
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 258

**The Environmental Assessment of Plans and
Programmes (Scotland) Regulations 2004**

PART 2

ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

Restriction on adoption or submission of plans and programmes where environmental assessment or determination required

6.—(1) A plan or programme for which an environmental assessment is required by any provision of Part 2 of these Regulations shall not be adopted or submitted to the legislative procedure for the purpose of its adoption before the requirements of such provisions of Part 3 of these Regulations as apply in relation to that plan or programme (and in particular regulation 18) have been met.

(2) A plan or programme in respect of which a determination is required under regulation 13(1) shall not be adopted, or submitted to the legislative procedure for the purposes of its adoption, unless either—

- (a) the requirements of paragraph (1) have been met, or
- (b) the determination under that regulation is that the plan or programme is unlikely to have significant environmental effects.

Directions as regards plans and programmes

7.—(1) The Scottish Ministers may at any time direct a responsible authority to send to them a copy of any plan or programme which—

- (a) is being prepared;
- (b) has been adopted; or
- (c) has been submitted to the legislative procedure for the purposes of its adoption,

by the responsible authority, and in respect of which the requirements of these Regulations have not been carried out.

(2) The Scottish Ministers shall consider any plan or programme sent to them in accordance with paragraph (1), together with such information relating to it as they may reasonably require the responsible authority to provide.

(3) Where the Scottish Ministers consider that the plan or programme falls within—

- (a) regulation 9(a) or (b), direct the responsible authority to carry out an assessment in accordance with Part 3 of these Regulations;
- (b) regulation 9(c) or 10, direct the responsible authority to carry out a determination in accordance with regulation 13(1).

(4) A responsible authority shall comply with any direction given to it under paragraph (1) or (3).

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

8. Subject to regulations 10 and 12, 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 regulation 9,

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.

Description of plans and programmes

9. The description referred to in regulations 8 and 11 is a plan or programme which—

- (a)
 - (i) is prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, and
 - (ii) sets the framework for future development consent of projects listed in Annex I and II to the EIA Directive;
- (b) 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; or
- (c) does not fall within paragraph (a) or (b), but is a plan or programme which sets the framework for future development consent of projects, and is the subject of a determination under regulation 13(1) that it is likely to have significant environmental effects.

Exemptions from assessment

10. In the case of—

- (a) a minor modification to a plan or programme referred to in regulation 9; or
- (b) a plan or programme referred to in regulation 9 which determines the use of small areas at local levels,

an environmental assessment is required only where it has been determined under regulation 13(1) that the modification, or as the case may be, plan or programme, is likely to have significant environmental effects.

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

11.—(1) Subject to paragraph (2), and regulations 10 and 12, where a plan or programme is of a description set out in regulation 9 and—

- (a) is a plan or programme of which the first formal preparatory act is before 21st July 2004 and which has not been adopted or submitted to the legislative procedure for adoption before 21st July 2006; and
- (b) the plan or programme is such that, had the first act in its preparation occurred on or after 21st July 2004, it would have required an environmental assessment by virtue of regulation 8,

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 Scottish Ministers—

- (a) decide that such assessment is not feasible; and
- (b) inform the public of their decision.

Relationship with other Community law requirements

12.—(1) An environmental assessment carried out under these Regulations shall be without prejudice to any requirement under the EIA Directive and to any other Community law requirements.

(2) An environmental assessment required by these Regulations 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.

Determinations of whether environmental assessment required

13.—(1) The responsible authority shall determine whether or not a plan or programme of a description set out regulation 9(c) or referred to in 10 is likely to have significant environmental effects.

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

- (a) apply the criteria specified in Schedule 1 to these Regulations to the plan or programme under consideration; and
- (b) follow the procedure set out in regulation 14.

(3) Where the responsible authority determines that the plan or programme is unlikely to have significant environmental effects it shall prepare a statement of its reasons for that determination.

Determination procedure

14.—(1) Before making a determination under regulation 13(1), the responsible authority shall prepare a report on whether or not the authority considers that the plan or programme is likely to have significant environmental effects.

(2) The responsible authority shall send the report prepared in accordance with paragraph (1) to the consultation authorities for their consideration.

(3) The consultation authorities shall, within 28 days of receipt of the report prepared in accordance with paragraph (1), respond to the responsible authority with their views on that report.

(4) If the responsible authority and the consultation authorities agree that the plan or programme is unlikely to have significant environmental effects, the responsible authority shall make a determination to that effect under regulation 13(1).

(5) If the responsible authority and the consultation authorities agree that the plan or programme is likely to have significant environmental effects then the responsible authority shall make a determination to that effect under regulation 13(1).

(6) If the responsible authority and the consultation authorities do not reach agreement as to whether or not the plan or programme is likely to have significant environmental effects, the responsible authority shall refer the matter to the Scottish Ministers for their determination.

(7) A determination of the Scottish Ministers under paragraph (6) shall have effect as if made by the responsible authority under regulation 13(1), and where the determination is that the plan or programme is unlikely to have significant environmental effects, the provisions of regulation 13(3) shall apply to the Scottish Ministers as they would to a responsible authority.

Publicity for determinations

15.—(1) Within 28 days of a determination having been made under regulation 13(1), the responsible authority shall send to the consultation authorities—

- (a) a copy of the determination; and
- (b) any related statement of reasons prepared in accordance with regulation 13(3).

(2) The responsible authority shall—

- (a) keep a copy of the determination, and any related statement of reasons, available at its principal office for inspection by the public at all reasonable times and free of charge;
- (b) publish a copy of the determination and any related statement of reasons on the authority's website; and
- (c) within 14 days of the making of the determination, take, or secure the taking of, such steps as it considers appropriate (including publication in at least one newspaper circulating in its area) to bring to the attention of the public—
 - (i) the title of the plan or programme to which the determination relates;
 - (ii) that a determination has been made under regulation 13(1) that an environmental assessment is or, as the case may be, is not required in respect of the plan or programme; and
 - (iii) the address (which may include a website) at which a copy of the determination and any related statement of reasons may be inspected or from which a copy may be obtained.

(3) Nothing in paragraph (2)(c)(iii) shall require the responsible authority to provide a copy of any document free of charge; but where a charge is made, it shall be of a reasonable amount.