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## STATUTORY INSTRUMENTS

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### 2017 No. 583

## The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017

### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017 and come into force on 16th May 2017.

(2) In these Regulations, “the 2003 Regulations” means the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003(1).

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#### Commencement Information

**II** Reg. 1 in force at 16.5.2017, see [reg. 1\(1\)](#)

### Amendments to the 2003 Regulations

2. The 2003 Regulations are amended in accordance with regulations 3 to 18.

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#### Commencement Information

**I2** Reg. 2 in force at 16.5.2017, see [reg. 1\(1\)](#)

### Amendments to regulation 2

3.—(1) Regulation 2 (interpretation) is renumbered as paragraph (1) of that regulation.

(2) In paragraph (1) (as renumbered)—

(a) at the appropriate places insert—

““environmental impact assessment” means—

- (a) the preparation of an environmental statement under regulation 5;
- (b) the carrying out of consultations under regulation 7;
- (c) the consideration of the environmental statement and other information under regulation 7A(1);
- (d) reaching a conclusion about the likely significant environmental effects of the project under regulation 7A(2); and
- (e) the consideration of that conclusion in the decision of whether or not to grant an authorisation for, or for the variation of an authorisation relating to, a relevant project under regulation 8(2);”;

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(1) [S.I. 2003/164](#), amended by [S.I. 2006/3124](#), [2010/1159](#), [2011/1043](#), [2013/755 \(W.90\)](#); there are other amending instruments but none is relevant.

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““environmental statement” has the meaning given in regulation 5;”;

““EU 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 the EIA Directive); or
- (b) under the law of any part of the United Kingdom implementing an EU obligation other than an obligation arising under the EIA Directive, of the effect of anything on the environment;”;

““the Habitats Directive” means Council [Directive 92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora(2) as last amended by Council [Directive 2013/17/EU](#)(3);”;

““UK environmental assessment” means an assessment carried out in accordance with an obligation under the law of any part of the United Kingdom of the effect of anything on the environment;”;

““the Wild Birds Directive” means [Directive 2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds(4), as amended by Council [Directive 2013/17/EU](#);”;

- (b) in the definition of “appropriate Minister”, for paragraph (a) substitute—

“(a) in relation to a project in Wales, the Welsh Ministers;”;

- (c) in the definition of “consultation bodies”(5)—

(i) in paragraph (b) for “the Countryside Agency, English Nature” substitute “Natural England(6);”;

(ii) in paragraph (c) for “National Assembly for Wales in its” substitute “Welsh Ministers for the”;

(iii) in paragraph (d) after “responsibilities” insert “or local or regional competences”;

- (d) for the definition of the “EIA Directive”(7) substitute—

““the EIA Directive” means [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(8), as amended by [Directive 2014/52/EU](#) of the European Parliament and of the Council(9);”.

- (3) After paragraph (1) (as renumbered) insert—

“(2) In these Regulations, any reference to the likely significant effects, or the likely significant adverse effects, of a relevant project, or a project which may be a relevant project, on the environment includes a reference to the effects of that project on the environment once any construction, installation or other intervention is completed and in operation.

(3) In paragraph (2) each reference to the environment includes a reference to the matters referred to in regulation 7A(2)(a) to (e).”.

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(2) OJ No L 206, 22.7.1992, p. 7.

(3) OJ No L 158, 10.6.2013, p. 193.

(4) OJ No L 20, 26.1.2010, p. 7.

(5) The definition of “consultation bodies” was amended by [S.I. 2006/3124](#), [2013/755 \(W. 90\)](#).

(6) Natural England was established by section 1(1) of the Natural Environment and Rural Communities Act 2006 (c. 16).

(7) The definition of “EIA Directive” was amended by [S.I. 2006/3124](#).

(8) OJ No L 26, 28.1.2012, p. 1.

(9) OJ No L 124, 25.4.2014, p. 1.

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**Commencement Information**

**I3** Reg. 3 in force at 16.5.2017, see [reg. 1\(1\)](#)

**Amendment to regulation 3**

4. For paragraph (3) of regulation 3 (requirement for an environmental impact assessment) substitute—

“(3) A project is not a relevant project if it—

- (a) involves development within the meaning of section 55 of the Town and Country Planning Act 1990<sup>(10)</sup>;
- (b) involves improvement works within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999<sup>(11)</sup>; or
- (c) is exempt in accordance with a direction under regulation 3A(1) or (2) or 3B(1).”.

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**Commencement Information**

**I4** Reg. 4 in force at 16.5.2017, see [reg. 1\(1\)](#)

**New regulations 3A to 3C**

5. After regulation 3 insert—

**“Defence and civil emergencies**

**3A.—**(1) The Secretary of State may direct that a relevant project, or a project which may be a relevant project, is exempt where—

- (a) the project has national defence as its sole purpose; and
- (b) the Secretary of State considers that an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of that purpose.

