

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL ASSESSMENTS AND MISCELLANEOUS PLANNING
(AMENDMENT) (EU EXIT) REGULATIONS 2018
2018 No. [XXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Committees on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 This instrument uses powers in the European Union (Withdrawal) Act 2018 to make necessary changes, which arise as a result of the UK leaving the European Union, in the following pieces of legislation:

The main part of this instrument amends the following:

- The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, S.I. 2017/571
- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, S.I. 2017/572
- The Environmental Assessment of Plans and Programmes Regulations 2004, S.I. 2004/1633 (“SEA Regulations”)

The instrument also contains amendments to:

- The Town and Country Planning Act 1990
- The Planning and Compulsory Purchase Act 2004
- The Planning Act 2008

- 2.2 The instrument (in regulations 2(3) and 5(3)(a)) also uses section 2(2) of the European Communities Act 1972 to update references. The amendment in regulation 2(3) reflects an amendment to Directive 2008/98/EC of the European Parliament and of the Council on waste. The amendment in regulation 5(3)(a) replaces an out of date reference in regulation 3 of the SEA Regulations to Council Directive 85/337/EEC with Directive 2011/92/EU of the European Parliament and of the Council on the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. These provisions come into force before exit day.

- 2.3 Explanations

What did any relevant EU law do before exit day?

This instrument principally concerns the Environmental Impact Assessment and Strategic Environmental Assessment regimes.

Directive 2011/92/EU¹ of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”) is implemented, as respects developments of land, by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571) and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572). The EIA Directive requires that development consent for public or private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of these projects has been carried out. The two sets of regulations apply to the environmental impact assessment of certain public or private projects which are given development consent through the town and country planning regime and through the Nationally Significant Infrastructure Planning regime respectively. These two sets of Regulations provide that development consent must not be granted until an assessment has been carried out. They set out what an environmental impact assessment is, what it must identify, describe and assess, what is to be included in any environmental report prepared and the public consultation and other procedures relating to environmental impact assessments.

Directive 2001/42/EC² of the European Parliament and Council on the assessment of the effects of certain plans and programmes on the environment (“the SEA Directive”) is implemented by the SEA Regulations. The SEA Directive aims to ensure that Member States integrate environmental assessment into their plans and programmes at the earliest stages. The Regulations apply to any plan or programme prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, which sets the framework for future development consent of certain projects. The projects being those listed in Annex I or II of the EIA Directive and are either—

- (a) subject to preparation or adoption by an authority at national, regional or local level; or
- (b) prepared by an authority for adoption, through a legislative procedure by Parliament or Government.

These Regulations set out what a strategic environmental assessment must include and the public consultation and other procedures relating to such assessments.

In relation to the other amendments in this instrument, across the UK’s domestic planning regime there are a number of references to complying with obligations under EU law which this instrument amends to become references to complying with retained EU law. Namely these are references to complying with EU obligations in:

- sections 61E and 336 of, and paragraphs 8 and 13B of Schedule 4B and paragraph 10 of Schedule 4C to, the Town and Country Planning Act 1990,
- section 38A of, and Schedule A2 to, the Planning and Compulsory Purchase Act 2004, and
- paragraph 3 of Schedule 6 to the Planning Act 2008.

¹ OJ No L 26, 28.1.2012, p. 1.

² OJ No L 197, 21.7.2001, p. 30

Why is it being changed?

This instrument uses powers in the European Union (Withdrawal) Act to make necessary changes to the above legislation to ensure that the law functions correctly after the UK has left the European Union. In particular the amendments update references in UK legislation to EU law, Member States and related terms to reflect the UK leaving the European Union. No substantive changes are being made by this instrument to the way the EIA or SEA regimes operate or the other legislation amended by this instrument. The changes remove unnecessary references, for example to the United Kingdom being a Member State.

What will it now do?

The SEA and EIA regimes amended by this instrument will continue to function as they did before Exit. The changes are:

- references to complying with EU obligations have been replaced with references to complying with retained EU law (regulations 5(3), 5(4), 5(7), 5(8), 6(2), 6(3), 6(4), 6(6), 6(8), 6(9), 6(13), 6(14), 7(2), 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))
- references to Directives are amended to make clear to readers they are referring to the version in force immediately before exit day (regulations 5(2), 6(2), 6(11) and 6(12) and 7(2), 7(8) and 7(9))
- references to the UK as a Member State are 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)).

In relation to the other amendments in this instrument they relate to references to obligations in EU law which are redundant or no longer appropriate. Namely these are references to complying with EU obligations etc have been replaced with references to complying with retained EU obligations etc (regulations 2(2), 2(4), 2(5), 3, and 4).

