STATUTORY INSTRUMENTS

2017 No. 583

WATER RESOURCES, ENGLAND AND WALES

The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017

Made - - - -	*24th April 2017*
Laid before Parliament	*24th 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 Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017 and come into force on 16th May 2017.

(2) In these Regulations, "the 2003 Regulations" means the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003(**3**).

Amendments to the 2003 Regulations

2. The 2003 Regulations are amended in accordance with regulations 3 to 18.

Amendments to regulation 2

3.—(1) Regulation 2 (interpretation) is renumbered as paragraph (1) of that regulation.

(2) In paragraph (1) (as renumbered)—

(a) at the appropriate places insert—

""environmental impact assessment" means—

(**1**) 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. 2003/164, amended by S.I. 2006/3124, 2010/1159, 2011/1043, 2013/755 (W.90); there are other amending instruments but none is relevant.

(a) the preparation of an environmental statement under regulation 5;

(b) the carrying out of consultations under regulation 7;

(c) the consideration of the environmental statement and other information under regulation 7A(1);

(d) reaching a conclusion about the likely significant environmental effects of the project under regulation 7A(2); and

(e) the consideration of that conclusion in the decision of whether or not to grant an authorisation for, or for the variation of an authorisation relating to, a relevant project under regulation 8(2);";

""environmental statement" has the meaning given in regulation 5;";

""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,

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(**4**) as last amended by Council Directive 2013/17/EU(**5**);";

""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(**6**), as amended by Council Directive 2013/17/EU;";

(b) in the definition of "appropriate Minister", for paragraph (a) substitute—

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

(c) in the definition of "consultation bodies"(**7**)—

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

(ii) in paragraph (c) for "National Assembly for Wales in its" substitute "Welsh Ministers for the";

(iii) in paragraph (d) after "responsibilities" insert "or local or regional competences";

(d) for the definition of the "EIA Directive"(**9**) 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(**10**), as amended by Directive 2014/52/EU of the European Parliament and of the Council(**11**);".

(**4**) OJ No L 206, 22.7.1992, p. 7.
(**5**) OJ No L 158, 10.6.2013, p. 193.
(**6**) OJ No L 20, 26.1.2010, p. 7.
(**7**) The definition of "consultation bodies" was amended by S.I. 2006/3124, 2013/755 (W. 90).
(**8**) Natural England was established by section 1(1) of the Natural Environment and Rural Communities Act 2006 (c. 16).
(**9**) The definition of "EIA Directive" was amended by S.I. 2006/3124.
(**10**) OJ No L 26, 28.1.2012, p. 1.
(**11**) OJ No L 124, 25.4.2014, p. 1.

(3) After paragraph (1) (as renumbered) insert—

"(2) In these Regulations, any reference to the likely significant effects, or the likely significant adverse effects, of a relevant project, or a project which may be a relevant project, on the environment includes a reference to the effects of that project on the environment once any construction, installation or other intervention is completed and in operation.

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

Amendment to regulation 3

4. For paragraph (3) of regulation 3 (requirement for an environmental impact assessment) substitute—

"(3) A project is not a relevant project if it—

(a) involves development within the meaning of section 55 of the Town and Country Planning Act 1990(**12**);

(b) involves improvement works within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999(**13**); or

(c) is exempt in accordance with a direction under regulation 3A(1) or (2) or 3B(1).".

New regulations 3A to 3C

5. After regulation 3 insert—

"**Defence and civil emergencies**

3A.—(1) The Secretary of State may direct that a relevant project, or a project which may be a relevant project, is exempt where—

(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 would have an adverse effect on the fulfilment of that purpose.

(2) The appropriate Minister may direct that a relevant project, or a project which may be a relevant project, is exempt where—

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

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

(3) Following a direction under paragraph (1) or (2), the person who gave the direction must send notice in writing of the direction to the relevant appropriate authority.

(4) Following a direction under paragraph (1) in respect of a project in Wales, the Secretary of State must send notice in writing of the direction to the Welsh Ministers.

(**12**) c. 8. Section 55 was amended by sections 13 and 14 of, and paragraph 9 of Schedule 6 to, the Planning and Compensation Act 1991 (c. 34), S.I. 1999/293 and section 49(1) and paragraph 1 of Schedule 9 to the Planning and Compulsory Purchase Act 2004 (c. 5).

(**13**) S.I. 1999/783, to which there are amendments not relevant to these Regulations.

Exceptional circumstances

3B.—(1) The appropriate Minister may direct that a relevant project, or a project which may be a relevant project, is exempt where the circumstances are exceptional and the appropriate Minister considers that—

(a) an environmental impact assessment would have an adverse effect on the fulfilment of the project's purpose; and

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

(2) Where the appropriate Minister gives a direction that a relevant project, or a project which may be a relevant project, is exempt under paragraph (1), the appropriate Minister must—

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

(b) make available to the public concerned—

(i) the direction including an explanation of the reasons for it; and

(ii) the information obtained under any other assessment referred to in sub-paragraph (a).

Coordination

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

Amendments to regulation 4

6.—(1) Regulation 4(**15**) (determination whether a project is a relevant project) is amended as follows.

(2) For paragraph (2) substitute—

"(2) The request shall contain—

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

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

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

(b) a description of the aspects of the environment likely to be significantly affected by the project;

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

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

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

(**14**) S.I. 2010/490, to which there are amendments not relevant to these Regulations.
(**15**) Regulation 4 was amended by S.I. 2013/755 (W. 90).

(d) if the applicant elects to provide it, a description of any measure proposed to be taken to avoid or prevent any likely significant adverse effects on the environment.

(2A) When compiling the information referred to in paragraph (2), the applicant shall take into account—

(a) the selection criteria set out in Schedule 1; and

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

(3) For paragraph (4) substitute—

"(4) In determining whether a project is a relevant project the appropriate authority shall take into account—

(a) the selection criteria set out in Schedule 1; and

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

(4) For paragraph (5)(b) substitute—

"(b) where agreed in writing with the applicant, any other period of not more than 90 days beginning with—

(i) the date on which the request is received; or

(ii) where the appropriate authority has served a notice under paragraph (3), the date on which the further information is given to the appropriate authority.".

(5) After paragraph (5) insert—

"(5A) The appropriate authority—

(a) may extend the period referred to in paragraph (5) in exceptional cases (such as where the nature, complexity, location or size of the works demands a longer period for determination); and

(b) where it does so, shall inform the applicant in writing of the reasons for the extension and of the date on which its determination under paragraph (1) is expected.".

(6) For paragraph (9) substitute—

"(9) A determination under this regulation shall be accompanied by a written statement —

(a) of the reasons for the determination with reference to such of the selection criteria set out in Schedule 1 as are relevant; and

(b) if the determination under paragraph (1) is that the project is not a relevant project, describing any measure disclosed under paragraph (2)(d).".

Amendments to regulation 5

7. In regulation 5 (environmental statement to be provided in relation to an application for authorisation)—

(a) for "An environmental statement" substitute "A written statement (an "environmental statement")";

(b) omit "made after 31st March 2003".