

## POLICY INSTRUCTION

**Subject:** Environmental Impact Assessment: Amendments to and consolidation of the Town and Country Planning (EIA) Regulations 1999 (as amended) and the informal Defence EIA Exemption protocol

**Number:** PI 13/11

DIO Secretariat Sponsor: Pippa Morrison

Date of issue: 20 Sept 2011

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Who should read this: MOD estate staff and Industry Partners involved in all aspects of Town and Country Planning (Environmental Impact Assessment) as this applies to the UK.

When it takes effect: Immediately

When it is due to expire: Until further notice

Sustainable Development

### Equality And Diversity Impact Assessment

This policy has been Equality and Diversity Impact Assessed in accordance with the Department's Equality and Diversity Impact Assessment Tool against:

**Part 1 Assessment Only (no diversity impact found)**

### Document Aim:

The aim of this Policy Instruction is to inform all MOD project teams and all those contracted to carry out works on the MOD estate about the amendments related to the Town and Country Planning (Environmental Impact Assessment) Regulations following recent consultations in England and Scotland.

This Policy Instruction also informs all MOD project teams and those contracted to carry out works on the MOD estate about demolition and the changes to planning requirements and the protocol for the Request for Consideration of Defence Exemption related to the Town and Country Planning (Environmental Impact Assessment) Regulations with the Department for Communities and Local Government and the Devolved Administrations.



## **INTRODUCTION**

1. The Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended) and associated statutory instruments transpose the requirements of the European (EIA) Directive (85/337/EEC on the assessment of the effects of certain public and private projects on the environment) into domestic law as this applies to the planning system.

## **PROPOSED CHANGES**

2. Following recent case law, the Department for Communities and Local Government (CLG) and the Scottish Government have amended and consolidated the Regulations in the respective jurisdictions. The new Regulations apply to England and Scotland only. Wales and NI have not yet conducted a review of their EIA legislation.

3. These judgements have held that screening<sup>1</sup> is required for changes or extensions to existing planning permissions (the Baker case)<sup>2</sup> when they may result in cumulative environmental effects and the need for the local planning authority to give reasons for negative screening decisions (the Mellor case)<sup>3</sup>.

## **REQUESTS FOR A SCREENING OPINION FROM THE LOCAL PLANNING AUTHORITY**

4. For changes or extensions to existing or approved development, planning authorities will be required to consider the cumulative environmental effects of the development once it has been modified and not only the effects of the change or extension in isolation of the existing development. If a view can be reached that the change or extension will not have significant adverse environmental effects, there will be no requirement to apply for screening.

5. For multi-stage consent applications (including reserved matters applications), the planning authority must consider whether the available environmental information at the outset is sufficient to satisfy the requirements of the Regulations at each subsequent application stage.

6. Where likely significant environmental effects are identified at the subsequent application stage, a new or revised Environmental Statement (ES) must be publicised; however, the Planning Authority do not need to re-publicise the ES where this is adequate for purpose at each subsequent application stage.

## **HOW WILL THIS AFFECT MOD IN ITS REQUEST FOR PLANNING APPROVAL?**

7. MOD's Project Teams, together with DIO Planning Teams and environmental advisers, will need to work with local planning authorities to consider whether significant adverse environmental effects may result from an existing or approved development being changed or extended. Sufficient information must be provided to the planning authority to be able to understand the environmental effects of the project in order to make a formal determination.

8. The amendments should enable development to be considered on a case-by-case basis to ensure that the EIA Regulations are not applied disproportionately and the requirement for additional EIA screening can be absorbed without additional administrative burden or undue delays.

9. Collaborative working and the use of robust sustainability appraisals of all new projects, programmes and plans, will assist in the early identification and mitigation of risks to projects by ensuring compliance with these regulations and wider environmental obligations. DIO Secretariat (via liaison with CLG, DIO Ops and Industry Partners) will monitor how the amended regulations are being used by local planning authorities and the effect this has on estate development. Any issues with the application of these amendments should be raised with DIO Secretariat using the contact for this PI.

## DEMOLITION

10. In March 2011, The Court of Appeal<sup>4</sup> ruled that the demolition of buildings and other structures could constitute an “urban development project” within Annex II of the EIA Directive. The demolition of buildings and structures<sup>5</sup> may need ‘prior approval’ through the planning process and could be subject to EIA.

