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## EXPLANATORY NOTE

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

These Regulations implement Directive [2001/42/EC](#) of the European Parliament and Council on the assessment of the effects of certain plans and programmes on the environment (“the Directive”), as regards plans and programmes which relate solely to the whole or any part of Scotland.

The Directive and, accordingly, these Regulations, do not apply to plans and programmes whose sole purpose is to serve national defence or civil emergency, or to financial or budget plans and programmes. Nor do they apply to a plan or programme co-financed by the European Community under the 2000-2006 programming period for Council Regulation (EC) No. [1260/1999](#) or the 2000-2006 or 2000-2007 programming period for Council Regulation (EC) No. [1257/1999](#) (regulation 3). Article 3.8 and 3.9 of the Directive).

The Regulations apply to certain plans and programmes, including those co-financed by the European Community, and any modifications to them, which are required by legislative, regulatory or administrative provisions and are either–

- (a) subject to preparation or adoption by an authority at national, regional or local level; or
- (b) prepared by an authority for adoption, through a legislative procedure by Parliament or Government.

Subject to the exceptions mentioned below, where the first formal preparatory act in relation to a plan or programme to which the Regulations apply is after 21st July 2004, the plan or programme cannot be adopted, or submitted for adoption, unless it has been subjected to environmental assessment under the Regulations (regulations 8 and 12(2); Articles 4.1 and 13.3 of the Directive).

The requirement for environmental assessment applies, in particular, to any plan or programme prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, which sets the framework for future development consent of projects listed in Annex I or II to Council Directive [85/33/EEC](#) on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive [97/11/EC](#); and to any 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 Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild flora and fauna, as last amended by Council Directive [97/11/EC](#) (regulation 9(a) and (b); Article 3.2 of the Directive).

There are exceptions for plans and programmes that determine the use of a small area at local level, and for minor modifications, if the authority responsible for preparing the plan or programme (referred to in the Regulations as the “responsible authority”) has determined under regulation 13 and 14 that the plan or programme is unlikely to have significant environmental effects (regulation 10, Article 3.3 of the Directive).

The requirement for environmental assessment also applies to other plans and programmes which set the framework for future development consent of projects if they are determined under regulation 13 and 14 to be likely to have significant environmental effects (regulation 9(c), Article 3.4 of the Directive).

The requirement for environmental assessment under the Regulations may also apply where a plan or programme in relation to which the first formal preparatory act occurred before 21st July 2004 has not been adopted before 22nd July 2006. If an environmental assessment would have been required if the first formal preparatory act had occurred after 21st July 2004, the plan or programme must be

subjected to environmental assessment unless the Scottish Ministers decide that that is not feasible and informs the public to that effect (regulation 11, Articles 4.1 and 13.3 of the Directive).

Regulation 12 makes it clear that an assessment carried out under these Regulations is without prejudice to other Community Law requirements. It also provides for environmental assessment of plans and programmes co-financed by the European Community (other than those excepted by Article 3.9 of the Directive) to be carried out in conformity with the specific provisions in relevant Community legislation (Article 11.3 of the Directive).

Regulation 6 prevents the adoption, or submission for adoption, of a plan or programme for which an environmental assessment is required under these Regulations, before the completion of that assessment. An environmental assessment is not complete until account has been taken of the environmental report for that plan or programme and the opinions expressed in the course of the consultations required by regulation 18, and the outcome of any transboundary consultations under regulation 14(4) of the Environmental Assessment of Plans and Programmes Regulations 2004 (Article 8 of the Directive). Regulation 6 also prevents the adoption, or submission for adoption, of a plan or programme before the responsible authority has determined whether the plan or programme is likely to have significant environmental effects.

Regulation 13 deals with the making of determinations by the responsible authority as to whether a plan or programme is likely to have significant environmental effects. The criteria to be applied are set out in Schedule 1 to the Regulations (Article 3.5 of, and Annex II to, the Directive). Determinations cannot be made unless the responsible authority has consulted designated authorities (“the consultation authority”).

Regulation 5 deals with the designation of the consultation bodies (Article 6.3 of the Directive). In the case of every plan and programme to which the Regulations apply, the consultation bodies will consist of, or include, the Scottish Ministers and the Scottish Environment Agency and Scottish Natural Heritage.

Regulation 7 enables the Scottish Ministers to require a responsible authority to provide them with a copy of any plan or programme to which the requirements of the Regulations have not been applied. It also enables them to direct that these requirements will be applied to a particular plan or programme where they consider those requirements apply.

Regulation 15 requires the publication of determinations under regulations 13 and 14 (Articles 3.7 of the Directive).

Environmental assessment under the Regulations includes the preparation of an environmental report (regulation 16, Article 5 of the Directive). The matters to be included in the environmental report are specified in Schedule 2 to the Regulations (Article 5.1 of, and Annex II to, the Directive).

Regulation 17 provides for the consultation authorities to be consulted on the scope and level of detail of the environmental report (Article 5.4). It also provides for review by the Scottish Ministers of the period for consultation to ensure that consultees have enough time to express their opinion on the relevant documents (Article 6.2).

Regulation 18 specifies the consultation procedures that must be undertaken in relation to a draft plan or programme for which an environmental report has been prepared under these Regulations (Articles 5.4 and 6 of the Directive).

Regulation 19 requires the appropriate authority to take account of the environmental report, the opinions expressed in response to consultations and the outcome of a transboundary consultation (Article 8).

Regulation 20 deals with procedures after the adoption of a plan or programme that has been the subject of an environmental assessment under the Regulations. It requires the person who prepared the plan or programme to give notice of its adoption and to make it and other specified information available for inspection (Article 9 of the Directive).

Regulation 21 provides for the monitoring of the significant environmental effects of implementing plans and programmes (Article 10 of the Directive). It requires the person by whom the plan or programme was prepared to monitor with a view to identifying, at an early stage, unforeseen adverse effects, and being able to undertake appropriate remedial action.

A Regulatory Impact Assessment has been prepared in connection with these Regulations. A copy may be obtained from the Strategic Environment Assessment Team, the Sustainable Development Directorate, Victoria Quay, Leith, EH6 6QQ, and may be viewed on the Scottish Executive website, [www.scotland.gov.uk/about/ELLD/EI/00015242/Final.aspx](http://www.scotland.gov.uk/about/ELLD/EI/00015242/Final.aspx). Copies have also been placed in the Scottish Parliament Information Centre, George IV Bridge, Edinburgh.