

2020 No. 0000

**EXITING THE EUROPEAN UNION**

**HARBOURS, DOCKS, PIERS AND FERRIES**

**HIGHWAYS, ENGLAND AND WALES**

The Harbours and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2020

*Sift requirements satisfied* \*\*\*

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force in accordance with regulation 1*

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

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

**Citation and commencement**

1. These Regulations may be cited as the Harbours and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2020 and come into force on IP completion day.

**Amendment of the Harbours Act 1964**

2.—(1) The Harbours Act 1964(b) is amended as follows.

(2) In section 44 (limitation of right to challenge harbour revision orders, etc., in legal proceedings), as it applies in relation to England and Wales—

(a) in subsection (6)(c) omit the words “, in accordance with Article 11(1)(a) of the EIA Directive,”;

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(a) 2018 c. 16. Section 8 was amended by section 27 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(b) 1964 c. 40.

(c) Section 44(6) was inserted in relation to England and Wales by regulation 2 of the Harbour Works (Environmental Impact Assessment) (Amendment) (England and Wales) Regulations 2009, S.I. 2009/269, and subsequently amended by paragraph 5(2) of Schedule 1 to the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017, S.I. 2017/1070.

(b) for subsections (7) and (8)(a) substitute—

“(7) An order is within this subsection if, in relation to the proposed application relating to the project authorised by the order, the Secretary of State decided that an environmental impact assessment was required and informed the applicant accordingly under paragraph 6(2)(a) of Schedule 3.

(8) For the purposes of subsections (6) and (7), an “environmental organisation” is a non-governmental organisation promoting environmental protection.”

(3) For subsections (6) to (8)(b) of section 44, as it applies in relation to Scotland, substitute—

“(6) In the case of an order falling within subsection (7), an environmental organisation is to be deemed to have sufficient interest to make an application under subsection (1).

(7) An order is within this subsection if, in relation to the proposed application relating to the project authorised by the order, the Scottish Ministers decided that an environmental impact assessment was required and informed the applicant accordingly under paragraph 6(2)(a) of Schedule 3.

(8) For the purposes of subsections (6) and (7), an “environmental organisation” is a non-governmental organisation promoting environmental protection.”

(4) In Part 1 of Schedule 3 (procedure for making harbour revision and empowerment orders)—

(a) in paragraph 1(c), as it applies in relation to England and Wales—

(i) in paragraph (b) in the definition of “the environment” after “protected under” insert “any law of any part of the United Kingdom which implemented”;

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

““environmental assessment” means an assessment of the effect of anything on the environment if the assessment is carried out under—

(a) retained EU law, or

(b) any other law of any part of the United Kingdom, other than any law which implemented the EIA Directive;”;

(b) in paragraph 1(d), as it applies in relation to Scotland—

(i) in paragraph (b) in the definition of “the environment” after “protected under” insert “any law of any part of the United Kingdom which implemented”;

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

““environmental assessment” means an assessment of the effect of anything on the environment if the assessment is carried out under—

(a) retained EU law, or

(b) any law of any part of the United Kingdom, other than any law which implemented the EIA Directive;”;

(c) after paragraph 1 insert—

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(a) Subsections (7) and (8) of section 44 were inserted in relation to England and Wales by regulation 2 of the Harbour Works (Environmental Impact Assessment) (Amendment) (England and Wales) Regulations 2009, S.I. 2009/269, and subsequently amended by paragraph 5(3) and (4) of Schedule 1 to the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017, S.I. 2017/1070.

(b) Subsections (6) to (8) of section 44 were inserted in relation to Scotland by section 25(1) and (2) of the Transport and Works (Scotland) Act 2007, asp 8, and were subsequently amended by paragraph 6(2), (3) and (4) of Schedule 1 to the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017, S.I. 2017/1070.

(c) In paragraph 1 of Schedule 3 to the Harbours Act 1964 (c. 40) the definitions of “the environment” and “environmental assessment” were inserted in relation to England and Wales by regulation 3 of, and paragraphs 1, 8(1) and 8(2)(c) of Schedule 1 to, the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017, S.I. 2017/1070.

