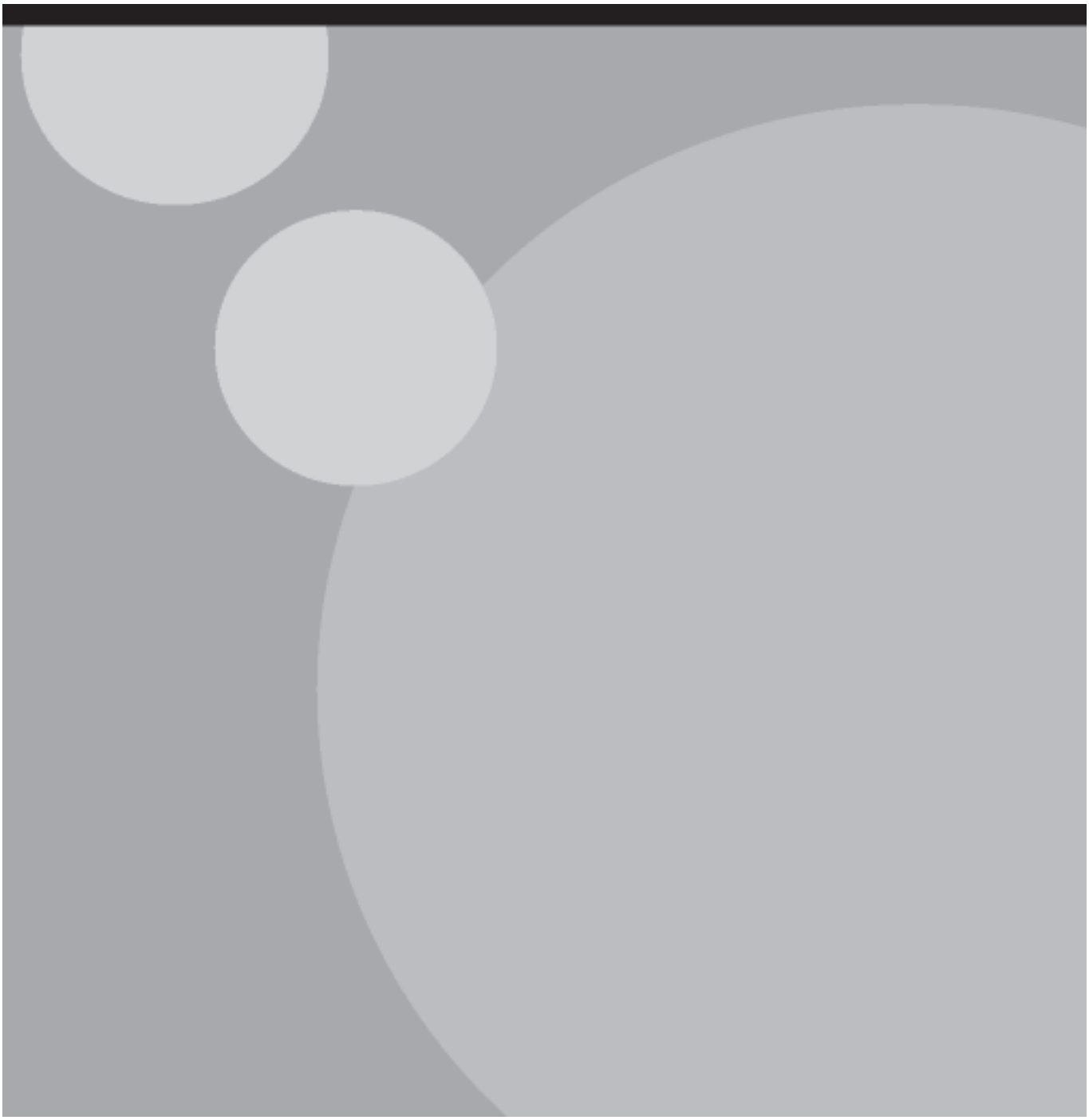
Communities and Local Government

The Town and Country Planning (Environmental Impact Assessment) Regulations 2010

Consultation on draft regulations



The Town and Country Planning (Environmental Impact Assessment) Regulations 2010

Consultation on draft regulations

August 2010
Department for Communities and Local Government

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Contents

About this consultation

Scope of the consultation

Topic of this consultation:	The consultation paper covers the consolidation of the 1999 Environmental Impact Assessment Regulations, as amended, and explains amendments for screening changes and extensions, and also the requirement for the competent authority to provide reasons for screening decisions.
Scope of this consultation:	The purpose of this consultation is to seek comments on proposed amendments to the Regulations as required by two recent judgments in the High Court and the European Court of Justice and other minor changes to the Regulations.
Geographical scope:	The consolidated Regulations will apply to England apart from provisions relating to projects serving national defence purposes in Scotland, Wales and Northern Ireland.
Impact Assessment:	The Impact Assessment is attached.

