EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) (AMENDMENT) REGULATIONS 2011

2011 No. 2741

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations will ensure that recent changes made to the European rules on environmental impact assessments will be reflected in domestic legislation. They also insert a review clause into the domestic legislation and correct an omission.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 These regulations are needed to transpose EC Directive 2009/31/EC. That Directive amended EC Directive 85/337/EEC, known as the environmental impact assessment Directive (the "EIA Directive"). The EIA Directive was transposed for the purposes of nationally significant development by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the "2009 Regulations"). As the EIA Directive has been amended, it is necessary to amend the 2009 Regulations. The deadline for transposition was 25th June 2011.

4.2 As part of the Government's Better Regulation initiative all regulations, including those that implement EU obligations, must contain a review clause. These Regulations insert a review clause into the 2009 Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales and to the extent specified in section 240(4) of the Planning Act 2008 ("the Act"), to Scotland.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Act created a new regime for applications for nationally significant infrastructure projects. The projects that are or will be covered by the new regime are defined in section 14 of the Act. The Act also created a new independent body - The Infrastructure Planning Commission ("IPC"), to take over responsibility for considering and deciding such applications.

7.2 Regulations have already been made under the powers in the Act to prescribe how an application must be made and how it should then be considered. Regulations have also been made to ensure that the requirements on environmental and habitats issues are taken into account. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (S.I. 2009/2263) prescribe the environmental requirements and it is these regulations that are being amended to reflect the change in the Directive, namely to include infrastructure for the capture, and geological storage, of carbon dioxide.

7.3 Those regulations are also being amended to correct an unintended omission when they were drafted. Schedule 1 to those regulations was intended to be a copy of Annex 1 of the EIA Directive. However, paragraph 20 of Annex 1 was omitted from that Schedule by mistake. Paragraph 20 refers to the construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.

- Consolidation

7.4 The Department has no plans to consolidate the legislation, at present.

- Transposition note

7.5 It is normal practice to make available to Parliament, alongside primary or secondary legislation giving effect to European directives, a transposition note that sets out how the Government will transpose the main elements of those directives into UK law. These Regulations are part of a suite of regulations that transpose the amended EIA requirements, for which there will be a single transposition note. This note is the one attached to the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010[1], as amended.

8. Consultation outcome

8.1 The construction of overhead power lines mentioned above was included in the original consultation on "the 2009 Regulations". It was omitted from the Schedule to "the 2009 Regulations" purely by typographical error.

8.2 It has not been considered necessary to carry out a further consultation on the amendments required by EC Directive 2009/31/EC because it is

[1] S.I. 2010/1513.

intended that the processes which have already been the subject of consultation will apply to this addition to the Schedule. Furthermore there is an obligation to make this transposition and what is being done is the minimum that is necessary to comply with this obligation.

9. Guidance

9.1 The guidance will be amended in due course. It is not being amended immediately because we are currently reviewing the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and anticipate that we may need to make changes to reflect the outcome of various court cases and a wider consolidation exercise. The guidance will be updated when that review is completed.

10. Impact

10.1 The impact on business, charities or voluntary bodies has been considered in terms of the cost of fulfilling the obligations under the EIA Directive, which are borne by the potential applicants for the types of infrastructure referred to in these amendment regulations. The costs will primarily be for the undertaking of an environmental impact assessment to produce an environmental statement, where one is required to be produced as part of an application for a development consent order. It therefore forms part of an applicant's usual pre-application costs. There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector has been considered in terms of costs borne by the IPC in fulfilling its obligations under the EIA Directive; and costs borne by local authorities, and others that are statutory consultees under the IPC regime, who may be engaged in the EIA Directive related processes, such as commenting on proposed and submitted applications. With respect to the IPC, these costs are reimbursed through the fees it receives from applicants when they submit an application for a development consent order. Local authorities and the statutory consultees are deemed to be fulfilling roles for which they are centrally funded through their respective funding sources. However, if a local authority receives a request from a potential applicant to provide it with pre-application advice, if it so wishes it is able to recover its costs incurred in providing that advice by charging the applicant a fee under section 93 of the Local Government Act 2003.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 Although the legislation applies to small business, the Government believes it is unlikely that a small business will apply for a development consent order for a nationally significant infrastructure project under the Act.

12. Monitoring & review

12.1 There will be Ministerial review of this measure every 5 years, the first one within 5 years from when these Regulations come into force. The conclusions of the review will be set out in a report, which will be published.

13. Contact

Paul Lancaster at the Department for Communities and Local Government: 0303 444 1597 or email: paul.lancaster@communities.gsi.gov.uk can answer any queries regarding the instrument.