

**2004 No. 1633**

**ENVIRONMENTAL PROTECTION**

**The Environmental Assessment of Plans and Programmes  
Regulations 2004**

<i>Made</i> - - - -	<i>28th June 2004</i>
<i>Laid before Parliament</i>	<i>29th June 2004</i>
<i>Coming into force</i> - -	<i>20th July 2004</i>

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The Secretary of State, being a designated(a) Minister for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to matters relating to the assessment of the effects of certain plans and programmes on the environment, in exercise of the powers conferred by that section 2, and of all other powers enabling him in that behalf, hereby makes the following Regulations:

### PART 1

#### INTRODUCTORY PROVISIONS

##### Citation and commencement

1. These Regulations may be cited as the Environmental Assessment of Plans and Programmes Regulations 2004 and shall come into force on 20th July 2004.

##### Interpretation

2.—(1) In these Regulations—

“consultation body” has the meaning given by regulation 4;

“England” includes the territorial waters of the United Kingdom that are not part of Northern Ireland, Scotland or Wales, and waters in any area for the time being designated under section 17(1) of the Continental Shelf Act 1964(c);

“the Environmental Assessment of Plans and Programmes Directive” means Directive 2001/42/EC(d) of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment;

“the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna, as last amended by Council Directive 97/62/EC(e);

“Northern Ireland” has the meaning given by section 98 of the Northern Ireland Act 1998(f);

“plans and programmes” means plans and programmes, including those co-financed by the European Community, as well as any modifications to them, which—

(a) are subject to preparation or adoption by an authority at national, regional or local level; or

(b) are prepared by an authority for adoption, through a legislative procedure by Parliament or Government; and, in either case,

(c) are required by legislative, regulatory or administrative provisions; and

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(a) S.I. 2004/706.

(b) 1972 c.68.

(c) 1964 c.29.

(d) O.J. No. L 197, 21.07.2001, p.30.

(e) O.J. No. L 206, 22.7.1992. The latest amending Directive is at O.J. No. L 305, 8.11.1997, p.42.

(f) 1998 c.47. See also the orders made under section 98.

“responsible authority”, in relation to a plan or programme, means—

- (a) the authority by which or on whose behalf it is prepared; and
- (b) where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible (solely or jointly with the authority) for taking those steps;

“Scotland” has the meaning given by section 126 of the Scotland Act 1998(a); and

“Wales” has the meaning given by section 155 of the Government of Wales Act 1998(b).

(2) Other expressions used both in these Regulations and in the Environmental Assessment of Plans and Programmes Directive have the same meaning in these Regulations as they have in that Directive.

### **Application of Regulations**

3.—(1) With the exception of regulations 14 and 15, these Regulations apply as follows.

(2) These Regulations apply to a plan or programme relating—

- (a) solely to the whole or any part of England; or
- (b) to England (whether as to the whole or part) and any other part of the United Kingdom.

(3) These Regulations apply to a plan or programme relating (whether wholly or in part) to the Isles of Scilly as if the Isles were a county in England.

(4) These Regulations do not apply to a plan or programme relating solely —

- (a) to the whole or any part of Northern Ireland;
- (b) to the whole or any part of Scotland; or
- (c) to the whole or any part of Wales.

### **Consultation bodies**

4.—(1) Subject to paragraph (5), in relation to every plan or programme to which these Regulations apply, each of the following bodies shall be a consultation body—

- (a) the Countryside Agency;
- (b) the Historic Buildings and Monuments Commission for England (English Heritage);
- (c) English Nature; and
- (d) the Environment Agency,

but where paragraph (2), (3) or (4) applies, the functions of those bodies under these Regulations shall be exercisable only in relation to so much of the plan or programme as relates to England.

(2) In relation to such part of a plan or programme to which these Regulations apply as relates to Northern Ireland, the Department of the Environment for Northern Ireland shall be a consultation body for the purposes of these Regulations.

(3) In relation to such part of a plan or programme to which these Regulations apply as relates to Scotland, each of the following shall be a consultation body for the purposes of these Regulations—

- (a) the Scottish Ministers;
- (b) the Scottish Environment Protection Agency; and
- (c) Scottish Natural Heritage.

(4) In relation to such part of a plan or programme to which these Regulations apply as relates to Wales, each of the following shall be a consultation body for the purposes of these Regulations—

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(a) 1998 c.46. See also the orders made under section 126.

(b) 1998 c.38. See also the orders made under section 155.

- (a) the National Assembly for Wales; and
- (b) the Countryside Council for Wales.

(5) Where a body mentioned in paragraph (1) is at any time the responsible authority as regards a plan or programme, it shall not at that time exercise the functions under these Regulations of a consultation body in relation to that plan or programme; and references to the consultation bodies in the following provisions of these Regulations shall be construed accordingly.

