

Environmental Impact Assessment (EIA)

1. EIA is a European concept. It dates back to the 1985 Directive and the requirements are now found in Directive 2011/92/EU which came into force in February 2012 – it was a codifying Directive intended to make it more legally clear, accessible and easier to enforce.
2. The transposing regulations are the T&CP (EIA) Regs 2011.
3. The core obligation is not to grant permission (or a subsequent consent) for EIA Development without first considering the environmental information and stating in the decision that this has been done. A subsequent consent is an approval required by a planning condition that is to be obtained before all or any part of the permitted development may be begun. The obvious example is reserved matters approval but it is not limited to those.
4. Environmental information is the environmental statement (ES), including any other substantive information formally required by the local planning authority or voluntarily provided by the applicant in connection with the ES. It also includes any representations made as part of the EIA process.
5. An ES is a statement that includes a range of information as to the proposed development and its likely environmental effects. The requirements are set out in Schedule 4 to the EIA Regs.
6. What the actual decision is – whether or not planning permission or subsequent consent should be granted - is not determined by the EIA process.
7. EIA Development is either
 - 1 Schedule 1 Development, or
 - 2 Schedule 2 Development likely to have significant effects on the environment by virtue of factors such as its nature, size of location.
8. Schedule 1 Development is simply development of a type described in the first schedule to the EIA Regs. It includes, by way of example, thermal power stations with a heat output of 300 megawatts or more, waste disposal installations for the incineration of hazardous waste and, installations for storage and distribution of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.
9. Schedule 2 Development is development of a type

- 1 described in the second schedule to the EIA Regs, AND
 - 2 to be carried out in whole or in part in a sensitive area OR is in excess of any applicable threshold or criterion in that second schedule
10. Schedule 2 includes, again by way of examples, intensive livestock installations with an area of new floorspace over 500 square metres, installations for hydroelectric energy production designed to produce more than 0.5 megawatts and, urban development projects with a development area exceeding 0.5 hectare
 11. Sensitive area is also a defined term meaning a SSSI, a National Park, the Broads, a World Heritage Site, a Scheduled Ancient Monument, an AoNB or, a European Site.
 12. Screening is the process of determining whether development is EIA Development. When screening there is a set of selection criteria listed in the EIA Regs (Schedule 3) and those that are relevant must be taken into account. There is also significant non-statutory guidance from the Secretary of State and the EU.
 13. If, in relation to a development, an applicant submits a statement referring to it as an ES for the purposes of the EIA Regs, the development is EIA Development. This applies regardless of whether or not the criteria already mentioned are met.
 14. The other events that would determine that development is EIA Development is the adoption by a local planning authority of a screening opinion to that effect or a direction to that effect by the Secretary of State. (The Secretary of State may also direct that development is not EIA Development even where it is Schedule 1 Development in limited circumstances.)
 15. An intending applicant may ask a local planning authority to adopt a screening opinion. The request must include a plan identifying the land, a brief description of the nature and purpose of the development and, of its possible effects on the environment. If the request relates to a subsequent consent the original planning permission must also be identified. The local planning authority may request additional information but is required to adopt a screening opinion within three weeks of receiving the request (a longer period may be agreed with the requestor).

16. If the local planning authority does not adopt a screening opinion within that time or determines that the development is EIA Development the requestor may request the Secretary of State to make a screening direction which would be determinative.
17. If a local planning authority receives an application for planning permission which appears to be for Schedule 1 or Schedule 2 development which is not accompanied by an ES and is not the subject of a screening opinion or direction, it must screen it as if a screening request had been made.
18. In connection with applications for subsequent consent, if the application appears to relate to Schedule 1 or Schedule 2 development, is not accompanied by an ES and, is not the subject of a screening opinion or direction, the local planning authority must also screen it as if a screening request had been made. This does not apply if the original application for planning permission was accompanied by an ES. In that circumstance the local planning authority must consider whether or not the environmental information it has is adequate to assess the environmental effects. If inadequate the local planning authority must formally require the provision of further information.
19. If an application for planning permission or subsequent consent in relation to EIA Development is made without an ES the local planning authority is required to inform the applicant of this. The applicant then has three weeks to inform the local planning authority that it will either agree to provide an ES or seek a screening direction from the Secretary of State. If neither option is taken the application is deemed to be refused without a right of appeal. If the local planning authority is aware of any person who is or is likely to be affected by (or has an interest in) the application and is unlikely to be made aware of it by site notice or local newspaper advertisement it is also required to notify the applicant of that person.
20. Scoping is an optional process allowing an intending applicant to ask (a scoping request) a local planning authority to state in writing its opinion as to information to be provided in the ES (a scoping opinion). An intending applicant is under no obligation to make a scoping request and, unlike screening, there is no deemed scoping request if an application for EIA Development is made without having sought a scoping opinion. A scoping

opinion does also not definitively determine what should be included in an ES. The local planning authority may formally require further information on a particular possible environmental impact even if it has been “scoped out” via a scoping opinion.

