



# Environmental Assessment (Scotland) Act 2005 2005 asp 15

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 9th November 2005 and received Royal Assent on 14th December 2005**

An Act of the Scottish Parliament to make provision for the assessment of the environmental effects of certain plans and programmes, including plans and programmes to which Directive [2001/42/EC](#) of the European Parliament and of the Council relates; and for connected purposes.

VALID FROM 20/02/2006

## **PART 1** **S**

### ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

#### **1 Requirement for environmental assessment** **S**

- (1) The responsible authority shall—
- (a) during the preparation of a qualifying plan or programme, secure the carrying out of an environmental assessment in relation to the plan or programme; and
  - (b) do so—
    - (i) where the plan or programme is to be submitted to a legislative procedure for the purposes of its adoption, before its submission; or
    - (ii) in any other case, before its adoption.
- (2) In this Act, an environmental assessment is—
- (a) the preparation of an environmental report;
  - (b) the carrying out of consultations; and
  - (c) the taking into account of the environmental report and the result of the consultations in decision-making,
- in accordance with Part 2 of this Act.

*Status: Point in time view as at 14/12/2005. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Environmental Assessment (Scotland) Act 2005. (See end of Document for details)*

## **2 Responsible authorities** **S**

- (1) In this Act, a responsible authority is any person, body or office-holder exercising functions of a public character.
- (2) The responsible authority in relation to a particular plan or programme is the authority by whom, or on whose behalf, the plan or programme is prepared.
- (3) Where more than one authority is responsible for a plan or programme (or part of it) the responsible authority shall be—
  - (a) the authority determined by agreement between those authorities; or
  - (b) if there is no such agreement, the authority determined by the Scottish Ministers.
- (4) But for the purposes of section 5(4)(a) the responsible authorities are—
  - (a) the Scottish Ministers;
  - (b) any holder of an office in the Scottish Administration which is not a ministerial office;
  - (c) the Scottish Parliament;
  - (d) the Scottish Parliamentary Corporate Body;
  - (e) a Scottish public authority with mixed functions or no reserved functions;
  - (f) any other person, body or office-holder of a description (and to such extent) as may be specified by the Scottish Ministers by order.

## **3 Consultation authorities** **S**

- (1) In this Act, the consultation authorities are—
  - (a) the Scottish Ministers;
  - (b) the Scottish Environment Protection Agency; and
  - (c) Scottish Natural Heritage.
- (2) Where an authority mentioned in subsection (1) is the responsible authority as regards a plan or programme, the authority shall not be a consultation authority in relation to that plan or programme.

## **4 Plans and programmes** **S**

- (1) This Act applies to plans and programmes (including those co-financed by the European Community) which—
  - (a) are—
    - (i) subject to preparation or adoption (or both) by a responsible authority at national, regional or local level; or
    - (ii) without prejudice to the generality of sub-paragraph (i), prepared by a responsible authority for adoption through a legislative procedure; and
  - (b) relate solely to the whole or any part of Scotland.
- (2) In this Act, any reference to plans or programmes includes reference to modification of plans or programmes.
- (3) This Act does not apply to—

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- (a) plans and programmes the sole purpose of which is to serve national defence or civil emergency;
  - (b) financial or budgetary plans and programmes;
  - (c) plans and programmes co-financed under the 2000-2006 programming period for Council Regulation (EC) No. 1260/1999 and the 2000/2006 and 2000/2007 programming periods for Council Regulation (EC) No. 1257/99 on support for rural development from the European Agricultural Guidance and Guarantee Fund.
- (4) In this Act, any reference to plans or programmes includes strategies.

