

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING AND INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (AMENDMENT) REGULATIONS 2018

2018 No. 695

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, 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 (“JCSI”).

2. Purpose of the instrument

- 2.1 The Town and Country Planning and Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2018 (“the EIA Amendment Regulations”): correct minor and technical drafting errors in a number of instruments set out in paragraph 4.2 below; amend references in the Town and Country Planning (Brownfield Land Register) Regulations 2017 (S.I. 2017/403) to refer to provisions of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571); and provide for the assessment of environmental effects of certain special consenting processes under the Town and Country Planning Act 1990 as amended (modification orders, discontinuance orders, and purchase notices) which engage EU Directive 2011/92/EU¹ as amended (“EIA Directive”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

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

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative 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 The EIA Directive requires that development consent for public or private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of these projects has been carried out. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571) and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572) transposed

¹ OJ No L26, 28.1.2012, p.1

changes made to the EIA Directive by EU Directive 2014/52/EU². These two sets of regulations apply to the environmental impact assessment (“EIA”) of certain public or private projects which are given development consent through the town and country planning system and through the Nationally Significant Infrastructure Planning (“NSIP”) regime.

4.2 In summary, the EIA Amendment Regulations will -

- amend the Town and Country Planning (Brownfield Land Register) Regulations 2017 (S.I. 2017/403) to refer to the provisions of S.I. 2017/571;
- amend the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595) and the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) to correct minor and technical errors with the amendments made by S.I. 2017/571;
- amend S.I.s 2017/571 and 2017/572 to correct minor and technical errors identified in those instruments including provision to amend an incorrectly-stated threshold in paragraph 10(a) of Schedule 2 to S.I. 2017/571 (the amendment is from 0.5 hectare to 5 hectares) and to insert text omitted at the end of paragraph 10(k) of Schedule 2 to S.I. 2017/572 as the result of a minor and technical drafting error.
- amend prescribed certificates 2 to 5 in Schedule 5 to S.I. 2017/572 following a JCSI report³ of November 2017 to stipulate that they are to be published on the Secretary of State’s website, maintained on his behalf by the Planning Inspectorate.
- provide in S.I. 2017/571 for the assessment of environmental effects for modification orders, discontinuance orders, and purchase notices under the Town and Country Planning Act 1990 as amended which engage the EIA Directive in circumstances where either the local planning authority or the Secretary of State proposes to grant or modify a planning permission. The EIA Amendment Regulations provide for the screening of these special consenting processes and, where likely significant environmental effects are identified, for an EIA process to be followed. Specifically, the EIA Amendment Regulations insert new Regulations 33A and 33B into SI 2017/571 applying a modified version of the EIA process which currently applies to Local Development Orders for modification orders, discontinuance orders, and purchase notices.

5. Extent and Territorial Application

- 5.1 The EIA Amendment Regulations have the same territorial application as the instruments which they amend.
- 5.2 S.I. 2017/571 applies to England only, with the exception of regulations 60, 61 and 62 which apply to Scotland, Wales and Northern Ireland respectively. The NSIP regime set out in the Planning Act 2008 extends to England and Wales and for limited purposes to Scotland. To the extent that S.I. 2017/572 addresses implementation of the EIA Directive in relation to the NSIP regime, S.I. 2017/572 extends to England

² OJ No. L 124, 25.4.2014, p. 1.

³ Para. 10 of JCSI’ 4th report of 2017-19 https://publications.parliament.uk/pa/jt201719/jtselect/jtstatin/44/4403.htm#_idTextAnchor020

and Wales and for limited purposes to Scotland. S.I.s 2015/595, 2015/596 and 2017/403 apply to England only.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The objective of the EIA 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 development consent for certain public or private projects which are likely to have a significant effect on the environment unless an EIA has been carried out. EIA is a process. In summary, it involves- (i) the preparation of an environmental statement by or on behalf of the developer; (ii) public consultation on the application for development consent, the environmental statement, and any other relevant information; (iii) examination by the competent authority (usually the local planning authority) of the information presented in the environmental statement and other relevant information including that received through the consultation; (iv) the competent authority coming to a reasoned conclusion on the environmental effects of the proposed project; and (v) the competent authority integrating the reasoned conclusion into the decision whether or not to grant development consent for the proposed project.
- 7.2 The EIA Directive was amended in 2014 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.
- 7.3 S.I.s 2017/571 and 2017/572 transposed the EIA Directive as amended and came into force on 16 May 2017. These S.I.s contained a number of minor and technical drafting errors which the EIA Amendment Regulations correct. These corrections include, in the case of S.I. 2017/571, amending the unintended reversal of the threshold for screening industrial estate development in paragraph 10(a) of Schedule 2 to S.I. 2017/571 from 0.5 hectare to 5 hectares which was introduced by the Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015 (S.I. 2015/660) (“2015 Regulations”). The policy context for the changes made in the 2015 Regulations is explained in the Explanatory Memorandum to S.I. 2015/660 www.legislation.gov.uk/ukxi/2015/660/pdfs/ukxiem_20150660_en.pdf. The effect of the drafting error in S.I. 2017/571 is to require the screening of proposals by the local planning authority to determine whether an EIA is required where the area of the development exceeds 0.5 hectare, rather than 5 hectares as intended. While it is not expected that there will be many industrial estate developments that fall below the higher threshold, this amendment reverts to the higher threshold as originally intended and provided for in the 2015 Regulations.
- 7.4 Under regulations 19 (6)(i), 20(3)(h)(iii), 22(2)(c) & 24(3)(h) of S.I. 2017/572 the applicant must submit to the Examining Authority one of the prescribed certificates 2-

