



EIA Notification and Consultation

Advice Note three: EIA Notification and Consultation

Status of this Advice Note

This Advice Note has no statutory status and forms part of a suite of advice provided by the Planning Inspectorate.

This version of this Advice Note supersedes all previous versions. It will be kept under review and updated when necessary.

This advice note makes reference to other advice notes, these can all be found at: <http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

Summary of this Advice Note

The purpose of this Advice Note is to explain the approach taken by the Planning Inspectorate, on behalf of the Secretary of State (SoS), when identifying consultation bodies to be notified and, where relevant, consulted on the scope of the Environmental Statement (ES) in accordance with the Infrastructure Planning (Environmental Impact Assessment (EIA)) Regulations 2017 (the 2017 EIA Regulations).

The 2017 EIA Regulations came into force in England and Wales on 16 May 2017. Consequently all EIA notification and consultation undertaken by the Planning Inspectorate will now be made in accordance with those Regulations. Regulation 37 of the 2017 EIA Regulations includes transitional provisions which allow for the continued applicability of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the 2009 EIA Regulations) in some cases. The Planning Inspectorate will notify and consult in accordance with the 2009 EIA Regulations where it is required to do so. Further references to the 'EIA Regulations' in this Advice Note are made in respect of the 2017 EIA Regulations.

This Advice Note has been compiled having regard to obligations under s42 of the Planning Act 2008 (as amended) (PA2008) and relevant statutory instruments including the EIA Regulations and the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (as amended) (the APFP Regulations).

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Introduction

The Applicant of a proposed Nationally Significant Infrastructure Project (NSIP), when meeting their statutory pre-application consultation obligations under s42 of the PA2008 must, where relevant, make diligent inquiries carrying out their own investigations and taking their own legal advice, as appropriate. It is the responsibility of the Applicant to ensure that their pre-application consultation fully accords with the requirements of the PA2008, including associated regulations, and that they have regard to relevant guidance. Applicants may nonetheless find it helpful to understand the approach taken by the Planning Inspectorate, acting on behalf of the SoS, when meeting its relevant statutory notification and consultation obligations under the EIA Regulations.

Background

1. Consultation bodies

1.1 Consultation bodies are defined under the EIA Regulations¹ as:

- a body prescribed under s42(1)(a) of the PA2008 (duty to consult) and listed in column 1 of the table set out at Schedule 1 to the APFP Regulations where the circumstances set out in column 2 are satisfied in respect of that body (referred to as '*prescribed consultees*' within this Advice Note');
- each authority that is within s43 of the PA2008 (local authorities for purposes of s42(1)(b)) (referred to as '*s43 local authorities*' within this Advice Note'); and
- if the land to which the application, or proposed application, relates or any part of that land is in Greater London, the Greater London Authority.

2. Regulation 11(1)(c) bodies

2.1 Regulation 11(1)(c) of the EIA Regulations relates to particular person(s) whom the Planning Inspectorate considers "*to be, or to be likely to be, affected by, or to have an interest in*" a Proposed Development and who are "*unlikely to become aware of the proposed development by means of the measures taken in compliance with Part 5 (applications for orders granting development consent) of the Act*".

2.2 Applicants will need to have regard to the requirements imposed under the EIA Regulations with regard to notifying and consulting Regulation 11(1)(c) persons².

3. Non-prescribed consultation bodies

3.1 The Planning Inspectorate may decide on a discretionary basis to consult with some bodies that are not defined under the EIA Regulations but which have relevant functions and responsibilities. These are termed '*non-prescribed consultation bodies*' and are described later in this Advice Note.

4. Regulation 8 notification/screening request

4.1 The Applicant for a Proposed Development is required under Regulation 8 of the EIA Regulations to either notify the Planning Inspectorate in writing that they propose to provide an ES in respect of the Proposed Development (a 'Regulation 8 notification') or request a screening opinion from the Planning Inspectorate, before carrying out pre-application consultation under s42 of the PA2008³.

1. Regulation 3(1) of the EIA Regulations

2. EIA Regulations 13, 16, 19, 20, 22 and 24 also refer to notification requirements with regard to Regulation 11(1)(c) persons

3. Regulation 8(1) of the EIA Regulations



4.2 Further information on making a Regulation 8 notification/request is provided in the Planning Inspectorate's **Advice Note 7: Environmental Impact Assessment: Preliminary Environmental Information, Screening and Scoping**.