Basic Information

To:	The consultation seeks the views of individuals, consultants, planning officers, statutory consultees and any others who have an interest in environmental impact assessment.
Body responsible for the consultation:	The Natural Environment and Environmental Assessment policy team of Communities and Local Government are responsible for the consultation.
Duration:	12 weeks: Monday 9 August to Monday 25 October 2010
Enquiries:	Please email Mr Kim Chowns at kim.chowns@communities.gsi.gov.uk for enquiries about the content or scope of the consultation, requests for hard copies, information about consultation events, etc.
How to respond:	Please email responses to kim.chowns@communities.gsi.gov.uk.
Additional ways to become involved:	N/A

After the consultation:	The consultation responses will be published on the Communities and Local Government website – www.communities.gov.uk.
Compliance with the Code of Practice on Consultation:	The consultation complies with the Code of Practice on Consultation

Background

Getting to this stage:	There has been internal consultation, and external consultation with the Devolved Administrations and other Government Departments.
Previous engagement:	N/A

Consultation Code of Practice

This consultation document and consultation process have been planned to adhere to the code of practice on consultation issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

CLG Consultation Co-ordinator
Zone 6/H10
Eland House
Bressenden Place
London
SW1E 5DU

or by e-mail to: consultationcoordinator@communities.gsi.gov.uk

Consultation process

1. Please note that responses to this consultation document should be received no later than 25 October 2010.

2. Responses and any comments about this consultation should be sent to:

   Kim Chowns
   Communities and Local Government
   PREP (B)
   Zone 1/J6
   Eland House
   Bressenden Place
   London
   SW1E 5DU

   Tel: 0303 444 1696
   email: kim.chowns@communities.gsi.gov.uk.

3. The consultation document will only be available on the CLG website at www.communities.gov.uk/corporate/publications/consultations/

4. A summary of responses to this consultation paper will be published on the CLG website within three months of the closing date of this consultation. Unless you specifically state that your response, or any part of it, is confidential, we shall assume that you have no objection to it being made available to the public and identified on the CLG website. Confidential responses will be included in any numerical summary or analysis of responses.

Introduction and context

5. This consultation paper sets out Communities and Local Government's (CLG's) proposals for consolidating and amending the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999/293),[1] as amended ("the 1999 EIA Regulations"). The 1999 EIA Regulations transpose Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended[2] ("the EIA Directive"), in its application to development under the Town and Country Planning Act 1990 in England and Wales.

6. In 2007, power to make regulations in relation to environmental impact assessment in Wales was devolved to the Welsh Ministers.[3] Consequently, the new regulations apply to England only (except for provisions relating to projects serving national defence purposes in Scotland, Wales and Northern Ireland). The Welsh Government is making its own regulations, and the Devolved Administrations in Scotland and Northern Ireland are making similar changes to their EIA legislation.

Environmental Impact Assessment

7. The EIA Directive requires an assessment of the effects of certain public and private projects on the environment before development consent is granted. Its main aim is to ensure that an authority giving development consent for a project makes its decision in the full knowledge of any likely significant effects on the environment. The Directive's requirements are procedurally based and must be followed by Member States for certain types of projects before development consent can be granted. It helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the relevant competent authority before it makes its decision.

8. Since the 1999 EIA Regulations came into force they have been amended on several occasions to take account of case law and amendments to the Directive. Further changes are required now to take account of the latest case law and it is CLG's intention to use the opportunity to consolidate the Regulations to make them more accessible and to make a limited number of other amendments.

9. It is not CLG's intention to undertake a wholesale review of the Regulations at this time, neither is it the intention to make any fundamental changes to the operation of the EIA regime, over and above those changes set out in this paper. The European Commission is undertaking its own review of the application and effectiveness of the Directive and we must await its proposals in due course. In the meantime, CLG considers that the current proposals will provide a sound basis for making any future changes which may be required in years to come to take account of any changes to the Directive at the European level.

[1] www.opsi.gov.uk/si/si1999/19990293.htm
[2] eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1985L0337:20090625:EN:PDF
[3] See European Communities (Designation) (no 3) Order 2007 (S.I. 2007/1679), article 4.

Environmental Impact Assessment (England) Regulations 2010

10. This consultation paper sets out the key changes which CLG proposes to make through the Environmental Impact Assessment (England) Regulations 2010 ("the 2010 EIA regulations") and explains how the 2010 EIA regulations will differ from the 1999 EIA Regulations. Key changes include:

- **Proposals to change or extend existing development** – It is proposed that the thresholds in Schedule 2 shall apply to the development as a whole once modified, and not just to the change or extension. It is also proposed to add a new provision that will require any change or extension to an existing or approved Schedule 1 project to be screened for the need for EIA where the change or extension is not a Schedule 1 development in its own right.

- **Reasons for negative screening decisions** – We are proposing a new provision which will make it clear that where the Secretary of State issues a screening direction or a planning authority a screening opinion that EIA is not required (i.e. a "negative screening decision"), they shall make available their reasons for that conclusion, as they already do when EIA is required.

- **Multi-stage consents** – We also intend to remove a provision which goes beyond the requirement of the Directive (i.e. "gold plating") which was inadvertently introduced through the 2008 amending Regulations. It applies to multi-stage consents (e.g. applications for outline planning consent and the subsequent application for approval of reserved matters). There is currently an unintentional requirement for public consultation on the environmental statement at each stage, even where the environmental statement produced at the outline stage satisfies the requirements of the EIA Regulations at the later stage. Our intention is to remove this provision.

- **Other changes** – We are also proposing to make a small number of other changes to generally update the regulations and address any minor drafting issues. These include a proposed amendment to the threshold and criteria for wind farms, the addition of the Marine Management Organisation as a statutory consultee and the removal of the criminal offence provision where an applicant is required to publicise an environmental statement. There is also a requirement to add new categories of development to Schedules 1 and 2 to the Regulations to take account of amendments made to the EIA Directive by the new Directive 2009/31/EC[4] on the geological storage of carbon dioxide (see draft of the 2010 Regulations).

Changes to Guidance - Circular 02/1999

11. It is our intention to cancel Circular 02/99 and replace it with updated procedural guidance shortly after the 2010 EIA Regulations come into force.

[4] see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0114:0135:EN:PDF

Proposed amendments to regulations - recent case law

The Baker judgment - changes or extensions to existing development

12. A recent judgement in the High Court of Justice, *R (on the application of Baker) v Bath and North East Somerset Council* (known as the 'Baker' case), concerned the application of the EIA Directive to changes or extensions to existing or approved development.

