



Environmental Assessment (Scotland) Act 2005

2005 asp 15

PART 1

ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

1 Requirement for environmental assessment

- (1) The responsible authority shall—
- (a) during the preparation of a qualifying plan or programme, secure the carrying out of an environmental assessment in relation to the plan or programme; and
 - (b) do so—
 - (i) where the plan or programme is to be submitted to a legislative procedure for the purposes of its adoption, before its submission; or
 - (ii) in any other case, before its adoption.
- (2) In this Act, an environmental assessment is—
- (a) the preparation of an environmental report;
 - (b) the carrying out of consultations; and
 - (c) the taking into account of the environmental report and the result of the consultations in decision-making,
- in accordance with Part 2 of this Act.

2 Responsible authorities

- (1) In this Act, a responsible authority is any person, body or office-holder exercising functions of a public character.
- (2) The responsible authority in relation to a particular plan or programme is the authority by whom, 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—
- (a) the authority determined by agreement between those authorities; or

- (b) if there is no such agreement, the authority determined by the Scottish Ministers.
- (4) But for the purposes of section 5(4)(a) the responsible authorities are—
 - (a) the Scottish Ministers;
 - (b) any holder of an office in the Scottish Administration which is not a ministerial office;
 - (c) the Scottish Parliament;
 - (d) the Scottish Parliamentary Corporate Body;
 - (e) a Scottish public authority with mixed functions or no reserved functions;
 - (f) any other person, body or office-holder of a description (and to such extent) as may be specified by the Scottish Ministers by order.

3 Consultation authorities

- (1) In this Act, the consultation authorities are—
 - (a) the Scottish Ministers;
 - (b) the Scottish Environment Protection Agency; and
 - (c) Scottish Natural Heritage.
- (2) Where an authority mentioned in subsection (1) is the responsible authority as regards a plan or programme, the authority shall not be a consultation authority in relation to that plan or programme.

4 Plans and programmes

- (1) This Act applies to 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) without prejudice to the generality of sub-paragraph (i), prepared by a responsible authority for adoption through a legislative procedure; and
 - (b) relate solely to the whole or any part of Scotland.
- (2) In this Act, any reference to plans or programmes includes reference to modification of plans or programmes.
- (3) This Act does not apply to—
 - (a) plans and programmes the sole purpose of which is to serve national defence or civil emergency;
 - (b) financial or budgetary plans and programmes;
 - (c) plans and programmes co-financed under the 2000-2006 programming period for Council Regulation (EC) No. 1260/1999 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.
- (4) In this Act, any reference to plans or programmes includes strategies.

5 Qualifying plans and programmes

- (1) In this Act, qualifying plans and programmes are plans and programmes of a description set out in subsection (3) or (4)—
 - (a) in respect of which the first formal preparatory act is on or after the coming into force of this section; and
 - (b) which are not exempt by virtue of section 7(1) or 8(2).
- (2) But a plan or programme is a qualifying plan or programme only to the extent that it relates to matters of a public character.
- (3) The description set out in this subsection is a plan or programme (to which this Act applies) which is required by a legislative, regulatory or administrative provision and—
 - (a) which—
 - (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 schedule 1;
 - (b) 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](#)); or
 - (c) which does not fall within paragraph (a) or (b) but sets the framework for future development consent of projects.
- (4) The description set out in this subsection is a plan or programme (to which this Act applies)—
 - (a) which is prepared by a responsible authority as specified in, or by virtue of, section 2(4); and
 - (b) which—
 - (i) is not a plan or programme of a description set out in subsection (3); and
 - (ii) is not of a type specified in, or by virtue of, section 6(1).
- (5) The Scottish Ministers may by order modify schedule 1.

6 Types of excluded plans and programmes

- (1) The types of plan or programme referred to in section 5(4)(b)(ii) are those which—
 - (a) consist of plans or programmes each of which relates to an individual school; or
 - (b) may be specified by order made by the Scottish Ministers.
- (2) The Scottish Ministers may by order modify subsection (1)(a).
- (3) If specifying a type of plan or programme by virtue of subsection (1)(b) or (2), the Scottish Ministers must be of the opinion that the type of plan or programme is likely to have—
 - (a) no effect; or

(b) minimal effect,
in relation to the environment.

(4) In this section, “school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980 (c. 44).

7 Exemptions: pre-screening

(1) A plan or programme of a description set out in section 5(4) is exempt if the responsible authority is of the opinion that the plan or programme will have—

(a) no effect; or
(b) minimal effect,
in relation to the environment.

