

Key Issue Response:

Planning for a Sustainable Future – White Paper

The Institute of Environmental Management and Assessment (IEMA) and the Ireland & UK Branch of the International Association of Impact Assessment (IAIA) welcome the opportunity to comment on the Government's proposals to improve the planning system set out in *Planning for a Sustainable Future* (the White Paper). We have identified a number of opportunities and concerns, related to both the effective safeguarding of the environment and environmental assessment practice, within the White Paper.

The Institute of Environmental Management and Assessment (IEMA) is a non-for-profit membership organisation established to promote best practice standards in environmental management, auditing and assessment. The Institute offers ongoing support to environmental professionals and aims to promote sustainability through improved environmental practice and performance. With over 11,500 individual and corporate members, the IEMA is now a leading international membership-based organisation, dedicated to the promotion of sustainable development and to the professional development of individuals involved in the environmental occupation across many industrial sectors. For more information on the IEMA, its events, services, products, membership, training and publications, please visit www.iema.net.

The IAIA is the leading global networking organisation on impact assessment for sustainable decision-making, providing an international forum for communicating information on best practice and innovation. It is truly a multi-disciplinary organisation covering the many aspects of impact assessment, and has 1500 members in more than 120 countries, including private and public sector planners and managers, consultants and policy analysts, university and college lecturers, researchers and students. In 2005, a regional Branch for Ireland and the United Kingdom was created, which aims to promote interaction between impact assessment researchers at leading Irish and UK universities with professionals in the field.

Given the Government's desire to see Regulation, in relation to the White Paper's proposals, consulted upon this autumn we have chosen to provide a key issue response to the White Paper consultation. This will allow the maximum amount of time to consider the issues set out below and to engage with the environmental assessment profession to identify how the proposals can minimise risk and capitalise on the value of environmental assessment as a tool to help deliver sustainable development. We will also be submitting a full response to the White Paper's consultation questions, in due course.

This key issue response highlights 3 major concerns we have identified in the White Paper in relation to environmental assessment. Our key issues are:

- 1. All National Policy Statements (NPS) should undergo Strategic Environmental Assessment (SEA) in line with Directive 2001/42/EC.**
- 2. Proposed changes to speed up delivery of Development Plan Documents (DPDs) have the potential to increase the risk of failing to meet SEA Directive requirements.**
- 3. Proposals to raise the screening thresholds related to EIA should be based on clear evidence.**

We also wish to highlight the assistance our organisations and membership may be in a position to provide during the implementation / operation of proposals related to the new approach to major infrastructure development. We believe we could play a key role in:

- Ensuring the SEA of NPS is undertaken in an effective and efficient manner.
- The development and operation of the Infrastructure Planning Commission (IPC), in relation to ensuring it utilises skilled environmental assessment professionals to advise it on its potential role in scoping EIA and reviewing Environmental Statements.

We would be happy to meet with DCLG to further discuss any assistance we may be able to provide on taking the White Paper's proposals for both NPS and the IPC forward.

- 1. All National Policy Statements (NPS) should undergo Strategic Environmental Assessment (SEA) in line with Directive 2001/42/EC**

The White Paper proposes that NPS '*should be the primary consideration for the commission in determining applications for development consent, i.e. that they should have more weight than any other statement of national, regional or local policy.*' (Paragraph 3.12). As such we consider that all NPS will clearly set the framework for future development consents for types of infrastructure listed under Annexes I and II of the EIA Directive (85/337/EEC, as amended). Such developments are likely to lead to significant effects on the environment by virtue of their size and nature whatever their location may be. Therefore it is clear that all NPS should undergo assessment compliant with the SEA Directive, to enable significant environmental effects to be identified and taken into account at the earliest stage of planning.

The current proposal in the White Paper indicates that NPS would undergo SEA 'as appropriate' and it could be the case that some existing Government policy would become NPS without SEA. There would seem to be no reason why a similar approach to the appraisal of sustainability, already undertaken at regional and local level, should not be required for NPS, thus automatically complying with the SEA Directive.

