

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT
ASSESSMENT) REGULATIONS 2017

2017 No. 571

AND

THE INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT
ASSESSMENT) REGULATIONS 2017

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1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Communities and Local Government and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“the TCP Regulations”) transpose changes made to EU Directive 2011/92/EU¹ (“the EIA Directive”) by EU Directive 2014/52/EU². They relate to certain development given planning permission through the town and country planning system. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the IP Regulations”) transpose the same changes for development given planning consent through the nationally significant infrastructure planning regime.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The TCP Regulations are made using powers conferred under section 2(2) of the European Communities Act 1972 and sections 71A(1) and (2) and 298A(2) of the Town and Country Planning Act 1990. The IP Regulations are made using powers conferred under section 2(2) of the European Communities Act 1972.

Other matters of interest to the House of Commons

- 3.2 As these instruments are subject to the negative procedure and have 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 The EIA Directive applies to public and private developments which are likely to have significant effects on the environment. These Regulations apply only to the

¹ OJ No. L 26, 28.1.2012, p.1-21.

² OJ No. L 124, 25.4.2014, p. 1.

environmental impact assessment (“EIA”) of certain developments which are given consent for development under the town and country planning laws of England (the TCP Regulations) and through the nationally significant infrastructure planning regime (the IP Regulations).

- 4.2 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. Insofar as was possible, the Directive has been transposed by copy-out with additional text inserted where necessary to give clarity.

5. Extent and Territorial Application

- 5.1 The nationally significant infrastructure planning regime extends to Wales and for limited purposes to Scotland. To the extent that these proposals address implementation of the Directive in relation to this regime, the IP Regulations extend to Wales and Scotland.
- 5.2 The TCP Regulations apply to England only, with the exception of regulations 60 to 62 (projects serving national defence purposes) which apply to Scotland, Wales and Northern Ireland respectively.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The objective of the Directive is to provide a high level of protection of the environment and to help integrate environmental considerations into the preparation of proposals for development to reduce their impact on the environment. The EIA Directive prohibits the granting of consent for development which is likely to have a significant effect on the environment unless an EIA has been carried out.
- 7.2 EIA is a process. It involves- (i) the preparation of an environmental statement by or on behalf of the developer; (ii) public consultation on the application for planning permission or development consent, the environmental statement and any other relevant information; (iii) examination by the relevant authority of the information presented in the environmental statement and other relevant information including that received through the consultation; (iv) the authority coming to a reasoned conclusion on the significant effects of the proposed development on the environment; and (v) the authority integrating the reasoned conclusion into the decision on whether to grant consent for the development.
- 7.3 The amendments to the EIA Directive aim to: simplify the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation; to lighten unnecessary administrative burdens; and to improve the level of environmental protection, with a view to making business decisions on public and private investments more sound, predictable and sustainable in the longer term.

- 7.4 The most significant changes introduced by the amending Directive³ are -
- The introduction of joint and/or co-ordinated procedures for projects which are subject to assessment under Directive 92/43/EEC⁴ (“the Habitats Directive”) or under Directive 2009/147/EC⁵ (“the Wild Birds Directive”) and the EIA Directive. Provision has been made in both sets of Regulations for co-ordinated procedures as this provides flexibility for developers and enables them to phase the various assessments where considered appropriate.
 - To the list of environmental factors to be considered as part of the EIA process. The term ‘human being’ has been replaced by the term ‘population and human health’; the term ‘fauna and flora’ has been replaced by ‘biodiversity’ and there is a new requirement to consider, where relevant, the effects on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters.
 - A new requirement to use competent experts. The developer must ensure that their environmental statement is prepared by competent experts, while the consenting authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement.
 - A new article elaborating on information to be given in decision notices and during the decision-making procedures.
 - The decision to grant development consent should also now include, where appropriate, monitoring measures.
- 7.5 There are around 500 - 600 environmental statements submitted each year in England through the planning system, representing about 0.1% of all planning applications. There are between 10 - 20 applications for a development consent order under the nationally significant infrastructure planning regime subject to EIA each year.
- 7.6 There are no alternatives to legislation to implement the Directive. However, in line with the Government’s Better Regulation agenda we have sought to minimise any additional regulatory burden by copying out the text of the Directive except where an alternative approach was considered beneficial.

Consolidation

- 7.7 The TCP Regulations revoke and replace the Town and Country Planning (Environmental Impact Assessment) Regulations 2011⁶. The IP Regulations revoke and replace the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009⁷.

8. Consultation outcome

- 8.1 The Government undertook a seven week consultation covering the TCP and IP Regulations. This ran from 14 December 2016 to 1 February 2017 (<https://www.gov.uk/government/consultations/amending-environmental-impact-assessment-regulations>).

³ Directive 2014/52/EU.

⁴ OJ. No. L 206, 22.7.1992, p.7.

⁵ OJ No. L 20, 26.1.2010, p.7.

⁶ S.I. 2011/1824.

⁷ S.I. 2009/2263.

8.2 There were 72 responses including from local planning authorities, government agencies, representative bodies, developers, consultants and the third sector. The vast majority of respondents agreed with all but one of the Government's proposals. Around half of those that commented expressed concern about the proposal to require the consenting authority to be satisfied as to the competency of experts. As some respondents pointed out, the Directive places this duty upon the developer, not on the consenting authority. There were concerns that the proposals could increase the risk of legal challenge and therefore cause delay. The Government accepts the possibility of unintended consequences resulting from the draft provisions and has responded by reverting to a copy out of the Directive's text.

9. Guidance

9.1 The Government is updating its guidance on the EIA Directive through the planning system as part of the Planning Practice Guidance (<https://www.gov.uk/guidance/environmental-impact-assessment>).

9.2 Guidance on the implementation of the Directive through the nationally significant infrastructure planning regime is being updated by the Planning Inspectorate and will be available on their website (<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>).

10. Impact

10.1 There is no impact on charities or voluntary bodies. The impact on business is anticipated to be positive. There may be small overall savings through fewer, and in some cases shorter, environmental statements.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for these instruments.

11. Regulating small business

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

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 Small businesses will not be exempt from EIA where their projects are likely to have significant environmental effects, but they will have more opportunity to demonstrate to the local planning authority how proposed mitigation measures will avoid otherwise significant effects - thereby avoiding the need to undertake an EIA.

12. Monitoring & review

12.1 A review provision is included in each of the sets of Regulations (regulation 71 of the TCP Regulations and regulation 2 of the IP Regulations). Both provisions require that a report setting out the conclusions of the review be published before 16 May 2022. The review will assess, by considering relevant data, whether the objectives of the Regulations remain appropriate, and whether they could be achieved in another way which involves a less onerous regulatory provision.

13. Contact

- 13.1 Tom Simpson at the Department for Communities and Local Government can answer any queries regarding the instrument, Telephone: 0303 444 1704, Email: tom.simpson@communities.gsi.gov.uk.