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EXITING THE EUROPEAN UNION

AGRICULTURE, ENGLAND

ENVIRONMENTAL PROTECTION

FORESTRY, ENGLAND AND WALES

LAND DRAINAGE, ENGLAND AND WALES

LICENSING (MARINE)

MARINE MANAGEMENT

WATER RESOURCES, ENGLAND AND WALES

The Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019

<i>Sift requirements satisfied</i>	<i>29th November 2018</i>
<i>Made - - - -</i>	<i>8th January 2019</i>
<i>Laid before Parliament</i>	<i>11th January 2019</i>
<i>Coming into force in accordance with regulation 1(1)</i>	

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018^(a).

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(a) 2018 c. 16.

(2) Any amendment made by these Regulations has the same extent and application as the provision to which it relates.

Amendments to the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999

2.—(1) The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999(a) are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

(i) for the definition of “EU environmental assessment” substitute—

““EU environmental assessment” means an assessment of the effect of anything on the environment carried out under retained EU law other than any law of any part of the United Kingdom that implemented the EIA Directive;”;

(ii) after the definition of “improvement works” insert—

““public” means one or more natural or legal persons and, in accordance with the law or practice of any part of the United Kingdom, their associations, organisations or groups;

“public concerned” means the public affected or likely to be affected by, or having an interest in, environmental decision making procedures (for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under the law of any part of the United Kingdom are deemed to have an interest);”;

(b) omit paragraph (2).

(3) In regulation 12(2)(b), after the word “under” insert “any law of any part of the United Kingdom that implemented”.

(4) In regulation 12B(4)(b), after the word “under” insert “any law of any part of the United Kingdom that implemented”.

(5) In Schedule 1—

(a) in paragraph 6, for “established at EU or member State level” substitute “in retained EU law or under the law of any part of the United Kingdom”;

(b) in paragraph 9—

(i) for “EU legislation such as” substitute “retained EU law such as any law that implemented”;

(ii) after “requirements of” insert “any law that implemented”.

(c) In Schedule 2, in paragraph 2(c)(vi), after “EU legislation” insert “as it applied in the United Kingdom immediately prior to exit day, or in retained EU law”.

Amendments to the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999

3.—(1) The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999(b) are amended as follows.

(2) In regulation 2(1), for the definition of “EU environmental assessment” substitute—

““EU environmental assessment” means an assessment of the effect of anything on the environment carried out under retained EU law other than any law of any part of the United Kingdom that implemented the Directive;”;

(a) S.I. 1999/1783, amended by S.I. 2017/585; there are other amending instruments but none is relevant.

(b) S.I. 1999/2228; relevant amending instruments are S.I. 2006/3106, 2013/755 (W. 90) and 2017/592.

- (3) In regulation 3B—
- (a) in paragraph (7)(d), for the words after “risk of failing,” to the end, substitute “the environmental objectives set for them under the WFD Regulations due to acidification;”;
 - (b) the second paragraph numbered as paragraph (9) is renumbered as paragraph (10);
 - (c) in the second paragraph numbered as paragraph (9), after sub-paragraph (a) insert—
 - “(b) “environmental objectives” means—
 - (i) in relation to the Solway Tweed River Basin District, the objectives as defined in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004(a);
 - (ii) in relation to the Northumbria River Basin District, the objectives referred to in the WFD Regulations as applied and modified by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003(b);
 - (iii) in relation to any other river basin district, as defined in WFD Regulations, the same as in those regulations;”;
 - (d) after the second paragraph numbered as paragraph (9) insert—
 - “(11) In paragraphs (7) and (10), “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017(c).”.
- (4) In regulation 4B(1)(d), for “another” substitute “an”.
- (5) In regulation 14—
- (a) in the heading, for “another” substitute “an”;
 - (b) in paragraph (1), for “another”, in both places it occurs, substitute “an”;
 - (c) in paragraph (2), for “another”, in both places it occurs, substitute “an”;
 - (d) in paragraph (3)(a), for “another” substitute “an”;
 - (e) in paragraph (5)(a), for “referred to in Article 6(1) of the Directive” substitute “which the EEA State designated to be consulted about the project”;
 - (f) in paragraph (6)—
 - (i) omit “in accordance with Article 7(4) of the Directive”;
 - (ii) in sub-paragraph (b), omit “other”.
- (6) In Schedule 1, in Part 1—
- (a) in paragraph 6, for “established at Union or member State level” substitute “in retained EU law or under the law of any part of the United Kingdom”;
 - (b) in paragraph 9—
 - (i) for “legislation such as” substitute “retained EU law such as any law that implemented”;
 - (ii) after “requirements of” insert “any law that implemented”.
 - (c) In Schedule 4, in paragraph (b), after the word “under” insert “any law of any part of the United Kingdom that implemented”.

Amendments to the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003

4.—(1) The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003(d) are amended as follows.

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- (a) S.I. 2004/99, amended by S.I. 2016/139.
 - (b) S.I. 2003/3245; relevant amending instruments are S.I. 2016/139 and 2017/407.
 - (c) S.I. 2017/407, to which there are amendments not relevant to these Regulations.
 - (d) S.I. 2003/164, amended by S.I. 2017/583; there are other amending instruments but none is relevant.

