
STATUTORY RULES OF NORTHERN IRELAND

2004 No. 280

The Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004

PART I

INTRODUCTORY PROVISIONS

Citation and commencement

1. These Regulations may be cited as the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004 and shall come into operation on 22nd July 2004.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly⁽¹⁾.

(2) In these Regulations –

“consultation body” has the meaning given by regulation 4;

“Department” means a Department specified in Schedule 1 to the Departments (Northern Ireland) Order 1999⁽²⁾;

“the Habitats Directive” means 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](#)⁽³⁾;

“plans and programmes” means plans and programmes, including those co-financed by the European Community, as well as any modifications to them, which –

- (a) are subject to preparation and/or adoption by an authority at national, regional or local level; or
- (b) are prepared by an authority for adoption, through a legislative procedure by Parliament or Government; and, in either case,
- (c) are required by legislative, regulatory or administrative provisions;

“the Environmental Assessment of Plans and Programmes Directive” means Directive [2001/42/EC](#)⁽⁴⁾ of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment;

“responsible authority”, in relation to a plan or programme, means –

- (a) the authority by which, or on whose behalf, it is prepared; and

(1) 1954 c. 33 (N.I.)

(2) S.I.1999/283 (N.I. 1)

(3) O.J. No. L206, 22.7.1992. The last amending Directive is at O.J. No. L305, 8.11.1997, p. 42

(4) O.J. No. L197, 21.7.2001, p. 30

- (b) where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible (solely or jointly with the authority) for taking those steps.

“the Department concerned” in relation to any purpose or function under these regulations means the government department concerned with that purpose or function, and if any question arises as to what department is the department concerned, the question shall be determined by the Department of the Environment.

“Northern Ireland” has the meaning given by section 98 of the Northern Ireland Act 1998⁽⁵⁾.

- (3) Other expressions used both in these Regulations and in the Environmental Assessment of Plans and Programmes Directive have the same meaning in these Regulations as they have in that Directive.

Application

3.—(1) These Regulations apply as regards a plan or programme relating solely to the whole or any part of Northern Ireland.

- (2) These regulations shall bind the Crown.

Consultation body

4.—(1) Subject to paragraph (2), for the purposes of these Regulations, the Department of the Environment shall be the consultation body.

(2) Where the Department of the Environment is at any time the responsible authority as regards a plan or programme, it shall not at that time exercise the functions under these Regulations of the consultation body in relation to that plan or programme; and references to the consultation body in the following provisions of these Regulations shall be construed accordingly.

PART II

ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

Environmental assessment for plans and programmes: first formal preparatory act on or after 21st July 2004

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

(a) the first formal preparatory act of a plan or programme is on or after 21st July 2004; and

(b) the plan or programme is of the description set out in either paragraph (2) or paragraph (3),

the responsible authority shall carry out, or secure the carrying out of, an environmental assessment in accordance with Part III, 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

(5) 1998 c. 47 (N.I.)

- (b) 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](#)(6).
- (3) The description is a 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 the Habitats Directive.
- (4) Subject to paragraph (5) and regulation 7, where –
 - (a) the 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), is on or after 21st July 2004;
 - (b) the plan or programme sets the framework for future development consent of projects; and
 - (c) the plan or programme is the subject of a determination under regulation 9(1) that it is likely to have significant environmental effects,

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

- (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 is to serve national defence or civil emergency;
 - (b) a financial or budget plan or programme; or
 - (c) a 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 –
 - (a) for 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) for a 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.

Environmental assessment for plans and programmes: first formal preparatory act before 21st July 2004

- 6.—(1) Subject to paragraph (2) and regulation 7, where –
 - (a) a plan or programme of which the first formal preparatory act is before 21st July 2004 has not been adopted or submitted to the legislative procedure for adoption before 22nd July 2006; and
 - (b) the plan or programme is such that, had the first act in its preparation occurred on 21st 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 on 21st July 2004, it would have determined that the plan or programme was likely to have significant environmental effects,

(6) O.J. No. L175, 5.7.1985, p. 40. The amending Directive is at O.J. No. L73, 14.3.1997, p. 5

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

(2) Nothing in paragraph (1) shall require 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 for plans and programmes co-financed by the European Community

7. The environmental assessment required by any provision of this Part for a plan or programme co-financed by the European Community shall 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

8.—(1) A plan, programme or modification in respect of which a determination under regulation 9(1) is required shall not 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, before the requirements of paragraph (3) 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 shall not be adopted or submitted to the legislative procedure for the purpose 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, such of the requirements of Part III as apply in relation to the plan or programme, have been met.

