STATUTORY INSTRUMENTS

2017 No. 593

AGRICULTURE, ENGLAND

The Environmental Impact Assessment (Agriculture) (England) (No. 2) (Amendment) Regulations 2017

Made - - - -	*24th April 2017*
Laid before Parliament	*25th April 2017*
Coming into force - -	*16th May 2017*

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) ("the ECA 1972") in relation to the environment(**2**).

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the ECA 1972.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Agriculture) (England) (No. 2) (Amendment) Regulations 2017 and come into force on 16th May 2017.

(2) In these Regulations, "the 2006 Regulations" means the Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006(**3**).

Amendments to the 2006 Regulations

2. The 2006 Regulations are amended in accordance with regulations 3 to 18.

Amendments to regulation 2

3.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1) move the definition of "agriculture" to the appropriate place in the alphabetical order.

(3) In paragraph (1) in the definition of "consent" for "16(1)" substitute "16(2)".

(4) In paragraph (1) in the definition of "consultation bodies"—

(**1**) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
(**2**) S.I. 2008/301.
(**3**) S.I. 2006/2522 to which there are amendments not relevant to these Regulations.

(a) in paragraph (a) for "English Heritage" substitute "Historic England";

(b) in paragraph (c) after "project" insert "because of its specific environmental responsibilities or local or regional competences".

(5) In paragraph (1) for the definition of "the EIA Directive" substitute—

""the EIA Directive" means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(**4**), as amended by Directive 2014/52/EU of the European Parliament and of the Council(**5**);".

(6) In paragraph (1) for the definition of "environmental statement" substitute—

""environmental statement" has the meaning given by regulation 12(1);".

(7) In paragraph (1) in the definition of "European site" for "10(1)" substitute "8(1)".

(8) In paragraph (1) in the definition of "the Habitats Directive" for the words from "the Act concerning" to the end substitute "as last amended by Council Directive 2013/17/EU(**6**)".

(9) In paragraph (1) for the definition of "Habitats Regulations" substitute—

""the Habitats Regulations" means the Conservation of Habitats and Species Regulations 2010(**7**);".

(10) In paragraph (1) at the appropriate places in the alphabetical order insert—

""the Wild Birds Directive" means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(**8**), as amended by Council Directive 2013/17/EU;";

""environmental impact assessment", in respect of a project, means the process comprising—

(a) the preparation of an environmental statement by the applicant;

(b) the carrying out of consultations in accordance with regulations 12(5), 13 and 14;

(c) Natural England's consideration of the environmental statement and other information in accordance with regulation 15A(1);

(d) Natural England reaching a conclusion about the likely significant effects of the significant project in accordance with regulation 15A(2); and

(e) Natural England's consideration of that conclusion, and the reasons for it, in the decision whether or not to grant consent in accordance with regulation 16;";

""EU environmental assessment" means an assessment carried out—

(a) under an obligation to which section 2(1) of the European Communities Act 1972 applies (other than the EIA Directive), or

(b) under the law of any part of the United Kingdom implementing an EU obligation other than an obligation arising under the EIA Directive,

(c) of the effect of anything on the environment;";

""UK environmental assessment" means an assessment carried out in accordance with an obligation under the law of any part of the United Kingdom of the effect of anything on the environment.".

(11) After paragraph (5) insert—

(**4**) OJ No L 26, 28.1.2012, p. 1.
(**5**) OJ No L 124, 25.4.2014, p. 1.
(**6**) OJ No L 158, 10.6.2013, p. 193.
(**7**) S.I. 2010/490, to which there are amendments not relevant to these Regulations.
(**8**) OJ No L 20, 26.1.2010, p. 7.

"(6) In these Regulations, any reference to the likely significant effects, or the likely significant adverse effects, of—

(a) a restructuring project on the environment includes a reference to the effects of the restructuring project on the environment once the restructuring is completed and in operation;

(b) an uncultivated land project on the environment includes a reference to the effects of the uncultivated land project on the environment once any construction, installation or other intervention is finished and in operation.

(7) In paragraph (6) each reference to the environment includes a reference to the matters referred to in regulation 15A(2)(a) to (e)".

Amendments to regulation 3

4.—(1) Regulation 3 (application of Regulations) is amended as follows.

(2) In paragraph (1) for "or (3)" substitute "or regulation 3A or 3B".

(3) At the end of paragraph (2)(d) insert "or".

(4) At the end of paragraph (2)(e) omit "or".

(5) Omit paragraphs (2)(f) and (3) to (5).

New regulations 3A to 3C

5. After regulation 3 insert—

"**National defence and civil emergencies**

3A.—(1) The Secretary of State may direct that a restructuring project or an uncultivated land project or a part of such a project is exempt if—

(a) the project has national defence as its sole purpose, and

(b) the Secretary of State considers that an environmental impact assessment in respect of the project or the part of the project would have an adverse effect on the fulfilment of that purpose.

