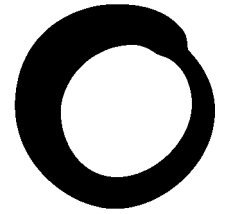


August 2006



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Environmental Impact Assessment

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About this guide

Environmental Impact Assessment (EIA) is a key aspect of many large scale planning applications. It is a technique which is meant to help us understand the potential environmental impacts of major development proposals. Unfortunately as often as not both the process and the outcome of EIA can be complex and confusing, leaving local communities unsure as to how a development might affect them. This guide is intended as a broad introduction to the Environmental Impact Assessment (EIA). The material is drawn from regulations, circulars and guidance and is designed to help individuals understand what EIA is and in what circumstances it should be applied. The guide is not intended to provide guidance on how to prepare an EIA. For example it does not explain how to prepare an archaeological survey or landscape assessment. The overall theme of this guide is to encourage local communities to engage in the EIA process. Experts do not always know best and by ignoring local knowledge, their decision may have disastrous consequences for local people living near development sites.

What is environmental impact assessment?

In a nut shell EIA is just an information gathering exercise carried out by the developer and other bodies, which enables a Local Planning Authority to understand the environmental affects of a development before deciding whether or not it should go ahead. The really important thing about environmental assessments is the emphasis on using the best available sources of objective information and in carrying out a systematic and holistic process, which should be bias free and allow the local authority and the whole community to properly understand the impact of the proposed development. Environmental assessment should lead to better standards of development and in some cases development not happening at all. Where developments do go ahead, environmental assessments should help to propose proper mitigation measures. Environmental impact assessment is meant to be a systematic process which leads to a final product, the Environmental Statement (ES).

Important jargon you will need to know:

- Environmental Impact Assessment (EIA) is a term used to describe the total process of assessing the environmental effects of a development project.
- An Environmental Statement (ES) is used to describe the written material submitted to the local planning authority in fulfilment of the EIA regulations.
- The term Environmental Assessment (EA) is no longer used, so as to avoid confusion with the Environment Agency.

So where does EIA come from?

The EIA process derives from European law. The European law basis is Directive 85/337, The Assessment of the Effects of Certain Public and Private Projects on the Environment as amended by EC Directive 97/11/EC. The Directive is mainly implemented in UK legislation through the Town and Country Planning (Assessment of Environmental Effects) (England and Wales) Regulations 1999 (SI 1999 No. 293). This is generally known as the EIA Regulations. Important guidance on the interpretation of the EIA Regulations and on the procedure to be used can be found in ODPM Circular 2/99 Environmental Impact Assessment.

The Regulations only cover decisions made under Town and Country Planning legislation. However, the Directive requires that all types of developments having significant impacts on the environment go through the EIA process. Therefore there are separate pieces of legislation (and

some non-legislative processes) covering EIA for other types of developments including highways, power stations, water resources, land drainage, forestry, pipelines, harbour works and many others. UK regulations have been criticised as not fully interpreting the spirit of the EIA directive. Individual cases over major development proposals have led to controversial debates about quality of EIA. Third parties have complained to the European Commission about the failure of the UK Government to fully implement the EC directives on EIA.

As well as the circular 2/99 there are a number of other key documents which outline the Regulations and the methodology of EIA including ODPM's Guide to Procedures: Environmental Impact Assessment (now found under the auspices of the Department for Communities and Local Government).

When is an EIA required?

In a simple world EIA would apply to all forms of development, but just to confuse everyone, EIA is required for some types of development and not others. Deciding on whether an EIA is required can be the source of major dispute between developers, communities and local authorities.

The EIA regulations define two schedules of developments. For Schedule 1 projects an EIA must always be carried out. For Schedule 2 projects an EIA must be carried out if the development is likely to have a significant impact on the environment by virtue of its nature, size or location (see selection criteria below). The definitions allow for considerable uncertainty about the need for EIA in specific circumstances.

Examples of Schedule 1 projects include:

- Major power plants
- Chemical works
- Waste disposal incineration
- Major Road Schemes

Examples of Schedule 2 Projects include:

- Quarries and opencast
- Some intensive livestock rearing
- Overhead transmission lines
- Surface storage of fossil fuel
- Foundries and forges
- Coke ovens
- Manufacture of dairy products
- Brewing
- Some textile operations
- Rubber production
- Wide range of infrastructure projects
- Waste water treatment plants
- Holiday villages

- Golf courses

All Schedule 2 developments are based on thresholds. A proposed development only becomes a Schedule 2 development where it exceeds the threshold. For example a 'shipyard' development only falls within Schedule 2 where 'the area of new floor space exceeds 1,000 square metres' (paragraph 4.g of Schedule 2).