11. MOD has no specific exemption or specific permitted development rights in relation to demolition and is, therefore, bound to adhere to the requirements of the ruling. To understand more about the impact of the judgement and the wider planning issues in more detail, the town planning team has produced a Demolition guidance note. Advice can be obtained by contacting the DIO Town Planning Team, Professional and Technical Services at Sutton Coldfield (see References Internal Guidance to this PI).

## DEFENCE EXEMPTIONS

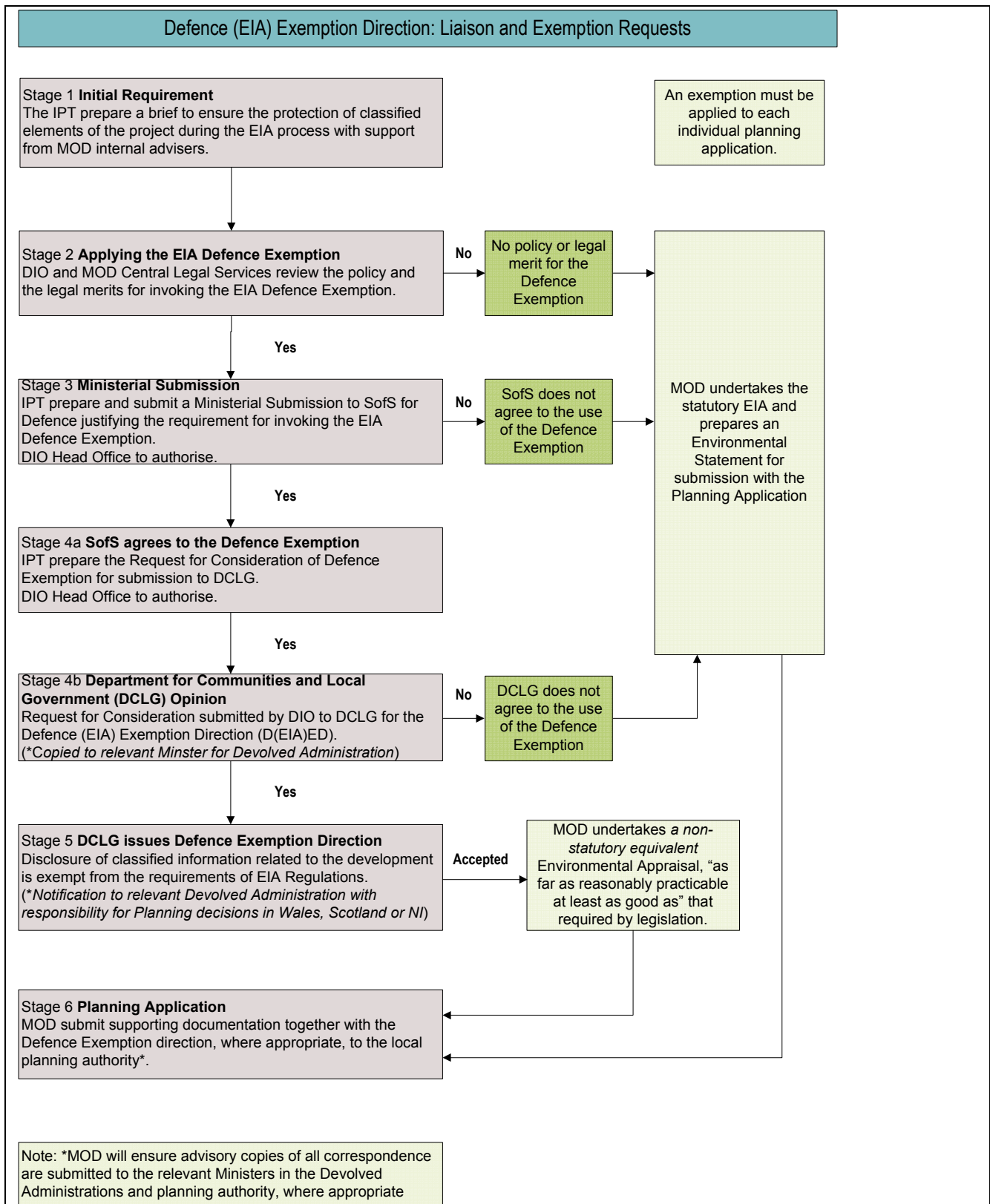
12. The MOD is subject to Town and Country planning legislation, but has certain limited exemptions to the requirements for EIA. Exemptions can only be applied on a case-by-case basis where clear demonstration of the adverse effects on national defence is provided. This is authorised by both the Secretary of State for Defence and the Secretary of State for Communities and Local Government Regulation 4(4) (a)(ii) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales<sup>6</sup>) Regulations 1999 (SI 1999/293) (as amended) provides that:

“the Secretary of State may direct that these Regulations shall not apply to a particular proposed development specified in the direction ... if the development comprises or forms part of a project serving national defence purposes and in the opinion of the Secretary of State compliance with these Regulations would have an adverse effect on those purposes.”