(2) The Secretary of State may direct that a restructuring project or an uncultivated land project is exempt if—

(a) the project has the response to a civil emergency as its sole purpose, and

(b) the Secretary of State considers that an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of that purpose.

(3) The effect of a direction that a restructuring project or an uncultivated land project is exempt under paragraph (1) or (2) is that these Regulations, except for paragraph (5), do not apply in respect of the project.

(4) The effect of a direction under paragraph (1) that a part of a restructuring project or an uncultivated land project is exempt is that the project is to be treated under these Regulations as not including the part which is the subject of the direction.

(5) After the Secretary of State gives a direction under paragraph (1) or (2), the Secretary of State must as soon as practicable serve notice of the direction on the applicant and Natural England.

Exceptional circumstances

3B.—(1) The Secretary of State may direct that a restructuring project or an uncultivated land project is exempt if the Secretary of State is satisfied that—

(a) it is appropriate to do so by reason of exceptional circumstances,

(b) an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of the purpose of the project,

(c) the objectives of the EIA Directive will be met even though such an assessment is not carried out, and

(d) the project is unlikely to have significant effects on the environment in another EEA State.

(2) The effect of a direction that a restructuring project or an uncultivated land project is exempt under paragraph (1) is that these Regulations, except for paragraphs (3) and (4), do not apply in respect of the project.

(3) The Secretary of State must not give a direction under paragraph (1) that a restructuring project or an uncultivated land project is exempt unless the Secretary of State has considered whether another form of assessment is appropriate.

(4) After the Secretary of State gives a direction under paragraph (1), the Secretary of State must as soon as practicable make available to the public concerned—

(a) the direction including an explanation of the reasons for it, and

(b) the information obtained under any other assessment considered appropriate in accordance with paragraph (3).

Coordination of environmental assessments

3C. Where, in respect of a significant project, there is a requirement to carry out an environmental impact assessment and a requirement to carry out an assessment under regulation 21 or 61 of the Habitats Regulations, Natural England must, where appropriate, ensure that the environmental impact assessment and the other assessment, or assessments, are coordinated.".

Amendments to regulation 7

6.—(1) Regulation 7 (application for a screening decision) is amended as follows.

(2) In paragraph (1)—

(a) for sub-paragraph (b) substitute—

"(b) contain—

(i) a description of the project, including in particular a description—

(aa) of the physical characteristics of the whole project and, where relevant, of demolition works, and

(bb) of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected,

(ii) a description of the aspects of the environment likely to be significantly affected by the project,

(iii) a description of any likely significant effects, to the extent that the information is available on such effects, of the project on the environment resulting from—

(aa) the expected residues and emissions and the production of waste, where relevant, and

(bb) the use of natural resources, in particular soil, land, water and biodiversity,

(iv) if the applicant elects to provide it, a description of any features of the project or measures to avoid or prevent any likely significant adverse effects on the environment.";

(b) omit sub-paragraphs (c) and (d).

(3) After paragraph (1) insert—

"(1A) When compiling information under paragraph (1)(b), the applicant must take into account—

(a) any criteria in Schedule 2 which are relevant to the project, and

(b) the results of any relevant EU environmental assessment which are reasonably available to the applicant.".

Amendment to regulation 8

7.—(1) Regulation 8 (the screening decision) is amended as follows.

(2) After paragraph (1) insert—

"(1A) Natural England must take into account the results of any relevant EU environmental assessment which are reasonably available to it.".

(3) For paragraph (4)(a) substitute—

"(a) notify the applicant of—

(i) the decision and the main reasons for it with reference to the criteria in Schedule 2;

(ii) where the decision is that the project is not likely to have significant effects on the environment, a description of any measure provided by the applicant under regulation 7(1)(b)(iv);".

(4) In paragraph (4)(b) for "it" substitute "the information referred to in sub-paragraph (a)".

(5) In paragraph (4)(c) for "of it" substitute "of the information referred to in sub-paragraph (a)".

(6) For paragraph (5) substitute—

"(5) Natural England must make, and issue notice to the applicant of, a screening decision before the end of the period of 35 days beginning with—

(a) the date referred to in regulation 7(3), or

(b) where applicable, the date Natural England receives any additional information it has requested under regulation 7(2).

(5A) Natural England may, where it considers there are exceptional circumstances (including relating to the nature, complexity, location or size of the project), extend the period mentioned in paragraph (5) by informing the applicant in writing of—

(a) the new period within which it will make the screening decision and notify the applicant of it, and

(b) the reasons for the extension.".

Amendment to regulation 10

8.—(1) Regulation 10 (scoping opinions) is amended as follows.