

2017 No. 1070

HARBOURS, DOCKS, PIERS AND FERRIES

ENVIRONMENTAL PROTECTION

**HARBOURS, DOCKS, PIERS AND FERRIES,
NORTHERN IRELAND**

**ENVIRONMENTAL PROTECTION, NORTHERN
IRELAND**

The Environmental Impact Assessment (Miscellaneous
Amendments Relating to Harbours, Highways and Transport)
Regulations 2017

<i>Made</i> - - - -	<i>6th November 2017</i>
<i>Laid before Parliament</i>	<i>13th November 2017</i>
<i>Coming into force</i> - -	<i>5th December 2017</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), sections 8 and 9 of the Electronic Communications Act 2000(b) and section 105 of the Deregulation Act 2015(c).

The Secretary of State has been designated for the purposes of section 2(2) of the 1972 Act in relation to the environment(d).

The Secretary of State considers that the authorisation of the use of electronic communications by paragraph 7 of Schedule 1 to these Regulations is such that the extent (if any) to which records of things done for the purpose will be available will be no less satisfactory where use is made of electronic communications than in other cases.

(a) 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).
(b) 2000 c. 7.
(c) 2015 c. 20.
(d) S.I. 2008/301.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 and come into force on 5th December 2017.

(2) Subject to paragraphs (3) to (6), these Regulations extend to England and Wales, Scotland and Northern Ireland.

(3) The amendments made by Schedules 1, 2 and 4 have the same extent as the provisions which they amend.

(4) The amendments made by Schedule 3 extend to England and Wales only.

(5) In Schedule 5—

(a) Part 1 extends to Northern Ireland only;

(b) Part 2 extends to Scotland only.

(6) Paragraphs 1 and 4 to 12 of Schedule 6 extend to England and Wales only.

Interpretation

2. In these Regulations—

“the 1964 Act” means the Harbours Act 1964(a);

“the 1980 Act” means the Highways Act 1980(b);

“the 1992 Act” means the Transport and Works Act 1992(c);

“the 2006 Rules” means the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(d);

“the commencement date” means the day on which these Regulations come into force.

Amendments

3. The 1964 Act is amended in accordance with Schedule 1.

4. The 1980 Act is amended in accordance with Schedule 2.

5. The 1992 Act is amended in accordance with Schedule 3.

6. The 2006 Rules are amended in accordance with Schedule 4.

Projects and works in Scotland or Northern Ireland: national defence exemption

7. Schedule 5 makes provision for the exemption of projects or works from the requirement for an environmental impact assessment under—

(a) the Roads (Northern Ireland) Order 1993;

(b) the Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2003(e);

(c) the Transport and Works (Scotland) Act 2007 and the Transport and Works (Scotland) Act 2007 (Applications and Objections) Procedure Regulations 2007,

where the sole purpose of the works or projects is national defence.

(a) 1964 c. 40.
(b) 1980 c. 66.
(c) 1992 c. 42.
(d) S.I. 2006/1466.
(e) S.R. (N.I.) 2003/136.

Transitional provisions

8. Schedule 6 makes transitional provision in consequence of the amendments made by these Regulations.

Signed by authority of the Secretary of State

6th November 2017

Jesse Norman
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE 1

Regulation 3

Amendments to the 1964 Act

1. The 1964 Act is amended as follows.
2. In section 17 (procedure for making harbour revision and empowerment orders etc.), in subsection (2C)(a), for “paragraph” substitute “paragraphs 20A and”.
3. In section 17D (harbour closure orders: procedure)(b), in subsection (2)—
 - (a) for paragraph (a) substitute—

“(a) ignore paragraphs 3, 4A, 4B(2), 4C(2), 5(2), 6(2)(a) and (c), (3) and (4), 7, 8A, 9, 10(6) to (8), 13 and 14,”;
 - (b) at the end of paragraph (d), omit “and”;
 - (c) for paragraph (e), substitute—

“(e) paragraph 4B applies as if for sub-paragraph (1) there were substituted—
“(1) The Secretary of State must make a screening decision in respect of the proposed order—
 - (a) as soon as possible, and
 - (b) in any event within the period of 90 days beginning with the day on which the Secretary of State has all of the information needed to make the decision.”,
- (f) paragraph 8 applies if the Secretary of State decides that the order would relate to a project which requires an environment impact assessment, in which case—
 - (i) the Secretary of State, having consulted bodies with environmental responsibilities, must arrange for the preparation of an environmental statement by competent experts,
 - (ii) the environmental statement must include the information specified in sub-paragraphs (2)(b) and (3) (and may include other information),
 - (iii) the environmental statement must take into account the results of any relevant environmental assessment which are reasonably available to the Secretary of State, and

(a) Section 17(2C) was inserted by S.I. 1999/3445.

(b) Section 17D was inserted by section 6(1) of the Marine Navigation Act 2013 (c. 23).

- (iv) the environmental statement must include a statement setting out the relevant expertise or qualifications of the experts who prepared the environmental statement,
- (g) where paragraph 8 applies, treat a reference to an environmental statement supplied under paragraph 8(1)(a) as a reference to the environment statement prepared on behalf of the Secretary of State, and
- (h) paragraph 10ZA applies if the Secretary of State decides that the order would relate to a project which requires an environmental impact assessment, in which case, treat a reference to the notice received under paragraph 10(6) as a reference to the notice published under paragraph 10(1)."

4. In section 42A (power to make orders delegating functions)(a), after subsection (7), insert—
“(7A) Subsection (7) does not apply to a reference in paragraph 20A of Schedule 3 to the Secretary of State or the Welsh Ministers.”

5.—(1) Section 44 (limitation of right to challenge harbour revision orders etc in legal proceedings)(b), as it applies in relation to England and Wales, is amended as follows.

(2) In subsection (6), for “Article 10a of the Directive” substitute “Article 11(1)(a) of the EIA Directive”.

(3) In subsection (7), for “the Directive” substitute “the EIA Directive”.

(4) In subsection (8), in paragraphs (a) and (c), for “the Directive” substitute “the EIA Directive”.

6.—(1) Section 44(c), as it applies in relation to Scotland, is amended as follows.

(2) In subsection (6)—

(a) in the opening words, for “the Directive” substitute “the EIA Directive”;

(b) in paragraphs (a) and (b), for “Article 10a” substitute “Article 11(1)(a)”.

(3) In subsection (7), in paragraphs (a) and (b), for “the Directive” substitute “the EIA Directive”.

(4) In subsection (8), for “the Directive” substitute “the EIA Directive”.

7.—(1) Section 48 (service of documents) is amended as follows.

(2) After subsection (1) insert—

“(1A) Any such document may also be given to or served on a person (the “recipient”) by means of an electronic communication but only if—

(a) the recipient has given a written statement agreeing to accept service of the document by means of an electronic communication,

(b) the statement has not been withdrawn, and

(c) the document was transmitted in a specified electronic form to a specified electronic address.

(1B) For the purposes of subsection (1A)(c) “specified” means specified by the recipient in a written statement given for the purposes of paragraph (a) of that subsection.

(1C) A document given or served on a recipient in accordance with subsection (1A) must be in a form sufficiently permanent to be used for subsequent reference.

(1D) Where a document is given to or served on a recipient in accordance with subsection (1A), the document is deemed, unless the contrary is proved, to have been given to or served on the recipient at the time at which the electronic communication is transmitted.

(a) Section 42A was inserted in relation to England and Wales by paragraph 3(1) of Schedule 21 to the Marine and Coastal Access Act 2009 (c. 23).

(b) Section 44(6) to (8) was inserted in relation to England and Wales by S.I. 2009/269.

(c) Section 44(6) to (8) was inserted in relation to Scotland by the Transport and Works (Scotland) Act 2007 (asp 8).

(1E) But if the transmission is made outside the recipient's normal business hours, the document is to be taken to have been given to or served on the recipient on the next working day.

(1F) A statement under subsection (1A) may be withdrawn by giving a written notice to the person to whom the statement was made.

(1G) A withdrawal under subsection (1F) takes effect on the later of—

- (a) the date specified by the person in the notice, and
- (b) the date which is fourteen days after the date on which the notice is given.”

(3) For subsection (2), substitute—

“(2) Any document required or authorised to be given to or served on a body corporate may be given to or served on the secretary or clerk of that body.”

(4) After subsection (4) insert—

“(5) Subsections (1) to (4) do not apply in relation to a document if—

- (a) it is required or authorised by Schedule 3 to be given to or served on a relevant authority, and
- (b) the authority, in exercise of a power in Schedule 3, has specified the form in which, or means by which, the document is to be given to or served on it.

(6) In this section —

“electronic address” includes any number or address used for the purpose of receiving electronic communications;

“electronic communication” has the meaning given in section 15 of the Electronic Communications Act 2000;

“relevant authority” means—

- (a) the Secretary of State;
- (b) the Welsh Ministers;
- (c) the Scottish Ministers;

“working day” means any day other than—

- (a) a Saturday or Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

8.—(1) Part 1 of Schedule 3 (harbour revision orders made on application to the Secretary of State)(a) is amended as follows.

(2) In paragraph 1, as it applies in relation to England and Wales—

(a) omit the definition of “the Directive”(b);

(b) for the definition of “EEA Agreement” substitute—

““EEA Agreement” and “EEA State” have the meanings given in Schedule 1 to the Interpretation Act 1978;”

(c) after that definition, insert—

““EIA application” means an application for a harbour revision order authorising a project which requires an environmental impact assessment;

“the EIA Directive” means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment(a);

(a) Schedule 3 was substituted by Schedule 3 to S.I. 1999/3445.

(b) The definition of “the Directive” was substituted by S.I. 2009/269.

“the environment” means—

- (a) population and human health,
- (b) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Wild Birds Directive,
- (c) land, soil, water, air and climate,
- (d) material assets, cultural heritage and the landscape, and
- (e) the interaction between the factors referred to in paragraphs (a) to (d);

“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 an obligation arising under the EIA Directive), or
- (b) under the law of any part of the United Kingdom (other than a rule which implements an obligation arising under the EIA Directive),

of the effect of anything on the environment;

“environmental impact assessment”, in relation to a project, means the process comprising—

- (a) the preparation of an environmental statement by the applicant,
- (b) the carrying out of consultations under this Part of this Schedule about the likely significant effects of the project on the environment,
- (c) the Secretary of State’s consideration of the information about the likely significant effects of the project on the environment (see paragraph 18A(2)),
- (d) the Secretary of State reaching a reasoned conclusion on the significant effects of the project on the environment (see paragraph 18A(4)), and
- (e) the Secretary of State’s consideration of that reasoned conclusion when making a decision under paragraph 19 in respect of the application for a harbour revision order authorising the project;”;

(d) omit the definition of “EEA state”;

(e) for the definition of “environmental statement”, substitute—

““environmental statement” has the meaning given in paragraph 8(2);”;

(f) after the definition of “fishery harbour” insert—

““the Habitats Directive” means Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora**(b)**;

“official website” means a website maintained by or on behalf of the Secretary of State;”;

(g) after the definition of “project” insert—

““reasoned conclusion”, in relation to a project, means the conclusion required by paragraph 18A(4);

“screening decision” has the meaning given in paragraph 4(4);”;

(h) in the definition of “selection criteria”, for “Directive” substitute “EIA Directive”;

(i) after the definition of “sensitive area” insert—

““the Wild Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds**(c)**;”;

(3) In paragraph 1, as it applies in relation to Scotland—

(a) omit the definition of “the Directive”;

(a) O.J. No. L 26, 28.1.2012, p. 1.

(b) O.J. No. L 206, 22.7.1992, p. 7.

(c) O.J. No. L 20, 26.1.2010, p. 7.