## 5 Qualifying plans and programmes **S**

- (1) In this Act, qualifying plans and programmes are plans and programmes of a description set out in subsection (3) or (4)—
- (a) in respect of which the first formal preparatory act is on or after the coming into force of this section; and
  - (b) which are not exempt by virtue of section 7(1) or 8(2).
- (2) But a plan or programme is a qualifying plan or programme only to the extent that it relates to matters of a public character.
- (3) The description set out in this subsection is a plan or programme (to which this Act applies) which is required by a legislative, regulatory or administrative provision and—
- (a) which—
    - (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 schedule 1;
  - (b) 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 97/62/EC); or
  - (c) which does not fall within paragraph (a) or (b) but sets the framework for future development consent of projects.
- (4) The description set out in this subsection is a plan or programme (to which this Act applies)—
- (a) which is prepared by a responsible authority as specified in, or by virtue of, section 2(4); and
  - (b) which—
    - (i) is not a plan or programme of a description set out in subsection (3); and
    - (ii) is not of a type specified in, or by virtue of, section 6(1).
- (5) The Scottish Ministers may by order modify schedule 1.

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## 6 Types of excluded plans and programmes **S**

- (1) The types of plan or programme referred to in section 5(4)(b)(ii) are those which—
  - (a) consist of plans or programmes each of which relates to an individual school; or
  - (b) may be specified by order made by the Scottish Ministers.
- (2) The Scottish Ministers may by order modify subsection (1)(a).
- (3) If specifying a type of plan or programme by virtue of subsection (1)(b) or (2), the Scottish Ministers must be of the opinion that the type of plan or programme is likely to have—
  - (a) no effect; or
  - (b) minimal effect,in relation to the environment.
- (4) In this section, “school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980 (c. 44).

## 7 Exemptions: pre-screening **S**

- (1) A plan or programme of a description set out in section 5(4) is exempt if the responsible authority is of the opinion that the plan or programme will have—
  - (a) no effect; or
  - (b) minimal effect,in relation to the environment.
- (2) In considering whether or not it is of the opinion described in subsection (1), the responsible authority shall apply the criteria specified in schedule 2.
- (3) If a responsible authority is of the opinion described in subsection (1), it shall notify the consultation authorities of that fact as soon as practicable.
- (4) A notification under subsection (3) shall also include the following information—
  - (a) the title of the plan or programme;
  - (b) the date of the opinion; and
  - (c) a brief description of the plan or programme, including the area or location to which the plan or programme relates.
- (5) The Scottish Ministers shall arrange for a register to be kept of any notifications under subsection (3).
- (6) The register kept under subsection (5)—
  - (a) shall be available for public inspection—
    - (i) at any reasonable time; and
    - (ii) at such place as the Scottish Ministers may direct;
  - (b) may include such other information in relation to a plan or programme as the Scottish Ministers consider appropriate.
- (7) The information contained in the register may also be made available, for the purpose of facilitating public access to that information, by such means (including by means of display on a website) as the Scottish Ministers think fit.
- (8) The Scottish Ministers may by order modify schedule 2.

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## **8 Exemptions: screening** **S**

- (1) The responsible authority shall determine whether or not—
  - (a) a plan or programme of a description set out in section 5(3) which determines the use of small areas at local levels;
  - (b) a minor modification to a plan or programme of a description set out in section 5(3);
  - (c) a plan or programme of the description set out in section 5(3)(c);
  - (d) a plan or programme of the description set out in section 5(4) which is not exempt by virtue of section 7(1),is likely to have significant environmental effects.
- (2) Where the responsible authority determines under subsection (1) that a plan or programme is unlikely to have significant environmental effects—
  - (a) that plan or programme is exempt; and
  - (b) the authority shall prepare a statement of its reasons for the determination.
- (3) In making a determination under subsection (1), the responsible authority shall apply the criteria specified in schedule 2.
- (4) The statement of reasons under subsection (2)(b) shall, in particular, state how the criteria mentioned in subsection (3) were applied when making the determination.

## **9 Screening: procedure** **S**

- (1) Before making a determination under section 8(1), the responsible authority shall prepare a summary of its views as to whether or not the plan or programme is likely to have significant environmental effects.
- (2) The responsible authority shall send that summary to each consultation authority for its consideration.
- (3) Each consultation authority shall, within 28 days of receipt of that summary, respond to the responsible authority with the consultation authority's views on it.
- (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 section 8(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 section 8(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 subsection (6) shall have effect as if made by the responsible authority under section 8(1); and, where the determination is that the plan or programme is unlikely to have significant environmental effects, section 8(2)(b) shall apply to the Scottish Ministers as it would to the responsible authority.