13. The Court in *Baker* held that paragraph 13 of Schedule 2 ("Schedule 2.13") of the 1999 EIA Regulations did not properly implement the Directive, because it limited consideration of the environmental effects of a change or extension to only the change or extension, rather than looking at the effects of the development as a whole, once modified.

Changes or extensions to Schedule 2 development

14. We propose to amend Schedule 2.13 so that the thresholds in Schedule 2 apply to **the development as a whole once changed or extended**, and not just to the change or extension. Amended text for Schedule 2.13 can be found in Annex A to this consultation paper.

Changes or extensions to Schedule 1 development

15. Currently separate thresholds apply to changes or extensions to Schedule 1 development (where the change or extension does not meet the criteria or exceed the thresholds set for Schedule 1 development), as set out in Schedule 2.13(a)(ii) of the 1999 EIA regulations. The Schedule 2.13 thresholds are taken from the nearest equivalent development category in Schedule 2, and are specifically applied only to the change or extension, rather than to the whole development.

16. Due to the nature and size of most Schedule 1 projects, applying the Schedule 2.13(a)(ii) thresholds to the development as changed or extended will almost certainly trigger screening, since the threshold will nearly always be met or exceeded. Whilst we do not accept that the use of thresholds applied specifically to the change or extension is necessarily contrary to the Directive, as long as the thresholds are set at levels which take into account the likelihood of new significant environmental effects arising from the development as changed or extended, we nevertheless have some concerns as to whether the existing thresholds in Schedule 2.13(a)(ii) remain appropriate in light of the Baker judgment.

17. CLG therefore proposes to introduce a new provision that any change or extension to a Schedule 1 development (where the change or extension is not a Schedule 1

development in its own right) must always be screened, and a case by case decision on the need for EIA, using the selection criteria set out in Schedule 3 to the 1999 EIA Regulations, must be made. The new provision can be found in the draft in Annex A of this paper (see Schedule 2.13(b)).

18. An alternative option would be to carry out a review of the thresholds in Schedule 2.13(a)(ii), in light of the Baker judgment. However, as we are awaiting proposals from the European Commission to amend the Directive itself, it is CLG's view that such an exercise would be premature at this time.

Q1. Do you agree that applying the existing Schedule 2.13(a)(ii) thresholds to Schedule 1 development *as changed or extended* will always trigger the threshold and hence require screening?

Q2. Do you agree that, in light of the Baker judgment, all changes or extensions to Schedule 1 development should be screened for any likely significant effects on the environment?

19. Following the Baker judgment, it is also our intention to update guidance on the use of regulation 4(7) and (8) (Directions by the Secretary of State). It is intended that the guidance will explain how planning authorities can request the Secretary of State to consider a screening direction for projects that are described in Schedule 2, but are not Schedule 2 development as they fail to meet the relevant criteria or thresholds, and explain how third parties can make representations to authorities where they feel an EIA is required.

Q3. Do you have any comments on what information the guidance should provide for planning authorities and third parties?

Interpreting the thresholds in Schedules 1 and 2

20. Where the thresholds in Schedule 2 make reference to "proposed development", "area of any new building", "new floorspace" etc., we anticipate that difficulties may arise when interpreting the thresholds for a change or extension.

21. To help clarify the application of the Schedule 2 thresholds to changes or extensions we propose adding a proviso that disapplies the concept of "new" in relation to the existing or approved development that is being modified.

Q4. Do you agree that disapplying "new" will help to clarify the Regulations as they apply to changes or extensions?

Identifying Schedule 2 development (changes or extensions)

22. Draft Schedule 2.13 (see **Annex A**) requires authorities to screen any application for a change or extension to an existing development where the development *as changed or extended* either meets or exceeds the corresponding threshold or criteria in Schedule 2, or where the development is to be located in a sensitive area.

23. Where a series of changes or extensions have been made to a development over time, particularly where previous changes have been made by a different developer, there may be some uncertainty as to where the precise boundary of the development *as changed or extended* can be said to fall. CLG considers that, for the purposes of identifying Schedule 2 development and in cases of any doubt, it is not necessary to define precisely where that boundary should be; rather, it is necessary only to establish whether the development as a whole can be said to either meet or exceed the threshold in question.

24. In addressing this issue, authorities should ensure the aims of the 2010 EIA Regulations and the Directive are not frustrated by the submission of an application to change or extend a development where the development as changed or extended should more properly be considered part of a more substantial development.

Screening Schedule 2 development (changes or extensions)

25. CLG considers that development which comprises a change or extension requires EIA only if the change or extension is itself likely to have significant environmental effects. In this respect the position has not changed since the Baker judgment. However, when determining whether significant effects are likely to arise, cumulative effects must be taken into account, including those with the development to be modified. Existing guidance on changes or extensions currently contained in Paragraph 46 of Circular 02/99[5] explains that:

> *"… the significance of any effects must be considered in the context of the existing development. For example, even a small extension to an airport runway might have the effect of allowing larger aircraft to land, thus significantly increasing the level of noise and emissions. In some cases, repeated small extensions may be made to development...An expansion of the same size as a previous expansion will not automatically lead to the same determination on the need for EIA because the environment may have altered since the question was last addressed."*

This guidance reflects the requirements of Schedule 3 to the 1999 EIA Regulations (Selection Criteria for Screening Schedule 2 Development) which requires authorities to have regard to cumulation with other development.

