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WELSH STATUTORY INSTRUMENTS

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**2019 No. 245 (W. 60)**

**EXITING THE EUROPEAN UNION, WALES  
ENVIRONMENTAL PROTECTION, WALES  
AGRICULTURE, WALES  
TOWN AND COUNTRY PLANNING, WALES**

The Environmental Assessment of Plans and Programmes  
and the Environmental Impact Assessment (Miscellaneous  
Amendments) (Wales) (EU Exit) Regulations 2019

*Sift requirements satisfied* 28 January 2019  
*Made* - - - - 13 February 2019  
*Laid before the National  
Assembly for Wales* - - 13 February 2019  
*Coming into force in accordance with regulation 1(2)  
and (3)*

The requirements of paragraph 4(2) of Schedule 7 to the European Union (Withdrawal) Act 2018(1) (relating to the appropriate National Assembly for Wales scrutiny procedure for these Regulations) have been satisfied.

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in so far as it concerns town and country planning(3) and in relation to matters relating to the assessment of the effects of certain plans and programmes on the environment(4); and the National Assembly for Wales has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment in so far as they concern the use of uncultivated land or semi-natural areas for intensive agricultural purposes(5).

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(1) 2018 c.16. See section 20(1) of that Act for the definition of “devolved authority”.  
(2) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008.  
(3) S.I. 2007/1679.  
(4) S.I. 2004/706.  
(5) S.I. 2001/2555. The functions of the National Assembly for Wales exercisable as a result of a designation made under section 2(2) of the European Communities Act 1972 (c. 68) were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

The Welsh Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018, make the following Regulations.

### **Title, commencement and application**

1.—(1) The title of these Regulations is the Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

(2) Subject to paragraph (3), these Regulations come into force on exit day.

(3) Regulations 2(8)(a)(i), 3(2), 3(4)(a)(iii), 4(5)(b)(iv), 4(5)(c), 5(2)(c), 6(4)(b) and 6(12)(c) come into force 21 days after the date on which these Regulations are made.

(4) These Regulations apply in relation to Wales.

### **The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004**

2.—(1) The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004(6) are amended as follows.

(2) In regulation 5(3), for “pursuant to” substitute “under EU-derived domestic legislation(7) which transposed”.

(3) In regulation 12(4), for “other EU legislation” substitute “retained EU law(8)”.

(4) In regulation 13(2)(b), for “required under” substitute “as specified in”.

(5) In regulation 14, in paragraphs (1) and (3)(a), for “another” substitute “a”.

(6) In regulation 15—

(a) in the heading, omit “other”; and

(b) omit the words from “under” to “Directive”.

(7) In Schedule 1, in paragraph 1(e), for “EU legislation” substitute “retained EU law”.

(8) In Schedule 2—

(a) in paragraph 4—

(i) after “Council Directive 79/409/EEC on the conservation of wild birds” insert “or Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(9)”; and

(ii) for “pursuant to” substitute “under EU-derived domestic legislation which transposed”; and

(b) in paragraph 5, for “Member State” substitute “national”.

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(6) S.I. 2004/1656 (W. 170), amended by S.I. 2013/755, S.I. 2018/1216 (W. 249).

(7) See section 2(2) European Union (Withdrawal) Act 2018 for the definition of “EU-derived domestic legislation”.

(8) See section 6(7) of the European Union (Withdrawal) Act 2018 for the definition of “retained EU law”.

(9) O.J. L 20, 26.1.2010, p. 7.

### **The Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009**

3.—(1) The Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009<sup>(10)</sup> are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

(i) for ““the Directive” (“y Gyfarwyddeb”) means Council Directive 85/337/EEC” substitute ““the Directive” (“y Gyfarwyddeb”) means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment as adopted on 13 December 2011<sup>(11)</sup>”; and

(ii) in the definition of “sensitive area”, in paragraph (h), for “regulation 10 of the Conservation (Natural Habitats etc) Regulations 1994” substitute “regulation 8 of the Conservation of Habitats and Species Regulations 2017<sup>(12)</sup>”; and

(b) in paragraph (7), after “Council Directive” insert “(other than the Directive)”.

