations came into force governing which projects require formal environmental impact assessment (EIA) and implement the European Directive 97/11/EC. The *Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999* set out how local authorities are to decide on whether EIA is needed; what an environmental statement should contain; and the procedures to be followed. The DETR has also issued Circular 02/99 which explains the new Regulations. This should be a helpful aid to local volunteers.

### **When is EIA necessary?**

The process of determining whether a project needs an EIA is known as 'screening'. For cases falling under the planning system the primary responsibility for making a screening decision resides with the local planning authority (LPA). There are two key questions which the local planning authority needs to ask itself:

- does the project fall within the EIA Regulations?
- will the project give rise to significant environmental effects?

A look at the Regulations will soon answer the first question. They contain two lists which set out when EIA is mandatory (those projects listed in Schedule 1) and those where EIA may be necessary (Schedule 2 projects). EIA is mandatory for 20 major categories of project, including new nuclear power stations and quarries over 25ha in size. Here it is considered significant environmental impact will always occur.

Most volunteers will be faced with Schedule 2 applications. The Regulations list 13 project categories and 84 detailed projects types. New project types which may require EIA since March include golf courses, groundwater abstraction, theme parks and permanent camp and caravan sites.

A LPA will need to make a screening decision if a schedule 2 development is proposed. The European Directive states that the key test to be applied is whether *significant environmental effects* may occur. It is always important to remember this when in discussions with planners or developers who may argue that the scheme falls just below certain thresholds or criteria and therefore escapes the need for EIA. To assist local authorities determine whether significant environmental effects are likely, the Government has established a four stage test. The tests, which are explained below, include:

- how does the project compare against the selection criteria in Schedule 3 of the Regulations?
- is the development in a 'sensitive area'?

- does the project meet any of a list of criteria included in the Regulations?
- is the project likely to have significant environmental effects?

The European Directive contains selection criteria for screening decisions which covers the characteristics of the development, its location, the likely impact and whether cumulative impacts or irreversible effects are likely. This has been transposed into Schedule 3 of the Regulations and is an important check-list for volunteers. The Regulations also state that a project may need EIA because it is within a ‘sensitive area’ which it defines by national designated sites (SSSIs, AONBs, National Parks, Scheduled Monument etc). CPRE has been critical that this only refers to developments *in* rather than affecting these sites. Schedule 3 of the Regulations, however, clarifies that LPAs should consider “*the environmental sensitivity of geographical areas likely to be affected by development*” (our emphasis). And while it is not automatic that EIA will be required because a sensitive site is affected, it is more likely.

A project may be outside a sensitive area but still give rise to significant environmental effects. For such cases, the Regulations include a list of thresholds for the LPA to consider. New shopping centres and car parks, for example, may require EIA if development exceeds 0.5ha. For golf courses and caravan sites the area is 1ha.

It can be hard to determine significant environmental effects on the basis of measuring the floorspace of a development. Other considerations might be likely traffic implications, the affect on water useage, or the design of the development? It is important, therefore, that the LPA focuses on whether *significant environmental effects* are likely! You might like to remind planning officers and/ or Councillors on the planning committee of the DETR guidance which clearly states that:

*“Given the range of Schedule 2 developments, and the importance of location in determining whether significant effects on the environment are likely, it is not possible to formulate criteria or thresholds which will provide a simple universal test of whether or not EIA is required. The question must be considered on a case-by-case basis... It should not be presumed that developments falling below these thresholds could never give rise to significant effects, especially where the development is in an environmentally-sensitive location. Equally developments which exceed the thresholds will not in every case require assessment. The fundamental test to be applied in each case is whether that particular development and its specific impacts are likely, in that particular location, to result in significant effects on the environment”*

*(Circular 02/99 paragraphs 48 &49).*

### **What Happens After the LPA Makes A Screening Decision?**

Having considered the proposal, the LPA will tell the developer whether EIA is necessary. In addition, they should make their determination known to the public, usually by placing it on the planning register. This is not required for Schedule 1 projects (since EIA is mandatory) or where a Schedule 2 project does not meet any of the criteria included in the Regulations. A developer may of course volunteer to submit an EIA. Alternatively they can ask the LPA in advance of a planning application whether EIA is necessary (a screening request). This is good practice since it enables the project design to be informed and amended by the EIA process. The Regulations also allow a developer to appeal to the Secretary of State should the LPA consider an EIA is required. Finally, the Secretary of State may direct that an EIA is required at any stage prior to planning permission being granted because of information provided by “other bodies” (such as CPRE volunteers) which indicates EIA is necessary and the project meets the requirements.

### **What Should I Do?**

Volunteers may find it helpful to familiarise themselves with the new Regulations and the projects it applies to. If you have major developments planned for your area consider whether you think EIA is necessary. Contact the LPA to find out whether they will be calling for a full EIA? If they are not, why not? If you disagree with their assessment and you can show that significant environmental effects are likely, consider writing to the Government Regional Office asking them to intervene.

