

Briefing

September 2020

Environmental Impact Assessment (EIA)

Environmental Impact Assessment

About this guide

Environmental Impact Assessment (EIA) is a key feature of the planning system for larger and environmentally riskier types of development, such as large housing applications or opencast coal mines. It is an assessment which is meant to help us understand the potential environmental impacts of development proposals.

Unfortunately, both the process and outcome of EIA can be complex and confusing, leaving local communities unsure how a development might affect them or how to get involved. This guide is intended as a broad introduction to EIA. The material is drawn from regulations, official guidance and case law and is designed to help you understand what EIA is, in what circumstances it should happen and how to interact with the process. It is accompanied by a separate case law annex.

The guide is not intended to provide guidance on how to prepare an EIA nor is it legal advice. For example, it does not explain how to prepare an ecological survey or landscape and visual impact assessment. The overall theme of this guide is to encourage you to engage in the EIA process. We should not assume council planning experts always know best since, by ignoring local knowledge, decisions could have disastrous consequences for people living near development sites.

What is Environmental Impact Assessment?

In a nutshell EIA is an information gathering exercise which follows a prescribed, well-established methodology carried out by the developer and which enables a local planning authority to understand the environmental effects of a development before deciding whether it should go ahead.

The really important thing about EIA is the emphasis on using the best available sources of objective information and for developers to compile information in a systematic, holistic and robust way. In theory, a properly researched and objective EIA submission should allow the whole community to properly understand the true impact of the proposed development.

An EIA *should* lead to better standards of development and, in some cases, development not happening at all. EIA also helps to assess the effectiveness of the mitigation measures proposed for a development and whether they will ensure that no significant effect takes place.

EIA should be a systematic process which leads to a final written product, the Environmental Statement (ES).

Important jargon you will need to know:

- Environmental Impact Assessment (EIA) is a term used to describe the total process of assessing the environmental effects of a development project.
- An Environmental Statement (ES) is used to describe the written material submitted to the local planning authority in fulfilment of the EIA regulations.

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Where does EIA come from?

EIA in the UK derives from the legal obligations set out in the European Union's EIA Directive. In England, the Directive is implemented by way of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Similar regulations apply in Wales, Scotland and Northern Ireland – see reference section for links. The Directive requires that certain types of development likely to have significant impacts on the environment to undergo EIA. Official guidance on the interpretation of Regulations and procedures used to assess ESs can be found online – see reference section.

Separate legislation (and some non-legislative processes) cover EIA for development that is not considered under town and country planning legislation, such as highways, power stations, water resources, land drainage, forestry, pipelines, harbour works and many others. Some of these will be considered nationally significant infrastructure projects (NSIPs) – dealt with under the 2008 Planning Act by the Planning Inspectorate on behalf of the Secretary of State.

UK regulations have been criticised as not fully interpreting the spirit of the EIA Directive. Individual cases regarding major development proposals have led to controversial debates about the quality of EIA undertaken. Third parties have also complained to the European Commission about the failure of the UK Government to fully implement the EU Directive on EIA. Such matters continue to be tested in the courts – see our separate EIA Case Law Annex.

On 31 January 2020, the UK left the EU. A transition period will run until 31 December 2020, and during that time, the UK will mostly continue to be treated as if it were a member state of the EU, and continue to be subject to EU law. The EIA Directive has been implemented into UK law via the EIA Regulations, and these Regulations will in any event continue to function after the expiry of the transition period until such time they are revised, if applicable.

The government has signalled its intention to consult on reforms to Environmental Impact Assessment later in 2020, so watch this space.

When is an EIA required?

EIA is required for some types of development, but not others. Deciding whether an EIA is required is known as “**screening**” and can be a source of major dispute between developers, communities and local authorities. It is vital that this stage is carried out properly.

When undertaking screening, the regulations define two different types of project: those where EIA must take place or where it may be needed. These are set out in two Schedules as follows:

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Schedule 1 projects: an **EIA must always be carried out** (except where regulations 60-63 apply such as where the 'sole purpose' of the proposals is either military/national defence or in response to a civil emergency).

Schedule 2 projects: an EIA must be carried out if the development is likely to have a **significant impact on the environment by virtue of its nature, size or location**.

Unfortunately, the definitions allow for considerable uncertainty about the need for EIA in specific circumstances and this can result in legal challenge – **see separate EIA Case Law Annex**.

Examples of Schedule 1 projects (where EIA is always needed) include:

- major power plants
- chemical works
- long distance railway lines
- waste disposal incineration
- major road schemes (motorways)
- major wastewater treatment works.

Examples of Schedule 2 Projects (where EIA may be needed) can include:

- quarries and opencast mines
- deep drilling
- surface industrial installations (including hydraulic fracturing (fracking))
- urban development projects (housing and shopping centres)
- some intensive agricultural purposes
- surface storage of fossil fuel
- foundries and forges
- coke ovens
- chemical production
- manufacture of dairy products
- brewing
- installations for the slaughter of animals
- rubber production
- wastewater treatment plants
- holiday villages
- golf courses
- large scale/groups of wind turbines.

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All Schedule 2 developments are based on thresholds set out in the regulations. A proposed development only becomes a Schedule 2 development where it **exceeds** these thresholds. For example, 'surface industrial installations' development only falls within Schedule 2 for the purposes of screening where 'the area of development exceeds 0.5 hectare (section 2(e) of the Schedule 2 table). A further assessment as to whether the development will then have a significant effect, either on its own or in combination with another plan or project, is also needed.

Screening thresholds and whether a scheme is EIA: It is important not to confuse the qualifying issue of 'thresholds' with the issue of whether a Schedule 2 development must undergo EIA because it is likely to have a significant effect on the environment. Just because a project falls within one of the categories set out in Schedule 2 and exceeds the Schedule 2 threshold does not automatically mean EIA is required.

