

---

## EXPLANATORY NOTE

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

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 relating solely to any part of England. For this purpose, England is treated as including any territorial waters of the United Kingdom that are not within Northern Ireland, Scotland or Wales, and waters in areas for the time being designated under the Continental Shelf Act 1964.

The Regulations also implement the Directive as regards plans and programmes relating to England and any other part of the United Kingdom. They do not apply to plans and programmes relating exclusively to Northern Ireland, Scotland or Wales, for which separate provision implementing the Directive is to be made.

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 21 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 5(1) and 7; 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 [85/337/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 [97/62/EC](#) (regulation 5(1) to (3); 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 9(1) that the plan or programme is unlikely to have significant environmental effects (regulation 5(6); Article 3.3 of the Directive). The responsible authority’s determination may, however, cease to have effect if the Secretary of State gives a direction under regulation 10(3).

*Status: This is the original version (as it was originally made).*

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 (regulation 5(4); Article 3.4 of the Directive). The responsible authority's determination may, however, cease to have effect if the Secretary of State gives a direction under regulation 10(3).

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 21 July 2004 has not been adopted before 22 July 2006. If an environmental assessment would have been required if the first formal preparatory act had occurred on 21 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 (regulation 6; Articles 4.1 and 13.3 of the Directive).

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 13, and the outcome of any transboundary consultations under regulation 14(4) (Article 8 of the Directive). Regulation 8 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 9 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 bodies ("the consultation bodies").

Regulation 4 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 Countryside Agency, English Heritage, English Nature and the Environment Agency. In respect of the part of a plan or programme to which the Regulations apply that relates to any part of Northern Ireland, the Department of the Environment for Northern Ireland will also be a consultation body. In respect of the part of a plan or programme to which the Regulations apply that relates to any part of Scotland, the Scottish Ministers, the Scottish Environment Protection Agency and Scottish Natural Heritage will also be consultation bodies. In respect of the part of a plan or programme to which the Regulations apply that relates to any part of Wales, the National Assembly for Wales and the Countryside Council for Wales will also be consultation bodies.

Regulation 10 enables the Secretary of State to require a responsible authority to provide him with relevant documents. It also enables him to direct that a particular plan or programme is likely to have significant environmental effects. In the latter case, any determination to the contrary made under regulation 9(1) by a responsible authority ceases to have effect. If a responsible authority has not made any determination under that provision, the Secretary of State's direction relieves it of the duty to do so.

Regulation 11 requires the publication of determinations under regulation 9 (Article 3.7 of the Directive) and directions under regulation 10.

Environmental assessment under the Regulations includes the preparation of an environmental report (regulation 12; 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 I to, the Directive).

Regulation 13 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 14 deals with transboundary consultations and includes procedures for consultations in relation to those draft plans and programmes prepared in the United Kingdom that are likely to have significant effects on the environment in other Member States (Article 7 of the Directive).

Regulation 15 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 the United Kingdom (Article 7 of the Directive). Where the Secretary of State receives a draft plan or programme from another Member State he must indicate to that Member State whether the United Kingdom 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 16 in Part 4 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 17 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 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 Office of the Deputy Prime Minister, Zone D1, Eland House, Bressenden Place, London, SW1E 5DU (Tel: 0207 944 3894 or 5879) or accessed at [www.odpm.gov.uk](http://www.odpm.gov.uk)