

2018 No. XXX

EXITING THE EUROPEAN UNION (NORTHERN IRELAND)

TOWN AND COUNTRY PLANNING

The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018

<i>Sift requirements satisfied</i>	***
<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force in accordance with regulation 1</i>	

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

General

Citation, commencement and extent

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

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

(3) Regulation 9(3)(b) comes into force on the day before that on which exit day falls.

(4) These Regulations extend to Northern Ireland only.

(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).

PART 2

Amendments to secondary legislation

Amendments to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999

2.—(1) Paragraphs (2) and (3) have effect in relation to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999^(a) to the extent that those Regulations continue in force by virtue of regulation 48(4) of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017^(b).

(2) In regulation 18—

- (a) in the heading and in paragraphs (1) and (2), for “another”, in each place it occurs, substitute “a”;
- (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”; and
- (c) in paragraph (5)—
 - (i) omit “in accordance with Article 7.4 of the Directive”; and
 - (ii) in sub-paragraph (b) omit “other”.

(3) In regulation 28(a), in the text substituting regulation 18(1)(a), for “another” substitute “a”.

Amendments to the Planning (Local Development Plan) Regulations (Northern Ireland) 2015

3. Regulation 14 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015^(c) shall be amended as follows—

- (a) in paragraph (1)(a) omit “by pursuing those objectives through the controls described in Article 13 of the Directive”;
- (b) in paragraph (1)(b)(iii), for the words “Article 5 of the Directive” substitute “regulation 5 of the Control of Major Accident Hazards Regulations (Northern Ireland) 2015^(d)”; and
- (c) omit paragraph (2).

Amendments to the Planning (Control of Advertisements) Regulations (Northern Ireland) 2015

4. In class 13 of Schedule 3 of the Planning (Control of Advertisements) Regulations (Northern Ireland) 2015^(e) omit “, European Parliamentary”.

Amendments to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015

5.—(1) Paragraphs (2) to (4) have effect in relation to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015^(f) to the extent that those Regulations continue in force by virtue of regulation 48 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

(2) In regulation 2(2) at the end of the definition of “the Directive” insert “as it had effect immediately before exit day”.

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- (a) S.R. 1999 No.73
 - (b) S.R. 2017 No.83
 - (c) S.R. 2015 No.62
 - (d) S.R. 2015 No.325
 - (e) S.R. 2015 No.66
 - (f) S.R. 2015 No.74

- (3) In regulation 27—
- (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”; and
 - (c) in paragraph (5)—
 - (i) omit “in accordance with Article 7.4 of the Directive”; and
 - (ii) in sub-paragraph (b) omit “other”.
- (4) In regulation 37(a), in the text substituting regulation 27(1)(a), for “another” substitute “an”.
- (5) In Schedule 1—
- (a) in paragraph 23 after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008(a) and any law that implemented”; and
 - (b) in paragraph 24 after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented”.
- (6) In Schedule 2, in the table in paragraph 1 in item 3(k), after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented”.

Amendments to the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015

6.—(1) The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015(b) shall be amended as follows—

- (2) In regulation 2(2)—
- (a) for the definition of “best available techniques” substitute ““best available techniques” has the same meaning as in Article 3(12) of Council Directive 2010/75/EU(c) of 24 November 2010 as it had effect immediately before exit day”;
 - (b) at the end of the definition of “the Directive” insert “as it had effect immediately before exit day”;
 - (c) omit the definition of “Directive 2006/11/EC”(d);
 - (d) at the end of the definition of “Directive 2006/118/EC”(e) insert “as it had effect immediately before exit day”;
 - (e) at the end of the definition of “Directive 2008/98/EC”(f) insert “as it had effect immediately before exit day”;
 - (f) at the end of the definition of “Directive 2012/18/EU”(g) insert “as it had effect immediately before exit day”;
 - (g) at the end of the definition of “Directive 2000/60/EC”(h) insert “as it had effect immediately before exit day”;
 - (h) in the definition of “extractive waste”, in paragraph (c), after the words “authorised by” insert “any law implementing”;
 - (i) after the definition of “major development” insert ““Member State” shall be construed in accordance with Schedule 1 to the Interpretation Act 1978(i);”;

(a) 2008 c. 32
 (b) S.R. 2015 No.85
 (c) O.J. No. L334, 17.12.2010, p.17–119
 (d) O.J. No. L64, 4.3.2006, p.52-59
 (e) O.J. No. L372, 27.12.2006, p.19-31
 (f) O.J. No. L312, 22.11.2008, p.3-30
 (g) O.J. No. L197, 24.7.2012, p.1-37
 (h) O.J. No. L327, 22.12.2000, p.1-73
 (i) 1978 c. 30