(2) In considering whether or not it is of the opinion described in subsection (1), the responsible authority shall apply the criteria specified in schedule 2.

(3) If a responsible authority is of the opinion described in subsection (1), it shall notify the consultation authorities of that fact as soon as practicable.

(4) A notification under subsection (3) shall also include the following information—

(a) the title of the plan or programme;
(b) the date of the opinion; and
(c) a brief description of the plan or programme, including the area or location to which the plan or programme relates.

(5) The Scottish Ministers shall arrange for a register to be kept of any notifications under subsection (3).

(6) The register kept under subsection (5)—

(a) shall be available for public inspection—
(i) at any reasonable time; and
(ii) at such place as the Scottish Ministers may direct;
(b) may include such other information in relation to a plan or programme as the Scottish Ministers consider appropriate.

(7) The information contained in the register may also be made available, for the purpose of facilitating public access to that information, by such means (including by means of display on a website) as the Scottish Ministers think fit.

(8) The Scottish Ministers may by order modify schedule 2.

8 Exemptions: screening

(1) The responsible authority shall determine whether or not—

(a) a plan or programme of a description set out in section 5(3) which determines the use of small areas at local levels;
(b) a minor modification to a plan or programme of a description set out in section 5(3);
(c) a plan or programme of the description set out in section 5(3)(c);
(d) a plan or programme of the description set out in section 5(4) which is not exempt by virtue of section 7(1),

is likely to have significant environmental effects.

- (2) Where the responsible authority determines under subsection (1) that a plan or programme is unlikely to have significant environmental effects—
 - (a) that plan or programme is exempt; and
 - (b) the authority shall prepare a statement of its reasons for the determination.
- (3) In making a determination under subsection (1), the responsible authority shall apply the criteria specified in schedule 2.
- (4) The statement of reasons under subsection (2)(b) shall, in particular, state how the criteria mentioned in subsection (3) were applied when making the determination.

9 Screening: procedure

- (1) Before making a determination under section 8(1), the responsible authority shall prepare a summary of its views as to whether or not the plan or programme is likely to have significant environmental effects.
- (2) The responsible authority shall send that summary to each consultation authority for its consideration.
- (3) Each consultation authority shall, within 28 days of receipt of that summary, respond to the responsible authority with the consultation authority's views on it.
- (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 section 8(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 section 8(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 subsection (6) shall have effect as if made by the responsible authority under section 8(1); and, where the determination is that the plan or programme is unlikely to have significant environmental effects, section 8(2)(b) shall apply to the Scottish Ministers as it would to the responsible authority.

10 Screening: publicity for determinations

- (1) Within 28 days of a determination having been made under section 8(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 section 8(2)(b).
- (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;

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- (b) display 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, 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 to which the determination relates;
 - (ii) that a determination has been made under section 8(1);
 - (iii) whether or not an environmental assessment is required in respect of the plan or programme; and
 - (iv) 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 subsection (2)(c)(iv) 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.

11 Directions as regards plans and programmes

- (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 a legislative procedure for the purposes of its adoption, by that responsible authority.
- (2) The Scottish Ministers shall consider any plan or programme sent to them under subsection (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) section 5(3)(a) or (b), they may direct the responsible authority to carry out an environmental assessment in accordance with this Act;
 - (b) paragraphs (a) to (d) of subsection (1) of section 8, they may direct the responsible authority to carry out a determination in accordance with that subsection.
- (4) Where subsection (3) applies, the Scottish Ministers shall send to the responsible authority a summary of the reasons as to why a direction was, or (as the case may be) was not, made.
- (5) A responsible authority shall comply with any direction given to it under subsection (1) or (3).

12 Restriction on adoption or submission

- (1) A qualifying plan or programme shall not be—
 - (a) adopted; or
 - (b) submitted to a legislative procedure for the purposes of its adoption,

before the requirements of such provisions of Part 2 of this Act as apply in relation to that plan or programme have been met.

- (2) A plan or programme in respect of which a determination is required under section 8(1) shall not be adopted, or submitted to a legislative procedure for the purpose of its adoption, unless either—
- (a) the requirements of subsection (1) have been met; or
 - (b) the determination under section 8(1) is that the plan or programme is unlikely to have significant environmental effects.

13 Relationship with Community law requirements

- (1) An environmental assessment carried out under this Act shall be without prejudice to any requirement under Community law.
- (2) Where a qualifying plan or programme is co-financed by the European Community, the responsible authority, in carrying out the environmental assessment required by this Act, shall do so in conformity with any relevant provision of Community law that is applicable by reason of that co-financing.