The key question for the competent authority (usually the local planning authority or Secretary of State) is whether the proposed development is *likely to have (a) significant effect(s)* on the environment.



As "Schedule 1" development, major wastewater treatment works will always require EIA.

The three-stage process for assessing Schedule 2 developments

When screening a Schedule 2 proposal for EIA, a planning authority will consider the following:

1. Is the proposed development within a category set out in Schedule 2?

If so, then either:

2. a) Does it exceed the threshold set out for that category in Schedule 2?

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or b) Is it in a 'sensitive area' such as a Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC), National Park, Area of Outstanding Natural Beauty (AONB) etc?

If so, then:

3. Is it likely to have significant effects on the environment by virtue of factors such as its nature, size or location? (Schedule 3 criteria)

If the answer to all three of those questions is 'yes' then an EIA is required.

Questions 1 and 2 are objective questions of fact. However, question 3 is a matter of opinion and different authorities may reach different views on that question based on their interpretation of Schedule 3 criteria. A decision on question 3 is therefore much harder to challenge in court – see our separate legal EIA case law annex for relevant cases.

OK, understood so far, but how do local authorities reach a decision on all of these tests?

The overall test for whether EIA is required for Schedule 2 development is whether the proposed development would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location. PPG provides a [threshold table](#) to aid consideration of whether a schedule 2 development is likely to be EIA. The thresholds are however indicative only and the proposal will be subject to local planning authority scrutiny before the authority offers its screening opinion.

EIA will usually be needed for Schedule 2 projects in three main types of case:

- major projects
- occasionally for projects on a smaller scale which are proposed for particularly sensitive or vulnerable locations
- in a small number of cases, for projects with unusually complex and potentially adverse environmental effects, where expert and detailed analysis of those effects would be desirable and relevant to whether the development should be permitted.

The criteria which must be taken into account when screening a Schedule 2 development are set out in **Schedule 3** of the Regulations.

Schedule 3 'selection criteria' for screening Schedule 2 development:

When a development is identified as surpassing the thresholds identified in Schedule 2, it is then screened against Schedule 3 criteria, as set out in [regulations](#). These include:

1 Characteristics of development

The characteristics of development must be considered have particular regard to:

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- the size and design of the development
- the cumulation with other development
- the use of natural resources, in particular land, soil, water and biodiversity
- the production of waste
- pollution and nuisances¹
- the risk of major accidents and/or disasters relevant to the development concerned including those caused by climate change, in accordance with scientific knowledge
- the risks to human health (for example, due to water contamination or air pollution).

2 Location of development

The environmental sensitivity of geographical areas likely to be affected by development must be considered, with particular regard to:

- the existing and approved land use
- the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground
- the absorption capacity of the natural environment, paying particular attention to:
 - (i) wetlands, riparian areas, river mouths
 - (ii) coastal zones and the marine environment
 - (iii) mountain and forest areas
 - (iv) nature reserves and parks
 - (v) European sites² and other areas classified or protected under national legislation
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure
 - (vii) densely populated areas
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

3 Characteristics of the potential impact

The likely significant effects of the development on the environment must be considered in relation to criteria set out in paragraphs 1 and 2 above, taking into account:

- the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected)
- the nature of the impact
- The transboundary nature of the impact
- The intensity and complexity of the impact
- The probability of the impact
- the expected onset, duration, frequency and reversibility of the impact

¹ Such as smells or odours

² As defined in Regulation 8 of the Conservation of Habitats and Species Regulations 2017

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- the cumulation of the impact with that of other existing and/or approved development
- the possibility of effectively reducing the impact.

What if a proposal has the potential to impact on sensitive areas?

The 2017 EIA Regulations and updated PPG make clear that in instances where proposals identified as Schedule 2 do not meet screening thresholds but are likely to impact on environmentally sensitive areas, they will need screening: *‘Projects listed in Schedule 2 which are located in, or partly in, a sensitive area also need to be screened, even if they are below the thresholds or do not meet the criteria.’*³

This means that for any development likely to have a significant impact on an SSSI, National Park or AONB, the likelihood of requiring an EIA is substantially increased. PPG states that *“in general, the more environmentally sensitive the location, the lower the threshold will be at which significant effects are likely”*⁴ Development in close proximity to these areas, as well as within them, may have the potential to cause such an impact.

In addition, in certain cases, local designations which fall outside the definition of ‘sensitive areas’, but which are nonetheless environmentally sensitive, may also be relevant in determining whether an assessment is required.⁵

There are a number of complex ideas bound up in the assessment of the likely impact of the development and its consequent need for EIA. The sensitivity of particular receptors to environmental impact may, for example, include both social and ecological impacts.

Likewise, there is an emerging trend to appraise the environmental carrying capacity of an area not just in terms of wildlife, but, for example, but taking into account broader considerations, such as air pollution and its impact on human health. This has led to an extremely important and contentious area of EIA and planning regulation – the assessment of health impacts and their materiality to planning decisions. The 2017 Regulations now include a specific reference to “risks to human health” in Schedule 3, para 1(g).

What about extensions to existing developments?

Changes or extensions to [Schedule 2](#) development, which when considered with the existing development as a whole, may result in significant adverse effects on the environment, or which meet the thresholds or criteria set out in column 2 of Schedule 2, also require screening.

Who decides if an EIA is required?