[5] Circular 02/99: Environmental impact assessment

Preparation and Content of an Environmental Statement (changes or extensions)

26. It should be noted that the applicant can be asked to provide an Environmental Statement only in respect of the specific application made. Therefore, where an application concerns a change or extension to an existing development, the applicant should be asked to provide an Environmental Statement only in respect of the proposed change or extension. The Statement will however need to address not only direct, but also indirect and cumulative effects, including any cumulative effects with the development to be changed or extended. In this respect, CLG does not consider there is any need to amend the existing requirements of Schedule 4 to the 1999 EIA Regulations, which already require that consideration must be given to cumulative effects.

Q5. Do you agree that no changes are needed to Schedules 3 and 4 of the 1999 EIA Regulations?

The Mellor judgment - reasons for negative screening decisions

27. Where a planning authority or the Secretary of State adopt a screening opinion or direction, to the effect that EIA is required, regulation 4(6)(b)(i) of the 1999 EIA Regulations requires that a written statement giving clearly and precisely the full reasons should be provided for that conclusion. CLG considers that there is no similar requirement within the EIA Directive where the authority is of the opinion that EIA is not required. This view has been confirmed in a recent preliminary ruling from the European Court of Justice in case C-75/08 (the “Mellor” case), but that ruling has clarified that if an interested party so requests, reasons for the determination or copies of the relevant information and documents must be communicated to that party.

28. It is proposed, however, to require reasons to be provided for screening opinions where EIA is not required in the same way as they are when EIA is required. This will provide a balanced and transparent requirement for all interested parties and satisfy requirements to make such information available in an accessible way.

29. Draft regulation 4(5) and (7) (see **Annex B**) serves to clarify these requirements by providing that reasons for a negative screening decision must be made available when a screening opinion is issued.

Q6. Do you have any comments on the requirement in draft regulation 4(5) and (7) for reasons to be given for all screening opinions/directions, as set out in Annex B?

Multi-stage consents

Background

30. Following rulings from the European Court of Justice, CLG made changes to the 1999 EIA Regulations in 2008[6] to transpose the requirement that consideration must be given to the need for EIA before determining a planning application for approval of subsequent consents. This was because the Court had held that outline planning permission and the decision which grants approval of reserved matters must be considered a multi-stage development process within the meaning of Article 1(2) of the EIA Directive.

"Gold plating"

31. The 2008 amending Regulations required applications for multi-stage consents to be screened to see if EIA is needed where it had not been required at the initial consent stage (e.g. application for outline permission), or to see if further environmental information needed to be added to the environmental statement where an EIA had been carried out in order for the ES to satisfy the requirements of the Regulations[7] at the subsequent consent stage (e.g. application for approval of reserved matters). For either of these outcomes public consultation would be required.

32. Where the environmental statement produced at the initial consent stage is still considered adequate for purpose following screening of the subsequent application, it was intended there would be no requirement to repeat the consultation process.

33. It became clear after the Regulations had come into force, however, that the 2008 amendment did, unintentionally, require a repeat of the public consultation process where the environmental statement was still adequate for its purpose. The consolidation has now removed this requirement as set out in Part 3 of the draft Regulations (see **Annex C**).

[6]Town and Country Planning (Environmental Impact Assessment) (England) Regulations 2008 (S.I. 2008/2093)
[7]Schedule 4 on the Information for Inclusion in Environmental Statements

Proposed amendments to regulations - miscellaneous changes

Criteria and thresholds for wind turbines

34. We are taking the opportunity to clarify the criteria under this category and proposing to increase the threshold by three metres to 18 metres (see **Annex D**).

Q7. Do you have any comments on the proposed rewording of the criteria in Schedule 2.3(i), and the proposal to increase the threshold from 15 to 18 metres?

Marine Management Organisation

35. We are proposing to make the Marine Management Organisation a statutory consultee in order to strengthen consultation between planning authorities and the Organisation where there is an overlap between marine and terrestrial planning applications.

Removal of criminal offence

36. We are proposing to remove the criminal offence relating to applicants who intentionally provide misleading information or are reckless in providing information when certifying they have placed a notice on land publicising the environmental statement. The EIA Directive does not require us to include such an offence.

37. There is no offence in Article 11 of the General Permitted Development Order (SI 1995/419) for a similar requirement where an applicant has to certify that the requisite notice of a planning application has been made, so it would appear to be disproportionate to apply a criminal offence to the EIA Regulations. If someone were to intentionally make a false certificate, intending by doing so to make a gain for themself or another, it would constitute the offence of fraud by false representation.

Draft impact assessment

38. A draft impact assessment is included at **Annex E**.

Q8 Do you have any comments on the draft impact assessment contained at Annex E of this paper. In particular:

(a) Are the key assumptions used in the analysis in the impact assessment realistic? If not, what do you think would be more appropriate and do you have any evidence to support your view?

(b) Have any significant costs and benefits been omitted?
If so, please give details, including any groups in society affected and your view on the extent of the impact.

(c) Have any significant risks or unintended consequences not been identified? If so please describe.

(d) Do you think there are any groups disproportionately affected?

Annex A: Changes or extensions to existing development

(Draft Schedule 2.13)

(a) Any change to or extension of development of a description mentioned in paragraphs 1 to 12 of Column 1 of this table, where that development is already authorised, executed or in the process of being executed.	The thresholds and criteria in the corresponding part of column 2 of this table applied to the development as changed or extended, except that the word “new”, where it appears in column 2, shall be omitted.
(b) Any change to or extension of development of a description mentioned in Schedule 1 (other than a change or extension falling within paragraph 21 of Schedule 1), where that development is already authorised, executed or in the process of being executed.	All development
(c) Development of a description mentioned in Schedule 1, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.	All development.