(3) The requirements of this paragraph are that account shall be taken of –

- (a) the environmental report for the plan or programme;
- (b) the opinions expressed in response to the invitations referred to in regulation 12; and
- (c) the outcome of any consultations under regulation 13(4).

Determination of whether a particular plan, programme or modification is likely to have significant environmental effects

9.—(1) The provisions of this Regulation apply in respect of the determination of whether a plan, programme or modification of a description referred to in –

- (a) regulation 5(4)(a) and (b); or
- (b) regulation 5(6)(a) and (b);

is likely to have significant environmental effects.

(2) The responsible authority shall apply the criteria specified in Schedule 1 to the plan, programme or modification under consideration, and shall prepare a report on whether the authority considers that the plan or programme, or as the case may be, the modification, is likely to have significant environmental effects.

(3) The responsible authority shall send the report prepared in accordance with paragraph (2) to the consultation body for consideration.

(4) The consultation body shall, within 28 days of receipt of the report prepared in accordance with paragraph (2), respond to the responsible authority with its views on that report.

(5) If the responsible authority and the consultation body agree that the plan, programme or modification is not likely to have significant environmental effects, the responsible authority shall make a determination to that effect and shall state its reasons for that determination.

(6) If the responsible authority and the consultation body agree that the plan, programme or modification is likely to have significant environmental effects then the responsible authority shall make a determination to that effect and shall carry out an environmental assessment in accordance with Part III, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.

(7) If the responsible authority and the consultation body cannot reach agreement as to whether or not the plan, programme or modification is likely to have significant environmental effects, the consultation body shall determine that issue.

(8) A determination of the Department of the Environment under paragraph (7) shall include a statement of reasons where the determination is that the plan, programme or modification is not likely to have significant environmental effects, and shall have effect as if made by the responsible authority under paragraph (5).

Publicity for determinations

10.—(1) Within 28 days of a determination having been made under regulation 9(5) or (6), the responsible authority shall send to the consultation body –

- (a) a copy of the determination; and
- (b) any related statement of reasons prepared in accordance with regulation 9.

(2) Where a determination has been made under regulation 9(5) or (6), or the responsible authority receives a determination made under regulation (7), 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;
- (b) publish a copy of the determination and any related statement of reasons on the authority's website; and
- (c) within 28 days of the making 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 a determination has been made 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 related statement of reasons may be inspected or from which a copy may be obtained.

(3) Nothing in paragraph (2)(c)(iii) shall require the responsible authority to provide a copy of the documents concerned free of charge; but where a charge is made, it shall be of a reasonable amount.

PART III

ENVIRONMENTAL REPORTS AND CONSULTATION PROCEDURES

Preparation of environmental report

11.—(1) Where an environmental assessment is required by any provision of Part II, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3).

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of –

- (a) implementing the plan or programme; and
- (b) reasonable alternatives taking into account the objectives and geographical scope of the plan or programme.

(3) The report shall include such of the information referred to in Schedule 2 that may reasonably be required, taking account of –

- (a) current knowledge and methods of assessment;
- (b) the contents and level of detail in the plan or programme;
- (c) the stage of the plan or programme in the decision-making process; and
- (d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

(4) Information referred to in Schedule 2 may be provided by reference to relevant information obtained at other levels of decision-making or through other Community legislation.

(5) When deciding on the scope and level of detail of the information that must be included in the report, the responsible authority shall consult the consultation body.

(6) Where the consultation body wishes to respond to a consultation under paragraph (5), it shall do so within the period of 5 weeks beginning with the date on which it receives the responsible authority's invitation to engage in the consultation.

Consultation procedures

12.—(1) Every draft plan or programme for which an environmental report has been prepared in accordance with regulation 11 and its accompanying environmental report (“the relevant documents”) shall be made available to the consultation body and to the public in accordance with the following provisions of this regulation.