³ [Para. 017 Reference ID: 4-017-20170728](#)

⁴ [Para. 057 Reference ID: 4-057-2070720](#)

⁵ [Para. 032 Reference ID: 4-032-20170728](#)

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A developer can submit an ES voluntarily with a planning application in recognition that their scheme falls under Schedule 1 or exceeds Schedule 2 thresholds and would have a significant effect. Normally, however, the local planning authority decides if an EIA is required in consultation with the applicant in the first instance.

The local planning authority

The local planning authority (LPA) will likely be asked by the applicant whether EIA is necessary for a Schedule 2 submission. The proposal will then either be ‘screened in’ or ‘screened out’ by the LPA using the 3-step methodology set out above.

Regulations require a LPA to provide on request a formal opinion as to whether EIA should be carried out. This is called a **Screening Opinion**. They have 21 days to provide this or not longer than 90 days as agreed with the applicant. The LPA must be satisfied that it has received sufficient information to give a screening opinion, bearing in mind that the failure to require an EIA for a project subsequently found to have significant environmental impacts could be subject to costly legal challenge – see our separate EIA case law annex.

Where an application is submitted for a development falling within any of the Schedule 2 descriptions without an ES, the LPA may decide EIA is required and should refuse to consider the planning application until an ES is submitted. Likewise, when an application is appealed, an Inspector can refuse to consider further a case without EIA being undertaken.

The Secretary of State

The Secretary of State has powers to intervene in cases where the LPA has failed to give an opinion on whether an EIA is needed within the prescribed period, **or** where the applicant disagrees with the opinion given by the LPA. Their decision is known as a **Screening Direction**. They have up to 90 days to issue a screening direction under the EIA regulations.⁶

Important Note: If you are unsatisfied with the screening decision made by your local authority for a controversial development in your area, you can request a Screening Direction from the Secretary of State via the National Planning Casework Unit which undertakes this function on their behalf. You will need to justify why you think a development will introduce significant effects on the environment, and what these effects are likely to be (taking into account mitigation measures proposed by the applicant). The more convincing and robust your arguments, the more likely your case will be given full consideration. A Screening Direction will state whether an EIA is required with the SoS’ decision being final (i.e. it can only be challenged by way of judicial review in the courts).

⁶ <https://www.legislation.gov.uk/ukxi/2017/571/regulation/7/made>

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EIA and Case Law

In recent years, there have been increasing numbers of cases in the UK courts and European Court of Justice regarding EIA process and application. One important case illustrates the range of case questions which the courts have dealt with:

In *Berkeley v Secretary of State for the Environment 2000*, the House of Lords ruled that EIA could no longer be inferred. In short, this means that planning authorities can no longer say that while they have not explicitly carried out an EIA, their determination process amounts to an EIA by addressing key environmental impacts. This was often used as a defence by local authorities which had not required EIA. The Lords ruled that EIA was a distinct set of methods which must be applied coherently and in their entirety. In effect, local authorities are now under pressure to ensure their decisions about whether to require EIA are correct in the first instance.

Case law on Schedule 2 projects

Further cases concern whether Schedule 2 thresholds are determinative as to whether EIA is needed. The European Court of Justice gave judgment in the case of *Paul Abraham and others v Region Wallone and others* [2008] concerning modifications to an airport in Belgium. The European Court referred to the original European law (the Directive) which requires that projects which are likely to have significant effects on the environment, by virtue of their **nature, size or location**, are to be subject to EIA. The Court then issued a warning that ‘a Member State which establishes criteria and/or thresholds taking account only of the size of projects, without also taking their nature and location into consideration, would exceed the limits of its discretion’ under the Directive. This judgment may mean that even if a project does not exceed the threshold set out for its category in Schedule 2, and is not in a ‘sensitive area’, an EIA could **still** be required if the nature and location of the project mean it’s still likely to have a significant effect on the environment. Note Regulation 5(7) specifically allows the Secretary of State to direct that an EIA should be carried out, even where the Schedule 2 criteria or thresholds are not met.

Other cases of interest include:

- i) Failure of a planning authority to question if it had enough information to make an informed decision as to whether EIA is necessary. In *British Telecommunications plc v. Gloucester City Council* [2001] the court noted how easy it is for officers to slip into the trap of focusing on themes/areas suggested by the developers, rather than making their own independent assessments. See (EWHC 1001 (Admin); [2002] 2 P & CR 512; [2002] JPL 993).
- ii) Disregard for EIA procedural formality. Regulations state that when an EIA is not required, a written statement must be placed formally on the Planning Register. A case where this did not happen is illustrated in *R (Lebus) v. South Cambridgeshire District Council* ([2002] EWHC 2009 (Admin); [2003] 2 P & CR 71; [2003]).

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(See accompanying EIA Case Law Annex for further cases).

