

EXPLANATORY MEMORANDUM TO
THE WATER RESOURCES (ENVIRONMENTAL IMPACT ASSESSMENT)
(ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2017

2017 No. 583

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Directive 2011/92/EU ensures that projects likely to have significant effects on the environment are made subject to an environmental assessment, prior to their approval or authorisation. This was implemented by the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 (SI 2003/164) (as amended) (the “Regulations”) in respect of water management projects for agriculture (including irrigation projects) in England and Wales. The purpose of this instrument is to amend those Regulations to implement the changes made by the EU Directive 2014/52/EU (the “2014 Directive”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Due to the decision to call a general election and the consequent dissolution of Parliament on 3 May 2017 there are not 21 days available between the laying date and the date on which the Regulations need to come into force in order to meet the deadline of 16 May 2017 set in the EIA Directive. A failure to meet this deadline could result in infraction proceedings being taken and the UK being fined.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument is made in order to transpose the amendments to Directive 2011/92 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* (usually known as the Environmental Impact Assessment, or “EIA Directive”). This instrument is one of a group of instruments which will implement changes to the EIA Directive across different consenting regimes. A transposition note setting out the detail of the transposition is submitted with this memorandum.
- 4.2 Insofar as was possible, the Directive has been transposed by copy-out with additional text inserted where necessary to give clarity. The European Scrutiny Committees were provided with an explanatory memorandum on the Commission's proposals in December 2012 and were updated following a vote in the European Parliament in October 2013 and following the agreement of a compromise text in February 2014.

The House of Commons committee released the proposal from scrutiny on 19 March 2014 and the House of Lords scrutiny committee did so on 3 April 2014.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
- 7.2 Environmental assessment is a procedure that ensures that the environmental implications of decisions are taken into account before the decisions are made. The EIA Directive ensures that projects likely to have significant effects on the environment are made subject to an environmental assessment, prior to their approval or authorisation. This process is part of European law and has been implemented into national legislation by the Regulations. The EIA Directive was amended by the 2014 Directive and it is these amendments which need to be incorporated into national legislation no later than 16 May 2017.
- 7.3 The broad intention of the 2014 amendments is deregulatory – to simplify and clarify the requirements of the EIA Directive, by focusing on environmental factors that are significantly impacted, rather than on any potential impact. It also improves the level of environmental protection, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term.
- 7.4 There are no alternatives to legislation to implement the Directive. However, in line with the Government’s Better Regulation agenda the Government has sought to minimise additional regulatory burden by copying out the text of the Directive except where an alternative approach was considered beneficial.
- 7.5 There has been liaison with other government departments to ensure that as far as possible a consistent approach has been followed.
- 7.6 This instrument will implement the changes to the EIA Directive in relation to water management projects for agriculture in England and Wales. These Regulations require an EIA to be carried out for water management projects for agriculture (including irrigation projects) which would be likely to have significant effects on the environment due to their nature, size or location. These Regulations do not apply if the project is subject to any other EIA legislation. Projects involving the abstraction of

water are only included if the amounts abstracted exceed 20 cubic meters in any 24 hours.

