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## EXPLANATORY NOTE

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

These Regulations implement for Northern Ireland, 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”).

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 5(5); 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 on or 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 (Articles 4.1 and 13.3 of the Directive and regulations 5(1) and 7).

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 [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive [97/11/EC](#); 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](#) (Article 3.2 of the Directive and regulation 5(1) to (3)).

There are exceptions for plans and programmes that determine the use of a small area at local level, and for minor modifications, where it has been determined that they are unlikely to have significant environmental effects (Article 3.3 and regulation 5(6)).

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 the subject of a determination under regulation 9(1) that the plan or programme is likely to have significant environmental effects (Article 3.4 of the Directive and regulation 5(4)).

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 on 21st July 2004, the plan or programme must be subjected to environmental assessment unless the responsible authority directs that that is not feasible and informs the public to that effect. (Articles 4.1 and 13.3 of the Directive and regulation 6).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Regulation 7 makes provision 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 8 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 12, and the outcome of any transboundary consultations under regulation 13(4) (Article 8 of the Directive). Regulation 8 also prevents the adoption, or submission for adoption, of a plan or programme before a determination has been made under regulation 9(1) whether the plan or programme is likely to have significant environmental effects.

Regulation 9 deals with the making of determinations 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 the designated authority (“the consultation body”).

Regulation 10 requires the publication of determinations under regulation 9 (Article 3.7 of the Directive).

Environmental assessment under the Regulations includes the preparation of an environmental report (Article 5 of the Directive and regulation 11). 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 12 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 13 deals with transboundary consultations and includes procedures for consultations in relation to those draft plans and programmes prepared in Northern Ireland that are likely to have significant effects on the environment in other Member States (Article 7 of the Directive).

Regulation 14 applies in relation to those draft plans and programmes prepared in another Member State that are likely to have significant effects on the environment in any part of Northern Ireland (Article 7 of the Directive). Where the Department concerned receives a draft plan or programme from another Member State it must indicate to that Member State whether it wishes to enter into consultations in respect of that plan or programme concerning –

- (a) the likely transboundary environmental effects of implementing the plan or programme; and
- (b) the measures envisaged to reduce or eliminate such effects.

Regulation 15 in Part IV 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 16 is relevant to 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 to undertake appropriate remedial action.