



## Annex to Advice Note 7 – Presentation of the Environmental Statement

This document is an annex to Advice Note 7: Environmental Impact Assessment: Process, Preliminary Environmental Information and Environmental Statements

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations) set out the information which must accompany an application for a Development Consent Order (DCO) for a Nationally Significant Infrastructure Project (NSIP) under the Planning Act 2008 (PA2008). Where required, this includes an Environmental Statement (ES).

The purpose of an ES is to ensure that the significant environmental effects of a Proposed Development are sufficiently described and understood. This information is then put before the Examining Authority (ExA) and examined as part of the DCO application process before a recommendation to the Secretary of State (SoS) is made under the PA2008. The ES is a part of the environmental information that should support the decision maker to reach a reasoned conclusion on the significant effects. The Planning Inspectorate considers that the ES should be a 'standalone' document prepared in line with best practice and case law.

The Planning Inspectorate advises that the ES should be laid out clearly avoiding (where possible) over-reliance on detailed and technical terminology. The ES should provide a clear, objective and realistic description of the likely significant effects of the Proposed Development. Information should be presented so as to be comprehensible to the specialist and non-specialist, alike. The Planning Inspectorate recommends that the ES be concise with technical information placed in appendices as appropriate.

### ES indicative contents

#### [The Infrastructure Planning \(EIA\) Regulations 2017](#)

Regulation 14 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) sets out what information the ES should contain as a minimum. This includes:

- a) a description of the Proposed Development comprising information on the site, design, size and other relevant features of the development;
- b) a description of the likely significant effects of the Proposed Development on the environment;
- c) a description of any features of the Proposed Development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- d) a description of the reasonable alternatives studied by the Applicant, which are relevant to the Proposed Development and its specific characteristics, and an

indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;

- e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.

Having had regard to Regulation 14(2)(f) the Planning Inspectorate considers that there is information specified in Schedule 4 that will always be 'relevant' for inclusion in an ES. These are summarised in points 1 to 5 below, and include:

1. a description of the Proposed Development including location, physical characteristics, operational characteristics, and expected residues and emissions;
2. a description of the baseline scenario including the future baseline without development as far as can be assessed;
3. a description of the methods used to predict significant effects;
4. a description of the likely significant effects (both positive and negative) of the Proposed Development having regard to impacts that are; direct and indirect, secondary, cumulative, transboundary, short, medium or long-term, permanent and temporary; and
5. a description of avoidance and mitigation measures and to what extent these will be effective and a description of any proposed monitoring arrangements.

Schedule 4 (Paragraph 4) of the EIA Regulations provides a list of the environmental aspects which (where relevant) should be considered when determining significant environmental effects. These are:

- Biodiversity (for example fauna and flora);
- Water (for example hydromorphological changes, quantity and quality);
- Air;
- Landscape;
- Cultural heritage, including architectural and archaeological aspects;
- Land (for example land take);
- Soil (for example organic matter, erosion, compaction, sealing);
- Material assets;
- Population;
- Human health; and
- Climate (for example greenhouse gas emissions, impacts relevant to adaptation).

Traffic and transport is not a specified aspect identified by the Regulations. However, good practice indicates that this can be an important consideration when assessing environmental impacts particularly in terms of interrelated impacts to air quality, noise and vibration and where relevant this should be assessed.

The Regulation also require (where relevant) the ES to include a description of significant effects associated with the risk of major accidents and/or disasters. The Inspectorate considers that this should be addressed in terms of; the Proposed Developments potential to cause major accidents and/or disasters but also the vulnerability of the Proposed Development to potential major accidents and disasters.

The EIA Regulations require that where a scoping opinion has been adopted the ES to be based on the most recent scoping opinion (provided the project remains materially the same) and to contain the information required to reach a reasoned conclusion on significant environmental effects.

## **A balanced approach**

The Planning Inspectorate expects that the ES should be balanced, with greater prominence being given to impacts more likely to generate significant effects. Where few or no impacts are identified, the relevant aspect chapter may be more concise in its findings.