5 in Schedule 5, depending on the situation, certifying that the applicant has complied with the relevant requirements. Current wording in the prescribed certificates stipulate that these should be sent to the Secretary of State. The November 2017 JCSI report considered that this might be confusing, as in practice the applicant must submit the certificates to the Examining Authority acting on behalf of the Secretary of State (in this case the Planning Inspectorate). The EIA Amendment Regulations implement the JCSI recommendation by amending the prescribed certificates to stipulate that they will be published on the Secretary of State's website, maintained on his behalf by the Planning Inspectorate.

- 7.5 There are certain special consenting processes in the Town and Country Planning Act 1990, not currently provided for in SI 2017/572, which potentially engage the requirements of the EIA Directive in circumstances where the local planning authority or the Secretary of State proposes to grant or modify a planning permission. These special consenting processes are modification orders, discontinuance orders, and purchase notices. The EIA Amendment Regulations provide for the screening of these special consenting processes and, where likely significant environmental effects are identified, for an EIA process to be followed. Specifically, the EIA Amendment Regulations insert new Regulations 33A and 33B into SI 2017/571 applying a modified version of the EIA process, which currently applies to Local Development Orders, for modification orders, discontinuance orders, and purchase notices.

Consolidation

- 7.6 The amendments made by the EIA Amendment Regulations are minor and technical in nature and therefore the Ministry of Housing, Communities and Local Government does not propose to consolidate any of the amended instruments.

8. Consultation outcome

- 8.1 The Government undertook a seven week consultation on the drafts of S.I.s 2017/571 and 2017/572⁴. This ran from 14 December 2016 to 1 February 2017: – This consultation exercise included a question asking whether revocation and modification orders, discontinuance orders, and purchase notices engaged the requirements of the EIA Directive and sought views from respondents as to how these measures should be implemented. There were 34 responses including from developers, local planning authorities, statutory consultees, representative organisations and EIA consultants, with 33 responses agreeing that the various processes could engage the directive and 1 disagreeing. There were no strong views on how the measures should be implemented; the main point raised by respondents was the need for guidance. The amending regulations make provision for these special consenting processes. As to respondents' views on the need for guidance, the Government intends to update the EIA section of the national Planning Policy Guidance ("PPG") to address these special consenting processes before the EIA Amendment Regulations come into effect. No further consultation was considered necessary regarding the other minor and technical amendments

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/580464/EIA_Consultation_Paper_-_14_December_-_corrected.pdf

9. Guidance

- 9.1 The Ministry of Housing, Communities and Local Government updated the PPG to take account of changes introduced by S.I. 2017/571. The Government intends to further update the PPG to reflect the changes introduced by the EIA Amendment Regulations in advance of these measures coming into force on 1 October 2018. The PPG updates will include guidance referencing the amended screening threshold for industrial estate development and guidance referencing the EIA provision for modification orders, discontinuance orders, and purchase notices.
- 9.2 The Planning Inspectorate is in the process of updating its advice notes to take account of S.I. 2017/572; those updates will also take into account the provisions of this instrument.

10. Impact

- 10.1 There is no impact on charities or voluntary bodies. It is anticipated that there may be small overall savings to business through fewer environmental statements being necessary in the case of industrial estate development projects. The change to the threshold brought forward in the Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015 (S.I. 2015/660) was subject to an impact assessment.⁵
- 10.2 The impact on the public sector is minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 This instrument applies to activities that are undertaken by small businesses. The amendments introduced by this instrument are minor and so it has not been thought necessary to take steps to minimise the impact of the requirements on small businesses.

12. Monitoring & review

- 12.1 The following instruments contain their own review provision and so in accordance with paragraph 35 of the ‘Statutory Review Guidance for Departments’ no additional review provisions are included in these Regulations: the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571), the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572) and the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596). The amendments introduced by this instrument will be reviewed as part of the review of the instruments which they amend.
- 12.2 No review provision has been included in respect of the Town and Country Planning (Brownfield Register) Regulations 2017 (S.I. 2017/403) because these regulations do not contain provisions which regulate business. No review provision has been included in respect of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595) because neither the amendments to that instrument, nor the provisions which they amend, have a regulatory effect upon business. The amendments will be monitored as part of the monitoring of the instruments that they amend. The Explanatory Memorandums for S.I.s 2017/403 and

⁵ <http://www.legislation.gov.uk/uksi/2015/660/impacts>

2015/595 can be viewed at these links respectively:
www.legislation.gov.uk/uksi/2017/403/memorandum/contents and
www.legislation.gov.uk/uksi/2015/595/memorandum/contents

13. Contact

- 13.1 David Hughes at the Ministry of Housing, Communities and Local Government can answer any questions regarding this instrument. Telephone: 0303 444 0282 or email: david.hughes@communities.gsi.gov.uk