Annex B: Reasons for negative screening decisions

(Draft Regulation 4(5) and (7))

Regulation 4 - General provisions relating to screening

(5) Where a direction is given under paragraph (4)(a)(i) the Secretary of State must—

(a) make available to the public the information considered in making the direction and the reasons for making the direction;

(b) consider whether another form of assessment would be appropriate; and

(c) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public.

(7) Where a local planning authority adopts a screening opinion under regulation 5(5), or the Secretary of State makes a screening direction under paragraph (3)—

a) that opinion or direction shall be accompanied by a written statement giving clearly and precisely the full reasons for that conclusion; and

b) the authority or the Secretary of State, as the case may be, shall send a copy of the opinion or direction and a copy of the written statement required by sub-paragraph (a) to the person who proposes to carry out, or who has carried out, the development in question.

Annex C: Multi-stage consents provisions

Please refer to Part 3 of the draft Regulations (see separate document).

Annex D: Proposed Schedule 2.3(i)

(i) Installations for the harnessing of wind power for energy production (wind farms).	The development involves the installation of more than 2 turbines; or The total height of any turbine (including the rotor blade) exceeds 18 metres.

Annex E: Impact assessment

Title:	Impact Assessment (IA)
Proposal to consolidate and amend the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended).	**IA No:** CLG0007
Lead department or agency: Communities and Local Government	**Date:** 08.07.10
Other departments or agencies:	**Stage:** Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: Lydia Read 030 34441684

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Since the 1999 Environmental Impact Assessment (EIA) regulations came into force, they have been amended substantially to take account of case law and more recently changes to the planning system. It is our intention to consolidate the regulations to make them more accessible and up-to-date and to propose a number of additional changes to take account of the latest case law. These recent court cases highlighted areas where the UK had failed to properly transpose the EIA EU Directive. There is a need to make the necessary changes to the regulations to ensure the EU Directive is properly transposed in order to avoid potential infraction proceedings (pre-infraction action has already been taken by the EU Commission with regard to these cases) and the fines associated with infraction.

What are the policy objectives and the intended effects?

The objectives are: to consolidate the 1999 EIA Regulations; to update the Regulations in order to reflect recent EIA case-law and to remove 'gold-plating' for multi-stage consents by removing the unnecessary requirement to re-publicise and consult on Environmental Statements (ES). The recent legal cases refer to 'Mellor' (the need to give reasons for negative screening decisions) and 'Baker' (where screening is required for modifications or extensions to existing planning permissions) - see Evidence Base for further information. The intended effects are to ensure the Regulations are more accessible to users and remain fit for purpose; and to decrease the burden for developers and Local Planning Authorities (LPAs).

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

• Option 1 - Do nothing. This option is not feasible as it could result in EU infraction proceedings (and associated fines). It would also maintain the current administrative burden associated with the numerous amendments to the Regulations.

• Option 2 - Amend the Regulations without a consolidation. This option is not feasible given that there is a high risk of infraction proceedings and associated fines. There is also an expectation from the Joint Committee on Statutory Instruments that the current proposed amendments will form part of a consolidation of the EIA Regulations.

• Option 3 - Amend and consolidate the Regulations. This is the preferred option because it will make the necessary changes to take into account recent court judgements to ensure the EIA Directive is properly transposed. The consolidation will ensure the Regulations are up-to-date and generally fit for purpose which will make it easier to use and interpret.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed in 3 to 5 years.
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Date: 28 July 2010

Summary: Analysis and Evidence Policy Option 3

Description: Amend and consolidate the Environmental Impact Assessment (EIA) Regulations (the preferred option).

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £208m	**High:** £218m	**Best Estimate: £213m**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Neg		£4m	**£38m**
High	Neg		£6m	**£59m**
Best Estimate	Neg		£5m	**£48m**

Description and scale of key monetised costs by 'main affected groups'

Time costs to LPAs in stating formal reasons for a negative screening decision when an EIA is not required. Increased admin burden to LPAs in determining whether an EIA is required for a development as a whole (not solely the modification). Time costs to developer of carrying out an EIA to the development as a whole (not solely the modification). Familiarisation costs to developers and LPAs using the amended and consolidated Regulations.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			£25m	**£246m**
High			£28m	**£277m**
Best Estimate			£27m	**£261m**

Description and scale of key monetised benefits by 'main affected groups'

Time and admin savings for LPAs given that the Regulations will be consolidated, more streamlined and accessible. Reduced number of requests/queries to LPAs given that reasons for negative screening decisions are now published. Reduced admin burden for LPAs no longer re-publicising Environmental Statements (ES).
Time and admin savings for applicants/developers given that the Regulations will be consolidated, more streamlined and accessible. Reduced admin burden for developers by removing the requirement to re-publicise Environmental Statements (ES).

Other key non-monetised benefits by 'main affected groups'

Greater transparency of circumstances in which an EIA is not required for developers to gain a better understanding of Environmental Impact Assessments, reducing queries/requests for information.
Improved decisions regarding the environment will be made as a result of an EIA assessing the development as a whole, as opposed to the modification only.
Reduces the risk of legal challenge and the associated financial and time costs.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

