

**2004 No. 258**

**ENVIRONMENTAL PROTECTION**

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

*Made* - - - - - *2nd June 2004*

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*Coming into force* - - - *20th July 2004*

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The Scottish Ministers, in exercise of the powers conferred by sections 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

### PART 1

#### INTRODUCTORY PROVISIONS

##### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 and shall come into force on 20th July 2004.

(2) These Regulations extend to Scotland only.

##### **Interpretation**

2.—(1) In these Regulations—

“consultation authority” has the meaning given by regulation 5;

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

“the EIA Directive” means 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(c);

“environmental assessment” means the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the result of the consultations in decision-making and the provision of information on the decision in accordance with Part 3 of these Regulations;

“environmental report” means the part of the plan or programme documentation containing the information required in regulation 16 and Schedule 2;

“the Habitats Directive” means 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(d);

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(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) O.J. No. L 197, 21.07.2001, p.30.

(c) O.J. No. L 175, 5.7.1985, p.40. The amending Directive is at O.J. No. L 73, 14.3.1997, p.5.

(d) O.J. No. L 206, 22.7.1992. The latest amending Directive is at O.J. No. L 305, 8.11.1997, p.42.

“plans and programmes” means 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) prepared by a responsible authority for adoption, through a legislative procedure; and

(b) are required by legislative, regulatory or administrative provisions,

and includes any modification of such plans or programmes;

“responsible authority”, had the meaning given in regulation 4;

“the public” means one or more natural or legal persons, trusts or associations.

(2) Other expressions used both in these Regulations and in the Directive have the same meaning in these Regulations as they have in the Directive.

### **Application of the Regulations**

**3.**—(1) Subject to paragraph (2), these Regulations apply to plans and programmes which relate solely to the whole or any part of Scotland.

(2) These Regulations do not apply to—

(a) plans and programmes the sole purpose of which is to serve national defence or civil emergency;

(b) financial or budget plans and programmes;

(c) plans and programmes co-financed under the 2000-2006 programming period for Council Regulation (EC) No. 1260 1/1999 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 (EAGGF) (O.J. L 160, 26.6.1999 p.80).

### **Responsible authorities**

**4.**—(1) In these Regulations a responsible authority is any body or person exercising functions of a public character.

(2) Subject to paragraph (3), the responsible authority in relation to a plan or programme is the authority by which, 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 the authority agreed upon amongst those authorities with an interest in the plan or programme, which failing, shall be the authority determined to be the responsible authority by the Scottish Ministers.

### **Consultation authorities**

**5.**—(1) Subject to paragraph (2), in relation to every plan or programme, each of the following shall be a consultation authority:—

(a) the Scottish Ministers;

(b) the Scottish Environment Protection Agency; and

(c) Scottish Natural Heritage.

(2) Where an authority mentioned in paragraph (1) is at any time the responsible authority as regards a plan or programme, it shall not at that time exercise the functions under these Regulations of a consultation authority in relation to that plan or programme; and references to the consultation authorities in the following provisions of these Regulations shall be construed accordingly.

## 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.

## PART 3

### ENVIRONMENTAL REPORTS

#### **Preparation of environmental report**

**16.**—(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of implementing—

- (a) the plan or programme; and
- (b) reasonable alternatives,

taking into account the objectives and the geographical scope of the plan or programme.

(3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of—

- (a) current knowledge and methods of assessment;
- (b) the contents 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 certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

(4) Information referred to in Schedule 2 may be provided by reference to relevant information obtained at other levels of decision-making or through other Community legislation.

#### **Scoping**

**17.**—(1) Before deciding on—

- (a) the scope and level of detail of the information that must be included in the environmental report to be prepared under regulation 16, and
- (b) the consultation period it intends to—
  - (i) specify under regulation 18(2); and
  - (ii) notify under regulation 18(3)(a)(iv),

the responsible authority shall send to the consultation authorities sufficient details of the plan or programme in respect of which an environmental assessment is to be prepared to enable them to form a view on those matters.

(2) Each consultation authority shall send to the responsible authority its views on the matters referred to in paragraph (1) within the period of 5 weeks beginning with the date on which the details referred to in paragraph (1) are received by the consultation authority, and shall copy those views to the other consultation authorities.

(3) The responsible authority shall—

- (a) take account of the views expressed by the consultation authorities under paragraph (2) on the scope and level of detail to be included in the report, and
- (b) advise the Scottish Ministers of the period it intends to specify under regulation 18(2) and notify under regulation 18(3)(a)(iv).

(4) If the Scottish Ministers consider that a period referred to in paragraph (3)(b) is not likely to give the consultation authorities or the public affected or likely to be affected by, or having an interest in, the plan or programme, as the case may be, an early and effective opportunity to express their opinion on the plan or programme and the accompanying environmental report, they shall, within 7 days of receipt of the advice under paragraph (3)(b), specify such other period as they consider will give the consultation authorities, or the public, as the case may be, such an early and effective opportunity.

