

SCHEDULE 2

Regulation 4

Amendments to the Highways Act 1980

1. Part 5A of the 1980 Act (environmental impact assessments) is amended as follows.
2. Before section 105A insert—

“Interpretation

105ZA.—(1) In this Part —

“Annex” means an Annex to the Directive;

“the consultation bodies” means—

- (a) any principal council (within the meaning given in section 270(1) of the Local Government Act 1972) in whose area the project is to be carried out;
- (b) where the project is to be carried out on land situated in England—
 - (i) the Historic Buildings and Monuments Commission for England, the Environment Agency and Natural England, and
 - (ii) the Natural Resources Body for Wales and the Welsh Ministers where, in the opinion of the project authority, the land is sufficiently near to Wales to be of interest to them;
- (c) where the project is to be carried out on land situated in Wales—
 - (i) the Natural Resources Body for Wales, and
 - (ii) an organisation referred to in paragraph (b)(i) where, in the opinion of the Welsh Ministers, the land is sufficiently near to England to be of interest to that organisation;
- (d) any other public authority which has environmental responsibilities and which the project authority considers is likely to have an interest in the project;
- (e) any body with local or regional competencies and which the project authority or Welsh Ministers considers is likely to have an interest in the project;

“the Directive” means [Directive 2011/92/EU](#) 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;

“the environment” means—

- (a) population and human health,
- (b) biodiversity, with particular attention to species and habitats protected under—
 - (i) Council [Directive 92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, and
 - (ii) [Directive 2009/147/EC](#) of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds,
- (c) land, soil, water, air and climate,
- (d) material assets, cultural heritage and the landscape, and
- (e) the interaction between the factors referred to in paragraphs (a) to (d).

“environmental impact assessment”, in relation to a project, means the process comprising—

- (a) the preparation of an environmental statement,

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- (b) the carrying out of consultations about the likely significant effects of the project on the environment,
- (c) the consideration of the environmental statement and other information about the likely significant effects of the project on the environment,
- (d) the reaching of a reasoned conclusion about the significant effects of the project on the environment, and
- (e) the consideration of the reasoned conclusion when deciding whether to proceed with the project;

“environmental assessment” means an assessment carried out—

- (a) under an obligation to which section 2(1) of the European Communities Act 1972 applies (other than an obligation arising under the Directive), or
- (b) under the law of any part of the United Kingdom (other than a rule which implements an obligation arising under the Directive);

of the effect of anything on the environment;

“member of the public” includes a body of persons corporate or unincorporate;

“official website” means a website maintained by or on behalf of the project authority;

“project authority” has the meaning given in section 105A(2);

“public authority” means a person on whom functions are conferred by or under an enactment (including an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament);

“relevant project” has the meaning given in subsection (2);

“sensitive area” means—

- (a) a site of special scientific interest (within the meaning given in section 52 of the Wildlife and Countryside Act 1981),
- (b) any land adjacent to such an area that is notified to the local planning authority in accordance with paragraph (q)(ii) in the Table in Schedule 4 to the Town and Country Planning (General Development Management Procedure) (Wales) Order 2012(1),
- (c) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949,
- (d) an area of outstanding natural beauty designated as such under section 82 of the Countryside and Rights of Way Act 2000,
- (e) the Broads as defined in the Norfolk and Suffolk Broads Act 1988,
- (f) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage,
- (g) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979, or
- (h) a European site within the meaning of the Conservation of Habitats and Species Regulations 2010 (see regulation 8).

(2) A project is a “relevant project” if the area of the completed works together with any area occupied during the period of construction or improvement by requisite apparatus,

equipment, machinery, materials, plant, spoil heaps or other such facilities exceeds 1 hectare or if it, or any part of it, is situated in a sensitive area.

- (3) For the purposes of this Part, the effects of a project on the environment include—
 - (a) any effects on the environment which arise (directly or indirectly) from the operation of the project;
 - (b) any expected effects on the environment which derive (directly or indirectly) from the vulnerability of the project to the risks of major accidents or disasters.
- (4) References to the adverse, likely or significant effects of a project on the environment are to be read accordingly.
- (5) Publication by the project authority for the purposes of this Part is to be—
 - (a) in the London Gazette,
 - (b) in at least one local newspaper circulating in the area in which the project for the construction or improvement of the highway is proposed to be situated, and
 - (c) on an official website.”

3. For section 105A substitute—

“Screening of projects for constructing or improving highways

105A.—(1) If a project authority is considering a project for constructing or improving a highway for which it is the highway authority, the project authority must, before details of the project are published, determine—

- (a) whether or not the project falls within Annex I or Annex II, and
- (b) if it considers the project is a relevant project falling within Annex II, whether it should be made subject to an environmental impact assessment.