- (2) In regulation 2(1)—
- (a) omit the words after “In these Regulations” until the first definition;
 - (b) for the definition of “EU environmental assessment” substitute—

““EU environmental assessment” means an assessment of the effect of anything on the environment carried out under retained EU law other than any law of any part of the United Kingdom that implemented the EIA Directive;”;
 - (c) after the definition of “the Habitats Directive” insert—

““public” means one or more natural or legal persons and, in accordance with the law or practice of any part of the United Kingdom, their associations, organisations or groups;”.
- (3) In regulation 3B, after paragraph (2) insert—
- “(3) In paragraph (2)(b), the “public concerned” means the public affected or likely to be affected by, or having an interest in, environmental decision making procedures (for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under the law of any part of the United Kingdom are deemed to have an interest).”.
- (4) In regulation 7A(2)(b), after the word “under” insert “any law of any part of the United Kingdom that implemented”;
- (5) In Schedule 1, in paragraph 2(c)(vi), after “EU legislation” insert “as it applied in the United Kingdom immediately prior to exit day, or in retained EU law”.
- (6) In Schedule 2—
- (a) in paragraph 6, for “at EU or member State level” substitute “in retained EU law or under the law of any part of the United Kingdom”;
 - (b) in paragraph 9—
 - (i) for “EU legislation such as” substitute “retained EU law such as any law that implemented”
 - (ii) after “requirements of” substitute “any law that implemented”.

Amendments to the Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006

5.—(1) The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006(a) are amended as follows.

- (2) In regulation 2—
- (a) in paragraph (1)—
 - (i) for the definition of “EU environmental assessment” substitute—

““EU environmental assessment” means an assessment of the effect of anything on the environment carried out under retained EU law other than any law of any part of the United Kingdom that implemented the EIA Directive;”;
 - (ii) after the definition of “project” insert—

““public” means one or more natural or legal persons and, in accordance with the law of any part of the United Kingdom or practice, their associations, organisations or groups;

“public concerned” means the public affected or likely to be affected by, or having an interest in, environmental decision making procedures (for the purposes of this definition, non-governmental organisations promoting environmental protection

(a) S.I. 2006/2522, amended by S.I. 2017/593; there are other amending instruments but none is relevant.

and meeting any requirements under the law of any part of the United Kingdom are deemed to have an interest);”;

- (b) omit paragraph (2).
- (3) In regulation 3B(1)(d), for “another” substitute “an”.
- (4) In regulation 12(5)(e)—
 - (a) omit the word “other”;
 - (b) for “referred to in Article 6(1) of the EIA Directive” substitute “designated by the EEA State concerned”.
- (5) In regulation 14—
 - (a) in the heading, for “another” substitute “an”;
 - (b) in paragraph (1), for “another” substitute “an”;
 - (c) in paragraph (5)(a), for “referred to in Article 6(1) of the EIA Directive” substitute “which the EEA State designated to be consulted about the project”;
 - (d) in paragraph (6), omit “In accordance with Article 7(4) of the EIA Directive,”.
- (6) In regulation 15—
 - (a) in the heading, for “another” substitute “an”;
 - (b) in paragraph (1)—
 - (i) for “another” substitute “an”;
 - (ii) after the words “EEA State”, in the first place they occur, omit the words until the end of the closing bracket;
 - (iii) in sub-paragraph (b), after “competent authority in the EEA State” insert “ which the State designated as responsible for performing the duties arising from the EIA Directive”;
 - (c) in paragraph (2), omit “In accordance with Article 7(4) of the EIA Directive,”;
 - (d) in paragraph (3)—
 - (i) for “another” substitute “an”;
 - (ii) omit “in accordance with Article 9(2) of the EIA Directive”.
- (7) In regulation 15A(2)(b), after the word “under” insert “any law of any part of the United Kingdom that implemented”;
- (8) In regulation 16(4)(c), for “another” substitute “an”.
- (9) In regulation 17(5)(b), for “European Commission” substitute “Secretary of State”;
- (10) In Schedule 2, in paragraph 2(c)(vi), after “EU legislation” insert “as it applied in the United Kingdom immediately prior to exit day, or in retained EU law”.
- (11) In Schedule 3—
 - (a) in paragraph 6, for “at EU or member State level” substitute “in retained EU law or under the law of any part of the United Kingdom”;
 - (b) in paragraph 9—
 - (i) for “EU legislation such as” substitute “retained EU law such as any law that implemented”;
 - (ii) after “requirements of” insert “any law that implemented”.

Amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007

6.—(1) The Marine Works (Environmental Impact Assessment) Regulations 2007(a) are amended as follows.

(a) S.I. 2007/1518; relevant amending instruments are S.I. 2011/735, 2015/446, 2017/588 and S.S.I. 2017/115.

