



Consultation on changes to the Environmental Impact Assessment Regulations

Summary

The Government is consulting on revised, consolidated Environmental Impact Assessment Regulations. The changes are largely just consolidating the previous regulations, however, there are changes that bring the law up-to-date with recent case law. These include:

- changes or extensions to Schedule 2 development may now require an Environmental Impact Assessment;
- extending screening to all changes or extensions to Schedule 1 development;
- a requirement to give reasons for negative screening; and
- a simplification in relation to Multi stage consents.

Nabarro shall be commenting on this consultation.

Consultation on new Regulations

On 9 August 2010, the Department for the Communities and Local Government (CLG) outlined its proposals for consolidating and amending the Town and Country Planning (Environmental Impact Assessment (England and Wales) Regulations 1999 (as amended) (the "1999 EIA Regulations"). These are to be replaced by the Town and Country Planning (Environmental Impact Assessment) Regulations 2010 (the "2010 EIA Regulations"). The Consultation closes on Monday 25 October 2010 and a summary of the responses received will be published on the [CLG website](#) by 25 January 2011. CLG also intend to produce updated procedural guidance shortly after the 2010 EIA Regulations come into force.

To view the consultation and the draft 2010 EIA Regulations, click [here](#).

Key Amendments

A wholesale review of the 1999 EIA Regulations is not intended. This is because the European Commission is currently consulting on a revision to EU Directive 85/8377 (the "EIA Directive") which the 1999 EIA Regulations transpose. However, certain changes are required to take into account recent case law and oversights in previous drafting.

Ask a question

If you have any questions or would like to feed your comments into the Nabarro response, please contact:

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Key Changes for Urban Development:

Changes or amendments to Schedule 2 development such as urban development projects may now require the environmental impact assessment of the whole project.

The key amendments are:

Changes or extensions to Schedule 2 development may now require an Environmental Impact Assessment

Recent case law stated that the 1999 EIA Regulations did not properly implement the EIA Directive as to changes or extensions to existing or approved developments. This was because the 1999 EIA Regulations stated that only the environmental effects of the change or extension needed to be considered. Instead the environmental effects of the *whole*, modified development should be assessed.

Extend screening to all changes or extensions to Schedule 1 development

Currently separate thresholds apply to changes or extensions to Schedule 1 developments. Due to the nature and size of most Schedule 1 developments, almost invariably these thresholds are met. Therefore CLG propose 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.

Reasons for negative screening

The draft 2010 EIA Regulations require that where the Secretary of State issues a screening direction, or a planning authority issues a screening opinion, that no Environmental Impact Assessment (EIA) is required, then the reasons for this must be made available. This is in line with the existing requirement to give reasons when an EIA is required.

Multi stage consents

CLG intend to remove a provision in the 1999 EIA Regulations, relating to multi stage consents, which went beyond the requirements of the EIA Directive. Currently, where there are applications for outline planning consent and subsequent applications for approval of reserved matters, there is a need at each stage for public consultation on an EIA or amendments to any existing Environmental Statement. The draft 2010 EIA Regulations remove this requirement when the environmental statement produced at the outline stage still satisfies the EIA Regulations at the later stage.

Schedule 1 Developments (include)	Schedule 2 Developments (include) (above certain minimum sizes)
Crude Oil Refineries	Agriculture and Aquaculture
Power Stations	Extractive industry
Asbestos extraction installations	Energy industry
Industrial Chemical installations	Metal processing
Longer transport constructions	Mineral industry
Various Waste Disposal Facilities	Chemical industry
Water treatment facilities	Food industry
Extraction of Petroleum and Natural Gas Facilities	Urban Development Projects including shopping centres
Quarries and open-cast mining over 25 hectares	Infrastructure projects
Iron and Steel Works	Tourism and Leisure

Other changes

Further minor amendments include:

- a change to the threshold height for wind farms under Schedule 2;
- the addition of the Marine Management Organisation as a statutory consultee;
- the removal of the criminal offence where an applicant intentionally or recklessly provides misleading information when certifying that they have placed a notice on land publicising the environmental statement. This is considered disproportionate as there is no comparable requirement where it is certifying a planning application has been made;
- new Schedule 1 and 2 categories relating to the geological storage of carbon dioxide to take account of new EU law.

Nabarro shall be submitting comments to this consultation. If you would like to feed any comments into our response please contact [Clare](#), [Christopher](#) or your usual Nabarro contact.

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