



Environmental Assessment (Scotland) Act 2005

2005 asp 15

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 9th November 2005 and received Royal Assent on 14th December 2005

An Act of the Scottish Parliament to make provision for the assessment of the environmental effects of certain plans and programmes, including plans and programmes to which Directive [2001/42/EC](#) of the European Parliament and of the Council relates; and for connected purposes.

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.

Commencement Information

II S. 1 in force at 20.2.2006 by [S.S.I. 2006/19](#), [art. 2](#)

*Changes to legislation: There are currently no known outstanding effects for the
 Environmental Assessment (Scotland) Act 2005. (See end of Document for details)*

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.

Commencement Information

I2 S. 2 in force at 20.2.2006 by [S.S.I. 2006/19](#), [art. 2](#)

3 Consultation authorities

- (1) In this Act, the consultation authorities are—
 - ^[F1](a) Historic Environment Scotland;
 - (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.

Textual Amendments

F1 [S. 3\(1\)\(a\)](#) substituted (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Ancillary Provision\) Order 2015 \(S.S.I. 2015/271\)](#), [arts. 1, 5\(1\)](#) (with [art. 5\(2\)](#))

Commencement Information

I3 S. 3 in force at 20.2.2006 by [S.S.I. 2006/19](#), [art. 2](#)

4 Plans and programmes

- (1) This Act applies to plans and programmes (including those co-financed by ^[F2]the European Union]) which—

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- (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.

Textual Amendments

F2 Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with arts. 3(2)(3), 4(2), 6(4)(5))

Commencement Information

I4 S. 4 in force at 20.2.2006 by [S.I. 2006/19](#), art. 2

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

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- (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 [^{F3}any retained EU law extending to Scotland which implemented] 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 [^{F4}Council [Directive 2013/17/EU](#)]); 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.

Textual Amendments

- F3** Words in s. 5(3)(b) inserted (31.12.2020) by [The Environmental Assessment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019](#) (S.S.I. 2019/178), regs. 1(2)(b), **3(2)**; 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in s. 5(3)(b) substituted (30.6.2019) by [The Environmental Assessment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019](#) (S.S.I. 2019/178), regs. 1(2)(a), **2(2)**

Commencement Information

- I5** S. 5 in force at 20.2.2006 by [S.S.I. 2006/19](#), **art. 2**

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).

Changes to legislation: There are currently no known outstanding effects for the Environmental Assessment (Scotland) Act 2005. (See end of Document for details)

Commencement Information

I6 S. 6 in force at 20.2.2006 by [S.S.I. 2006/19](#), [art. 2](#)

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.

Commencement Information

I7 S. 7 in force at 20.2.2006 by [S.S.I. 2006/19](#), [art. 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);