Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

WELSH STATUTORY INSTRUMENTS

2004 No. 1656 (W.170)

ENVIRONMENTAL PROTECTION, WALES

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

Made - - - -	*29 June 2004*
Coming into force - -	*12 July 2004*

The National Assembly for Wales, being designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to matters relating to the assessment of the effects of certain plans and programmes on the environment, in exercise of the powers conferred by the said section 2 and of all other powers enabling it in that behalf, hereby makes the following Regulations:

F1 S.I. 2004/706.
F2 1972 c. 68.

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

1. These Regulations may be cited as the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 and come into force on 12 July 2004.

Interpretation

2.—(1) In these Regulations—

"Cadw" ("*Cadw*") means the executive agency responsible for administering the exercise of functions vested in the National Assembly relating to the historic environment;

"consultation body" ("*corff ymgynghori*") has the meaning given by regulation 4;

"the Environmental Assessment of Plans and Programmes Directive" ("*Cyfarwyddeb Asesiad Amgylcheddol o Gynlluniau a Rhaglenni*") means Directive 2001/42/EC[F3] of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment;

"functions" ("*swyddogaethau*") includes powers and duties;

"the Habitats Directive" ("*y Gyfarwyddeb Cynefinoedd*") means Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna **[**F4, as amended from time to time**]**;

"the National Assembly" ("*y Cynulliad Cenedlaethol*") means the National Assembly for Wales;

references to "plans" ("*cynlluniau*") and "programmes" ("*rhaglenni*") are references to plans and programmes, including those co-financed by the European Community, as well as any modifications to them, which are—

(a) subject to preparation or adoption, or both, 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; and, in either case,

(c) required by legislative, regulatory or administrative provisions;

"responsible authority", ("*awdurdod cyfrifol*") in relation to a plan or programme, means—

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

(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; and

"Secretary of State" ("*Ysgrifennydd Gwladol*") means the Secretary of State having responsibility for the subject matter of the plan or programme.

(2) 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.

(3) In these Regulations, unless otherwise stated, references to Parts, regulations and Schedules are references to Parts, regulations and Schedules of these Regulations.

F3 O.J. No. L 197, 21.07.2001, p.30.

F4 Words in reg. 2(1) substituted (17.12.2018) by The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018 (S.I. 2018/1216), regs. 1(3), **17(2)**

Application

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

(2) For the purposes of these Regulations, "Wales" has the meaning given by section 155 of the Government of Wales Act 1998 and any orders under paragraph (2) of that section **F5**.

(3) For the purposes of this regulation, the territorial waters of the United Kingdom adjacent to Wales are to be treated as part of Wales; and references to Wales are to be construed as including the adjacent territorial waters.

(4) For the purposes of paragraph (3), territorial waters include any waters landward of the baselines from which the breadth of the territorial sea is measured.

F5 1998 c. 38. See article 6 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

Consultation bodies

4.—**[**F6(1) Subject to paragraph (2), in relation to every plan or programme to which these Regulations apply, each of the following bodies are consultation bodies—

(a) the Natural Resources Body for Wales;

(b) Cadw.**]**

(2) Where **[**F7Cadw**]** is at any time the responsible authority as regards a plan or programme, it must not at that time exercise the functions under these Regulations of a consultation body in relation to that plan or programme; and references to the consultation bodies in the following provisions of these Regulations are to be construed accordingly.

F6 Reg. 4(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 5 para. 26(2)** (with Sch. 7)

F7 Word in reg. 4(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 5 para. 26(3)** (with Sch. 7)

PART 2

ENVIRONMENTAL ASSESSMENT OF PLANS AND PROGRAMMES

Environmental assessment of plans and programmes: first formal preparatory act after 21 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 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 **[**F8Directive 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 pursuant to 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).

F8 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)**

Environmental assessment of plans and programmes: first formal preparatory act on or before 21 July 2004

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

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

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

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.