(3) In regulation 9(1)—

(a) for “The Welsh Ministers” substitute “Without prejudice to regulation 52, the Welsh Ministers”; and

(b) omit the words from “in accordance with” to the end.

(4) In Schedule 1—

(a) in paragraph 2(c)(v)—

(i) after “Member States’ legislation” insert “or the legislation of any part of the UK”;

(ii) for “by Member States pursuant to” substitute “under EU-derived domestic legislation which transposed”; and

(iii) after “Council Directive 79/409/EEC on the conservation of wild birds” insert “or Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds”; and

(b) in paragraph 2(c)(vi), for “EU legislation” substitute “retained EU law”.

### **The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016**

4.—(1) The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2016<sup>(13)</sup> are amended as follows.

(2) In regulation 4(4), for “in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive)” substitute “in exceptional circumstances, without prejudice to regulations 56 and 57”.

(3) In regulation 51(a), for “another” substitute “an”.

(4) In regulation 53—

(a) in the heading and in paragraph (1)(a) and (b), for “another” substitute “an”;

<sup>(10)</sup> S.I. 2009/3342 (W. 293), amended by S.I. 2013/755 (W. 90) and S.I. 2016/58 (W. 28).

<sup>(11)</sup> O.J. L 26, 28.1.2012, p. 1.

<sup>(12)</sup> S.I. 2017/1012, amended by S.I.2018/1307.

<sup>(13)</sup> S.I. 2016/58 (W. 28). Revoked by S.I. 2017/567 (W. 136) but saved for certain purposes by regulation 65 of those Regulations.

- (b) in paragraph (4)(a), for “the authorities referred to in Article 6(1) of the Directive” substitute “authorities in the relevant EEA State which that state has designated as responsible for performing the duties arising from the Directive”; and
  - (c) in paragraph (5), omit “in accordance with Article 7(4) of the Directive”.
- (5) In regulation 54—
- (a) in the heading, for “another” substitute “an”;
  - (b) in paragraph (1)—
    - (i) for “another” substitute “an”;
    - (ii) omit “, pursuant to Article 7(1) or 7(2) of the Directive,”;
    - (iii) omit “, in accordance with Article 7(4) of the Directive”; and
    - (iv) in sub-paragraph (b), for “to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive” substitute “representations to the authority in the relevant EEA State which that state has designated as responsible for performing the duties arising from the Directive”; and
  - (c) in paragraph (2)—
    - (i) in sub-paragraph (b), for “competent authority in the relevant EEA State” substitute “the authority in the relevant EEA State which that state has designated as responsible for performing the duties arising from the Directive”; and
    - (ii) in sub-paragraph (c), for “competent authority of the relevant EEA State” substitute “the authority in the relevant EEA State which that state has designated as responsible for performing the duties arising from the Directive”.
- (6) In Schedule 1, in paragraphs 21 and 22, after “pursuant to” in both places it occurs, insert “Chapter 3 of Part 1 of the Energy Act 2008(14) and any law which implemented”.
- (7) In Schedule 2, in the table in paragraph 2 in item 3(j), after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law which implemented”.
- (8) In Schedule 3, in paragraph 2(c)—
- (a) in paragraph (v)—
    - (i) after “under Member States’ legislation” insert “or under the legislation of any part of the UK,”;
    - (ii) omit “by Member States”; and
    - (iii) for “pursuant to” substitute “under EU-derived domestic legislation which transposed”; and
  - (b) in paragraph (vi), for “EU legislation” substitute “retained EU law”.
- (9) In Schedule 5, in paragraph 12(a), for “another” substitute “an”.
- (10) In Schedule 6, in paragraph 15(b), for “another” substitute “an”.

### **Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017**

**5.—(1)** The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017(15) are amended as follows.

- (2) In regulation 2(1), in the appropriate places, insert—
  - (a)

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(14) 2008 c. 32.

(15) S.I. 2017/565 (W. 134), amended by S.I. 2017/1012.