It is important not to confuse the issue of 'thresholds' with the issue of whether a Schedule 2 development must undergo EIA because it is likely to have a significant effect on the environment. Just because a project falls within one of the categories set out in Schedule 2 and exceeds the Schedule 2 threshold, does not mean that EIA is required. The question is still whether the proposed development is likely to have a significant effect on the environment.

The three stage process is therefore as follows:

1. Is the proposed development within a category set out in Schedule 2?

If so, either:

2. a. does it exceed the threshold set out for that category in Schedule 2?

or b. is it in a 'sensitive area' such as a SSSI, SPA, national park, AONB etc?

3. If so, is it likely to have a significant effect on the environment by virtue of its nature, size or location?

If the answer to all three of those questions is 'yes' then an EIA is required.

If the answer to any of those questions is 'no' then an EIA is not required.

Questions 1 and 2 are objective questions of fact. However, question 3 is a matter of opinion and different authorities may reach different views on that question. A decision on question 3 is therefore much harder to challenge in Court.

Alright, so how do local authorities reach a decision on all of these tests?

The overall test for whether EIA is required for a Schedule 2 description of development is whether the proposed development would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

Government guidance states that EIA will be needed for Schedule 2 projects in three main types of cases:

- for major projects which are of more than local importance;
- occasionally for projects on a smaller scale which are proposed for particularly sensitive or vulnerable locations;
- in a small number of cases, for projects with unusually complex and potentially adverse environmental effects; where expert and detailed analysis of those effects would be desirable and would be relevant to the issue of principle as to whether or not the development should be permitted.

The decision should be taken by the local planning authority or the Secretary of State on a case-by-case basis taking into account the criteria set out in the new Regulations. The criteria which must be taken into account when screening a Schedule 2 development are set out in Schedule 3 to the Regulations which are as follows:

Schedule 3 selection criteria for screening schedule 2 development:

1 Characteristics of development

The characteristics of development must be considered having regard in particular to:

- the size of the development;
- the accumulation with other development;
- the use of natural resources;
- the production of waste;
- pollution and nuisances;
- the risk of accidents, having regard in particular to substances or technologies used.

2 Location of development

The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard in particular to:

- the existing land use;
- the relative abundance, quality and regenerative capacity of natural resources in the area;
- the absorption capacity of the natural environment, paying particular attention to:
 - i. wetlands;
 - ii. coastal zones;
 - iii. mountain and forest areas;
 - iv. nature reserves and parks;
 - v. areas classified or protected under Member States' legislation; areas designated by Member States pursuant to Council Directive 79/409/EEC on the conservation of wild birds[41] and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora[42];
 - vi. areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
 - vii. densely populated areas;
 - viii. landscapes of historical, cultural or archaeological significance.

3 Characteristics of the potential impact

The potential significant effects of development must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to:

- the extent of the impact (geographical area and size of the affected population);
- the transfrontier nature of the impact;
- the magnitude and complexity of the impact;
- the probability of the impact;

- the duration, frequency and reversibility of the impact.

The 1999 regulations and circular 02/99 make clear that the usual indicative criteria for requiring EIA in schedule 2 cases may not apply when the development is likely to impact on environmentally sensitive locations.

Paragraph 36 of the circular makes clear that an EIA will normally be required for any development likely to have significant impacts on SSSIs and that in areas such as National Parks and areas of Outstanding Natural Beauty, the probability of requiring environmental impact assessment for particular development is increased.

There are a number of complex ideas bound up in the assessment of the likely impact of the development and its consequent need for environmental impact assessment. The sensitivity of particular receptors to environmental impact may, for example, include both social and ecological impacts. Likewise there is an emerging trend to see the environmental carrying capacity of an area in terms, not just of wildlife, but as a measure of for example air pollution and its impact on human health. This has led to an extremely important and contentious area of environmental impact assessment and planning regulation which is the assessment of health impacts and their materiality to planning decisions. For major developments, Local Planning Authorities have required health impact studies to be prepared.

What about extensions to existing developments?