(2) As soon as reasonably practicable after their preparation, the responsible authority shall send a copy of the relevant documents to the consultation body and invite it to express its opinion on the relevant documents within a specified period.

(3) The responsible authority shall also –

- (a) within 14 days of the preparation of the relevant documents, publish in accordance with paragraph (5), or secure the publication of, a notice –
 - (i) stating the title of the plan, programme or modification;
 - (ii) stating the address (which may include a website) at which a copy of the relevant documents may be inspected or from which a copy may be obtained;
 - (iii) inviting expressions of opinion on the relevant documents;
 - (iv) stating the address to which, and the period within which, opinions must be sent; and

(b) keep a copy of the relevant documents available at its principal office for inspection by the public at all reasonable times and free of charge; and

(c) publish a copy of the relevant documents on the authority's website.

(4) The periods referred to in paragraphs (2) and (3)(a)(iv) must be of such length as will ensure that those to whom the invitation is extended are given an early and effective opportunity to express their opinion on the relevant documents.

(5) Publication of a notice under paragraph (3)(a) shall be by such means as will ensure that the contents of the notice are likely to come to the attention of the public affected by, or likely to be affected by, or having an interest in, the draft plan or the programme.

(6) Nothing in paragraph (3)(a)(ii) shall require the responsible authority to provide a copy of the documents concerned free of charge; but where a charge is made, it shall be of a reasonable amount.

Transboundary consultations

13.—(1) Where a responsible authority is of the opinion that a plan or programme for which it is the responsible authority is likely to have significant effects on the environment of another Member State, it shall, as soon as reasonably practical after forming that opinion –

(a) notify the Department concerned of its opinion and of the reasons for it; and

(b) supply the Department concerned with a copy of the relevant plan or programme, and of the accompanying environmental report.

(2) Where the Department concerned has been notified under paragraph (1)(a), the responsible authority shall, within such period as the Department concerned may specify by notice in writing to the authority, provide that Department with such other information about the plan or programme or its accompanying environmental report as it may reasonably require.

(3) Where –

(a) the Department concerned, whether in consequence of a notice under paragraph (1)(a) or otherwise, considers that the implementation of a plan or programme is likely to have significant effects on the environment of another Member State; or

(b) a Member State that is likely to be significantly affected by the implementation of a plan or programme so requests,

the Department concerned shall, before the adoption of the plan or programme or its submission to the legislative procedure for adoption, forward a copy of it and of its accompanying environmental report to the Member State concerned.

(4) Where the Department concerned receives from a Member State an indication that it wishes to enter into consultations before the adoption, or submission to the legislative procedure for adoption, of a plan or programme forwarded to it in accordance with paragraph (3), the Department concerned shall –

(a) agree with the Member State –

(i) detailed arrangements to ensure that the authorities referred to in paragraph 3 of Article 6 of the Environmental Assessment of Plans and Programmes Directive and the public referred to in paragraph 4 of that Article in the Member State likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time; and

(ii) a reasonable time for the duration of the consultations;

(b) enter into consultations with the Member State concerning –

(i) the likely transboundary environmental effects of implementing the plan or programme;

- (ii) the measures envisaged to reduce or eliminate such effects.
- (c) where it is not the responsible authority, direct the responsible authority that it shall not adopt the plan or programme, or submit it to the legislative procedure for adoption, until the consultations with the Member State have been concluded.
- (5) Where consultations take place pursuant to paragraph (4), the Department concerned shall –
 - (a) as soon as reasonably practicable after those consultations begin, notify the consultation body of that fact; and
 - (b) notify the consultation body and, where the Department concerned is not the responsible authority, the responsible authority, of the outcome of the consultations.

Plans and programmes of other Member States

14.—(1) This regulation applies where the Department concerned receives from a Member State (whether or not in response to a request made by that Department in that behalf under the Environmental Assessment of Plans and Programmes Directive) a copy of a draft plan or programme –

- (a) that is being prepared in relation to any part of that Member State; and
- (b) whose implementation is likely to have significant effects on the environment of any part of Northern Ireland.

(2) The Department concerned shall indicate to the Member State whether, before the adoption of the plan or programme or its submission to the legislative procedure for adoption, it 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.

