



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

Environmental Impact Assessment:

Scoping Process

Frequently Asked Questions (FAQ)

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1. What is a scoping request?

Regulation 10(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) allows a person who proposes to make an application for an order granting development consent (the Applicant) to ask the Planning Inspectorate (the Inspectorate), on behalf of the Secretary of State (the SoS), to state its written opinion (the Scoping Opinion) as to the scope and level of detail of the information to be provided in the Environmental Statement (the ES). The scoping request typically comprises a Scoping Report provided by the Applicant and setting out the information required under Regulation 10(1) of the EIA Regulations.

2. What must a scoping request include?

The request made under Regulation 10(1) of the EIA Regulations must include:

- a plan sufficient to identify the land;
- a description of the Proposed Development, including its location and technical capacity;
- an explanation of the likely significant effects of the development on the environment; and
- such other information or representations as the person making the request may wish to provide or make.

3. Where can I view the Applicant's Scoping Report?

Once received and deemed to include all relevant information required by the EIA Regulations, the Applicant's Scoping Report is published on the relevant project page of the Inspectorate's website, accessed via this link:

<https://infrastructure.planninginspectorate.gov.uk/projects>

4. How long does the Planning Inspectorate have to respond to the scoping request?

In accordance with Regulation 10(6) of the EIA Regulations, the Inspectorate (on behalf of the SoS) must adopt a Scoping Opinion within 42 days of receiving a scoping request. This is a fixed timeframe which cannot be extended.

5. What consultation is undertaken on the scoping request?

Before adopting a Scoping Opinion the Inspectorate must, under Regulation 10(6) of the EIA Regulations, consult the relevant 'consultation bodies' defined in the EIA Regulations as the following:

1. Prescribed consultation bodies

These are the bodies identified in Schedule 1 of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) (the APFP Regulations), including Statutory Undertakers’.

Statutory Undertakers are defined in Schedule 1 of the APFP Regulations as having the same meaning as in s127 of the Planning Act 2008 (the PA2008), which defines statutory undertakers as:

- having the meaning given by s8 of the Acquisition of Land Act 1981 (the ALA), which are Statutory Undertakers in specified sectors;
- those deemed to be Statutory Undertakers for the purposes of the ALA, by virtue of another enactment; and
- those that are Statutory Undertakers for the purposes of s16(1) and (2) of the ALA, which are specified health bodies.

The Inspectorate must either consult prescribed bodies in all cases or has discretion in deciding which bodies should be consulted by adopting a ‘relevance test’ and/ or by deciding whether certain circumstances apply, as set out in Schedule 1 of the APFP Regulations.

2. Local authorities

These are defined in section 43 of the PA2008 in terms of whether they fall within the categories of an ‘A’, ‘B’, ‘C’ or ‘D’ local authority:

- ‘A’ is a neighbouring local authority (s43(3)) that shares a boundary with a ‘B’ host authority;
- ‘B’ is either a unitary council or a lower-tier district council in which the Proposed Development and any Associated Development is situated (a host authority);
- ‘C’ is an upper-tier county council in which the Proposed Development is situated (a host authority); and
- ‘D’ is a neighbouring local authority (s43(3)) which is not a lower-tier district council and shares a boundary with a ‘C’ authority.

3. The Greater London Authority

If the land to which the application relates is in Greater London, the Inspectorate must consult the Greater London Authority.

The Inspectorate has also identified a number of bodies which are not defined as consultation bodies under the EIA Regulations, but have relevant functions and responsibilities which are akin to other consultation bodies. The Inspectorate will exercise judgment and may on a discretionary and non-statutory basis consult with these bodies on the information to be included in an ES. Such bodies are identified in the Inspectorate’s Advice Note Three, which can be accessed here: https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/07/advice_note_3_v5.pdf

In accordance with Regulation 10(11) of the EIA Regulations, the consultation bodies have 28 days from receipt of the Inspectorate’s correspondence to

respond to the consultation. Responses received after the 28 day deadline will not be considered within the SoS's Scoping Opinion; the Inspectorate is entitled to assume that the consultation body in question does not have any comments on the information to be provided in the ES or the updated ES.