Extensions or changes to existing development will only require environmental impact assessment if they are likely to have significant negative environmental impact. Such impact should be measured against the indicative thresholds set out in column 2 of schedule 2.

Who decides if an EIA is required?

A developer can decide to submit an EIA voluntarily for a large scale development. Normally, however, it is the local planning authority who decides if an EIA is required in consultation with the applicant.

The local planning authority

The local planning authority may be asked informally by the applicant whether EIA is necessary for schedule 2 projects. The 1999 regulations now require a local planning authority to provide on request a formal opinion as to whether EIA should be carried out, and this is termed a screening opinion. The local planning authority must be satisfied that it has received sufficient information to give a safe opinion, bearing in mind that the failure to require an EIA for a project subsequently found to have significant environmental impacts, could be subject to costly legal challenge. The 1999 regulations require that such opinions be made public by formally recording them on the planning register.

Where an application is submitted for a development falling within any of the Schedule 2 descriptions without an ES, the local planning authority may determine that EIA is required and refuse to consider the application until an ES is submitted. Such determination should be made within three weeks, beginning with the date of receipt of the application.

The Secretary of state

The Secretary of State has reserved powers to intervene in cases where the local planning

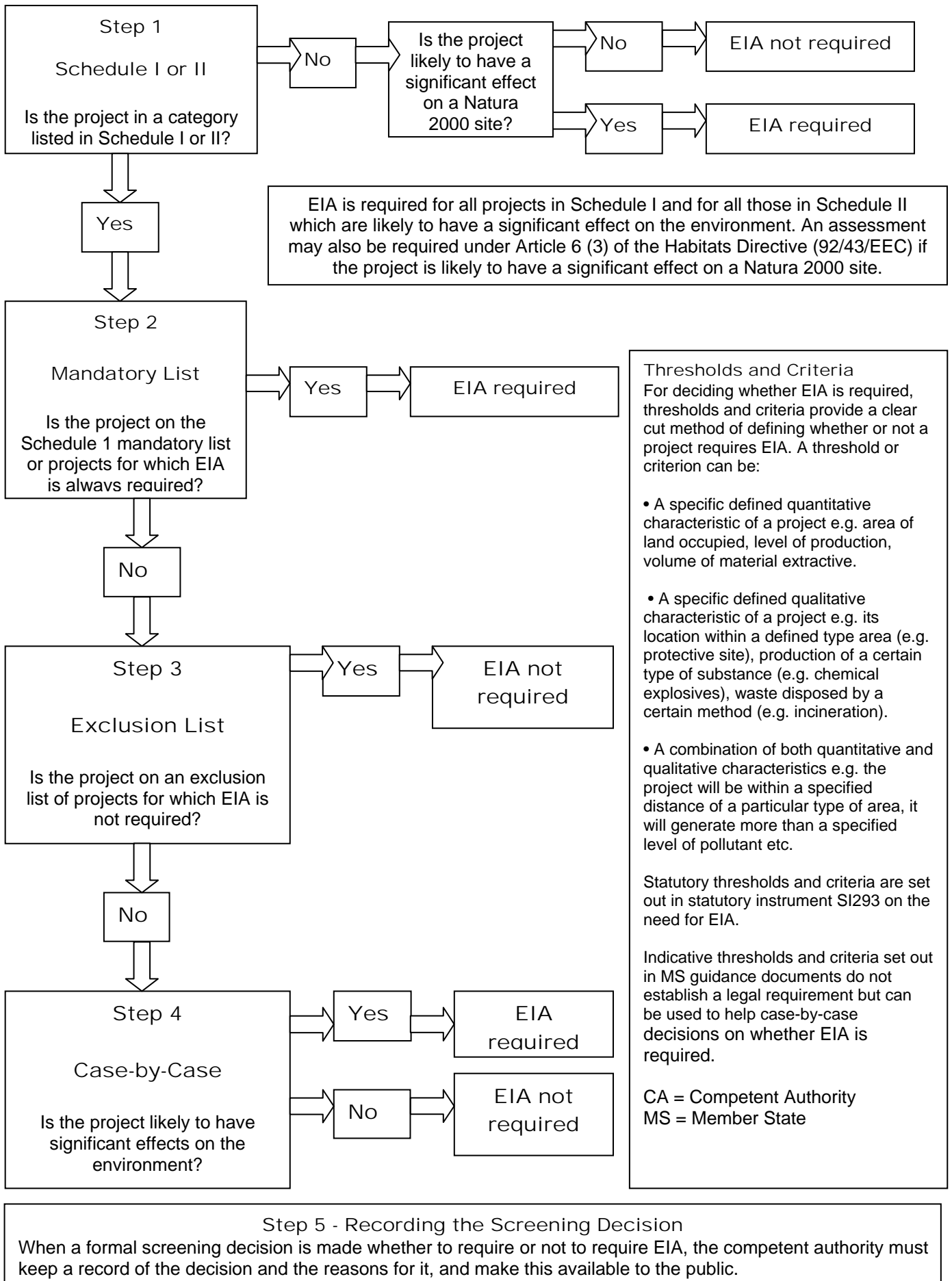
authority have failed to give an opinion on whether an EIA is needed within the prescribed period, or where the applicant disagrees with the opinion given by the local planning authority.

