



EIA & Environmental Reports

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EIA Update





A legal minefield?

Procedural requirements:-

- Is project within Sch1 or 2 of the EIA Regs;
- Determine scope of the project at issue;
- If Sch2 development, carry out a screening opinion (written with reasons).

- ES must meet requirements of r.18 (inc “based on” scoping opinion) & Sch4;
- Consultation
- Further information if required [r.25]
- Consultation
- Examine the environmental information; & integrate into decision to grant consent [r.26]

To discuss...

01

'The project'

Why does it matter?
Who decides?
What is the correct approach?

02

EIA procedure

Procedural requirements

Recent cases: the project

01

Ashchurch

The bridge to nowhere
CA held it was irrational to treat the bridge as a standalone project from the development it was designed to serve.

02

Sizewell C

Functional interdependence:
SoS concluded the means of supplying water to the proposal was not part of the same project. HC: his 'evaluative judgment' was not irrational.
Appeal hearing 1-11-23

03

Llandaff NRA

Sewage pipe not part of a pumping station project albeit necessary to link it to proposed development.
HC held not irrational: existence of cumulative effects do not make two projects one.

EIA procedure: issues to look out for

01

Scoping Opinion

Not essential – but useful.

ES must be “based on” the most recent scoping opinion.

02

Cumulative effects

Must be assessed.
GHG emissions particularly interesting (see *Boswell*) – courts currently give decision makers a wide degree of latitude.

03

Reg. 26

Often overlooked.

In an LPA decision, the officer report should evidence compliance.



Finch v Surrey CC



Environmental Outcomes Reporting: Substantive Basis

- Dissatisfaction with delay, expense, inadequacy of current EIA/SEA regimes
- Aim is to establish “*an outcomes-based approach to assessment where anticipated environmental effects are measured against specified environmental outcomes*” (from Explanatory Notes)
- EOR is to “*demonstrate how the plan or consent would affect the delivery of specified environmental outcomes as defined in [subsequent] regulations*”
- Explanatory Notes confirm EOR will extend the focus of assessment to include assessment of measures taken to improve the delivery of specified environmental outcomes, and must include an assessment of “*how matters raised through assessment are monitored or secured*”
- Litigation and uncertainty also noted as reasons for new regime

EOR: Legal Basis

- Part 6 Levelling Up and Regeneration Bill
- As required by Environment Act 2021, introduction of Bill included “environmental statement” to Parliament:
 - Baroness Scott of Bybrook: *“the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law”*
- Subsequent regulations will set out “*specified environmental outcomes*”
- Subsequent regulations will require EOR for relevant plan/project, will be “category 1” and “category 2” developments (i.e. EIA Schedule 1 and 2)
- Targets and Environmental Improvement Plan under Environment Act 2021 key

Key Questions

How will the aim be achieved? Focus appears to be on (1) application of mitigation hierarchy; and (2) post-implementation monitoring, enforcement and “action” (will be spelled out in subsequent regulations)

In light of focus, will enforcement be given teeth? Subsequent regulations may provide for criminal offences, civil sanctions under RESA (even where there is no offence)

Key Issues with EOR

- Maintaining current levels of legal environmental protection (non-regression)
- All detail to come via secondary legislation
- Gaps in EOR regime
- Achieving specified environmental outcome laudable but difficult in practice
- Screening
- Assessment of cumulative effects
- Enforcement
- The new approach to environmental assessment: is EOR a procedure or a product?

Timetable and Conclusion

- Transition period for secondary legislation 1-2 years
- Specified outcomes and guidance will be subject to consultation
- Will EOR improve the state of the environment?

Yes:

- Centralized, standardized and publicly available database of environmental information
- Clarity on what is to be achieved
- Focus on monitoring and enforcement

No:

- Too great a reliance on public reporting breaches?
- Capacity
- Discretionary nature of enforcement

So, maybe.



Thank you

Please send any questions to

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