- ““public” (“*aelodau’r cyhoedd*”) means one or more natural or legal persons and, in accordance with the law of any part of the United Kingdom or practice, their associations, organisations or groups;”;
- (b) ““public concerned” (“*aelodau’r cyhoedd y mae a wnelo’r cais â hwy*”) means the public affected or likely to be affected by, or having an interest in, environmental decision making procedures (for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under the relevant national law are deemed to have an interest);”;
- (c) ““Natura 2000” (“*Natura 2000*”) has the same meaning as in regulation 3(1) of the Habitats Regulations;”.
- (3) In regulation 2(2)—
- (a) omit “the EIA Directive or”;
- (b) for “the Habitats Directive” substitute “the Habitats Regulations”; and
- (c) for “relevant Directive” substitute “the Habitats Regulations”.
- (4) In regulation 3—
- (a) in paragraph (3)—
- (i) omit “, in accordance with Article 2(4) of the EIA Directive,”; and
- (ii) after “Regulations” insert “, but this is subject to paragraph (3A);
- (b) after paragraph (3) insert—
- “(3A) The Welsh Ministers must not make a direction under paragraph (3) unless—
- (a) it is appropriate to do so because of exceptional circumstances;
- (b) the application of these Regulations would result in adversely affecting the purpose of the project;
- (c) they have considered whether another form of assessment would be appropriate;
- (d) the objectives of the Directive are met even though their requirements are not fulfilled; and
- (e) the project is unlikely to have a significant effect on the environment in an EEA State.
- (3B) The Welsh Ministers must make available to the public concerned—
- (a) the information obtained from any other form of assessment relating to the decision under paragraph (3A) whether to grant an exemption; and
- (b) the reasons for granting it.”; and
- (c) in paragraph (4), for “Habitats Directive” substitute “Habitats Regulations”.
- (5) In regulation 11(3)(e) for “EU legislation” substitute “retained EU law”.
- (6) In regulation 13—
- (a) in the heading and in paragraph (1), for “another” substitute “an”;
- (b) in paragraph (4)—
- (i) omit “In accordance with Article 6 of the Directive,”; and
- (ii) in sub-paragraph (a), for “referred to in Article 6(1) of the Directive” substitute “which the EEA State has designated to be consulted about the project”; and

- (c) in paragraph (5), omit “In accordance with Article 7(4) of the EIA Directive,”.
- (7) In regulation 14—
  - (a) in the heading and in paragraphs (1) and (3), for “another” substitute “an”;
  - (b) in paragraph (1), omit “in accordance with Article 7(1) of the EIA Directive”; and
  - (c) in paragraph (2), omit “In accordance with Article 7(4) of the EIA Directive,”.
- (8) In regulation 15(2)(d), for “another” substitute “an”.
- (9) In regulation 16—
  - (a) in paragraph (6)(b), for “the European Commission” substitute “the Welsh Ministers”; and
  - (b) after paragraph (6) insert—
    - “(6A) Before deciding whether the reasons are imperative reasons of overriding public interest, the Welsh Ministers must—
    - (a) consult—
      - (i) the Joint Nature Conservation Committee;
      - (ii) the Secretary of State and the other devolved administrations;
      - (iii) any other person they consider appropriate; and
    - (b) have regard to the national interest.”
- (10) In Schedule 2, in paragraph 2(c)(vi), for “EU legislation” substitute “retained EU law”.
- (11) In Schedule 3—
  - (a) in paragraph 4(1)—
    - (i) in paragraph (b)—
      - (aa) for “protected by” substitute “protected under EU-derived domestic legislation which transposed”; and
      - (bb) after “Birds Directive” insert “, as may be amended from time to time”; and
    - (ii) for the words after paragraph (d) substitute—
      - “This description should take into account the environmental protection objectives established at European Union level as they were immediately before exit day (including in particular those established under the Habitats Directive and the Birds Directive or at national level.”; and
  - (b) in paragraph 8—
    - (i) for “EU legislation such as” substitute “retained EU law such as any law which implemented”;
    - (ii) after “pursuant to”, in the second place with it appears, insert “any other”; and
    - (iii) after “requirements of” insert “any law which implemented”.

## **The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017**

6.—(1) The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017(16) are amended as follows.

