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WELSH STATUTORY INSTRUMENTS

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**2004 No. 1656**

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

**PART 2** **E+W**

**ENVIRONMENTAL ASSESSMENT OF PLANS AND PROGRAMMES**

**Environmental assessment of plans and programmes: first formal preparatory act after 21 July 2004** **E+W**

5.—(1) Subject to paragraphs (5) and (6) and regulation 7, where—

- (a) the first formal preparatory act of a plan or programme occurs after 21 July 2004; and
- (b) the plan or programme is of the description set out in paragraph (2) or (3),

the responsible authority must 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) The description is a plan or programme which—

- (a) is prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use; and
- (b) sets the framework for future development consent of projects listed in Annex I or II to [\[<sup>F1</sup>Directive 2011/92/EU](#) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment, as amended from time to time].

(3) The description is a plan or programme which, in view of the likely effect on sites, has been determined to require an assessment [<sup>F2</sup>under EU-derived domestic legislation which transposed] Article 6 or 7 of the Habitats Directive.

(4) Subject to paragraph (5) and regulation 7, where the—

- (a) first formal preparatory act of a plan or programme, other than a plan or programme of the description set out in paragraph (2) or (3), occurs after 21 July 2004;
- (b) plan or programme sets the framework for future development consent of projects; and
- (c) plan or programme is the subject of a determination under regulation 9(1), or a direction under regulation 10(3), that it is likely to have significant environmental effects,

the responsible authority must carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure leading to adoption.

(5) Nothing in paragraph (1) or (4) requires the carrying out of an environmental assessment for a—

- (a) plan or programme, the sole purpose of which relates to national defence or civil emergency;
  - (b) financial or budget plan or programme; or
  - (c) plan or programme co-financed under—
    - (i) the 2000-2006 programming period for Council Regulation (EC) No. 1260/1999; or
    - (ii) the 2000-2006 or 2000-2007 programming period for Council Regulation (EC) No. 1257/1999.
- (6) An environmental assessment need not be carried out for a—
- (a) plan or programme of the description set out in paragraph (2) or (3) which determines the use of a small area at local level; or
  - (b) minor modification to a plan or programme of the description set out in either of those paragraphs,

unless it has been determined under regulation 9(1) that the plan, programme or modification, as the case may be, is likely to have significant environmental effects, or it is the subject of a direction under regulation 10(3).

#### Textual Amendments

- F1** Words in reg. 5(2)(b) substituted (17.12.2018) by [The Environment, Planning and Rural Affairs \(Miscellaneous Amendments\) \(Wales\) Regulations 2018 \(S.I. 2018/1216\)](#), regs. 1(3), **17(3)**
- F2** Words in reg. 5(3) substituted (31.12.2020) by [The Environmental Assessment of Plans and Programmes and the Environmental Impact Assessment \(Miscellaneous Amendments\) \(Wales\) \(EU Exit\) Regulations 2019 \(S.I. 2019/245\)](#), regs. 1(2)(3), **2(2)**; 2020 c. 1, Sch. 5 para. 1(1)

#### **Environmental assessment of plans and programmes: first formal preparatory act on or before 21 July 2004** **E+W**

- 6.—(1) Subject to paragraph (2) and regulation 7, where—
- (a) a plan or programme of which the first formal preparatory act occurs on or before 21 July 2004 has not been adopted or submitted to the legislative procedure for adoption before 22 July 2006; and
  - (b) the plan or programme is such that, had the first act in its preparation occurred after 21 July 2004, the plan or programme would have required an environmental assessment by virtue of regulation 5(1); or
  - (c) the responsible authority is of the opinion that, if a determination under regulation 9(1) in respect of the plan or programme had been made after 21 July 2004, it would have determined that the plan or programme was likely to have significant environmental effects,

the responsible authority must carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure for adoption.

- (2) Nothing in paragraph (1) requires the environmental assessment of a particular plan or programme if the responsible authority—
- (a) decides that such assessment is not feasible; and
  - (b) informs the public of its decision.

## **Environmental assessment of plans and programmes co-financed by the European Community** **E+W**

7. The environmental assessment required by any provision of this Part for a plan or programme co-financed by the European Community must be carried out by the responsible authority in conformity with the specific provisions in relevant Community legislation.

## **Restriction on adoption or submission of plans, programmes or modifications** **E+W**

8.—(1) A plan, programme or modification in respect of which a determination under regulation 9(1) is required is not to be adopted or submitted to the legislative procedure for the purpose of its adoption—

- (a) where an environmental assessment is required in consequence of the determination, or of a direction under regulation 10(3), before the requirements of paragraph (3) below have been met;
- (b) in any other case, before the determination has been made under regulation 9(1).