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## **10 Screening: publicity for determinations** **S**

- (1) Within 28 days of a determination having been made under section 8(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 section 8(2)(b).
- (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) display 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, secure the taking of such steps as it considers appropriate (including publication in at least one newspaper circulating in the area to which the plan or programme relates) 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 section 8(1);
    - (iii) whether or not an environmental assessment is required in respect of the plan or programme; and
    - (iv) 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 subsection (2)(c)(iv) 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.

## **11 Directions as regards plans and programmes** **S**

- (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 a legislative procedure for the purposes of its adoption, by that responsible authority.
- (2) The Scottish Ministers shall consider any plan or programme sent to them under subsection (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) section 5(3)(a) or (b), they may direct the responsible authority to carry out an environmental assessment in accordance with this Act;
  - (b) paragraphs (a) to (d) of subsection (1) of section 8, they may direct the responsible authority to carry out a determination in accordance with that subsection.
- (4) Where subsection (3) applies, the Scottish Ministers shall send to the responsible authority a summary of the reasons as to why a direction was, or (as the case may be) was not, made.

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- (5) A responsible authority shall comply with any direction given to it under subsection (1) or (3).

## **12 Restriction on adoption or submission** **S**

- (1) A qualifying plan or programme shall not be—
- adopted; or
  - submitted to a legislative procedure for the purposes of its adoption, before the requirements of such provisions of Part 2 of this Act as apply in relation to that plan or programme have been met.
- (2) A plan or programme in respect of which a determination is required under section 8(1) shall not be adopted, or submitted to a legislative procedure for the purpose of its adoption, unless either—
- the requirements of subsection (1) have been met; or
  - the determination under section 8(1) is that the plan or programme is unlikely to have significant environmental effects.

## **13 Relationship with Community law requirements** **S**

- (1) An environmental assessment carried out under this Act shall be without prejudice to any requirement under Community law.
- (2) Where a qualifying plan or programme is co-financed by the European Community, the responsible authority, in carrying out the environmental assessment required by this Act, shall do so in conformity with any relevant provision of Community law that is applicable by reason of that co-financing.

VALID FROM 20/02/2006

## **PART 2** **S**

### ENVIRONMENTAL REPORTS AND CONSULTATION

## **14 Preparation of environmental report** **S**

- (1) In relation to any qualifying plan or programme, the responsible authority shall secure the preparation of an environmental report.
- (2) The report shall identify, describe and evaluate the likely significant effects on the environment of implementing—
- the plan or programme; and
  - reasonable alternatives to the plan or programme, taking into account the objectives and the geographical scope of the plan or programme.
- (3) The report shall include such of the information specified in schedule 3 as may reasonably be required, taking account of—
- current knowledge and methods of assessment of environmental matters;



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- (b) the contents of, and level of detail in, the plan or programme;
  - (c) the stage of the plan or programme in the decision-making process; and
  - (d) the extent to which any matters to which the report relates would be more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.
- (4) Information referred to in schedule 3 may be included in the report by reference to relevant information obtained at other levels of decision-making or through Community legislation.
- (5) The Scottish Ministers may by order modify schedule 3.

## 15 Scoping **S**

- (1) Before deciding on—
- (a) the scope and level of detail of the information to be included in the environmental report to be prepared in accordance with section 14; and
  - (b) the consultation period it intends to—
    - (i) specify under section 16(1)(b); and
    - (ii) notify under section 16(2)(a)(iv),
 the responsible authority shall send to each consultation authority such sufficient details of the qualifying plan or programme as will enable the consultation authority to form a view on those matters.
- (2) Each consultation authority shall—
- (a) send to the responsible authority its views on the matters referred to in subsection (1) within the period of 5 weeks beginning with the date on which the details referred to in that subsection are received by the consultation authority; and
  - (b) send a copy of those views to the other consultation authorities.
- (3) The responsible authority shall—
- (a) take account of the views expressed by the consultation authorities under subsection (2)(a); and
  - (b) advise the Scottish Ministers of the period it intends to specify under section 16(1)(b) and notify under section 16(2)(a)(iv).
- (4) If the Scottish Ministers consider that a period referred to in subsection (3)(b) is not likely to give (as the case may be)—
- (a) the consultation authorities; or
  - (b) the public—
    - (i) affected or likely to be affected by; or
    - (ii) having an interest in,
 the plan or programme,
 