- (b) for the definition of “EEA Agreement” substitute—
 ““EEA Agreement” and “EEA State” have the meanings given in Schedule 1 to the Interpretation Act 1978;”
- (c) after that definition, insert—
 ““EIA application” means an application for a harbour revision order authorising a project which requires an environmental impact assessment;
 “the EIA Directive” means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment^(a);
 “the environment” means—
 (a) population and human health,
 (b) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Wild Birds Directive,
 (c) land, soil, water, air and climate,
 (d) material assets, cultural heritage and the landscape, and
 (e) the interaction between the factors referred to in paragraphs (a) to (d);
 “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 an obligation arising under the EIA Directive), or
 (b) under the law of any part of the United Kingdom (other than a rule which implements an obligation arising under the EIA Directive),
 of the effect of anything on the environment;
 “environmental impact assessment”, in relation to a project, means the process comprising—
 (a) the preparation of an environmental statement by the applicant,
 (b) the carrying out of consultations under this Part of this Schedule about the likely significant effects of the project on the environment,
 (c) the Scottish Ministers’ consideration of the information about the likely significant effects of the project on the environment (see paragraph 18A(2)),
 (d) the Scottish Ministers’ reaching a reasoned conclusion on the significant effects of the project on the environment (see paragraph 18A(4)), and
 (e) the Scottish Ministers’ consideration of the reasoned conclusion when making a decision under paragraph 19 in respect of the application for a harbour revision order authorising the project;”;
- (d) omit the definition of “EEA state”;
- (e) for the definition of “environmental statement”, substitute—
 ““environmental statement” has the meaning given in paragraph 8(2);”;
- (f) after the definition of “fishery harbour” insert—
 ““the Habitats Directive” means Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora^(b);
 “official website” means a website maintained by or on behalf of the Scottish Ministers;
 ”;
- (g) after the definition of “project” insert—

(a) O.J. No. L 26, 28.1.2012, p. 1.

(b) O.J. No. L 206, 22.7.1992, p. 7.

““reasoned conclusion”, in relation to a project, means the conclusion required by paragraph 18A(4);

“screening decision” has the meaning given in paragraph 4(4);”;

(h) in the definition of “selection criteria”, for “Directive” substitute “EIA Directive”;

(i) after the definition of “sensitive area” insert—

““the Wild Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds(a);”;

(4) After paragraph 2, insert—

“**2A.**—(1) For purposes of this Part, the effects of a project on the environment include—

(a) any effects on the environment which arise (directly or indirectly) from the operational phase of the project;

(b) any expected effects on the environment which derive (directly or indirectly) from the vulnerability of the project to risks of major accidents or disasters.

(2) References to the adverse, likely or significant effects of a project on the environment are to be read accordingly”.

(5) For paragraph 3 substitute—

“**3.**—(1) A person may not make an application for a harbour revision order which, directly or indirectly, authorises a project unless—

(a) the proposed applicant has given the Secretary of State notice of the proposed applicant’s intention to make the application, and

(b) the Secretary of State has responded under paragraph 5(2) or 6(2)(a).

(2) If the project is likely to fall within Annex I or Annex II to the EIA Directive, the notice given under sub-paragraph (1)(a) —

(a) must include the information described in Annex II.A to the EIA Directive (information to be provided on projects listed in Annex II) taking into account the results of any relevant environmental assessment which are reasonably available to the proposed applicant, and

(b) may include a description of any feature of the project or measure envisaged to avoid or prevent what otherwise might be significant adverse effects of the project on the environment.

(3) This paragraph does not apply if the Secretary of State gives a direction in respect of the project under paragraph 20A, 20B or 20C (exemptions).”

(6) For paragraph 4 substitute—

“**4.**—(1) Where the Secretary of State is notified of a proposed application under paragraph 3(1)(a), the Secretary of State must decide whether it relates to a project which requires an environmental impact assessment.

(2) A project requires an environmental impact assessment if—

(a) it falls within Annex I to the EIA Directive, or

(b) it falls within Annex II to the EIA Directive and, having regard to the selection criteria, is a relevant project.

(3) For the purposes of sub-paragraph (1), the Secretary of State must take into account the results of any relevant environmental assessment which are reasonably available to the Secretary of State.

(4) In this Part of this Schedule, “screening decision” means a decision under sub-paragraph (1) of this paragraph.

(a) O.J. No. L 20, 26.1.2010, p. 7.

4A.—(1) The Secretary of State may direct a person to provide the Secretary of State with such further information as the Secretary of State requires for the purpose of making a screening decision.

(2) A direction under sub-paragraph (1) must be given before the end of the period of 90 days beginning with the day on which the Secretary of State is notified of the proposed application under paragraph 3(1)(a).

(3) A direction under sub-paragraph (1) must be in writing and must—

- (a) specify the further information to be provided by the proposed applicant, and
- (b) state that, in accordance with paragraph 4B, the period within which the Secretary of State is required to make the screening decision will begin with the day on which all of the specified information has been provided by the proposed applicant.

4B.—(1) The Secretary of State must make a screening decision in respect of a proposed application—

- (a) as soon as possible after the day on which the Secretary of State is notified of the proposed application under paragraph 3(1)(a), and
- (b) in any event within the period of 90 days beginning with that day.

(2) But if the Secretary of State gives a direction under paragraph 4A(1) to the proposed applicant, the screening decision in respect of the proposed application is to be made—

- (a) as soon as possible after the day on which all of the information specified in the direction has been provided by the proposed applicant, and
- (b) in any event within the period of 90 days beginning with that day.

(3) This paragraph is subject to paragraph 4C.

4C.—(1) The Secretary of State, if satisfied that it is appropriate to do so by reason of exceptional circumstances relating to a project (including circumstances relating to the nature, complexity, location or size of the project), may extend the period specified in paragraph 4B(1)(b) or (2)(b).

(2) If the Secretary of States extends the relevant period, the Secretary of State must inform the proposed applicant, in writing, of—

- (a) the reasons for the extension, and
- (b) the date by which the Secretary of State expects to make the screening decision.”

(7) For paragraph 5 substitute—

“5.—(1) This paragraph applies if the Secretary of State decides that a proposed application relates to a project which does not require an environmental impact assessment.

(2) The Secretary of State must inform the proposed applicant, in writing, of the decision and the reasons for it with reference to the selection criteria (where relevant).

(3) The Secretary of State must also publish a notice of the decision which—

- (a) states the reasons for it with reference to the selection criteria (where relevant), and
- (b) if provided by the proposed applicant in the notice under paragraph 3(1)(a) or in response to a direction given under paragraph 4A(1), includes a description of any feature of the project or measure envisaged to avoid or prevent what might otherwise be significant adverse effects of the project on the environment.”

(8) For paragraph 6 substitute—

“6.—(1) This paragraph applies if the Secretary of State decides that the proposed application relates to a project which requires an environmental impact assessment.

(2) The Secretary of State must—

- (a) inform the proposed applicant, in writing, of the decision and the reasons for it with reference to the selection criteria (where relevant),

- (b) publish a notice of the decision which states the reasons for it with reference to the selection criteria (where relevant), and
 - (c) give the proposed applicant an opinion, in writing, about the scope and level of detail of the information which the proposed applicant will be required to supply in an environmental statement, if the application is made.
- (3) In giving an opinion under sub-paragraph (2)(c), the Secretary of State must have regard to the information provided by the proposed applicant including in particular any information about—
- (a) the specific characteristics of the project (including its location and technical capacity), and
 - (b) its likely impact on the environment.
- (4) Before giving the opinion the Secretary of State must consult such bodies with environmental responsibilities or local or regional competencies as the Secretary of State considers appropriate.”
- (9) For paragraph 7(a) substitute—
- “7.—(1) An application for a harbour revision order must be accompanied by—
- (a) a draft of the proposed order,
 - (b) six copies (or such lesser number as the Secretary of State may specify) of any map which, if the order is made in the form of the draft, will be annexed to it, and
 - (c) such fee as the Secretary of State may determine.
- (2) The Secretary of State may specify the form in which, or means by which, any document mentioned in sub-paragraph (1) is to be provided (and may specify different forms or means for different documents).”
- (10) For paragraph 8 substitute—
- “8.—(1) If an applicant makes an EIA application, the applicant must—
- (a) supply the Secretary of State with an environmental statement, and
 - (b) if directed to do so by the Secretary of State, supply the Secretary of State with such number of copies of the statement as is specified in the direction.
- (2) In this Part of this Schedule, “environmental statement” means a statement which—
- (a) is prepared by competent experts,
 - (b) includes the information which, taking into account current knowledge and methods of assessment, may reasonably be required by the Secretary of State to reach a reasoned conclusion under paragraph 18A(4) and in particular, the information specified in sub-paragraph (3),
 - (c) is based on the opinion given under paragraph 6(2)(c), and
 - (d) with a view to avoiding duplication of assessments, takes into account the results of any relevant environmental assessment which are reasonably available to the applicant.
- (3) The specified information is—
- (a) a description of the site, design, size and any other relevant features of the project,
 - (b) a description of the likely significant effects of the project on the environment,
 - (c) a description of any features of the project or measures envisaged to avoid, prevent or reduce and, if possible, offset any likely significant adverse effects of the project on the environment,

(a) Paragraph 7 was amended in relation to Scotland by section 2 (2) of the Harbours (Scotland) Act 2015 (asp 13).

- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the likely effects of the project on the environment,
- (e) a non-technical summary of the information mentioned in paragraphs (a) to (d), and
- (f) any additional information specified in Annex IV to the EIA Directive (information for the environmental impact assessment report) relevant to the specific characteristics of the project or type of project and to the environmental features likely to be affected.

(4) The environmental statement must be accompanied by a statement from the applicant setting out the relevant expertise or qualifications of the experts who prepared the environmental statement.

(5) The Secretary of State may specify the form in which, or means by which, an environmental statement, a statement under sub-paragraph (4) or a copy of an environmental statement, is to be provided (and may specify different forms or means for different documents).

8A.—(1) The Secretary of State must, where necessary, direct an applicant who makes an EIA application to supply the Secretary of State with any information of a type specified in Annex IV to the EIA Directive which is not included in the environmental statement but which—

- (a) is directly relevant to the reaching of a reasoned conclusion, and
- (b) having regard to current knowledge and methods of assessment, can reasonably be compiled by the applicant.

(2) The applicant must supply the Secretary of State with such number of copies of the information as is specified in the direction.

(3) For the purposes of sub-paragraph (1), it does not matter whether the information requested is specified in the opinion under paragraph 6(2)(c).

(4) A direction under sub-paragraph (1) must specify the information to be supplied.

(5) A direction under sub-paragraph (1) or (2) may specify the form in which, or means by which, the information is, or copies of the information are, to be provided (and may specify different forms or means for different documents).

Co-ordination of environmental impact assessment and other assessments

8B. If in respect of a project there is—

- (a) a requirement to carry out an environmental impact assessment, and
- (b) a requirement to carry out an assessment under the law of any part of the United Kingdom giving effect to the Habitats Directive or the Wild Birds Directive,

the Secretary of State must ensure that the assessments are co-ordinated.”

(11) For paragraph 9 substitute—

“**9.** The Secretary of State must not consider an application for a harbour revision order unless the applicant—

- (a) pays any fee which is due under paragraph 7(1)(c),
- (b) complies with any direction under paragraph 7(2),
- (c) if the application is an EIA application—
 - (i) supplies an environmental statement, and
 - (ii) complies with any direction under paragraph 8A(1), and
- (d) complies with any relevant requirements of paragraphs 10 to 14.”

(12) In paragraph 10—

(a) in sub-paragraph (2)—

(i) after paragraph (b), insert—

“(ba) if the Secretary of State gives a direction in respect of the project under paragraph 20A, 20B, 20C or 20D (exemptions and deferral), state that such a direction has been given.”;

(ii) in paragraph (c), for “8(1)” substitute “8(1)(a)”;

(b) after sub-paragraph (5) insert—

“(6) If an applicant publishes a notice which states that an environmental statement has been supplied under paragraph 8(1)(a), the applicant must supply the Secretary of State with a copy of the notice—

(a) as soon as possible, and

(b) in any event within the period of three working days starting with the date specified in accordance with sub-paragraph (2)(f).

