

Chapter 1

Introduction

'Consult the Genius of the Place in all...'

Alexander Pope 1731

An overview of the Environmental Impact Assessment (EIA) process, explaining why and when it is necessary to carry out an EIA. The role of EIA within the planning and development processes is introduced, together with standards and the role of environmental management. EIA is placed within the context of sustainable development, and links are shown with other mechanisms and consenting procedures in the planning and environmental protection systems.

1.1 What is EIA?

Environment Impact Assessment (EIA) is a procedure which serves to provide information to local authority planners, other regulators and authorising bodies, other interested parties and the general public about certain proposed developments and their likely effects on the environment. It also enables developers, on whose behalf the EIA is generally undertaken, to meet their own environmental standards, to minimise environmental impacts and facilitate the approval process. It is a technique which has developed since the introduction of EIA by the National Environmental Protection Act 1969 in the USA. It is now applied by governments and international institutions throughout the world.

It must be emphasised that EIA is *part* of the wider process of deciding whether certain types of development projects should be approved. Other dimensions - political, local feelings and cultures, overriding need, competing proposals - also have to be considered. However, by including environmental factors *alongside* social and economic considerations, a more sustainable approach to development is ensured.

EIA is an ongoing process: the collection and assessment of environmental information (usually undertaken by, or on behalf of, a developer or promoter/investor), the preparation of an Environmental Statement (ES), consultation with a wide range of parties *and* the consideration of the environmental information. This is then taken into account in the determination of the application for development approval (undertaken by the authorising body). Early and continued positive dialogue is encouraged between the promoter, the authorising body, other consultees and the public. The process identifies the potential significant effects on the environment and develops appropriate options for their mitigation.

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EIA is an important procedure for ensuring that the likely effects of new development on the environment are fully understood and taken into account before the development is allowed to go ahead

– Department of Environment, Transport and the Regions (DETR) 2000. *EIA: A Guide to Procedures*



Key fact

Environmental issues are not necessarily a constraint on development: environmental enhancement can facilitate sustainable development

The Need for EIA

Key legislation and guidance

EU Directive 85/337/EEC as amended by 97/11/EC and 2003/35/EC: The assessment of effects of certain public and private projects on the environment. (The 'EIA Directive')

Planning and Compulsory Purchase Act 2004

Town & Country (EIA) (England and Wales) Regulations 1999 (as amended). (The 'EIA Regulations')

DETR 1999. Circular 02/99: *Environmental Impact Assessment*

DETR 2000. *EIA: A Guide to Procedures*. www.communities.gov.uk, www.opsi.gov.uk

Department for Communities and Local Government 2006 (Consultation draft). *Circular and Guide to Good Practice*

EU EIA studies, reports and guidance. www.europa.eu.int

EU Directive 2001/42/EC: The assessment of the effects of certain plans and programmes on the environment. (The 'SEA Directive')

The Environmental Assessment of Plans and Programmes Regulations 2004

UN Environment Programme studies, reports and guidance. www.unep.org

www.worldbank.org

www.iaia.org

Key fact

The planning system should:

- deliver key objectives such as housing, economic development, transport infrastructure and rural regeneration sustainably while protecting the environment
- create and sustain mixed and inclusive communities
- be transparent
- enable local communities to be involved positively
- deliver a higher quality and better respected public service

– Office of the Deputy Prime Minister 2002

1.2 Some Definitions

- *Environmental Impact Assessment (EIA)*: the process assessing the environmental impacts of development projects.
- *Environmental Statement (ES)*: the document reporting the EIA.
- *Mitigation*: avoiding, reducing or remedying potential significant adverse impacts.
- *Compensation*: replacing an adverse impact either in kind or by something of a different nature to that which may be lost.
- *Enhancement*: improving elements of the environment.
- *Screening*: the process to decide if EIA is required.
- *Scoping*: the process to identify the key environmental issues.
- *Consultees*: statutory and non-statutory interested parties who are consulted during the EIA process.
- *Strategic Environmental Assessment (SEA)*: environmental assessment of plans and programmes.

1.3 The Need for EIA

The need for EIA is derived from the EU Directive on the assessment of certain public and private projects on the environment, first introduced in 1985 and subsequently amended in 1997 and 2003. It was incorporated into UK legislation in 1988, and the current Regulations date from 1999 with subsequent amendments.

EIA applies to major developments for which planning approval is required from local authorities under the Town and Country Planning Act 1990. EIA also applies to many projects which are outside the planning system and require authorisation from other bodies:

- trunk roads and motorways
- power stations, overhead power lines and long-distance oil and gas pipelines
- afforestation
- land drainage improvements (including flood and coastal defence)
- ports and harbours
- marine fish farming
- marine dredging for minerals
- projects under the Transport and Works Act 1992 (e.g. railways, inland waterways).

