Title:	Impact Assessment (IA)
Proposal to consolidate and amend the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended).	**IA No:** CLG0032
Lead department or agency: Department for Communities and Local Government	**Date: 05/08/2011**
Other departments or agencies:	**Stage:** Enactment
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: Kim Chowns x41696

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The 1999 Regulations transposed into English law the European Union Directive on Environmental Impact Assessment (EIA). Since the 1999 Regulations came into force, they have been amended substantially to take account of case law and changes to the planning system. Recent court cases have highlighted other areas where the UK has failed to properly transpose the Directive. There is therefore a need to make the necessary changes to the 1999 Regulations to avoid potential infraction proceedings (pre-infraction action has already been taken by the EU Commission with regard to these cases) and the fines associated with infraction. It is also our intention to consolidate the 1999 Regulations, as amended, to make them more accessible and up-to-date.

What are the policy objectives and the intended effects?

The primary objective is: (i) to amend the Regulations to reflect recent Environmental Impact Assessment case-law (**Mellor** - the need to give reasons for negative screening decisions; and **Baker** - where screening is required for changes or extensions to existing planning permissions). This will reduce the potential for EU infraction fines on this matter. Further objectives are to (ii) remove 'gold-plating' for multi-stage consents (e.g. outline planning permission and approval of reserved matters) by removing the unnecessary requirement to re-publicise and consult on Environmental Statements; and (iii) consolidate the 1999 Regulations, as amended, into one set. These will ensure that regulations are up-to-date and generally fit for purpose whilst making them easier to use and interpret.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

• Option 1 - Do nothing. This option is not feasible as it would result in EU infraction proceedings (and associated fines). It would also maintain the current administrative burden associated with the numerous amendments to the 1999 Regulations.

• Option 2 - Amend the 1999 Regulations without a consolidation. This option is not feasible as there is an expectation from the Joint Committee on Statutory Instruments that the current proposed amendments will form part of a consolidation of the 1999 Regulations, as amended.

• Option 3 - Amend and consolidate the amended 1999 Regulations. This is the preferred option because it will reduce the potential for EU infraction fines on this matter, and make the regulations up-to-date, and fit for purpose. It will also serve to make the 1999 regulations easier to use and interpret.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Five years from the date the new Regulations come into force.

What is the basis for this review? Regulation 64 of the new Regulations. **If applicable, set sunset clause date:** Not applicable

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	No

Ministerial Sign-off For enactment stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Bob Neill Date: 18 August 2011

Summary: Analysis and Evidence — Policy Option 1

Description: Amend and consolidate the Environmental Impact Assessment (EIA) Regulations (the preferred option).

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: - £15.7m	**High:** £11.5m	**Best Estimate: - £2.1m**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			£1.3m	**£11.5m**
High			£5.4m	**£46.1m**
Best Estimate			£3.4m	**£28.8m**

Description and scale of key monetised costs by 'main affected groups'

For **Mellor** the requirement for Local Planning Authorities to stating formal reasons for a negative screening decision when an Environmental Impact Assessment is not required will incur time costs. Some Local Planning Authorities are already undertaking this practice, the only additional requirement to publish reasons and the likely reduction in related queries/ FOI requests the impact is likely to be minimal: £1.3m - £5.4m.

Other key non-monetised costs by 'main affected groups'

For **Baker** there could potentially be an increase in time spent by planners and developers carrying out a screening opinion, now that a cumulative assessment is necessary.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			£2.7m	**£23.0m**
High			£3.5m	**£30.4m**
Best Estimate			£3.1m	**£26.7m**

Description and scale of key monetised benefits by 'main affected groups'

The consolidation of the amended 1999 regulations will lead to time and administrative savings for Local Planning Authorities given that they will be consolidated, more streamlined and accessible: £2.7m - £3.5m.

Other key non-monetised benefits by 'main affected groups'

The main benefit of these changes cannot be monetised – this is the avoidance of EU infraction fines (and the associated financial and time costs).

The main benefit of these changes cannot be monetised – this is the avoidance of EU infraction fines (and the associated financial and time costs).

Greater transparency of circumstances in which an Environmental Impact Assessment is not required.

Reduced administrative burden for developers and local planning authorities of no longer re-publicising Environmental Statements (ESs). There will also be benefits for developers in terms of time and administrative savings from using consolidated and streamlined regulations.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

This impact assessment focuses on the impact on the planning process and not the potential wider environmental benefits of this policy.

The analytical key assumptions are outlined on pages 9 – 12.