(2) The appropriate Minister may direct that a relevant project, or a project which may be a relevant project, is exempt where—

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

(3) Following a direction under paragraph (1) or (2), the person who gave the direction must send notice in writing of the direction to the relevant appropriate authority.

(4) Following a direction under paragraph (1) in respect of a project in Wales, the Secretary of State must send notice in writing of the direction to the Welsh Ministers.

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<sup>(10)</sup> c. 8. Section 55 was amended by sections 13 and 14 of, and paragraph 9 of Schedule 6 to, the Planning and Compensation Act 1991 (c. 34), S.I. 1999/293 and section 49(1) and paragraph 1 of Schedule 9 to the Planning and Compulsory Purchase Act 2004 (c. 5).

<sup>(11)</sup> S.I. 1999/783, to which there are amendments not relevant to these Regulations.

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### Exceptional circumstances

**3B.**—(1) The appropriate Minister may direct that a relevant project, or a project which may be a relevant project, is exempt where the circumstances are exceptional and the appropriate Minister considers that—

- (a) an environmental impact assessment would have an adverse effect on the fulfilment of the project’s purpose; and
- (b) the objectives of the EIA Directive will be met even though such an assessment is not carried out.

(2) Where the appropriate Minister gives a direction that a relevant project, or a project which may be a relevant project, is exempt under paragraph (1), the appropriate Minister must—

- (a) consider whether another form of assessment of the likely significant effects on the environment of the project is appropriate; and
- (b) make available to the public concerned—
  - (i) the direction including an explanation of the reasons for it; and
  - (ii) the information obtained under any other assessment referred to in sub-paragraph (a).

### Coordination

**3C.** Where, in respect of a relevant project, there is a requirement to carry out an environmental impact assessment and a requirement to carry out an assessment under regulation 21 or 61 of the Conservation of Habitats and Species Regulations 2010<sup>(12)</sup>, the appropriate Minister must, where appropriate, ensure that the environmental impact assessment and the other assessment, or assessments, are coordinated.”.

#### Commencement Information

**I5** Reg. 5 in force at 16.5.2017, see [reg. 1\(1\)](#)

### Amendments to regulation 4

**6.**—(1) Regulation 4<sup>(13)</sup> (determination whether a project is a relevant project) is amended as follows.

(2) For paragraph (2) substitute—

“(2) The request shall contain—

- (a) a description of the project, including in particular a description—
  - (i) of the physical characteristics of the whole project and, where relevant, of demolition works; and
  - (ii) of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (b) a description of the aspects of the environment likely to be significantly affected by the project;

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<sup>(12)</sup> S.I. 2010/490, to which there are amendments not relevant to these Regulations.

<sup>(13)</sup> Regulation 4 was amended by S.I. 2013/755 (W. 90).

- (c) a description of any likely significant effects, to the extent of the information available on such effects, of the project 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; and
  - (d) if the applicant elects to provide it, a description of any measure proposed to be taken to avoid or prevent any likely significant adverse effects on the environment.
- (2A) When compiling the information referred to in paragraph (2), the applicant shall take into account—
- (a) the selection criteria set out in Schedule 1; and
  - (b) the results of any relevant EU environmental assessment which are reasonably available to the applicant.”.
- (3) For paragraph (4) substitute—
- “(4) In determining whether a project is a relevant project the appropriate authority shall take into account—
- (a) the selection criteria set out in Schedule 1; and
  - (b) the results of any relevant EU environmental assessment which are reasonably available to the applicant.”.
- (4) For paragraph (5)(b) substitute—
- “(b) where agreed in writing with the applicant, any other period of not more than 90 days beginning with—
- (i) the date on which the request is received; or
  - (ii) where the appropriate authority has served a notice under paragraph (3), the date on which the further information is given to the appropriate authority.”.
- (5) After paragraph (5) insert—
- “(5A) The appropriate authority—
- (a) may extend the period referred to in paragraph (5) in exceptional cases (such as where the nature, complexity, location or size of the works demands a longer period for determination); and
  - (b) where it does so, shall inform the applicant in writing of the reasons for the extension and of the date on which its determination under paragraph (1) is expected.”.
- (6) For paragraph (9) substitute—
- “(9) A determination under this regulation shall be accompanied by a written statement—
- (a) of the reasons for the determination with reference to such of the selection criteria set out in Schedule 1 as are relevant; and
  - (b) if the determination under paragraph (1) is that the project is not a relevant project, describing any measure disclosed under paragraph (2)(d).”.

