

Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Transposition note for Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

1. This transposition note sets out how Directive 2014/52/EU¹ (“the 2014 Directive”), amending Directive 2011/92/EU² on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”), is transposed in respect of the national infrastructure planning regime.
2. The table seeks to explain how the main elements of the EIA Directive, following its amendment by the 2014 Directive, are transposed in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the Regulations”). References in the table to Article numbers are to the EIA Directive as amended by the 2014 Directive unless stated otherwise.
3. The table also highlights important changes of substance introduced by the 2014 Directive.
4. In the table, “EIA” means “environmental impact assessment”.

Article	Objective	Implementation
Article 1(1)	This Article states that the EIA Directive applies to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.	Regulation 4 – Prohibition on granting consent without consideration of environmental information; and regulation 3(1) – Interpretation (see the definition of “EIA development”).
Article 1(2)	This Article defines the meaning of certain key terms. Article 1(2)(g) sets out a new definition of “environmental impact assessment”.	This Article is not copied out as adaptations have been necessary to make the EIA Directive applicable to the national infrastructure planning system. Regulation 3(1) defines some of the terms used in the Regulations. Other regulations define key concepts or terms, such as regulation 5 which defines EIA and regulation 14 which defines an “environmental statement”.
Article 1(3)	The existing exemption from the provisions of the EIA Directive for projects serving national defence purposes has been limited to cases where defence is the <i>sole</i> purpose of the project, or parts of projects. The exemption has also been extended to projects responding to civil emergencies as their <i>sole</i> purpose, if it is deemed that the application of the principles of the EIA Directive would have an adverse effect on those purposes.	Regulation 33(1)(b) – Exemption in exceptional circumstances.
Article 2(1)	Requires Member States to ensure	Regulation 4 – Prohibition on

¹ O.J. No. L 124, 25.4.2014, p. 1.

² O.J. No. L 26, 28.1.2012, p.1-21.

	<p>that before development consent is given, that projects likely to have a significant effect on the environment by virtue of, inter alia, their nature, size or location, are made subject to a requirement for development consent and an assessment with regard to their effects on the environment.</p> <p>The word ‘development’ has been inserted before ‘consent’ to bring it in line with the definition provided in Article 1(2).</p>	<p>granting consent without consideration of environmental information; and regulation 5 – Environmental impact assessment process.</p>
Article 2 (3)	<p>This imposes a requirement for joint and/or co-ordinated procedures where projects are subject to assessment under both the EIA Directive and Directive 92/43/EEC³ (“the Habitats Directive”) or Directive 2009/147/EC⁴ (“the Wild Birds Directive”).</p>	<p>Regulation 26 – Co-ordination.</p> <p>The Regulations opt for a co-ordinated procedure, not a joint procedure, as this is thought to provide the greatest flexibility and to have the least impact on business.</p>
Article 2(4)	<p>Member States may, in exceptional circumstances, exempt a specific project from the requirements of the EIA Directive, where the application of the provisions of the EIA Directive would result in adversely affecting the purpose of the project. There is a requirement that the exemption only be used where the objectives of the EIA Directive are met. This is stated to be without prejudice to Article 7 of the EIA Directive, which makes provision for consultation where a project is likely to have significant effects on the environment in another Member State.</p>	<p>Regulation 33 – Exemptions.</p> <p>Regulation 33(3)(b) transposes, with some additional detail, the requirement that the exemption be exercised without prejudice to Article 7 of the EIA Directive.</p>
Article 3	<p>This Article sets out the basic requirements of the EIA process and lists the environmental factors that the assessment should consider.</p>	<p>Regulation 5 - Environmental impact assessment process.</p>
Article 4(1)	<p>Projects listed in Annex I to the EIA Directive must be subject to the EIA process.</p>	<p>Regulation 3(1) – Interpretation (see the definition of “EIA development” and “Schedule 1 development”); regulation 4 – prohibition on granting consent without consideration of environmental information; and Schedule 1 – Descriptions of development for the purposes of the definition of “Schedule 1</p>

³ O.J. No. L 206, 22.7.1992, p.7.