The ES should explain the range of matters to be considered under each aspect which may be influenced by the characteristics of the Proposed Development. If the matters to be considered are narrow in scope then this should be justified.

## **Describing the Proposed Development and providing flexibility**

The ES should include a description of the location and physical characteristics of the Proposed Development. This should include a description of any required demolition works and land-use requirements for construction and operation (and decommissioning, if applicable). The description should address any operational production processes and include information on the expected residues and emissions.

The Planning Inspectorate acknowledges that the EIA process is iterative, and therefore the Proposed Development may change and evolve. For example, there may be changes to the design in response to consultation. Such changes should be addressed and reported in the ES. However, at the time of the application for a DCO, any Proposed Development parameters should not be so wide-ranging as to represent effectively different schemes.

If design parameters are used to inform the assessment they should be clearly defined and be consistent with the relevant parameters specified in the draft DCO. The ES should set out any parameters applicable to the description of the Proposed Development. The Applicant should attempt to narrow the range of options and explain clearly in the ES which elements of the Proposed Development have yet to be finalised and provide the reasons. Where flexibility is sought the ES should include an appropriate justification and explanation for the need or reference to other application documents for detailed information as needed. In determining suitable flexibility it might also be relevant to consider the choice of materials, the form of any structures and buildings, and lighting proposals, particularly if these aspects relate to the assessment (for example if they form part of mitigation proposals).

The Applicant should ensure that a parameter-based assessment considers the worst case scenario which the Proposed Development could have (in terms of environmental impacts) to ensure that it is robustly assessed.

This approach is generally consistent with the Rochdale Envelope principle (see *R v Rochdale MBC ex parte Tew (1999)* and *R v Rochdale MBC ex parte Milne (2000)*) which is a way of dealing with uncertainty in preparing development applications. The Applicant's attention is drawn to the Planning Inspectorate's Advice Note 9: Rochdale Envelope which is available on the Advice Notes page of the National Infrastructure Planning website.

The Applicant should determine, when preparing an ES, whether it is possible to robustly assess a range of impacts resulting from increased flexibility and a large number of undecided parameters. Applicants should be aware that the description of the Proposed Development in the ES must not be so wide that it is insufficiently certain to be able to address the requirements of the EIA Regulations.

The ES should be able to confirm that any changes to the Proposed Development within any proposed parameters would not result in significant impacts not previously identified and assessed.

Although it is not encouraged, Advice Note 16 provides advice about requesting changes to a Proposed Development (which may be material) after an application is accepted and before the close of the Examination. In such circumstances, it would be the Applicant's responsibility to ensure any implications of the change for the ES (and the EIA process including publicity and consultation) are addressed.

## **Addressing alternatives**

The ES must set out an outline of the reasonable alternatives studied by the Applicant and provide an indication of the main reasons for the Applicant's choice, including a comparison of the environmental effects (Regulation 14(2)(d) and Schedule 4).

The description of alternatives should take into account decisions relating to alternative locations, routes and design options. The justification for the final choice and evolution of the scheme development should be made clear.

## **Baseline**

The Planning Inspectorate recommends that the baseline should describe (with reference to the relevant environmental aspects) the current state of the receiving environment (the baseline scenario). The accuracy of the baseline scenario is particularly important as this is the point from which the impacts of the Proposed Development are measured. The baseline should be chosen carefully and, whenever possible, be consistent between aspects. The Planning Inspectorate recommends that the baseline scenario should be clearly explained in the ES, including any dates of surveys used to inform it. Particular care should be taken to ensure that all the baseline data remains relevant and up to date.

For each environmental aspect, the data source(s) used to establish the baseline should be explained along with details of any survey work undertaken. The timing and scope of all surveys should be agreed with the relevant statutory bodies and appropriate consultees, wherever possible.

The description of the Proposed Development and the baseline scenario should be established taking into account the context of the site and any other proposals in the vicinity. Paragraph 3 of Schedule 4 to the EIA Regulations also identifies the need to consider the future baseline in the absence of the development within the assessment, where relevant.