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**Commencement Information**

**16** Reg. 6 in force at 16.5.2017, see [reg. 1\(1\)](#)

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## Amendments to regulation 5

7. In regulation 5 (environmental statement to be provided in relation to an application for authorisation)—

- (a) for “An environmental statement” substitute “A written statement (an “environmental statement”)”;
- (b) omit “made after 31st March 2003”.

### Commencement Information

I7 Reg. 7 in force at 16.5.2017, see [reg. 1\(1\)](#)

## Amendments to regulation 6

8.—(1) Regulation 6 (environmental statement, and opinions of the appropriate authority on the contents of an environmental statement) is amended as follows.

(2) For paragraph (1) substitute—

“(1) The environmental statement shall be prepared by a competent person and shall—

- (a) include—
  - (i) the information specified in paragraph (1A); and
  - (ii) any additional information which, taking into account current knowledge and methods of assessment, may reasonably be required by the appropriate authority to reach a conclusion about the likely significant environmental effects of the relevant project;
- (b) be based on any opinion given under paragraph (2) in respect of the relevant project;
- (c) take into account the results of any relevant UK environmental assessment which are reasonably available to the applicant; and
- (d) state the relevant expertise and qualifications of the competent person.

(1A) The specified information is—

- (a) a description of the relevant project comprising information on its site, design, size and other relevant features;
- (b) a description of the likely significant effects of the relevant project on the environment;
- (c) a description of the features of the relevant project or measures to avoid, prevent, reduce or offset any likely significant adverse effects of the relevant project on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the relevant project and its specific characteristics, and an indication of the main reasons for the applicant’s choice, taking into account the environmental effects;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- (f) any additional information referred to in Schedule 2 relevant to the specific characteristics of the relevant project and to the environmental features likely to be affected.”.

(3) In paragraph (2) after “opinion on the” insert “scope and level of detail of”.

(4) After paragraph (2) insert—

“(2A) The request for an opinion under paragraph (2) shall be in writing and include—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the relevant project, including its location and technical capacity;
- (c) an explanation of the likely significant effects of the relevant project on the environment; and
- (d) any other information the person wishes to provide.”.

**Commencement Information**

**18** Reg. 8 in force at 16.5.2017, see [reg. 1\(1\)](#)

**Amendments to regulation 7**

**9.**—(1) Regulation 7 (publicity for environmental statement and related information) is amended as follows.

- (2) In paragraph (1)(b) for “twenty-eight” substitute “thirty”.
- (3) In paragraph (1)(e) for “twenty-eight” substitute “thirty”.
- (4) In paragraph (3)(a) for “twenty-eight” substitute “thirty”.
- (5) In paragraph (4), in the words after sub-paragraph (c) for “twenty-eight” substitute “thirty”.

**Commencement Information**

**19** Reg. 9 in force at 16.5.2017, see [reg. 1\(1\)](#)

**New regulation 7A**

**10.** After regulation 7 insert—

**“Conclusion about environmental impact**

**7A.**—(1) The appropriate authority must consider (ensuring that in doing so it has or has access to any expertise it considers necessary)—

- (a) the environmental statement;
- (b) any further information given under regulation 6(3) or (7);
- (c) any representations made under regulation 7(1)(e) or (4); and
- (d) any features of the relevant project or measures to avoid, prevent, reduce or offset any likely significant adverse effects of the relevant project on the environment.

(2) Following that consideration, the appropriate authority must reach a conclusion about the likely significant effects (including the expected effects deriving from the vulnerability of the relevant project to risks of major accidents or disasters) of the relevant project on—

- (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;

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- (d) material assets, cultural heritage and the landscape;
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).”.

#### Commencement Information

**I10** Reg. 10 in force at 16.5.2017, see [reg. 1\(1\)](#)

### Amendment to regulation 8

**11.**—(1) Regulation 8 (determination of application and notice of determination) is amended as follows.

(2) In paragraph (2)—

(a) for the words from “the environmental statement” to the end substitute—

“(ensuring that in doing so it has, or has access to, any expertise it considers necessary)—

- (a) the conclusion reached under regulation 7A(2);
- (b) whether it is appropriate to require the applicant to monitor the significant adverse effects of the relevant project on the environment, and if so—
  - (i) whether the authorisation should contain provisions to ensure that the applicant is under such a duty; and
  - (ii) whether the authorisation should contain provisions to require remedial action to be taken in circumstances described in the authorisation; and
- (c) whether, having regard to the likely significant environmental effects of the relevant project, the authorisation should contain provisions for any other purpose.”.

(3) After paragraph 2 insert—

“(2A) The appropriate authority may grant the authorisation only if satisfied that the conclusion reached under regulation 7A(2) in respect of the relevant project and the reasons for it address the likely significant environmental effects of the relevant project.”.

