

**EXPLANATORY MEMORANDUM TO THE ENVIRONMENTAL
ASSESSMENT OF PLANS AND PROGRAMMES REGULATIONS 2004
(S.I. 2004 No. 1633)**

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1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty. This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. DESCRIPTION

- 2.1 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 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.
- 2.2 These Regulations also implement Directive 2001/42/EC as regards plans and programmes relating to both England and any other part of the United Kingdom.
- 2.3 Directive 2001/42/EC is commonly referred to, and will be referred to in the following paragraphs of this Memorandum, as “the SEA Directive” (where “SEA” stands for strategic environmental assessment).
- 2.4 Council Directive 85/337/EEC, as amended by Council Directive 97/11/EC, provides for the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”, where “EIA” stands for environmental impact assessment). The SEA Directive, to which these Regulations give effect, addresses the issue of environmental impact at a stage earlier than that of the EIA Directive.

3. MATTERS OF SPECIAL INTEREST TO THE JOINT COMMITTEE

- 3.1 A Transposition Note accompanies the Regulations and this Memorandum. However, the following explanation of the main content of the Regulations may be helpful to members of the Committee.
- 3.2 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.

- 3.3 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 SEA Directive).
- 3.4 The requirement for environmental assessment applies 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 the EIA Directive. The requirement also applies to a plan or programme which, in view of the likely effect on sites, has been determined to require an assessment under 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 (the Habitats Directive) (regulation 5(3) and Article 3.2(b) of the SEA 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 SEA Directive). The responsible authority’s determination may, however, cease to have effect if the Secretary of State gives a direction under regulation 10(3).
- 3.5 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 SEA Directive). The responsible authority’s determination may, however, cease to have effect if the Secretary of State gives a direction under regulation 10(3).
- 3.6 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 SEA Directive).

- 3.7 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 SEA Directive) to be carried out in conformity with the specific provisions in relevant Community legislation (Article 11.3 of the SEA Directive).
- 3.8 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 SEA 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.
- 3.9 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 SEA Directive). Determinations cannot be made unless the responsible authority has consulted designated bodies (“the consultation bodies”).
- 3.10 Regulation 4 deals with the designation of the consultation bodies (Article 6.3 of the SEA 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.
- 3.11 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.

- 3.12 Regulation 11 requires the publication of determinations under regulation 9 (Article 3.7 of the SEA Directive) and directions under regulation 10.
- 3.13 Environmental assessment under the Regulations includes the preparation of an environmental report (regulation 12; Article 5 of the SEA 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 SEA Directive).
- 3.14 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 the Regulations (Article 6 of the SEA Directive).
- 3.15 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 SEA Directive).
- 3.16 Regulation 15 sets out the consultation procedures that are to apply 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 SEA Directive).
- 3.17 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 SEA Directive).
- 3.18 Regulation 17 is relevant to the monitoring of the significant environmental effects of implementing plans and programmes (Article 10 of the SEA 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.
- 3.19 The SEA 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 (reg 5(5); Article 3(8) and (9) of the SEA Directive).

4. LEGISLATIVE BACKGROUND

4. Council Directive 85/337/EEC, as amended by Council Directive 97/11/EC, provides for the assessment of the effects of certain public and private projects on the environment. The SEA Directive, to which these Regulations give effect, addresses the issue of environmental impact at an earlier stage.

5. EXTENT

5. The Regulations extend to the United Kingdom. However, as indicated in paragraphs 2.1 and 2.2, they do not apply to plans and programmes relating exclusively to Northern Ireland, Scotland or Wales, for which separate provision implementing the SEA Directive is to be made territorially.

6. EUROPEAN CONVENTION ON HUMAN RIGHTS

6. These Regulations are subject to the negative resolution procedure. They do not amend an Act of Parliament. Accordingly, certification under section 19(1)(a) of the Human Rights Act 1998 is not required.

7. POLICY BACKGROUND

7.1 Although the Office of the Deputy Prime Minister has overall policy responsibility for implementing the SEA Directive, the plans and programmes which will be subject to the new requirements fall within the remit of a number of Departments and their Agencies, including DEFRA, DTI and DfT.

7.2 For many types of plan and programme, environmental assessment is already established practice. However, approaches vary widely and implementation of the Directive brings a new emphasis to the process in several areas, including collection and presentation of baseline environmental information, identification of strategic alternatives and their effects, consultation of environmental bodies and the public, and monitoring of environmental effects.

7.3 The objectives of the SEA Directive include the promotion of sustainable development (Article 1). The Government's Sustainable Development Strategy says that achieving sustainable development means meeting four objectives at the same time:

- social progress which recognises the needs of everyone;
- effective protection of the environment;

- prudent use of natural resources; and
- maintenance of high and stable levels of economic growth and employment.

7.4 Plans and programmes in all sectors covered by the SEA Directive have a significant role to play in helping to achieve these objectives.

7.5 A Consultation Paper was issued in March 2004, together with an early draft of the Regulations. The Consultation Paper was deposited in the Library of both Houses of Parliament and sent to a wide range of bodies on ODPM's standard consultation lists.

7.6 There were 86 responses, none of which indicated that the respondent was not, broadly, content with the proposals for implementation of the SEA Directive. Most of the comments related to the specific proposal in the draft Regulations for consulting on environmental reports, and asked that more time for comment should be allowed (in regulation 13(3) a period of 28 days had been proposed). It has been possible to address this issue in a way that should meet respondents' concerns.

7.7 Many of the comments could not be addressed in the Regulations because, essentially, they were directed to the content of the SEA Directive. In relation to other comments, the Office of the Deputy Prime Minister intends to issue further practical guidance to coincide with the coming into force of the Regulations.

7.8 The effect of the Regulations will be closely monitored, although the scope for amendment is constrained by the terms of the SEA Directive.

8. OTHER IMPACTS

8.1 A Regulatory Impact Assessment accompanies this Memorandum.

8.2 The impact on the public sector is estimated to be in the region of £25 - 40 million per annum for the UK as a whole, spread across a large number of bodies including local authorities and Government departments and agencies. This expenditure is however difficult to separate from existing activities and the effects of other new responsibilities. Further details are set out in the Regulatory Impact Assessment.

9. CONTACT

9.1 Phil Weatherby at the Office of the Deputy Prime Minister Tel: 0207 944 3888 or e-mail Phil.weatherby@odpm.gsi.gov.uk can answer any queries regarding the Regulations.

23 June 2004