If volunteers come across EIA it is probably because an environmental statement (ES) has been produced and its availability has been publicised in the local press or on site notices. Although the environmental statement is important - it is what Councillors must take into account when coming to a planning decision - the statement is only the product of an environmental assessment *process* which will have occurred weeks, months and sometimes years before. An important element of the EIA process is how it leads to amendments in projects so that environmental harm can be avoided or mitigated. As environmental impacts are identified, the project should be re-evaluated, re-designed and other alternatives investigated in an iterative fashion. It is for this reason that, sometimes to the bafflement of volunteers, the EIA is undertaken by the developer who is best placed to amend the project. The last article in this series will describe what to do to tackle bias in an ES. Focusing on an ES alone, therefore, is only half the story and volunteers should be aware of how they can influence earlier stages.

The new European Directive 97/11/EC sets out the EIA process and has been implemented by the *Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999*. Assuming a project requires EIA, what are the next stages?

### **What should an EIA cover?**

The developer needs to first determine what the EIA should cover. This is known as 'scoping' and is an important part in framing the work which follows. Certain issues (included in the EU Directive) must always be covered and include a description of the development, an outline of the main alternatives studied, how the environment will be affected and measures envisaged to prevent, reduce or offset possible negative impacts. Other issues may need investigation because of the particular characteristics of the area, local concerns, or the type of project. Under the Directive a developer can ask the local planning authority for advice on what the EIA should cover. This exercise can be undertaken either informally, or by the developer seeking a formal opinion on the scope of the EIA. When a formal request is made the local planning authority (LPA) is required to consult designated 'consultation bodies' and give its opinion within 5 weeks. The consultation bodies include the Countryside Agency, English Nature and the Environment Agency.

It may be that the developer and LPA disagree over the scope of the EIA in which case the Regulations dictate that the Secretary of State may make a 'scoping direction'. Again, the various environmental authorities should be consulted before this occurs. Importantly, "*the fact that a LPA or the Secretary of State has given a scoping opinion or scoping direction does not prevent them from requesting further information at a later stage*" (DETR Circular 02/99 Environmental Impact Assessment paragraph 96). This may be needed, for example, because more information becomes available about the project which was unknown at the beginning of the process. A full scoping exercise might involve looking at which issues should be covered, to what degree, the boundaries of investigation (do you adopt a cradle to grave approach, for example, or are you more limited in defining the effect of the project) and what alternatives should be considered? The (then) Department of the Environment's guidance to developers on best practice states "*scoping is the key to a good quality Environmental Statement*". CPRE lobbied for the EU Directive to require the public to be consulted on the scope of EIAs and for the process to be mandatory. There is widespread support for mandatory scoping and although the Directive allows for this, the UK Government chose not to adopt this approach, and only half of ESs currently benefit from

early scoping. The better consultancies and developers, however, will seek opinions from the LPA and some circulate ‘scoping reports’ to groups known to be interested in the development, including CPRE groups.

## **Undertaking the EIA**

Having established what the assessment will cover, the consultant or developer needs to undertake the actual field work. Noise surveys, ecological surveys, traffic counts, landscape assessments, archaeological desk studies, and more may all be conducted. For each area, the EIA should:

- identify what the existing environmental situation is (known as the ‘baseline conditions’);
- identify what the environmental impacts will be;
- evaluate how significant these impacts will be; and
- determine what can be done to avoid, reduce and mitigate negative effects.

The developer/ consultant may seek information from the environmental authorities listed above to help them assess the current state of the environment. They may also ask Wildlife Trusts and other local groups for comments or information.

All this information is compiled into an Environmental Statement. Under the EIA Regulations a *Non Technical Summary* (NTS) must also be produced. The ES and NTS should be submitted with the planning application and any other associated information which is required. Copies of the ES are sent to the environmental authorities, Secretary of State, as well as the LPA. “*Applications must also make a reasonable number of copies of the ES available to the public, either free of charge or at a reasonable cost reflecting printing and distribution costs*” (DETR Circular 02/99, paragraph 101). Furthermore, “*applicants are encouraged to publish the NTS as a separate document, and to make copies available free of charge so as to facilitate wider public consultation*” (paragraph 105). ES are frequently available for inspection at the LPA’s offices. Site notices and public notices in the local press should inform the public of the availability of the ES, where copies can be obtained, inspected (free of charge), and give a deadline for comments. The public are given a mere 21 days to consider the ES after the notice is published. It is frequently at this stage that most local people will be introduced to the EIA process and it should be apparent, that many important decisions have already been taken.

The LPA will next consider the ES and consult the environmental authorities listed above for their comments. The LPA has 16 weeks to determine the planning application from the time it received the ES, although this may be extended with the agreement of the developer. Within this time the LPA will need to consider whether the ES is of sufficient quality to be able to make a planning decision. Assuming the ES is adequate, Councillors must consider the ES when coming to a decision on whether to grant planning permission. Although the Regulations do not stipulate how the ES should be presented to Councillors, CPRE would expect the main findings to be summarised in the officers report, along with any objections received, and the comments of environmental authorities. It should also refer to the adequacy of the ES, the reliability of predictions made, and the likely success (or otherwise) of the mitigation measures included in the Statement.