(d) In paragraph 1 of Schedule 3 to the Harbours Act 1964 (c. 40) the definitions of “the environment” and “environmental assessment” were inserted in relation to Scotland by regulation 3 of, and paragraphs 1, 8(1) and 8(3)(c) of Schedule 1 to, the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017, S.I. 2017/1070.

**“1A.** In this Part of this Schedule, references to provisions of the EIA Directive are to be read as if—

- (a) in Annex III—
  - (i) in point 2(c)(v) the reference to Member States were a reference to the Secretary of State;
  - (ii) in point 2(c)(vi) the reference to Union legislation were a reference to retained EU law;
- (b) in Annex IV—
  - (i) in the text following point 5(g) the words “established at Union or Member State level” were omitted;
  - (ii) in point 8 the following were substituted for the second sentence—

“Relevant information available and obtained through risk assessments pursuant to retained EU law, such as any law of any part of the United Kingdom which implemented Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom, or relevant assessments undertaken under other domestic legislation may be used for this purpose provided that the requirements of any law of any part of the United Kingdom which implemented this Directive are met.”;
- (d) in paragraph 2 for “falling within”, in each place it occurs, substitute “of a type specified in”;
- (e) in paragraph 3(2)(a) for “fall within” substitute “be of a type specified in”;
- (f) in paragraph (4)(2)(b) for “falls within”, in each place it occurs, substitute “is of a type specified in”;
- (g) in paragraph 8(3)(f)(c) after “additional information” insert “of a type”;
- (h) in paragraph 16 (projects likely to have significant effects on the environment in another EEA State)—
  - (i) in subparagraph 1(c) for “another EEA State”, in each place it occurs, substitute “an EEA State”;
  - (ii) for “the other EEA State”, in each place it occurs, substitute “the EEA State”;
- (i) in paragraph 20C(1)(d)(d) for “another EEA State” substitute “an EEA State”;
- (j) in paragraph 20D(1)(b)(e) for “satisfies or will satisfy the requirements of Article 1(2)(g)(i) to (iv) of the EIA Directive (definition of environmental impact assessment)” substitute “comprises, or will comprise, the steps set out in paragraphs (a) to (d) of the definition of “environmental impact assessment” in paragraph 1”.

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- (a) Paragraph 3 of Schedule 3 to the Harbours Act 1964 (c. 40) was substituted by regulation 3 of, and paragraphs 1, 8(1) and 8(5) of Schedule 1 to, the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017, S.I. 2017/1070.
  - (b) Paragraph 4 of Schedule 3 to the Harbours Act 1964 (c. 40) was substituted by regulation 3 of, and paragraphs 1, 8(1) and 8(6) of Schedule 1 to, the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017, S.I. 2017/1070.
  - (c) Paragraph 8 of Schedule 3 to the Harbours Act 1964 (c. 40) was substituted by regulation 3 of, and paragraphs 1, 8(1) and 8(10) of Schedule 1 to, the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017, S.I. 2017/1070.
  - (d) Paragraph 20C of Schedule 3 to the Harbours Act 1964 (c. 40) was inserted by regulation 3 of, and paragraphs 1, 8(1) and 8(20) of Schedule 1 to, the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017, S.I. 2017/1070.
  - (e) Paragraph 20D of Schedule 3 to the Harbours Act 1964 (c. 40) was inserted by regulation 3 of, and paragraphs 1, 8(1) and 8(20) of Schedule 1 to, the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017, S.I. 2017/1070.

### **Amendment of the Highways Act 1980**

**3.**—(1) Part VA of the Highways Act 1980(a) (environmental impact assessments) is amended as follows.

(2) In section 105ZA(1)(b) (interpretation)—

- (a) in paragraph (b) in the definition of “the environment” after “protected under” insert “any law of any part of the United Kingdom which implemented”;
- (b) for the definition of “environmental assessment” substitute—

““environmental assessment” means an assessment of the effect of anything on the environment if the assessment is carried out under—

  - (a) retained EU law, or
  - (b) any other law of any part of the United Kingdom, other than any law which implemented the Directive;”.

