

**2018 No.**

**EXITING THE EUROPEAN UNION**

**ENVIRONMENTAL PROTECTION**

**TOWN AND COUNTRY PLANNING**

**The Environmental Assessments and Miscellaneous Planning  
(Amendment) (EU Exit) Regulations 2018**

*Sifting requirements satisfied* [?? November 2018]

*Made* - - - - [?? November 2018]

*Laid before Parliament* [?? November 2018]

*Coming into force in accordance with regulation 1*

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

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

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 8(1) of the European Union (Withdrawal) Act 2018.

**PART 1**

**Introduction**

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018.

(2) Subject to paragraph (3), these Regulations come into force on exit day.

(3) Regulations 2(3) and 5(3)(a) come into force on 31st December 2018.

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(a) 2018 c. 16.

(b) S.I. 2008/301.

(c) 1972 c.68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51); and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(4) The amendments made by these Regulations have the same extent as the provisions they amend.

## PART 2

### Amendments to primary legislation

#### Amendments to the Town and Country Planning Act 1990

**2.**—(1) The Town and Country Planning Act 1990(a) is amended as follows.

(2) In section 61E(8) (neighbourhood development orders) for “EU obligation” substitute “retained EU obligation”.

(3) In section 336(1) (interpretation), in the definition of “waste” at the end of paragraph (a), before the “and” insert “as last amended by Council Regulation (EU) 2017/997,”.

(4) In Schedule 4B (process for making neighbourhood development orders), in paragraphs 8(2)(f), 13B(1)(c)(ii) and 13B(6)(a), for “EU obligations” substitute “retained EU obligations”.

(5) In Schedule 4C (community right to build orders), in paragraph 10(5)(a), for “EU obligations” substitute “retained EU obligations”.

#### Amendments to the Planning and Compulsory Purchase Act 2004

**3.**—(1) The Planning and Compulsory Purchase Act 2004(b) is amended as follows.

(2) In section 38A(6) (meaning of “neighbourhood development plan”) for “EU obligation” substitute “retained EU obligation”.

(3) In Schedule A2 (modification of neighbourhood development plans)—

(a) in paragraphs 11(2)(d) and 14(6)(a), for “EU obligations” substitute “retained EU obligations”; and

(b) in paragraph 14(4), for “EU obligation” substitute “retained EU obligation”.

#### Amendments to the Planning Act 2008

**4.**—(1) The Planning Act 2008(c) is amended as follows.

(2) In Schedule 6 (changes to, and revocation of, orders granting development consent)—

(a) in paragraph 3(7)(a) for “EU law” substitute “relevant retained EU law”; and

(b) in paragraph 3(8) for the definition of “EU law” substitute—

““relevant retained EU law” means—

(a) any right, power, obligation, liability or restriction that—

(i) was created or arose by or under the EU Treaties before exit day, and

(ii) forms part of retained EU law, and

(b) any remedy or procedure that—

(i) was provided for by or under the EU Treaties before exit day, and

(ii) forms part of retained EU law,

as modified from time to time.”.

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(a) 1990 c. 8. Section 61E was inserted by paragraph 2 of Schedule 9 to the Localism Act 2011 (c. 20). Schedule 4B and 4C were inserted by Schedules 10 and 11 to the Localism Act 2011. Paragraph 13B was inserted by section 141 of the Housing and Planning Act 2016 (c. 22).

(b) 2004 c. 5. Section 38A was inserted by paragraph 7 of Schedule 9 to the Localism Act 2011. Schedule A2 was inserted by section 4(10) of, and Schedule 1 to, the Neighbourhood Planning Act 2017 (c. 20).

(c) 2008 c. 29. Paragraph 3 of Schedule 6 was amended by S.I. 2011/1043. There are other amendments not relevant to this instrument.

