STATUTORY INSTRUMENTS

2017 No. 585

LAND DRAINAGE, ENGLAND AND WALES

The Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017

Made - - - -	*24th April 2017*
Laid before Parliament	*24th April 2017*
Laid before the National Assembly for Wales - -	*24th April 2017*
Coming into force - -	*16th May 2017*

For the purposes of section 2(2) of the European Communities Act 1972(**1**) ("the ECA 1972")—

(a) the Secretary of State has been designated(**2**) in relation to the environment; and

(b) the Welsh Ministers have been designated(**3**) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in so far as they concern improvement works within the meaning in regulation 2(1) of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999(**4**).

The Secretary of State and the Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the ECA 1972—

(a) the Welsh Ministers in relation to Wales, to the extent that they are designated to do so; and

(b) the Secretary of State, in every other respect.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2017 and come into force on 16th May 2017.

(2) In these Regulations, "the 1999 Regulations" means the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999.

(**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. 2000/2812. The functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 28(1) of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
(**4**) S.I. 1999/1783, amended by S.I. 2005/1399, S.I. 2006/618, S.I. 2013/755 (W. 90).

Amendments to the 1999 Regulations

2. The 1999 Regulations are amended in accordance with regulations 3 to 21.

Amendments to regulation 2

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

(2) In paragraph (1)—

(a) at the appropriate place in the alphabetical order insert—

""environmental impact assessment", in respect of improvement works, means—

(a) the preparation of an environmental statement by the drainage body;

(b) the carrying out of consultations under regulations 10 and 12B(6);

(c) the drainage body's or the appropriate Authority's consideration of the environmental statement and other information under regulation 12(1) or 12B(3);

(d) the drainage body or the appropriate Authority reaching a conclusion about the likely significant environmental effects of the project under regulation 12(2) or 12B(4); and

(e) the drainage body's or the appropriate Authority's consideration of that conclusion under regulation 12A(3) or 12C(2) in the determination of whether or not the improvement works should proceed;";

""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 under 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,

of the effect of anything on the environment;;";

""the Habitats Directive" means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(**5**) as last amended by Council Directive 2013/17/EU(**6**);";

""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;";

""the Wild Birds Directive" means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(**7**) as amended by Council Directive 2013/17/EU;";

(b) for the definition of "the appropriate Authority" substitute—

""the appropriate Authority" means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the Welsh Ministers;";

(c) in the definition of "consultation bodies"—

(**5**) OJ No L 206, 22.7.1992, p. 7.
(**6**) OJ No L 158, 10.6.2013, p. 193.
(**7**) OJ No L 20, 26.1.2010, p. 7.

(i) in paragraph (a)(**8**) for "English Nature, English Heritage and the Countryside Agency" substitute "Natural England";

(ii) in paragraph (b) for "National Assembly" substitute "Welsh Ministers";

(iii) in paragraph (c), after "works", in the second place it occurs, insert "by virtue of its environmental responsibilities or local or regional competences";

(d) for the definition of "the 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(**9**), as amended by Directive 2014/52/EU of the European Parliament and of the Council(**10**);";

(e) omit the definition of "EEA State";

(f) for the definition of "environmental statement" substitute—

""environmental statement" has the meaning given by regulation 7(1);";

(g) for the definition of "improvement works" substitute—

""improvement works" means—

(a) in relation to England, works which are—

(i) the subject of a project to deepen, widen, straighten, or otherwise improve or alter, any existing watercourse or remove or alter mill dams, weirs, or other obstructions to watercourses, or raise, widen, or otherwise improve or alter, any existing drainage work; and

(ii) permitted development by virtue of Class C or Class D of Part 13 (water and sewerage) of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(**11**);

(b) in relation to Wales, works which are—

(i) the subject of a project to deepen, widen, straighten, or otherwise improve or alter, any existing watercourse or remove or alter mill dams, weirs, or other obstructions to watercourses, or raise, widen, or otherwise improve or alter, any existing drainage work; and

(ii) permitted development by virtue of Part 14 or Part 15 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995(**12**);".

(3) In paragraph (2) for "the Directive" in both places substitute "the EIA Directive".

(4) After paragraph (3) insert—

"(4) In these Regulations, any reference to the likely significant effects, or the likely significant adverse effects, of improvement works on the environment includes a reference to the effects of the improvement works on the environment once the improvement works are finished and in operation.