## **Identifying and assessing impacts**

### **Legislation and guidelines**

The EIA Regulations require (where relevant) a description of the 'forecasting methods or evidence' used in the assessment. The Planning Inspectorate recommends that the EIA methodology refers (as applicable) to relevant legislation, policy, standards, guidelines and

best practice used to inform the assessment. This should include any relevant National Policy Statement(s) and guidelines prepared by relevant professional bodies. The Planning Inspectorate recommends that the methodologies for baseline data collection, identifying scope, identifying effects, and determining significance are all explained clearly in the appropriate section(s) of the ES.

The Planning Inspectorate recommends that the requirements of other regulatory regimes including relevant legislation and any permits or licences required should be listed in the ES, as relevant to each aspect or matter assessed. It would be helpful if there was also an indication in the ES of the progress made towards securing and the timescales attached to any other permits or licences, for example where these may impact on the effectiveness or delivery of avoidance or mitigation measures. This information is required to be submitted with the application in accordance with the APFP Regulations.

### **Physical scope**

In general the Planning Inspectorate recommends that the physical scope for each aspect or matter of the assessment should be determined in the light of:

- the nature of the proposal being considered;
- the relevance in terms of the matter or aspect;
- the breadth of the aspect considered;
- the physical extent of any surveys or the study area; and
- the extent of potential impacts.

The Planning Inspectorate recommends that the physical scope of the study areas should be identified and justified for each of the aspects. The study areas should be sufficiently robust in order to undertake the assessment. This should include at least the whole of the Proposed Development site and any Associated Development. The extent of the study areas should be established in accordance with recognised professional guidance and best practice, whenever this is available, and determined having regard to the extent of the likely impacts. The study areas should be agreed with relevant consultees and, where this is not possible, should be stated clearly in the ES along with a reasoned justification.

### **Temporal scope**

The assessment should take into account:

- impacts during demolition and construction works;
- impacts on completion/ operation of the Proposed Development;
- impacts following completion of the Proposed Development (for example, in order to allow for traffic growth or maturing of any landscape proposals); and
- impacts relating to decommissioning.

The Planning Inspectorate acknowledges that the assessment of the impacts from future decommissioning activities may be difficult not least because an assessment made on future scenarios is less certain, and less reliance may be placed on the outcome. However, the purpose of such a long-term assessment (as well as to enable the decommissioning of the works to be taken into account) is to encourage early consideration of how structures can be removed at the end of their useful life. The assessment can be used to help minimise

disruption, to increase the re-use of materials and to restore the site or put it to a suitable new use. The Planning Inspectorate encourages consideration of such matters in the ES.

The Planning Inspectorate recommends that these matters should be set out clearly in the ES and that the suitable time period for the assessment should be agreed with the relevant statutory consultees.

The Planning Inspectorate advises that the ES should use consistent terminology to define time periods so for example, 'short-term' always refers to the same period of time.

### **Assessment of effects and significance**

The EIA Regulations require the ES to include a description of the 'likely significant effects of the Proposed Development on the environment'. The assessment should take into account the nature of the impact(s) including whether they are direct and indirect, secondary, cumulative (see below), transboundary, short-, medium- or long-term, permanent and temporary.

As a matter of principle, the Planning Inspectorate applies the precautionary approach to follow the Court's reasoning in judging 'significant effects'. In other words 'likely to affect' will be taken as meaning that there is a probability or risk that the Proposed Development will have an effect, and not that a development will definitely have an effect.

The Planning Inspectorate considers it is imperative for the ES to define the meaning of 'significant' in the context of each of the aspects assessed and for significant effects to be clearly identified. The criteria used to determine 'significance' for each aspect should also be clearly explained. Quantitative criteria should be used where available. The Planning Inspectorate considers that this should also apply to the consideration of cumulative impacts and impact interrelationships.

The Planning Inspectorate recognises that the way in which each aspect of the environment may be affected by the Proposed Development can differ. However, it considers that it would be helpful, in terms of ease of understanding and in terms of clarity of presentation, to consider the impact assessment in a similar manner for each of the aspects assessed. The Planning Inspectorate recommends that a common format should be applied where possible.