an early and effective opportunity to express their opinion on the plan or programme and the accompanying environmental report, the Scottish Ministers shall, within 7 days of receipt of the advice under subsection (3)(b), specify such other period as the Scottish Ministers consider will give the consultation authorities, or (as the case may be) the public, such an early and effective opportunity.



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- (5) Where the Scottish Ministers have specified a period under subsection (4), the responsible authority shall specify under section 16(1)(b), or (as the case may be) notify under section 16(2)(a)(iv), that period.
- (6) Where the Scottish Ministers are the responsible authority in relation to a qualifying plan or programme, subsections (3)(b), (4) and (5) do not apply.

## 16 Consultation procedures **S**

- (1) As soon as reasonably practicable, and in any event within 14 days of the preparation of the environmental report, the responsible authority shall—
  - (a) send a copy of the report and the qualifying plan or programme to which it relates (“the relevant documents”) to the consultation authorities; and
  - (b) invite each consultation authority to express its opinion on the relevant documents within such period as the responsible authority may specify.
- (2) The responsible authority shall also—
  - (a) within 14 days of the preparation of the environmental report, secure the publication of a notice—
    - (i) stating the title of the plan or programme to which it relates;
    - (ii) stating the address (which may include a website) at which a copy of the relevant documents may be inspected or from which a copy may be obtained;
    - (iii) inviting expressions of opinion on the relevant documents; and
    - (iv) stating the address to which, and the period within which, opinions must be sent;
  - (b) keep a copy of the relevant documents available at the authority's principal office for inspection by the public at all reasonable times and free of charge; and
  - (c) display a copy of the relevant documents on the authority's website.
- (3) The periods referred to in subsections (1)(b) and (2)(a)(iv) must be of such length as will ensure that those to whom the invitation is extended are given an early and effective opportunity to express their opinion on the relevant documents.
- (4) Publication of a notice under subsection (2)(a) shall be by such means (including publication in at least one newspaper circulating in the area to which the plan or programme relates) as will ensure that the contents of the notice are likely to come to the attention of the public—
  - (a) affected by or likely to be affected by; or
  - (b) having an interest in,  
the plan or programme.
- (5) Nothing in subsection (2)(a)(ii) 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.

## 17 Account to be taken of environmental report etc. **S**

In the preparation of a qualifying plan or programme, the responsible authority shall take account of—

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- (a) the environmental report for that plan or programme;
- (b) every opinion expressed in response to the invitations referred to in section 16(1) and (2)(a)(iii); and
- (c) the outcome of any relevant consultation under regulation 14 of the Environmental Assessment of Plans and Programmes Regulations 2004 (S.I. 2004/1633).

VALID FROM 20/02/2006

### PART 3 **S**

#### POST-ADOPTION PROCEDURES

#### 18 Information as to adoption of a qualifying plan or programme **S**

- (1) As soon as reasonably practicable after the adoption of a qualifying plan or programme, the responsible authority shall—
- (a) make available a copy of—
    - (i) the plan or programme;
    - (ii) the environmental report relating to it; and
    - (iii) a statement containing the particulars specified in subsection (3), at the authority's principal office for inspection by the public at all reasonable times and free of charge;
  - (b) secure the taking of such steps as it considers appropriate (including publication in at least one newspaper circulating in the area to which the plan or programme relates) to bring to the attention of the public—
    - (i) the title of the plan or programme;
    - (ii) the date on which it was adopted;
    - (iii) the address (which may include a website) at which a copy of the plan or programme and its accompanying environmental report, and of the statement containing the particulars specified in subsection (3), may be inspected or from which a copy may be obtained;
    - (iv) the times at which inspection may be made; and
    - (v) that inspection may be made free of charge; and
  - (c) display a copy of—
    - (i) the documents referred to in paragraph (a); and
    - (ii) the information referred to in paragraph (b), on the authority's website.
- (2) As soon as reasonably practicable after the adoption of a qualifying plan or programme, the responsible authority shall inform the consultation authorities of the adoption of the plan or programme and shall send them a copy of—
- (a) the plan or programme as adopted; and
  - (b) the statement containing the particulars specified in subsection (3).
- (3) The particulars referred to in subsections (1)(a)(iii) and (b)(iii) and (2)(b) are—