## PART 2

### ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

#### **Environmental assessment for plans and programmes: first formal preparatory act on or after 21st July 2004**

5.—(1) Subject to paragraphs (5) and (6) and regulation 7, where—

- (a) the first formal preparatory act of a plan or programme is on or after 21st July 2004; and
- (b) the plan or programme is of the description set out in either paragraph (2) or paragraph (3),

the responsible authority shall carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of these Regulations, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.

(2) The description is a plan or programme which—

- (a) is prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, and
- (b) sets the framework for future development consent of projects listed in Annex I or II to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC(a).

(3) The description is a plan or programme which, in view of the likely effect on sites, has been determined to require an assessment pursuant to Article 6 or 7 of the Habitats Directive.

(4) Subject to paragraph (5) and regulation 7, where—

- (a) the first formal preparatory act of a plan or programme, other than a plan or programme of the description set out in paragraph (2) or (3), is on or after 21st July 2004;
- (b) the plan or programme sets the framework for future development consent of projects; and
- (c) the plan or programme is the subject of a determination under regulation 9(1) or a direction under regulation 10(3) that it is likely to have significant environmental effects,

the responsible authority shall carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of these Regulations, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.

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(a) O.J. No. L 175, 5.7.1985, p.40. The amending Directive is at O.J. L73, 14.3.1997, p.5.

(5) Nothing in paragraph (1) or (4) requires the carrying out of an environmental assessment for—

- (a) a plan or programme the sole purpose of which is to serve national defence or civil emergency;
- (b) a financial or budget plan or programme; or
- (c) a plan or programme co-financed under—
  - (i) the 2000-2006 programming period for Council Regulation (EC) No. 1260/1999; or
  - (ii) the 2000-2006 or 2000-2007 programming period for Council Regulation (EC) No. 1257/1999.

(6) An environmental assessment need not be carried out—

- (a) for a plan or programme of the description set out in paragraph (2) or (3) which determines the use of a small area at local level; or
- (b) for a minor modification to a plan or programme of the description set out in either of those paragraphs,

unless it has been determined under regulation 9(1) that the plan, programme or modification, as the case may be, is likely to have significant environmental effects, or it is the subject of a direction under regulation 10(3).

#### **Environmental assessment for plans and programmes: first formal preparatory act before 21st July 2004**

6.—(1) Subject to paragraph (2) and regulation 7, where—

- (a) a plan or programme of which the first formal preparatory act is before 21st July 2004 has not been adopted or submitted to the legislative procedure for adoption before 22nd July 2006; and
- (b) the plan or programme is such that, had the first act in its preparation occurred on 21st July 2004, the plan or programme would have required an environmental assessment by virtue of regulation 5(1); or
- (c) the responsible authority is of the opinion that, if a determination under regulation 9(1) in respect of the plan or programme had been made on 21st July 2004, it would have determined that the plan or programme was likely to have significant environmental effects,

the responsible authority shall carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of these Regulations, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.

(2) Nothing in paragraph (1) shall require the environmental assessment of a particular plan or programme if the responsible authority—

- (a) decides that such assessment is not feasible; and
- (b) informs the public of its decision.

#### **Environmental assessment for plans and programmes co-financed by the European Community**

7. The environmental assessment required by any provision of this Part for a plan or programme co-financed by the European Community shall be carried out by the responsible authority in conformity with the specific provisions in relevant Community legislation.

### **Restriction on adoption or submission of plans, programmes and modifications**

**8.—(1)** A plan, programme or modification in respect of which a determination under regulation 9(1) is required shall not be adopted or submitted to the legislative procedure for the purpose of its adoption—

- (a) where an environmental assessment is required in consequence of the determination or of a direction under regulation 10(3), before the requirements of paragraph (3) below have been met;
- (b) in any other case, before the determination has been made under regulation 9(1).

(2) A plan or programme for which an environmental assessment is required by any provision of this Part shall not be adopted or submitted to the legislative procedure for the purpose of its adoption before—

- (a) if it is a plan or programme co-financed by the European Community, the environmental assessment has been carried out as mentioned in regulation 7;
- (b) in any other case, the requirements of paragraph (3) below, and such requirements of Part 3 as apply in relation to the plan or programme, have been met.

(3) The requirements of this paragraph are that account shall be taken of—

- (a) the environmental report for the plan or programme;
- (b) opinions expressed in response to the invitation referred to in regulation 13(2)(d);
- (c) opinions expressed in response to action taken by the responsible authority in accordance with regulation 13(4); and
- (d) the outcome of any consultations under regulation 14(4).

### **Determinations of the responsible authority**

**9.—(1)** The responsible authority shall determine whether or not a plan, programme or modification of a description referred to in—

- (a) paragraph (4)(a) and (b) of regulation 5;
- (b) paragraph (6)(a) of that regulation; or
- (c) paragraph (6)(b) of that regulation,

is likely to have significant environmental effects.

