EXPLANATORY MEMORANDUM TO

THE HARBOURS AND HIGHWAYS (ENVIRONMENTAL IMPACT ASSESSMENT) (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 460

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Sifting Committees.

2. Purpose of the instrument

2.1 This instrument is required to ensure that the United Kingdom ("UK") has a functioning statute book and will come into force at the end of the transition period provided for in the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union ("EU") and the European Atomic Energy Community ("the Withdrawal Agreement".)

2.2 This instrument will correct retained EU law so that it functions correctly after the end of the transition period, which is consistent with the Withdrawal Agreement.

2.3 The purpose of these Regulations is to ensure that, so far as harbours situated in England, Wales and Scotland, and major road schemes in England and Wales, are concerned the established statutory processes and procedures for undertaking environmental impact assessments will continue to work effectively at the end of the transition period following the exit of the UK from the EU. In order to achieve this, modifications are needed to the Harbours Act 1964 (specifically, in section 44 and Schedule 3) and the Highways Act 1980 (specifically, in Part VA). The modifications remove and replace language that binds UK environmental impact assessments to EU legislation and institutions.

Explanations

What did any relevant EU law do before exit day?

2.4 The relevant EU law is Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment ("the 2011 Directive") subsequently substantially amended by Directive 2014/52/EU. It required Member States to ensure that, before consent is given, projects likely to have significant effects on the environment undergo an assessment with regard to their effects – an "environmental impact assessment" ("EIA"). In the UK, the 2011 Directive was implemented, so far as harbours situated in England, Wales and Scotland, and major road schemes in England and Wales, are concerned, by amendments made to the Harbours Act 1964 and the Highways Act 1980. The relevant provisions are section 44 of, and Part 1 of Schedule 3 to, the Harbours Act 1964; and Part VA of the Highways Act 1980.

Why is it being changed?

2.5 Provisions in section 44 of, and Part 1 of Schedule 3 to, the Harbours Act 1964, and in Part VA of the Highways Act 1980 are drafted from the perspective of the UK being an EU Member State, and some of the wording and language used in these provisions reflects this. At the end of the transition period following the exit of the UK from the EU, this wording will become deficient as it is not consistent with the UK no longer being an EU Member State and it is therefore being changed.

What will it now do?

2.6 The proposed changes are designed to cure the deficiencies in section 44 of, and Part 1 of Schedule 3 to, the Harbours Act 1964, and in Part VA of the Highways Act 1980 by eliminating or amending the wording in those provisions that is not consistent with the UK no longer being an EU Member State. The instrument otherwise maintains intact the EIA regimes for major harbour schemes in Great Britain and major roads schemes in England and Wales.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was laid in draft for sifting on 10 April. It was considered by the European Statutory Instruments Committee and by the Secondary Legislation Scrutiny Committee on 24 March. The Sifting Committees both agreed that the instrument should proceed by way of the negative resolution procedure. The Minister has considered the decisions of the Sifting Committees and has approved and signed 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)

3.2 As the instrument is subject to the 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, in so far as it relates to the Harbours Act 1964, is England, Wales and Scotland. The territorial extent of this instrument, in so far as it relates to the Highways Act 1980, is England and Wales.

4.2 The territorial application of this instrument, in so far as it relates to the Harbours Act 1964, is England, Wales and Scotland. The territorial application of this instrument, in so far as it relates to the Highways Act 1980, is England and Wales.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Harbours and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made in exercise of powers in section 8 of the Withdrawal Act.

6.2 The Withdrawal Act makes provision for repealing the European Communities Act 1972 and will preserve EU Law, as it stands at the end of the transition period, in UK law. The Withdrawal 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 State of the EU; together this will be retained EU Law.

6.3 Section 8 of the Withdrawal Act is a temporary power to make secondary legislation to deal with deficiencies in this retained EU Law. This instrument amends section 44 of, and Part 1 of Schedule 3 to, the Harbours Act 1964, and Part VA of the Highways Act 1980 which provide for the environmental impact assessment of harbour and road schemes, in order to ensure that the legislation continues to function properly at the end of the transition period following the exit of the UK from the EU.

