

The Government's proposes consultation on Environmental Impact Assessment

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On 10th July 2020, the Secretary of State for Environment, Food & Rural Affairs announced that the government would be launching a consultation on Environmental Impact Assessments (EIA) in the Autumn. The Planning White Paper, published at the end of August, set out the principles for a reformed EIA as part of its broader Pillar Two (Planning for beautiful and sustainable places) proposals, which confirmed that the details would be published in a separate consultation. With the transition period shortly ending, and the EU's laws ceasing to have effect, the future publication of the proposals will undoubtedly generate significant interest given the fact that the current regime is not popular with developers.

Background

An Environmental Impact Assessment (EIA) ensures that a planning authority, which is considering a proposed development, takes into account and assesses its impact on the environment before granting planning permission. It is required by the European Union's EIA Directive 2011 (as amended by EIA Directive 2014) and is primarily implemented by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations 2017).

Proposed reforms

The consultation paper has yet to be published and many within the environment community will be keen to see whether there will be a loosening of existing requirements. Whether there will be a weakening of the regime or not, it seems clear that the government intends to facilitate and simplify the EIA process.

Indeed, the Prime Minister's comments in his speech on the economy over the summer that "...*newt counting delays in our system are a massive drag on the productivity and the prosperity of this country*" and that the government intends "...*to scythe through red tape.....*" have suggest that the government will take such an approach. The Planning White Paper set out proposals to speed up the processes; these included environmental aspects being considered at the early stages of a project and data being made available to planning authorities, applicants and other stakeholders thus reducing the need for site specific surveys.

The prospect of weakening the regulations, however, has resulted in unease within the environmental community. Environmental professionals and organisations have warned against diluting the EIA regulations; for example, in response to the Environment Secretary's speech signalling EIA change, Friends of the Earth responded that "... *Any proposals for reform should seek to strengthen and improve their effectiveness, not water them down.*" Some have also expressed concern that such action could be taken because of political considerations over Brexit rather than because of a need for reform. At the same time, however, many in the environmental community do accept that the EIA regulations are in need of reform. For example, while cautioning that 99.9% of projects do not require an EIA (and thus cannot take the blame for delayed projects), the Institute for Environmental Management and Assessment has proposed reforms of its own. The reforms mooted include: investing in the skills and knowledge base of EIA professionals, reducing the scope of the EIA on an evidential basis, and increasing the use of digital tools. It's interesting to note that its proposal to focus on digital use builds on those contained in the planning white paper.

However, while there is concern about a proposed “light touch” regime, it has been noted that, although the current requirements are a part of EU law, it’s the UN treaty that ultimately governs the EIA requirements. The Secretary of State confirmed in his speech that the UK would not retreat from its existing obligations under international conventions; this has also been reiterated in the Planning White Paper, which refers to the new system “...*meeting our domestic and international obligations for environmental protection.*” Ultimately, therefore, even after the transition period ending, the government’s ability to effect substantial change to the EIA regime will perhaps be limited.

Conclusion

Given that the EIA is a requirement of an EU Directive, it was always inevitable that it would be subject to a review as the UK completed its exit from the European Union. There also appears to be consensus both within the government and the environmental community generally that the EIA regime should be improved. However, whether this consensus holds, once the details of the consultation’s proposals are published and examined, remains to be seen.

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