(7) In this paragraph and paragraph 10A, “working day” means a day other than—

(a) Saturday or Sunday,

(b) Christmas Day or Good Friday, or

(c) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the harbour, dock or wharf to which the application relates is situated.

(8) The Secretary of State may specify the form in which, and means by which, the copy of the notice is to be provided.”

(13) After paragraph 10 insert—

“**10ZA.**—(1) If the Secretary of State receives a copy of a notice from an applicant under paragraph 10(6), the Secretary of State must—

(a) make the specified documents available for inspection on an official website as soon as reasonably practicable after the Secretary of State receives the copy, and

(b) keep the documents available on the website throughout the period required to ensure the effective participation of the public in the environmental impact assessment.

(2) A failure to make the documents available throughout the period specified in sub-paragraph (1)(b) is to be disregarded if—

(a) the specified documents were available on the official website for part of that period, and

(b) the failure is wholly attributable to circumstances that it would not be reasonable to expect the Secretary of State to prevent or avoid.

(3) The specified documents are—

(a) the copy of the notice,

(b) a copy of the draft order to which the notice relates,

(c) a copy of the environmental statement mentioned in the notice, and

(d) a copy of any map which accompanied the application to which the notice relates.

(4) If the size or form of a specified document means that it is not practicable for the document to be made available on the official website—

(a) the Secretary of State must state on the website how a copy of the document may be obtained, and

(b) where the Secretary of State does so—

- (i) the requirement in sub-paragraph (1)(a) as it applies in relation to the document is taken to be satisfied, and
- (ii) the requirement in sub-paragraph (1)(b) applies to the statement.

10ZB.—(1) This paragraph applies if an applicant makes an EIA application and before the Secretary of State makes a decision under paragraph 19(6) in relation to the application—

- (a) the applicant supplies the Secretary of State with information in accordance with a direction under paragraph 8A(1)(a), or
 - (b) the applicant or any other person supplies the Secretary of State with information which the Secretary of State is satisfied must be considered in order to assess properly the significant effects of the project on the environment.
- (2) The Secretary of State must—
- (a) make the information available on an official website as soon as reasonably practicable after the Secretary of State receives it, and
 - (b) keep the information available on the website throughout the period required to ensure the effective participation of the public in the environmental impact assessment.
- (3) A failure to make the further information available throughout the period specified in sub-paragraph (2)(b) is to be disregarded if—
- (a) the information was available on the official website for part of that period, and
 - (b) the failure is wholly attributable to circumstances that it would not be reasonable to expect the Secretary of State to prevent or avoid.
- (4) If the size or form of any further information means that it is not practicable for it to be made available on the official website—
- (a) the Secretary of State must state on the website how a copy of the information may be obtained, and
 - (b) where the Secretary of State does so—
 - (i) the requirement in sub-paragraph (2)(a) as it applies in relation to the information is taken to be satisfied, and
 - (ii) the requirement in sub-paragraph (2)(b) applies to the statement.”

(14) For paragraph 10A(a) substitute—

“**10A.**—(1) Where further information is made available on an official website under paragraph 10ZB, the Secretary of State must publish, or direct another person to publish, an information notice.

(2) But the Secretary of State is not required to publish, or direct the publication of, an information notice if the Secretary of State considers that the information will be made publicly available at an inquiry or hearing under paragraph 18.

(3) An information notice must—

- (a) state that the Secretary of State has received the information,
- (b) specify a place where a copy of the information can, until the expiry of the period referred to in paragraph (d), be inspected at all reasonable hours,
- (c) provide an address from which a copy of the information can, until the expiry of that period, be obtained and details of the amount of any charge for the provision of such a copy, and

(a) Paragraph 10A was inserted by regulation 6 of S.I. 2009/269 in relation to England and Wales and section 25(5)(d) of the Transport and Works (Scotland) Act 2007 (asp 8) in relation to Scotland.

- (d) state that any person who desires to make representations in relation to the further information should do so in writing to the Secretary of State before the expiry of the period of 42 days starting with a date specified in the notice.
- (4) The information notice must—
 - (a) be published by Gazette and local advertisement, and
 - (a) be published in such other ways, if any, as seem appropriate to the Secretary of State.
- (5) The information notice, or a copy of it, must also—
 - (a) be made available by the Secretary of State on an official website, and
 - (b) be kept available on the website throughout the period required to ensure the effective participation of the public in the environmental impact assessment for the project to which the notice relates.
- (6) Any charge imposed under sub-paragraph (3)(c) must be reasonable.
- (7) The date specified in accordance with sub-paragraph (3)(d) must be the date on which the notice first appears in a local newspaper.
- (8) If the Secretary of State directs a person to publish an information notice, the person must supply the Secretary of State with a copy of the notice—
 - (a) as soon as possible, and
 - (b) in any event within the period of three working days (see paragraph 10(7)) starting with the date specified in accordance with sub-paragraph (3)(d).
- (9) The Secretary of State may specify the form in which, and means by which, a copy of an information notice is to be provided.”
- (15) For paragraph 15(a), substitute—

“**15.**—(1) The Secretary of State, before determining an application, must—

 - (a) consult such bodies that are likely to have an interest in the application by reason of their environmental responsibilities or local or regional competencies as the Secretary of State thinks appropriate, and
 - (b) send the information listed in sub-paragraph (2) to the bodies consulted.

(2) The information is—

 - (a) the environmental statement supplied under paragraph 8(1)(a);
 - (b) any information supplied in pursuance of a direction under paragraph 8A(1);
 - (c) any information about the project falling within paragraph 10ZB(1)(b).”
 - (16) In paragraph 16(b)—
 - (a) in sub-paragraph (1), for paragraph (b), substitute—

“(b) the application is an EIA application.”;
 - (b) in sub-paragraph (4), for paragraph (b), substitute—

“(b) the environmental statement supplied to the Secretary of State under paragraph 8(1)(a);

 - (ba) any information supplied in pursuance of a direction under paragraph 8A(1);
 - (bb) any information falling within paragraph 10ZB(1)(b).”;
 - (c) in sub-paragraph (5), in paragraph (a) after “responsibilities” insert “or local or regional competencies”;

(a) Paragraph 15 was amended by S.I. 2009/269 in relation to England and Wales and section 25(5)(e) of the Transport and Works (Scotland) Act 2007 (asp 8) in relation to Scotland.

(b) Paragraph 16 was amended by S.I. 2009/269 in relation to England and Wales and section 25(5)(f) of the Transport and Works (Scotland) Act 2007 (asp 8) in relation to Scotland.

- (d) in sub-paragraph (7)—
 - (i) at the end of paragraph (ba) insert “and”;
 - (ii) after paragraph (ba) insert—
 - “(bb) a summary of —
 - (i) the results of any consultations under paragraph 15 in connection with the application,
 - (ii) any objections made to the application and not withdrawn,
 - (iii) any representations made in relation to the environmental statement for the project or in relation to any information in accordance with a notice published under paragraph 10 or 10A, and
 - (iv) how the information mentioned in paragraphs (i) to (iii) above and any opinion given under sub-paragraph (5)(b) have been taken into account in reaching the decision.”;
 - (iii) omit paragraphs (c) and (d).

(17) After paragraph 18 insert—

“Reasoned conclusion about environmental impact

18A.—(1) This paragraph applies where an EIA application is made.

(2) The Secretary of State must consider—

- (a) the environmental statement relating to the project,
- (b) any information supplied in pursuance of a direction under paragraph 8A in relation to the project,
- (c) any information about the project made available on an official website under paragraph 10ZB,
- (d) the results of any consultations under paragraph 15 or 16(6)(a) in relation to the project,
- (e) any opinion about the project which is sent under paragraph 16(5)(b),
- (f) any relevant objections made about the project and not withdrawn,
- (g) any relevant representations about the project made in accordance with a notice published under paragraph 10 or 10A,
- (h) where an inquiry or hearing relating to the project is held under paragraph 18, any relevant report of the person who held the inquiry or person appointed for the purpose of hearing the objector, or any relevant part of such a report, and
- (i) any features of the project or measures envisaged to avoid, prevent or reduce, and, if possible, offset any likely significant adverse effects of the project on the environment.

(3) For the purposes of sub-paragraph (2), an objection, representation, report or part of a report is “relevant” if it concerns the likely significant effects of the project on the environment.

(4) Following the consideration required by sub-paragraph (2), the Secretary of State must reach a reasoned conclusion about the likely significant effects of the project on the environment.

(5) The Secretary of State must obtain such expert advice as appears to the Secretary of State to be necessary for the purposes of considering the environmental statement.”

(18) For paragraph 19(a), substitute—

(a) Paragraph 19 was amended by S.I. 2009/269 in relation to England and Wales. Paragraph 19 was amended by section 46(5) of the Transport (Scotland) Act 2005 (asp 12) and section 25(5)(i) of the Transport and Works (Scotland) Act 2007 (asp 8) in relation to Scotland.

“19.—(1) The Secretary of State must—

- (a) in the case of an EIA application, consider the matters specified in sub-paragraph (2) and, if relevant, sub-paragraph (5);
- (b) in the case of any other application, consider the matters specified in sub-paragraph (4) and, if relevant, sub-paragraph (5).

(2) The matters to be considered in respect of an EIA application are—

- (a) the reasoned conclusion (including whether it is up to date);
- (b) to the extent that they were not required to be taken into account in reaching the reasoned conclusion—
 - (i) any objections made and not withdrawn;
 - (ii) the report of any person who held an inquiry or of any person appointed for the purpose of hearing an objector;
- (c) if the Secretary of State is minded to make the order applied for, whether monitoring of the significant adverse effects of the project on the environment is appropriate, and if so—
 - (i) whether it is necessary to modify the order to include a monitoring measure, and
 - (ii) whether or not to include provision in the order for potential remedial action.

(3) For the purpose of determining whether it is appropriate to impose a monitoring measure, the Secretary of State must have regard to any existing monitoring arrangements which are carried out in accordance with an obligation under the law of any part of the United Kingdom (other than a provision implementing the EIA Directive).

(4) The matters to be considered in respect of an application mentioned in sub-paragraph (1)(b) are—

- (a) any objections made and not withdrawn, and
- (b) the report of any person who held an inquiry or of any person appointed for the purpose of hearing an objector.

(5) If an application for a harbour revision order relates to a project to be carried out in Scotland, the Scottish Ministers must also consider any written representations—

- (a) submitted to them by the applicant in elaboration of the application, or
- (b) submitted to them by an objector in elaboration of any objection.

(6) Following the consideration required by sub-paragraph (1), the Secretary of State must decide—

- (a) not to make the order applied for,
- (b) to make the order in the form of the draft submitted to him, or
- (c) to make the order with modifications.

(7) Sub-paragraph (6) is subject to paragraph 19A.

(8) In this paragraph and paragraph 19A “monitoring measure” means a requirement to monitor any significant adverse effects of a project on the environment.

19A.—(1) The Secretary of State must make a decision under paragraph 19(6) in respect of an EIA application only if satisfied that the reasoned conclusion relating to that application is up to date.

(2) A reasoned conclusion is to be taken to be up to date if, in the opinion of the Secretary of State, it addresses the likely significant effects of the project on the environment.

(3) The Secretary of State may decide to modify an order to include a monitoring measure only if satisfied that the type of parameters which will be required to be monitored and the duration of such monitoring are proportionate having regard to—

- (a) the nature, location and size of the project, and

- (b) the significance of the effects of the project on the environment.

19B. The Secretary of State must make the decision required by paragraph 19(6) in respect of an EIA application within a reasonable period of time (having regard to the nature and complexity of the application and the project to which it relates) beginning with the day on which the Secretary of State has all the information needed to make that decision.”

(19) For paragraph 20(a), substitute—

“**20.**—(1) This paragraph applies where the Secretary of State makes a decision under paragraph 19(6) in relation to an EIA application.

(2) The Secretary of State—

- (a) as soon as reasonably practicable after making the decision, must make the information specified in sub-paragraph (3) available on an official website, and
- (b) must keep the information available on the website throughout the period of three months beginning with the day on which it is first made available on the website in accordance with this paragraph.