### **Interrelationships between environmental aspects**

The Planning Inspectorate considers that the interrelationships between aspects must be assessed in order to address the environmental impacts of the Proposed Development as a whole. The Planning Inspectorate recommends that each of the aspects considered in the ES should cross-refer to other relevant aspects where necessary. This will help to ensure that the ES is not a series of separate reports collated into one document, but rather a comprehensive assessment drawing together the environmental impacts of the Proposed Development. This is particularly important when considering impacts in terms of any permutations or parameters to the Proposed Development.

### **Cumulative effects**

The potential cumulative impacts with other developments will need to be identified and assessed, as required by the EIA Regulations. Significant effects should be determined having regard to the baseline position (which would include built and operational development). The EIA Regulations (Schedule 4) refer to 'existing and/ or approved development' in terms of the scope of cumulative impact assessment. The Planning

Inspectorate's Advice Note 17 explains that this assessment should include reasonably foreseeable development (with built development forming part of the baseline). In assessing cumulative impacts, other development to be included in the scope should be identified through consultation with the relevant local planning authorities and other relevant organisations to identify:

- projects that are under construction;
- permitted application(s) not yet implemented;
- submitted application(s) not yet determined;
- all refusals subject to appeal procedures not yet determined;
- projects on the Register of applications on the National Infrastructure Planning website; and
- projects identified in the relevant development plan (and emerging development plans, with appropriate weight being given as they move closer to adoption) recognising that information on such proposals may be limited.

Details should be provided in the ES, including the types of development, location and key characteristics that may affect the EIA and how these have been taken into account as part of the assessment.

The Planning Inspectorate emphasises the importance of a robust approach to the assessment and the need to consider other developments in the round. For example, it would not be appropriate for offshore wind farms to artificially restrict the assessment to only other offshore windfarms. They should also take account of any offshore licensed and consented activities in the area, for the purposes of the cumulative impact assessment. Consultation with the relevant licensing/ consenting bodies is essential in agreeing this approach.

Where relevant, applicants should consult consenting bodies in other EU states to assist with the identification of cumulative impacts with other developments outside of the UK (see commentary on transboundary effects below).

### **Related/ consequential development**

The ES should assess development which is related or consequential to the Proposed Development (but that is intended to be consented/delivered separately) to ensure that all the impacts of the Proposed Development are assessed. This will include development which may be subject to permitted development rights but which is necessary or consequential to the Proposed Development.

The Planning Inspectorate recommends that the Applicant should distinguish between the Proposed Development for which development consent will be sought and any other development. This distinction should be clear in the ES.

### **Mitigation measures and monitoring**

Mitigation measures may fall into certain categories, namely: avoid; prevent; reduce; or offset (see Regulation 14(2)(c) and Schedule 4 paragraph 7 of the EIA Regulations); and should be identified as such. Mitigation measures should not be developed in isolation as they may relate to more than one aspect. The ES should set out any mitigation measures, and identify to what extent these are expected to avoid, reduce or offset adverse effects on the relevant aspects to the environment. Any proposed mitigation should be discussed, and

wherever possible agreed with the relevant consultees. Only mitigation measures which are a firm commitment and can be shown to be deliverable should be taken into account as part of the assessment.

Schedule 4 of the EIA Regulations also refers to the inclusion of any monitoring arrangements which apply. Good practice indicates that any proposed remedial measures accompanying the monitoring arrangements are also described.

The mitigation and monitoring measures proposed in the ES should be cross-referred to specific provisions and/ or Requirements proposed within the draft DCO (or Deemed Marine Licence (DML) Condition, if relevant). This could be achieved by describing the mitigation measures proposed either in each of the aspect chapters or collating these within a summary tables section on mitigation/monitoring. If this is not provided it is likely that a table of this sort will be requested by the Examining Authority in any event.

The Planning Inspectorate considers it to be best practice for the ES to outline the structure of any environmental management and monitoring plan relied upon. This should include any necessary safety procedures which will be adopted during construction and operation and may be adopted during decommissioning phases.