(2) In this Part “project authority” means—

- (a) the Secretary of State,
- (b) the Welsh Ministers, or
- (c) a strategic highways company.

(3) When making a determination under subsection (1)(b), a project authority must have regard to the following—

- (a) the information to be provided on the project under Annex II.A,
- (b) the selection criteria in Annex III,
- (c) any features of the project or measures envisaged to avoid or prevent what might otherwise be significant adverse effects on the environment, and
- (d) the results of any relevant environmental assessment which are reasonably available to the authority.

(4) The project authority must make a determination under subsection (1)(b)—

- (a) as soon as possible, and
- (b) in any event within the period of 90 days beginning with the day on which it has access to the information mentioned in paragraphs (a), (c) and (d) of subsection (3).

(5) If the project authority is satisfied that it is appropriate to do so by reason of exceptional circumstances relating to a project (including circumstances relating to the nature, complexity, location or size of project), it may extend the period specified in subsection (4)(b).

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Exemptions

105AA.—(1) A project to which subsection (2) applies is to be treated in the same way as a project that the project authority considers does not fall within Annex I or Annex II.

(2) This subsection applies to a project if—

(a) the Secretary of State directs that the project is a defence project, or

(b) the project authority determines that—

(i) the project is a civil emergency project, or

(ii) the exemption in subsection (6) applies to the project.

(3) The Secretary of State may direct that a project is a defence project only if satisfied that—

(a) the project has national defence as its sole purpose, and

(b) carrying out an environmental impact assessment would have an adverse effect on the fulfilment of that purpose.

(4) The Secretary of State must send a copy of any direction given under subsection (3)—

(a) to the Welsh Ministers, if the Welsh Ministers are the highway authority for the highway to which the project relates;

(b) to the strategic highways company, if the company is the highway authority for the highway to which the project relates.

(5) A project authority may determine that a project is a civil emergency project only if satisfied that—

(a) the project has the response to a civil emergency as its sole purpose, and

(b) carrying out an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of that purpose.

(6) A project authority may determine that this subsection applies to a project only if satisfied that—

(a) it is appropriate to do so by reason of exceptional circumstances,

(b) carrying out an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of the purpose of the project,

(c) the objectives of the Directive will be met even though such an assessment is not carried out, and

(d) the project is unlikely to have significant effects on the environment in another EEA State.

(7) Before making a determination under subsection (6), the project authority must consider whether another form of assessment of the effects of the project on the environment would be appropriate.

Publication of screening decisions: projects not to be subject to an environmental impact assessment

105AB.—(1) The project authority must publish a notice of—

(a) any determination that the exemption in section 105AA(6) applies to a project;

(b) any determination that a relevant project falling within Annex II should not be made subject to an environmental impact assessment.

(2) A notice under subsection (1)(a) must—

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- (a) state the reasons for the determination, and
 - (b) state whether another form of assessment of the effects of the project on the environment is considered appropriate.
- (3) A notice under subsection (1)(b) must—
- (a) state the reasons for the determination with reference to the relevant selection criteria in Annex III, and
 - (b) include a description of any features of the project, or other measures, which are proposed by the authority to avoid or prevent significant adverse effects on the environment.
- (4) If the project authority publishes a notice under subsection (1)(a), the project authority must publish the results of any other assessment considered appropriate for the purposes of section 105AA(7).”

4. For section 105B substitute—

“Publication of screening decision and environmental statement for projects subject to an environmental impact assessment

- 105B.**—(1) This section applies if a project authority considers that a project—
- (a) falls within Annex I, or
 - (b) is a relevant project falling within Annex II which should be made subject to an environmental impact assessment.
- (2) The project authority must, not later than the date when details of the project itself are published—
- (a) ensure that an environmental statement is prepared for the project, and
 - (b) publish a notice of the environmental statement so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express their opinion before a decision is made as to whether to proceed with the construction or improvement to which the statement relates.
- (3) The environmental statement for the project—
- (a) must be prepared by competent experts,
 - (b) must include the information which, taking into account current knowledge and methods of assessment, is reasonably required by the project authority to reach a reasoned conclusion about the significant effects of the project on the environment (as required by section 105CA) and in particular the information specified in subsection (4) of this section, and
 - (c) with a view to avoiding duplication of assessments, must take into account the results of any relevant environmental assessment which are reasonably available to the project authority.
- (4) The specified information is—
- (a) a description of the site, design, size and any other relevant features of the project,
 - (b) a description of the likely significant effects of the project on the environment,
 - (c) a description of the features of the project or measures envisaged to avoid, prevent or reduce and, if possible, offset any likely significant effects of the project on the environment,
 - (d) a description of the reasonable alternatives studied by the project authority which are relevant to the project and its specific characteristics, and an indication of the

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main reasons for the option chosen, taking into account the effects of the project on the environment,

- (e) a non-technical summary of the information mentioned in paragraphs (a) to (d), and
- (f) any additional information specified in Annex IV that is relevant to the specific characteristics of the project, or type of project, and to the environmental features likely to be affected.