(2) A plan or programme for which an environmental assessment is required by any provision of this Part is not to be adopted or submitted to the legislative procedure for the purposes of its adoption before—

- (a) if it is a plan or programme co-financed by the European Community, the environmental assessment has been carried out as mentioned in regulation 7;
- (b) in any other case, the requirements of paragraph (3) below, and such requirements of Part 3 as apply in relation to the plan or programme, have been met.

(3) This paragraph requires account to be taken of—

- (a) the environmental report for the plan or programme;
- (b) every opinion expressed in response to the invitations referred to in regulation 13(2)(d);
- (c) every opinion expressed in response to action taken by the responsible authority in accordance with regulation 13(4); and
- (d) the outcome of any consultations commenced under regulation 14.

## **Determinations of the responsible authority** **E+W**

9.—(1) The responsible authority must determine whether or not a plan, programme or modification of a description referred to in—

- (a) paragraph (4)(a) and (b) of regulation 5;
- (b) paragraph (6)(a) of that regulation; or
- (c) paragraph (6)(b) of that regulation,

is likely to have significant environmental effects.

(2) Before making a determination under paragraph (1), the responsible authority must—

- (a) take into account the criteria specified in Schedule 1; and
- (b) consult the consultation bodies.

(3) Where the responsible authority determines that the plan, programme or modification is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), it must prepare a statement of its reasons for such determination.

## **Powers of the National Assembly** **E+W**

**10.**—(1) The National Assembly may at any time before the adoption of a plan, programme or modification or its submission to the legislative procedure for the purpose of its adoption (as the case may be), in writing, require the responsible authority to send to the National Assembly a copy of—

- (a) any determination under paragraph (1) of regulation 9 with respect to the plan, programme or modification;
- (b) the plan, programme or modification to which the determination relates; and
- (c) where paragraph (3) of that regulation applies, the statement of reasons prepared in accordance with that paragraph.

(2) The responsible authority must comply with a requirement specified under paragraph (1) within 7 days of receiving notification of it.

(3) The National Assembly may direct that a plan, programme or modification is likely to have significant environmental effects (whether or not a copy of the plan, programme or modification has been sent to it in response to a requirement under paragraph (1)).

(4) Before giving a direction, the National Assembly must—

- (a) take into account the criteria specified in Schedule 1; and
- (b) consult the consultation bodies.

(5) The National Assembly must, as soon as reasonably practicable after the giving of the direction, send to the responsible authority and to each consultation body—

- (a) a copy of the direction; and
- (b) a statement of its reasons for giving the direction.

(6) In relation to a plan, programme or modification in respect of which a direction has been given—

- (a) any determination under regulation 9(1) with respect to the plan, programme or modification ceases to have effect on receipt of the direction; and
- (b) if no determination has been made under regulation 9(1) with respect to the plan, programme or modification, the responsible authority ceases to be under any duty imposed by that regulation.

(7) In this regulation, “direction” means a direction under paragraph (3).

## **Publicity for determinations and directions** **E+W**

**11.**—(1) Within 28 days of making a determination under regulation 9(1), the responsible authority must send to each consultation body—

- (a) a copy of the determination; and
- (b) where it has determined that the plan or programme does not require an environmental assessment, a statement of its reasons for that decision.

(2) The responsible authority must—

- (a) keep a copy of the determination, and any accompanying statement of reasons, available at its principal office for inspection by the public at all reasonable times and free of charge; and
- (b) within 14 days of the making of the copy of the determination, take such steps as it considers appropriate to bring to the attention of the public—
  - (i) the title of the plan, programme or modification to which the determination relates;

- (ii) that the responsible authority has determined that the plan, programme or modification is or, as the case may be, is not likely to have significant environmental effects and, accordingly, that an environmental assessment is or, as the case may be, is not required in respect of the plan, programme or modification; and
  - (iii) the address (which may include a website) at which a copy of the determination and any accompanying statement of reasons may be inspected or from which a copy may be obtained.
- (3) Where the responsible authority receives a direction under regulation 10(3), it must—
  - (a) keep a copy of the direction available at its principal office for inspection by the public at all reasonable times and free of charge; and
  - (b) within 14 days of the receipt of such a direction, take such steps as it considers appropriate to bring to the attention of the public—
    - (i) the title of the plan, programme or modification to which the direction relates;
    - (ii) that the National Assembly has directed that the plan, programme or modification is likely to have significant environmental effects and, accordingly, that an environmental assessment is required in respect of the plan, programme or modification; and
    - (iii) the address (which may include a website) at which the National Assembly's direction (and statement of its reasons for giving the direction) may be inspected or from which a copy may be obtained.
- (4) Nothing in paragraph (2)(b)(iii) or (3)(b)(iii) requires the responsible authority to provide a copy of the documents concerned free of charge; but, where a charge is made, it must be of a reasonable amount.

**Changes to legislation:**

There are currently no known outstanding effects for the The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, PART 2.