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## 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 Wales.

The Directive is implemented, in respect of plans and programmes which relate both to Wales and another part of the United Kingdom, by the Environmental Assessment of Plans and Programmes Regulations 2004.

The Directive and, accordingly, these Regulations, do not apply to plans and programmes whose sole purpose relates to 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](#) (Article 3.8 and 3.9 of the Directive and regulation 5(5) of these Regulations).

These 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 and/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 these Regulations apply occurs after 21 July 2004, the plan or programme cannot be adopted, or submitted for adoption, unless it has been subjected to environmental assessment under these Regulations (Articles 4.1 and 13.3 of the Directive and regulations 5(1) and 7 of these Regulations).

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 [97/11/EC](#) (Article 3.2 of the Directive and regulation 5(1) to (3) of these Regulations).

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 these Regulations as the “responsible authority”) has determined under regulation 9(1) of these Regulations that they are unlikely to have significant environmental effects (Article 3.3 and regulation 5(6) of these Regulations). The responsible authority’s determination may, however, cease to have effect if the National Assembly gives a direction under regulation 10(3).

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 (Article 3.4 of the Directive and regulation 5(4) of these Regulations). The

responsible authority's determination may, however, cease to have effect if the National Assembly gives a direction under regulation 10(3).

The requirement for environmental assessment under these Regulations also applies where a plan or programme in relation to which the first formal preparatory act occurred before 21 July 2004 has not been adopted, or submitted for adoption, before 22 July 2006. If an environmental assessment would have been required if the first formal preparatory act had occurred after 21 July 2004, the plan or programme must be subjected to environmental assessment unless the National Assembly directs that that is not feasible and informs the public to that effect (Articles 4.1 and 13.3 of the Directive and regulation 6 of these Regulations).

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, the opinions expressed in the course of the required consultations and the outcome of any transboundary consultations (Article 8 of the Directive). Regulation 8 also prevents the adoption, or submission for adoption, of a plan or programme while the National Assembly is considering whether the plan or programme is likely to have significant environmental effects.

Regulation 9 deals with the making of determinations by the relevant 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 these Regulations (Article 3.5 of, and Annex II to, the Directive). Determinations cannot be made unless the relevant authority has consulted designated bodies ("the consultation bodies"). The designation of the consultation bodies is dealt with in regulation 4 (Article 6.3 of the Directive). In the case of every plan and programme to which these Regulations apply the consultation bodies will consist of, or include, the Countryside Council for Wales, Cadw and the Environment Agency.

Regulation 10 enables the National Assembly to require a responsible authority to provide it with relevant documents. It also enables it 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) of these Regulations by a responsible authority ceases to have effect. If a responsible authority has not made any determination under that provision, the National Assembly'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 these Regulations includes the preparation of an environmental report (Article 5 of the Directive and regulation 12 of these Regulations). The matters to be included in the environmental report are specified in Schedule 2 to these Regulations (Article 5.1 of, and Annex II 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).

Regulations 14 and 15 deal with transboundary consultations and include procedures for consultations in relation to those draft plans and programmes prepared in Wales that are likely to have significant effects on the environment in other Member States (Article 7 of the Directive).

Regulation 16 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 relates 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

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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.

**Changes to legislation:**

There are currently no known outstanding effects for the The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004.