(5) The environmental statement must be accompanied by a statement from the project authority setting out the relevant expertise or qualifications of the experts who prepared the environmental statement.

(6) The notice published under subsection (2)(b) must state—

- (a) that the project authority, as the relevant highway authority, is considering implementing the project;
- (b) the proposed location and nature of the project;
- (c) that the project is subject to an environmental impact assessment and, where relevant, that section 105C applies;
- (d) if the project is a relevant project falling within Annex II, the reasons for the determination that the project should be made subject to an environmental impact assessment with reference to the selection criteria in Annex III;
- (e) that a copy of the environmental statement may be inspected at an address in the area in which the project is proposed to be situated during the period specified under paragraph (j);
- (f) the times at which the copy of the environmental statement may be so inspected;
- (g) an address from which copies of the environmental statement may be obtained and from which further information about the project may be requested during the period specified under paragraph (j);
- (h) if a charge is to be made for a copy of the environmental statement, the amount of the charge;
- (i) that a copy of the environmental statement may be inspected on the official website;
- (j) that any person wishing to make representations about the project and the environmental statement may do so in writing to the project authority at a specified address for a specified period, being not less than 6 weeks from the date of publication of the notice, and
- (k) that the project authority will take into consideration any representations so made before deciding whether or not to proceed with the project with or without modifications.

(7) The project authority must ensure that during the period specified under subsection (6)(j)—

- (a) copies of the environmental statement are available for inspection by any person free of charge at all reasonable hours at the address specified under subsection (6)(e),
- (b) copies of the environmental statement are available to be obtained by any person from the address specified under subsection (6)(g), and
- (c) that a copy of the environmental statement is available for inspection by any person on the official website.

(8) A reasonable charge reflecting the costs of printing, copying and distribution may be made by the project authority for the supply of a copy of the environmental statement—

- (a) to a person other than a consultation body, or
- (b) to a consultation body to which one copy has already been supplied free of charge.

(9) The project authority must ensure that the consultation bodies are given an opportunity to express an opinion on the project and the environmental statement before the authority carries out the consideration required by section 105CA(1).

Co-ordination

105BA.—(1) Where in order to proceed with the construction or improvement in relation to which an environmental statement has been made it is necessary for the project authority to make—

- (a) an order or scheme to which Schedule 1 to this Act applies, or
- (b) a compulsory purchase order in the exercise of highway land acquisition powers, the project authority must, so far as is practicable to do so, take the steps required of it by this Part of this Act concurrently with the corresponding steps required of it by Schedule 1 to this Act or the Acquisition of Land Act 1981 (as the case may be) in connection with the making of the related instruments.

(2) Where, in respect of a project, there is a requirement to carry out—

- (a) an environmental impact assessment, and
- (b) an assessment under regulation 61 of the Conservation of Habitats and Species Regulations 2010,

the project authority must, so far as is practicable to do so, ensure that the assessments are co-ordinated.”

5.—(1) Section 105C is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a)—
 - (i) for “Secretary of State or a strategic highways company” substitute “project authority”;
 - (ii) for “105A(3)” substitute “105B”;
- (b) in paragraph (b) for “Secretary of State or the strategic highways company, whichever is considering the project,” substitute “project authority”.

(3) In subsection (2)—

- (a) in the opening words for “Secretary of State or the strategic highways company” substitute “project authority”;
- (b) in paragraph (a) for “him or the company” substitute “the authority”;
- (c) in paragraphs (b) and (c) for “he or the company” substitute “the authority”.

(4) In subsection (3), for “the determination referred to in section 105B(1)” substitute “the notice under section 105B(2)(b)”.

(5) In subsection (4)—

- (a) in the opening words, for “Secretary of State or the strategic highways company” substitute “project authority”;
- (b) in paragraphs (a) and (c), for “he or the company” substitute “the authority”;

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- (c) in paragraph (b)—
 - (i) for “subsection (3A)” substitute “subsection (6)”;
 - (ii) for “subsection (3)” substitute “subsection (2)(b)”.
- (6) In subsection (5)—
 - (a) for the opening words substitute “The project authority must also”;
 - (b) in paragraph (a)—
 - (i) in the opening words, for “he or the company” substitute “the authority”;
 - (ii) for paragraph (i) substitute—
 - “(i) the consultation bodies, and”;
 - (c) in paragraph (b)—
 - (i) for “him and the company” substitute “the project authority”;
 - (ii) for “he and the company” substitute “the project authority”.
- (7) after subsection (6), insert—
 - “(6A) The consultations required under subsection (6)(a) may be carried out through an appropriate joint body (within the meaning of the Directive).”
- (8) Omit subsection (7).
- 6. After section 105C insert—

