

ENVIRONMENTAL ASSESSMENT (SCOTLAND) ACT 2005 (ASP15)

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Environmental Assessment for Plans and Programmes

Section 5 – Qualifying plans and programmes

15. This section describes in detail the plans and programmes to which the provisions of the Act apply and provides that these be called “qualifying plans and programmes”. The Act only applies to plans and programmes for which the first formal preparatory act takes place on or after the coming into force of section 5(1)(a) of the Act, and which are not exempt under sections 7(1) or 8(2).
16. [Section 5\(2\)](#) excludes those parts of plans and programmes that relate to matters that are not of a public character. The intention here is to ensure that the private activities of Responsible Authorities are not affected.
17. [Section 5\(3\)](#) deals with those plans and programmes required by the Directive. Section 5(3)(a) and (b) set out a group of activity areas which, by their nature, mean that plans and programmes relating to them are deemed always to be likely to give rise to significant environmental effects and therefore will always give rise to the requirement to carry out an environmental assessment. Subsection (5) allows Scottish Ministers to amend and update schedule 1 of the Act, to take account of any further amendments that may be made to Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment (“ the EIA Directive ”) on which schedule 1 is largely based. The additions of Motorway service areas and Golf Courses and associated developments are included to be consistent with the provisions of [Environmental Impact Assessment \(Scotland\) Regulations S.I. 1999/1](#). Any order made in this respect by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.
18. [Section 5\(3\)\(c\)](#) provides that even though a plan or programmes does not fall within sub-paragraph (a) or (b), it is still necessary to consider whether it sets the framework for future development consent of projects. So, for example, a core paths plan would not deal directly with the various categories of plans and programmes set out in schedule 1 to the Act, but it could set the framework for future development consent of those plans and programmes. That being so, the Responsible Authority would then have to determine whether the core paths plan would be likely to have significant environmental effects.
19. [Section 5\(4\)](#) introduces an additional set of plans and programmes that are subject to environmental assessment beyond those set out in section 5(3) and importantly therefore beyond those subject to assessment under existing regulations. Exclusions to this additional set are detailed in section 6. The ‘public’ bodies listed at section 2(4) are the Responsible Authorities for these additional plans and programmes. These bodies

*These notes relate to the Environmental Assessment (Scotland) Act 2005
(asp15) (asp 15) which received Royal Assent on 14 December 2005*

will require to apply pre-screening (see paragraphs 20-24) before entering the formal screening stage (see paragraphs 25-26).