- (2) In regulation 2(1), omit the definition of “Union legislation”.
- (3) In regulation 4(2)(b)—

- (a) after “protected under” insert ““EU-derived domestic legislation which transposed”; and
  - (b) at the end, insert “as may be amended from time to time”.
- (4) In regulation 5—
- (a) in paragraph (4)(a), for “in accordance with Article 2(4) of the Directive (without prejudice to Article 7 of the Directive)” substitute “in exceptional circumstances, without prejudice to regulations 56 and 57 and”;
  - (b) omit paragraph (7); and
  - (c) in paragraphs (8)(b) and (13)(b)(ii), for “Union legislation other than legislation implementing the requirements of the Directive” substitute “retained EU law (other than an enactment which implemented the Directive)”.
- (5) In regulation 6(4), for “Union legislation other than under the Directive” substitute “retained EU law (other than an enactment which implemented the Directive)”.
- (6) In regulation 17(4)(e), for “Union legislation” substitute “retained EU law”.
- (7) In regulation 25(3)(c), for “Union legislation (other than legislation implementing the requirements of the Directive)” substitute “retained EU law (other than an enactment which implemented the Directive)”.
- (8) In regulation 31(3), for “Union legislation other than under the Directive” substitute “retained EU law (other than an enactment which implemented the Directive)”.
- (9) In regulation 43, for “the requirements and objectives of the Directive” substitute “any law which implemented the Directive and with the objectives of the Directive”.
- (10) In regulation 54(a), for “another” substitute “an”.
- (11) In regulation 56—
- (a) in the heading and in paragraphs (1)(a) and (b) and (2)(a), for “another”, in each place it occurs, substitute “an”; and
  - (b) in paragraph (5)—
    - (i) omit “in accordance with Article 7(4) of the Directive”; and
    - (ii) in sub-paragraph (b), omit “other”.
- (12) In regulation 57—
- (a) in the heading, for “another” substitute “an”;
  - (b) in paragraph (1)—
    - (i) for “another” substitute “an”;
    - (ii) omit “, pursuant to Article 7(1) or (2) of the Directive,”;
    - (iii) omit “, in accordance with Article 7(4) of the Directive”; and
    - (iv) in sub-paragraph (b), omit “pursuant to Article 7(3)(b) of the Directive”; and
  - (c) in paragraph (2)—
    - (i) in sub-paragraph (b), for “competent authority in the relevant EEA State” substitute “authority in the relevant EEA State which that state has designated as responsible for performing the duties arising from the Directive”; and
    - (ii) in sub-paragraph (c), for the words from “competent authority” to the end substitute “authority in the relevant EEA State which that state has designated as responsible for performing the duties arising from the Directive”.
- (13) In Schedule 1, in paragraphs 21 and 22, after “pursuant to” in both places it occurs, insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law which implemented”.

- (14) In Schedule 2, in the table in paragraph 2, in item 3(j), after “pursuant to” insert “Chapter 3 of Part 1 of the Energy Act 2008 and any law which implemented”.
- (15) In Schedule 3, in paragraph 2(c)(vi), for “Union legislation” substitute “retained EU law”.
- (16) In Schedule 4—
- (a) in paragraph 5, for the words from “at European Union or Member State level” to the end substitute “at European Union level as they were immediately before exit day (including in particular those established under Council [Directive 92/43/EEC](#) and [Directive 2009/147/EC](#)) or at national level,”; and
  - (b) in paragraph 8—
    - (i) for “European Union legislation such as” substitute “retained EU law such as any law which implemented”; and
    - (ii) after “requirements of” insert “any law which implemented”.
- (17) In Schedule 5, in paragraph 17(a), for “another” substitute “an”.
- (18) In Schedule 6, in paragraph 20(b), for “another” substitute “an”.

13 February 2019

*Julie James*  
Minister for Housing and Local Government,  
one of the Welsh Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (c. 68) and by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16).

Regulations 2(8)(a)(i), 3(2), 3(4)(a)(iii), 4(5)(b)(iv), 4(5)(c), 5(2)(c), (4)(b) and (12)(c) are made under section 2(2) of the European Communities Act 1972 (c.68). Regulations 4(5)(b)(iv), 4(5)(c), 5(2)(c), (4)(b) and (12)(c) make minor amendments. Regulations 2(8)(a)(i), 3(2) and 3(4)(a)(iii) update out-of-date references.

The remaining regulations address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation relevant to both the environmental assessment of plans and programmes and to the environmental impact assessment in the matters of town and country planning and agriculture.

The Regulations apply in relation to Wales.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.