

The Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017

Transposition note for Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

1. This transposition note sets out how Directive 2014/52/EU (“the 2014 Directive”) amending Directive 2011/92/EU on the assessment of certain public and private projects on the environment (“the EIA Directive”) is transposed in respect of relevant harbours, highways and transport legislation concerned with the consenting of infrastructure projects.
2. The table shows how the main elements of the 2014 Directive are transposed in Schedule 3 to the Harbours Act 1964 (“the 1964 Act”), Part VA of the Highways Act 1980 (“the 1980 Act”), the Transport and Works Act 1992 (“the 1992 Act”) and the procedure rules made under that Act, the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (“the 2006 Procedure Rules”) as amended by the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017 (“the 2017 Regulations”).
3. References in the table to Article numbers are to the EIA Directive as amended by the 2014 Directive.

Article	Objective	Implementation – 1964 Act (Schedule 3)	Implementation – 1980 Act	Implementation – 1992 Act and 2006 Procedure Rules
Article 1(2)(g)	Definition of “environmental impact assessment”.	Paragraph 1	Section 105ZA(1)	Section 13B(1) and rule 7(1)
Article 1(3)	Exemption for projects or parts of projects having defence as their sole purpose or response to civil emergencies.	Paragraphs 20A and 20B	Section 105AA(2)(a) and (b)(i)	Rule 7(3)
Article 2(3)	Joint or co-ordinated procedures to apply where projects are assessed under the EIA Directive and Directive 92/43 EEC on habitats or Directive 2009/147/EC on wild birds.	Paragraph 8B	Section 105BA(2)	Rule 8A
Article 2(4)	Exemption in exceptional circumstances.	Paragraph 20C	Section 105AA(2)(b)(ii)	Optional – not implemented
Article 3	Statement of factors which must be considered etc. during environmental impact assessment.	Definition of “environment” in paragraph 1	Section 105ZA(1), (3) and (4)	Rule 7A(2) and (3)

Article	Objective	Implementation – 1964 Act (Schedule 3)	Implementation – 1980 Act	Implementation – 1992 Act and 2006 Procedure Rules
Article 4(3)	Statement of criteria to determine when projects must undergo for an initial (“screening”) decision or an environmental impact assessment.	Screening is a mandatory requirement under Schedule 3 - see paragraph 3	Section 105A	Optional – not implemented
Article 4(4) first and second sentence	Developer provides information specified in Annex IIA for an initial (“screening”) decision of whether project likely to have significant effects on environment.	Paragraph 3(2)(a)	Section 105A(3)(a)	Rule 7(5)
Article 4(4) third sentence	Developer must take other assessments under Union legislation into account in preparing information for screening decision.	Paragraph 3(2)(a)	Section 105A(3)(d)	Rule 7(5)
Article 4(4) fourth sentence	Developer may also provide a description of Description of features in information for screening decision.	Paragraph 3(2)(b)	Section 105A(3)(c)	Rule 7(5A)
Article 4(5) first sentence	Screening decision of competent authority.	Paragraph 4(1)	Section 105A(1)(a) and (4)(a)	Rule 7(11)
Article 4(5) second sentence	Screening decision must be made public.	Paragraphs 5 and 6	Sections 105AB(1)(b) and section 105B(2)(b)	Rule 7(14) and (15)
Article 4(6)	Screening decision must be made within 90 days.	Paragraph 4B	Section 105A(4)(b)	Rule 7(13A) and (13B)
Article 5(1) first sentence	Developer must prepare and submit an environmental impact assessment report.	Paragraph 8	Section 105B(2)(a)	Rule 7A(1)
Article 5(1) second sentence	Environmental impact assessment must include certain information.	Paragraph 8(2) and (3)	Section 105B(3)(b) and (4)	Rule 11(1)
Article 5(1) third sentence	Environmental impact assessment report must be based on opinion (“scoping opinion”) by authority about contents of report where requested.	Paragraph 8(2)(c)	Section 105B(3)(b) and (4)	Rule 11(2)(a) and (b)
Article 5(1) fourth sentence	Other relevant assessments can be taken into account by developer in preparing environmental impact assessment.	Paragraph 8(2)(d)	Section 105B(3)(c)	Rule 11(2)(c)
Article 5(3)(a)	Developer must ensure environmental impact assessment report prepared by competent experts.	Paragraph 8(2)(a)	Section 105B(3)(a)	Rule 11(3)