⁴ O.J. No. L 20, 26.1.2010, p.7.

		development”.
Article 4(2) and (3)	<p>Member States must determine whether the projects listed in Annex II to the EIA Directive shall be subject to an EIA. That determination can be made by the Member State setting thresholds and/or criteria for the assessment of such projects.</p> <p>Member States may set thresholds and/or criteria to determine when projects need not go through the screening process or through an EIA, or may set such thresholds to determine when a project shall be subject to an EIA without going through the screening process.</p> <p>The discretion afforded to Member States is subject to the requirement of Article 2(1) that no project likely to have significant effects on the environment shall avoid EIA.</p>	<p>Regulation 3(1) – Interpretation (see the definition of “EIA development” which includes developments of the type listed in Schedule 2 which are likely to have significant effects on the environment by virtue of factors such as its nature, size or location. See also the definition of “Schedule 2 development”);</p> <p>regulation 4 – Prohibition on granting consent without consideration of environmental information);</p> <p>regulation 8 – Procedure for establishing whether environmental impact assessment is required; and</p> <p>Schedule 2 – Descriptions of development for the purposes of the definition of “Schedule 2 development”.</p>
Article 4(4)	<p>Where a Member State requires a determination for projects in Annex II (i.e. “a screening opinion”), the developer must provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be supplied to the competent authority is specified in a new Annex IIA.</p>	<p>The requirements of Article 4(4) and Annex IIA have been combined. We have largely copied out the information listed in Annex IIA, but have included a requirement that the request for a screening opinion should also be accompanied by ‘a plan sufficient to identify the land’ as this reduces the risk of misunderstanding about the precise location of a proposal.</p> <p>Regulation 8 – Procedure for establishing whether environmental impact assessment is required.</p>
Article 4(5)	<p>This Article requires the competent authority to base its screening decision on the information provided by the developer and to take into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than the EIA Directive. The competent authority must make its determination and reasoning available to the public.</p>	<p>The text of this provision has largely been copied out, but we have removed terms (such as “preliminary verifications”) which are vague and difficult to understand, and the omission of which is not considered to make a material difference. We have also provided additional wording to clarify the scope of the assessments to be taken into account.</p> <p>Regulation 8 – Procedure for establishing whether environmental impact assessment is required; and</p> <p>regulation 9 – Considerations for screening decisions.</p>
Article 4(6)	<p>This Article provides that the</p>	<p>Regulation 7 – When development</p>

	<p>screening opinion must be made as soon as possible and within a time period not exceeding 90 days from the date on which the developer submits all of the information required. In exceptional circumstances the competent authority may extend that deadline.</p>	<p>is EIA development: screening directions by Secretary of State; and regulation 8- Procedure for establishing whether environmental impact assessment is required.</p>
Article 5(1)	<p>This Article requires a developer to prepare and submit an environmental impact assessment report in relation to EIA development and sets out minimum information requirements. Where a developer has requested a scoping opinion the environmental impact assessment report must be based on that opinion. The developer must take into account the available results of other relevant assessments.</p>	<p>Article 5(1) is mainly copied out, but the Regulations refer to ‘environmental statements’ rather than to ‘environmental impact assessment reports.’</p> <p>The Regulations further provide that an environmental statement need be based on a scoping opinion only to the extent that development for which permission is sought remains materially the same as that described. This is thought helpful to clarify that an environmental statement need not be based on a scoping opinion where that opinion is no longer of relevance.</p> <p>There is additional text to clarify the scope of assessments to be taken into account when preparing the environmental statement.</p> <p>Regulation 14 – Environmental statements.</p>
Article 5(2)	<p>This Article requires that, where requested by a developer, the competent authority must issue an opinion on the scope and level of detail of the information to be included in the environmental impact assessment report (known as a “scoping opinion”).</p> <p>Certain matters that a competent authority must consider when adopting a scoping opinion are set out.</p>	<p>Regulation 10 – Application for a scoping opinion.</p>
Article 5(3)	<p>This Article requires (a) that the developer must ensure that their environmental statement is prepared by competent experts; (b) the competent authority must ensure that it has, or has access as</p>	<p>(a) Regulation 14(4)(a) and (b) – Environmental statements; (b) Regulation 5(5) - environmental impact assessment process; (c) Regulation 20(1) – Accepted</p>