Each of these different types of development requires EIA under separate pieces of legislation, e.g. the Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2006.

Major projects for which EIA may be required are listed in the Directive and the Regulations. They are divided into Annex I and Annex II developments in the Directive, and into Schedules 1 and 2 in the EIA Regulations. Schedule 1 projects, e.g. nuclear power stations, always require EIA. Schedule 2 projects are those listed in the Regulations and where EIA will only be required if significant environmental effects are likely to arise. Criteria and thresholds for significance are set out in the DETR Circular 02/99 and are reproduced in Appendix 2 of this handbook.

The key word is *significant*, and the Circular suggests three main criteria of significance:

- major developments
- environmentally sensitive locations
- complex developments with hazardous effects.

N.B. the Consultation Draft of the revised Circular removes these criteria

The legislation allows developers to apply to the local authority for guidance, a '*screening opinion*', on whether an EIA is necessary for Schedule 2 projects, and to the Secretary of State (SoS) for a final '*screening direction*' if the developer disagrees with the *screening opinion*.

Permitted Development Rights (PDRs): Schedule 1 projects are not permitted development, and always require submission of a planning application and an ES. PDRs for Schedule 2 projects are also withdrawn unless the planning authority has given a screening opinion (or the Secretary of State has given a screening direction) that EIA is not required.

Major Infrastructure Proposals may be decided by an Infrastructure Planning Commission under new planning legislation and guided by National Policy Statements for nationally significant infrastructure. The IPC will consider, independently of local authorities, proposals for major developments such as airports, power stations and reservoirs. *Whilst the consenting regime may change, the need for EIA in accordance with the EU Directive will not change.*

1.4 The Purpose of EIA

Environmental protection: The EC directive on EIA was promoted by the Trade Department of the European Commission, and the underlying reason was to ensure that a level playing field prevailed in the competitive conditions of a common market. However, the stated aim, and the one which is often overlooked, is in the preamble to the 1985 Directive:

'... the best environmental policy consists in preventing the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects;... [and] to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes;...'

So, EIA is actually about the reduction or minimisation of pollution in its widest sense. While EIA is part of the planning system in the UK, separate approvals may also be required for certain developments, e.g. Pollution Prevention and Control (PPC), land drainage and discharge consents. Planning authorities look to other agencies to confirm compliance or satisfactory standards; Planning Policy Statement (PPS) 23, *Planning and Pollution Control*, encourages approval procedures to run simultaneously and to avoid duplication of controls.

Design and planning: The integration of the emerging design of a development into the EIA process can ensure that a proposal with the least damaging environmental effects is arrived at. This can facilitate consideration of alternative approaches to development and lead to a more robust planning application. By taking account of such issues as the design of the development, the process, the location and the site at the earliest possible stage, the design can be influenced such that major changes or onerous planning conditions are not required too late in the project programme.

Further information

Town and Country Planning (General Permitted Development) Order 1995

Planning Act, 2008

Key legislation and guidance

PPC Regulations 2000

PPS23: *Planning and Pollution Control*

Key facts

The EIA Regulations require consideration of '*the regenerative capacity of natural resources [and] the absorptive capacity of the natural environment*'

The government's commitment to good design is presented in PPS1, and confirmed in PPS3, which requires local authorities and housebuilders to design for quality

EIA regulations were amended in 2006 to require increased public consultation on the ES as a minimum, in line with the Aarhus Convention and the EU Public Participation Directive

The Process of EIA



An ES provides a useful framework within which environmental considerations and design development can interact

– DETR 2000



Community involvement is vitally important to planning and the achievement of sustainable development

– PPS1 (DCLG, 2005)



Further information

PPS1: *Delivering Sustainable Development*

PPS3: *Housing*

DETR 2000. *Urban Design in the Planning System: Towards Better Practice*

Urban Design Alliance

Commission for Architecture and the Built Environment (CABE)

UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. (The 'Aarhus Convention')

Public Participation Directive 2003/35/EC

Key fact

Sufficient information to assess the environmental effects must be provided for both outline and detailed planning applications

Key fact

In the UK planning system, consideration of a major planning application is subject to a 13-week determination period (with 8 weeks for minor applications) until an appeal can be made against non-determination – for applications with an ES, 16 weeks is allowed for decision-making

The presentation of the environmental information in a transparent and systematic way assists the competent authorities when determining the application for approval. This can also allay the general public's concerns, which are often based on the fear of unknown effects.

Management: EIA can also be used as a management tool by contributing to environmental risk assessment, identifying hazards at the design stage, and presenting the opportunity to design them out and ensuring that risks are managed throughout the project.