(5) Where the Scottish Ministers have specified a period under paragraph (4), the responsible authority shall specify under regulation 18(2), or notify under regulation 18(3)(a)(iv), as the case may be, that period.

### **Consultation procedures**

**18.**—(1) The provisions of this regulation apply to every environmental report that has been prepared in accordance with regulation 16 and the plan or programme to which it relates (“the relevant documents”).

(2) As soon as reasonably practicable, and in any event within 14 days of their preparation, the responsible authority shall send a copy of the relevant documents to the consultation authorities and invite them to express their opinion on the relevant documents within such period as it may specify.

(3) The responsible authority shall also—

- (a) within 14 days of the preparation of the relevant documents, publish in accordance with paragraph (5), or secure the publication of, a notice—
  - (i) stating the title of the plan or programme;
  - (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) publish a copy of the relevant documents on the authority’s website.

(4) The periods referred to in paragraphs (2) and (3)(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.

(5) Publication of a notice under paragraph (3)(a) shall be by such means (including publication in at least one newspaper circulating in the responsible authority’s area) as will ensure that the contents of the notice are likely to come to the attention of the public affected by, or likely to be affected by, or having an interest in, the draft plan or the programme.

### **Account to be taken of environmental report and responses to consultation**

**19.** In the preparation of a plan or programme for which an environmental assessment is required, the responsible authority shall take account of—

- (a) the environmental report for that plan or programme;
- (b) every opinion expressed in response to the invitations referred to in regulation 18(2) and (3)(a)(iii); and



- (c) the outcome of any consultation under regulation 14 of the Environmental Assessment of Plans and Programmes Regulations 2004(a).

## PART 4

### POST-ADOPTION PROCEDURES

#### **Information as to adoption of a plan or programme**

**20.—**(1) As soon as reasonably practicable after the adoption of a plan or programme for which an environmental assessment has been carried out under these Regulations, the responsible authority shall—

- (a) make a copy of the plan or programme and its accompanying environmental report available at its principal office for inspection by the public at all reasonable times and free of charge;
- (b) publish a copy of the plan or programme and of the information referred to in subparagraph (c) on the authority's website; and
- (c) take, or 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 a statement containing the particulars specified in paragraph (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.

(2) As soon as reasonably practicable after the adoption of a plan or programme, the responsible authority shall inform the consultation authorities of the adoption of the plan or programme and shall send them—

- (a) a copy of the plan or programme as adopted; and
  - (b) a statement containing the particulars specified in paragraph (3).
- (3) The particulars referred to in paragraphs (1)(c)(iii) and (2)(b) are—
- (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 regulation 18 have been taken into account;
  - (d) how the results of any consultation under regulation 14 of the Environmental Assessment of Plans and Programmes Regulations 2004 have been taken into account;
  - (e) the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with; and
  - (f) the measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme.

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(a) S.I. 2004/1633.

### **Monitoring of implementation of plans and programmes**

**21.**—(1) The responsible authority shall monitor the significant environmental effects of the implementation of each plan or programme for which it has carried out an environmental assessment under these Regulations.

(2) Without prejudice to the generality of paragraph (1), the responsible authority's monitoring arrangements (which may comprise or include arrangements established otherwise than for the express purpose of compliance with this regulation) must enable the authority—

- (a) to identify any unforeseen adverse effects at an early stage; and
- (b) to undertake appropriate remedial action.

St Andrew's House,  
Edinburgh  
2nd June 2004

*ROSS FINNIE*  
A member of the Scottish Executive

## CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

- 1.** The characteristics of plans and programmes, having regard, in particular, to—
  - (a) the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources;
  - (b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy;
  - (c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development;
  - (d) environmental problems relevant to the plan or programme; and
  - (e) the relevance of the plan or programme for the implementation of Community legislation on the environment (for example, plans and programmes linked to waste management or water protection).
  
- 2.** Characteristics of the effects and of the area likely to be affected, having regard, in particular, to—
  - (a) the probability, duration, frequency and reversibility of the effects;
  - (b) the cumulative nature of the effects;
  - (c) the transboundary nature of the effects;
  - (d) the risks to human health or the environment (for example, due to accidents);
  - (e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);
  - (f) the value and vulnerability of the area likely to be affected due to—
    - (i) special natural characteristics or cultural heritage;
    - (ii) exceeded environmental quality standards or limit values; or
    - (iii) intensive land-use; and
  - (g) the effects on areas or landscapes which have a recognised national, Community or international protection status.

## INFORMATION FOR ENVIRONMENTAL REPORTS

1. An outline of the contents and main objectives of the plan or programme, and of its relationship (if any) with other relevant plans and programmes.