(3) The specified information is—

- (a) the content of the decision whether or not to make the order and any conditions attached to it,
- (b) the main reasons and considerations on which the decision is based,
- (c) a summary of the results of any consultations under paragraph 15 or 16(6)(a),
- (d) a copy of any opinion given under paragraph 16(5)(b),
- (e) the details of the provision made for public participation in the making of the decision,
- (f) a summary of any objections—
 - (i) made about the likely significant adverse effects of the project on the environment, and
 - (ii) not withdrawn,
- (g) a summary of any representations made under paragraph 10 or 10A about the likely significant adverse effects of the project on the environment,
- (h) a copy of the reasoned conclusion,
- (i) a description of any features of the project or measures envisaged to avoid, prevent or reduce and, if possible, offset, any likely significant adverse effects of the project on the environment,
- (j) a summary of how the information mentioned above (and, in particular, any opinion given under paragraph 16(5)(b) or the results of any consultations under paragraph 16(6)(a)) have been taken into account in making the decision, and
- (k) a statement regarding the right to challenge the validity of the decision and the procedure for doing so.

(4) A failure to make the specified information available throughout the period specified in sub-paragraph (2)(b) is to be disregarded if—

- (a) the information was available on the official website for part of that period, and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to expect the Secretary of State to prevent or avoid.

(5) The Secretary of State, as soon as reasonably practicable after making the decision, must also publish by Gazette and local advertisement the following information—

(a) Paragraph 20 was amended by regulation 11 of S.I. 2009/269.

- (a) the content of the decision whether or not to make the order and any conditions attached to it,
- (b) the main reasons and considerations on which the decision is based,
- (c) a statement regarding the right to challenge the validity of the decision and the procedure for doing so,
- (d) a statement that the matters referred to in paragraph 19(1) have been taken into consideration, and
- (e) details of the official website on which the information referred to in sub-paragraph (2) is made available.

(6) The Secretary of State must also give notice of the information referred to in sub-paragraph (5) to such bodies likely to have an interest in the project by reason of their environmental responsibilities, or their local or regional competencies, as the Secretary of State considers appropriate.”

(20) After paragraph 20 insert—

“Defence projects: exemption from environmental impact assessment

20A.—(1) The Secretary of State may direct that an environmental impact assessment is not required for a project if satisfied that—

- (a) the sole purpose of the project is national defence, and
- (b) carrying out the assessment would have an adverse effect on the fulfilment of that purpose.

(2) The Secretary of State must, as soon as reasonably practicable, send a copy of a direction given under sub-paragraph (1)—

- (a) to the Scottish Ministers, if the application for a harbour revision order authorising the project is required to be made to the Scottish Ministers;
- (b) to the Welsh Ministers, if the application for a harbour revision order authorising the project is required to be made to the Welsh Ministers;
- (c) to a person designated by an order made under section 42A(1), if the application for a harbour revision order authorising the project is required to be made to that person.

Civil emergencies: exemption from environmental impact assessment

20B. The Secretary of State may direct that an environmental impact assessment is not required for a project if satisfied that—

- (a) the sole purpose of the project is the response to a civil emergency, and
- (b) carrying out the assessment would have an adverse effect on the fulfilment of that purpose.

Exemption from environmental impact assessment in exceptional circumstances

20C.—(1) The Secretary of State may direct that an environmental impact assessment is not required for a project if satisfied that—

- (a) it is appropriate to do so by reason of exceptional circumstances,
- (b) carrying out the assessment 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 the assessment is not carried out, and
- (d) the project is unlikely to have significant effects on the environment in another EEA State.

(2) Before giving a direction under sub-paragraph (1), the Secretary of State must consider whether another form of assessment of the effects of the project on the environment would be appropriate.

(3) The Secretary of State must—

- (a) as soon as reasonably practicable, make a copy of any direction given and a statement of the reasons for which it is given available for inspection on an official website,
- (b) publish the results of any other assessment considered appropriate for the purposes of sub-paragraph (2), and
- (c) keep the copy of the direction and the results (if any) available on the website throughout the period of three months beginning with the day on which the information is first made available on the website in accordance with this paragraph.

(4) A failure to make information available throughout the period specified in sub-paragraph (3)(c) is to be disregarded if—

- (a) the information was available on the official website for part of that period, and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to expect the Secretary of State to prevent or avoid.

(4) If the Secretary of State gives a direction under sub-paragraph (1), paragraph 19 applies in relation to the relevant application as if the matters listed in sub-paragraph (4) of that paragraph included any results published under sub-paragraph (3)(b) of this paragraph.

Deferral of environmental impact assessment: direction and effect of direction

20D.—(1) The Secretary of State may give a deferral direction in respect of a project which requires an environmental impact assessment if satisfied that—

- (a) an assessment of the effects of the project on the environment, or any activity to be carried out in the course of it, has been, is being or will be carried out by a consenting authority, and
- (b) the assessment satisfies or will satisfy the requirements of Article 1(2)(g)(i) to (iv) of the EIA Directive (definition of environmental impact assessment) in respect of the project.

(2) In this paragraph, “consenting authority”, in relation to a project or an activity, means an authority (including the Secretary of State) whose consent to, or authority for, the project or the activity is required under an enactment (other than this Act).

(3) The Secretary of State must—

- (a) as soon as reasonably practicable, make a copy of any deferral direction given and a statement of the reasons for which it is given available on an official website, and
- (b) keep the copy of the direction and statement available throughout the period required to ensure the effective participation of the public in the environmental impact assessment.

(4) A failure to make a copy of a deferral direction or statement available throughout the period specified in sub-paragraph (3)(b) is to be disregarded if—

- (a) the copy was available on the official website for part of that period, and
- (b) the failure is wholly attributable to circumstances that it would not be reasonable to expect the Secretary of State to prevent or avoid.

(5) The effect of a deferral direction is set out in paragraphs 20E to 20G.

20E.—(1) If a deferral direction is given in respect of a project (referred to in this Part as a “deferred project”), the following provisions of this Part of this Schedule do not apply in relation to an application for a harbour revision order authorising the deferred project—

- (a) paragraph 6(2)(c);
- (b) paragraphs 8 to 8B;
- (c) paragraph 9(c);
- (d) paragraph 10(6) to (8);

- (e) paragraphs 10ZA to 10A;
- (f) paragraph 15, in so far as it requires consultation about the likely effects of the project on the environment;
- (g) paragraph 16;
- (h) paragraph 18A;
- (i) paragraphs 19A and 19B.

(2) Paragraph 19 applies to an application for a harbour revision order authorising a deferred project but as if—

- (a) the matters the Secretary of State is required to consider under sub-paragraph (1) were the specified matters, and
- (b) the reference to paragraph 19A in sub-paragraph (7) were a reference to paragraph 20F(1).

(3) The specified matters are—

- (a) the conclusion on the significant effects of the deferred project on the environment reached by the consenting authority following the assessment mentioned in paragraph 20D(1)(a);
- (b) to the extent they were not taken into account for the purposes of that conclusion, any objections made and not withdrawn;
- (c) the report of any person who held an inquiry or of any person appointed for the purpose of hearing an objector;
- (d) any comments made by the consenting authority about the deferred project or any activity to be carried on during the course of the project;
- (e) if consent or authorisation has been granted by the consenting authority—
 - (i) any conditions attached to the consent or authorisation which relate to the significant effects of the deferred project on the environment;
 - (ii) any description of any features of the deferred project or any measures envisaged to avoid, prevent or reduce and, if possible, offset any significant adverse effects of the project on the environment;
 - (iii) any measures considered appropriate by the consenting authority for the purpose of monitoring the significant adverse effects of the deferred project on the environment;
- (f) if the Secretary of State is minded to make the order applied for, whether monitoring of the significant adverse effects of the deferred project on the environment is appropriate, and if so—
 - (i) whether it is necessary to modify the order to include a monitoring measure, and
 - (ii) whether to include provision in the order for potential remedial action;
- (g) if the application relates to a deferred project which is to be carried out in Scotland, any written representations submitted to the Scottish Ministers by the applicant in elaboration of the application or by an objector in elaboration of an objection.

(4) For the purpose of determining whether it is appropriate to impose a monitoring measure, the Secretary of State must have regard to any existing monitoring arrangements which are carried out in accordance with an obligation under the law of any part of the United Kingdom (other than a provision implementing the EIA Directive).

20F.—(1) The Secretary of State may make an order authorising a deferred project only if satisfied that—

- (a) the conclusion mentioned in paragraph 20E(3)(a) is up to date, and

- (b) making the order in the form of the draft submitted with the application, or with modifications, would be compatible with the decision made by the consenting authority following the assessment mentioned in paragraph 20D(1)(b).

(2) A conclusion is to be taken to be up to date for the purposes of sub-paragraph (1)(a) if, in the opinion of the Secretary of State, it addresses the likely significant effects of the project on the environment.

(3) The Secretary State must consult the consenting authority if satisfied that it is appropriate to do so for the purposes of sub-paragraph (1)(b).

20G. The Secretary of State must make the decision required by paragraph 19(6) in respect of an application for an order authorising a deferred project within a reasonable period of time (having regard to the nature and complexity of the application and the project to which it relates) beginning with the day on which the Secretary of State has all the information needed to make that decision.”

SCHEDULE 2

Regulation 4

Amendments to the Highways Act 1980

1. Part 5A of the 1980 Act (environmental impact assessments) is amended as follows.
2. Before section 105A insert—

“**Interpretation**

105ZA.—(1) In this Part —

“Annex” means an Annex to the Directive;

“the consultation bodies” means—

- (a) any principal council (within the meaning given in section 270(1) of the Local Government Act 1972) in whose area the project is to be carried out;
- (b) where the project is to be carried out on land situated in England—
 - (i) the Historic Buildings and Monuments Commission for England, the Environment Agency and Natural England, and
 - (ii) the Natural Resources Body for Wales and the Welsh Ministers where, in the opinion of the project authority, the land is sufficiently near to Wales to be of interest to them;
- (c) where the project is to be carried out on land situated in Wales—
 - (i) the Natural Resources Body for Wales, and
 - (ii) an organisation referred to in paragraph (b)(i) where, in the opinion of the Welsh Ministers, the land is sufficiently near to England to be of interest to that organisation;
- (d) any other public authority which has environmental responsibilities and which the project authority considers is likely to have an interest in the project;
- (e) any body with local or regional competencies and which the project authority or Welsh Ministers considers is likely to have an interest in the project;

“the Directive” means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment;

“the environment” means—

- (a) population and human health,
- (b) biodiversity, with particular attention to species and habitats protected under—

- (i) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, and
- (ii) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds,
- (c) land, soil, water, air and climate,
- (d) material assets, cultural heritage and the landscape, and
- (e) the interaction between the factors referred to in paragraphs (a) to (d).

“environmental impact assessment”, in relation to a project, means the process comprising—

- (a) the preparation of an environmental statement,
- (b) the carrying out of consultations about the likely significant effects of the project on the environment,
- (c) the consideration of the environmental statement and other information about the likely significant effects of the project on the environment,
- (d) the reaching of a reasoned conclusion about the significant effects of the project on the environment, and
- (e) the consideration of the reasoned conclusion when deciding whether to proceed with the project;

“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 an obligation arising under the Directive), or
- (b) under the law of any part of the United Kingdom (other than a rule which implements an obligation arising under the Directive);

of the effect of anything on the environment;

“member of the public” includes a body of persons corporate or unincorporate;

“official website” means a website maintained by or on behalf of the project authority;

“project authority” has the meaning given in section 105A(2);

“public authority” means a person on whom functions are conferred by or under an enactment (including an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament);

“relevant project” has the meaning given in subsection (2);

“sensitive area” means—

- (a) a site of special scientific interest (within the meaning given in section 52 of the Wildlife and Countryside Act 1981),
- (b) any land adjacent to such an area that is notified to the local planning authority in accordance with paragraph (q)(ii) in the Table in Schedule 4 to the Town and Country Planning (General Development Management Procedure) (Wales) Order 2012(a),
- (c) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949,
- (d) an area of outstanding natural beauty designated as such under section 82 of the Countryside and Rights of Way Act 2000,
- (e) the Broads as defined in the Norfolk and Suffolk Broads Act 1988,
- (f) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage,

(a) S.I. 2012/801.