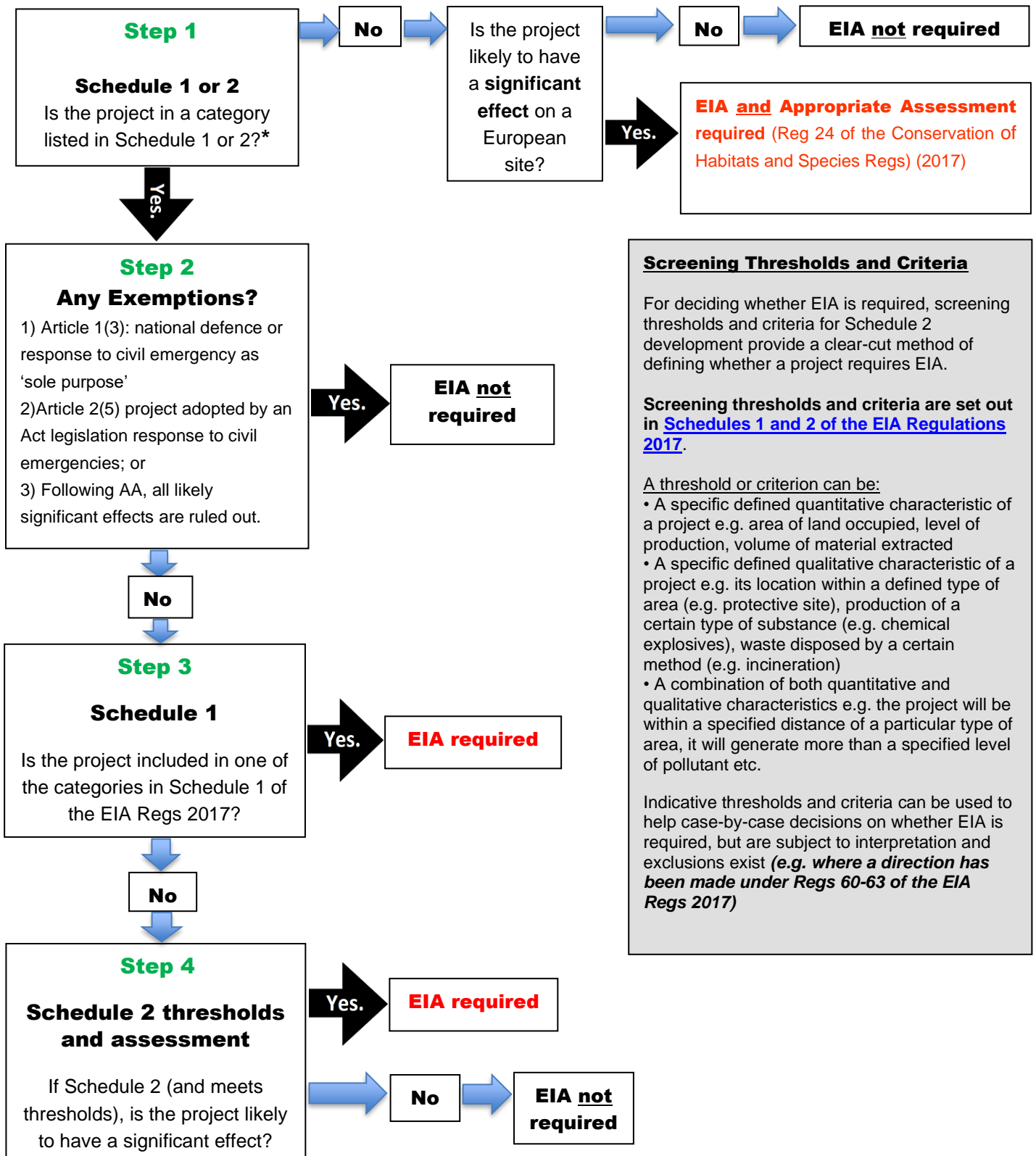
EIA Screening Procedure: Flowchart

The flow chart below provides a breakdown of how development proposals should be screened for EIA, bearing in mind relevant thresholds and criteria that must be considered by a planning authority (or the Secretary of State) before issuing a screening decision. It aims to encompass all screening considerations provided above in a simplified format – but as with all such simplifications, there may be some exceptions which are not covered. As you can see from the legal examples given above, EIA is **never** black and white where screening is concerned, despite simplified threshold tables having been made available. Planning Practice Guidance emphasises this point:

‘It should not be presumed that developments above the indicative thresholds should always be subject to assessment, or those falling below these thresholds could never give rise to significant effects, especially where the development is in an environmentally sensitive location. Each development will need to be considered on its merits.’⁷

⁷ PPG [Para: 018 Reference ID: 4-018-20170728](#)

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Screening Thresholds and Criteria

For deciding whether EIA is required, screening thresholds and criteria for Schedule 2 development provide a clear-cut method of defining whether a project requires EIA.

Screening thresholds and criteria are set out in [Schedules 1 and 2 of the EIA Regulations 2017](#).

A threshold or criterion can be:

- A specific defined quantitative characteristic of a project e.g. area of land occupied, level of production, volume of material extracted
- A specific defined qualitative characteristic of a project e.g. its location within a defined type of area (e.g. protective site), production of a certain type of substance (e.g. chemical explosives), waste disposed by a certain method (e.g. incineration)
- A combination of both quantitative and qualitative characteristics e.g. the project will be within a specified distance of a particular type of area, it will generate more than a specified level of pollutant etc.

Indicative thresholds and criteria can be used to help case-by-case decisions on whether EIA is required, but are subject to interpretation and exclusions exist (*e.g. where a direction has been made under Regs 60-63 of the EIA Regs 2017*)

Step 5 Recording the Screening Decision

When a formal screening decision is made whether to require or not to require EIA, the competent authority must keep a record of the decision and the reasons for it and make this available to the public – see Reg 28 of the Regulations.

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What stages of the EIA should we look out for?

Once a development has been ‘screened-in’, other stages of the process are unlocked, including: ES scoping, ES formulation and submission, public consultation, consideration and final decision making by the planning authority. It is useful to be aware of these stages, as well as some key areas of the ES you may wish to scrutinise in your response.

Scoping

Scoping refers to that part of the process after screening, where the applicant and local planning authority (“LPA”) decide – with input from statutory consultees – on the scope of issues the EIA will investigate. If a formal request for scoping has been received, a planning authority will consult statutory consultees (eg the Environment Agency, Natural England, Highways England and others) to help refine and identify the key scoping issues. There is a statutory timeframe of 5 weeks (or longer, if agreed with the applicant) for the LPA to respond. Consideration should focus on what are likely to be the ‘main’ or ‘significant’ effects with the ES. Issues considered to be of little or no significance require only brief treatment to indicate their relevance has been considered.