21. Where a scoping request is made (with similar information being provided as for a screening request) the local planning authority is obliged to adopt a scoping opinion within 5 weeks of receiving the request. It may not adopt a scoping opinion without consulting the requester and statutory consultation bodies. The local planning authority must take into account the specific characteristics of the particular development, the specific characteristics of that type of development and the environmental features likely to be affected by that development.
22. If the local planning authority does not adopt a scoping opinion within the given time the requester may seek a scoping direction from the Secretary of State. As with a scoping opinion, the “scoping out” of an issue by a scoping direction does not prevent the local planning authority requiring further information upon that issue.
23. A person intending to submit an ES may also inform the local planning authority of that intent giving details of the land affected, the development and the main intended contents of the ES. The local planning authority is then required to inform the statutory consultation bodies reminding them of their duty to provide information relevant to the ES preparation.
24. Where an applicant for EIA Development (or subsequent consent) submits an ES additional copies of the ES must be provided for forwarding on to the Secretary of State and statutory consultation bodies. The applicant may send the copies direct. In addition to forwarding the ES copies the local planning authority is required to give notice to any person it is aware of that is likely to be affected by (or have an interest in) the application and is unlikely to become aware of it via site notice or local advertisement.
25. The Development Management Procedure Order publicity requirements for such an application are similar to those applying to departure applications and applications affecting public rights of way. The prescribed notice is different drawing attention to the fact that the development is EIA Development and the existence of and opportunity to inspect (and obtain copies of) the ES. In

addition to the publication of information on the local planning authority's website, the notice must be publicised by at least one site notice on or near the subject land and a newspaper notice.

26. If an ES is to be submitted after the application to which it relates then prior to submitting the ES the applicant is required to:
 - 1 Effect a local newspaper notice giving specified details including as to the application, how to inspect documents, how to make representations and availability of the ES.
 - 2 Give similar notice to any person notified to the applicant by the local planning authority as affected by or interested in the application but unlikely to be made aware of it via site notice or local newspaper advertisement.
 - 3 Post a site notice giving specified details including as to the application, how to inspect documents, how to make representations and availability of the ES.
27. An applicant who submits an ES (whether with or after the application) is required to ensure that a "reasonable" number of copies are available in accordance with the details publicised by either the local planning authority or the applicant. A "reasonable charge reflecting printing and distribution costs" made by imposed.
28. If a local planning authority in receipt of an ES is of the opinion that further information is required then it may require the applicant to provide that information.
29. Further information and any other substantive information provided by the applicant relating to the ES is also required to be publicised by local newspaper advertisement by the local planning authority and copied to persons to whom the ES was sent. As with the ES this information is to be made available (details to be provided by the publicity) for the public. A reasonable number of copies are to be made available and a reasonable charge may be made.
30. A range of EIA relevant documentation is required to be included in the planning register when the application is registered. These include screening and scoping opinions and directions, ESs and further information and any other substantive information provided by the applicant relating to it and, any

statements of reasons relating to these. If there has not been an application (and accordingly no registration), then for a period of two years the local planning authority is required to keep copies of screening and scoping opinion and directions and requests for scoping opinions (and any related statement of reasons) available for public inspection at the same place at which the planning register is made available for inspection.

31. Once an application for EIA Development (or subsequent consent relating to it) has been determined the local planning authority is required to inform the Secretary of State. It is required to inform the public of the decision by local advertisement or by such other means as is reasonable in the circumstances. It is also required to make a statement available (in the same place as the planning register is kept) containing the content of the decision and any conditions, the main reasons and considerations on which the decision was based including (if relevant) information about public participation, a description (where necessary) of the main measure to avoid reduce and (if possible) offset the major adverse effects and, information concerning the right to challenge the decision and the procedures for doing so.