5. Regulation 10 scoping request

5.1 Regulation 10 of the EIA Regulations enables a person to seek an opinion from the Planning Inspectorate acting on behalf of the SoS on the information to be included in an ES (a 'scoping opinion'). Before adopting a scoping opinion the Planning Inspectorate must, under Regulation 10(6) of the EIA Regulations, consult the consultation bodies.

5.2 Further information on making a scoping request is provided in the Planning Inspectorate's **Advice Note 7: Environmental Impact Assessment**.

6. Regulation 11 notification

6.1 Following the Applicant's notification to the Planning Inspectorate in writing that they propose to provide an ES, or after a screening opinion has been adopted to the effect that the Proposed Development is EIA development, the Planning Inspectorate will notify the consultation bodies that the Applicant intends to provide an ES for the Proposed Development. The Planning Inspectorate is also required to notify the consultation bodies of the duty imposed on them under Regulation 11(3) of the EIA Regulations, that if requested by the Applicant, they must enter into consultation with that person to determine whether they possess any information which is considered relevant to the preparation of the ES or the updated ES; and, if that is the case, they must make that information available to the Applicant. Regulation 11(3) does not apply to Regulation 11(1)(c) persons or non-prescribed consultees.

6.2 In accordance with Regulation 11(1)(b) of the EIA Regulations, the Planning Inspectorate will provide the Applicant with a list of the notified consultation bodies and any Regulation 11(1)(c) persons. Details of any non-prescribed consultees (see below) will also be provided, if appropriate. The 'Regulation 11 list' is compiled by the Planning Inspectorate to comply with its duty to notify the consultation bodies in accordance with Regulation 11(1)(a) of the EIA Regulations. Applicants may use this list to inform their pre-application consultation, but should not rely on this when carrying out their own s42 consultation exercise.

6.3 During the acceptance stage of an application for development consent the Planning Inspectorate, on behalf of the SoS, must, amongst other matters, determine whether the Applicant has complied with chapter 2 of part 5 of the PA2008 (pre-application procedure). Applicants will sometimes identify and consult fewer or different consultees (as part of their s42 obligations) than the Planning Inspectorate notifies/consults under Regulations 10 and 11 of the EIA Regulations. Where this occurs, Applicants should ensure there is a clear explanation for this within their consultation report⁴.

6.4 Applicants should also have regard to the relevant Department for Communities and Local Government guidance on pre-application consultation⁵ and the Planning Inspectorate's **Advice Note 14: Compiling the Consultation Report** and **Advice Note 16: The Developer's Pre-application Consultation, Publicity and Notification Duties**.

4. An application for development consent must be accompanied by a consultation report (s37(3)(c) of the PA2008)
5. Planning Act 2008: guidance on the pre-application process for major infrastructure projects available at: <https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects>



Notification and consultation by the Planning Inspectorate

In accordance with the approach explained below in this Advice Note, the Planning Inspectorate will notify⁶ and/or consult⁷ the following:

- A. prescribed consultees;
- B. s43 local authorities; and
- C. non-prescribed consultation bodies.

A) Prescribed consultees

1. Schedule 1 of the APFP Regulations

1.1 The prescribed consultees, which the Planning Inspectorate is required to notify and consult, are those bodies identified in Schedule 1 of the APFP Regulations. They are either:

- identified by name (for example the Joint Nature Conservation Committee); or
- are identified by category (for example the relevant highways authorities and statutory undertakers).

1.2 When identifying whether a prescribed consultee should be notified and consulted, the Planning Inspectorate either has:

- no discretion and must notify or consult in all cases^{A1}; or
- has discretion in deciding which bodies should be notified or consulted by adopting a 'relevance test' and/or by deciding whether certain circumstances apply (the 'circumstances test'), the application of this discretion is described below.

1.3 Applicants should be aware that amendments made to the APFP Regulations in 2013^{A2} introduced differences to the approach required to identify consultation bodies in England and Wales. This is in terms of both the application of the relevance test (see below) and the bodies listed in Schedule 1 of the APFP Regulations.

1.4 **Table 1** in the **Annex to this Advice Note** identifies the prescribed consultees listed in Schedule 1 of the APFP Regulations for both England and Wales. It sets out the circumstances test that applies when the Planning Inspectorate is determining whether a prescribed consultee should be consulted or not; this process is described in more detail below.

2. Applying the 'relevance test' of the APFP Regulations

For projects located in England:

2.1 The relevance test in Schedule 1 of the APFP Regulation states that:

"'relevant' in relation to a body, shall mean the body which has responsibility for the location where the proposals may or will be sited"^{A3}.