## **What You Should Do?**

How can volunteers get to influence the EIA process if the Regulations would indicate that you only get to hear about it once the ES has been produced? Keeping good contacts with officers in the LPA, the Chair of the Planning Committee, and being aware of future development projects is essential. Make sure the LPA knows that you wish to be consulted early on, encourage the authority to persuade developers to consult other interested parties on

the scope of the EIA (it may save the developer and planners time later if they consider your views from the beginning). Tell the developer direct that you wish to be consulted *before* the scope of the ES is finalised. What alternatives do you think should be considered? Alert the environmental authorities early on about concerns you may have so they can be incorporated into any comments on the scope of the EIA that they make. And keep in touch so they understand your views about the ES once it has been submitted. And finally, make sure you get hold of the ES as soon as possible so you can develop your arguments to Councillors and officers rather than respond in a hurry.

Making sure you feed into the EIA *process* (by responding to consultations and initiating meetings with the consultants doing it) is important so that your concerns are addressed at an early stage. But at some point you will be presented with the Environmental Statement (ES). What should you do with it? How do you analyse it to see if it is any good? What do you do if it is inadequate?

The first thing to do is to look at the non technical summary – a quick way of familiarising yourself with some of the issues. Next, look at the contents page of the environmental statement to see how the report is structured. This can save time later. What are the key issues you want to look for? It might be the range of alternatives considered, or the impact on landscape or the built environment. An ES can include a lot of useful information which is a resource to draw on, from calculations on emissions to predicted traffic flows. These may be helpful in subsequent letters to Councillors, press releases or in leaflets.

You may feel you want to assess the quality of the ES, especially if it comes to some dubious conclusions. This requires a knowledge of what is legally required. There are a number of things which all ESs should cover.

**An Environmental Statement must include a:**

- description of the development comprising information on the site, design and size of the development;
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
- the data required to identify and assess the main effects which the development is likely to have on the environment;
- an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects;
- a non technical summary of the information provided.

*Source: Schedule 4 Information for inclusion in environmental statements, The Town and Country Planning (EIA) (England and Wales) Regulations 1999*

The above list can be elaborated on if the local planning authority believes other information is required in order to assess the environmental effects of the development. Specific issues, of particular relevance to a development or geographical area may be important and have been highlighted in the earlier ‘scoping exercise’.

Unfortunately, research for the Government indicates that ESs are frequently in need of improvement. One survey of 50 ESs found 56% of them to be inadequate. It is important to establish that all the relevant information which is required by the UK Regulations has been included in an ES. But this only indicates whether particular subjects are mentioned, rather than the quality of the analysis. It can be hard to determine whether a statement looks at an issue in sufficient depth or covers all the relevant issues. Help is at hand, however, since national office has a number of free EIA Review packages which are available. These guide readers through the ES, asking a series of questions as prompts. These can be very effective in highlighting areas of superficial analysis, omissions, or unsupported assumptions. Particular areas which are often lacking are the range of alternatives considered, the degree to which cumulative effects have been

examined, and whether the ES identifies how to avoid and reduce environmental impacts or simply focuses on mitigation measures. Don't forget, in some cases what is not in the ES may be just as significant as what is.

Volunteers can undertake comprehensive reviews themselves, however, the Institute of Environmental Assessment (a professional body) also provides a review service and will grade the quality of the ES. Be warned, reviews can easily cost hundreds of pounds!

### Tackling Poor Quality Environmental Statements

Before making a planning decision (where EIA is involved) the local planning authority has to satisfy itself that it has sufficient information on which to make a decision. Pressures on time mean not all authorities assess the quality of the ES as systematically as they ought to. If you are faced with an inadequate ES you should:

- write to the planning case officer and Councillors on the planning committee expressing your concerns, urging them to systematically review the ES, and asking them to use their powers under Regulation 19(1) to request further information; and
- issue a press release urging the local authority not to make a decision based on deficient information.

If your authority is content to make a decision without the necessary information, you should write to your Government Regional Office raising the matter with them and asking that they intervene. Finally, in the last resort you can contact CPRE national office and seek advice on options for legal challenge. Throughout, it is important to remember that the EIA process is a tool for helping to inform a decision and improve the quality of development, rather than necessarily a tool to stop it.

The planning committee, in coming to a decision, must consider the “*environmental information*” available to it. This includes any objections received and the results of public consultation as much as the ES itself. Volunteers should, therefore, continue to campaign on a development and prevent themselves being sidetracked into theoretical discussions about the pollution models or ecological survey techniques used in the ES. That said, EIA is a powerful aid to the local volunteer in highlighting potential damage to the countryside, before it happens, and feeding this into the final decision.

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