Direct impact on business (Equivalent Annual) £m):				In scope of OIOO?	Measure qualifies as
Costs:	**Benefits:**	**Net:**	n/a	Yes	n/a

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England		
From what date will the policy be implemented? (date SI comes into force)			August 2011		
Which organisation(s) will enforce the policy?			DCLG		
What is the annual change in enforcement cost (£m)?			n/a		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** n/a	**Benefits:** n/a	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests (SITs): Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	16
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	16
Small firms Small Firms Impact Test guidance	Yes	16
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	16
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	16
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	16
Human rights Human Rights Impact Test guidance	No	16
Justice system Justice Impact Test guidance	Yes	16
Rural proofing Rural Proofing Impact Test guidance	No	16
Sustainable development Sustainable Development Impact Test guidance	No	16

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base

References

No.	Legislation or publication
1	European Court of Justice judgement - C-75/08 ('Mellor') http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:153:0011:0012:EN:PDF
2	High Court judgement - CO/397/2007 ('Baker') http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2009/595.html&query=Baker+and+2007+and+EIA&method=boolean
3	European Directive 85/337/EEC ('the Environmental Impact Assessment Directive'). As amended by Directive 97/111/EC and by Article 3 of 2003/35/EC
4	Pre-Budget Forecast, June 2010. Office for Budget Responsibility. http://budgetresponsibility.independent.gov.uk/d/pre_budget_forecast_140610.pdf
5	Live Tables: Planning Applications statistics http://www.communities.gov.uk/documents/statistics/xls/1627454.xls
6	Responses to consultation document

+ Add another row

Evidence Base

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs										
Annual recurring cost										
Total annual costs	3.0	3.1	3.2	3.2	3.3	3.4	3.5	3.6	3.7	3.7
Transition benefits										
Annual recurring benefits										
Total annual benefits	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1

* For non-monetised benefits please see summary pages and main evidence base section

Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Background:

i) The Environmental Impact Assessment Directive requires an assessment of the effects of certain public and private projects on the environment before development consent is granted. Its main aim is to ensure that an authority giving development consent for a project makes its decision in the full knowledge of any likely significant effects on the environment. The Directive's requirements are procedurally based and must be followed by Member States for certain types of projects before development consent can be granted. It helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the relevant competent authority before it makes its decision.

ii) The Directive has largely been implemented through the planning system, as the majority of projects that fall within the scope of the Directive are 'development' for which planning permission is required. Local planning authorities are the 'competent authorities' for Environmental Impact Assessment purposes, except for applications which are the subject of an appeal or are called in where the Secretary of State for the Department for Communities and Local Government is the competent authority in England.

iii) Certain types of development which are listed in Schedule 1 to the 1999 regulations (including larger power stations, chemical installations and quarries over 25 hectares) require an Environmental Impact Assessment in all cases. Others, listed in Schedule 2 (such as housing schemes and smaller mineral workings), require Environmental Impact Assessment where they are considered likely to have significant environmental effects. For all Schedule 2 development (including that which would otherwise benefit from permitted development rights), the local planning authority must make its own formal determination of whether or not an Environmental Impact Assessment is required (referred to as a 'screening opinion'). Where it is determined that an Environmental Impact Assessment is required, an Environmental Statement must be produced which details the assessment of the project undertaken alongside the planning application.

iv) Issues arising from the transposition of the Environmental Impact Assessment Directive into domestic law and its implementation have been successfully challenged, on a number of occasions, in the domestic and European Courts. As a result, the 1999 Regulations have been amended substantially over the years to take account of case law or transposition issues e.g. in 2000 and twice in 2008.

Problems under consideration;

1) Introduction

1.1 There are three main changes proposed to the amended 1999 Regulations to address recent case law (**Baker** and **Mellor**) and the removal of 'gold plating' in processing subsequent applications. Furthermore, the amended 1999 Regulations will be consolidated. The key changes and consultation responses are considered below.

2) **Baker case**

2.1 The case considered how changes or extensions to existing development which satisfy criteria and thresholds in Schedule 2[2] to the Regulations are screened. Justice Collins in his

[2] Schedule 2 lists projects that the local planning authority is required to screen and determine whether environmental impact assessment is required.

judgment[3] said that the 1999 Regulations restrict screening to consider only the likely significant effects of the change or extension and not overall effect of the changes and this is a breach of the Directive. This means that significant effects of the change or extension to the existing development would not necessarily be considered, whereas the Directive specifically requires the consideration of all likely significant cumulative environmental effects.

2.2 The consultation draft of the new Regulations required that all changes and extensions to existing Schedule 14 development would need to be screened, and that the thresholds and criteria set out in Schedule 2 to be applied, not just to a change or extension, but also to the existing development as changed and/or extended for Schedule 2 development.

*Consultation responses on **Baker** (changes and extensions to existing or approved development)*

2.3 Over 40% of consultation responses (received from airport operators, Ministry of Defence, port authorities, water and energy companies and a number of LPAs) expressed, in detail, concern that the draft went beyond what is required by the **Baker** judgment, and would require the screening of very minor developments (e.g. those with and without permitted development rights) which are uncontroversial and were not reflected in the impact assessment. Such a change would place an unnecessary burden on developers' and planning authority's resources. Although the concerns were about development which is minor in nature, such development is important to the infrastructure of the establishments operated by these consultees and could hinder an operator's ability to respond rapidly to urgent works, e.g. security measures to protect human safety.