EIA and Case Law

In recent years, there have been a large number of cases in the UK courts and the European Court of Justice that have looked at questions surrounding environmental impact assessments. One important case illustrates the range of EIA questions which the courts have dealt with:

In *Berkeley v Secretary of State for the Environment* 2000, the House of Lords ruled that EIA could no longer be inferred. In short, this means that planning authorities can no longer say that while they have not carried out an explicit EIA, their determination process amounts to an EIA by addressing key environmental impacts. This was often used as a defence by local authorities who had not required EIA. The Lords ruled that EIA was a distinct set of methods which must be applied coherently and in their entirety. In effect, local authorities are now under more pressure to get their decisions about whether to require an EIA right in the first instance.

Environmental impact assessment criteria



So what stages of the EIA should we look out for?

Identifying Alternatives

Part II of Schedule 4 of the regulations requires the applicant to provide a reasoned decision of the main alternatives to development. These requirements raise a number of important new issues about planning decision making. It suggests for example that a developer would honestly seek to examine other development sites which may not be in their control. It also suggests that, in the case of waste disposal, consideration should be given to more sustainable solutions in sectors outside the operational range of the company. In practice therefore, the assessment of alternatives is at present fairly meaningless, since developers will not identify an option likely to make profits for a competitor.

Scoping

Scoping is simply the part of the process when the applicant and the LPA decided what issues the EIA will investigate. The emphasis should be on the 'main' or 'significant' effects. Other issues may be of little or no significance for the particular development and will need only brief treatment to indicate that their relevance has been considered. Regulation 10 of the Regulations allows developers to obtain a formal scoping opinion from an LPA on what should be included in an ES. This is a controversial move because it throws a considerable administrative burden on planning officers. It also means that responsibility for failing to include an important issue rests as much with planning officers as it does with the applicant.

Baseline

The scoping exercise enables the applicant to establish the existing conditions or standards referred to as the baseline against which the effects of the proposed development may be judged. This can be crucial stage for communities who may have local knowledge which is highly relevant to understanding the baseline conditions.

Consultation

As well as consulting the local authority, anyone conducting an EIA is obliged to consult a set of statutory consultees. These names, which include government agencies, are laid down in regulation and are obliged to provide information which they hold and which might be relevant to the EIA. In practice, there are some key consultees, such as the Environment Agency who deal with a whole range of pollution issues and flood defence and, English Nature and English Heritage who deal with biodiversity and archaeology respectively.

The consultation bodies are only required to provide information already in their possession usually held on public registers. They are not required to carry out any research on behalf of the applicant. A reasonable charge may be made to cover the cost of making the information available to the applicant.

In addition to the statutory consultation, many of those working with third parties have taken the directive requirement for consultation as applying to the whole community, placing a burden on the developers negotiating with local communities. In reality, while this may be best practice, UK EIA regulations do not require any additional level of public consultation. The applicant may however choose to consult other local organisations with a specific interest, particularly where local groups or societies may have prepared species schedules

and carry out regular monitoring.

Publicity

For an ES accompanying a planning application, the publicity by the local planning authority consists of the following:

- a copy of the ES is put on Part I of the Register of Planning Applications available for inspection by members of the public;
- a site notice in the prescribed form is displayed on or near the application site for not less than 21 days;
- an advertisement is put in a newspaper circulating in the locality of the application site.

Where the development involved is likely to be controversial, the planning authority may provide copies of the ES in local public libraries or at local authority offices or other convenient locations.