(2) Before making a determination under paragraph (1) the responsible authority shall—

- (a) take into account the criteria specified in Schedule 1 to these Regulations; and
- (b) consult the consultation bodies.

(3) Where the responsible authority determines that the plan, programme or modification is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), it shall prepare a statement of its reasons for the determination.

### **Powers of the Secretary of State**

**10.—(1)** The Secretary of State may at any time require the responsible authority to send him a copy of—

- (a) any determination under paragraph (1) of regulation 9 with respect to the plan, programme or modification;
- (b) the plan, programme or modification to which the determination relates; and
- (c) where paragraph (3) of that regulation applies, the statement prepared in accordance with that paragraph.

(2) The responsible authority shall comply with a requirement under paragraph (1) within 7 days.

(3) The Secretary of State may direct that a plan, programme or modification is likely to have significant environmental effects (whether or not a copy of it has been sent to him in response to a requirement under paragraph (1)).

(4) Before giving a direction under paragraph (3) the Secretary of State shall—

- (a) take into account the criteria specified in Schedule 1 to these Regulations; and
- (b) consult the consultation bodies.

(5) The Secretary of State shall, as soon as reasonably practicable after the giving of the direction, send to the responsible authority and to each consultation body—

- (a) a copy of the direction; and
- (b) a statement of his reasons for giving the direction.

(6) In relation to a plan, programme or modification in respect of which a direction has been given—

- (a) any determination under regulation 9(1) with respect to the plan, programme or modification shall cease to have effect on the giving of the direction; and
- (b) if no determination has been made under regulation 9(1) with respect to the plan, programme or modification, the responsible authority shall cease to be under any duty imposed by that regulation.

#### **Publicity for determinations and directions**

**11.—**(1) Within 28 days of making a determination under regulation 9(1), the responsible authority shall send to each consultation body—

- (a) a copy of the determination; and
- (b) where the responsible authority has determined that the plan or programme does not require an environmental assessment, a statement of its reasons for the determination.

(2) The responsible authority shall—

- (a) keep a copy of the determination, and any accompanying statement of reasons, available at its principal office for inspection by the public at all reasonable times and free of charge; and
- (b) within 28 days of the making of the determination, take such steps as it considers appropriate to bring to the attention of the public—
  - (i) the title of the plan, programme or modification to which the determination relates;
  - (ii) that the responsible authority has determined that the plan, programme or modification is or is not likely to have significant environmental effects (as the case may be) and, accordingly, that an environmental assessment is or is not required in respect of the plan, programme or modification; and
  - (iii) the address (which may include a website) at which a copy of the determination and any accompanying statement of reasons may be inspected or from which a copy may be obtained.

(3) Where the responsible authority receives a direction under regulation 10(3), it shall—

- (a) keep a copy of the direction and of the Secretary of State's statement of his reasons for giving it available at its principal office for inspection by the public at all reasonable times and free of charge; and
- (b) within 28 days of the receipt of such a direction, take such steps as it considers appropriate to bring to the attention of the public—
  - (i) the title of the plan, programme or modification to which the direction relates;
  - (ii) that the Secretary of State has directed that the plan, programme or modification is likely to have significant environmental effects and, accordingly, that an environmental assessment is required in respect of the plan, programme or modification; and

- (iii) the address (which may include a website) at which a copy of the direction and of the Secretary of State's statement of his reasons for giving it may be inspected or from which a copy may be obtained.

(4) The responsible authority shall provide a copy of any document referred to in paragraph (2)(b)(iii) or (3)(b)(iii) free of charge.

## PART 3

### ENVIRONMENTAL REPORTS AND CONSULTATION PROCEDURES

#### Preparation of environmental report

**12.**—(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of—

- (a) implementing the plan or programme; and
- (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.

(3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of—

- (a) current knowledge and methods of assessment;
- (b) the contents and level of detail in the plan or programme;
- (c) the stage of the plan or programme in the decision-making process; and
- (d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

(4) Information referred to in Schedule 2 may be provided by reference to relevant information obtained at other levels of decision-making or through other Community legislation.

(5) When deciding on the scope and level of detail of the information that must be included in the report, the responsible authority shall consult the consultation bodies.

(6) Where a consultation body wishes to respond to a consultation under paragraph (5), it shall do so within the period of 5 weeks beginning with the date on which it receives the responsible authority's invitation to engage in the consultation.

#### Consultation procedures

**13.**—(1) Every draft plan or programme for which an environmental report has been prepared in accordance with regulation 12 and its accompanying environmental report ("the relevant documents") shall be made available for the purposes of consultation in accordance with the following provisions of this regulation.

(2) As soon as reasonably practicable after the preparation of the relevant documents, the responsible authority shall—

- (a) send a copy of those documents to each consultation body;
- (b) take such steps as it considers appropriate to bring the preparation of the relevant documents to the attention of the persons who, in the authority's opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan or programme concerned, required under the Environmental Assessment of Plans and Programmes Directive ("the public consultees");