2.4 An operator seeking prior approval for a minor development with permitted development rights uses less resources in the preparation for approval than for a planning application which is going to be subject to a screening opinion by a planning authority, . A planning authority also needs to employ more resources to process screening opinions compared to assessing prior approvals. One major airport indicated that 10 - 20 extra screening requests would have to be made each year. Another indicated that around 80% of its development proposals are those with permitted development rights.

2.5 In view of the above concerns DCLG officials met with the Airports Operators Association (AOA) whose own members' responses were representative of those from received from other consultees.

2.6 DCLG decided that in the light of these responses and the discussions that took place in the meeting with the AOA, to carry out a further review of the **Baker** judgment and the requirements of the Directive for screening changes and extensions to existing or approved developments. It was concluded that Schedule 2.13 could be redrafted to satisfy the judgment in **Baker**, the requirements of the Directive and remove the resource concerns expressed by the consultees.

2.7 Developers and local planning authorities will now need to consider if significant adverse environmental effects may result from an existing or approved development being changed or extended. If a view is reached that the change or extension will not have significant adverse effects there is no requirement to apply for screening. This is likely to be the outcome, for example, in the vast majority of cases involving a minor change or extension, and minor development which may have permitted development rights (e.g. changes within the curtilage of a house or a development such as a bus shelter within the boundary of an airport). However, where it appears that a development to be changed or extended may lead to significant adverse environmental effects the proposed development must be screened. In this case permitted

[3] R (on the application of Baker) v Bath & North East Somerset Council
[2009] EWHC 595 (Admin)
[4] Lists major developments where environmental impact assessment is compulsory

development rights are removed and can only be restored where the local planning authority issue a negative screening opinion. Changes and extensions to existing Schedule 1 and 2 development that meet or exceed the criteria and thresholds in sections (ii) of the second column to 2.13(a) and (b) have to be screened by the local planning authority as currently required under the 1999 Regulations. **This means that when screening changes or extensions to existing or approved development, planning authorities will now have to consider the cumulative[5] environmental effects of the development once it has been modified and not only the effects of the change or extension in isolation of the existing development.**

3) **Baker case** and Article 10a of the Directive

3.1 Justice Collins was also concerned that there is an obligation, under Article 10a of the Directive, that where a member of the public is of the view that EIA is required and the local planning authority has decided that it is not EIA development that the authority should make it known to the public that they can make representations to the Secretary of State pursuant to regulation 4(8) in the 1999 Regulations.

3.2 In the consultation document, DCLG proposed to take account of this concern by updating and clarifying guidance on the use of current regulation 4(7) and (8) (Directions by the Secretary of State). Under this regulation the Secretary of State can decide to issue a screening direction for projects that are described in Schedule 2, but are not Schedule 2 development because they either fail to meet the relevant criteria or thresholds, or are not considered to be EIA development by the planning authority.

*Consultation responses on **Baker** in relation to Article 10a of Directive*

3.3 Professional views have been received from some consultees that the existing regulation 4(8), together with the proposed guidance, may not adequately inform the public that they can ask the Secretary of State to exercise his power of direction, and may not be compliant with the obligation in Article 10a of the Directive to ensure that practical information is made available to the public on access to administrative procedures. Following consideration of the views expressed it has been decided, in addition to guidance, to add a provision in the new Regulations to clarify that the Secretary of State may make a screening direction when a representation is received from a member of the public.

4) **Mellor case**

4.1 The Court of Justice of the European Union (formerly the European Court of Justice (ECJ)) clarified in its ruling in the **Mellor** case that if an interested party so requests, reasons for a screening determination or copies of the relevant information and documents must be communicated to that party. This means that where the Secretary of State or a planning authority issue a screening direction or opinion that an Environmental Impact Assessment is not required, i.e. a negative screening decision, they have to make this decision available on request. The 1999 Regulations only required reasons for requiring environmental impact assessment to be made available to the applicant in every case of a positive screening. The 1999 Regulations therefore have to be amended to take the ruling into account so that Environmental Impact Assessment Directive is properly transposed.

4.2 DCLG decided, for the purposes of transparency, to require reasons to be made available for all screening opinions whether or not environmental impact assessment was required. Advice was sought from Cabinet Office Legal Advisors (COLA) on this approach. COLA looked at the Department of Business Innovation and Skills guidance on implementing Directives and

[5] Schedule 3 to the Regulations sets out the selection criteria for screening Schedule 2 development, which include the requirement to consider the cumulative effects of a development with other development.

confirmed the approach to requiring reasons for all negative screening opinions was not gold plating the ECJ's ruling, and that to require reasons in all cases, would not go beyond the minimum that is required to implement the Environmental Impact Assessment Directive.

