

EXPLANATORY MEMORANDUM TO
THE ROADS (ENVIRONMENTAL IMPACT ASSESSMENT) (AMENDMENT)
(NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 377

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Infrastructure, Northern Ireland, and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations are made to correct a number of deficiencies in the Roads (Northern Ireland) Order 1993, Part V (environmental impact assessment), which would otherwise result from the withdrawal of the United Kingdom from the European Union. This will maintain in Northern Ireland the existing environmental impact assessment regime in relation to road schemes of the Department for Infrastructure Northern Ireland, adjusting the language which would otherwise indicate the United Kingdom was a member State of the European Union.
- 2.2 They also correct an out of date reference to European Legislation (by substituting a reference to Directive 2011/92/EU, on the assessment of the effects of certain public and private projects on the environment, for a reference to the repealed Directive 85/337/EEC which it replaced).

Explanations

What did any relevant EU law do before exit day?

- 2.3 Directive 2011/92/EU, as amended by Directive 2014/52/EU, was transposed as Part V of the Roads (Northern Ireland) Order 1993. Part V sets out the Environmental Impact Assessment (EIA) procedure which applies to relevant proposed major road projects of the Department for Infrastructure, Northern Ireland. The objective is to provide high level protection to the environment and the integration of all environmental considerations in the preparation of such road projects to reduce their impact on the environment. This is to be achieved by requiring an environmental impact assessment to be prepared where a scheme will, or would be likely to, have a significant impact on the environment.

Why is it being changed?

- 2.4 Part V of the Roads (Northern Ireland) Order 1993 is written from the perspective of the UK being an EU member State, and some of the language used or referred to acknowledges this. This is not consistent with the UK no longer being a member State and would result in ambiguity. The changes being introduced remove or replace wording which will become inappropriate following the withdrawal of the UK from the EU, including changing references to EU law with references to domestic law and changing references to the UK being a member State. They will also update an out of date definition of the environmental impact assessment Directive.

What will it now do?

- 2.5 The proposed changes are designed to eliminate or adjust the wording that is no longer apt due to the UK no longer being a Member State but otherwise to maintain intact the current EIA regime in Northern Ireland. They will also update an out of date definition of the environmental impact assessment Directive.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was laid for sifting, under paragraph 3 of Schedule 7 to the European Union (Withdrawal) Act 2018, on the 5th February 2019 by the Minister of State for Transport, Jesse Norman. He considered that the appropriate Parliamentary procedure for the instrument was that it should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the “negative procedure”), and made a statement to that effect as detailed in Part 2 of the Annex to this Explanatory Memorandum.
- 3.2 The European Statutory Instruments Committee of the House of Commons, at its meeting on 12th February 2019, scrutinised the instrument and agreed that the negative procedure should apply to the instrument.
- 3.3 The Secondary Legislation Scrutiny Committee (Sub-Committee B) of the House of Lords, at its meeting on 19th February 2019, scrutinised the instrument and agreed that the negative procedure should apply to the instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018.
- 6.2 The Act makes provision for repealing the European Communities Act 1972 and will preserve EU Law, as it stands at the moment of exit, in UK law. The Act creates a new body of domestic legislation from directly applicable EU Law being brought into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK’s obligations as a member of the EU; together this will be retained EU Law.

- 6.3 Section 8 of the European Union (Withdrawal) Act 2018 is a temporary power to make secondary legislation to deal with deficiencies in this retained EU Law. This instrument makes textual amendments to Part V of the Roads (Northern Ireland) Order 1993, which provides for the environmental impact assessment of road building projects, in order to ensure that the legislation continues to function properly following the exit of Northern Ireland, as part of the United Kingdom, from the European Union.
- 6.4 Part V of the Roads (Northern Ireland) Order 1993 is EU-derived domestic legislation as it was made in order to transpose originally the environmental impact assessment Directive of 1985 (Council Directive 85/337/EEC), and subsequently its replacement, Directive 2011/92/EU, which consolidated the 1985 Directive and its amendments and which was itself later amended by Directive 2014/52/EU which was transposed into Part V in May 2017.