6. Under Regulation 11(3) of the EIA Regulations

7. Under Regulation 10(6) of the EIA Regulations

A1. For example, the Planning Inspectorate must consult the Health and Safety Executive, as the table in Schedule 1 of the APFP Regulations states that the Health and Safety Executive must be consulted in 'all cases'

A2. Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013

A3. As defined in the 'Notes to Table' in Schedule 1 of the APFP Regulations



2.2 The Planning Inspectorate's understanding of the terms used in this definition of 'relevant' is explained below:

- *'the location'* means the location encompassing the land required for the development for which development consent is required and the land required for any associated development;
- *'the proposals'* means the Proposed Development including any associated development for which development consent is sought; and
- *'the body which has responsibility for the location'* is the body who has responsibility for where the Proposed Development including any associated development is located.

For projects located in Wales:

2.3 The relevance test in Schedule 1 of the APFP Regulation states that:

"relevant", in relation to a body, shall mean the body which has responsibility for the location where the proposals may or will be sited or has responsibility for an area which neighbours that location"^{A3}.

2.4 The Planning Inspectorate's understanding of the terms *'the location'*, *'the proposals'* and *'the body which has responsibility for the location'* are as per the explanations above for projects in England. The Planning Inspectorate interprets the body which has 'responsibility for an area which neighbours that location' to be the body which has responsibility for an area which is in proximity to the proposed location of the Proposed Development and any associated development^{A4}. As a rule of thumb, the Planning Inspectorate considers a body is 'neighbouring' if the proposals are within 1km of any part of the body's area of responsibility.

3. Applying the 'circumstances test' of the APFP Regulations

3.1 The Planning Inspectorate applies the 'circumstances test', as set out in column 2 of the table in Schedule 1 of the APFP Regulations. This will determine whether or not it is necessary to notify or consult bodies identified as 'relevant', or certain bodies prescribed by name in the APFP Regulations. Determining if the 'circumstances' apply is a matter of judgement, which will need to be exercised by the Planning Inspectorate on a case-by-case basis.

3.2 The Planning Inspectorate applies a precautionary approach, such that where the circumstances test is *'likely to affect'*, it will be taken as meaning that there is a probability or risk that the Proposed Development will have an effect, and not that a Proposed Development will definitely have an effect.

3.3 In view of the probability or risk that every Proposed Development will have an effect of some kind (whatever the magnitude) on the environment, be it land, air or water, the Planning Inspectorate considers it reasonable to notify and consult all the prescribed consultation bodies where the 'circumstances test' in column 2 of Schedule 1 is *'all proposed applications likely to affect land in'* England or Wales.

3.4 In all other cases, a decision on the need to notify or consult will be reached on a case by case basis. In doing so, the Planning Inspectorate will have regard to the nature and location of the development, the likely geographical extent of the impacts (where known) and the statutory responsibilities and functions of the consultation bodies.

A4. For NSIPs in Wales, the Secretary of State cannot grant development consent for associated development except in limited circumstances. Therefore, "location" in Wales means the location encompassing the land required for the development for which development consent is required, unless this development is within s15(3A), s15 (3B), s14(1)(b), or s17(3), in which case "location" means the location encompassing the land required for the development for which development consent is required and the land required for any associated development



4. Identifying the relevant parish/community/town councils

4.1 Parish/community/town councils^{A5} have valuable information about the receiving environment for which they are responsible. Therefore the Planning Inspectorate will notify and consult parish/community/town councils where they are identified as 'relevant'.

For projects located in England:

4.2 In applying the 'relevance' test, the Planning Inspectorate will identify the relevant parish council in which the Proposed Development and any associated development would be located (referred to as the 'B' parish council). In accordance with the 'circumstances test', the 'B' parish councils will be notified and consulted in all cases.

For projects located in Wales:

4.3 In applying the 'relevance' test, the Planning Inspectorate will identify the following relevant community/town councils:

- the community/town council(s) in which the Proposed Development and any associated development would be located (referred to as the 'B' community/town council(s)); and
- the neighbouring community/town councils which share a boundary with the 'B' community/town council(s) (referred to as the 'A' parish/community councils).

4.4 In accordance with the 'circumstances test', the 'B' community/town council(s) and neighbouring 'A' community/town councils will be notified and consulted in all cases.

5. Identifying statutory undertakers as prescribed in the APFP Regulations

5.1 Schedule 1 of the APFP Regulations includes 'relevant statutory undertakers'. 'Statutory Undertaker' is defined in the APFP Regulations^{A6} as having the same meaning as in s127 of 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.