*Consultation responses on **Mellor** (need to give reasons where a negative screening opinion/direction is issued)*

4.4 An overwhelming majority of consultation responses received on the proposed requirement to give reasons for negative screening opinions (93%) were in support of this proposal, or indicated they had no comment to make. The new Regulations will therefore require reasons to be given by the Secretary of State or planning authorities when either negative and positive screening directions or opinions are issued.

5) Wind farm threshold

5.1 The threshold in Schedule 2 to the 1999 Regulations for the harnessing of wind power for energy production was amended in the draft of the new Regulations to be consistent with a wind turbine threshold for proposed Regulations for permitted development rights for microgeneration. It was not the intention of the proposal to decrease or increase, in real terms, the threshold set out under column 2(ii) of the wind turbine category in Schedule 2.3(i). The draft amendment replaced a threshold for hub height and any other structure exceeding 15 metres to a total height of any turbine (including the rotor blade) exceeding 18 metres.

Consultation responses on wind farm threshold

5.2 Responses indicated that it was more appropriate for the threshold to relate to hub height as it is used as an industry standard and this was confirmed by dialogue with a body representing the industry. Further discussions, post consultation, together with responses to the consultation exercise on permitted development rights for microgeneration development indicated that inconsistency would not be a problem if the 1999 threshold and criteria were retained. It was, therefore, decided to keep the criteria and thresholds in the1999 Regulations.

6) Multi-stage consents and gold plating

6.1 The Department amended the 1999 Regulations in 2008 following rulings of the European Court of Justice (ECJ) in the **Barker case** (C-290/03 and C-508/03), that the Environmental Impact Assessment Directive requires consideration to be given to the need for environmental impact assessment before determining a planning application for approval of subsequent consents (e.g. approval of reserved matters after obtaining outline planning permission). The Court held that outline planning permission and the decision which grants approval of reserved matters must be considered a multi-stage development process within the meaning of Article 1(2) of the EIA Directive. This required the 1999 Regulations to be amended to consider whether information in the environmental statement produced at the outline stage was still adequate for purpose at the reserve matters stage, or where no environmental impact assessment had been carried out, whether it was now required, for example, because information had come to light that a development was likely to have significant environmental effects.

6.2 The amendments in 2008 unintentionally created a requirement for the environmental statement to be screened again a multi stage consent process (e.g. outline planning process) even where the initial environmental statement was still adequate for purpose at the later stage (e.g. application for approval of reserve matters). This "gold plating" was never the intention and not required by the ECJ rulings.

6.3 The intention was to require publicity in cases where an environmental statement produced at the first stage (e.g. outline stage) required further information at the subsequent application stage. This could, for example, be because new information has come to light on previously unidentified likely significant environmental effects, or because EIA was not required at the outline stage, but likely significant effects have been identified for the first time at the subsequent application stage. In both these scenarios the new or amended environmental statement has to be publicised, so that members of the public can make representations to the local planning authority.

Consultation responses on multi-stage consents and gold plating

6.4 The amendments made to Part 3 of the new Regulations set out to remove the gold plating. Responses received from the consultation exercise were all in support of amending the 1999 Regulations however, several detailed and very helpful responses explained that further redrafting was necessary to achieve the removal of the gold plating. This was achieved by creating separate regulations for screening new applications (regulations 7 and 10) and screening applications for subsequent consents (regulations 8 and 9).

Marine Management Organisation (MMO)

6.5 The MMO is an addition to the list of statutory consultees. Its addition is designed to help consultation in relation to projects that have both marine and terrestrial components and will trigger EIA under both the Marine & Coastal Access and Town and Country Planning regimes. An example of a development that requires consent from Regulations under the two consent regimes would be a harbour development, where there is building below the Mean High Water Springtide where the planning system ends and the marine regime takes effect.

6.6 A few consultation responses were received in favour and stressed it should have a limited role (see below, as this was always the intention).

6.7 The EIA Regulations only require the MMO to have the role of a statutory consultee where the proposed development would affect, or would be likely to affect, any of the following areas:

1. waters in or adjacent to England up to the seaward limits of the territorial sea;
2. an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;
3. a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;
4. an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.

6.8 The number of projects affected by the addition of the MMO will be very small in comparison to other projects caught by the EIA Regulations. In reality there should be no change in the level of consultation that would have taken place before the recent creation of the MMO with the Marine & Fisheries Agency (MFA). The MMO (& previously the MFA) routinely consult with planning authorities and other regulators in terms of screening and scoping opinions and the adequacy of an environmental statement. The addition of the MMO as a statutory consultee simply formalises what has gone on before for EIA under the town and country planning system.

Removal of criminal offence

6.9 This was proposed in the consultation document, and is consistent with the policy which was announced in June 2010 by the Home Secretary that he wanted to clear all potential new offences to ensure no unnecessary criminal or civil penalties are created. The policy also

applies to existing offences being re-enacted. DCLG reviewed the offence, and felt the offence was inconsistent and unnecessary.

7. DCLG could find no record of the offence actually having been used. So a decision was made that a sufficient case for retention could not be made. The offence of fraud could be used in appropriate, egregious, cases.