- (g) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979, or
- (h) a European site within the meaning of the Conservation of Habitats and Species Regulations 2010 (see regulation 8).

(2) A project is a “relevant project” if the area of the completed works together with any area occupied during the period of construction or improvement by requisite apparatus, equipment, machinery, materials, plant, spoil heaps or other such facilities exceeds 1 hectare or if it, or any part of it, is situated in a sensitive area.

(3) For the purposes of this Part, the effects of a project on the environment include—

- (a) any effects on the environment which arise (directly or indirectly) from the operation of the project;
- (b) any expected effects on the environment which derive (directly or indirectly) from the vulnerability of the project to the risks of major accidents or disasters.

(4) References to the adverse, likely or significant effects of a project on the environment are to be read accordingly.

(5) Publication by the project authority for the purposes of this Part is to be—

- (a) in the London Gazette,
- (b) in at least one local newspaper circulating in the area in which the project for the construction or improvement of the highway is proposed to be situated, and
- (c) on an official website.”

3. For section 105A substitute—

“Screening of projects for constructing or improving highways

105A.—(1) If a project authority is considering a project for constructing or improving a highway for which it is the highway authority, the project authority must, before details of the project are published, determine—

- (a) whether or not the project falls within Annex I or Annex II, and
- (b) if it considers the project is a relevant project falling within Annex II, whether it should be made subject to an environmental impact assessment.

(2) In this Part “project authority” means—

- (a) the Secretary of State,
- (b) the Welsh Ministers, or
- (c) a strategic highways company.

(3) When making a determination under subsection (1)(b), a project authority must have regard to the following—

- (a) the information to be provided on the project under Annex II.A,
- (b) the selection criteria in Annex III,
- (c) any features of the project or measures envisaged to avoid or prevent what might otherwise be significant adverse effects on the environment, and
- (d) the results of any relevant environmental assessment which are reasonably available to the authority.

(4) The project authority must make a determination under subsection (1)(b)—

- (a) as soon as possible, and
- (b) in any event within the period of 90 days beginning with the day on which it has access to the information mentioned in paragraphs (a), (c) and (d) of subsection (3).

(5) If the project authority is satisfied that it is appropriate to do so by reason of exceptional circumstances relating to a project (including circumstances relating to the nature, complexity, location or size of project), it may extend the period specified in subsection (4)(b).

Exemptions

105AA.—(1) A project to which subsection (2) applies is to be treated in the same way as a project that the project authority considers does not fall within Annex I or Annex II.

(2) This subsection applies to a project if—

- (a) the Secretary of State directs that the project is a defence project, or
- (b) the project authority determines that—
 - (i) the project is a civil emergency project, or
 - (ii) the exemption in subsection (6) applies to the project.

(3) The Secretary of State may direct that a project is a defence project only if satisfied that—

- (a) the project has national defence as its sole purpose, and
- (b) carrying out an environmental impact assessment would have an adverse effect on the fulfilment of that purpose.

(4) The Secretary of State must send a copy of any direction given under subsection (3)—

- (a) to the Welsh Ministers, if the Welsh Ministers are the highway authority for the highway to which the project relates;
- (b) to the strategic highways company, if the company is the highway authority for the highway to which the project relates.

(5) A project authority may determine that a project is a civil emergency project only if satisfied that—

- (a) the project has the response to a civil emergency as its sole purpose, and
- (b) carrying out an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of that purpose.

(6) A project authority may determine that this subsection applies to a project only if satisfied that—

- (a) it is appropriate to do so by reason of exceptional circumstances,
- (b) carrying out 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 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.

(7) Before making a determination under subsection (6), the project authority must consider whether another form of assessment of the effects of the project on the environment would be appropriate.

Publication of screening decisions: projects not to be subject to an environmental impact assessment

105AB.—(1) The project authority must publish a notice of—

- (a) any determination that the exemption in section 105AA(6) applies to a project;
- (b) any determination that a relevant project falling within Annex II should not be made subject to an environmental impact assessment.

(2) A notice under subsection (1)(a) must—

- (a) state the reasons for the determination, and
 - (b) state whether another form of assessment of the effects of the project on the environment is considered appropriate.
- (3) A notice under subsection (1)(b) must—
- (a) state the reasons for the determination with reference to the relevant selection criteria in Annex III, and
 - (b) include a description of any features of the project, or other measures, which are proposed by the authority to avoid or prevent significant adverse effects on the environment.
- (4) If the project authority publishes a notice under subsection (1)(a), the project authority must publish the results of any other assessment considered appropriate for the purposes of section 105AA(7).”

4. For section 105B substitute—

“Publication of screening decision and environmental statement for projects subject to an environmental impact assessment

- 105B.**—(1) This section applies if a project authority considers that a project—
- (a) falls within Annex I, or
 - (b) is a relevant project falling within Annex II which should be made subject to an environmental impact assessment.
- (2) The project authority must, not later than the date when details of the project itself are published—
- (a) ensure that an environmental statement is prepared for the project, and
 - (b) publish a notice of the environmental statement so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express their opinion before a decision is made as to whether to proceed with the construction or improvement to which the statement relates.
- (3) The environmental statement for the project—
- (a) must be prepared by competent experts,
 - (b) must include the information which, taking into account current knowledge and methods of assessment, is reasonably required by the project authority to reach a reasoned conclusion about the significant effects of the project on the environment (as required by section 105CA) and in particular the information specified in subsection (4) of this section, and
 - (c) with a view to avoiding duplication of assessments, must take into account the results of any relevant environmental assessment which are reasonably available to the project authority.
- (4) The specified information is—
- (a) a description of the site, design, size and any other relevant features of the project,
 - (b) a description of the likely significant effects of the project on the environment,
 - (c) a description of the features of the project or measures envisaged to avoid, prevent or reduce and, if possible, offset any likely significant effects of the project on the environment,
 - (d) a description of the reasonable alternatives studied by the project authority which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment,
 - (e) a non-technical summary of the information mentioned in paragraphs (a) to (d), and

- (f) any additional information specified in Annex IV that is relevant to the specific characteristics of the project, or type of project, and to the environmental features likely to be affected.
- (5) The environmental statement must be accompanied by a statement from the project authority setting out the relevant expertise or qualifications of the experts who prepared the environmental statement.
- (6) The notice published under subsection (2)(b) must state—
- (a) that the project authority, as the relevant highway authority, is considering implementing the project;
 - (b) the proposed location and nature of the project;
 - (c) that the project is subject to an environmental impact assessment and, where relevant, that section 105C applies;
 - (d) if the project is a relevant project falling with Annex II, the reasons for the determination that the project should be made subject to an environmental impact assessment with reference to the selection criteria in Annex III;
 - (e) that a copy of the environmental statement may be inspected at an address in the area in which the project is proposed to be situated during the period specified under paragraph (j);
 - (f) the times at which the copy of the environmental statement may be so inspected;
 - (g) an address from which copies of the environmental statement may be obtained and from which further information about the project may be requested during the period specified under paragraph (j);
 - (h) if a charge is to be made for a copy of the environmental statement, the amount of the charge;
 - (i) that a copy of the environmental statement may be inspected on the official website;
 - (j) that any person wishing to make representations about the project and the environmental statement may do so in writing to the project authority at a specified address for a specified period, being not less than 6 weeks from the date of publication of the notice, and
 - (k) that the project authority will take into consideration any representations so made before deciding whether or not to proceed with the project with or without modifications.
- (7) The project authority must ensure that during the period specified under subsection (6)(j)—
- (a) copies of the environmental statement are available for inspection by any person free of charge at all reasonable hours at the address specified under subsection (6)(e),
 - (b) copies of the environmental statement are available to be obtained by any person from the address specified under subsection (6)(g), and
 - (c) that a copy of the environmental statement is available for inspection by any person on the official website.
- (8) A reasonable charge reflecting the costs of printing, copying and distribution may be made by the project authority for the supply of a copy of the environmental statement—
- (a) to a person other than a consultation body, or
 - (b) to a consultation body to which one copy has already been supplied free of charge.
- (9) The project authority must ensure that the consultation bodies are given an opportunity to express an opinion on the project and the environmental statement before the authority carries out the consideration required by section 105CA(1).

Co-ordination

105BA.—(1) Where in order to proceed with the construction or improvement in relation to which an environmental statement has been made it is necessary for the project authority to make—

- (a) an order or scheme to which Schedule 1 to this Act applies, or
- (b) a compulsory purchase order in the exercise of highway land acquisition powers,

the project authority must, so far as is practicable to do so, take the steps required of it by this Part of this Act concurrently with the corresponding steps required of it by Schedule 1 to this Act or the Acquisition of Land Act 1981 (as the case may be) in connection with the making of the related instruments.

(2) Where, in respect of a project, there is a requirement to carry out—

- (a) an environmental impact assessment, and
- (b) an assessment under regulation 61 of the Conservation of Habitats and Species Regulations 2010,

the project authority must, so far as is practicable to do so, ensure that the assessments are co-ordinated.”

5.—(1) Section 105C is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a)—

- (i) for “Secretary of State or a strategic highways company” substitute “project authority”;
- (ii) for “105A(3)” substitute “105B”;

(b) in paragraph (b) for “Secretary of State or the strategic highways company, whichever is considering the project,” substitute “project authority”.

(3) In subsection (2)—

- (a) in the opening words for “Secretary of State or the strategic highways company” substitute “project authority”;
- (b) in paragraph (a) for “him or the company” substitute “the authority”;
- (c) in paragraphs (b) and (c) for “he or the company” substitute “the authority”.

(4) In subsection (3), for “the determination referred to in section 105B(1)” substitute “the notice under section 105B(2)(b)”.

(5) In subsection (4)—

- (a) in the opening words, for “Secretary of State or the strategic highways company” substitute “project authority”;
- (b) in paragraphs (a) and (c), for “he or the company” substitute “the authority”;
- (c) in paragraph (b)—
 - (i) for “subsection (3A)” substitute “subsection (6)”;
 - (ii) for “subsection (3)” substitute “subsection (2)(b)”.

(6) In subsection (5)—

- (a) for the opening words substitute “The project authority must also”;
- (b) in paragraph (a)—
 - (i) in the opening words, for “he or the company” substitute “the authority”;
 - (ii) for paragraph (i) substitute—
 - “(i) the consultation bodies, and”;
- (c) in paragraph (b)—
 - (i) for “him and the company” substitute “the project authority”;

- (ii) for “he and the company” substitute “the project authority”.
 - (7) after subsection (6), insert—
 - “(6A) The consultations required under subsection (6)(a) may be carried out through an appropriate joint body (within the meaning of the Directive).”
 - (8) Omit subsection (7).
6. After section 105C insert—

“Conclusion about environmental impact of a project for constructing or improving a highway

105CA.—(1) Before deciding whether or not to proceed with a project for which notice of an environmental statement is published in accordance with section 105B, the project authority—

- (a) must consider the matters specified in subsection (2), and
 - (b) following that consideration, must reach a reasoned conclusion about the significant effects of the proposed construction or improvement on the environment.
- (2) The specified matters are—
- (a) the environmental statement,
 - (b) any relevant opinion received by the project authority on the project or the statement,
 - (c) where an EEA State indicates under section 105C that it wishes to participate in the procedure required by this Part of this Act, any relevant EEA opinion received by the project authority on the project or the statement,
 - (d) any features of the project, or measures, envisaged to avoid, prevent or reduce, and if possible, offset any likely significant adverse effects of the project on the environment, and
 - (e) any other information of a description specified in Annex IV which is directly relevant to the conclusion to be reached on the environmental impact of the project.
- (3) For the purposes of subsection (2)(b), an opinion on a project or an environmental statement is a relevant opinion if—
- (a) it is expressed in writing by a consultation body or any other person, and
 - (b) it is received by the project authority within the period specified for the purpose by the authority.
- (4) For the purposes of subsection (2)(c), an opinion on a project or an environmental statement is a relevant EEA opinion if—
- (a) it is expressed in writing by—
 - (i) the EEA State,
 - (ii) a member of the public in the EEA State, or
 - (iii) an authority having environmental responsibilities designated by the EEA State to be consulted about the project under Article 6(1) of the Directive, and
 - (b) it is received by the project authority within the period specified for the purpose by the project authority.
- (5) The period specified for the purposes of subsection (3)(b) or subsection (4)(b) must not be less than 42 days beginning with the day on which the notice of the environmental statement is published in accordance with section 105B(2)(b).
- (6) The project authority must obtain such expert advice as appears to the authority to be necessary for the purposes of considering the environmental statement.

