POLICY NOTE

THE ENVIRONMENTAL IMPACT ASSESSMENT (TRANSPORT) (SCOTLAND) REGULATIONS 2019

SSI 2019/322

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. This instrument is subject to the negative procedure.

Purpose of the instrument. The Regulations provides technical updates to provisions of the Roads (Scotland) Act 1984, the Transport and Works (Scotland) Act 2007 and the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007. These are to ensure the Environmental Impact Assessment process for transport projects conforms with the requirements of Directive 2014/52/EU.

Policy Objectives

The Regulations make amendments to the Roads (Scotland) Act 1984, the Transport and Works (Scotland) Act 2007 and the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007 to ensure legislative references in relation to the Environmental Impact Assessment (EIA) Directive are up to date and provisions within the Acts and Rules are suitably clear.

This instrument does not introduce any policy changes.

Explanation of the law being amended by the regulations

The Regulations will amend the following pieces of legislation:

- The Roads (Scotland) Act 1984
- The Transport and Works (Scotland) Act 2007
- The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007

Reasons for and effect of the proposed change or changes on retained EU law

<u>The Roads (Scotland) Act 1984</u>

The Roads (Scotland) Act 1984 created a framework for the construction and operation of road works in Scotland. The Act set out the general power and duties of the Secretary of State and Local Authorities in relation to the construction and maintenance of public roads, private roads and new roads, as well as establishing provisions in relation to damage to roads, and to the acquisition and compensation of sites for the construction of roads. The Act sets out the content and form of notices, orders and schemes related to the operation of any of powers and duties connected to the Act.

The Regulations will make minor amendments in relation to the following –

- in section 20B(3) bringing up to date a reference to Directive 2009/147/EC,

- in section 20C ensuring consistency with section 55A,

- in section 55A(14) (environment assessment of certain road improvement projects) to reflect the wording in Section 20C(14) (environment impact assessment report).

The Transport and Works (Scotland) Act 2007

The Regulations will –

- update the existing cross-reference in section 4(7) (applications) from "85/337/EEC, as amended by Council Directive 97/11/EC" to "2011/92/EU, as amended by Council Directive 2014/52/EU",

- in section 5(3) substitute the definition of the EEA Agreement to ensure consistency with the definition of that Agreement contained in the European Union (Withdrawal Act) 2018 (Consequential Modifications and Repeals and Revocations((EU Exit) Regulations 2019.

Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007

The Regulations also seek to –

- amend the definition of the EIA Directive 2011/92/EU to include a reference to its amending Directive 2014/52/EU,

- amend the definition of EEA State to substitute the definition of EEA Agreement to ensure consistency with the definition of that Agreement contained in the European Union (Withdrawal Act) 2018 (Consequential Modifications and Repeals and Revocations((EU Exit) Regulations 2019,

- provide clarification by amending rule 5(3) (EIA application and screening decision), to make clear that these Rules, other than the requirement to carry out an Environmental Impact Assessment, apply to projects in response to a civil emergency,

- amend Rule 12 (publicity for application), where there is currently no requirement to publish the Environmental Impact Assessment report on a website. To create consistency with other EIA regimes, such as in Town and Country Planning, and to allow the legislation to work as was intended in the 2017 update, rule 12 will be amended to provide for the online publication of the EIA report.

Consultation

This instrument does not amount to a change in policy and seeks only to update legislative references and provide greater clarity in the current application of the above legislation. Therefore there has been no formal public consultation regarding this instrument.

The Scottish Government previously consulted in relation to proposals for amending Environmental Impact Assessment legislation through *The Consultation on Transposition of Environmental Impact Assessment Directive 2014/52/EU* between August and October 2016 and the comments received helped inform the update instruments made in 2017. The analysis paper of that consultation is available on the Scottish Government website at: http://www.gov.scot/Publications/2016/08/2499.

Impact Assessments

Impact assessments have not been prepared for this instrument because the changes are minor and technical in nature, aimed solely at ensuring the adequate operation of the current regulatory regimes in relation to environmental impact assessments. The amendments do not alter the Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment.

A suite of impact assessments were undertaken in August 2016 when the Scottish Government consulted on amendments to Environmental Impact Assessment legislation and it was determined that the legislation was unlikely to have a negative impact on equalities groups, the environment and children's rights and wellbeing.

Financial Effects

No BRIA is necessary as the instrument has no additional financial effects on the Scottish Government, local government or on business over and above those of compliance with existing statutory provision on EIA.

Scottish Government
Transport Scotland

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