5.2 **Table 2** of the **Annex of this Advice Note** identifies the categories of statutory undertakers which the Planning Inspectorate has interpreted to fall within the definition of 'relevant statutory undertakers'.

A5. The relevant parish council in England or the relevant community/town council where the application relates to land in Wales

A6. Regulation 2(1) of the APFP Regulations



B) s43 local authorities

1.1 The EIA Regulations provide a definition of the consultation bodies. This includes each local authority that is within s43 of the PA2008 (as amended). S43 defines local authorities in terms of whether they fall within the categories of an 'A', 'B', 'C' or 'D' local authority:

- **'A'^{B1}** - is a neighbouring local authority (s43(3)) that shares a boundary with a 'B' host authority;
- **'B'^{B1}** - 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'^{B2}** - is an upper-tier county council in which the Proposed Development is situated (a host authority); and
- **'D'^{B2}** - is a neighbouring local authority (s43(3)) which is not a lower-tier district council and shares a boundary with a 'C' authority.

1.2 Further information on identifying s43 local authorities is provided in the Planning Inspectorate's **Advice Note 2: The role of local authorities in the development consent process.**

B1. Defined in s43(2) of the PA2008
B2. Defined in s43(2A) of the PA2008

C) Non-prescribed consultation bodies

1.1 The Planning Inspectorate has 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 Planning 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.

1.2 These bodies are summarised below. Further information on their responsibilities and the circumstances in which the Planning Inspectorate would consult these bodies is detailed in **Table 3** of the **Annex to this Advice Note**.

1.3 Where the Planning Inspectorate decides to consult non-prescribed consultation bodies before adopting a scoping opinion for a Proposed Development, any views received from these bodies by the specified deadline will be taken into consideration before adopting the scoping opinion.

1.4 The Applicant is not required to consult with the non-prescribed consultation bodies in order to meet their statutory pre-application consultation obligations. However, the Planning Inspectorate encourages Applicants to consult with as wide a range of bodies as they deem appropriate during the pre-application stage, including whilst preparing the ES.

1.5 If an application for development consent is accepted for examination, the Applicant is required to notify the category of persons specified in s56(2) of the PA2008 (which reflects the consultees identified under s42 of the PA2008). Unlike the consultation bodies, there is no statutory requirement for the Applicant to notify the non-prescribed consultation bodies that the application for development consent has been accepted, even if the Applicant has consulted them during the pre-application stage. However, the Planning Inspectorate would encourage Applicants to do so.



2. Non-prescribed consultation bodies in Wales

2.1 The Planning Inspectorate has identified the following non-prescribed consultation bodies who operate in Wales and/or Welsh territorial waters. For the most part these bodies have relevant functions and responsibilities which are akin to prescribed consultation bodies listed in Schedule 1 of the APFP Regulations who operate in England:

- **Cadw** – the Welsh Government’s historic environment service, which has a similar function to Historic England;
- **Welsh Language Commissioner** - an independent body established by the Welsh Language (Wales) Measure 2011, principally to promote and facilitate use of the Welsh language in Wales;
- **Joint Transport Authorities (JTAs)** – akin to Passenger Transport Executives (PTEs) or Integrated Transport Authorities (ITAs) who operate in England; and
- **SoS for Defence** – identified as a prescribed consultee in Schedule 1 of the APFP Regulations for projects in England only; the Planning Inspectorate has interpreted this to be ‘the Ministry of Defence’.

3. Relevant British Crown Dependencies

3.1 The Planning Inspectorate has identified the following British Crown Dependencies, which are not listed in Schedule 1 of the APFP Regulations but have planning functions akin to a local authority:

- **The Isle of Man**; and
- **The Channel Islands** (the Bailiwicks of Jersey and Guernsey).

4. Relevant development corporations in England and Wales

4.1 The Planning Inspectorate has identified the following bodies as being non-prescribed consultation bodies as they administer a relevant planning function, but are not defined as a ‘local authority’ in s43(3) of the PA2008:

- **urban development corporations** - defined as a corporation established by an order under s135 of the Local Government, Planning and Land Act 1980; and
- **mayoral development corporations** - defined as a corporation established by an order under s198 of the Localism Act 2011.