Decision about whether or not to proceed with a project subject to an environmental impact assessment

105CB.—(1) When deciding whether or not to proceed with a project for which notice of an environmental statement is published in accordance with section 105B, the project authority—

- (a) must take into account its reasoned conclusion under section 105CA(1)(b), and
- (b) must consider whether to make provision for monitoring significant adverse effects of the construction or the improvement on the environment.

(2) The project authority may decide to proceed with the project only if satisfied that the reasoned conclusion is up to date.

(3) The project authority may make provision for monitoring significant adverse effects on the environment only if satisfied that the type of parameters which will be required to be monitored and the duration of such monitoring are proportionate having regard to—

- (a) the nature, location and size of the project, and
- (b) the significance of the effects of the project on the environment.

(4) If the project authority decides to proceed with the project, it must implement any relevant feature or other measure envisaged to avoid, prevent or reduce, and if possible, offset any significant adverse effects of the project on the environment.

(5) For the purposes of subsection (4) a feature of a project or other measure is relevant if it was taken into account by the project authority in reaching the reasoned conclusion required under section 105CA(1)(b).

Timing of conclusion and decision

105CC. The project authority must—

- (a) reach the reasoned conclusion required by section 105CA(1)(b), and
- (b) decide whether or not to proceed with the relevant construction or improvement,

within a reasonable period of time (having regard to the nature and complexity of the project) beginning on the day on which the authority begins the consideration required by section 105CA(1)(a).

Publication of conclusion and decision

105CD.—(1) When the project authority has decided whether or not to proceed with the construction or improvement subject to an environmental impact assessment, it must—

- (a) publish its reasoned conclusion under section 105CA(1)(b),
- (b) publish its decision and a decision statement, and
- (c) if an EEA State has been consulted in accordance with section 105C(4), inform the EEA State of the decision and give the EEA State a copy of the decision statement.

(2) A decision statement must—

- (a) confirm that the project authority has complied with the requirements of this Part of this Act,
- (b) include a summary of the reasoned conclusion under section 105CA(1)(b),
- (c) include a summary of the decision and any conditions attached to the decision,
- (d) state the main reasons and considerations on which the decision is based, and
- (e) include a summary of the consultations carried out under this Part of this Act, the results of those consultations and how those consultations have been taken into account in the conclusion and decision,

- (f) where the authority's decision is to proceed with the project, describe the right under section 105D(1) to challenge the validity of the decision."

7. In section 105D, in subsection (1), for "Secretary of State or a strategic highways company" substitute "project authority".

SCHEDULE 3

Regulation 5

Amendments to the Transport and Works Act 1992

1. Part 1 of the 1992 Act is amended as follows.
2. In section 6 (applications for orders under section 1 or 3 of the 1992 Act)—
 - (a) in subsection (2B), for "environmental information" substitute "EIA information (see section 13A)";
 - (b) for subsection (7), substitute—

"(7) In subsection (3) above "relevant authority" means—

 - (a) Natural England;
 - (b) the Natural Resources Body for Wales;
 - (c) a local planning authority, within the meaning of Part 1 of the Town and Country Planning Act 1990;
 - (d) any other person or authority having specific environmental responsibilities, or local or regional competences, which the Secretary of State considers is likely to have an interest in an application a person proposes to make."
3. In section 13—
 - (a) in the heading, after "or 3" insert ":", general";
 - (b) after subsection (5), insert—

"(6) This section is subject to sections 13B to 13D (which make provision about the consideration of applications or proposals for EIA orders and the making of such orders)."
4. After section 13 insert—

"Environmental impact assessment: definitions

13A.—(1) This section defines certain terms used in this Part.

(2) "The EIA Directive" means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

(3) "EIA information", in relation to an application under section 6, or proposal under section 7, for an EIA order, means—

- (a) the environmental statement,
 - (b) any other information which the Secretary of State reasonably requires for the purpose of reaching a reasoned conclusion (see section 13B), and
 - (c) any representations made by any person about the environmental effects of the proposed works or other projects.
- (4) "EIA order" means an order authorising works or other projects—
- (a) which are—
 - (i) in a class listed in Annex I to the EIA Directive, or
 - (ii) in a class listed in Annex II to the EIA Directive and, by virtue of their nature, size or location, likely to have significant effects on the environment, and

(b) which are not exempt works.

(5) For the purposes of subsection (4), works or other projects are exempt if the Secretary of State directs or decides (in accordance with rules made under section 6) that an environmental impact assessment is not required in respect of those works or projects.

(6) “Environmental statement” means a statement which, by rules under section 6, is required—

(a) to accompany an application for, or be prepared in connection with the publication of a proposal to make, an EIA order, and

(b) amongst other matters, to set out the likely significant effects of the implementation of the EIA order applied for or proposed on the environment.

(7) “Reasoned conclusion” means a reasoned conclusion under section 13B(1)(b).

Application or proposal for an EIA order: reasoned conclusion

13B.—(1) Before making a determination under section 13(1) in respect of an application or proposal for an EIA order, the Secretary of State—

(a) must consider the EIA information, and

(b) following that consideration, must reach a reasoned conclusion about the likely significant effects of the proposed works or other projects on the environment.

(2) The Secretary of State must obtain such expert advice as appears to the Secretary of State to be necessary for the purposes of considering the environmental statement.

(3) When making a determination under section 13(1) in respect of an application or proposal for an EIA order, the Secretary of State must take into account the reasoned conclusion.

(4) But the Secretary of State may determine to make an EIA order (whether with or without modifications) only if satisfied that the reasoned conclusion is up to date.

EIA orders: monitoring measures and remedial action

13C.—(1) If the Secretary of State proposes to make an EIA order (whether with or without modifications), the Secretary of State must consider whether monitoring of the significant adverse effects of the works or other projects on the environment to be authorised by the order is appropriate and, if so, must consider—

(a) whether it is appropriate to impose a monitoring measure, and

(b) whether it is appropriate to impose a requirement to take remedial action.

(2) In this section, “monitoring measure”, in relation to proposed works or other projects, means a requirement to monitor any significant adverse effects of the works or projects on the environment.

(3) For the purposes of subsection (1)(a), the Secretary of State must take into account any monitoring arrangements which are required to be carried out under the law of any part of the United Kingdom (other than a provision implementing the EIA Directive).

(4) The Secretary of State may impose a monitoring measure or a requirement to take remedial action in the EIA order or, if the Secretary of State gives a direction under section 90(2A) of the Town and Country Planning Act 1990 on the making of the EIA order, by way of condition specified in that direction.

(5) But the Secretary of State may impose a monitoring measure only if satisfied that the type of parameters which will be required to be monitored and the duration of such monitoring are proportionate having regard to—

(a) the nature, location and size of the proposed works or other projects, and

(b) the significance of the effects of the works or other projects on the environment.

Application or proposal for an EIA order: time limit

13D. The Secretary of State must make a determination under section 13(1) in relation to an application or proposal for an EIA order within a reasonable period of time (having regard to the nature and complexity of the works or other project to which it relates) beginning on the day on which the Secretary of State has all of the information necessary to reach the reasoned conclusion.”

5.—(1) Section 14(a) (publicity for making or refusal of orders) is amended as follows.

(2) For subsection (1), substitute—

“(1) As soon as practicable after making a determination under section 13(1) above, the Secretary of State must—

- (a) give notice of the determination to the persons specified in subsection (1A),
- (b) publish a notice of the determination in the London Gazette, and
- (c) if it relates to an EIA order, make a notice of the determination available on a website maintained by or on behalf of the Secretary of State.

(1A) The specified persons are—

- (a) the person (if any) who applied for the order;
- (b) any person who made an objection which was referred to an inquiry or hearing in accordance with section 11(3);
- (c) if the determination is that an EIA order is to be made, to any authority the Secretary of State considers is likely to be concerned by the works or other projects authorised by the order because of their specific environmental responsibilities or local and regional competencies.”

(3) In subsection (3A)—

- (a) for “to which this subsection applies” substitute “for an EIA order”;
- (b) in paragraph (a), for “considered the environmental statement” substitute “complied with sections 13B to 13D”.

(4) For subsection (3AA), substitute—

“(3AA) If an EIA order is to be made—

- (a) the notice under subsection (1)(a) must also include the address of the website on which it is to be made available under subsection (1)(c), and
- (b) the notices under subsection (1)(a) and (c) must include the information specified in subsection (3AB).

(3AB) The specified information is—

- (a) in so far as they relate to the likely significant effects of the proposed works or other projects on the environment, a summary of —
 - (i) the results of any consultation undertaken in accordance with rules made under section 6 (including in particular any comments made by, or the authorities in or public of, another Member State), and
 - (ii) any objections made in accordance with rules made under section 10,
- (b) a summary of how those results and objections have been taken into account in making the determination,
- (c) the reasoned conclusion,
- (d) a description of any features of the works or other projects, or measures, to avoid, prevent or reduce and, if possible, offset any likely significant adverse effects of the works or other projects on the environment, and

(a) As amended by paragraph 34(2) of Schedule 7 to the Local Government (Wales) Act 1994 (c. 19), S.I. 1995/1541, S.I. 1998/2226 and S.I. 2006/958.

- (e) a statement of any monitoring measures, requirements to take remedial action or other conditions relating to the likely significant effects of the proposed works or other projects on the environment that are imposed.”
- (5) Omit subsection (3B).
- (6) Omit subsection (3D).

SCHEDULE 4

Regulation 6

Amendments to the 2006 Rules

1. The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(a) are amended as follows.

2. In rule 4(1) (interpretation and notices)—

(a) for the definition of “the Directive”, substitute—

““the Directive” means Directive 2011/92/EU of the European Parliament and of the Council of 13th December 2011 on the assessment of the effects of certain public and private projects on the environment**(b)**.”;

(b) for the definition of “environmental impact assessment”, substitute—

““environmental impact assessment” means the process referred to in rule 7A.”;

(c) for the definition of “environmental statement”, substitute—

““environmental statement” means a statement—

(a) which is required by virtue of these Rules—

(i) to accompany an application for an order under section 6; or

(ii) to be prepared in connection with the publication of a notice of a proposal to make an order by virtue of section 7; and

(b) which includes the information referred to in rule 11(1).”;

(d) after paragraph (3), insert—

“(4) For the purposes of these Rules information is sufficiently published on a website maintained by or on behalf of the Secretary of State if such information is accessible via that website from another website where it is published.”

3. In rule 7(1), 7(2), 8(8), 10(2)(g), 10(9), 13(8)(f), 16(6)(b), 17(1), 17(2), 17(4)(b) and 17(5), for “applicant’s statement of environmental information”, substitute “applicant’s environmental statement”.