6.4 Relevant provisions in section 44 of, and Part 1 of Schedule 3 to, the Harbours Act 1964, and in Part VA of the Highways Act 1980 are EU-derived domestic legislation. They were made in order to transpose the environmental impact assessment Directive (Directive 85/337/EEC), and its replacement (the 2011 Directive). The 2011 Directive was amended by Directive 2014/52/EU which was transposed into the 1964 and 1980 Acts in 2017.

7. Policy background

What is being done and why?

7.1 This instrument relates to relevant provisions in section 44 of, and Part 1 of Schedule 3 to, the Harbours Act 1964, and in Part VA of the Highways Act 1980 which set out the EIA process to be followed by the Secretary of State when considering relevant harbour schemes; and the Secretary of State, the Welsh Ministers and Highways England when considering relevant major road schemes, to ensure proper consideration of potential environmental impact is factored into the decision making processes for such schemes.

7.2 This instrument will ensure that these provisions on environmental impact assessment in the Harbours Act 1964 and the Highways Act 1980 continue to operate effectively at the end of the transition period following the exit of the UK from the EU. The purpose of the amendments is to adjust wording in the legislation which will become inappropriate as a result of the exit of the UK from the EU, in order that it reads correctly and remains coherent and clear. Otherwise this instrument makes no change to these existing EIA regimes within the 1964 and 1980 Acts.

7.3 The following changes are made—

- references to "Member States" are amended to "Secretary of State",
- references to "Union law" are amended to refer to "retained EU law",
- references to European Economic Area (EEA) states that assume that the UK is a member of the EEA are amended to reflect that the UK is not a member of the EEA,

- definitions which relied on cross references to the Directive, e.g. definition of "environmental organisation", are amended to be free-standing by removing reliance on cross references to the Directive.

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 Withdrawal Act in order to address failures of retained EU law to function correctly or other deficiencies arising from the exit of the UK from the EU. The instrument is also made under the complementary powers of paragraph 21of Schedule 7 to the Withdrawal Act. In accordance with that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

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

10. Consultation outcome

10.1 No formal consultation has been undertaken, as the instrument maintains the regulatory status quo with the amendments having no additional adverse effect on harbours or roads. However, in so far as the legislation being amended falls within the devolved competence of the Devolved Administrations, the relevant administrations have been consulted and have agreed to the amendments that are being made.

11. Guidance

11.1 No guidance will be issued in relation to this instrument because it does not make changes that affect businesses or others and it will not require anyone to take any different action in order to comply with the regulations in question.

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 it maintains the policy status quo and has no impact on businesses, charities, voluntary bodies or the public sector.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that regulatory burdens on small businesses will not change as a result of this instrument.

14. Monitoring & review

14.1 The approach to monitoring of this legislation will be through communication with key stakeholder groups.

14.2 In so far as this instrument is made under the Withdrawal Act, no review clause is required.

15. Contact

15.1 Caroline Wall (Maritime International and Trade) at the Department for Transport Tel: 020 7944 6251 or email Caroline.Wall@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Haroona Chughtai, Deputy Director for Maritime International and Trade, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rachel Maclean MP, Parliamentary Under Secretary 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) Act 2018

1. Sifting statement(s)

1.1 The Parliamentary Under Secretary of State for Transport at the Department for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Harbours and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2020 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: this legislation does not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018. It does not establish a new public authority, transfer an EU function to a newly created public authority, transfer an EU legislative function to a UK body, relate to fees, create or widen the scope of a criminal offence, or create or amend a power to legislate. The aim is simply to ensure that existing legislation functions correctly after the end of the transition period.

2. Appropriateness statement

2.1 The Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Harbours and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate."

2.2 This is the case because they make technical changes which do no more than is necessary to ensure that section 44 of, and Part 1 of Schedule 3 to, the Harbours Act 1964; and Part VA of the Highways Act 1980 function correctly after the end of the transition period following the exit of the UK from the EU.

3. Good reasons

3.1 The Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, 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 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.

4. Equalities

4.1 The Parliamentary Under Secretary of State, Rachel Maclean MP, has made the following statement:

"The draft 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 Parliamentary Under Secretary of State for Transport, Rachel Maclean MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Rachel Maclean MP, 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."

5. Explanations

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