Up-rated wage rates per hour estimated at £40 for planning officers, developers; £20 for admin staff. Time spent by developers/planners/admin is estimated at 1 hour for: stating formal reasons for negative screening decisions and time saved responding to queries (admin staff at LPAs); considering the development as a whole in the EIA process (developers and admin staff at LPAs); time saved for no longer republicising ES (developers and admin staff at LPAs); time saved for developers and LPAs using consolidated and amended regulations. 10%-25% of the sum of minor and other development planning applications is used as an estimate for the proportion of planning applications that relate to modifications. 25%-50% reduction in queries from applicants/developers to LPAs regarding EIAs. The number of ES received is based on an England average over 10 years. The number of screenings not requiring an EIA is based on a 10 year Northern Ireland average (Data unavailable for England; N. Ireland employed as the closest proxy.) 80%-90% of developers and LPAs are affected by the amended and consolidated Regulations for EIA. Data relating to planning applications is based on England 2009/10.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: £0.19m	**AB savings:** £20.4m	**Net:** £20.2m	**Policy cost savings:** n/a	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England wholly, Wales partly		
From what date will the policy be implemented? (date SI comes into force)			17.01.11 – at the earliest		
Which organisation(s) will enforce the policy?			CLG		
What is the annual change in enforcement cost (£m)?			n/a		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** n/a	**Benefits:** n/a	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[8] Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	

[8] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Sustainable development Sustainable Development Impact Test guidance	No	

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	European Court of Justice judgement - C-75/08 ('Mellor') http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:153:0011:0012:EN:PDF
2	High Court judgement - CO/397/2007 ('Baker') http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2009/595.html&query=Baker+and+2007+and+EIA&method=boolean
3	European Directive 85/337/EEC ('the EIA Directive'). As amended by Directive 97/111/EC and by Article 3 of 2003/35/EC
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	5.8	5.6	5.4	5.2	5.1	4.9	4.7	4.6	4.4	4.3
Total annual costs	5.8	5.6	5.4	5.2	5.1	4.9	4.7	4.6	4.4	4.3
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	31.4	30.4	29.3	28.3	27.4	26.5	25.6	24.7	23.9	22.3
Total annual benefits	31.4	30.4	29.3	28.3	27.4	26.5	25.6	24.7	23.9	22.3

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:

Background:

The Environmental Impact Assessment (EIA) Directive requires an assessment of the effects of certain public and private projects on the environment before development consent is granted. Its main aim is to ensure that an authority giving development consent for a project makes its decision in the full knowledge of any likely significant effects on the environment. The EU Directive's requirements are procedurally based and must be followed by Member States for certain types of projects before development consent can be granted. It helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the relevant competent authority before it makes its decision.

The Directive has largely been implemented through the planning system, as the majority of projects that fall within the scope of the Directive are 'development' for which, in the UK, planning permission is required. Local planning authorities are the 'competent authorities' for EIA purposes, except for applications which are the subject of an appeal or are called in, for which, in England, the Secretary of State for Communities and Local Government is the competent authority.

Certain types of development which are listed in Schedule 1 to the regulations (including larger power stations, chemical installations and quarries over 25 hectares) require EIA in all cases. Others, listed in Schedule 2 (such as housing schemes and smaller mineral workings), require EIA where they are considered likely to have significant environmental effects. For all Schedule 2 development (including that which would otherwise benefit from permitted development rights), the local planning authority must make its own formal determination of whether or not EIA is required (referred to as a 'screening opinion'). Where it is determined that EIA is required, an Environmental Statement (ES) must be produced alongside the planning application which details the assessment of the project undertaken.

The transposition of the EIA Directive into domestic law and its implementation has, on a number of occasions, been successfully challenged in the domestic and European Courts. As a result, the Regulations have been amended substantially over the years to take account of case law or transposition issues e.g. in 2000 and twice in 2008. The recent judgements 'Mellor' and 'Baker' (explained below) have meant that further amendments to the regulations are required now to avoid infraction proceedings.

Problem under consideration:

There are three main proposed changes to the regulations to address recent case law ('Baker' and 'Mellor') and 'gold plating' of multi stage consents. Furthermore, there will be consolidation to the regulations. Key changes include:

1. **'Baker' Case:** Changes or extensions to existing development – screening of Schedule 2 development (projects which require screening by the LPA to determine whether a planning application requires an ES) shall apply to the development as a whole once modified and not just to the change or extension. There is also a new provision for Schedule 1 projects (where screening is not necessary as EIA is mandatory for these projects) which require that all changes or extensions must be screened where these projects are not Schedule 1 developments in their own right. These changes would rectify the failure to properly transpose the EIA Directive as identified in a High Court judgement.

2. **'Mellor' Case:** Reasons for negative screening decisions - where the Secretary of State/planning authorities issue a screening direction/opinion that an EIA is not required ("negative screening decision"), they shall make available reasons for that conclusion, as they currently do for when an EIA is required. This change is required to rectify the failure to properly transpose the EIA Directive as identified in a European Court and High Court judgements.

3. **Multi-stage consents:** will remove the requirement which was unintentionally introduced by the 2008 Regulations, for an ES to be publicised again in a multi stage consent (outline consents followed by full planning applications) where the ES was still adequate for purpose at a later stage (e.g. application for approval of reserve matters). The ES has to be advertised in the local press and copies made available in accessible places such as the local library and at the offices of the developer. Copies should also be available for purchase. It is the responsibility of the developer to publicise the environmental statement, although the LPA should place a notice of the availability of the environmental statement on its website.

Rationale for intervention:

The rationale is to update the 1999 EIA Regulations to reflect recent court judgements, namely Baker and Mellor, thus ensuring the EIA Directive is properly transposed into UK legislation. This guards against the threat of infraction. In addition, it is necessary to remove the requirement for 'gold-plating' thus reducing the admin burden for Local Planning Authorities (LPAs). Furthermore, there is a need to consolidate the regulations to ensure they are accessible and fit for purpose for users.

Policy objective:

To consolidate and update the 1999 EIA Regulations in order to make changes to reflect recent EIA case-law as well as ensuring the regulations remain fit for purpose and more accessible.