Regulation 15 allows developers to obtain a ‘formal scoping opinion’ from an LPA (5-week turnaround from receipt to issuing) on what should be included in an ES. It means that responsibility for failing to include an important issue rests as much with planning officers as it does with the applicant.

‘Informal scoping’ is also possible, although no statutory timeframe applies, and an authority is not obliged to publish its response to an applicant on its website. Friends of the Earth has previously submitted information requests to LPAs to get hold of such ‘informal’ scoping correspondence between a council and a developer, where this was not published on a council portal. This highlights possible transparency issues. For information on how to request environmental information under the statutory scheme, see our “Your Right to Know” briefings.

Where a LPA fails to adopt a scoping opinion within the ‘formal’ time period or if a developer is not happy with the scoping opinion from an authority, they can request a Scoping Direction from the Secretary of State. The Secretary of State’s decision is final.

Reasonable alternatives

Paragraph 2, Schedule 4 of the EIA Regulations requires the applicant to provide, within their ES, a description of reasonable alternatives they have considered to the development being proposed (for example in terms of development design, technology, location, size and scale) and to explain why they have selected that particular option.

These requirements raise a number of issues about planning decision making. For example, a developer may be limited in the extent to which they might consider development sites outside of their ownership. In the case of development concerned with waste disposal, consideration should be given to more sustainable solutions in

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sectors outside the operational range of the company. In practice therefore, the assessment of alternatives is at present limited in scope, since developers are unlikely to identify an option that would aggrieve itself or benefit a competitor. Still, if a developer fails to provide evidence to show it has looked at reasonable alternatives, this may leave a scheme open to challenge or further requests for information down the line.

Baseline

The scoping exercise enables the applicant to establish the existing conditions or standards referred to as the baseline against which the effects of the proposed development may be judged. This can be a crucial stage for communities who may have local knowledge which is highly relevant to understanding the baseline conditions and local context.

Consultation

As well as consulting the local authority, anyone conducting an EIA is obliged to consult certain statutory consultees. The regulations lay down which bodies must be consulted, and this includes government agencies that are obliged to provide information they hold which might be relevant to the EIA. Key consultees include:

- The EA gives advice on a whole range of pollution, permitting and flood defence issues (*N.B. even if the EA issues a permit for a certain aspect of a development such as waste or emissions, the development could still have a significant adverse impact and an EIA may be required. See our Case Law annex for details*)
- Natural England deals with biodiversity, protected areas and landscape impact
- Historic England covers archaeology, heritage and conservation matters
- Highways England deals with capacity, constraint and possible impacts to the strategic road network.

Other regulators/consultees might include: Coal Authority, Oil and Gas Authority, AONB area officers; Public Health England, the Police, Marine Management Organisation, Internal Drainage Boards – as well as other bodies and organisations.

The council will consult the same statutory bodies – where relevant – before issuing a formal scoping opinion and also once an Environmental Statement (ES) has been formally submitted by the developer.

Under the [Environmental Information Regulations 2004](#) public bodies must make environmental information available to any person who requests it. However, the consultation bodies are only required to provide information already in their possession.

In terms of notifying the public, PPG states: “*The Environmental Statement (and the application for development to which it relates) must be publicised electronically and by public notice. The statutory ‘consultation bodies’ and the public must be given an opportunity to give their views about the proposed development and the Environmental*

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Statement.” (para - 003 Reference ID: 4-003-20170728).

Regulation 19(3)(d) also states that a person “likely to be affected by, or with an interest in the application who is unlikely to become aware of it by means of a site notice or local advertisement” needs to be sent a notice.

Publicity

For an ES accompanying a planning application, publicity⁸ by the LPA consists of:

- a copy of the ES is put on Part I of the Register of Planning Applications available for inspection by members of the public
- a site notice in the prescribed form is displayed on or near the application site for **‘not less than 30 days’**
- notice in a newspaper circulating in the locality of the site
- where necessary⁹ sending a notice (equivalent information to that publicised in the newspaper notice) to those unlikely to become aware by the above means, including the name and address of the planning authority.

Where the development involved is likely to be controversial, the LPA may provide copies of the ES in local public libraries or at local authority offices or other convenient locations.

If an ES is submitted after the planning application, it is the applicant’s responsibility to organise publicity¹⁰ by way of:

- a notice in a local newspaper circulating in the locality in which the land is situated
- a site notice on the application site containing the same information as the newspaper advertisement, in a position where it is visible to members of the public without trespassing. The site notice should remain in position for not less than seven days in the month immediately preceding the submission of the ES.

A certificate that the site notice has been posted, together with a copy of the newspaper advertisement, should be supplied to the LPA with the ES.

Under regulation 20(2)(j) where an ES is submitted after a planning application, any person wishing to make written representations to the planning authority can do so for a specified period. In all instances, **the consultation period for EIA must be “not less than 30 days” from the date of publication of the ES on the planning register.**

This 30-day consultation timeframe also applies to Regulation 25 consultations (for further information), where following a formal request by a planning authority, a developer submits additional environmental information to support their application.

⁸ Town and Country Planning (Development Management Procedure) (England) Order 2015 [Article 15](#)

⁹ Such as someone living remote from the site.

¹⁰ Town and Country Planning (Environmental Impact Assessment) Regulations 2017 [Regulation 20](#)

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In May 2020, as a result of the fallout of Covid-19, the government introduced temporary changes to publicity requirements for certain planning applications, including applications for EIA development. These changes, for a limited time period only (ending 31 December 2020), give LPAs (and applicants of EIA development) the flexibility to take other reasonable steps to publicise applications if they cannot discharge the specific requirements for site notices, neighbour notifications or newspaper publicity. Guidance on these temporary changes is set out in PPG.¹¹



The Preston New Road fracking exploration site qualifies as “extractive industry” (Schedule 2 EIA Regs 2017). At more than 2.65Ha, it is over the 0.5Ha threshold for screening and, due to potential for significant effect, required the submission of an ES.