7.1 The criminal offence in the current, 1999, EIA Regulations applies where a person issues a certificate that purports to comply with the requirements concerning the posting of a notice on land where it is proposed to build the EIA development announcing that an environmental statement has been published and its availability, but does so by making a statement which is false or misleading.

7.2 The impact of the removal of the criminal clause should be undetectable, as we have been unable to find any record of an offence being committed, and in any case a charge can be brought by other means.

7.3 There were a couple of responses concerned about the removal of the criminal clause, however, as stated above it is DCLG's view that adequate provisions exist elsewhere in which to prosecute fraudulent statements.

Policy options considered;

- Option 1 - Do nothing. This option is not feasible as it would result in EU infraction proceedings (and associated fines). It would also maintain the current administrative burden associated with the numerous amendments to the 1999 Regulations.

- Option 2 - Amend the 1999 Regulations without a consolidation. This option is not feasible as there is an expectation from the Joint Committee on Statutory Instruments (JCSI) that the current proposed amendments will form part of a consolidation of the 1999 Regulations, as amended.

The 1999 EIA regulations were amended twice in 2008 (other amendments were made in 2000 and 2006). The JCSI raised the issue of why the two 2008 amendments could not be done as one, but accepted DCLG views that the two sets of Regulations were that far apart on content to warrant separate amendments, and more importantly that one amendment was to avoid infraction proceedings by the European Commission. The infraction proceedings meant that the amending set of regulations could not follow any set timetable for the other amending regulations (application of EIA to stalled old mineral permissions) and had to be completed as soon as possible.

The JCSI, however, did make it clear that it would be unacceptable for further amendments to be made as you could not expect people to have to work with so many statutory instruments to understand the requirements of the EIA Regulations. They said that any further amendments would have to be made by way of a consolidation of the original regulations and amendments, and required an informal consolidation to be added to the explanatory memorandum for the 2008 amending regulations that were required to avoid infraction proceedings.

- Option 3 - Amend and consolidate the amended 1999 Regulations. This is the preferred option because it will reduce the potential for EU infraction fines on this matter, and make the regulations up-to-date, and fit for purpose. It will also serve to make the 1999 regulations easier to use and interpret.

Rationale for intervention;

The rationale is to update the 1999 Regulations to reflect recent court judgements, namely **Baker** and **Mellor**, thus ensuring the Environmental Impact Assessment Directive is properly

transposed into UK legislation. This guards against the threat of infraction. In addition, it is necessary to remove the requirement for 'gold-plating' thus reducing the administrative burden for Local Planning Authorities (LPAs). Furthermore, there is a need to consolidate the amended 1999 regulations to ensure they are accessible and fit for purpose for users.

Policy objective;

To consolidate and update the 1999 Regulations in order to make changes to reflect recent Environmental Impact Assessment case-law as well as ensuring the regulations remain fit for purpose and more accessible.

It is important to note that the following cost/ benefit analysis establishes the costs and cost savings associated with these amendments, in comparison to the 1999 Regulations (i.e. if we didn't amend them). The analysis, therefore, does not consider the total costs of Environmental Impact Assessments, and the details of screening, scoping, advising, monitoring etc. to various partners, including planning authorities, developers and specialist expertise.

Costs and benefits of each option;

Option 3 - the preferred option.

The major benefit relates to the amendments of the 1999 Regulations in order to reduce the risk of EU infraction fines.
Both the proposed changes and the consolidation of the amended 1999 Regulations will help to reduce the risk of legal challenge and the associated financial and time costs. This is because the proposed changes will address recent legal judgements, which highlighted the need to properly transpose the requirements of the Directive into the new Regulations, whilst the consolidation will make the new Regulations easier to use and interpret.

It is difficult to predict with any degree of certainty the amount of fine that may be imposed by the European Court of Justice in any individual case, but the likely level might be significant with a minimum lump sum of about €9.666 million (based upon the UK's GDP) and a possible substantial daily fine of thousands of pounds for continuing non-compliance. To give a very rough indication of historic fines, in a Spanish bathing water case, the levy was €624,000 per year for each 1% of bathing waters in breach of the relevant Directive. In a French fishing case the levy was a €20 million lump sum fine and €58 million every 6 months until the issue is resolved. In a Greece state aid case the levy was €16,000 for each day of delay in complying with the judgement and a lump sum of €2 million. Due to the major uncertainty around the actual imposition and size of the potential fine the benefit of avoiding this have not been monetised.