	necessary to, sufficient expertise to examine the environmental statement and (c) the competent authority, where necessary, must seek supplementary information from the developer which is directly relevant to reaching a reasoned conclusion.	application – effect of environmental statement being inadequate; and regulation 24(1) – Subsequent application not complying with EIA requirements.
Article 6(1)	Article 6 makes provision for consultation with authorities likely to be concerned by the project and the public. The amendments to the EIA Directive extend the list of organisations to be defined as consultation bodies to include authorities with “local and regional competencies”.	It has been considered easier for applicants to know in advance which authorities need to be consulted on a planning application. Relevant organisations are already included in the list of consultation bodies. Regulation 3(1) – Interpretation.
Article 6(2) and (5)	These provisions of the EIA Directive have been amended to require that the public be informed electronically about applications for EIA development, and that information be publicised electronically and through at least a central portal or easily accessible points of access, at the appropriate administrative level.	The EIA Directive does not define the terms ‘electronically’ or ‘central portal’. We consider that the measure is transposed by requiring electronic publication of notices and environmental statements (and any further information) on a website maintained by or on behalf of the Secretary of State or the relevant authority, as appropriate. Regulation 19(6)(b)(vi)(bb) and (f) – Accepted application – effect of screening opinion not taking into account all relevant information; regulation 20(3)(b)(vi)(bb) and (f) – Accepted application – effect of environmental statement being inadequate; regulation 22(3)(b)(iv)(bb) and (e) – Subsequent application for EIA development; regulation 24(3)(b)(vi)(bb) and (e) – Subsequent application not complying with EIA requirements; regulation 27(2) – Availability of copies of environmental statements; regulation 36 – Amendment of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ⁵ .
Article 6(7)	This requires that the timeframe for consulting the public on the environmental statement must be no shorter than 30 days.	Regulation 19(6)(b)(x), (h)(ii) – Accepted application – effect of screening opinion not taking account of all relevant information; regulation 20(3)(b)(x), (e) and (h)(ii) – Accepted application – effect of environmental statement

⁵ S.I. 2009/2264.

		<p>being inadequate; regulation 22(3)(a)(x) and (f)(iii) – Subsequent application for EIA development; regulation 24(3)(b)(x) – Subsequent application not complying with EIA requirements; and amendments made by Regulation 36 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.</p>
Article 7	<p>This Article requires that a Member State carry out consultations with another Member State where it is aware that a project is likely to have significant effects on the environment in that Member State. Such consultation must also be carried out where the Member State likely to be affected so requests.</p>	<p>Regulations 32 -Development with significant transboundary effects.</p>
Article 8	<p>This amended Article requires that the environmental impact assessment report and results of consultations are duly taken into account in the development consent process.</p>	<p>The regulations prevent the Secretary of State or relevant authority from granting development consent for EIA development unless they have first taken the environmental information into consideration.</p> <p>Regulation 3(1) – Interpretation; regulation 4 - Prohibition on granting consent without consideration of environmental information; and regulation 21 – Consideration of whether development consent should be granted.</p>
Article 8a (1) and (2)	<p>This Article sets out minimum requirements for the content of a decision to grant or refuse development consent.</p>	<p>Regulation 30 – Decision notices.</p>
Article 8a(3)	<p>This Article applies to Member States which have not integrated their EIA procedures into their development consent procedures (as is permitted by Article 2(2) of the EIA Directive).</p>	<p>N/A</p>
Article 8a(4)	<p>This Article requires Member States to ensure that mitigation measures and avoidance measures are implemented by the developer. The Member State must determine the procedures regarding the monitoring of significant adverse effects on the environment.</p>	<p>It is considered that implementation of this measure is achieved by the general framework of the planning system. Any aspects of, or conditions imposed on, a development consent order would have to be implemented in line with the terms of the consent. A developer who failed to do this would be in breach of their consent and subject to potential enforcement</p>