What is the format of an Environmental Statement (ES)?

Once an applicant has compiled the EIA, the information should be systematically presented in the ES. Regulations specify in Schedule 4 that information to be included in the ES is as follows:

¹¹ Temporary changes to publicity requirements for planning applications.
<https://www.gov.uk/guidance/consultation-and-pre-decision-matters# covid19>

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Description of the development, including in particular:

- a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases
- a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used or volumes of hydrocarbons being extracted
- an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc) resulting from the operation of the proposed development
- a description of the **likely significant effects** of the proposed development on the environment, including in particular:
 - (a) the construction and existence of the development, including, where relevant, demolition works
 - (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources
 - (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances¹², and the disposal and recovery of waste
 - (d) the risks to human health, cultural heritage or the environment (for example, due to accidents or disasters)
 - (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources
 - (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change
 - (g) the technologies and the substances used
- a description of the likely significant effects of the proposed development (given above) on the environment, covering the **direct effects** and any **indirect, secondary, cumulative, transboundary short, medium and long-term, permanent and temporary, positive and negative effects**
- a description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment.

A non-technical summary of the information provided above should also be provided, along with an indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information and uncertainties involved. The EIA Regulations also require the ES be compiled by a “competent expert”.

¹² Such as smells or odours

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Overall, there is no statutory or prescribed format for the arrangement of this information. This will depend upon the scale of the development project, and the complexity of issues investigated. A typical ES submission usually comprises a lengthy main document with separate technical annexes, as well as a non-technical summary (which briefly summarises the EIA findings). While there is no set format, an EIA application is often packaged into **three separate parts:**

Part I: The planning application

- planning application form
- certificate
- schedule of plans and drawings.

Part II: The Environmental Statement

Non-technical summary:

This summarises the contents and conclusions of the ES. It is the part of the ES which may be published separately for circulation on a non-statutory basis to local residents or interested parties. Beware the generalised nature of such 'non-technical' summaries. If you really want to get to grips with an EIA application (and identify possible pitfalls and shortcomings), you need to scrutinise the full ES chapter by chapter. If you're short of time, focus on those chapters which cover matters which concern you most.

Environmental Statement:

This sets out information about the development in much more detail than provided in the non-technical summary. The ES draws together the threads which have been explored through the technical reports. These issues can be summarised under various headings, depending upon the nature of the development proposed, and having regard to the various items identified in the Regulations (see Schedule 4).

It is necessary to define the 'baseline' that has been adopted to demonstrate the effects, if any, of the development upon each key issue previously identified by the scoping exercise. Where an issue has not been investigated in detail, this should be clearly explained to avoid any third party questioning the adequacy of the EIA.

The mitigation measures should be described either in relation to each item or collated in a separate section of the ES, which may also constitute the suggested environmental management and monitoring scheme to be followed during and after the development has been completed and is operational. This section is crucial, as if the prescribed mitigation is not deemed robust or effective enough, the scheme could still be viewed as introducing potential significant adverse effects and be refused.

Reasonable alternatives

As set out above, the ES should describe the reasonable alternatives studied by the

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developer, which are relevant to the proposed development and its specific characteristics compare environmental effects and indicate the main reasons for the option chosen. Reasonable alternatives studied by the developer should include:

- development design, technology, location, size and scale, relevant to the proposed project and its specific characteristics, and
- an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

This component of an ES is often dealt with in a somewhat cursory way. It should not, however, be ignored by the developer as it could give rise to third-party objections about the adequacy of the ES and potential legal challenges down the line.

Part III: Technical reports

Technical reports prepared for the various effects on the environment, together with the data supporting the conclusions, should be included in Part III. This enables the local planning authority to verify the contents of the ES by reference to the source material, evidence drawn on and reach a view on whether it is satisfied that the EIA has been sufficiently and rigorously prepared in accordance with the methodology agreed as part of the scoping exercise.

Making sense of this amount of material with only limited time available means you should focus on those aspects likely to cause the most concern. We suggest reading actual chapters rather than technical summaries where possible, as the devil is in the detail. Important information, for example, might be buried in an appendix or a footnote.

When is an Environmental Statement not an Environmental Statement?

The format and contents of an ES can often be inadequate either in terms of the quality of the assessment or because key parts of the assessment are missing. Schedule 4 of the UK regulations sets out the information that should be included in Environmental Statements. Common inadequacies include: failure to produce a non-technical summary; failure to adequately consider human health or properly consider reasonable alternatives; gaps in evidence (such as ecology surveys that are incomplete or carried out at the wrong time of year) or overly complicated submissions – see our Case Law Annex. The discussion above has outlined some issues which regulations require EIA to consider. It is also worth referring to the original EU Directive 2011/92/EU (as amended by EU Directive 2014/52/EU) in your representation, which contains a useful indication of the scope of EIA.

The legal principle of direct effect, in which EU Directives can have a direct effect in UK law, regardless of whether they have been transposed by UK regulations, means that local communities can mount challenges based on original directives.

Having left the EU on 31 January 2020, the UK is now in a period of transition, in which EU law continues to apply. The transition period is currently set to end on 31 December

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2020. The government has signalled its intention to consult on reforms to Environmental Impact Assessment later in 2020, so watch this space.

Are the public entitled to see the ES and how much should it cost?

