

# The Planning Series

## 10 – Environmental Impact Assessment

August 2022



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# **The Planning Series**

## 10 – Environmental Impact Assessment

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## Introduction

This quick guide gives an overview of Environmental Impact Assessment (EIA). EIA is a procedure that ensures the environmental implications of developments are taken into account before planning decisions are made. This briefing outlines what EIAs are, when they are required, what is meant by screening, what happens to planning applications without an Environmental Statement, what EIAs have to include, and how Environmental Statements are taken into account.

## What is an Environmental Impact Assessment?

An Environmental Impact Assessment (EIA) is a procedure that ensures environmental implications are taken into account before planning decisions are made. An EIA assesses the possible positive and negative impact a proposed project may have on the environment. This information is submitted to the local planning authority or the Welsh Government in the form of an Environmental Statement (ES) to be considered alongside a planning application. An ES must contain a non-technical summary.

The process for undertaking an EIA must comply with **EU Directive 2011/92/EU**, known as the EIA Directive. The EIA Directive was amended in 2014 by **Directive 2014/52/EU** to simplify the rules for assessment. The changes also aimed to improve the level of environmental protection, with a view to making business decisions on public and private investments more sustainable in the longer term. Threats and challenges such as resource efficiency, climate change and disaster prevention **are strengthened**. Member States had to apply the rules from May 2017.

Powers to make regulations about environmental assessment before the grant of planning permission are contained within section **71A of the Town and Country Planning Act 1990**. The requirement to carry out an EIA on certain planning proposals is in the **Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017** (the 2017 Regulations), which implement

**Directive 2014/52/EU** in Wales in respect of land use planning. Despite the UK no longer being a Member State of the European Union, EU law was transferred into UK law following EU exit and the Regulations still apply in Wales.

## When is an EIA required?

In general, an EIA will be needed for projects likely to have significant effects on the environment by virtue of their nature, size or location. The determination of whether or not an EIA is required for a particular development proposal can take place at a number of different stages:

- the developer may decide that an EIA is required and will submit an ES with the planning application;
- the developer may, before submitting any planning application, request a 'screening opinion' from the local planning authority (detailed later);
- the local planning authority may determine that an EIA is required following receipt of a planning application;
- the Welsh Ministers may also determine that an EIA is required for an application that has been called in for their determination or is before them on appeal; or
- the Welsh Ministers may direct that an EIA is required at any stage prior to the granting of consent for particular development.

If the need for an EIA only arises after the planning application has been submitted, consideration of the application will be suspended pending submission of an ES.

## Types of development requiring an EIA

An EIA is compulsory for major types of development listed in **Schedule 1** of the 2017 Regulations (known as "Schedule 1 developments"). **Schedule 2** indicates other types of development for which an EIA is required when certain thresholds and criteria are met.

The **Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019** add the installation of certain overhead electric lines to Schedule 2.

Changes or extensions to Schedule 1 or Schedule 2 developments which may have significant adverse effects on the environment also fall within the scope of the 2017 Regulations.

Different regulations apply to projects which may require assessment under the Directive but are exempt from the town and country planning system in Wales. For example land drainage works, forestry works and marine fish farming.

## What is a Screening Opinion?

Determination by the local planning authority of whether a development needs an EIA is known as a “screening opinion” and can be undertaken before or after a planning application is submitted. Developers who are in doubt about whether an EIA would be required can request a screening opinion from the local planning authority prior to submission of their planning application.

The request should include a plan indicating the proposed location of the development, a brief description of the nature and purpose of the proposal and its possible environmental effects, giving a broad indication of their likely scale.

On receipt of the request, the local planning authority will consider whether the proposed development is likely to have significant effects on the environment taking into account factors such as its nature, size or location. **Schedule 3** of the 2017 Regulations identifies three broad criteria to be considered:

- the characteristics of the development (size, design, use of natural resources, quantities of pollution, waste generated, risk of accidents and risk to human health);
- the environmental sensitivity of the location; and
- the types and characteristics of the potential impact (magnitude and duration).

The local planning authority must adopt its screening opinion within three weeks of receiving a request. A copy of the relevant documents must be made available for public inspection for two years at the place where the planning register is kept (each local planning authority holds a planning register), or transferred to Part I of the register (Part 1: application forms, plans and supporting information) if a planning application is subsequently made for the development.

Developers may appeal to the Welsh Ministers for a ‘screening direction’ where they disagree with a local planning authority’s decision to adopt a screening opinion that an EIA is required, or where an authority fails to adopt any opinion within the given time.

## Planning applications without an accompanying Environmental Statement

If the local planning authority receives a planning application for what appears to be a Schedule 1 or Schedule 2 development without an accompanying ES, and no screening opinion has been adopted to date, it must now adopt one:

- if an EIA is not required, a screening opinion explaining this should be adopted and placed on Part I of the planning register with the planning application; or
- if an EIA is required, the local planning authority must notify the applicant, giving full reasons for its view, and a copy of the notification must then be placed on Part I of the planning register.

