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STATUTORY INSTRUMENTS

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**2004 No. 1633**

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

**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](#)<sup>(1)</sup>.

(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.

(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;

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

- (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.