The public are entitled to see both the non-technical summary and the full ES – with the LPA obliged to provide this information. While this will usually be in electronic format, UK regulations usually require application documents to be made available both online and in physical form – usually in a library or council offices. It should be noted however, that temporary amendments to the EIA regulations in response to Covid 19 provide a temporary exception to this requirement to ensure availability of copies of environmental statements at a “named address”, instead requiring that notices publicise where the environmental statement is available online.¹³ Obtaining a personal hard copy may prove expensive as the regulations allow for a charge to print and distribute such material – which for a full ES might run into hundreds of pounds. While requesting a hard copy under the Environmental Information Regulations (EIR) 2004 (See our Your Right to Know briefings) could provide a route to obtaining a hard copy of an ES, public authorities are allowed up to 20 working days to respond to EIR requests, which may leave very little time following receipt of the document to respond to the consultation. We would recommend viewing such documents online, where possible.



The potential for significant effects to protected species can be a principal consideration for an EIA.

Assessing the quality of EIA

In practice, the quality of EIAs and associated ESs is highly variable. Some ESs can seem more akin to a sales brochure for the applicant, rather than setting out a clear, technical, objective statement of environmental effects. There have been calls for an independent commission of EIAs to take them out of the hands of those with a vested interest in seeing schemes approved. This realisation is vitally important for the evaluation of EIA since it requires planners and the public to apply a critical assessment of both baseline

¹³ Reg 16 - The Town and Country Planning (Development Management Procedure, Listed Buildings and Environmental Impact Assessment) (England) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/505) (2020 Regulations) came into force on 14 May 2020.

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data and measures designed to secure mitigation. The 2017 EIA Regulations introduced a new requirement that the ES must be “prepared by competent experts” (Regulation 18(5)(a)) – a move towards ensuring the quality of the ES is not compromised.

A number of formalised mechanisms have been developed with which to assess the quality of EIA. A well-known system is the **Lee and Colley Review Package (1992)** – see reference section below. This system divides an ES into its constituent areas, review categories and sub-categories and provides a form of assessment (In this A to F scale, A means ‘performed well’ and F is ‘unsatisfactory’). The review process is usually conducted by consultants with experience in each field, but any local community group could apply the technique, particularly where they have local knowledge not possessed by the developer.

A key flaw with the review package, however, is that it’s essentially subjective. It is also time consuming, especially with ESs getting larger by the year. It’s therefore unlikely that a decision to reject the contents of an ES submitted with a validated application could be justified solely using the Lee and Colley assessment method.

In practice, the evaluation of ES is based on professional experience and on good knowledge of the application area and its environmental context. These are skills which a LPA should have, or can procure, for the purposes of considering EIA applications in its area. You are, however, entitled to query in detail aspects of an ES, to which the authority may then ask the applicant for further information via the formal Regulation 25 request route (see below).

What if more information is needed before a decision can be made?

A council may ask a developer to submit further information for an EIA application where they consider it necessary for the ES to be supplemented with additional information directly relevant to their reaching a conclusion on the likely significant effects. This is known as a Regulation 25 consultation, as it links to Regulation 25 of the 2017 EIA regulations. In such instances, a developer must provide that “further information” before a final decision can be made. Further submissions will then be formally consulted on a period of 30 days to allow the public to voice any concerns they may have.

EIA and permission in principle

The Housing and Planning Act 2016 introduced the concept of “permission in principle (PIP)”, where land put on Part 2 of a council’s brownfield land register is conferred permission in principle for housing. To build on such a site requires a developer to gain technical details consent. Consultation is carried on the technical detail, not the principle, of the development.

Whether EIA screening is required for development proposals put forward on sites with permission in principle, will depend on whether EIA thresholds are likely to be exceeded, their proximity to sensitive sites and level of impact. Planning Practice Guidance states

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that EIA development (proposals that are ‘screened in’) cannot be conferred permission in principle and so cannot be put onto Part 2 of the Register.

Planning Practice Guidance states that where a site was previously screened-out for EIA before being put into Part 2 of the register, but is then screened-in at the technical details consent stage the original PIP remains valid, but the specific requirements set out in the EIA Regulations and other related legislation must then be met before technical details consent can be granted.

Conclusion

The legal and procedural background to EIA is complex but members of the public can be effective participants in the process if they ignore the jargon, are able to garner a basic understanding of the process and can apply local knowledge effectively.

Things to look out for are phrases such as “desktop survey” (shorthand for nobody had time to actually visit the site) or a lack of detailed survey work, especially when statutory consultees have advised such is needed to assess significant effects of a scheme (eg bats and birds; noise; health; landscape/visual; transport etc).

The quality of ESs can also be surprisingly poor with some developers keen to do the least possible. EIA can on occasion be reduced to a box ticking exercise. Where this is the case, the ES then lacks sufficient objective detail or evidence for an authority to gauge likely significant effect(s) or effectiveness of mitigation – and therefore make an informed decision.

It’s vital that local residents near an EIA site continue to ask critical questions of an ES, as well as the local authority’s interpretation of the document.

Use the local knowledge and collective skills of your group to identify flaws in the ES conclusions, especially when the data being quoted don’t seem to support what’s being said. Don’t be afraid to use the assessment methodologies provided above, or at least check the submission against Schedule 4 of the regulations to ensure everything has been submitted and the correct procedure followed.

Use your judgement to see if the developer has made reasoned conclusions, especially where it is argued that proposed mitigation will overcome the original significant effect but the evidence does not appear to support this (eg, landscape screening to protect/reduce visual impact; replanting/restoration schemes to restore physical impacts to the landscape or acoustic fencing to reduce noise impacts – as well as other forms of mitigation).