## PART 3

### Amendments to secondary legislation

#### **Amendments to the Environmental Assessment of Plans and Programmes Regulations 2004**

**5.**—(1) The Environmental Assessment of Plans and Programmes Regulations 2004(a) are amended as follows.

- (2) In regulation 2(1)—
  - (a) at the end of the definition of “the Environmental Assessment of Plans and Programmes Directive” add “, as it had effect immediately before exit day”; and
  - (b) in the definition of “the Habitats Directive” for “as last amended by Council Directive 97/62/EC” substitute “as it had effect immediately before exit day”.
- (3) In regulation 5—
  - (a) in paragraph (2)(b), for “Council Directive 85/337/EEC(b) on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC(c)” substitute “Directive 2011/92/EU(d) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment”; and
  - (b) in paragraph (3) after “pursuant to” insert “any law that implemented”.
- (4) In regulation 12(4) for “EU legislation” substitute “retained EU law”.
- (5) In regulation 14, in paragraphs (1) and (3)(a), for “another” substitute “a”.
- (6) In regulation 15—
  - (a) in the heading, omit “other”;
  - (b) in paragraph (1), omit the words from “in that behalf” to “Directive”; and
  - (c) in paragraph (4)—
    - (i) in sub-paragraph (b) for “under Article 7.1 of the Environmental Assessment of Plans and Programmes Directive” substitute “by the Member State”;
    - (ii) in sub-paragraph (d) for “under Article 7.1 of the Environmental Assessment of Plans and Programmes Directive” substitute “by the Member State”.
- (7) In Schedule 1, in paragraph 1(e), for “EU legislation” substitute “retained EU law”.
- (8) In Schedule 2—
  - (a) in paragraph 4, for the words “such as” to the end substitute “such as a European site (within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2017(e))”; and
  - (b) in paragraph 5, for “Member State” substitute “national”.

#### **Amendments to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017**

**6.**—(1) The Town and Country Planning (Environmental Impact Assessment) Regulations 2017(f) are amended as follows.

- (2) In regulation 2(1)—

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(a) S.I. 2004/1633, amended by S.I. 2011/1043; there are other amending instruments but none is relevant to this instrument.  
(b) OJ No L 175, 5.7.1985, p. 40.  
(c) OJ No L 73, 14.3.1997, p. 5.  
(d) OJ No L 26, 28.1.2012, p. 1  
(e) S.I. 2017/1012.  
(f) S.I. 2017/571.

- (a) at the end of the definition of “the Directive” add “as it had effect immediately before exit day”;
- (b) for the definition of “EU environmental assessment” substitute—
  - ““EU environmental assessment” means an assessment of the effect of anything on the environment carried out under retained EU law other than any law of any part of the United Kingdom that implemented the Directive;”.
- (3) In regulation 4(2)(b) after “under” insert “any law that implemented”.
- (4) In regulation 26(3)(c) after the second occurrence of “under” insert “any law that implemented”.
- (5) In regulation 32(6)(n)(i), in the text substituting regulation 58(1)(a), for “another” substitute “an”.
- (6) In regulation 35—
  - (a) after “requirements” insert “of any law that implemented the Directive”; and
  - (b) after “and” insert “the”.
- (7) In regulation 46(a), in the text substituting regulation 58(1)(a), for “another” substitute “an”.
- (8) In regulation 58—
  - (a) in the heading and in paragraphs (1) and (2), for “another”, in each place it occurs, substitute “an”;
  - (b) in paragraph (4) for “referred to in Article 6(1) of the Directive” substitute “which the EEA State designated to be consulted about the project”;
  - (c) in paragraph (5)—
    - (i) omit “in accordance with Article 7(4) of the Directive”; and
    - (ii) in sub-paragraph (b) omit “other”.
- (9) In regulation 59—
  - (a) in the heading for “another” substitute “an”;
  - (b) in paragraph (1)—
    - (i) for “another” substitute “an”;
    - (ii) omit “, pursuant to Article 7(1) or 7(2) of the Directive,”;
    - (iii) omit “, in accordance with Article 7(4) of the Directive”;
    - (iv) in sub-paragraph (b)—
      - (aa) for “in that EEA State” substitute “(which the EEA State designated as responsible for performing the duties arising from the Directive)”;
      - (bb) omit “pursuant to Article 7(3)(b) of the Directive”; and
  - (c) in paragraph (2)(c) omit “in order to comply with Article 9(2) of the Directive”.
- (10) In regulation 63—
  - (a) in paragraphs (3)(b) and (5)(b) for “another”, in each place it occurs, substitute “an”; and
  - (b) omit paragraph (6).
- (11) In Schedule 1—
  - (a) in paragraph 22 after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008(a) and any law that implemented”; and
  - (b) in paragraph 23 for “pursuant to Directive 2009/31/EC(b)” substitute “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)”.

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(a) 2008 c. 32.

(b) OJ No L 140, 5.6.2009, p. 114.

(12) In Schedule 2, in the table in paragraph 1 in item 3(j), for “pursuant to Directive 2009/31/EC” substitute “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)”.

(13) In Schedule 3, in paragraph 2(1)(c)(vi), for “Union legislation” substitute “retained EU law”.