The commitment to environmental management which is made in the ES can be conditioned by regulators and incorporated into contract documents, thus ensuring continued protection of the environment from construction through to final restoration.

Consultation and participation: Government policy increasingly emphasises the need to involve local communities and stakeholders in the planning of development to allow those affected to be properly informed and consulted and to participate in decisions affecting their environment. EIA is an important way of helping to ensure that those likely to be affected by a proposed development are better informed and involved in the development planning process.

1.5 The Process of EIA

Those environmental issues which may be significant in the context of the proposed development and are the reasons why EIA is being undertaken are identified by 'scoping'. Provision is made in the Regulations for formal scoping by consultation with interested parties. For each significant environmental issue, baseline conditions are identified through a review of existing information (desk study) and by site surveys. The likely effects of the development are then predicted. The magnitude and significance of the effects – including indirect and cumulative effects – are assessed. Mitigation measures are incorporated throughout the iterative process of design and EIA in order to minimise any likely significant adverse effects and to maximise likely beneficial effects. This requires team effort and interactions both within the development team itself and with the external contributors.

Consultation is inherent in the EIA process, and is continuous throughout, involving statutory and non-statutory consultees as well as the public: it feeds into the evolving design in an interactive way. Early and thorough consultation will identify those interested parties who might be concerned about the proposed development (see Section 1.4).

The Regulations and the Directive indicate what should be included within an ES:

- description of the site and development
- outline of the main alternatives studied
- significant direct and indirect effects
- measures to prevent, reduce or offset significant adverse effects
- a non-technical summary (NTS).

Professional Standards and Review

Key fact

The modernisation of the UK planning system has placed more emphasis on public participation

Further information

Department of Environment (DoE) 1995. *Preparation of Environmental Statements: A Good Practice Guide* (to be revised)

Department of Transport, Local Government and the Regions 2001. *Planning: Delivering a Fundamental Change*

Office of the Deputy Prime Minister (ODPM) 2005. *Sustainable Communities: Homes for all*

DoE Circular 11/95: *Planning Conditions*

ODPM Circular 05/2005: *Planning Obligations*

An important requirement is an NTS, and this confirms that the approach of EIA has to be understandable by planning professionals, elected members and the general public. The ES itself should, therefore, reflect this.

The EIA process continues through to determination: the ES, and the responses of consultation bodies and the public to the ES and the environmental implications of the planning application comprise the 'environmental information' that must be formally considered and taken into account by the decision-makers before determination of the planning application. A planning application can be refused or approved. Planning permission for an EIA development will be subject to a number of planning conditions; it may also be accompanied by a legal agreement negotiated with the local planning authority (including under Section 106 of the Town and Country Planning Act 1990).

Conditions and legal agreements can require detailed specification of mitigation commitments established as necessary in the ES (or otherwise in the EIA), together with monitoring and management of the development. They are in effect used to carry forward the commitments made in the ES through to the reality of the construction and occupation/operation (and, where relevant, decommissioning and restoration) stages. The ES should therefore preferably include a section on environmental management and 'follow-up' post-decision practices. This will provide a framework for identifying mitigation measures and the specification of the means of their implementation, including any monitoring, community involvement and feedback to future planning and management decisions.

1.6 Professional Standards and Review

As stated above, under the EIA Regulations the ES will be considered by the planning authority as part of the overall planning application documentation, in order for officers to prepare comments and recommendations to elected members making the decision on the application. It is likely at this stage that the authority will compare the ES with the information that it requested in any Scoping Opinion. The ES will also be reviewed and commented on by consultation bodies and members of the public. To supplement this local feedback, the ES may also be subject to a formal review for its quality and adequacy of its information. There are review systems available which systematically check the adequacy of the ES against the legislative requirements and good practice guidance. The Institute of Environmental Management and Assessment (IEMA) was established to improve the standard of ESs (Wood and Jones reported on the inadequacy of the majority of ESs in the 1980s) and, more recently, the adequacy of ESs has been challenged in the courts through judicial review. IEMA has established criteria based on the work of Lee and Colley at the EIA Centre at the University of Manchester. Many planning authorities will seek a quality review of the ES from IEMA or external consultants because of their own inexperience of such major developments, issues raised by consultees or lack of resources.

