

# Post-implementation review of Defra Environmental Impact Assessment Regulations

<b>Lead department</b>	Department for Environment, Food and Rural Affairs
<b>Summary of measure</b>	The Department is reviewing regulations requiring the undertaking of environmental impact assessments (EIAs), for both public and private projects, to ensure that members of the public are afforded early and effective participation in decision-making.
<b>Submission type</b>	Post-implementation review
<b>Implementation date</b>	16 May 2017
<b>Department recommendation</b>	Amend
<b>RPC reference</b>	RPC-DEFRA-5280(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	25 July 2023

## RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The RPC considers the post-implementation review (PIR) to be fit for purpose and the recommendation to reform (amend) to be clearly supported by evidence. The Department has gathered a range of evidence across the various policy areas that the EIAs cover, reflecting views and issues raised by stakeholders in each. The PIR would be improved through more clearly articulating the decision to reform and the specific issues noted throughout the PIR that these are intending to correct.

<sup>1</sup> The RPC opinion rating is based on whether the evidence in the PIR is sufficiently robust, as set out in the better regulation framework, to support the departmental recommendation. RPC ratings are fit for purpose or not fit for purpose.

## RPC summary

Category	Quality <sup>2</sup>	RPC comments
Recommendation	<b>Green</b>	The evidence that the Department has considered is relevant to the regulations. The review notes that while the regulations continue to be required, from the evidence gathered, there are clear issues with the regulations, as well as unintended effects that therefore should be reformed.
Monitoring and implementation	<b>Weak</b>	While the department has done well to gather evidence from a range of stakeholders, there are clear evidence gaps throughout the PIR. Given the longstanding nature of these regulations, the Department should consider means through which to improve the known deficiencies in the evidence. The likely scale of the benefits arising from the policy would suggest it proportionate to do so.
Evaluation	<b>Satisfactory</b>	The Department references the original policy objectives throughout the review and identifies several unintended impacts, some of which are limiting the success in achieving the objectives. The review discusses future policy recommendations seeking to correct for these unintended impacts. While the department does well to consider whether small and micro businesses (SMBs) were disproportionately impacted, it could be made clearer how much engagement there was with SMBs to establish this position.

<sup>2</sup> The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed [here](#).

## Summary of proposal

The EIA regulations in the UK are an implementation of an EU directive. The specific EIA regulations operate differently across four key policy areas under the Department's jurisdiction: marine, forestry, water resources and agriculture. In the review, the Department describes the original objectives of the regulations as being to:

- provide a framework of assessment of the environmental effects of public and private projects which are likely to have significant effects on the environment;
- transpose relevant EU directives, amended to capture changes in domestic legislation and regulatory bodies; and
- provide for cases where the EIA Regulations may, or will not, apply.

In light of unintended impacts and other shortcomings of the regulations in their current form, the Department are recommending to reform the EIA regulations through powers introduced by the Levelling Up and Regeneration Bill (LURB).

## Recommendation

The Department very clearly explains the continued importance and role that EIA requirements play across the various policy areas covered by the review. Additionally, the review of the EIAs in these various policy areas is undertaken separately, allowing for the nuances of each policy area and its interaction with the EIAs to be addressed. Furthermore, it allows the Department to highlight specific areas of concern and unintended effects that may not be present across all policies. As a result of the engagement the Department has undertaken to inform this review and the unintended impacts identified limiting the effectiveness of the EIAs from fully achieving the stated objectives, the Department's recommendation is supported by sufficient evidence and analysis. The review would also benefit from more discussion considering the merits of alternative, lesser, forms of intervention in achieving the stated objectives.

### Clarity of recommendation

While the RPC are content that the recommendation made by the Department in the review is supported by sufficient analysis, given the evidence that has been presented, the recommendation itself and the evidence supporting it could be better presented. At present, the review does not clearly set out the specific actions to be taken in reforming the EIA regulations. Additionally, the review would benefit from clearly highlighting what elements of the reforms will address specific issues raised throughout the document.

## Monitoring and implementation

### Proportionality

The Department has gathered evidence and undertaken a review that would appear proportionate with the scale of the impacts quantified prior to the latest iteration of the EIAs. However, given the broad range of policy areas covered by the EIAs and the Department's discussion of the likely size of quantified benefits, the Department could perhaps consider whether a more in-depth assessment is appropriate.

### Evidence to support recommendation

For each of the policy areas where EIAs are required, the Department has sought to develop a range of evidence on the undertaking of EIAs and the associated effects from this requirement. The Department has surveyed key stakeholders (e.g., industry, non-governmental organisations and public bodies), conducted further engagement and undertaken a literature review, which included looking at international comparators. However, the review would benefit from providing more context on those that were consulted and responded to the survey (e.g., how representative are they of their industry, as well as if EIAs has promoted or hindered their economic activity), while also providing a deeper discussion of the implementation of EIAs in other countries beyond high level comparisons.

## Evaluation

### Consideration of policy objectives

The review sets out the original objectives of the policy early in the review and repeatedly refers back to them throughout as appropriate. While the Department comments on the success through which these objectives have been met, there is little discussion regarding the continued suitability of the objectives. As they stand, the objectives set out for the EIAs are quite high level and the review would benefit from discussing whether the objectives remain effective. Furthermore, the review would benefit from considering if the objectives could be made more 'SMART' (i.e., specific, measurable, achievable, realistic and timely).

### Unintended effects

The Department does well to identify a range of unintended effects and impacts from the EIAs, and includes a long-list of those identified towards the end of the review. However, in this long-list it is not clear that all unintended effects discussed throughout the review have been reflected, whilst this is also the first mention of some that have gone unreferenced to this point in the review. The Department should ensure that all unintended effects are clearly explained and referenced throughout the review, to ensure that they have been given equal consideration with respect to the upcoming reforms.

The review would benefit from discussing the additional time that the requirement to undertake EIAs has added to affected projects and the costs associated with such delays for affected parties. Furthermore, the Department could discuss in more detail whether the reduction in applications (noted as occurring in some sectors) may

be an indication of the prohibitive effect the cost to undertake the EIA process, resulting in businesses opting not to proceed with projects they otherwise would like to.

### **Original assumptions**

While the Department does attempt to revisit some cost estimates from previous impact assessments produced to support the EIAs, there is not much review of the accuracy of original key assumptions from these IAs. The review would be improved from revisiting key assumptions, particularly looking to see whether these have any linkage to the identified unintended effects and if the lessons from revisiting them can assist the development of the reforms.

### **Impact on small and micro businesses**

Where appropriate, the Department has sought to consider the impacts upon SMBs from the requirement to conduct EIAs, stating that they have not received evidence that SMBs were disproportionately impacted. However, the degree to which the Department was able to engage with SMBs during their stakeholder engagement is not clear. The review would benefit from setting out how many of those in the affected industries consulted were SMBs and therefore best placed to discuss the specific issues faced. If few SMBs responded, that may suggest that they have limited experience conducting EIAs and the Department may then wish to investigate why this may be the case.

The review focusses on the direct impact of those undertaking EIAs however does not consider the wider effects. While it may be the case that SMBs are less likely to undertake EIAs themselves, they may be indirectly affected by those larger businesses they form supply chains with having to do so. The department could also consider whether, as part of the further work on the reforms, a partial exemption for SMBs, or smaller projects in select sectors, may be appropriate if the cost of undertaking the assessment is too prohibitive for them.

### **Future impacts**

As noted above, the Department states the intention to use powers laid out in the LURB, to bring forth the recommended reforms. The RPC would welcome any further engagement on the development of analysis to support these reforms.

## **Regulatory Policy Committee**

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