(3) After section 105ZA(1) insert—

“(1A) In this Part, references to provisions of the Directive are to be read as if—

- (a) in Annex III—
  - (i) in point 2(c)(v), the reference to Member States were a reference to the Secretary of State;
  - (ii) in point 2(c)(vi), the reference to Union legislation were a reference to retained EU law;
- (b) in Annex IV—
  - (i) in the text following point 5(g), the words “established at Union or Member State level” were omitted;
  - (ii) in point 8 the following were substituted for the second sentence—

“Relevant information available and obtained through risk assessments pursuant to retained EU law, such as any law of any part of the United Kingdom which implemented Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom, or relevant assessments undertaken under other domestic legislation may be used for this purpose provided that the requirements of any law of any part of the United Kingdom which implemented this Directive are met.””.

(4) In section 105A(c) (screening of projects for constructing or improving highways)—

- (a) in subsection (1)(a) for “falls within” substitute “is of a type specified in”;
- (b) in subsection (1)(b) for “falling within” substitute “of a type specified in”;
- (c) in subsection (3)(a) for “to be provided on the project under” substitute “described in”;
- (d) in subsection (3)(b) before “in Annex III” insert “set out”.

(5) In section 105AA(d) (exemptions)—

- (a) in subsection (1) for “does not fall within” substitute “is not of a type specified in”;
- (b) in subsection (6)(d) for “another EEA state” substitute “an EEA state”.

(6) In section 105AB(e) (publication of screening decisions: projects not to be subject to an environmental impact assessment)—

- (a) in subsection (1)(b) for “falling within” substitute “of a type specified in”;

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(a) Part VA of the Highways Act 1980 (c. 66) was originally inserted by S.I. 1988/1241, but substituted by S.I. 1999/369. It was substantially substituted further by S.I. 2017/1070.

(b) Section 105ZA was inserted by S.I. 2017/1070, Schedule 2, paragraphs 1 and 2.

(c) Section 105A was substituted by S.I. 2017/1070, Schedule 2, paragraphs 1 and 3.

(d) Section 105AA was inserted by S.I. 2017/1070, Schedule 2, paragraphs 1 and 3.

(e) Section 105AB was inserted by S.I. 2017/1070, Schedule 2, paragraphs 1 and 3.

(b) in subsection (3)(a) before “in Annex III” insert “set out”.

(7) In section 105B(a) (publication of screening decision and environmental statement for projects subject to an environmental impact assessment)—

(a) in subsection (1)(a) for “falls within” substitute “is of a type specified in”;

(b) in subsection (1)(b) for “falling within” substitute “of a type specified in”;

(c) in subsection (4)(f) before “specified in Annex IV” insert “of a type”;

(d) in subsection (6)(d)—

(i) for “falling with” substitute “of a type specified in”;

(ii) before “in Annex III” insert “set out”.

(8) In section 105C(b) (other EEA States)—

(a) in the heading omit “Other”;

(b) in subsection (1)(a) for “another EEA state” substitute “an EEA state”;

(c) in subsection (6) omit “, in accordance with Article 7(4) of the Directive”;

(d) in subsection (6A) for “(within the meaning of the Directive)” substitute “set up for that purpose”.

Signed by authority of the Secretary of State for Transport

Parliamentary Under Secretary of State  
Department for Transport

Date

### **EXPLANATORY NOTE**

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

These Regulations are made in exercise of the powers conferred by section 8(1), and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) and (g)) arising from the withdrawal of the United Kingdom from the European Union. The amendments are made to legislation governing environmental impact assessment for highway schemes of the Secretary of State, the Welsh Ministers and Highways England via regulation 3, and for harbour schemes via regulation 2.

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 these Regulations on the UK legislation website [www.legislation.gov.uk](http://www.legislation.gov.uk).

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(a) Section 105B was substituted by S.I. 2017/1070, Schedule 2, paragraphs 1 and 4.

(b) Section 105C was substituted by S.I. 1999/369 and amended by S.I. 2007/1062, paragraph 4, and by the Infrastructure Act 2015 (c. 7) Schedule 1, Part 1, paragraphs 1, 32(1) and (6), and by S.I. 2017/1070, Schedule 2, paragraphs 1 and 5.