Description of options considered (including do nothing):

Option 1 - Do nothing. This option is not feasible as it would result in EU infraction proceedings (and associated fines). It would also maintain the current administrative burden associated with the numerous amendments to the Regulations.

Option 2 - Amend the Regulations without a consolidation. This option is not feasible given there will be an expectation from the Joint Committee on Statutory Instruments that the current proposed amendments will form part of a consolidation of the EIA Regulations.

Costs and benefits of each option:

Option 3: The preferred option. The benefits relate to the amendments of the Regulations in order to avoid EU infraction fines. Consolidation of the Regulations enable time savings for applicants and LPAs since the Regulations are more accessible and generally fit for purpose.

The table below summarises the costs and benefits to all affected parties.

Group	Benefits	Costs
Local Planning Authorities (LPAs)	Time and admin savings by using more streamlined, accessible and amended EIA Regulations. Reduced number of queries/requests from partners regarding negative screening decisions (since the reasons are now published). Reduced admin burden in no longer having to re-publicise Environmental Statements.	Increased admin burden in stating the formal reasons for a negative screening decision when an EIA is not required. Increased admin burden in determining whether an EIA is required for the development as a whole, given a modification. Time costs of familiarising with amended and consolidated EIA Regulations.
Partners (Developers)	Time and admin savings by using more streamlined, accessible and amended EIA Regulations. Reduced admin burden in no longer having to re-publicise Environmental Statements. Greater transparency of circumstances in which an EIA is not required for developers to gain a better understanding of EIAs, reducing requests for information and queries.	Increased admin burden in carrying out an EIA is required for the development as a whole, given a modification. Time costs of familiarising with amended and consolidated EIA Regulations.
Lawyers/developers/LPAs	Both the proposed changes and the consolidation of the Regulations will help to reduce the risk of legal challenge and the associated financial and time costs. This is because the proposed changes will address recent legal judgements which highlighted the need to properly transpose the requirements of the Directive into the Regulations, whilst the consolidation will make the Regulations easier to use and interpret.	
Local community	Improved decisions regarding the environment, as a result of an EIA assessing the development as a whole, not solely the modification.	

The following evidence is used in the analysis:

- 466,000 planning applications were received in 2009/10 in England.[9]
- 93% of screenings of planning applications do not require an Environmental Impact Assessment.[10]
- The number of Environmental Statements received is based on a 10 year average for England equating to 324.
- The proportion of planning applications that relate to modifications are estimated using a proportion of the sum of minor and other developments planning applications. A range of 10% to 25% is used for sensitivity analysis.
- Up-rated wages per hour are estimated at £40 for planning officers and developers; £60 for lawyers; and £20 for admin staff at LPAs. Up-rated wages are based on average hourly wage levels multiplied by 1.25 to take account of overheads such as pensions.
- Time spent by planning officers, developers and admin staff is estimated at 1 hour for stating formal reasons for negative screening decisions and time saved responding to queries (admin staff at LPAs); considering the development as a whole in the EIA process (developers and admin staff at LPAs); time saved for no longer republicising ES (developers and admin staff at LPAs); time saved for developers and LPAs using consolidated and amended regulations.
- The amendments and consolidation of Regulations are estimated to affect 80% - 90% of planners and developers, based on the total number employed in the UK (April-June 2009).[11]
- Environmental Statements have to be republicised for multi stage consents (outline consents followed by full applications). Removing the requirement to republicise ES for multi stage consents is estimated to affect 50% of Environmenal Statements, following limited consultation with LPAs, including London Borough Council.
- 25%-50% reduction in queries from applicants/developers to LPAs regarding negative screening decisions and reasons for not requiring an EIA.

The table below summarises the quantification of the costs and benefits, including the calculations used, the assumptions employed and the sensitivity analysis conducted. Figures represent the annual costs/benefits in the base year.

Costs	Group	LOW	HIGH	Quantification
Cost to LPAs of stating formal reasons for negative screening decision*	Admin staff (LPAs)	£4,350,000	£6,500,000	93% of total number of planning applications relate to negative screening decisions for an EIA. Time spent = 1 hour at £20/hour. This cost is offset by 25%-50% reduction in enquires by developers. Thus, this cost is reduced by 25%-50% due to time savings of admin staff responding to requests and queries, since the reasons for negative screening decisions are now published.
Time cost to developer in assessing development as a	Partner /Developer	£109,000	£271,000	Increased length of EIA process. Estimated proportion of planning applications that relate to

[9] www.communities.gov.uk/documents/statistics/xls/1627454.xls
[10] This is based on a 10 year average of data on screenings and EIA from Northern Ireland.
[11] www.statistics.gov.uk/downloads/theme_labour/UKallinemploybySOCApr-Jun2009.xls

whole (no longer solely the modification) for an EIA				modifications multiplied by 1 hour work at wage of £40
Time cost to planning officer in assessing development as a whole (no longer solely the modification) for an EIA	Planning officer (LPA)	£109,000	£271,000	Increased length of EIA process. Estimated proportion of planning applications that relate to modifications multiplied by 1 hour work at wage of £40