(14) In Schedule 4—

(a) in paragraph 5—

(i) for “or Member State” substitute “level (as they had effect immediately before exit day) or United Kingdom”;

(ii) after “those established under” insert “the law of any part of the United Kingdom that implemented”; and

(b) in paragraph 8—

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

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

### **Amendments to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**

7.—(1) The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(a) are amended as follows.

(2) In regulation 3(1)—

(a) at the end of the definition of “the Directive” add “as it had effect immediately before exit day”;

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

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

(3) In regulation 5(2)(b) after “under” insert “any law that implemented”; and

(4) In regulation 21(3)(c) after “other than under” insert “any law that implemented”.

(5) In regulation 25(3)(c) after “other than under” insert “any law that implemented”.

(6) In regulation 32—

(a) in paragraphs (1) and (3) for “another”, in each place it occurs, substitute “an”;

(b) in paragraph (5) for “referred to in Article 6(1) of the Directive” substitute “which the EEA State designated to be consulted about the project”; and

(c) in paragraph (6)—

(i) omit “in accordance with Article 7(4) of the Directive”; and

(ii) in sub-paragraph (b) omit “other”.

(7) In regulation 33—

(a) in paragraphs (3)(b) and (5)(b) for “another”, in each place it occurs, substitute “an”; and

(b) omit paragraph (6).

(8) In Schedule 1—

(a) in paragraph 22 after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented”; and

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(a) S.I. 2017/572.

(b) in paragraph 23 for “pursuant to Directive 2009/31/EC(a)” substitute “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)”.

(9) In Schedule 2, in paragraph 3(j), for “pursuant to Directive 2009/31/EC” substitute “(pursuant to Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented Directive 2009/31/EC)”.

(10) In Schedule 3, in paragraph 2(1)(c)(vi), for “Union legislation” substitute “retained EU law”.

(11) In Schedule 4—

(a) in paragraph 5—

(i) for “or Member State” substitute “level (as they had effect immediately before exit day) or United Kingdom”;

(ii) after “those established under” insert “the law of any part of the United Kingdom that implemented”; and

(b) in paragraph 8—

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

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

Signed by authority of the Secretary of State for Housing, Communities and Local Government

	<i>Name</i>
Address	Parliamentary Under Secretary of State
Date	Ministry of Housing, Communities and Local Government

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. Apart from regulations 2(3) and 5(3)(a), these Regulations are made under section 8 of that Act and correct deficiencies of the type mentioned in section 8(2)(a) and (g) of that Act – matters which have no practical application to the United Kingdom or are otherwise redundant, and EU references which are no longer appropriate.

These Regulations make amendments to legislation in the field of town and country planning and infrastructure planning.

These Regulations are also made under section 2(2) of the European Communities Act 1972. Regulations 2(3) and 5(3)(a), which come into force on 31st December 2018, are made under that Act. The amendment in regulation 2(3) reflects an amendment to Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p 3). The amendment in regulation 5(3)(a) reflects the repeal and replacement of Council Directive 85/337/EEC (OJ L 175, 5th July 1985, p.40) on the assessment of the effects of certain public and private projects on the environment, by Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28th January 2012, p.1).

Part 2 of these Regulations amends primary legislation. In particular it amends sections 61E and 336 of, and paragraphs 8 and 13B of Schedule 4B and paragraph 10 of Schedule 4C to, the Town

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(a) OJ No L 140, 5.6.2009, p. 114.

and Country Planning Act 1990, section 38A of the Planning and Compulsory Purchase Act 2004, and paragraph 3 of Schedule 6 to the Planning Act 2008 so that references to complying with EU obligations have been replaced with references to complying with retained EU obligations (regulations 2(2), 2(4), 2(5), 3 and 4).

Part 3 of these Regulations amends subordinate legislation. In particular, the references to complying with or having regard to EU or union law have been replaced with references to complying with or having regard to retained EU law such as domestic law which implemented Directives (regulations 5(3), 5(4), 5(7), 5(8), 6(2)(b), 6(3), 6(4), 6(6), 6(8), 6(9), 6(13), 6(14), 7(2)(b), 7(3), 7(4), 7(5), 7(6), 7(10) and 7(11)); references to requests made and documents provided, pursuant to EU law, to the UK from other Member States are amended (regulations 5(6), 6(8), 6(9) and 7(6)); amending references to certain Directives (regulations 5(2), 6(2)(a), (11) and (12) and 7(2)(a), (8) and (9)); references to the UK as a Member State has been amended (regulations 5(5), 5(6), 5(8), 6(5), 6(7), 6(8), 6(9), 6(10), 6(14), 7(6), 7(7) and 7(11)) and removing requirements to notify the European Commission (regulations 6(10)(b) and 7(7)(b)).

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

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