“Conclusion about environmental impact of a project for constructing or improving a highway

105CA.—(1) Before deciding whether or not to proceed with a project for which notice of an environmental statement is published in accordance with section 105B, the project authority—

- (a) must consider the matters specified in subsection (2), and
 - (b) following that consideration, must reach a reasoned conclusion about the significant effects of the proposed construction or improvement on the environment.
- (2) The specified matters are—
- (a) the environmental statement,
 - (b) any relevant opinion received by the project authority on the project or the statement,
 - (c) where an EEA State indicates under section 105C that it wishes to participate in the procedure required by this Part of this Act, any relevant EEA opinion received by the project authority on the project or the statement,
 - (d) any features of the project, or measures, envisaged to avoid, prevent or reduce, and if possible, offset any likely significant adverse effects of the project on the environment, and
 - (e) any other information of a description specified in Annex IV which is directly relevant to the conclusion to be reached on the environmental impact of the project.
- (3) For the purposes of subsection (2)(b), an opinion on a project or an environmental statement is a relevant opinion if—
- (a) it is expressed in writing by a consultation body or any other person, and

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- (b) it is received by the project authority within the period specified for the purpose by the authority.
- (4) For the purposes of subsection (2)(c), an opinion on a project or an environmental statement is a relevant EEA opinion if—
 - (a) it is expressed in writing by—
 - (i) the EEA State,
 - (ii) a member of the public in the EEA State, or
 - (iii) an authority having environmental responsibilities designated by the EEA State to be consulted about the project under Article 6(1) of the Directive, and
 - (b) it is received by the project authority within the period specified for the purpose by the project authority.
- (5) The period specified for the purposes of subsection (3)(b) or subsection (4)(b) must not be less than 42 days beginning with the day on which the notice of the environmental statement is published in accordance with section 105B(2)(b).
- (6) The project authority must obtain such expert advice as appears to the authority to be necessary for the purposes of considering the environmental statement.

Decision about whether or not to proceed with a project subject to an environmental impact assessment

105CB.—(1) When deciding whether or not to proceed with a project for which notice of an environmental statement is published in accordance with section 105B, the project authority—

- (a) must take into account its reasoned conclusion under section 105CA(1)(b), and
 - (b) must consider whether to make provision for monitoring significant adverse effects of the construction or the improvement on the environment.
- (2) The project authority may decide to proceed with the project only if satisfied that the reasoned conclusion is up to date.
- (3) The project authority may make provision for monitoring significant adverse effects on the environment only if satisfied that the type of parameters which will be required to be monitored and the duration of such monitoring are proportionate having regard to—
- (a) the nature, location and size of the project, and
 - (b) the significance of the effects of the project on the environment.
- (4) If the project authority decides to proceed with the project, it must implement any relevant feature or other measure envisaged to avoid, prevent or reduce, and if possible, offset any significant adverse effects of the project on the environment.
- (5) For the purposes of subsection (4) a feature of a project or other measure is relevant if it was taken into account by the project authority in reaching the reasoned conclusion required under section 105CA(1)(b).

Timing of conclusion and decision

105CC. The project authority must—

- (a) reach the reasoned conclusion required by section 105CA(1)(b), and
- (b) decide whether or not to proceed with the relevant construction or improvement,

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within a reasonable period of time (having regard to the nature and complexity of the project) beginning on the day on which the authority begins the consideration required by section 105CA(1)(a).

Publication of conclusion and decision

105CD.—(1) When the project authority has decided whether or not to proceed with the construction or improvement subject to an environmental impact assessment, it must—

- (a) publish its reasoned conclusion under section 105CA(1)(b),
- (b) publish its decision and a decision statement, and
- (c) if an EEA State has been consulted in accordance with section 105C(4), inform the EEA State of the decision and give the EEA State a copy of the decision statement.

(2) A decision statement must—

- (a) confirm that the project authority has complied with the requirements of this Part of this Act,
- (b) include a summary of the reasoned conclusion under section 105CA(1)(b),
- (c) include a summary of the decision and any conditions attached to the decision,
- (d) state the main reasons and considerations on which the decision is based, and
- (e) include a summary of the consultations carried out under this Part of this Act, the results of those consultations and how those consultations have been taken into account in the conclusion and decision,
- (f) where the authority’s decision is to proceed with the project, describe the right under section 105D(1) to challenge the validity of the decision.”

7. In section 105D, in subsection (1), for “Secretary of State or a strategic highways company” substitute “project authority”.