Such an approach would allow a consistent and transparent approach to the consideration of both environmental and wider sustainability issues during the NPS' development. It would also avoid the potential risk of legal challenge to those NPS developed utilising an appraisal of sustainability, which was not compliant with the SEA Directive.

- 2. Proposed changes to speed up delivery of Development Plan Documents (DPDs) have the potential to increase the risk of failing to meet SEA Directive requirements**

Proposals to increase the speed of production of Development Plan Documents (DPDs) by removal of the 'preferred options' consultation (Regulation 26, Town & Country Planning (Local Development) Regulations 2004) pose risks related to failure to comply with the SEA Directive. The SEA Directive requires the output of the SEA process (the Environmental Report) to be consulted upon alongside the draft plan. The current approach to DPD production automatically ensures compliance, to this aspect of the SEA Directive, by requiring the Sustainability Appraisal Report (incorporating the Environmental Report) to be consulted upon alongside the Preferred Options.

Whilst we wish to see an efficient and effective strategic planning system, which is not inappropriately delayed, we are concerned that the White Paper has failed to recognise the potential procedural conflict proposed changes could have with the SEA Regulations (SI 1633, 2004). We are further concerned that any new approach to pre-submission consultation on DPDs avoids increasing burdens on Local Planning Authorities and consultees. The White Paper proposes '*a period of plan preparation*' including:

'a statutory requirement to consult ... to a degree proportionate to the scale of the matters covered by the DPD in a form somewhat akin to the current regulation 25'.

If the White Paper's proposals are taken forward plan makers, consultees and the Planning Inspectorate would need to be satisfied that such '*proportionate*' consultation was sufficient to satisfy Regulation 13 of the SEA Regulations (SI 1633, 2004). If consultation were not considered sufficient the plan may be considered to be unsound, leading to delays in production, and would increase the risk of the DPD being subject to legal challenge in relation to SEA compliance.

In order to avoid these risks, planning authorities are likely to undertake consultation, within the 'period of plan preparation', on a draft plan accompanied by the Sustainability (/ Environmental) Report for all DPDs. This being the case, removing Regulation 26 will not remove the requirement to consult on a draft of the DPD and the results of its accompanying assessment. As such the White Paper's proposals may not generate the level of efficiencies anticipated and could increase delays for some DPDs, where planning authorities fail to undertake sufficiently effective consultation to meet the requirements of the SEA Directive.

3. Proposals to raise the screening thresholds related to EIA (Paragraph 9.32) should be based on clear evidence.

We recognise and agree with the need to consider ways to streamline the planning application process to ensure it is both effective and efficient. However, we are concerned that proposals, set out in paragraph 9.32, to '*examine the potential to raise the thresholds used in determining whether applications require an environmental impact assessment (EIA)*' have not accurately assessed the risk this could pose to increasing legal challenge.

Raising the exclusive thresholds in the regulations does have the potential to allow development with potentially significant effects to escape EIA, resulting in significant environmental effects not being assessed and mitigated or taken into account in decision making. Care must be taken to avoid increasing the risk of legal challenge in relation to the application of the EIA Directive in this respect.

The DCLG undertook a consultation in the summer of 2006 on revisions to DETR Circular 02/99. The consultation indicated a desire to move away from indicative thresholds and criteria for EIA screening, partly due to a history of local authorities interpreting a strict application of them as a defence to legal challenge in relation to EIA / potential EIA development. The proposed new approach instead focussed guidance on assisting an examination of the particulars of each proposed development in order to decide whether it was likely to lead to significant environmental effects. Clarification is requested as to whether the intention is to make this change or to retain indicative thresholds and criteria.

It is our opinion, based on our knowledge of environmental assessment and from discussions with members involved in EIA legal cases, that any change to EIA screening thresholds needs to be based on sound evidence. We believe this should include a review of previous screening decisions and a robust analysis of how the thresholds and criteria relate to the likelihood of significant environmental effects.

IEMA and Ireland & UK Branch of IAIA, July 2007