- (j) at the end of the definition of “Regulation (EC) 1272/2008”(a) insert “as amended from time to time”; and
 - (k) in the definition of “unpolluted soil” for “national or community law” substitute “national legislation or retained EU law”.
- (3) In regulation 5—
- (a) for paragraph (2), substitute “Regulation 4(1)(d) shall not apply to those waste facilities which fall within the scope of Directive 2012/18/EU”; and
 - (b) in paragraph (8), for “Directives 2006/11/EC, 2006/118/EC or 2000/60/EC” substitute “any law implementing Directives 2006/118/EC or 2000/60/EC”.
- (4) In regulation 6(2)(j) before “Directive” insert “any law that implements”.
- (5) In regulation 7(2)(b)(i), for “national or community legislation” substitute “national legislation or retained EU law”.
- (6) In regulation 9(1)—
- (a) in paragraph (a), for “European Community or national obligations” substitute “obligations under national legislation or retained EU law”; and
 - (b) in paragraph (b), for “Directives 2006/11/EC, 2006/118/EC and 2000/60/EC” substitute “any law implementing Directives 2006/118/EC and 2000/60/EC”.
- (7) In regulation 10—
- (a) in paragraph (1), before “Directive” insert “any law that implements”;
 - (b) in paragraph (2), for “Directives 2006/11/EC, 2006/118/EC and 2000/60/EC” substitute “any law implementing Directives 2006/118/EC and 2000/60/EC”; and
 - (c) for paragraph (3)(b), substitute “compliance with environmental obligations in retained EU law, in particular any law which implements Directive 2000/60/EC”.
- (8) In regulation 12(b), for “Directives 2006/11/EC, 2006/118/EC and 2000/60/EC” substitute “any law implementing Directives 2006/118/EC and 2000/60/EC”.
- (9) In regulation 19(8) for “another” substitute “a”.
- (10) In regulation 19(9) omit “other”.
- (11) In regulation 20—
- (a) in the heading omit “other”;
 - (b) in paragraphs (1) and (2) for “another”, in each place it occurs, substitute “a”; and
 - (c) in paragraph (2)(a) omit “other”.
- (12) In Schedule 3, for paragraph 3 substitute—
- “3. It contains substances or preparations classified as dangerous which fall within the scope of Regulation (EC) 1272/2008(b).”

Amendments to the Planning (General Development Procedure) Order (Northern Ireland) 2015

7. Schedule 3 of the Planning (General Development Procedure) Order (Northern Ireland) 2015(c) shall be amended as follows—

- (a) in Part 1, paragraph 3(b)(ii), for the words “covered” to the end of the paragraph substitute “which would require notification under regulation 6(6) of the Control of Major Accident Hazards Regulations (Northern Ireland) 2015”; and

(a) O.J. No. L353, 31.12.2008, p.1-1355
 (b) O.J. No. L353, 31.12.2008, p. 1-1355
 (c) S.R. 2015 No.72

- (b) in Part 2, paragraph 4(b)(ii), for the words “covered” to the end of the paragraph substitute “which would require notification under regulation 6(6) of the Control of Major Accident Hazards Regulations (Northern Ireland) 2015”.

Amendments to the Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015

8.—(1) The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015(a) shall be amended as follows—

(2) In regulation 2(2)—

- (a) in the definition of “ the Directive” for “amending and subsequently repealing Council Directive 96/82/EC,” substitute “as it had effect immediately before exit day;”;

- (b) after the definition of “the Directive” insert—

““the EIA Directive” means Directive 2011/92/EU(b) 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 as it had effect immediately before exit day;”;

and

- (c) after the definition of “electronic communication” insert—

““major accident” has the same meaning as in regulation 2 of the Control of Major Accident Hazards Regulations (Northern Ireland) 2015.”.

(3) In regulation 6(2)—

- (a) in paragraph (d), for the words from “or to consultations” to the end of the paragraph substitute “(which have the same meaning as in any provision of retained EU law which implemented the EIA Directive)”; and

- (b) after paragraph (d), insert—

“(da) where applicable, the fact that the project to which the proposal relates is one in respect of which the council or, as the case may be, the Department is required to consult any state under any provision of retained EU law which implemented the EIA Directive or which is subject to consultations between Member States in accordance with Article 14(3) of the Directive;”.

(4) In regulation 11(3)(a)—

- (a) in paragraph (ii), for the words from “or to consultations” to the end of the paragraph substitute “(which have the same meaning as any provision of retained EU law which implemented the EIA Directive)”; and

- (b) after paragraph (ii), insert—

“(iia) where applicable, the fact that the project to which the proposal relates is one in respect of which the council or, as the case may be, the Department is required to consult any state under any provision of retained EU law which implemented the EIA Directive or which is subject to consultations between Member States in accordance with Article 14(3) of the Directive;”.

(5) In regulation 17, at the end of paragraph (1)(b) insert “(with the reference in sub-paragraph (c) of that paragraph of that Article to Article 5 being read as a reference to regulation 5 of the Control of Major Accident Hazards Regulations (Northern Ireland) 2015)”.

(6) In regulation 18(6), in the definition of “relevant plan or programme” in both sub-paragraphs (a) and (b), after “pursuant to” insert “any provision of retained EU law which implemented”.