(3) Where the Department concerned so indicates, it shall agree with the Member State concerned –

- (a) detailed arrangements to ensure that the consultation body and the public in Northern Ireland are informed and given an opportunity to forward their opinion within a reasonable time; and
- (b) a reasonable time for the duration of the consultations.

(4) Where such consultations take place under this regulation, the Department concerned shall –

- (a) inform the consultation body of the receipt of the draft plan or programme;
- (b) provide it with a copy of the draft plan or programme and the relevant environmental report provided under Article 7.1 of the Environmental Assessment of Plans and Programmes Directive or specify the address (which may include a website) at which those documents may be inspected;
- (c) take such steps as it considers appropriate to bring the receipt of the draft plan or programme to the attention of such persons as, in its opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan or programme concerned, required under the Environmental Assessment of Plans and Programmes Directive (“the transboundary consultees”);
- (d) inform the transboundary consultees of the address (which may include a website) at which a copy of the draft plan or programme and the relevant environmental report provided under Article 7.1 of the Environmental Assessment of Plans and Programmes Directive may be inspected, or from which a copy may be obtained; and

(e) invite the consultation body and the transboundary consultees to forward to it their opinions within such period as it may specify.

(5) The period specified under paragraph (4)(e) shall end not later than 28 days before the end of the period that the Department concerned has agreed with the Member State concerned, pursuant to paragraph (3)(b), as reasonable for the duration of their consultations.

(6) Nothing in paragraph (4)(d) shall require the Department concerned to provide a copy of the relevant documents free of charge; but where a charge is made, it shall be of a reasonable amount.

PART IV

POST-ADOPTION PROCEDURES

Information as to adoption of plan or programme

15.—(1) As soon as reasonably practicable after the adoption of a plan or programme for which an environmental assessment has been carried out under these Regulations, the responsible authority shall –

- (a) make a copy of the plan or programme and its accompanying environmental report available at its principal office for inspection by the public at all reasonable times and free of charge; and
- (b) publish a copy of the plan or programme and of the information referred to in subparagraph (c) on the authority's website; and
- (c) take such steps as it considers appropriate to bring to the attention of the public –
 - (i) the title of the plan or programme;
 - (ii) the date on which it was adopted;
 - (iii) the address (which may include a website) at which a copy of it and of its accompanying environmental report, and of a statement containing the particulars specified in paragraph (4), may be inspected or from which a copy may be obtained;
 - (iv) the times at which inspection may be made; and
 - (v) that inspection may be made free of charge.

(2) As soon as reasonably practicable after the adoption of a plan or programme –

- (a) the responsible authority shall inform –
 - (i) the consultation body;
 - (ii) where a plan or programme has been notified under regulation 13, the Department concerned.
- (b) the Department concerned shall inform the Member State with which consultations in relation to a plan or programme have taken place under regulation 13(4), of the matters referred to in paragraph (3).

(3) The matters are –

- (a) that the plan or programme has been adopted;
- (b) the date on which it was adopted; and
- (c) the address (which may include a website) at which a copy of –
 - (i) the plan or programme, as adopted,
 - (ii) its accompanying environmental report, and

- (iii) a statement containing the particulars specified in paragraph (4), may be viewed, or from which a copy may be obtained.
- (4) The particulars referred to in paragraphs (1)(c)(iii) and (3)(c)(iii), are –
- (a) how environmental considerations have been integrated into the plan or programme;
 - (b) how the environmental report has been taken into account;
 - (c) how the opinions expressed in response to the invitations mentioned in regulation 12 have been taken into account;
 - (d) how the results of any consultations entered into under regulation 13(4) have been taken into account;
 - (e) the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with; and
 - (f) the measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme.

Monitoring of implementation of plans and programmes

16.—(1) The responsible authority shall monitor the significant environmental effects of the implementation of each plan or programme with the purpose of identifying unforeseen adverse effects at an early stage and undertaking appropriate remedial action.

(2) The responsible authority’s monitoring arrangements may comprise or include arrangements established otherwise than for the express purpose of complying with paragraph (1).

Sealed with the Official Seal of the Department of the Environment on 1st July 2004.

L.S.

I. Maye
A senior officer of the
Department of the Environment