



**DELIVERING DEVELOPMENT:  
CHANGES IN  
ENVIRONMENTAL REGULATION  
HBF PLANNING CONFERENCE 2017**

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20 September 2017

**Answers not options...**

- Brexit
- Protected species
  - Planning applications
  - Natural England licences
- Environmental Impact Assessment
- Air quality

# **BREXIT: IMPACTS ON ENVIRONMENTAL REGULATION**

- UK environmental legislation mainly from EU
- European Court caselaw
  - Key in interpreting the written law
  - Precautionary approach

- Short term
  - no significant changes likely
  - existing EU-derived legislation retained (with “corrections”)
  - pre-Brexit European Court caselaw remains binding
  - Supreme Court *may* depart from pre-Brexit European caselaw

- Long term impacts
  - changes to written law definitely possible
  - *unless* prevented by international convention
  - European court caselaw then no longer binding

**PROTECTED SPECIES:  
POSITIVE CHANGES**

## When are protected species a problem?

FREETHS

- Planning applications – surveys
- When delivering development – getting Natural England licences
- Good news on both fronts!



- Non-EIA development
  - LPA must “have regard to biodiversity”
  - LPA must “have regard to the EU Habitats Directive” so must consider European Protected Species (EPS) (eg bats, GCNs)
- Ideally, conduct protected species surveys in good time - clarity on impacts / mitigation

- You don't need perfect survey data
- If missed survey season / have limited data?
  - Presume EPS are present
  - Make worst-case “guesstimate” of impacts
  - Grant permission on basis that “there is likely to be space for mitigation”
- Criminal law still applies: will need surveys to avoid criminal law

After planning: is a NE protected species licence needed?

FREETHS

- After planning
- Do you need a NE licence?
- Licences most difficult for EPS (bats, GCN)

- New flexibility on EPS licences from NE
  - don't have to fence and trap GCN if can offer good compensatory habitat
  - don't need to provide compensatory habitat *on site* (can provide it off site)
  - don't need perfect ecological survey data
- Push boundaries!

- In the long term
  - “District licensing” for GCN
    - LPA gets GCN licence from NE
    - Area is zoned for GCN
    - Don’t need your own NE licence
    - pay £££ contribution to LPA
  - Still get you own licence:
    - paying more than you need?
    - prevented from developing in certain zones?
- Answers not options...

- “Must have full planning permission to get a NE protected species licence”
- Really?
- Outline permission only....

# **ENVIRONMENTAL IMPACT ASSESSMENT: NEW REQUIREMENTS**

## New EIA requirements

**FREETHS**

- Came into force 16 May 2017
- Requirements more complex
- Front-loading the process



- No changes to when EIA is required:
  - >5ha / >150 dwellings / resi with >1ha other urban development
  - OR
  - any development in a “sensitive area”
  - AND
  - where “likely to have significant environmental effects”

- Complex rules on whether new (2017) EIA Regs or old (2011) Regs apply
- When new rules apply, greater demands on developers in:
  - EIA screening
  - Environmental Statements

- More detail on development / impacts
- Particular focus on:
  - emissions / waste
  - use of natural resources
- Can include measures to “avoid or prevent” adverse effects (but not to “reduce or offset”)
- Up to 90 day LPA response time where agreed

- More topics to consider:
  - detailed baseline and how it would change without the development
  - major disaster / accident risks
  - reasonable alternatives studied by the developer and reasons for choice including comparison of environmental effects

**AIR QUALITY:  
PROBLEMS?**

**Answers** not options...

- NO<sub>2</sub> – majority comes from vehicles
- EU limit values exceeded
- Impacts on:
  - health
  - protected habitats
- Litigation

- “European sites” under EU Habitats Directive
- Local plans / planning permission must:
  - demonstrate “no adverse effect” on sites
  - taking into account cumulative impacts
  - unless exception:
    - overriding need; no alternative; and
    - provide compensatory habitat measures

- Solutions?:
  - Manage European site to address adverse effects – but European caselaw
  - No net increase in vehicles / NO<sub>2</sub>
  - Rely on exception
- A relaxation of requirements with Brexit?



**ANY QUESTIONS?**

**Answers** not options...

## Contact

**FREETHS**



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**Answers** not options...