(7) In regulation 19(2)(a)—

(a) S.R. 2015 No. 344

(b) O.J. No. L26, 28.1.2012, p. 1-21

- (a) in paragraph (ii), for the words from “or to consultations” to the end of the paragraph substitute “(which have the same meaning as in any provision of retained EU law which implemented the EIA Directive)”; and
- (b) after paragraph (ii), insert—
 - “(iia) where applicable, the fact that the project to which the proposal relates is one in respect of which the council or, as the case may be, the Department is required to consult any state under any provision of retained EU law which implemented the EIA Directive or which is subject to consultations between Member States in accordance with Article 14(3) of the Directive;”.

Amendments to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017

9.—(1) The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 shall be amended as follows—

- (2) In regulation 2(2)—
 - (a) at the end of the definition of “the Directive” insert “as it had effect immediately before exit day”; and
 - (b) for the definition of “Union legislation” substitute—
 - ““Union legislation” means retained EU law;”.
- (3) In regulation 3—
 - (a) in paragraph (1)(b), omit “in accordance with Article 2.4 of the Directive (but without prejudice to Article 7 of the Directive).”;
 - (b) after paragraph (1) insert—
 - “(1A) The Department must not make a direction under paragraph (1)(b) that a project is exempt unless, where the Department considers that the development is likely to have significant effects on the environment in an EEA State, or where an EEA State likely to be significantly affected so requests, the Department has carried out a form of consultation with that EEA State broadly equivalent to the form described in regulation 29 or 30, as appropriate, or is satisfied that such an equivalent consultation has been carried out, before planning permission or subsequent consent is granted in respect of the development.”; and
 - (c) after paragraph (3) insert—
 - “(4) Before planning permission or subsequent consent is given in respect of a development which is exempt under paragraph (1)(b), the council or, as the case may be, the Department, must take into account the results of—
 - (a) any other assessment considered appropriate by the Department under paragraph (3)(b); and
 - (b) any consultation with an EEA State carried out under paragraph (1A) about the development.”
- (4) In regulation 5(2)(b) after “under” insert “any law that implemented”.
- (5) In regulation 29—
 - (a) in the heading and in paragraphs (1), (2) 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)(b) omit “other”.
- (6) In regulation 30—
 - (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”; and
 - (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)”; and
 - (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”.
- (7) In regulation 32, after the word “compliance” substitute “with the requirements of any law which implemented the Directive and the objectives of the Directive”.
- (8) In regulation 40(a), in the text substituting regulation 29(1), for “another” substitute “an”.
- (9) 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 after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented”.
- (10) In Schedule 2, in the table in paragraph 1 in item 3(k), after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law that implemented”.
- (11) In Schedule 4—
- (a) in paragraph 5—
 - (i) for “Member State level” substitute “United Kingdom level (as they had effect immediately before exit day)”; and
 - (ii) after “those established under” insert “any law that implemented”; and
 - (b) in paragraph 8—
 - (i) after “such as” insert “any law that implemented”; and
 - (ii) after “requirements of” insert “any law that implemented”.

Signatory text

Address Date	<i>Name</i> Parliamentary Under Secretary of State Department
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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 regulation 9(3)(b), these Regulations are made under the 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 are also made under section 2(2) of the European Communities Act 1972. Regulation 9(3)(b) is made under that Act.

These Regulations make amendments to subordinate legislation in the field of planning. 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

(a) 2008 c. 32

law which implemented Directives as set out in regulations 3(b), 5(5)(a), 5(5)(b), 5(6), 6(3)(b), 6(4), 6(5), 6(6)(a), 6(6)(b), 6(7)(a), 6(7)(b), 6(7)(c), 6(8), 8(3)(a), 8(3)(b), 8(4)(a), 8(4)(b), 8(5), 8(6), 8(7)(a), 8(7)(b), 9(3)(b), 9(3)(c), 9(7), 9(9)(a), 9(9)(b), 9(10), 9(11)(a)(ii), 9(11)(b)(i) and 9(11)(b)(ii); references to requests made and documents provided, pursuant to EU law, to Northern Ireland as part of the UK from other Member States are amended in regulations 2(2)(b), 5(3)(b), 7(a), 7(b), 9(5)(b) and 9(6)(b)(iv); while references to Northern Ireland as part of the UK as a Member State are amended in regulations 2(2)(a), 2(2)(c)(ii), 2(3), 5(3)(a), 5(3)(c)(ii), 5(4), 6(9), 6(10), 6(11)(a), 6(11)(b), 6(11)(c), 9(5)(a), 9(5)(c), 9(6)(a), 9(6)(b)(i) and 9(8); also references to Directives are amended to make clear to readers they are referring to the version in force immediately before exit day in regulations 5(2), 6(2), 8(2), 9(2), 9(4), and 9(11)(a)(i); and other amendments in this Statutory Instrument relate to references to obligations or terms in EU law which are redundant and no longer appropriate as detailed in regulations 2(2)(c)(i), 3(a), 3(c), 4, 5(3)(c)(i), 6(3)(a), 6(12), 6(13), 9(3)(a), 9(6)(b)(ii), 9(6)(b)(iii) and 9(6)(c).

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

An Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.

DRAFT