3. Matters of special interest to Parliament

Matters of special interest to the Committees on the UK's exit from the European Union

- 3.1 This instrument is being laid for sifting as required under the European Union (Withdrawal) Act 2018. A statement regarding the use of the legislative powers in that Act is contained in Part 2 of the Annex to this memorandum.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The amendments made by this instrument have the same extent and territorial application as the instruments which they amend.

5. European Convention on Human Rights

5.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Kit Malthouse, has made the following statement regarding human rights:

“In my view the provisions of the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

6.1 This instrument is made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018 and section 2(2) of the European Communities Act 1972.

6.2 The European Union (Withdrawal) Act 2018 makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment of exit, in UK law. The European Union (Withdrawal) Act 2018 creates a new body of domestic legislation from directly applicable EU law being brought into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK’s obligations as a member of the European Union; together this will be retained EU law.

6.3 The European Union (Withdrawal) Act 2018 contains a temporary power to make secondary legislation to deal with deficiencies in this retained EU law. This instrument makes a number of amendments to legislation in the field of environmental assessments and the planning regime in order to ensure that the legislation continues to function properly following the exit of the United Kingdom from the European Union. These amendments relate to matters which have been identified as deficiencies in the legislation arising from that withdrawal from the European Union. See paragraph 2 above for further details.

7. Policy background

What is being done and why?

7.1 This instrument makes amendments to correct deficiencies in certain environmental and planning related legislation. The purpose of the amendments is to ensure that the relevant legislation is still operable i.e. it remains coherent and workable following the United Kingdom’s exit from the European Union. Details of the amendments are set out in paragraph 2 above.

7.2 The instrument also makes provisions under section 2(2) of the European Communities Act 1972, to bring references to EU law up to date before exit day – details of these amendments are provided in paragraph 2 above. The purpose of these amendments is to ensure that UK legislation includes the up to date reference to EU law.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this memorandum.

8.2 Alongside the European Union (Withdrawal) Act 2018 powers the instrument is also being made under section 2(2) of the European Communities Act 1972 to bring references to EU law up to date before exit day – more details on these amendments are provided in paragraph 2.

9. Consolidation

9.1 There are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 A public consultation was not considered necessary because the instrument makes minor technical amendments to an existing regime to maintain the status quo as far as possible. No impact upon stakeholders is envisaged. The devolved administrations were consulted at an early stage and are content with the approach taken.

11. Guidance

11.1 No guidance is necessary. The existing planning practice guidance will be updated where necessary to reflect the amendments made by this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private or voluntary sector is foreseen due to the nature of the operability fixes contained within this instrument. This conclusion has been verified by an internal panel of economists.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, however the amendments introduced by this instrument seek only to maintain the way the current regimes function, as such it is not necessary to take any steps to minimise impacts. The approach of this instrument (i.e. to ensure the continuation of the relevant regimes as they currently function) will be communicated to the public in order to mitigate the risk of confusion or costs incurred.

14. Monitoring & review

14.1 In relation to the amendments to secondary legislation made by this instrument under section 2(2) of the European Communities Act 1972, the amendments made by this instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Kit Malthouse MP has made the following statement:

“Having had regard to the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make a provision for review in this instrument because it would be disproportionate taking into account the economic impact of the amendments made by this instrument. There are no substantive policy

changes and the amendments to legislation are being made to ensure that the existing position is maintained. Furthermore, as this is an EU Exit related instrument and is merely updating existing references to EU law, as such the measure has no, or no significant regulatory impact, and consequently a review clause would not be appropriate.”

- 14.2 As the remainder of this instrument is made under the European Union (Withdrawal) Act 2018 no review clause is required.

15. Contact

- 15.1 David Hughes at the Ministry of Housing, Communities and Local Government. Telephone: 0303 444 0282 or email: david.hughes@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Simon Gallagher, Director for Planning at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kit Malthouse MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

Statements under the European Union (Withdrawal) Act 2018

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement

- 1.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.
- 1.2 This is the case because the instrument does not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018. These Regulations correct deficiencies in retained planning legislation arising out of the UK’s withdrawal from the European Union. The instrument makes changes of a minor and technical nature to ensure the continued effective operability of the relevant legislation.

2. Appropriateness statement

- 2.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view the Environmental Assessments and Miscellaneous Planning (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.
- 2.2 This is the case because the amendments the instrument makes are minor and do no more than is strictly necessary to ensure the legislation amended functions correctly once the UK has left the European Union. In particular the amendments update references in UK legislation to EU law, Member States and related terms to reflect the UK leaving the European Union.

3. Good reasons

- 3.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 3.2 These are ensuring that the legislation amended by this instrument continues to function correctly once the UK has left the European Union and ensuring clarity for the public and stakeholders. In particular the amendments update references in UK

legislation to EU law, Member States and related terms to reflect the UK leaving the European Union.

4. Equalities

4.1 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

4.2 The Minister of State for Housing for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Kit Malthouse MP have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

5.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.