Article	Objective	Implementation – 1964 Act (Schedule 3)	Implementation – 1980 Act	Implementation – 1992 Act and 2006 Procedure Rules
Article 5(3)(b)	Authority must ensure it has sufficient expertise to consider environmental impact assessment report.	Paragraph 18A(5)	Section 105CA(6)	Section 13B(2)
Article 5(3)(c)	Facility for supplementary information to be provided which is relevant to authority's conclusion about environmental impact.	Paragraph 8A	Section 105CA(2)(e)	Existing rule 17
Article 6(1)	Authorities with specific environmental responsibilities or local or regional competences to be consulted.	Paragraph 15	Section 105ZA(1)	Rule 7(8)(f), 8(4)(f) and 13(4)
Article 6(2) and (5)	Informing the public electronically of request for consent and of availability of environmental impact assessment report etc.	Paragraphs 10ZA, 10ZB and 10A	Sections 105ZA(5)(c) and 105B(7)(c)	Rule 14(4A)
Article 6(7)	Timeframe for consulting public on environmental impact assessment report must not be less than 30 days.	Paragraph 10(2)(e)	Section 105CA(5)	Existing definition of "expiry date for objections" in rule 4(1)
Article 7(4) second sentence	In relation to projects having transboundary effects across member states, consultations about such effects may be conducted through an appropriate joint body.	Optional - not implemented	Section 105C(6A)	Optional – not implemented
Article 8a(1)	Decision to grant consent must incorporate at least the reasoned conclusion, and environmental conditions and, where appropriate, monitoring measures.	Paragraph 19	Sections 105CB(1) and (4) and 105CD	Section 13B(3) and 14(3AB)(d) and (e)
Article 8a(2)	Decision to refuse consent must state reasons.	Paragraph 20(5)(b)	Sections 105CB(1) and (4) and 105CD	Existing section 14(2)
Article 8a(4)	Member state must ensure environmental conditions are implemented by developer and determine procedures regarding monitoring significant adverse effects.	Paragraph 19(2)(c)(i)	Section 105CB(3) and (4)	Section 13C
Article 8a(5)	Decision whether to grant consent must be made within reasonable time.	Paragraph 19(b)	Section 105CC	Section 13D
Article 8a(6)	Reasoned conclusion must be up to date when decision to grant development consent is taken.	Paragraph 19A(1) and (2)	Section 105CB(2)	Section 13B(4)
Article 9(1)	Informing the public – new reference to consultation bodies.	Paragraph 20(6)	Section 105CD	Section 14(1), (1A), (3AA) and (3AB) and rule 16(8)
Article 9a	Authority must be objective and not in a situation which gives rise to a conflict of interests.	Common law: Magill v Porter [2002] 2 AC 357	Common law: Magill v Porter [2002] 2 AC 357	Common law: Magill v Porter [2002] 2 AC 357

Article	Objective	Implementation – 1964 Act (Schedule 3)	Implementation – 1980 Act	Implementation – 1992 Act and 2006 Procedure Rules
Article 10a	Member State must set out penalties for infringements.	Existing system of planning enforcement and provisions relating to unauthorised EIA development	Existing system of planning enforcement and provisions relating to unauthorised EIA development	Existing system of planning enforcement and provisions relating to unauthorised EIA development
Annex II.A	Information to be provided by developer on projects listed in Annex II for screening decision	Paragraph 3(2)(a)	Section 105A(3)(a)	Rule 7(5)
Annex III	Criteria to determine whether projects listed in Annex II should be subject to environmental impact assessment	Definition of “selection criteria” in paragraph 1	Sections 105A(3)(b), 105AB(3)(a) and 105B(6)(d)	Rule 7(11)(c) and (14)
Annex IV	Information for the environmental impact assessment report	Paragraph 8(3)(f)	Sections 105B(4)(f) and 105CA(2)(e)	Rule 4(1) and 11(1) and Schedule 1