It is also good practice to explain how proposed management plans will relate to one another. Applicants should consider including a 'hierarchy of plans' diagram or chart as part of the application.

## **Transboundary effects**

Regulation 32 of the EIA Regulations places duties on the Planning Inspectorate with regard to significant transboundary effects. In light of this, the Planning Inspectorate recommends that consideration should be given in the ES to any likely significant effects on the environment of another Member State of the European Economic Area. In particular, the Planning Inspectorate recommends consideration should be given to discharges to air and water and to potential impacts on migratory species and to impacts on shipping and fishing areas.

The Applicant's attention is also drawn to the Planning Inspectorate's Advice Note 12: Transboundary Impacts which is available on the Advice notes page of the National Infrastructure Planning website.

## **Habitats Regulations Assessment**

The 2017 EIA Regulations introduce a duty upon the relevant authority to ensure co-ordination between the EIA and Habitats Regulations Assessment. They also specifically mention European protected habitats and species as a consideration when assessing significant effects on biodiversity.

## **Summary tables**

The Planning Inspectorate recommends that in order to assist the decision-making process, the Applicant may wish to consider the use of tables in the ES:

- to demonstrate how the assessment has taken account of the most recent scoping opinion and any subsequent agreement reached with the relevant consultees regarding the scope of the assessment along with reference to the further evidence justifying the approach;

- to set out the proposed mitigation and/ or monitoring measures including cross-reference to the means of securing such measures (eg a draft DCO Requirement);
- to identify and collate the residual effects after mitigation for each of the aspects considered, including where they relate to interrelationships and cumulative effects;
- to describe any remedial measures that are identified as being necessary following monitoring; and
- to identify where details in the HRA report (where relevant), such as descriptions of European sites and their locations, together with any mitigation or compensation measures, are to be found in the ES.

## **Terminology and glossary of technical terms**

The Planning Inspectorate recommends that a common terminology within the ES and across all of the application documents should be adopted. This will help to ensure consistency and ease of understanding for the decision-making process. For example, ‘the application site’ should be defined (eg to mean the same as ‘the order limits’) and used only in terms of this definition so as to avoid confusion with, for example, the wider site area or the surrounding site. A glossary of technical terms should be included in the ES.

## **Non-Technical Summary**

The EIA Regulations require a Non-Technical Summary (Regulation 14(2)(e), Schedule 4). This should be a summary of the assessment in simple language. It should be supported by appropriate figures, photographs and photomontages where relevant.

## **Presentation**

The Planning Inspectorate recommends that the ES has all of its paragraphs numbered, as this makes referencing during examination easier as well as more accurate. Appendices to the ES must be clearly referenced, again with all paragraphs numbered. All figures and drawings, photographs and photomontages should be clearly referenced. Figures should clearly depict the Proposed Development site boundary, including Associated Development.

## **Confidential information**

In some circumstances it will be appropriate for information to be kept confidential. In particular, this may relate to information about the presence and locations of rare or sensitive species such as badgers, rare birds and plants where disturbance, damage, persecution or commercial exploitation may result from publication of the information. Where documents are intended to remain confidential, the Applicant should provide these as separate paper and electronic documents with their confidential nature clearly indicated in the title, and watermarked as such on each page. The information should not be incorporated within other documents that are intended for publication or which the Planning Inspectorate would be required to disclose under the Environmental Information Regulations 2014.

## **Limitations and expertise**

As set out in Schedule 4 (Paragraph 6) of the EIA Regulations, the ES should include a description of any difficulties (technical deficiencies or lack of knowledge) encountered by the Applicant in compiling the required information.

In Regulation 14(4) of the EIA Regulations emphasis is placed on the need for the ES to be prepared by competent experts and to be accompanied by a statement of qualifications from the Applicant.

### **Bibliography or reference list**

A bibliography/ reference list is required by the EIA Regulations (Schedule 4, Paragraph 10) and should be included in the ES. The author, date and publication title should be included for all references. All publications referred to within the technical reports should be included.