4. In rule 7 (the requirement for environmental statement and screening decisions)—

(a) for paragraph (3), substitute—

“(3) Where the proposed works comprise or form part of a project serving national defence as its sole purpose, or comprise a project having the response to a civil emergency as its sole purpose, and the Secretary of State considers that the carrying out of an environmental impact assessment of the works would have an adverse effect on that purpose he may direct that an environmental impact assessment of the works is not required and that rule 16 does not apply.”;

(b) for paragraph (5), substitute—

(a) S.I. 2006/1466, as amended by S.I. 2008/969, S.I. 2010/439, S.I. 2010/1551, S.I. 2011/556, S.I. 2011/1829, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/1659, S.I. 2012/2590, S.I. 2013/755, S.I. 2013/1888, S.I. 2014/469, S.I. 2015/627 and S.I. 2015/1682.

(b) OJ No L 26, 28.1.2012, p.1-21. Council Directive 2011/92/EU has been amended by Council Directive 2014/52/EU, OJ No. L 125, 25.4.2014, p. 1-18.

“(5) An applicant making a request for a screening decision under paragraph (4) shall, taking into account where relevant the available results of other environmental assessments required under European Union legislation (other than legislation implementing the requirements of the Directive), provide the following information—

- (a) a plan sufficient to identify the land affected by the works in question;
- (b) a description of the proposed works, including in particular—
 - (i) a description of the physical characteristics of the works and, where relevant, of demolition works; and
 - (ii) a description of the location of the works, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (c) a description of aspects of the environment likely to be significantly affected by the works; and
- (d) to the extent the information is available, a description of any likely significant effects of the works 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.

(5A) An applicant making a request for a screening decision under paragraph (4) may also provide a description of any features of the proposed works or any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.”;

- (c) in paragraph (8)(f)—
 - (i) after “provision”, insert “, or by the Secretary of State on a case-by-case basis,”; and
 - (ii) after “responsibilities”, insert “or local or regional competencies”;
- (d) for paragraphs (11) and (12), substitute—

“(11) In making his screening decision, the Secretary of State shall take into account—

 - (a) any information provided to the Secretary of State by the applicant or other bodies in accordance with this rule;
 - (b) where relevant, the results of other environmental assessments carried out pursuant to European Union legislation other than legislation implementing the requirements of the Directive; and
 - (c) such of the selection criteria set out in Annex III to the Directive as are relevant to the proposed works.

(12) If the Secretary of State considers that the works in question would be likely to have significant adverse effects on the environment if carried out, then unless the applicant has proposed features of the works or measures to avoid or prevent such significant adverse effects, his screening decision shall be that an environmental impact assessment of the works is required.”;

- (e) in paragraph (13), for “The Secretary of State” substitute “Subject to paragraphs (13A) and (13B), the Secretary of State”;
- (f) for paragraph (14), substitute—

“(13A) Where, in accordance with rule 26, the Secretary of State allows further time to make a screening decision, he must ensure that irrespective of the further time allowed the applicant is notified in writing of the Secretary of State’s screening decision not later than 90 days after receipt of the request made pursuant to paragraph (4) or, where a notification has been given under paragraph (6), not later than 90 days after receiving the further information that the applicant is required to supply by virtue of paragraph (7).

(13B) Where the Secretary of State considers that due to exceptional circumstances relating to the proposed works it is not practicable to notify the applicant of his screening decision within the period specified in paragraph (13A), the Secretary of State may extend

that period by giving notice in writing to the applicant giving reasons justifying the extension and the date when the decision is expected.

(14) In the notification given under paragraph (13), the Secretary of State shall state the main reasons for the decision with reference to the relevant criteria in Annex III to the Directive, and if that decision is that an environmental impact assessment is not required the Secretary of State shall also state any features of the proposed works or measures proposed to be taken in order to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(15) As soon as reasonably practicable after notifying the applicant of the screening decision, the Secretary of State shall arrange for a copy of the notification to be published on a website maintained by or on behalf of the Secretary of State for that purpose.”

5. After rule 7, insert—

“Environmental impact assessment

7A.—(1) The environmental impact assessment is a process consisting of—

- (a) the preparation of an environmental statement by the applicant;
- (b) the carrying out of consultation, publication and notification as required by rules 13 and 14 and, where relevant, rule 16; and
- (c) the steps that are required to be undertaken by the Secretary of State under section 13B.

(2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed works on the following factors—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC(a) and Directive 2009/147/EC(b);
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape; and
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

(3) The significant effects to be identified, described and assessed under paragraph (2) shall include—

- (a) the operational effects of the proposed works, where those works will have operational effects; and
- (b) the expected significant effects arising from the vulnerability of the proposed works to major accidents or disasters that are relevant to those works.”

6. In rule 8(4) (scoping opinion)—

- (a) in the opening words, omit “the applicant and”; and
- (b) for sub-paragraph (f), substitute—

“(f) any other body which is designated by statutory provision, or by the Secretary of State on a case-by-case basis, as having specific environmental responsibilities or local or regional competencies and which the Secretary of State considers is likely to have an interest in the application.”

7. After rule 8 insert—

(a) O.J. No. L 206, 22.7.1992, p. 7.
(b) O.J. No. L 20, 26.1.2010, p. 7.

“Coordination where application requires appropriate assessment

8A.—(1) Where in relation to proposed works which required an environmental impact assessment there is a requirement to carry out a habitats regulation assessment, the Secretary of State must where appropriate ensure that the habitats regulation assessment and the environmental impact assessment are co-ordinated.

(2) In this rule, a “habitats regulation assessment” means an assessment under regulation 61 of the Conservation of Habitats and Species Regulations 2010(a).”

8. For rule 11 (Environmental statements: provision of information), substitute—

“Environmental statements: provision of information

11.—(1) An environmental statement submitted in connection with an application shall include—

- (a) a description of the project comprising information on the site, design, size and other relevant features of the proposed works;
- (b) a description of the likely significant effects of the proposed works on the environment;
- (c) a description of any features of the proposed works, or measures proposed to be taken in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed works and their specific characteristics, and an indication of the main reason for the option chosen, taking into account the significant effects of the proposed works on the environment;
- (e) a non-technical summary of the information provided under sub-paragraphs (a) to (d); and
- (f) any additional information specified in Schedule 1 relevant to the specific characteristics of the proposed works or type of proposed works and to the environmental features likely to be significantly affected.

(2) The environmental statement referred to in paragraph (1) shall—

- (a) where a scoping opinion has been issued in accordance with rule 8, be based on the most recent scoping opinion issued (so far as the proposed works remains materially the same as the proposed works which was subject to that decision);
- (b) include the information required for reaching a reasoned conclusion on the significant effects of the works on the environment, taking into account current knowledge and methods of assessment; and
- (c) be prepared, taking into account other relevant environmental assessments required under European Union legislation or some other provision of domestic legislation, with a view to avoiding duplication of assessment.

(3) In order to ensure the completeness and quality of the environmental statement—

- (a) the applicant must ensure that the environmental statement is prepared by competent experts; and
- (b) the environmental statement must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of such experts.”

9. In rule 13(4) (deposit of copy application etc. with others)—

- (a) after “provision”, insert “, or by the Secretary of State on a case-by-case basis,”; and
- (b) after “responsibilities”, insert “or local or regional competencies”.

(a) S.I. 2010/2264, amended by S.I. 2012/635; there are other amending instruments but none is relevant.

10. In rule 14 (publicity for application), after paragraph (4) insert—

“(4A) In the case of an application in respect of which the applicant was required to submit an applicant’s environmental statement in accordance with rule 7(1), the applicant must arrange for a notice containing the information specified in paragraph (5), together with a copy of the applicant’s environmental statement and any further environmental information submitted under rule 17, to be published on a website maintained by or on behalf of the Secretary of State for that purpose.”

11. For rule 16(8) (developments likely to have significant effects on the environment of another part of the United Kingdom or certain other states), substitute—

“(8) Where a Member State has been consulted in accordance with paragraph (7)(c), the Secretary of State shall inform that Member State of his decision as to whether or not the order in question should be made and shall send to that Member State a copy of the notice referred to in section 14.”

12. After rule 28 (applications relating solely to Wales) insert—

“Review

29.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Rules; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 5th December 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(a) requires that a review carried out under this rule must, so far as is reasonable, have regard to how the obligations under the Directive are implemented in other Member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this rule must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provisions referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involved a less onerous regulatory provision.

(6) In this rule “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).”

13. For Schedule 1 (information to be included in environmental statements) substitute—

“SCHEDULE 1

Rules 4(1) and 11(1)

Information to be included in environmental statements

1. A description of the proposed project, including in particular—

- (a) a description of the location of the project;
- (b) a description of the physical characteristics of all the works, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;

(a) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12).

- (c) a description of the main characteristics of the operational phase of the project (in particular any production process), for example, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used or affected;
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) resulting from the operation of the proposed project.

2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the applicant, which are relevant to the works and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution of the environment without implementation of the proposed works as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

4. A description of the factors specified in rule 7A(2) likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5.—(1) A description of the likely significant effects of the project on the environment resulting from, amongst other things—

- (a) the construction and existence of the project, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

(2) The description of the likely significant effects on the factors specified in rule 7A(2) must cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at European Union or domestic level which are relevant to the project, including in particular those established under Council Directive 92/43/EEC and Directive 2009/147/EC.

6. A description of the forecasting methods or evidence used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description must explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and must cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to European Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments undertaken under domestic legislation may be used for this purpose provided that the requirements of the Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under paragraphs 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the environmental statement.”

14. In Schedule 7 (proposals for orders under section 7)—

(a) in paragraphs 4 and 5(b), for the words “purposes and he considers” to the end, substitute “as its sole purpose, or comprise a project having the response to a civil emergency as its sole purpose, and he considers that the carrying out of an environmental impact assessment of the works would have an adverse effect on that purpose.”;

(b) the existing provisions of paragraph 5, (as amended by paragraph (1)) becomes sub-paragraph (1) and after the new sub-paragraph (1) insert—

“(2) When carrying out consultation under sub-paragraph (1), the Secretary of State may also provide (in addition to the information described in rule 7(5)) a description of any features of the proposed works or any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.”;

(c) for paragraph 7, substitute—

“7. In reaching his determination as to whether an environmental impact assessment is necessary, the Secretary of State shall take into account—

(a) any information provided to the Secretary of State pursuant to paragraph 5;

(b) where relevant, the results of other environmental assessments carried out pursuant to European Union legislation other than legislation implementing the requirements of the Directive; and

(c) such of the selection criteria set out in Annex III to the Directive as are relevant to the proposed works.”;

(d) after paragraph 12, insert—

“12A.—(1) Where the Secretary of State has determined that an environmental impact assessment of the proposed works is necessary he must arrange for a notice containing the information specified in paragraph 12(a) and (b), together with a copy of the environmental statement, to be published on a website maintained by or on behalf of the Secretary of State for that purpose.”;

(e) in paragraph 18—

(i) after “provision” insert “, or by the Secretary of State on a case-by-case basis,”; and

(ii) after responsibilities insert “or local or regional competencies”; and

- (f) in paragraph 29, after “Where” insert “the Secretary of State has determined under paragraph 3 that an environmental impact assessment is necessary and”;
- (g) in paragraph 30, after “This paragraph shall apply where” insert “the Secretary of State has determined under paragraph 3 that an environmental impact assessment is necessary and”;
- (h) in paragraph 31, at the end of sub-paragraph (c), insert “; and” and insert—
 - “(d) arrange for a copy of the information to be published on a website maintained by or on behalf of the Secretary of State for that purpose.”

SCHEDULE 5

Regulation 7

Projects and works in Scotland and Northern Ireland: national defence exemptions

PART 1

Projects and works in Northern Ireland

Roads (Northern Ireland) Order 1993: national defence exemption

1.—(1) The Secretary of State may direct that Part 5 of the Roads (Northern Ireland) Order 1993 (environmental impact assessment) does not apply in relation to a road project specified in the direction if satisfied—

- (a) the project has national defence as its sole purpose, and
- (b) that carrying out an environmental impact assessment would have an adverse effect on the fulfilment of that purpose.

(2) In this Schedule—

- (a) “road project” means a project for constructing or improving a road which the Department for Infrastructure in Northern Ireland is considering;
- (b) “environmental impact assessment” has the meaning given in Article 67 of the Roads (Northern Ireland) Order 1993.