(4) For paragraph (3)(14) substitute—

“(3) Within a period of twenty-eight days beginning with the date of the determination of the application the appropriate authority shall—

- (a) give notice in writing to the applicant and consultation bodies; and
- (b) publish a notice on its website and in the newspaper or newspapers in which the notice was published under regulation 7(1),

stating that the appropriate authority has granted or refused the application and stating a place and times where any person may inspect the information referred to in paragraph (3A).

(3A) The information is—

- (a) any relevant authorisation or variation;
- (b) a document containing the determination and the reasons for it, including a summary of—
  - (i) the environmental statement;
  - (ii) the results of any representations the appropriate authority receives under regulation 7(1)(e) or (4); and



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- (iii) how the information referred to in sub-paragraphs (i) and (ii) has been taken into account;
- (c) a description, where necessary, of any features of the relevant project or measures to avoid, reduce or offset any likely significant adverse effect of the relevant project on the environment; and
- (d) information about any right to challenge the determination and the procedures for doing so.”.

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**Commencement Information**

**I11** Reg. 11 in force at 16.5.2017, see [reg. 1\(1\)](#)

**Amendment to regulation 13**

**12.** In regulation 13 (called-in applications in relation to abstraction or impounding licences) after “6(7)” insert “, 7A”.

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**Commencement Information**

**I12** Reg. 12 in force at 16.5.2017, see [reg. 1\(1\)](#)

**Amendment to regulation 15**

**13.** In paragraph (4) of regulation 15 (modifications where regulation 14 applies) for “(8)(15)” substitute “(7)(16)”.

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**Commencement Information**

**I13** Reg. 13 in force at 16.5.2017, see [reg. 1\(1\)](#)

**Amendment to heading to Part 5**

**14.** In the heading to Part 5 after “Registers” insert “and review”.

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**Commencement Information**

**I14** Reg. 14 in force at 16.5.2017, see [reg. 1\(1\)](#)

**Amendments to regulation 16**

**15.—(1)** Regulation 16 (register of environmental statements and further information) is amended as follows.

- (2) Regulation 16 is renumbered as paragraph (1) of that regulation.
- (3) After paragraph (1) (as renumbered) insert—

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(15) Section 52(8) of the Water Resources Act 1991 (c. 57) was repealed by paragraph 1 of Schedule 9(1) to the Water Act 2003 (c. 37).

(16) Section 52(7) of the Water Resources Act 1991 was substituted by section 22(6) of the Water Act 2003.

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“(2) In respect of a determination under regulation 4, the information kept in the register shall include—

- (a) the main reasons for the determination with reference to the relevant criteria listed in Schedule 1; and
- (b) in the case of a determination that an environmental impact assessment is not required, any features of the relevant project or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.”.

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**Commencement Information**

**I15** Reg. 15 in force at 16.5.2017, see [reg. 1\(1\)](#)

**New regulation 17**

**16.** After regulation 16 insert—

**“Review**

**17.—**(1) In relation to England, the Secretary of State must, from time to time—

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

(2) The first report must be published before 16th May 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<sup>(17)</sup> requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the EIA Directive is 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 regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision 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 involves less onerous regulatory provision.

(6) In this regulation, “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).”.

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**Commencement Information**

**I16** Reg. 16 in force at 16.5.2017, see [reg. 1\(1\)](#)

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<sup>(17)</sup> 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c.12).

### Amendment to Schedule 1

17. For Schedule 1(18) (selection criteria for relevant projects) substitute the Schedule at Schedule 1.

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**Commencement Information**

I17 Reg. 17 in force at 16.5.2017, see [reg. 1\(1\)](#)

### Amendment to Schedule 2

18. For Schedule 2 (information about proposed project) substitute the Schedule at Schedule 2.

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**Commencement Information**

I18 Reg. 18 in force at 16.5.2017, see [reg. 1\(1\)](#)

### Transitional provisions

19. These Regulations do not apply in respect of—

- (a) a determination of whether a project is a relevant project under regulation 4 of the 2003 Regulations, where the applicant concerned requested the determination under regulation 4(1) of the 2003 Regulations before 16th May 2017;
- (b) a proposed relevant project, where the applicant concerned requested an opinion about the scope and level of detail of information to be included in an environmental statement under regulation 6(2) of the 2003 Regulations in respect of the relevant project before 16th May 2017; and
- (c) a proposed relevant project, where the applicant concerned provided an environmental statement under regulation 5 of the 2003 Regulations in respect of the relevant project before 16th May 2017.

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**Commencement Information**

I19 Reg. 19 in force at 16.5.2017, see [reg. 1\(1\)](#)

24th April 2017

*Thérèse Coffey*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 28 Sch. 1 Pt. 1](#)