Further to the major benefit above, there are a number of additional costs and benefits relating to the transparency and planning procedures. Those relating to the consolidation are fully additional, yet those relating to the regulatory changes are likely to have been implemented by some already (which have been taken into account - where possible - within the analysis). These costs and benefits are outlined below:

Baker

Regarding the **Baker** case - an assessment of the development as a whole (no longer solely the modification) for an Environmental Impact Assessment must be made - it is not considered that this will have a significant impact on developers and local planning authorities. These changes to the 1999 Regulations may possibly lead to an increase in the number of EIAs carried out (given that the development must be considered as a whole once modified). However, the EIA Directive states that an EIA must consider the cumulative effects. Therefore, in practice, it is considered that this change is unlikely to significantly increase in the number of EIAs because a

cumulative assessment should be carried out currently in any case. If there are significant environmental effects/ indirect impacts of a modification, this would be clear and would be considered. Therefore, the objective is to address this law case, putting this in legislation.

Benefits:

The key benefit to developers is greater clarity and understanding of the Regulations. Currently, there should be a cumulative assessment of a development, however, this was not written explicitly in legislation. Furthermore, improved decisions regarding protection of the environment will be made as a result of an EIA assessing the existing development as changed or extended, as opposed to assessing only the change or extension. These benefits have not been monetised.

Costs:

If these changes lead to an increase in the number or length of Environmental Impact Assessments, this could impose costs on developers and planning authorities. This would depend on the type of development and sensitivity of the environmental impact. However, if good practice prevails, local planning authorities should not experience a real difference in resources used for the majority of modifications/ extensions to developments. This impact is estimated to add 0-5% increase in time spent by a planner carrying out a screening opinion. Yet, there could be a few cases where the planner may have to spend some considerable time evaluating cumulative effects. These costs have not been monetised.

Mellor

Benefits:

Benefits include greater transparency of why and when an Environmental Impact Assessment is not required. This is for those wishing to understand why the screening opinion concluded environmental impact assessment is not required. These benefits have not been monetised.

There could also be a reduction in requests for information under the FOI (Freedom of Information) or Environmental Information Regulations. These benefits have been monetised and netted off the additional burden of publishing negative screening decisions (see page 11).

Costs:

There will be costs to local planning authorities associated with stating formal reasons for a negative screening decision, when an EIA is not required.

Based on consultation with planning officers, it is estimated that it will take local planning authorities an average of one day (7 hours) to determine a negative screening opinion. This process will not change as a result of this policy - there determination still has to be made. The only additional burden is to formally publish the reason for a negative screening. This means that even in more controversial cases, which may require several days to prepare, on the whole the additional work required to publish reasons for a negative screening opinion are likely to be minimal. This is supported by some local planning authorities indicating that they already give reasons, or to do so would not present an additional burden, and should have no major resource implications, as the same information has to be given when a decision is taken to grant development consent on planning permission. Furthermore with the added benefits of increased transparency and reduced FoI requests the impact on local planning authorities is likely to be small. The following estimate is therefore assumed to be conservative.

The following evidence is used for the analysis:

417,606 planning applications were decided in 2009/10 in England.6 Planning applications decided are assumed to rise in line with the Office for Budget Responsibility's economic growth projection scenarios.7

93% of screenings of planning applications decided do not require an Environmental Impact Assessment, therefore, need a negative screening decision published.

We assume that for 25% to 50% of current negative screening decisions the reasons for the decision are either already published or recorded in a suitably publishable manner so that the additional burden is negligible. This assumption is based on the consultation responses and other engagement with local planning authorities.

A further 25ppt of this additional cost is removed due to the likely reduction in related enquiries and FoI requests that arose when negative screening decisions were not explained.

For the remainder: the hourly wage of a clerical worker is estimated at an up-rated wage of £23.63 per hour.8 This hourly wage rate is up-rated to account for additional costs of employment, such as pensions and also overheads, such as building and equipment costs, rent and other expenses incurred.

Time spent by a clerical worker is estimated to range from 0.5 to 1 hour per negative screening opinion. Whilst will vary largely by type of application, with a large number of applications requiring a very simple explanation of why a negative screening was concluded means the average additional time required is small.

Average annual costs to local planning authorities are estimated to range from £1.3m to £5.4m.

'Gold-plating'

Benefits:

There will be a reduced administrative burden on Local Planning Authorities no longer having to re-publicise Environmental Statements where they are adequate for purpose at the subsequent application stage.

Similarly, there would be reduced costs for developers. The amended 1999 Regulations have been altered so that further information will only be required where the environmental statement is deemed to be lacking in information at the subsequent application stage. No screening is required and the LPA simply ask formally for further information. Research from September 2010 estimates the cost of advertising further information would be around £3,000 for the developer. It would be expected that there would be an equivalent cost for re-advertising an Environmental Statement. Data is unavailable on how many Environmental Statements are unnecessarily re-advertised. Data shows the total number of Environmental Statements received in 2010 equal to 287.9 If 10% to 20% of these Environmental Statements no longer need to be re-publicised at a cost of £3,000, average annual savings to developers are estimated to range from £86,000 to £172,000.

These benefits have not been monetised.