6. Can I comment on the scoping request?

Only the consultation bodies identified above will be invited to comment on the Applicant's scoping request or be included within the SoS' Scoping Opinion. However, separately as part of the Applicant's Pre-application consultation duties a Statement of Community Consultation (SoCC) will be prepared setting out how the local community will be consulted about the Proposed Development. As the project is EIA development and requires an ES to be submitted, the SoCC will set out how the Applicant intends to publicise and consult on Preliminary Environmental Information about the likely significant effects of the project. It is therefore at this stage that individuals and bodies who were not invited to comment on the scoping request will have the ability to provide comments on environmental information relating to the Proposed Development.

The Inspectorate cannot comment on the merits of a Proposed Development or the likelihood that an application for development consent will be accepted if submitted and will not enter into correspondence on this subject. Further information on the SoCC is found in the Inspectorate's Advice Note Two, which is found here: https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/03/Advice_note_2.pdf

7. What is a Scoping Opinion?

A Scoping Opinion is the written opinion of the SoS as to the scope and level of detail of the information to be provided by the Applicant in their ES accompanying an application for development consent. The Inspectorate prepares the Scoping Opinion on behalf of the SoS.

Under Regulation 10(9) of the EIA Regulations, before adopting a Scoping Opinion the SoS or the relevant authority must take into account:

- any information provided about the Proposed Development;
- the specific characteristics of the development; and
- the likely significant effects of the development on the environment.

8. What weight should the Applicant place on the Scoping Opinion published by the Planning Inspectorate?

Regulation 14(3)(a) of the EIA Regulations states that where a Scoping Opinion has been adopted the Applicant's ES should "*be based on the most recent scoping opinion adopted (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion)*".

The Inspectorate expects that there may be some evolution of the methodological approach between the Scoping stage and submission of an application for development consent. It is for the Applicant to demonstrate how an ES submitted as part of an application for development consent meets the requirements of Regulation 14(3)(a).

9. What happens if the Applicant disagrees with the Secretary of State's Scoping Opinion or fails to act upon it?

As discussed above, Regulation 14(3)(a) of the EIA Regulations states that where a Scoping Opinion has been adopted the Applicant's ES should "*be based on the most recent scoping opinion adopted (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion)*". It is for the Applicant to demonstrate how an ES submitted as part of an application for development consent meets this requirement, and to justify any deviation from the SoS's Scoping Opinion due to the evolution of the project or methodologies. In the event that the Proposed Development materially changes between the Scoping stage and submission of an application for development consent, the Applicant should consider submitting a new scoping request.

10. Will the Secretary of State's Scoping Opinion have an impact on whether the Planning Inspectorate accepts an application for examination?

In accordance with Regulation 5(2) of the APFP Regulations the Applicant will need to submit the ES and SoS's Scoping Opinion with its application for development consent in order for the application to be accepted for examination. As discussed above, the ES must "*be based on the most recent scoping opinion adopted (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion)*" in accordance with Regulation 14(3)(a) of the EIA Regulations.

11. I have seen protected species on land earmarked for development. Should I tell the Planning Inspectorate?

Local authorities hold and manage records on the presence of plants, animals and habitats on all land. In the event that you have identified protected species on land earmarked by the Applicant for development it is therefore advisable to contact the conservation officer or ecology department of the relevant local authority to ensure that this has been recorded or can be raised by them during the Scoping process.

12. Where can I view the Secretary of State's Scoping Opinion?

The SoS' Scoping Opinion will be published on the Inspectorate's website at the end of the statutory 42 day scoping period (or before if applicable). Scoping Opinions are published on the relevant project page of the Inspectorate's

website, accessed via this link:

<https://infrastructure.planninginspectorate.gov.uk/projects>

13. Where can I find further information on the scoping process?

The Inspectorate's Advice Note Seven: EIA: Process, Preliminary Environmental Information provides further information on scoping and preliminary environmental information. It can be accessed here:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2017/12/Advice-note-7.pdf>