(3) The Secretary of State must send a copy of any direction given under sub-paragraph (1) to the Department for Infrastructure in Northern Ireland.

Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2003: national defence exemption

2.—(1) The Secretary of State may direct that the 2003 Regulations do not apply to the Northern Ireland harbour works specified in the direction if satisfied—

- (a) the works have national defence as their sole purpose, and
- (b) the application of the 2003 Regulations to the works would have an adverse effect on the fulfilment of that purpose.

(2) The Secretary of State must, as soon as reasonably practicable after giving a direction under sub-paragraph (1), send a copy of the direction to the Department for Infrastructure in Northern Ireland.

(3) In this paragraph—

“the 2003 Regulations” means Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2003;

“Northern Ireland harbour works” means proposed harbour works to which the 2003 Regulations apply (see regulation 3 of those Regulations).

PART 2

Works in Scotland

Transport and Works (Scotland) Act 2007 and the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007: national defence exemption

3.—(1) The Secretary of State may direct, in respect of the proposed works specified in the direction, that—

- (a) sections 11(8) and 12(4) of the Transport and Works (Scotland) Act 2007 do not apply;
- (b) rule 14 of the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007 does not apply;
- (c) any application in connection with those works is to be treated as if it were not an EIA application.

(2) The Secretary of State may give a direction under sub-paragraph (1) only if satisfied that—

- (a) the sole purpose of the proposed works is national defence, and
- (b) compliance with the requirement for an environmental impact assessment would have an adverse effect on the fulfilment of that purpose.

(3) The Secretary of State must send a copy of any direction given under sub-paragraph (1) to the Scottish Ministers.

SCHEDULE 6

Regulation 8

Transitional provisions and savings

PART 1

The 1964 Act

Orders made under section 42A of the 1964 Act

1. Section 42A of the 1964 Act as amended by paragraph 4 of Schedule 1 applies to orders made under that section before the commencement date as it applies to orders made under that section on or after that date.

Applications for harbour revision orders, harbour empowerment orders or closure orders

2.—(1) The amendments made by Schedule 1 to paragraphs 3 to 6(1)(a) of Schedule 3 to the 1964 Act do not apply in relation to a proposed application in respect of which notice is given under paragraph 3(a) of Schedule 3 to the 1964 Act before the commencement date.

(2) The amendments made by Schedule 1 to the 1964 Act do not apply in relation to an application in respect of which the applicant is informed of a screening decision before the commencement date.

(3) In this paragraph—

“application” means an application for a harbour revision order, a harbour empowerment order or a closure order;

“screening decision” means a decision under paragraph 6(1)(a) of Schedule 3 to the 1964 Act in response to a notice given under paragraph 3(a) of that Schedule.

Proposals for closure orders made otherwise than on the application of a harbour authority

3.—(1) The amendments made by Schedule 1 to section 17D(2)(e) of the 1964 Act do not apply in relation to a proposal in respect of which a screening decision is made before the commencement date.

(2) The amendments made by Schedule 1 to paragraph 4 of Schedule 3 to the 1964 Act do not apply in relation to a proposal which is made before the commencement date.

(3) The amendments made by Schedule 1 to Schedule 3 to the 1964 Act do not apply in relation to a proposal in respect of which a screening decision is made before the commencement date.

(4) In this paragraph—

“proposal” means a proposal to make a closure order otherwise than on the application of a harbour authority;

“screening decision”, in relation to a proposal, means a decision under section 17D(2)(e) of the 1964 Act.

PART 2

The 1980 Act

Existing projects for constructing or improving highways which are not screened before the commencement date

4.—(1) Despite the amendments made by paragraph 3 of Schedule 2, superseded sections 105A(2) and (3)(b) continue to apply on and after the commencement date for the purpose of determining whether an existing project is, or should be made, subject to an environmental impact assessment under Part 5A of the 1980 Act.

(2) A determination under superseded section 105(2) that an existing project does not fall within Annex I or Annex II is to be treated as a determination that the project does not fall within Annex I or Annex II to the EIA Directive.

(3) A determination under superseded section 105A(3)(b) that an existing project should not be subject to an environmental impact assessment is to be treated for the purposes of new Part 5A (other than section 105AB) as a determination under section 105A(1)(b) of the 1980 Act (as substituted by paragraph 3 of Schedule 2).

(4) The project authority must publish a notice of a determination under superseded section 105A(3)(b) that an existing project should not be subject to an environmental impact assessment—

(a) in the London Gazette,

(b) in at least one local newspaper circulating in the area in which the project for the construction or improvement is proposed to be situated, and

(c) on a website maintained by or on behalf of the project authority.

(5) An existing project which the project authority determines—

(a) under superseded section 105A(2), falls within Annex I, or

(b) under superseded section 105A(3)(b), should be subject to an environmental impact assessment,

is to be treated for the purposes of new Part 5A as a project to which section 105B(1) of the 1980 Act (as substituted by paragraph 4 of Schedule 2) applies.

(6) In this paragraph—

“existing project” means a project for constructing or improving a highway which the project authority that is the highway authority for the highway—

(a) is considering before the commencement date, but

(b) in respect of which it had not made a determination under subsection (2), or subsections (2) and (3)(b), of section 105A of the 1980 Act before that date;

“project authority” means—

(c) the Secretary of State,

(d) the Welsh Ministers, or

(e) a strategic highways company.

“superseded section 105A(2)” means subsection (2) of section 105A of the 1980 Act as it has effect immediately before the commencement date;

“superseded section 105A(3)(b)” means subsection (3)(b) of section 105A of the 1980 Act as it has effect immediately before the commencement date.

Exemptions for existing projects

5.—(1) Section 105AA of the 1980 Act (as inserted by paragraph 3 of Schedule 2) applies to an existing project as it applies to a new project.

(2) In this paragraph—

“existing project” has the meaning given in paragraph 4;

“new project” means a project for constructing or improving a highway which the project authority that is the highway authority for the highway begins to consider on or after the commencement date.

(3) Paragraph 4(4) does not apply to an existing project in respect of which a direction is given, or determination made, under section 105AA.

Projects for constructing or improving highways which are screened before the commencement date

6. The amendments made to the 1980 Act by Schedule 2 do not apply in relation to a project in respect of which notice of an environmental statement is published under section 105B(3) of the 1980 Act before the commencement date.

PART 3

The 1992 Act and the 2006 Rules

Requests for a screening decision made before the commencement date

7.—(1) The amendments made by Schedule 3 to section 6 of the 1992 Act do not apply in relation to a qualifying screening decision request.

(2) The amendments made by Schedule 4 to rules 4 and 7 of the 2006 Rules do not apply in relation to a qualifying screening decision request.

(3) In this paragraph “qualifying screening decision request” means a request made under rule 7(4) of the 2006 Rules before the commencement date.

Requests for a scoping opinion made before the commencement date

8.—(1) The amendments made by Schedule 3 to section 6 of the 1992 Act do not apply in relation to a qualifying scoping opinion request.

(2) The amendments made by Schedule 4 to rules 4 and 8 of the 2006 Rules do not apply in relation to a qualifying scoping opinion request.

(3) In this paragraph and paragraph 9, “qualifying scoping opinion request” means a request made under rule 8(1) of the 2006 Rules before the commencement date.

Applications for orders under sections 1 and 3 of the 1992 Act

- 9.**—(1) The amendments specified in sub-paragraph (2) do not apply in relation to—
- (a) an application in respect of which an environmental statement is submitted before the commencement date, or
 - (b) an application which is made following an opinion given on or after the commencement date in response to a qualifying scoping opinion request.
- (2) The specified amendments are—
- (a) the amendments made by Schedule 3 to the 1992 Act, and
 - (b) the amendments made by Schedule 4 to the 2006 Rules.
- (3) In this paragraph—
- “application” means an application under section 6 of the 1992 Act for an order under section 1 or 3 of that Act;
- “environmental statement” has the meaning given by section 14(3D) of the 1992 Act as it is in force immediately before the commencement date.

Existing proposals: screening decision

- 10.**—(1) The amendments made by Schedule 4 to rule 4 of and paragraphs 4, 5 and 7 of Schedule 7 to the 2006 Rules do not apply in relation to a proposal which is made by an appropriate national authority before the commencement date.
- (2) In this Part of this Schedule—
- “appropriate national authority”—
- (a) in relation to a proposal to which rule 28 of the 2006 Rules applies, means the National Assembly for Wales;
 - (b) otherwise, means the Secretary of State;
- “proposal” means a proposal to make an order by virtue of section 7 of the 1992 Act.

Existing proposals: scoping opinion

- 11.**—(1) The amendments made by Schedule 4 to rules 4 and 8 of the 2006 Rules do not apply in relation to a proposal in respect of which the relevant appropriate national authority consults as required by paragraph 9 of Schedule 7 to the 2006 Rules before the commencement date.
- (2) In this paragraph and paragraph 12 “relevant appropriate national authority”, in relation to a proposal, means the appropriate national authority which makes the proposal.

Existing proposals: other procedural requirements

- 12.**—(1) The amendments specified in sub-paragraph (2) do not apply in relation to a proposal in respect of which the relevant appropriate national authority—
- (a) consults as required by paragraph 9 of Schedule 7 to the 2006 Rules before the commencement date, or
 - (b) deposits a copy of the environmental statement in the library of the House of Commons (as required by paragraph 13 of Schedule 7 to the 2006 Rules) before that date.
- (2) The specified amendments are—
- (a) the amendments made by Schedule 3 to the 1992 Act, and
 - (b) the amendments made by Schedule 4 to rule 4 the 2006 Rules.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2014/52/EU of the European Parliament and of the Council (O.J. No. L 124, 25.4.2014, p. 1-18) amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (O.J. No. L 26, 28.1.2012, p. 1-21); they relate specifically to harbour works (in England and Wales and Scotland), the construction or improvement of highways (in England and Wales) and certain transport related works (in England and Wales).

Schedule 1 amends the Harbours Act 1964 (c. 40) which makes provision for harbour revision and empowerment orders.

Schedule 2 amends Part 5A of the Highways Act 1980 (c. 66) to provide for procedures governing the environmental impact assessment of projects for the construction or improvement of highways by the project authority; in England this is Highways England or the Secretary of State and in Wales the Welsh Ministers, which are respectively the highway authority. The relevant highways are for the most part trunk roads.

Schedules 3 and 4 amend the Transport and Works Act 1992 (c. 42) and the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S.I. 2006/1466) which make provision for orders authorising transport-related works in England and Wales.

In summary, these Regulations make provision governing:

- the circumstances in which a project may be exempt from the environmental impact assessment process (e.g. national defence or civil emergencies);
- the introduction of coordinated procedures for projects in respect of which there are other related assessments (e.g. habitats regulations);
- the list of environmental factors to be considered as part of the environmental impact assessment procedure;
- the information to be provided to inform a screening decision and the criteria to be applied when making a screening decision;
- the way in which an environmental statement is to be prepared, including an amendment to the information to be included in it, the introduction of a requirement that it be based upon a scoping opinion (where one has been obtained) and a requirement that it be prepared by a competent expert;
- the procedure not applying to projects where a separate assessment of the effects of the project on the environment has been, is or will be carried, out by another public authority; and
- the publication of decisions in respect of projects which are subject to the environmental impact assessment process.

Schedule 5 makes provision for the Secretary of State to direct that an environmental impact assessment with respect to certain works and projects in Scotland and Northern Ireland, which have national defence as their sole purpose, is not required.

Schedule 6 makes provision for transitional arrangements with respect to the amendments made by these Regulations.

These Regulations were notified to the European Commission in accordance with Article 2 of Directive 2014/52/EU.

An Explanatory Memorandum and a transposition note are available with these Regulations on www.legislation.gov.uk. Copies have also been placed in the Libraries of both Houses of Parliament.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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UK201711061009 11/2017 19585

<http://www.legislation.gov.uk/id/uksi/2017/1070>