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[6] http://www.communities.gov.uk/documents/statistics/xls/1627454.xls

[7] Pre-Budget Forecast, June 2010. Office for Budget Responsibility.

http://budgetresponsibility.independent.gov.uk/d/pre_budget_forecast_140610.pdf

[8] This is based on public sector wage data for 2010/11 (including local government) from the ONS Survey Control Unit.

[9] http://www.communities.gov.uk/documents/statistics/xls/1627454.xls

Consolidation and streamlining of guidance

Consolidated and streamlined guidance and Regulations will lead to time and administrative savings for local authorities and developers. This incorporates more efficient working, using amended and more accessible Regulations (rather than having to go through all the amending regulations in order to see if the existing regulations have changed), including the time costs of familiarisation. In the consultation impact assessment, we estimated that 80-90% of planning officers would be affected by consolidated guidance. However, this estimate has been reviewed for the final impact assessment. Based on consultation responses and following further consultation, it is estimated that 40% - 45% of local planning authorities would be directly affected by these amendments to the Regulations, thus gaining savings. It is argued by users and in a response from a QC who is experienced in the EIA field that stakeholders have access to the planning encyclopaedia and similar publications, which already contain consolidated versions of the 1999 Regulations as amended, so the benefit of streamlining is small.

There are 24,000 planners in employment in the UK, April-June 2010. However, not all of these will work in areas where EIA is relevant. On the whole those that do will be those working in development management (and predominantly on major applications). It should also be noted that out of approximately 500,000 planning applications submitted each year only around 500 require EIA, so the number of planners affected by the consolidation is in effect quite small. It is difficult to assess the exact proportion that deal with EIA regulations as it will partly depend on the number and mix of applications in the future, but for the purpose of this analysis we assume that 25% to 33% are able to make savings from this consolidation, which takes into account that planning applications for development described in the Regulations have to be assessed to see whether the Regulations apply and if the application requires a screening opinion.

The hourly wage of planners in a local planning authority is estimated at an up-rated wage of £37.18 per hour.10 This hourly wage rate is up-rated to account for additional costs of employment, such as pensions and also overheads, such as building and equipment costs, rent and other expenses incurred.

Informal discussions with an LPA suggest that there are likely to be time savings from consolidation of the regulations, although it is extremely difficult to estimate these time savings to planners. However, as an illustration, a cautious estimate is made that planners could save up to 1 hour per month, with consolidated and streamlined Regulations. There were no consultation comments on the actual time that may be saved, suggesting that those who responded were content with this estimation.
Average annual savings to local planning authorities are estimated to range from £2.7m to £3.5m.

There are similar benefits to other agents, such as applicants, consultants and lawyers, of using the consolidated and streamlined Regulations. Consolidation will reduce complexity and promote efficiency in using the Regulations. Having shorter, precise and easier to use Regulations will generate time savings to these agents. When these agents are required to complete an EIA, streamlined Regulations that are easier to interpret will reduce confusion and the amount of time spent studying the Regulations. It is difficult to estimate the time savings for these agents; and the number of agents affected by the consolidation of the Regulations. Robust evidence for this analysis is unavailable; therefore, these benefits have not been monetised.

Risks and assumptions;

[10] This is based on public sector wage data for 2010/11 (including local government) from the ONS Survey Control Unit.

As outlined above, if we do not undertake the necessary changes to the 1999 Regulations to take into account recent court cases there is a high risk that the European Commission will bring infraction proceedings against the UK which could result in a significant daily infraction fine. It is impossible to predict, with any degree of certainty, the amount of a fine that may be imposed by the Court of Justice of the European Union in any individual case, particularly as there will be changes to the levels of fines post-Lisbon Treaty. However, we expect any fines to be significant and existing Cabinet Office guidance suggests that any fine is likely to be passed on to DCLG, through a reduction in the Department's DEL budget.

The European Commission has already asked for a progress report on what stage we are at in relation to implementing two specific court judgements (**Mellor** and **Baker**) highlighted in a recent pre-infraction proceedings 'Pilot' letter. We have responded by outlining our project plan for the regulations. Given this commitment, we are aware the Commission will follow up to ensure we keep to this timetable.

Direct costs and benefits to business calculations (following OIOO methodology);
The policy lowers the regulatory burden on business and the third sector i.e. developers, as a result of consolidating and streamlining Regulations; and the removal of gold-plating. Therefore, it is within the scope of OIOO. However, these benefits are presented for illustration only and the evidence is not deemed fully robust. Therefore, these benefits have not been monetised. These figures are indicative only, and they would unable to formally qualify as an 'Out'.

New Burdens Assessment
It is not anticipated that local authorities will incur an overall burden as a result of these changes. Within the monetised benefits it suggests the impact on local planning authorities would be an annual average £0.3m net cost. This will vary upon the extent to which local authorities currently adhere to the regulations to publish negative screening decisions. Further to this there are a number of important other benefits that we have not been able to monetise that we feel will more than offset this small cost. These include additional savings from the removal of gold-plating and (direct or indirect) savings from the avoidance of EU infraction fines.