13. Where required, a request for a Defence (EIA) Exemption Direction (D(EIA)ED) must be initiated well in advance of the submission of the planning application, ideally prior to the point when a screening opinion would be requested from the local planning authority. In order to avoid any delays in the planning process, MOD will copy all submissions and decisions related to the D(EIA)ED to the relevant Minister and planning authority affected by the proposed project (the protocol for the D(EIA)ED request is shown in Annex A).

14. This protocol will inform the planning authority, in a timely manner, that the exemption will be applied. To support the planning decision, in line with the SofS Safety, Health, Environmental and Sustainable Development Policy Statement, an equivalent non-statutory Environmental Appraisal must be prepared that is, “*so far as reasonably practicable, at least as good as those required by legislation*”. This will provide a sufficient level of environmental information to support the planning authority without compromising the national defence interest.

**Flow Chart for the Process of Obtaining a Defence (EIA) Exemption Direction**



## REFERENCES

### England

The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 can be downloaded at:

<http://www.legislation.gov.uk/ukxi/2011/1824/contents/made?text%2525253D%25252522Environmental%25252520Impact%25252520Assessment%25252522>

Revised guidance is being prepared by the Department for Communities and Local Government to replace the publication, "Environmental Impact Assessment: A guide to procedures" (ODPM January 2000), but no publication date is available.

### Scotland

The legislation and guidance for the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 can be accessed at:

[http://www.legislation.gov.uk/ssi/2011/139/pdfs/ssi\\_20110139\\_en.pdf](http://www.legislation.gov.uk/ssi/2011/139/pdfs/ssi_20110139_en.pdf)

<http://www.scotland.gov.uk/Resource/Doc/350238/0117228.pdf>

### Internal Guidance

The MOD Sustainability and Environmental Appraisal Tool Handbook, Section 4 Environmental Impact Assessment can be accessed at:

[http://defenceintranetds.diiweb.r.mil.uk/sites/polestar/cs/DocumentLibrary/08/882\\_20091111%20-%20Section%204%20EIA%20Final%20-%20U.pdf](http://defenceintranetds.diiweb.r.mil.uk/sites/polestar/cs/DocumentLibrary/08/882_20091111%20-%20Section%204%20EIA%20Final%20-%20U.pdf)

The DIO Town Planning Team has produced further guidance on EIA and demolition: Guidance Note Demolition: Change to Planning Requirements (Guidance Note 07/11)

[http://defencestates.cis.r.mil.uk/library/documents/Information\\_notes/2011/07-11.pdf](http://defencestates.cis.r.mil.uk/library/documents/Information_notes/2011/07-11.pdf)

## ENDNOTES

<sup>1</sup> Screening is a process to gain an opinion from the local planning authority as to whether a planning application for a proposed development will need an Environmental Impact Assessment.

<sup>2</sup> Judgment of the High Court of Justice in *Baker v Bath and North East Somerset Council, Hinton Organics (Wessex) Ltd (the Baker case)* concerns the procedure for screening planning applications for changes or extensions to existing or approved development (19 February 2009).

<sup>3</sup> Judgment of the Court of the *Mellor Case C-75/08* the obligation to make public the reasons for a determination not to make a project subject to an assessment (30 April 2009)

<sup>4</sup> Judgement of the Chancellor, Toulson LJ and Sullivan LJ in *R (Save) v Secretary of State for Communities and Local Government*. This followed The European Court of Justice ruling, in the case of the *Commission vs. Ireland (C-50/09 dated March 2011)*, that demolition works may constitute a 'project'. As this results from an ECJ ruling, it applies UK wide.

<sup>5</sup> Under present regulations, planning permission or prior approval will not be required for the demolition of buildings with a volume of less than 50 cubic metres or enclosures, e.g. gates, walls, fences, etc.

<sup>6</sup> The exemption in the England and Wales Regulations also applies to Scotland and Northern Ireland as a reserved matter, i.e. reserves the decision-making on Defence EIA Exemption Directions to Westminster.