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- (a) how environmental considerations have been integrated into the plan or programme;
  - (b) how the environmental report has been taken into account;
  - (c) how the opinions expressed in response to the invitations mentioned in section 16 have been taken into account;
  - (d) how the results of any relevant consultation under regulation 14 of the Environmental Assessment of Plans and Programmes Regulations 2004 (S.I. 2004/1633) have been taken into account;
  - (e) the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives considered; and
  - (f) the measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme.
- (4) Nothing in subsection (1)(b)(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.

#### **19 Monitoring of implementation of qualifying plans and programmes S**

- (1) The responsible authority shall monitor the significant environmental effects of the implementation of every qualifying plan or programme for which it has carried out an environmental assessment.
- (2) The responsible authority shall do so in a manner (which may comprise or include arrangements established otherwise than for the express purpose of compliance with subsection (1)) which enables the authority to—
  - (a) identify any unforeseen adverse effects at an early stage; and
  - (b) undertake appropriate remedial action.

VALID FROM 20/02/2006

### **PART 4 S**

#### MISCELLANEOUS

#### **20 Annual reports S**

- (1) The Scottish Ministers must, as soon practicable after the end of each calendar year referred to in subsection (2)—
  - (a) prepare and publish a report on—
    - (i) the exercise of the functions of the Scottish Ministers under this Act; and
    - (ii) such other activities carried out in relation to environmental assessments as the Scottish Ministers consider appropriate, during that year;
  - (b) lay a copy of the report before the Scottish Parliament.
- (2) The calendar years are 2006 to 2010.

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- (3) After publishing the report relating to 2010, the Scottish Ministers must consult with such persons as they consider appropriate as to what arrangements, if any, are to be made for reporting on any of the matters referred to in subsection (1)(a)(i) and (ii).

## PART 5 **S**

### GENERAL

#### 21 **Crown application** **S**

This Act binds the Crown.

#### 22 **Orders** **S**

- (1) Any power of the Scottish Ministers to make orders under this Act is exercisable by statutory instrument.
- (2) Any such power includes power to make—
- such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient; and
  - different provision for different purposes.
- (3) A statutory instrument containing an order under this Act except—
- where subsection (4) applies, an order under section 23; or
  - an order under section 26,
- is subject to annulment in pursuance of a resolution of the Parliament.
- (4) No order under section 23 which amends an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Parliament.

#### 23 **Ancillary provision** **S**

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes or in consequence of this Act.

VALID FROM 20/02/2006

#### 24 **Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004** **S**

The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (S.S.I. 2004/258) are revoked.

#### 25 **Interpretation** **S**

- (1) In this Act—

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“the Directive” means Directive [2001/42/EC](#) of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment;

“the public” includes any legal person and any body of persons (whether incorporated or not).

- (2) Unless the context otherwise requires, expressions used in both this Act and in the Directive shall be construed in accordance with the Directive.

## **26 Commencement and short title** **S**

- (1) The provisions of this Act, except this section and sections 21, 22, 23 and 25, come into force on such day as the Scottish Ministers may by order appoint.
- (2) Different days may be so appointed for different provisions and different purposes.
- (3) This Act may be cited as the Environmental Assessment (Scotland) Act 2005.

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SCHEDULE 1 **S**

(introduced by section 5(3)(a))

PROJECTS

.....

SCHEDULE 2 **S**

(introduced by section 7(2))

CRITERIA FOR DETERMINING THE LIKELY  
SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

.....

SCHEDULE 3 **S**

(introduced by section 14)

INFORMATION FOR ENVIRONMENTAL REPORTS

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