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STATUTORY INSTRUMENTS

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**2019 No. 31**

**EXITING THE EUROPEAN  
UNION, NORTHERN IRELAND  
ENVIRONMENTAL PROTECTION,  
NORTHERN IRELAND  
LAND DRAINAGE, NORTHERN IRELAND**

The Drainage (Environmental Impact Assessment)  
(Amendment) (Northern Ireland) (EU Exit) Regulations 2019

<i>Sift requirements satisfied</i>	<i>27th November 2018</i>
<i>Made - - - -</i>	<i>9th January 2019</i>
<i>Laid before Parliament</i>	<i>14th January 2019</i>
<i>Coming into force in accordance with regulation 1(1)</i>	

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21(a)(i) and (b) of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(1)</sup>. The requirements of paragraph 3(2) of Schedule 7 to that Act (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

**PART 1**

Introduction

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 and come into force on exit day.

(2) These Regulations extend to Northern Ireland only.

## PART 2

### Amendment of primary legislation

#### Amendment of the Drainage (Northern Ireland) Order 1973

2.—(1) The Drainage (Northern Ireland) Order 1973(2) is amended as follows.

(2) In Article 2 (interpretation)—

(a) in paragraph (2)—

- (i) omit the definition of “another member State”;
- (ii) omit the definition of “another EEA State”;
- (iii) omit the definition of “EEA State”;
- (iv) after the definition of “general advertisement” insert—

““the Habitats Directive” means Council [Directive 92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora, as last amended by Council [Directive 2013/17/EU](#),”;

(v) after the definition of “sluice” insert—

““species and habitats” means—

- (a) species of naturally occurring birds in the wild state as specified in [Directive 2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds;
- (b) natural habitat types listed in Annex 1 to the Habitats Directive;
- (c) animal and plant species listed in Annex 2 or Annex 4 to the Habitats Directive;”;

(vi) omit the definition of “ Union Legislation”.

(b) in paragraph (2A), for “another EEA State” substitute “an EEA State”

(3) In Article 12ZA (direction that articles do not apply)—

(a) in paragraph (1)(a)—

- (i) omit the words from the beginning to “Article 7 of the Directive”;
- (ii) omit “, provided the objectives of the Directive are met”.

(b) in paragraph (3), for “another EEA State” substitute “an EEA State”.

(4) In Article 12A (consultations and determinations on whether a drainage scheme has significant effects on the environment)—

- (a) in paragraph (2)(a), for “Union legislation” substitute “retained EU law”;
- (b) in paragraph (5)(d), for “another EEA State” substitute “an EEA State”;
- (c) in paragraph (10), for “Union legislation” substitute “retained EU law”.

(5) In Article 12B (drainage schemes likely to have significant effects on the environment), in paragraph (2)(f), for “another EEA State” substitute “an EEA State”.

(6) In Article 12G (drainage schemes likely to have significant effects on the environment in another EEA State)—

- (a) in the heading and in paragraph (1), in each place it occurs, for “another EEA State” substitute “an EEA State”;

- (b) in paragraph (3)(a), for the words from “referred to in Article 6(1) of the Directive” to the end substitute “which the EEA State has designated to be consulted about the proposed drainage scheme and to the public concerned in that State; and”;
- (c) in paragraph (4)—
  - (i) omit “in accordance with Article (7)(4) of the Directive”;
  - (ii) in sub-paragraph (b), for “the other EEA State” substitute “that EEA State”.
- (7) In Article 12I (monitoring), in paragraph (2)(b), for “Union legislation” substitute “retained EU law”.
- (8) In Schedule 2A (information for inclusion in environmental statement)—
  - (a) for paragraph 4, for “Article 3(1) of the Directive” substitute “paragraph 1 of Schedule 2C”;
  - (b) in paragraph 6—
    - (i) for “specified in Article 3(1) of the Directive” substitute “set out in paragraph 4”;
    - (ii) for the words from “established at EU or member State level” to the end substitute “contained in retained EU law or any statutory provision which are relevant to the works, including in particular those objectives contained in any retained EU law or statutory provision which implemented the Habitats Directive and [Directive 2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds.”;
  - (c) in paragraph 9, for the second sentence substitute “Relevant information available and obtained through risk assessments carried out pursuant to retained EU law or relevant assessments carried out pursuant to any statutory provision may be used for this purpose provided that the requirements of any retained EU law or statutory provision that implemented the Directive are met”.
- (9) In Schedule 2B (selection criteria)—
  - (a) in the heading, omit “referred to in Article 4(3) of the Directive”;
  - (b) in paragraph 2(c)(v), for the words from “EEA States’ legislation,” to the end substitute “retained EU law or under any statutory provision; Natura 2000 (as defined in regulation 2(2) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995).”;
  - (c) in paragraph 2(c)(vi), for “Union Legislation” substitute “retained EU law”;
  - (d) in paragraph 3, for “specified in Article 3(1) of the Directive” substitute “set out in paragraph 1 of Schedule 2C”.
- (10) In Schedule 2C (environmental factors to be taken into account), in paragraph (1)(b), omit “protected under [Directive 92/43/EEC](#) and [Directive 2009/147/EEC](#)”.

## PART 3

### Amendment of subordinate legislation

#### **Amendment of the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017**

**3.—(1)** The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017**(3)** are amended as follows.

- (2) In regulation 2(1)—
  - (a) omit the definition of “another EEA State”;
  - (b) after the definition of “the Drainage Order” insert—
    - ““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993, as modified or supplemented from time to time, but does not include any retained direct EU legislation;”;
  - (c) for the definition of “EEA State” substitute—
    - ““EEA State”, in relation to a time, means—
    - (a) a state which at that time is a member State of the European Union, or
    - (b) any other state which at that time is a party to the EEA agreement;”;
  - (d) omit the definition of “Union Legislation”.
- (3) In regulations 2(3), 4(3), 8(2)(d) and 9(2)(f), for “another EEA State” substitute “an EEA State”.
- (4) In regulation 4(1)(a)—
  - (a) omit the words from the beginning to “Article 7 of the Directive”;
  - (b) omit “, provided the objectives of the Directive are met”.
- (5) In regulation 8—
  - (a) in paragraph (1), for “Union legislation” substitute “retained EU law”;
  - (b) in paragraph (7), for “Union legislation” substitute “retained EU law”.
- (6) In regulation 15—
  - (a) in the heading, for “another EEA State” substitute “an EEA State”;
  - (b) in paragraph (1), for “another EEA State”, in each place it occurs, substitute “an EEA State”;
  - (c) in paragraph (3)(a), for the words from “referred to in Article 6(1) of the Directive” to the end substitute “designated by the EEA State concerned to be consulted about the proposed drainage works and to the public concerned in that State”;
  - (d) in paragraph (4)—
    - (i) omit “in accordance with Article 7(1) of the Directive”;
    - (ii) in sub-paragraph (b), for “the other EEA State” substitute “that EEA State”.
- (7) In regulation 17(2)(b), for “Union legislation” substitute “retained EU law”.

*Thérèse Coffey*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

9th January 2019

## EXPLANATORY NOTE

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

These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21(a)(i) and (b) and Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to Northern Ireland legislation that implements, in relation to drainage projects, Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

Part 2 of these Regulations makes amendments to the Drainage (Northern Ireland) Order 1973. Part 3 makes amendments to the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

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