Wider impacts;

In terms of implementation of European requirements, we do not consider that the proposal to implement **Mellor** (i.e. to give reasons for all negative screening decisions) goes beyond European requirements. We have received legal advice from Cabinet Office Legal Advisors (COLA) which advises that our proposal is in-line with the Department for Business, Innovation and Skills (BIS) guidance, and it would not constitute gold plating, particularly as the "general principle of legal certainty" advice also states that "national rules implementing a Directive must guarantee the full application of the directive in a clear and precise manner, particularly where the directive confers rights on individuals" (the **Mellor** judgement does confer rights upon individuals).

With regard to wider impacts and carbon emissions, given that the proposed changes to the 1999 Regulations relate to the Environmental Impact Assessment process itself and not the projects the process applies to, it is not possible to quantify carbon emissions attached to Environmental Impact Assessment projects as it is not possible to anticipate whether these projects will come forward or when. The decision to make an application for a project (regardless of whether it is likely to requirement Environmental Impact Assessment) is largely driven by the development industry.

Specific impact tests

Statutory equality duties
No impacts on equality have been identified.

Economic impacts/ Competition
No impact on competition has been identified.

Small firms
Small firms are likely to be marginally better off as a result of this policy. This is because they will be able to view the reasons for others having a negative screening decision (and thus amend their application to be less likely to require one) and the streamlined guidance will make the process more transparent and easy to use.

Environmental impacts
No impact has been identified on greenhouse gas emissions. There may be additional environmental benefits due to greater transparency of the planning guidance and publication of negative screening decisions, but this impact assessment considers only the impact on the planning process.

Social impacts/ Health and well-being
No impact on health has been identified.

Human rights
No impact on human rights has been identified other than to clarify that the public can make representations to the Secretary of State.

Justice system
The criminal offence in regard to falsely certifying compliance with publicity arrangements has been removed in line with Ministry of Justice policy to remove where possible the proliferation of unnecessary criminal offences.

There is no requirement under the EIA Directive for such an offence, and were an offence to occur there are provisions elsewhere to deal with fraudulent claims.

Rural proofing
No rural proofing issues have been identified.

Sustainable development
No sustainable impacts have been identified.

Summary and preferred option with description of implementation plan.

Option 3 - Amend and consolidate the 1999 Regulations. This is the preferred option because it will make the necessary changes to take into account recent court judgements to ensure the Environmental Impact Assessment Directive is properly transposed. The consolidation will ensure the new Regulations are up-to-date and generally fit for purpose which will make it easier to use and interpret.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

The European Commission is currently undertaking a review of the application and effectiveness of the Environmental Impact Assessment Directive in order to inform possible amendments to the Directive. Formal proposals to amend the Directive are not expected until the end of 2011 at the earliest . Any future amendments which may be required to take account of any changes to the Directive could provide the opportunity to review the changes made through the current proposals to amend and consolidate the amended 1999 regulations.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

To ensure the amended and consolidated Regulations are more accessible and fit for purpose.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

Once the draft statutory instrument is in force, we will use evidence from discussion with partners and review of correspondence to review whether the current proposals to amend the 1999 regulations have successfully addressed the problems identified and consider whether changes are required where implementation has not been successful.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

The baseline in which the current changes could be measured is by the decrease in the number of legal challenges on the implementation of Environmental Impact Assessment due to clearer-new regulations.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

The proposal to require Local Planning Authorities to give reasons for all negative screening decisions (**Mellor**) should lead to an improvement in the transparency of decision making and ensures Local Planning Authorities give robust negative screening opinions. There may be an increase in Environmental Impact Assessments given that when a change or extension takes place, the likely significant environmental cumulative effects of the development as a whole now have to be considered (**Baker**). This gives a more robust analysis of the impact of the development on the environment. However, it is difficult to measure the success using the number of Environmental Impact Assessments or Environmental Statements as variables since there are other factors involved. The success of the consolidation and amendments to the 1999 Regulations centres on a more efficient process for agents, such as developers and LPAs, regarding Environmental Impact Assessment Regulations, making them easier to use and interpret. Furthermore, the success is that the EU Directive on Environmental Impact Assessment is properly transposed.

Overall, Environmental Impact Assessment helps to ensure that an authority giving development consent for a project makes its decision in the full knowledge of any likely significant effects on the environment which means the changes proposed in response to **Baker** should lead to better environmental outcomes. However, it is not possible to quantify the environmental outcomes given that the proposed changes relate to the Environmental Impact Assessment process itself and not the projects the process applies to and it is not possible to anticipate whether Environmental Impact Assessment projects will come forward and when they are likely to come forward (which is largely driven by the development industry).

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

If amendments are made to the Environmental Impact Assessment Directive which brings about the need to make future amendments to the Environmental Impact Assessment Regulations, this will provide an opportunity for us to monitor the implementation of the current changes proposals to the regulations. This will be done via informal consultation with partners.

Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

N/A