If an ES is submitted after the Planning Application, it is the applicant's responsibility to organise publicity by:

- a notice that should be put in a newspaper circulating in the locality of the application site;
- a site notice on the application site containing the same information as the newspaper advertisement, in a position where it is visible to members of the public without trespassing. The site notice should remain in position for not less than seven days in the month immediately preceding the submission of the ES.

A certificate that the site notice has been posted, together with a copy of the newspaper advertisement, should be supplied to the local planning authority with the ES.

What's the format of an environmental statement?

Once the EIA has been carried out, the information should be systematically presented in the environmental statement. The Regulations specify in Schedule 4, the information to be included in the ES is as follows:

Description of the development, including in particular:

- description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;
- a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;
- an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc) resulting from the operation of the proposed development.

A description of the aspects of the environment likely to be significantly affected by the proposed development, including in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

A description of the likely significant effects of the proposed development on the

environment should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from:

- the existence of the development;
- the use of the natural resources;
- the emission of pollutants, the creation of nuisances and the elimination of waste and the description by the applicant of the forecasting methods used to assess the effects on the environment.

A description of the measures envisaged to prevent, reduce and where possible, offset any significant adverse effects on the environment. A non-technical summary, of the information provided above.

An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information. There is no statutory or prescribed format for the arrangement of this information. This will depend upon the scale of the development project, and the complexity of the Issues that have been investigated. The ES can be a lengthy document with separate technical annexes.

At present, for an environmental statement of any significance, it would be usual to provide the information on a CD-Rom.

An Environmental Statement (ES) is often packaged in three parts

Part I: The planning application

- Planning application form
- Certificate
- Schedule of plans and drawings

Part II: The environmental statement

Non-technical summary:

This is the summary of the contents and conclusions of the EIA. It is the part of the ES which may be published separately for circulation on a non-statutory basis to local residents or interested parties. Beware of the often generalised nature of non-technical summaries. If you really want to get to grips with an application, you need the full ES.

Environmental statement:

This sets out the information about the development in more detail than the non-technical summary. The ES draws together the threads which have been explored through the technical reports. These issues can be summarised under various headings, depending upon the nature of the development proposed, and having regard to the various items identified in the Regulations (see 6(1) Appointment of environmental consultants). It is necessary to define the 'baseline' that has been adopted in order to demonstrate the effects, if any, of the development upon each key issue that has been identified by the scoping exercise. Also, where an issue has not been investigated in detail, this should be clearly

explained in order to avoid any third party questioning the adequacy of the EIA.

The mitigation measures should be described either in relation to each item or collated in a separate section of the ES, which may also constitute the suggested environmental management and monitoring scheme to be followed during and after the development has been completed and is operational.

The ES should set out an outline of the main alternatives studied by the applicant and an indication of the main reasons for his/her choice, taking into account the environmental effects.

Main alternatives may include:

- physical location of sites;
- type of processes (where relevant);
- physical appearance, design of buildings and site layout, including materials to be used;
- means of access, including principal mode of transport to be used to gain access to the development.

This component of an ES is often dealt with in a very summary way. It should not be ignored as it could give rise to third-party objections about the adequacy of the ES.

Part III: Technical reports

The individual technical reports prepared for the various effects on the environment, together with the data supporting the conclusions, should be included in Part III. This enables the local planning authority to verify the contents of the ES by reference to the source material, and also be satisfied that the EIA has been sufficiently rigorous and in accordance with the methodology agreed as part of the scoping exercise.

When is an Environmental Statement not an Environmental Statement?

The format and contents of an ES can often be inadequate either in terms of the quality of the assessment or because key parts of the assessment are missing. Frequent defects include, the failure to produce a non-technical summary, the failure to adequately consider human health and the failure to include proper consideration of alternatives. The discussion above has outlined some of the issues which the regulations require EIA to consider. It is also worthwhile making reference to the original EU directive 97/11/EC which sometimes contains more useful indications of the scope of EIA.

The legal principle of direct effect, in which EU directives can have a direct effect in UK law, regardless of whether they have been transposed by UK regulations, means that local communities can mount challenges based on original directives.

Are the public entitled to see the ES and how much should it cost?

The public are entitled to see both the non technical summary and the full ES. The local planning authority is obliged to provide this information. The problem is that they are also entitled to make charges to copy material, which for a full ES might run into hundreds of pounds.