Jones, C., Lee, N. and Wood, C. (1991) *UK Environmental Statements 1988-90*

Links

IEMA

- Professional standards
- Research and opinions
- ES reviews
- Specialist interest groups

The Institute undertakes research in the field of EIA, produces guidelines on particular topics and delivers services to IEMA corporate members

www.iema.net

IAIA

- International fora, networks and conferences
- Principles of EIA best practice
- Guidelines for lead impact assessment practitioners
- Ireland-UK branch

www.iaia.org

Guiding principles of sustainable development

- Living within environmental limits
- Ensuring a strong, healthy and just society
- Achieving a sustainable economy
- Promoting good governance
- Using sound science responsibly

– ODPM 2005. *Securing the Future: The UK Government Sustainable Development Strategy*



we are all environmental managers now

– Environment Agency 2000. *An Environmental Vision*



Further information

ODPM 2005. *Securing the Future: The UK Government Sustainable Development Strategy*

PPS12: *Local Development Frameworks*

DETR 2000. *A Strategy for more Sustainable Construction*

ODPM 2005. *Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents. Guidance for RPBs and LPAs*

IEMA is the professional institute for EIA in the UK and Ireland, and other institutions maintain professional standards for other disciplines which contribute to EIA. The International Association for Impact Assessment (IAIA), based in the USA (with an Ireland-UK branch), is the main international membership organisation for EIA and other forms of impact assessment, and also prepares good practice advice on EIA.

1.7 Links

Strategic Environmental Assessment (SEA) considers the environmental effects of plans and programmes, and is the process that the EC originally proposed prior to EIA. The long-overdue Directive on SEA was published in 2001, and is implemented into legislation through the Environmental Assessment of Plans and Programmes Regulations 2004 and separate Regulations in Scotland. Methodologies for Sustainability Appraisal (SA) have been developed to appraise the sustainability of development plans (and as required by PPS12, *Local Development Frameworks*). These have tended to evolve from SEA methods, and include the social and economic elements of the agenda as well as the environmental ones. In England and Wales, government guidance and practice is for SEA to be included within SA; in Scotland, SEA remains separate from other procedures.

Sustainable development (SD) is now enshrined in the UK planning system, and EIA is a technique that can assist in progressing the objectives and principles of SD by protecting natural resources and the environment. The relationships between the wider environment and health/social well-being are increasingly being understood. The practice of Health Impact Assessment for policies, plans and projects is being increasingly pursued by government health departments and agencies, either as part of or in parallel to EIA and SEA. Similarly, the opportunities to facilitate development and regeneration through improved environmental conditions are becoming recognised. The PPS1 supplement on climate change proposes an assessment of energy and climate implications for planning applications and plans, within the Design & Access Statement and/or ES for a development. Sustainability of resource usage in design and construction, including energy and materials, should, therefore, be reported in the ES.

The requirement for Appropriate Assessment of the implications of projects, plans and programmes on sites of designated international nature conservation importance (under the Habitats Directive 92/43/EEC, implemented by the Conservation (Natural Habitats &c.) Regulations 1994 (as amended)) is, although a separate legal requirement to EIA and SEA, often carried out either in conjunction with or in parallel to these procedures.

Cumulative Effects Assessment (CEA) is the practice that considers the cumulative effects of a number of development proposals or plans and programmes together, within the framework of EIA and SEA, while focusing on the receptors and issues affected.

The commitment to mitigation reported in an ES through a draft Environmental Management Plan (EMP) can provide the framework for the regulators and the contractors. If the developer and/or the contractor have an Environmental Management System (EMS), additional reassurance will be given to regulators and the public. The new international standard ISO/DIS 19011 will help organisations integrate quality and environmental management, allowing a single audit of both systems.

1.8 The Future

This handbook aims to be a pragmatic guide for everyone involved in the EIA process and to ensure that legal requirements are met. However, legislation and practice continually change and, therefore, we guide the reader in the direction of good practice, where appropriate, and with an awareness of emerging issues and requirements. For example, the Human Rights Act 1998 has been shown to test claims made in ESs, and planning authorities will have to consider whether their decisions have an impact on the rights of the individual.

The European Commission has been considering whether consolidation of the EIA and SEA Directives might achieve greater consistency and efficiency in environmental assessment across Member States and also achieve harmonisation between the Directives. An example of the practical application of such an approach is being developed in the UK: the Radioactive Waste Management Directorate is preparing a plan for the geological disposal of the UK's radioactive wastes. Tiered Environmental and Sustainability Assessments are proposed from the strategic to the project level with a proactive approach to stakeholder engagement, including working in partnership with potential host communities, representing best practice. (See www.nda.gov.uk.)

This second edition of the handbook is published at the same time as international studies are beginning for an update on the effectiveness study of environmental assessment undertaken by IAIA. It is expected that these studies will signpost further improvements in the practice of environmental assessment.

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In the beginning we built cities to overcome our environment. In the future we must build cities to nurture it

– Sir Richard Rogers 1995. Reith Lectures

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Greenwich Millennium Village and Ecology Park