If an applicant wishes to continue with the application they must reply within three weeks. The reply should indicate the applicant's intention either to provide an ES or to ask the Welsh Ministers for a 'screening direction' (as above), in which case the local planning authority should suspend consideration of the application. If the applicant does not reply within three weeks, the application will be deemed to have been refused. No appeal to the Welsh Ministers against such a refusal would be possible.

## What are the requirements for EIAs?

Where an EIA is required, the developer must compile detailed information about the likely main environmental effects of a project. **Schedule 4** of the 2017 Regulations sets out the information to be included in the ES. This includes:

- a description of the development including;
  - a description of the location and of the physical characteristics of the whole development;
  - a description of the main characteristics of the operational phase of the development (in particular any production process);
  - an estimate, by type and quantity, of expected residues and emissions;
- a description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) and reason for selecting the chosen option;
- a description of the relevant aspects of the current state of the environment (baseline scenario);

- a description of the factors specified in regulation 4(2) likely to be significantly affected by the development: population, human health, biodiversity, land, soil, water, air, climate, material assets, cultural heritage, including architectural and archaeological aspects, and landscape;
- a description of the likely significant effects of the development on the environment resulting from, for example, the use of natural resources, the emission of pollutants and the risks to human health;
- a description of the forecasting methods or evidence used to identify and assess the effects on the environment;
- a description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment;
- a description of the expected significant adverse effects of the development on the environment deriving from risks of major accidents and/or disasters which are relevant to the project concerned;
- a non-technical summary of the above information; and
- a reference list detailing sources used in the ES.

The local planning authority must send the planning application and ES to the Welsh Ministers, and also forward the application to any consultation body which has not received a copy directly from the applicant. The ES and the planning application must be publicised and the public given the opportunity to submit their views on the application.

## **Access to publicly held information**

To help the developer, the **Environmental Information Regulations 2004** provide for public access to environmental information held by public authorities. Such information might include, for example, the state of the elements of the environment, such as air and atmosphere, water, soil, land; any factors or measures affecting it; reports on the implementation of environmental legislation; cost-benefit analyses; and the state of human health and safety.

The 2004 Regulations do this in two ways:

- public authorities must make environmental information available proactively; and
- members of the public are entitled to request environmental information from public authorities.

## What is a Scoping Opinion?

Developers can obtain a formal opinion from the local planning authority as to what should be included in the ES, known as a “scoping opinion”. This allows the developer to be clear about what the local planning authority considers the main effects of the development are likely to be and, therefore, the ‘extent of issues’ which the ES should focus on.

## How is the Environmental Statement taken into account?

The local planning authority has sixteen weeks from the date of receipt of the ES to determine the planning application, instead of the normal eight weeks from the receipt of the planning application [see **Regulation 61**].

The local planning authority must seek the views of the consultation bodies, which include Natural Resources Wales and the Welsh Ministers. The local planning authority or the Welsh Ministers must take account of the ES, together with any other information, comments and representations made on it, in deciding whether or not to give consent for the development.

Where an ES reveals that a development would have an adverse impact on the environment it does not automatically follow that planning permission will be refused. If permission is granted, conditions may be attached that include mitigation measures that can be based on the ES.

The local planning authority must inform the public and the Welsh Ministers of the outcome of its decision-making and give the main reasons why the decision was made. If the decision has not been made after sixteen weeks, the applicant may appeal to the Welsh Ministers against non-determination.

## Key terms

**Environmental Impact Assessment (EIA):** a procedure that ensures environmental implications are taken into account before planning decisions are made.

**Environmental Statement (ES):** sets out the outcome of the EIA and is submitted to the planning authority to be considered alongside a planning application.

**Screening Opinion:** determination by the local planning authority of whether a development needs an EIA.

**Screening Direction:** the outcome of an appeal to the Welsh Ministers where developers disagree with a local planning authority that an EIA is required, or where an authority fails to adopt any opinion within the given time.

**Scoping Opinion:** a formal opinion from the planning authority as to which topics the EIA/ES should focus on.

## Key sources

### Welsh Government

The [planning section](#) of the Welsh Government website provides information including:

- [Planning Policy Wales](#) (Edition 11) 2021
- [Welsh Office Circular, Circular 11/99, Environmental Impact Assessment \(EIA\), 1999](#)
- [Environmental impact assessment for town and country planning: summary of changes](#), 2017
- [Development Management Manual](#) (Wales) 2017 Section 6.2 provides guidance on the process for EIA.

### European Commission

European Commission: [Environmental Impact Assessment](#)

### Planning Aid Wales

[Planning Aid Wales](#) is a charitable organisation helping [eligible](#) individuals and

communities to participate more effectively in the planning system. It provides advisory services, including a helpline.

## Key legislation

**EU Directives 2011/92/EU** and **2014/52/EU**

**Town and Country Planning Act 1990**

**Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017**

- **Schedule 1** lists major developments for which an EIA is compulsory
- **Schedule 2** lists thresholds and criteria for other developments requiring EIA
- **Schedule 3** lists the criteria for a screening opinion
- **Schedule 4** sets out the information to be included in the ES

**Town and Country Planning (Environmental Impact Assessment) (Wales) (Amendment) Regulations 2019**

**Environmental Information Regulations 2004** make provisions under the **Freedom of information Act 2000**

## Senedd Research

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