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31 January, 2017

Dear Mr Simpson,

Environmental Impact Assessment: Technical consultation (regulations on planning and major infrastructure)

Thank you for the opportunity to comment on these draft regulations. This response is submitted on behalf of the Chartered Institute for Archaeologists (CIfA), a professional body representing archaeologists working across the UK and overseas, and the Council for British Archaeology (CBA), representing the public voice for archaeology. Details of both bodies are provided in a separate appendix.

Environmental Impact Assessment: regulations on planning and major infrastructure

General

Environmental impact assessment (EIA) is a key mechanism for the management and protection of the historic environment, not only for designated historic assets but also for those assets which are not designated and for which EIA provides a crucial (and in some cases the only) safeguard.

As such, we are concerned to see that the current levels of protection and oversight provided by EIA are maintained and where appropriate improved and strongly support the transposition of Directive 2014/52/EU in this regard. Transposition should, if possible, be done in such a way as to ensure, or at least facilitate, the continued operation of these provisions regardless of the United Kingdom's membership of the European Union.

We particularly welcome the clear recognition in the draft regulations that *'The EIA must identify, describe and assess in an appropriate manner, in light of each individual*

case, the direct and indirect significant effects of the proposed development on ... (d) material assets, cultural heritage and the landscape' (regulation 4(2)(d) of the draft Town and Country Planning Regulations and 5(2)(d) of the draft Infrastructure Planning Regulations).

Specific Questions

Question 1 – Do you agree with our proposal to omit the term 'preliminary verification'?

1.1 Yes, but phrasing the draft regulations more widely might provide greater flexibility to cater for all eventualities. The parallel provisions in Scotland (the draft Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017) simply provide that the decision-maker must take into account (amongst other things) *'the available results of other assessments of the effects of the proposed development'*, which is preferable to the narrower wording proposed in regulations 5(6)(b) of the draft Town and Country Planning Regulations and 9(1)(b) of the draft Infrastructure Planning Regulations.

Question 2 – Do you agree that the Schedule 2 thresholds and criteria continue to be appropriate taking into account the changes to Annex III. If not, can you provide evidence in support of any changes?

2.1 Yes.

Question 3. Do you agree with our proposal to retain the existing 3 week period for the local planning authority and Secretary of State to issue a screening opinion?

3.1 Yes, provided that sufficient resources and expertise are available to the local planning authority to ensure that an adequately-informed opinion can be issued within the relevant time limit.

Question 4. Do you agree that the coordinated procedure provides the most flexibility?

4.1 Yes. In addition, there is always the risk, if individual assessments are merged into a single assessment, that specific environmental considerations may not be fully addressed.

Question 5. Do you have any views on introducing provisions to deal with projects subject to environmental impact assessment under multiple consent regimes?

5.1 No comment, save that, from an archaeological viewpoint, any such provisions should ensure that the impacts of any proposal on heritage assets are fully understood and appropriately addressed in any decision and that appropriate and binding safeguards for the historic environment are in place before construction commences. The timely delivery of development should be sought consistent with those aims.

Question 6. Do you agree that it is appropriate not to make it mandatory to apply joint or coordinated procedures to assessments under EU legislation other than the Habitats and Wild Birds Directives?

6.1 No comment.

Question 7 – do you agree that the competent authority, informed where appropriate through the consultation process, is best placed to determine whether those preparing an environmental statement have sufficient expertise for that purpose?

7.1 No.

7.2 We welcome the introduction of requirements for the developer to ensure that reports are prepared by competent experts and for competent authorities to have, or have access to, appropriate expertise.

7.3 However, the role of the competent authority is to adjudicate upon the proposal before it, not upon the professional competence of those promoting the proposal. The latter issue is one for relevant professional bodies. The proposed transposition of the requirements in question leaves open to doubt the definitions of a ‘competent expert’ and ‘sufficient expertise’. Such doubt is most effectively dispelled by the use of accreditation mechanisms (such as those provided in an archaeological context by ClfA’s accredited membership grades¹ and registered organisations scheme²). Ideally, these should be embedded in the regulations transposing the Directive, but if this does not occur, they should be clearly identified in supporting guidance.

¹ <http://www.archaeologists.net/regulation/accreditation>

² <http://www.archaeologists.net/regulation/organisations>

Question 8. Do you agree that subject to the small change to the enforcement provisions, we already have sufficient legislation in place to achieve the requirements on penalties?

8.1 Yes.

Question 9. Do consultees agree that these processes may engage the Directive?

9.1 Yes.

Do they have any views on the way in which these measures should be implemented?

9.2 The potential requirement for environmental impact assessment should be fully addressed in regulations and guidance.

9.3 The consultation document at paragraph 71 rightly identifies the provisions in the Housing and Planning Act 2016 relating to permission in principle as requiring consideration in this regard. We strongly endorse this view, particularly in the light of our continuing, grave concerns as regards the inability of the permission in principle mechanism to deliver sustainable development in accordance with the national Planning Policy Framework (with the likelihood that permission in principle will be granted in some cases without adequate knowledge of the significance of historic assets affected).

We would be happy further to discuss the issues raised in this consultation insofar as they affect the historic environment. In the meantime, if there is anything further that we can do to assist please do not hesitate to contact us.

Yours sincerely,

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Director, CBA

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BA MCifA FRSA FSA FIAM FSA Scot
Chief Executive, ClfA

APPENDIX

The Council for British Archaeology (CBA)

CBA is the national amenity society concerned with protection of the archaeological interest in heritage assets. CBA has a membership of 620 heritage organisations who, together with our thousands of members, represent national and local bodies encompassing state, local government, professional, academic, museum and voluntary sectors.

The Chartered Institute for Archaeologists

The Chartered Institute for Archaeologists (CIfA) is the leading professional body representing archaeologists working in the UK and overseas. CIfA promotes high professional standards and strong ethics in archaeological practice, to maximise the benefits that archaeologists bring to society, and provides a self-regulatory quality assurance framework for the sector and those it serves.

CIfA has over 3,150 members and around 80 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.