Benefits	Group	LOW	HIGH	Quantification
Time and admin savings to LPAs in using more accessible, streamlined and consolidated Regulations	Planners (LPAs)	£10,400,000	£11,700,000	Incorporates more efficient working using, amended, streamlined and consolidated Regulations, including the time costs of familiarisation with amended Regulations. Estimated that 80% - 90% of planning officers will be impacted by 1 hour per month by the amendments.
Time and admin savings to developers in using more accessible, streamlined and consolidated Regulations	Developer	£19,200,000	£21,600,000	Incorporates more efficient working using, amended, streamlined and consolidated Regulations; reduced number of queries/requests regarding negative screening decisions; including the time costs of familiarisation with amended Regulations. Estimated that 80% - 90% of developers will be impacted by 1 hour per month by the amendments.
Reduced number of queries/requests regarding negative screening decisions for EIA*	Admin staff (LPAs)			25-50% reduction in queries. Incorporated into the costs of stating formal reasons for negative screening decisions.
Reduced admin burden in no longer republicising Environmental Statements	Admin staff (LPAs)	£3,200	£3,200	50% of Environmental Statements no longer have to be republicised saving 1 hour at £20 / hour
Reduced admin burden in no longer republicising Environmental Statements	Developer	£6,500	£6,500	50% of Environmental Statements no longer have to be republicised saving 1 hour at £40 / hour
Greater transparency of circumstances in				Non-monetised

which an EIA not required				
Reduced risk of legal challenge				Non-monetised
Improved environmental decisions and assessments				Non-monetised

Risks and assumptions:

As outlined above, if we do not undertake the necessary changes to the regulations to take into account recent court cases there is a high risk that the EU commission will bring infraction proceedings against the UK which could result in a significant daily infraction fine for the UK. It is impossible to predict, with any degree of certainty, the amount of a fine that may be imposed by the European Court of Justice in any individual case, particularly as there will be changes to the levels of fines post-Lisbon Treaty. But we expect any fines to be significant and existing Cabinet Office guidance suggests that any fine is likely to be passed on to our Department, through a reduction in our DEL budget.

The EU Commission have asked for a progress report on what stage we are at in relation to implementing two specific court judgements ('Mellor' and 'Baker') highlighted in a recent pre-infraction proceedings 'Pilot' letter. We have responded by outlining our project plan for the regulations. Given this commitment, we are aware the Commission will follow up to ensure we are keeping to this timetable.

Wider impacts:

In terms of implementation of European requirements, we do not consider that the proposal to implement 'Mellor' (i.e. to give reasons for all negative screening decisions) goes beyond European requirements. We have received legal advice from Cabinet Office Legal Advisors (COLA) which advises that our proposal is in-line with BIS guidance it would not constitute gold plating. The advice suggests that it would be preferable to address the legal judgement as a legal requirement rather than explaining it in guidance as "non-binding administrative guidance which can be alterable at will by the relevant authorities have been regarded dubiously by the European Court of Justice. This is particularly given the "general principle of legal certainty" the advice also states that "national rules implementing a Directive must guarantee the full application of the directive in a clear and precise manner, particularly where the directive confers rights on individuals" (the 'Mellor' judgement does confer rights upon individuals).

With regard to wider impacts and carbon emissions, given that the proposed changes to the Regulations relate to the EIA process itself and not the projects the process applies to, it is not possible quantify carbon emissions attached to EIA projects as it is no possible to anticipate whether EIA projects will come forward and when they are likely to come forward. The decision to make an application for a project (regardless of whether it is likely to requirement EIA) is largely driven by the development industry.

Summary and preferred option with description of implementation plan:

Option 3 - Amend and consolidate the Regulations. This is the preferred option because it will make the necessary changes to take into account recent court judgements to ensure the EIA Directive is properly transposed. The consolidation will ensure the Regulations are up-to-date and generally fit for purpose which will make it easier to use and interpret.

With regard to the implementation of the proposed changes, the upcoming consultation on the amendments and consolidation of the EIA Regulations will seek views from those involved in the EIA process on the proposed changes. It is expected that the draft statutory instrument will come into in force in January 2011.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

The European Commission is currently undertaking a review of the application and effectiveness of the EIA Directive in order to inform possible amendments to the Directive. Formal proposals to amend the Directive are not expected until the end of 2011 at the earliest . Any future amendments which may be required to take account of any changes to the Directive could provide the opportunity in which to review the changes made under the current proposals to amend and consolidate the regulations.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

To ensure the amended and consolidated Regulations are more accessible and fit for purpose.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

Once the draft statutory instrument is in force, we will use evidence from conversations and informal consultations with partners to review whether the current proposals to amend the regulations have successfully addressed the problems identified and consider whether changes were required where implementation has not been successful.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

The baseline in which the current changes could be measured is by the decrease in the number of legal challenges on EIA grounds due to clearer and easier to use regulations.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

The proposal to require LPAs to give reasons for all negative screening decisions ('Mellor') should lead to an improvement in the transparency of decision making and ensures LPAs have robust negative screening opinions. There may be a rise in EIA given that when a modification takes place, the development as a whole now has to be considered ('Baker'). This gives a more robust analysis of the impact on the environment. However, it is difficult to measure the success using the number of EIA or ES as variables since there are other factors at work. The success of the consolidation and amendments to the Regulations centres on a more efficient process for agents, such as developers and LPAs, regarding Environmental Impact Assessment Regulations, making them easier to use and interpret. Furthermore, the success is that the EU Directive relating to EIA is properly transposed.

Overall, EIA helps to ensure that an authority giving development consent for a project makes its decision in the full knowledge of any likely significant effects on the environment which means the changes proposed in response to 'Baker' should lead to better environmental outcomes. However, it is not possible to quantify the environmental outcomes given that the proposed changes relate to the EIA process itself and not the projects the process applies to and it is not possible to anticipate whether EIA projects will come forward and when they are likely to come forward (which is largely driven by the development industry).

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

If amendments are made to the EIA Directive which brings about the need to make future amendments to the EIA Regulations, this will provide an opportunity for us to monitor the implementation of the current changes proposals to the regulations. This will be done via informal consultation with partners.

Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

N/A