

EIA Branch, Office of the Deputy Prime Minister (ODPM) – EclA Guidelines Comments

There is clearly some useful advice in this document. Our main concern is the way in which, in linking EclA to EIA procedures, the distinction between statutory requirements and non-statutory advice has become blurred. This is evident in a number of passages.

Our specific comments are:-

- At the outset (beginning of the summary and paragraph 1.1) it is stated that "EclA may be carried out as part of a formal EIA" and that EclA is a "key component of EIA". That is OK but it needs to be made clearer that, where it is, it will be subject to EIA regulations.
- 1.3 It is not made clear exactly what is available on the ODPM web site. As far as EIA is concerned, what is on the web site essentially reflects the legislative requirements, not a voluntary assessment which is the context in paragraph 1.3.
- Box 1 Two of the references need to be updated: the third entry (Note on EIA for Local Planning Authorities) has been updated & it's now 19 April 2004, while the eighth entry (the Guide to Procedures) is entitled Environmental Impact Assessment , not Environmental Assessment
- 1.17 This now isolates EclA from EIA by saying it is an independent process which may be carried out in addition to EIA, but that EIA provides a logical framework into which most EclAs fit. Again, this is not wrong in itself but, as the guidelines flit between integration into EIA and self-standing informal process, the reader needs to be in no doubt as to which one is being considered at any particular point in the guidelines.
- 1.18 Again this mixes statutory screening with either statutory or non-statutory scoping.
- 2.3 1st sentence - we are not aware of any statutory provision to require an EclA even where EIA is required.
- In the title to Box 5 there is a reference to the "Relevant Schedule to UK EIA Regulations". This gives the impression that the contents of Box 5 are in one of the Schedules to the regulations, which is not the case.
- 2.30 The sentiment in the last sentence seems a strange one given the theme of integration running throughout the guidelines - who are "those organising the EIA" and isn't the message elsewhere that the ecologist is one of them?
- 4.3/4.4 Paragraph 4.3 states that the following guidance is in accordance with the mandatory requirements of the EIA regulations, but then the end of 4.4 refers to cumulative effects and the need to take account of other "plans" or "proposals". We can find no legal requirement to consider other plans or proposals and, in fact, we work on the basis that the effects of other development should only be considered if it has been completed or if there is a planning permission covering it. The same point occurs in paragraph 4.17 ("other current proposals"). What is said in paragraph 4.20 about the difference between cumulative and in-combination effects, whilst it may reflect what is said in guidance on Habitats regulations, only serves to make the position even more confused, particularly if this is supposed to be in accordance with the mandatory requirements of the EIA regulations (paragraph 4.3).
- 4.19 This gives the title of a publication and adds a footnote 54, but that footnote gives a different title.
- 4.23ff This section is quite confusing. It starts out by defining "significance" in ecological terms. It then says that the assessment of "significance" may be assisted by reference to conservation objectives where available, but the rest of this section seems to explain that, depending on the context in which those objectives are stated, this can in fact undermine the objectivity of the assessment. Again, this section seems to stray away from the intention of being "in accordance with

mandatory EIA requirements" (paragraph 4.3) by introducing extraneous features such as the difference between parish and borough plans.

- 4.31 and 4.44 These paragraphs, particularly the latter, give the impression that the assessment should consider environmental effects after mitigation measures have been incorporated. You might find it helpful to consider what the court said on this subject in the case Gillespie v First Secretary and Bellway Urban Renewal (TLR 7/4/2003), which is summarised in a note we have placed on the ODPM website (go to Planning, then Environmental Assessment, then Environmental Impact Assessment, then Note on Environmental Impact Assessment Directive for Local Planning Authorities). The same considerations need to be taken into account in the last two sentences of paragraph 5.11 and the third sentence of paragraph 6.1.
- Table 2 References here and elsewhere to PPG9 should now be to PPS9.

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ODPM
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