- 7.7 The 2014 Directive introduces a definition of the environmental impact assessment process. In our view the definition reflects existing practice. In order to maintain consistency with the current approach, this definition is adopted in the new regulations.
- 7.8 Where a project is subject to an assessment under the EIA Directive and also under the Habitats and/or Wild Birds Directives, the 2014 Directive requires that either a 'coordinated procedure' or a 'joint procedure' should be used. We propose to include provision for a co-ordinated assessment. Co-ordinated assessments would apply where the Environment Agency or Natural Resources Wales is the competent authority for both environmental impact assessment and assessments under the Habitats and/or Wild Birds Directives.
- 7.9 The 2014 Directive has introduced a new detailed list of the information that the applicant provides to the competent authority to help it screen the application. The criteria have been amended, largely to provide more clarity about the issues to be considered. These changes have been copied out in the regulations.
- 7.10 The 2014 Directive requires that applicants provide results of other assessments relating to the project's effects on the environment at the screening stage. Currently these are provided later in the EIA process. The applicant can also provide details of any features of the project designed to avoid or prevent significant adverse effects on the environment. It is hoped these changes will help focus environmental impact assessment on those cases where there really is a likelihood of significant effects.
- 7.11 In addition to the above, the 2014 Directive has also introduced a requirement that the competent authorities should publish their screening decisions and explain the main reasons why an EIA is needed or not.
- 7.12 The competent authority will be required to make its screening determination on the basis of the information provided by the developer under Article 4(4) and taking into account the results of 'preliminary verifications' or assessments of the effects on the environment carried out pursuant to other EU legislation. When considering the information provided by the developer, the competent authority, as now, must take into account the criteria listed in Annex III. The criteria in Annex III have been amended, largely to provide more clarity about the issues to be considered.
- 7.13 The 2014 Directive has introduced a requirement that the competent authority must make its screening decision as soon as possible and within 90 days from the date the developer providing all the information required. This period can be extended in exceptional circumstances with the authority explaining the reason for the extension. The Regulations provide a three week period for screening opinion, unless extended by agreement with the applicant. If the competent authority wished to extend this deadline for making a determination they would inform the applicant in writing giving the reasons for the extension and the date when its determination will be made, which we propose to retain. However we proposed to copy out the requirements to conclude a decision within 90 days.
- 7.14 The 2014 Directive has introduced a requirement that information is made available electronically, in addition to more traditional methods. However, following consideration of the possible implications, as part of our Equalities Impact Assessment, we have kept the requirement to use non-electronic methods for notices.

- 7.15 The 2014 Directive has introduced a requirement for a new minimum time for public consultations of at least 30 days. This is an increase from 28 days. This amendment will allow those with an interest slightly more time to consider the contents of the report and we have copied out this requirement.
- 7.16 This 2014 Directive sets out requirements for information to be included in a decision. The decision includes: the reasoned conclusion; environmental conditions; and a description of any parts or actions in the project to reduce the risk of significant adverse effects on the environment. Where the decision is to refuse consent, the main reasons for the refusal are given. A notice of a decision must also include any planned monitoring measures. We have copied out these requirements. Our view is that it is likely in practice that all of the issues listed in the amended Annex should already be included in an environmental statement and monitoring requirements will already be met by the abstraction licensing requirements of the Water Resources Act 1991.
- 7.17 The 2014 Directive has introduced a requirement that the applicant must ensure that the environmental statement is prepared by competent experts. In addition, the competent authority must also have sufficient experts to assess the environmental statement. Most decision makers have people with sufficient expertise within their teams or can readily obtain access to people with expertise. Applicants will also have access to the comments of the statutory consultation bodies, including Natural England and the Environment Agency to assist them. We therefore do not expect this requirement to differ to current established practice.

8. Consultation outcome

- 8.1 A consultation was published on 14 December 2016. The consultation was open for 7 weeks and closed on 31 January 2017 and is available on gov.uk. The majority of respondents were supportive of the changes made to meet the requirements of the Directive and no substantive changes were made as a result of the consultation.

9. Guidance

- 9.1 Updated guidance incorporating the changes to the Regulations will be made available.

10. Impact

- 10.1 The 2014 Directive's changes aim to reduce the burden by cutting the number for cases that go through the EIA process; the benefits will mainly be seen in the bigger developments that usually need an environmental impact assessment report.
- 10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Secretary of State must review the Regulations after five years and publish a report setting out the extent to which the Regulations have met their intended objectives and whether those objectives are still appropriate for legislation, and if so the extent to which they could be achieved with less regulation. Subsequent reports must be published at intervals not exceeding five years.

13. Contact

- 13.1 Adrian Brookes at the Department for Environment, Food and Rural Affairs
Telephone: 020 8026 2653 or email: adrian.brookes@defra.gsi.gov.uk can answer any queries regarding the instrument.