(2) In regulation 2(1)—

(a) for the definition of “EU environmental assessment” substitute—

““EU environmental assessment” means an assessment of the effect of anything on the environment carried out under retained EU law other than any law of any part of the United Kingdom that implemented the EIA Directive;”;

(b) after the definition of “Northern Ireland” insert—

““public” means one or more natural or legal persons and, in accordance with the law of any part of the United Kingdom or practice, their associations, organisations or groups;

“public concerned” means the public affected or likely to be affected by, or having an interest in, environmental decision making procedures (for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under the law of any part of the United Kingdom are deemed to have an interest);”.

(3) In regulation 10—

(a) in paragraph (1)—

(i) in sub-paragraph (a)(ii), for “another” substitute “an”;

(ii) in sub-paragraph (b)(ii), after “requirements of” insert “any law of any part of the United Kingdom that implemented”;

(b) in paragraph (3)—

(i) for the words from “to comply” to “by” substitute “for the purpose of meeting the provisions of”;

(ii) after “namely” insert “the provision to ensure that information relating to the regulated activity and the reasons for its determination are”;

(iii) from sub-paragraph (a) to the end substitute—

“(a) published in such manner as it considers appropriate;

(b) in the case of an activity requiring regulatory approval under the 1985 Act or the 2009 Act, made available on the relevant Public Register.”;

(c) in paragraph (4)(a), after “comply with” insert “any law of any part of the United Kingdom that implemented”;

(d) at the end insert—

“(6) For the purpose of paragraphs (1)(a)(i) and (3), Article 2(4) of the EIA Directive is to be read as if—

(a) in the first sub-paragraph, the words “Without prejudice to Article 7,” were omitted;

(b) “Member States”, in both places where it occurs, were read as “appropriate authority”;

(b) in the second sub-paragraph, point (c) were omitted;

(c) the third and fourth sub-paragraphs were omitted.”.

(4) In regulation 10A—

(a) in paragraphs (2)(c) and (5)(c), for “another EEA State” substitute “an EEA State”;

(b) at the end insert—

“(8) For the purpose of this regulation, Article 2(4) of the EIA Directive is to be read as if—

(a) in the first sub-paragraph, the words “Without prejudice to Article 7,” were omitted;

(b) “Member States”, in both places where it occurs, were read as “appropriate authority”;

- (b) in the second sub-paragraph, point (c) were omitted;
 - (c) the third and fourth sub-paragraphs were omitted.”.
- (5) In regulation 15A(b), after “under” insert “any law of any part of the United Kingdom that implemented”.
- (6) In regulation 18—
- (a) in paragraph (1)(a) and (b), in both places it occurs, for “another” substitute “an”;
 - (b) in paragraph (3)(a), for “the other” substitute “that”.
- (7) In regulation 20A—
- (a) in the heading, for “another” substitute “an”;
 - (b) in paragraph (1)—
 - (i) omit “, pursuant to Article 7(1) or (2) of the EIA Directive,”;
 - (ii) omit “, in accordance with Article 7(4) of the EIA Directive”;
 - (iii) in sub-paragraph (b), omit “pursuant to Article 7(3)(b) of the EIA Directive”;
 - (c) in paragraph (2)(c), omit “in order to comply with Article 9(2) of the EIA Directive”.
- (8) In regulation 21A—
- (a) in paragraph (1)(e), omit “other”;
 - (b) in paragraph (2)(b), after “under” insert “any law of any part of the United Kingdom that implemented”.
- (9) In regulation 28—
- (a) the existing paragraph is renumbered as paragraph (1);
 - (b) at the end insert—
 - “(2) For the purpose of paragraph (1), Article 11(1) of the EIA Directive is to be read as if—
 - (a) in the words before point (a), “Member States” were “Scottish Ministers”;
 - (b) in point (b), “a Member State” were “Scotland”.”.
- (10) In Schedule A1—
- (a) in paragraph 29, after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008(a) and any law of any part of the United Kingdom that implemented”;
 - (b) in paragraph 30, after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law of any part of the United Kingdom that implemented”.
- (11) In Schedule A2, in paragraph 22, after “after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law of any part of the United Kingdom that implemented”.
- (12) In Schedule 1, in paragraph 2(c)(vi), after “EU legislation” insert “as it applied in the United Kingdom immediately prior to exit day, or in retained EU law”.
- (13) In Schedule 2, in paragraph 1(1B), for “an EU obligation” substitute “a retained EU obligation”.
- (14) In Schedule 3—
- (a) in paragraph 6, for “established at Union or member State level” substitute “in retained EU law or under the law of any part of the United Kingdom”;
 - (b) in paragraph 9—
 - (i) for “EU legislation such as” substitute “retained EU law such as any law that implemented”;
 - (ii) after “requirements of” insert “any law that implemented”.

(a) 2008 c. 32.

(15) In Schedule 5, in paragraph 2(4)(a), after “compliance with” insert “any law of any part of the United Kingdom that implemented”.

8th January 2019

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) and (g) of that Act) arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to domestic legislation that implements, in part, Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. More specifically these Regulations make amendments to domestic legislation concerned with environmental impact assessments in the context of land drainage improvement works, forestry, water resources, agriculture and marine works.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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