(5) In paragraph (4) each reference to the environment includes a reference to the matters referred to in regulation 12(2)(a) to (e).".

(**8**) The words "English Nature" were substituted by section 73(2) of the Countryside and Rights of Way Act 2000 (c. 37). The words "English Heritage" were inserted by regulation 5(2)(a)(i) of S.I. 2005/1399.
(**9**) OJ No L 26, 28.1.2012, p. 1.
(**10**) OJ No L 124, 25.4.2014, p. 1.
(**11**) S.I. 2015/596, to which there are amendments not relevant to these Regulations.
(**12**) S.I. 1995/418. Parts 14 and 15 of Schedule 2 were amended by S.I. 2013/755.

Amendments to regulation 3

4.—(1) Regulation 3 (restriction on improvement works) is amended as follows.

(2) In paragraph (1)—

(a) for "paragraph (2) below" substitute "regulations 3A and 3B";

(b) in sub-paragraph (b) for "12(4)" substitute "12B(2)".

(3) Omit paragraphs (2) to (4)(**13**).

New regulations 3A to 3C

5. After regulation 3 insert—

"**Defence and civil emergencies**

3A.—(1) The Secretary of State may direct that improvement works or a part of any improvement works are exempt where—

(a) the improvement works have national defence as their sole purpose; and

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

(2) The appropriate Authority may direct that improvement works are exempt where—

(a) the improvement works have the response to a civil emergency as their sole purpose; and

(b) the appropriate Authority considers that an environmental impact assessment in respect of the improvement works would have an adverse effect on the fulfilment of that purpose.

(3) The effect of a direction under paragraph (1) or (2) that improvement works are exempt is that these Regulations, except for paragraphs (5) and (6), do not apply to the improvement works.

(4) The effect of a direction under paragraph (1) that a part of any improvement works are exempt is that the improvement works are treated under these Regulations as not including the part of the improvement works the subject of the direction.

(5) Following a direction under paragraph (1) or (2), the person who made the direction must send notice of the direction to the drainage body concerned.

(6) Following a direction under paragraph (1) in respect of improvement works in Wales, the Secretary of State must send notice of the direction to the Welsh Ministers.

Exceptional circumstances

3B.—(1) The appropriate Authority may direct that improvement works are exempt where the circumstances are exceptional and it considers that—

(a) the application of these Regulations to the improvement works would have an adverse effect on the fulfilment of the improvement works' purpose; and

(b) the objectives of the EIA Directive will be met even though such an assessment is not carried out.

(**13**) Paragraphs (2) and (2A) were substituted by regulation 5(3) of S.I. 2005/1399.

(2) The effect of a direction that improvement works are exempt under paragraph (1) is that these Regulations, except for paragraphs (3) and (4) do not apply to the improvement works.

(3) Where the appropriate Authority makes a direction that improvement works are exempt under paragraph (1) it must—

(a) consider whether another form of assessment of the likely significant effects on the environment of the improvement works is appropriate;

(b) send a copy of the direction to the drainage body concerned; and

(c) publish in at least two newspapers local to the site of the improvement works a notice which briefly describes—

(i) the improvement works; and

(ii) the effect of the direction and the reasons for it.

(4) Where the appropriate Authority considers that another form of assessment is appropriate in accordance with paragraph (3)(a), it must make available to the public concerned the information obtained under that other assessment.

Coordination

3C. Where, in respect of improvement works, 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 Conservation of Habitats and Species Regulations 2010(**14**), the appropriate Authority must, where appropriate, ensure that the environmental impact assessment and the other assessment, or assessments, are coordinated.".

Substitution of regulation 4

6. For regulation 4 (determination of whether improvement works have significant effects on the environment) substitute—

"**Determination of whether improvement works have significant effects on the environment**

4.—(1) A drainage body proposing to carry out improvement works must determine whether the improvement works are likely to have significant effects on the environment, and in making that determination the drainage body must take into account—

(a) the selection criteria in Schedule 2; and

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

(2) The determination in paragraph (1) must be made as soon as possible but, subject to paragraph (3), within the period of 45 days beginning with the date on which the proposal to carry out improvement works was made.

(3) In exceptional cases (including relating to the nature, complexity, location or size of the improvement works), the drainage body may extend the 45-day period referred to in paragraph (2).".

(**14**) S.I. 2010/490, to which there are amendments not relevant to these Regulations.