EIA is a powerful tool. Carried out properly, it informs decisions on new development to ensure harmful schemes either incorporate mitigation to ensure no significant adverse effects occur, or the development is refused.

EIA offers significant potential to safeguard the environmental quality of local areas, but only if local people feel able to engage with the process effectively.

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Further information and guidance:

Friends of the Earth England, Wales and Northern Ireland
The Printworks
139 Clapham Rd
London
SW9 0HP

Website: www.foe.co.uk

Useful EIA Terminology

- **EIA:** Environmental Impact Assessment: an assessment to ensure that when deciding whether to grant planning permission for a project that is likely to have significant effects on the environment, a planning authority does so in full knowledge of likely significant effects, taking these into account in the overall decision making process.
- **Significant effect:** if a development is deemed likely to introduce a significant effect on population and human health, the environment (biodiversity, land, soil, water, air and climate), material assets, cultural heritage or the landscape, then it will be screened in for EIA.
- **EIA Screening:** where a development proposal is assessed by a local authority or the Secretary of State to determine whether it is EIA development, and therefore needs an EIA. NB where a development was screened before 16 May 2017, the older 2011 EIA regulations will apply, rather than the 2017 EIA regulations.
- **Screening Opinion:** where a local/minerals planning authority offers its opinion as to whether a development proposal constitutes EIA. It will usually justify its decision based on thresholds in PPG guidance and in line with the schedules contained in the 2017 Regulations.
- **'Screened in':** where a development proposal has been assessed as comprising EIA development (likely to have significant effects) and requires an EIA to be undertaken and an ES submitted to demonstrate it will not have such impact.
- **'Screened out':** a development that is not considered EIA.
- **Screening Direction:** while a local/minerals planning authority offers its opinion, it can be contested if a developer applies to the Secretary of State for a Screening Direction. It is usually undertaken by the Planning Casework Unit, and it will make a formal and final decision as to whether a development proposal should require EIA.
- **Scoping:** where, following input from statutory consultees, a local/minerals planning authority advises the applicant on the scope of a forthcoming environmental statement, usually based on factors where significant effects are most likely to arise (eg, landscape, heritage, ecology, transport, air quality, noise, hydrogeology and others)
- **Scoping Opinion:** the opinion published by the local/minerals planning authority which offers the scope of an ES.
- **Scoping Direction:** where a local/minerals planning authority may be late in

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publishing its scoping opinion or where an applicant disagrees with its findings, the applicant may apply to the Secretary of State for a Scoping Direction.

- **Request for Scoping:** following a development being 'screened in', this is where an applicant submits a request from the local authority as to the scope of the Environmental Statement to be submitted. The applicant may recommend in their correspondence what they feel is suitable, but the authority will give its view – usually following correspondence from statutory consultees such as Natural England or the Environment Agency – as to the scope required.
- **Reasonable Alternatives:** alternative schemes studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

Useful websites

Government

Air Quality – UK National Air Quality site (DEFRA)
www.airquality.co.uk

Environment Agency
www.environment-agency.gov.uk/

Environment Agency Public Registers (regarding permitting)
<https://environment.data.gov.uk/public-register/view/index>

Information Commissioner's Office
<https://ico.org.uk/>

Ministry for Housing Communities and Local Government
<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>

National Planning Casework Unit (NCPU)
<https://www.gov.uk/government/publications/2010-to-2015-government-policy-planning-system/planning-system#appendix-2-national-planning-casework-unit>

Neighbourhood Statistics
www.neighbourhood.statistics.gov.uk

Planning Portal
www.planningportal.co.uk

The Planning Inspectorate
www.planning-inspectorate.gov.uk/

Non Governmental Organisations (NGOs)

CPRE - the Countryside Charity – planning site
www.planninghelp.org.uk

Environmental Law Foundation

Environmental Impact Assessment

www.elflaw.org/

Liberty

www.liberty-human-rights.org.uk/

Wildlife and Countryside Link

www.wcl.org.uk

EIA further reading

Community Rights Resource Pack:

<https://friendsoftheearth.uk/legal-and-planning/guide-community-rights-environment-and-planning-law>

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

<http://www.legislation.gov.uk/ukxi/2017/571/contents/made>

The Planning and Compulsory Purchase Act 2004

<http://www.legislation.gov.uk/ukpga/2004/5/contents>

Permission in Principle and EIA

<https://www.gov.uk/guidance/permission-in-principle>

<http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted>

Permitted Development and EIA

<https://www.gov.uk/guidance/environmental-impact-assessment#decision-making-subject-to-eia> (see Paragraph: 014 Reference ID: 4-014-20170728 - Revision date: 28 07 2017)

Government guidance on EIA

<https://www.gov.uk/guidance/environmental-impact-assessment>

Planning Inspectorate Advice notes

<https://bit.ly/3knETp2>

Planning Practice Guidance screening checklist

<https://www.gov.uk/government/publications/environmental-impact-assessment-screening-checklist>

European Commission's web pages on EIA

<http://ec.europa.eu/environment/eia/eia-legalcontext.htm>

Lee and Colley Review Package (see part B2 for EIA review methodology): _

http://www.personal.ceu.hu/students/03/Jordan_Hristov/Lee_Coley%20package.doc
<https://aardlink.files.wordpress.com/2013/08/op55.pdf>

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Evaluation of (Lee and Colley) underlying EIA evaluation method (Pöder and Lukki – 2011)

<https://www.tandfonline.com/doi/pdf/10.3152/146155111X12913679730511>

Climate change adaptation and mitigation into EIAs

https://eprints.soton.ac.uk/398039/1/_filestore.soton.ac.uk_users_krc1d15_mydesktop_Hands%2520and%2520Hudson%2520accepted%2520version%2520for%2520eprints.pdf