5. Combined authorities in England

5.1 Combined authorities can be established^{C1} in England only. A combined authority’s executive will consist either of one representative of each member authority; or one representative of each member authority plus a directly-elected mayor (a ‘mayoral combined authority’). A combined authority’s functions primarily relate (but are not limited to) economic development, regeneration, transport (including functions transferred from an ITA or PTE^{C2}) and other functions that the member authorities agree to transfer.

6. Consulting where a Proposed Development includes an offshore element

6.1 There are a number of bodies who have both statutory and non-statutory responsibilities in relation to the marine environment, in particular, maritime search and rescue (SAR) authorities and authorities responsible for the protection of wrecks, as identified below. The Planning Inspectorate will exercise judgement and may on a discretionary basis consult with these bodies.

C1. In accordance with the Local Democracy, Economic Development and Construction Act 2009 and the Cities and Local Government Devolution Act 2016

C2. s104 of the Local Democracy, Economic Development and Construction Act 2009



6.2 Applicants should be aware that some of the non-prescribed consultation bodies also appear as prescribed consultees in Schedule 1 of the APFP Regulations. However, they have functions and responsibilities that extend to the offshore area that are not reflected in the relevance or circumstances tests in Schedule 1 of the APFP Regulations. Where the Planning Inspectorate considers that these functions and responsibilities are relevant to a proposed development, these bodies will be consulted on a non-statutory basis, if they have not already been identified as a prescribed consultee.

SAR authorities

6.3 The UK Government assumes responsibility for civilian maritime SAR within the UK and its aviation and maritime search and rescue regions, which extends beyond territorial waters (12 nautical miles). This is a legal obligation derived from the UK Government’s adherence to international conventions^{C3}. SAR authorities consist of:

- relevant police and crime commissioner^{C4};
- relevant fire and rescue authorities^{C5};
- relevant ambulance trusts^{C6}; and
- Royal National Lifeboat Institute (RNLI)^{C7}.

Authorities responsible for the protection of wrecks

6.4 The authorities responsible for the protection of wrecks in English and Welsh territorial waters are:

- The Historic Buildings and Monuments Commission for England (Historic England)^{C8};
- Cadw^{C9}; and
- Ministry of Defence (MoD)^{C10}.

C3. The Convention on the Law of the Sea (UNCLOS), the Convention on Safety of Life at Sea (SOLAS) (1974), the Maritime Search and Rescue Convention (1979) and the Convention on International Civil Aviation (Chicago 1944) (Annex 12)

C4. The responsibility for the co-ordination of land-based and inland waters SAR operations including the inland aspects of those incidents that originate at sea rests with the Police Service. Through their command infrastructure, the relevant police and crime commissioner will provide co-ordination of all emergency services and other authorities where appropriate

C5. Each fire and rescue authority has the power to use the resources primarily provided for fire fighting to deal with non-fire incidents, which may include SAR operations. This power is not restricted to the territorial sea of the United Kingdom (12 nautical miles)

C6. The NHS ambulance trusts which operate in England and Wales may have helicopter emergency medical service assets which may assist in SAR operations

C7. The RNLI is a voluntary organisation incorporated by Royal Charter for the purpose of saving lives, promoting safety and providing relief from disaster at sea (in and beyond UK territorial waters)

C8. Historic England is the relevant body in England for designated wrecks under s1 and s2 of the Protection of Wrecks Act 1973 and is also the relevant body in relation to any underwater sites that are scheduled under the Ancient Monuments and Archaeological Areas Act 1979

C9. Cadw is relevant body in Wales for designated wrecks under s1 and s2 of the Protection of Wrecks Act 1973

C10. The MoD is the relevant body, under the Protection of Military Remains Act 1986, in relation to the wreckage of (any) crashed, sunken or stranded military aircraft or designated vessels



7. Local authorities within zones of visual influence (ZVI)

7.1 Some Proposed Developments are located on sites adjacent to estuaries or rivers, in coastal locations, or with an offshore element. Such developments may present a potential visual impact to areas in local authorities which are not identified as 'A', 'B', 'C', or 'D' authorities under s43 of the PA2008. For example, where a local authority is located on the opposite side of an estuary to a Proposed Development, but does not share a boundary with the 'B' or 'C' authority. The Planning Inspectorate will exercise its discretion in determining whether or not to consult with these local authority(ies) on a non-statutory basis, having regard to the likely ZVI.

Further information

The Planning Inspectorate, Major Casework, Temple Quay House, Temple Quay, Bristol, BS1 6PN

Email: environmentalservices@pins.gsi.gov.uk

Telephone: 0303 444 5000

Web: <http://infrastructure.planninginspectorate.gov.uk>