The EIA regulations require that the developer must make available copies of the ES at a reasonable cost. This cost is nowhere defined but the average price for ES is between £60.00 and £120.00. This cost is a major barrier to public participation in the process. It is worth remembering that Parish Councils and elected members can often get free copies of ES.

In the past some local groups have also obtained copies free through appealing to MPs or MEPs. Members of the public can rely on their rights under the Environmental Information Regulations 2004 to obtain copies of the document at no more than the cost of photocopying (see www.RightToKnowOnline.org). One way of saving costs is to ask for a copy of the EIA on a CD-Rom. Where the council has a copy in CD Rom format, then this should cost no more than £1.00 - £2.00 to obtain.

What about assessing the quality of EIA?

Information in planning cannot be seen as always providing a clear technical and objective statement of environmental circumstances. In practice, the ES is often a sales document for the applicant and there have been increasing calls for an independent commission of EIAs to take them out of the hands of those with a vested interest in seeing schemes approved. This realisation is vitally important for the evaluation of EIA since it requires planners and the public to apply a critical assessment of both baseline data and measures designed to secure mitigation.

Beyond this critical mind set, a number of formalised mechanisms have been developed with which to assess the quality of EIA. These methods are summarised in Appendix 7 of the DoE publication 'Good Practice on the Evaluation of environmental Information for Planning Projects (HMSO 1994)'. The most often used system is known as the Lee Colley review Package. This system attempts to divide an ES into its constituent areas and review categories and sub categories in line with an A to F scale. The review process is usually conducted by consultants with experience in each field but in fact any local community group could apply a technique, particularly where they have local knowledge not possessed by the developer.

The major problem with the system is that it's essentially subjective and certainly time consuming. It is therefore unlikely that a decision to reject the contents of ES could be justified solely on such an assessment. In practice the evaluation of ES is based on professional experience and on good knowledge of the application area and its environmental context.

Conclusion

The legal and procedural background to EIA is complex but members of the public can be surprisingly effective in participating in the process if they ignore the jargon, have a basic understanding of the process and apply their local knowledge effectively. Things to look out for are phrases such as "desk top survey" which is short hand for nobody had time to look at the site. The quality of ES can be surprisingly poor, with developers often keen to do the least possible to get the application through, so it is vital local people go on asking critical questions of the applicant and local authority planners. In the future EIA is likely to be applied to ever more forms of development. New measures will soon ensure the Strategic Environmental Assessment of planning policy and investment programmes. EIA can be made into a useful tool to defend the environmental quality of localities but only if local people feel able to engage with the process effectively.

Further information and guidance:

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26 – 28 Underwood Street, London, N1 7JQ
Website: www.foe.co.uk

Planning

Email: planning@foe.co.uk
Website: www.YourPlanningRights.co.uk

Right to Know

Email: right2know@foe.co.uk
Website: www.RightToKnowOnline.org

Rights and Justice Centre

Email: legal@foe.co.uk

Useful web sites

Government

Audit Commission
www.audit-commission.gov.uk

Department for Communities and Local Government
<http://www.communities.gov.uk/>

The Planning Inspectorate
<http://www.planning-inspectorate.gov.uk/>

Environment Agency
www.environment-agency.gov.uk/

Information Commissioners Office
www.ico.gov.uk

Neighbourhood Statistics
www.neighbourhood.statistics.gov.uk

Environment Agency Public Registers
<http://www2.environment-agency.gov.uk/epr/>

Planning Portal
www.planningportal.gov.uk

Non Governmental Organisations (NGO)

Air Quality – UK National Air Quality site
www.airquality.co.uk

Campaign to Protect Rural England planning site
www.planninghelp.org.uk

Environmental Law Foundation
www.elflaw.org/

Liberty
www.liberty-human-rights.org.uk/

Neighbourhood Initiatives Foundation
www.nif.co.uk/

Planning Aid
www.planningaid.rtpi.org.uk

Wildlife and Countryside Link.
www.wcl.org.uk

Specific reading

Community Rights Resource Pack:
<http://www.foe.co.uk/resource/local/planning/resource/index.html>

Department for Communities and Local Government – Environmental Assessment
<http://www.communities.gov.uk/index.asp?id=1143275>

The Planning and Compulsory Purchase Act 2004
www.legislation.hmsso.gov.uk/acts/acts2004/20040005.htm

Royal Town Planning Institute:
<http://www.rtpi.org.uk/resources/publications/environment/eia/>