STATUTORY RULES OF NORTHERN IRELAND

2004 No. 280

ENVIRONMENTAL PROTECTION

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

Made - - - -	*1st July 2004*
Coming into operation	*22nd July 2004*

The Department of the Environment, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) 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 upon it by that section and of all other powers enabling it in that behalf, hereby makes the following Regulations:

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(**3**).

(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(**4**);

(**1**) S.I.2004/706
(**2**) 1972 c. 68
(**3**) 1954 c. 33 (N.I.)
(**4**) S.I. 1999/283 (N.I. 1)

"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(**5**);

"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(**6**) 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

(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(**7**).

(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.

(**5**) O.J. No. L206, 22.7.1992. The last amending Directive is at O.J. No. L305, 8.11.1997, p. 42
(**6**) O.J. No. L197, 21.7.2001, p. 30
(**7**) 1998 c. 47 (N.I.)

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

(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(**8**).

(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,

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

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,

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