

**The Town and Country Planning (Environmental Impact Assessment)
Regulations 2010: Consultation on draft regulations**

**A response by Wildlife and Countryside Link
October 2010**

Introduction and summary

Wildlife and Countryside Link (Link) brings together over 30 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 690,000 hectares of land.

This response is supported by the following 9 organisations:

- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Campaign to Protect Rural England
- Friends of the Earth England
- The Grasslands Trust
- Open Spaces Society
- Royal Society for the Protection of Birds
- Woodland Trust
- WWF-UK

Link strongly supports the principle of Environmental Impact Assessment (EIA) and our member organisations have a strong interest in its successful implementation. We therefore welcome, in general terms, the Government's intention to consolidate the regulations. We also support the following detailed proposed changes:

- The requirements for changes and extensions to Schedule 1 development to be screened for the need for EIA, and for thresholds for Schedule 2 development to apply to developments as a whole once they are modified, rather than applying them to modifications in isolation as at present; and
- The requirement to provide reasons for negative screening decisions.

Link does, however, have two major concerns. These relate to, respectively;

- The need for screening decisions to continue to be made on a case-by-case basis according to the likely significant effects on the environment., with guidance making clear that thresholds should only be used as guidelines; and
- The inclusion of the new Regulation 4(5). The EIA Directive enables Member States in exceptional cases, to exempt a specific project in whole or in part from the provisions laid down in the Directive. Regulation 4(5) relates to actions the Secretary of State must undertake when exercising this power, including considering alternative forms of assessment. The proposed Regulation also gives the Secretary of State wide discretion in deciding how the results of such an assessment should be made public.

Detailed response

Q1. Do you agree that applying the existing Schedule 2.13(a)(ii) thresholds to Schedule 1 development as changed or extended will always trigger the threshold and hence require screening?

No comment.

Q2. Do you agree that, in light of the Baker judgment, all changes or extensions to Schedule 1 development should be screened for any likely significant effects on the environment?

Link supports the proposed change to apply screening to all proposed changes or extensions to Schedule 1 development.

Q3. Do you have any comments on what information the guidance should provide for planning authorities and third parties?

Link welcomes the intention to provide further guidance on how third parties can get involved. In general terms, it is suggested that a new Circular could also usefully cover how Environmental Statements should be presented to local authority planning committees, and how the public might be involved in scoping.

As it is most important to consider the likelihood of significant environmental effects in a broad sense at the screening stage, Link considers that the thresholds are only ever appropriate as a guide, along with consideration of the sensitivity of the site. Furthermore, thresholds cause much confusion and have the potential to lead to poor decisions being made on the need for EIA. Mandatory screening would also account for likely significant effects on the environment arising from material changes in use (in process or operation) where the only threshold relates to area.

Q4. Do you agree that disapplying “new” will help to clarify the Regulations as they apply to changes or extensions?

Link agrees with this proposal, but it is important that local planning authorities continue to have the discretion to decide whether EIA is needed for Schedule 2 development outside the thresholds, as is currently the case. The following guidance in paragraphs 48 and 49 (set out below) of the existing Circular 2/99 should therefore be retained:

‘Given the range of Schedule 2 developments, and the importance of location in determining whether significant effects on the environment are likely, it is not possible to formulate criteria or thresholds which will provide a simple universal test of whether or not EIA is required. The question must be considered on a case-by-case basis... It should not be presumed that developments falling below these thresholds could never give rise to significant effects, especially where the development is in an environmentally-sensitive location. Equally developments which exceed the thresholds will not in every case require assessment. The fundamental test to be applied in each case is whether that particular development and its specific impacts are likely, in that particular location, to result in significant effects on the environment’

Q5. Do you agree that no changes are needed to Schedules 3 and 4 of the 1999 EIA Regulations?

Link does not agree. We would like to see it made clearer in a revised Schedule 3.1 (b) that “other development” also includes the existing development to which the change or extension relates, as well as to unrelated development(s). The existing wording in Schedule 3.1(b) refers to ‘cumulation with other development’. Cumulative effect could clearly arise from an extension or intensification of an existing operation as well as with other development.

Similarly we consider that it should be made clearer within Schedule 4 that the cumulative effects to be included in the description of the likely significant effects includes the cumulative effects arising from the existing development to which the change or extension relates.

Q6. Do you have any comments on the requirement in draft regulation 4(5) and (7) for reasons to be given for all screening opinions/directions, as set out in Annex B?

Link strongly welcomes the proposed Regulation 4(7); we believe that this will make the EIA process more transparent and open to public influence.

Link has strong concerns about the proposed Regulation 4(5), in particular that such a significant new regulation has not been explained clearly in the consultation paper, or views expressly sought on it. The Directive does not specify what would be ‘exceptional cases’, nor does it discuss the idea of substituting another form of assessment – the findings of which could be unavailable for public scrutiny, given the proposed provision in 4(5)(c).

We request clarification from CLG as to the reasoning behind inclusion of Regulation 4(5) in the draft; the circumstances in which it might be used; and for the absence of any discussion of it in the consultation document.

Q7. Do you have any comments on the proposed rewording of the criteria in Schedule 2.3(i), and the proposal to increase the threshold from 15 to 18 metres?

No comment

Q8 Do you have any comments on the draft impact assessment contained at Annex E of this paper. In particular:

(a) Are the key assumptions used in the analysis in the impact assessment realistic? If not, what do you think would be more appropriate and do you have any evidence to support your view?

(b) Have any significant costs and benefits been omitted?

If so, please give details, including any groups in society affected and your view on the extent of the impact.

(c) Have any significant risks or unintended consequences not been identified? If so please describe.

(d) Do you think there are any groups disproportionately affected?

Link is concerned that the approach to ‘multi-stage consents’ outlined in the consultation paper may represent an additional risk for local communities and planning authorities in terms of not being fully informed about the environmental impacts of matters that are reserved. The Environmental Statement (ES) can only be expected to relate to the outline proposals, which may often lack specific detail. We

recommend that the new version of the guidance should include a brief commentary on how to approach, in the light of recent case law, ESs for outline planning applications.

The assessments do not set out an analysis of the costs or benefits of removing the criminal offence relating to the intentional provision of misleading information. Without such evidence Link cannot support the consultation paper proposal to remove the offence. It may be, for example, that the current provisions have value to the planning process and the public generally by acting as a deterrent.

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