		<p>action.</p> <p>See Part VIII the Planning Act 2008⁶ - Enforcement and particularly section 161.</p>
Article 8a(5)	Member States must ensure that the competent authority takes any of the decisions referred to in paragraphs 1 to 3 within a reasonable period of time.	<p>An application for development consent is subject to a six-month examination period. The examining authority has three months within which prepare a report and recommendation to the Secretary of State, and the Secretary of State has three months within which to make a decision.</p> <p>See e.g. section 107 of the Planning Act 2008.</p>
Article 8a(6)	The competent authority must be satisfied that the “reasoned conclusion” referred to in Article 1(2)(g)(iv) is still up to date when taking a decision to grant development consent. Time frames for the validity of the reasoned conclusion or any other decision may be set by the Member State.	<p>The provision is copied out, but the Regulations elaborate to explain that the Secretary of State’s conclusion is to be taken to be up to date if, in their opinion, it addresses the likely significant effects of development. This is intended to help provide clarity that the Secretary of State only needs to revisit their conclusion if there has been some real change in the likely significant effects of a proposal.</p> <p>Regulation 21(2) - Consideration of whether development consent should be granted.</p>
Article 9	This Article requires the competent authority to promptly inform the public and consultation bodies of the decision to grant or refuse development consent and to ensure that specified information is made available.	Regulation 31 - Duty to inform the consultation bodies, public and the Secretary of State of final decisions.
Article 9a	This Article requires competent authorities performing duties under the EIA Directive to do so in an objective manner and to avoid conflicts of interest. Where the competent authority is also the developer, the Member State must implement an appropriate separation between conflicting functions.	Regulation 35 - Objectivity and bias.
Article 10a	This Article requires Member States to lay down rules on penalties for the infringement of national provisions adopted pursuant to the EIA Directive.	<p>Transposition relies on the existing system of planning enforcement and provisions relating to unauthorised EIA development.</p> <p>Regulation 35 – Objectivity and</p>

⁶ 2008 c. 29.

		bias.
Article 11	This Article provides that members of the public shall have access to a review procedure before a court of law or other independent and impartial body to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of the EIA Directive.	Transposition relies on the existing legal framework for legal challenges to development consent orders as provided for under Part 6 of the Planning Act 2008 - Deciding Applications for Orders Granting Development Consent and particularly section 118 of that Act - Legal challenges relating to applications for orders granting development consent.
Article 12(2)	This Article requires Member States to provide the European Commission with specified information every 6 years where the data are available.	N/A
Annex I	This Annex lists the projects which must be subject to the EIA process.	Schedule 1
Annex II	This Annex lists the projects which may be subject to the EIA process, subject to thresholds or criteria set by Member States.	Schedule 2
Annex IIA	This Annex lists the information to be provided by the developer in respect of projects listed in Annex II to the EIA Directive.	See entry for Article 4(4)
Annex III	This Annex amends the selection criteria to be taken into account during the screening process.	Schedule 3
Annex IV	This Annex amends the information to be included, where relevant, in an environmental statement.	Schedule 4
Article 2 of the 2014 Directive	This Article states the transposition date and requires Member States to communicate to the Commission the text of the main transposing provisions.	N/A
Article 3 of the 2014 Directive	This Article contains transitional provisions for projects that were subject to screening or scoping or where an environment statement has been submitted before the transposition date.	Regulation 37 – Revocation and transitional provisions.