

Report on the Statutory Instrument Consent Memorandum for The Environmental Impact Assessment (Miscellaneous Amendments relating to Harbours, Highways and Transport) Regulations 2017

December 2017

01. Background

1. On 15 November 2017, Ken Skates AM, Cabinet Secretary for Economy and Transport, in accordance with Standing Order 30A, laid before the National Assembly a Statutory Instrument Consent Memorandum for The Environmental Impact Assessment (Miscellaneous Amendments relating to Harbours, Highways and Transport) Regulations 2017.
2. Standing Order 30A states that a member of the government must lay a Statutory Instrument Consent Memorandum in relation to any relevant statutory instrument laid before the UK Parliament by UK Ministers, if a UK Statutory Instrument makes provision in relation to Wales to amend primary legislation within the legislative competence of the National Assembly.

02. The Statutory Instrument Consent Memorandum

3. The Memorandum states that:

“The objective of the regulations is to transpose Directive 2014/52/EU, which amends Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. This assessment is known as the Environmental Impact Assessment (‘EIA’)...



...These provisions are technical in nature, covering the procedural requirements of an EIA and clarifying elements of the existing regime. In many cases the existing legislation is likely to be sufficient to meet the requirements of the 2014 Directive, but a copy out approach has been taken in all appropriate places in order to minimise the risk of failure to properly transpose. The practical impacts of the changes are minor, as EIAs in Wales are already being carried out with a regard to the 2014 Directive.”¹

4. The Memorandum explains that the 2017 Regulations cover areas within and outside of devolved competence. In particular the specific provisions of the Harbour Act 1964 and Highways Act 1980, that are within the legislative competence of the National Assembly. The provisions relate to harbours, highways and transport which are used or required wholly or mainly for the fishing industry, for recreation, or for communication between places in Wales.²

5. The Memorandum also states that:

“It is the view of the Welsh Government that it is appropriate to deal with these provisions in these regulations as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in Wales. These regulations amend primary legislation which applies in Wales and England, and it was not practical or proportionate to make separate Welsh regulations to make identical changes to the same pieces of primary legislation.

Additionally, the Welsh Ministers are not designated to transpose the provisions relating to harbours and therefore only part of these regulations could be transposed in Wales. The Wales Act 2017 will extend devolved competence over ports and harbours, though at this point the enabling legislation (the Harbours Act 1964 and the Highways Act 1980) will still apply on an England and Wales basis. This approach ensures a common approach to transposing the Directive across the UK, and will support a smooth transition to further devolution.”³

¹ Statutory Instrument Consent Memorandum for The Environmental Impact Assessment (Miscellaneous Amendments relating to Harbours, Highways and Transport) Regulations 2017, paragraphs 3 and 5

² Statutory Instrument Consent Memorandum, paragraph 9

³ Statutory Instrument Consent Memorandum, paragraphs 27 and 28

6. In correspondence, the Cabinet Secretary for Economy and Transport stated his intention not to table a Statutory Instrument Consent Motion for debate.⁴

03. Consideration

7. We considered the Statutory Instrument Consent Memorandum at our meeting on 20 November 2017.

04. Conclusion

8. We are content with the Memorandum.

⁴ Letter from the Cabinet Secretary for Economy and Transport to the Chair of the Constitutional and Legislative Affairs Committee, 15 November 2017