

English High Court Rules EIA Regulations Incompatible with EU Law

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Environmental Impact Assessments (EIA) require the consideration of the impact of a development on the environment prior to the grant of planning permission. They derive from the EU's Environmental Impact Assessment Directive (85/337/EEC) which was transposed in Northern Ireland by the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999.

Similar legislation was enacted in England and Wales by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. In a recent oral judgment in the English High Court case of *R (Baker) v Bath and North East Somerset Council and Hinton Organics (Wessex) Limited* Collins J has ruled that part of the 1999 EIA Regulations do not properly implement the EIA Directive.

Both the English and the Northern Irish EIA Regulations divide specified projects into two schedules. Projects specified in Schedule 1 such as quarries or waste water treatment works over a certain size require an EIA in all circumstances. Schedule 2 projects require an EIA if the thresholds specified are fulfilled and the development is likely to have significant effects on the environment because of nature, size or location.

The *R (Baker)* case concerned two planning permissions which made changes to a composting facility near Queen Charlton, Bristol. The original composting site would now constitute Schedule 2 development, being a waste disposal installation exceeding 0.5h in area. The relevant applications were for a 'change or extension' to this development which could 'have significant adverse effects on the environment'. However the wording of the English EIA Regulations (and also of the Northern Irish EIA Regulations) is such that in determining whether a threshold is exceeded, and thus making an EIA compulsory, reference is to the size of the 'change or extension (and not to the development as changed or extended)'. On this basis the local planning authority did not subject either of the two applications to an EIA as the change/extension alone did not exceed the threshold.

In giving his judgement Collins J ruled that the words '(and not to the development as changed or extended)' do not properly implement the relevant EU Directive since the Directive requires there to be consideration of the environmental effect of the changed or extended development as a whole.

Whilst an appeal is likely the effect of this judgment would mean that where an application is made to change or extend Schedule 1 or Schedule 2 developments, and the change or extension may have significant adverse effects on the environment, screening is required, regardless of how minor the change or extension may be. With the Northern Irish EIA Regulations also containing the words '(and not to the development as changed or extended)' it is likely that Northern Ireland's High Court will take note of this English High Court ruling.

If you require any further information in relation to EIAs or any other planning matter please contact Karen Blair or Maria O'Loan.

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