7. Policy background

What is being done and why?

- 7.1 This instrument relates to Part V of the Roads (Northern Ireland) Order 1993, which sets out the environmental impact assessment (EIA) process to be followed by the Department for Infrastructure when considering relevant major roads projects and integrates all environmental considerations in the preparation of roads projects to reduce their impact on the environment.
- 7.2 The purpose of the amendments is to remove from, or adjust, wording in Part V which will become inappropriate as a result of the exit from the European Union of Northern Ireland as part of the UK, in order that Part V is worded correctly and remains coherent and clear. They will also update an out of date definition of the environmental impact assessment Directive. Otherwise this instrument makes no change to the existing EIA regime for the Department's road schemes.
- 7.3 This instrument applies to infrastructure (roads) services which is a transferred matter for Northern Ireland under section 4(1) of the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where the UK Government want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. The UK Government have been considering how to ensure a functioning statute book across the UK, including in Northern Ireland, for exit day in the absence of a Northern Ireland Executive. With exit day imminent, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. It has been decided, therefore, that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the complementary

powers of paragraph 21(a)(i) and (b) of Schedule 7 to that Act. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

- 8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under section 2(2) of the European Communities Act 1972 in order to allow for the update of the out of date definition of the environmental impact assessment Directive.

9. Consolidation

- 9.1 There are currently no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 A public consultation was not considered necessary because the instrument makes the necessary technical amendments to an existing regime to maintain the status quo as far as possible after the United Kingdom leaves the European Union. No impact upon stakeholders is envisaged.

11. Guidance

- 11.1 The Regulations relate to the procedures carried out by the Department for Infrastructure, Northern Ireland, and it is not considered necessary to issue guidance.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities, voluntary bodies or the public sector.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 There are no plans to monitor or review this instrument for the reasons indicated below.
- 14.2 The provision of this instrument which is made under the European Communities Act 1972 is to make a factual correction of an incorrect reference to an EU Directive (i.e. to update the definition of the environmental impact assessment Directive) and does not regulate business.
- 14.3 As this instrument is otherwise made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Mr Davy Millar at the Department for Infrastructure, Northern Ireland: Direct line telephone number 02890540140 or email: davy.millar@infrastructure-ni.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Mr Brendan Devlin at the Department for Infrastructure, Northern Ireland, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jesse Norman, Minister of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 The Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Roads (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

1.2 This is the case because:

(a) the instrument does not contain provisions falling within paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 requiring it to be made under the affirmative procedure;

(b) the effect of the instrument is primarily to maintain in Northern Ireland the existing environmental impact assessment regime in relation to road schemes of the Department for Infrastructure, Northern Ireland, but adjusting the language which would otherwise indicate the United Kingdom was a member State of the European Union. It also addresses an out of date reference to European Union law.

2. Appropriateness statement

2.1 The Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Roads (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate”.

2.2 This is the case because the instrument is limited in effect to simply correcting deficiencies in the legislation it relates to resulting from the UK leaving the EU and addressing an out of date reference to European Union law.

3. Good reasons

3.1 The Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

3.2 These are primarily to correct the language in key Northern Ireland legislation relating to environmental impact assessment to recognise that the UK is no longer an EU member State, and to so eliminate any ambiguity, but otherwise maintain the current environmental impact assessment regime intact in Northern Ireland.

4. Equalities

4.1 The Minister of State for Transport, Jesse Norman, has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts”.

- 4.2 The Minister of State for Transport, Jesse Norman, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Jesse Norman, Minister of State for Transport, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. This Act does not extend to Northern Ireland but as the Roads (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation, and any other conduct that is prohibited by or under the Equality Act 2010, in relation to Northern Ireland”.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.