2. The relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme.

3. The environmental characteristics of areas likely to be significantly affected.

4. Any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Council Directive 79/409/EEC on the conservation of wild birds<sup>(a)</sup> and Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna<sup>(b)</sup>.

5. The environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation.

6. The likely significant effects on the environment, including—

(a) on issues such as—

- (i) biodiversity;
- (ii) population;
- (iii) human health;
- (iv) fauna;
- (v) flora;
- (vi) soil;
- (vii) water;
- (viii) air;
- (ix) climatic factors;
- (x) material assets;
- (xi) cultural heritage, including architectural and archaeological heritage ;
- (xii) landscape; and
- (xiii) the inter-relationship between the issues referred to in heads (i) to (xii);

(b) short, medium and long-term effects;

(c) permanent and temporary effects;

(d) positive and negative effects; and

(e) secondary, cumulative and synergistic effects.

7. The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.

8. An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.

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<sup>(a)</sup> O.J. No. L 103, 25.4.1979, p.1. The latest amending Directive is at O.J. No. L 223, 12.08.1997, p.9

<sup>(b)</sup> O.J. No. L 206, 22.7.1992. The latest amending Directive is at O.J. No. L 305, 8.11.1997, p.42.

**9.** A description of the measures envisaged concerning monitoring in accordance with regulation 21.

**10.** A non-technical summary of the information provided under paragraphs 1 to 9.

## EXPLANATORY NOTE

*(This note is not part of the Regulation)*

These Regulations implement 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”), as regards plans and programmes which relate solely to the whole or any part of Scotland.

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 3). 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 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 (regulations 8 and 12(2); Articles 4.1 and 13.3 of the Directive).

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 85/33/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 (regulation 9(a) and (b); Article 3.2 of the Directive).

There are exceptions for plans and programmes that determine the use of a small area at local level, and for minor modifications, if the authority responsible for preparing the plan or programme (referred to in the Regulations as the “responsible authority”) has determined under regulation 13 and 14 that the plan or programme is unlikely to have significant environmental effects (regulation 10, Article 3.3 of the Directive).

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 determined under regulation 13 and 14 to be likely to have significant environmental effects (regulation 9(c), Article 3.4 of the Directive).

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 after 21st July 2004, the plan or programme must be subjected to environmental assessment unless the Scottish Ministers decide that that is not feasible and informs the public to that effect (regulation 11, Articles 4.1 and 13.3 of the Directive).

Regulation 12 makes it clear that an assessment carried out under these Regulations is without prejudice to other Community Law requirements. It also provides 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 6 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 18, and the outcome of any transboundary consultations under regulation 14(4) of the Environmental Assessment of Plans and Programmes Regulations 2004 (Article 8 of the Directive). Regulation 6 also prevents the adoption, or submission for adoption, of a plan or programme before the responsible authority has determined whether the plan or programme is likely to have significant environmental effects.

Regulation 13 deals with the making of determinations by the responsible authority 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 designated authorities (“the consultation authority”).

Regulation 5 deals with the designation of the consultation bodies (Article 6.3 of the Directive). In the case of every plan and programme to which the Regulations apply, the consultation bodies will consist of, or include, the Scottish Ministers and the Scottish Environment Agency and Scottish Natural Heritage.

Regulation 7 enables the Scottish Ministers to require a responsible authority to provide them with a copy of any plan or programme to which the requirements of the Regulations have not been applied. It also enables them to direct that these requirements will be applied to a particular plan or programme where they consider those requirements apply.

Regulation 15 requires the publication of determinations under regulations 13 and 14 (Articles 3.7 of the Directive).

Environmental assessment under the Regulations includes the preparation of an environmental report (regulation 16, Article 5 of the Directive). 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 17 provides for the consultation authorities to be consulted on the scope and level of detail of the environmental report (Article 5.4). It also provides for review by the Scottish Ministers of the period for consultation to ensure that consultees have enough time to express their opinion on the relevant documents (Article 6.2).

Regulation 18 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 19 requires the appropriate authority to take account of the environmental report, the opinions expressed in response to consultations and the outcome of a transboundary consultation (Article 8).

Regulation 20 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 21 provides for 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 being able to undertake appropriate remedial action.

A Regulatory Impact Assessment has been prepared in connection with these Regulations. A copy may be obtained from the Strategic Environment Assessment Team, the Sustainable Development Directorate, Victoria Quay, Leith, EH6 6QQ, and may be viewed on the Scottish Executive website, [www.scotland.gov.uk/about/ELLD/EI/00015242/Final.aspx](http://www.scotland.gov.uk/about/ELLD/EI/00015242/Final.aspx). Copies have also been placed in the Scottish Parliament Information Centre, George IV Bridge, Edinburgh.

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