



**Strategic Environmental Assessment
A Consultation on Proposed Legislative
Measures to Introduce Strategic
Environmental Assessment in Scotland**

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SUMMARY

1. Strategic environmental assessment (SEA) provides a systematic method of considering the likely effects on the environment of strategies, plans and programmes that set a broad-based context for future development activity. The Scottish Ministers regard it as a vital tool for putting the environment at the heart of public sector activity, ensuring that alternative strategies, plans and programmes are fully and transparently considered before final decisions are taken. It is a key component of sustainable development. The coalition Partnership Agreement, *A Partnership for a Better Scotland*, has a strong green thread running through it which SEA supports. One of the core environmental commitments the Scottish Executive has made in that Agreement is therefore to legislate to introduce SEA across the range of all new strategies, plans and programmes developed by the public sector in Scotland - going beyond our existing obligation to give effect to the European Directive on the Assessment of Environmental Effects of Certain Plans and Programmes (2001/42/EC) by 21 July 2004.

2. The legislation described in this consultation document will ensure that all new strategies, plans and programmes developed by the public sector in Scotland take full account of both positive and negative environmental impacts. All parts of the environment will be considered: impacts on water, land, air, biodiversity and human health, as well as on the built and archaeological heritage of Scotland. It will help public authorities to make better policy decisions based on a clear understanding of the environmental consequences, choosing between a range of alternative solutions to ensure that the environmental aims of sustainable development are fully met. A clearer understanding of the environmental impacts at the first stage of the planning process can make the later project stages more efficient, with fewer unforeseen impacts emerging and the cumulative effects of many projects already considered. The proposed legislation also underpins the public's right to know about plans, comment on them, have their comments taken into account and to have the final decision clearly explained. SEA will therefore help to improve public services and deliver better environmental outcomes to the benefit of Scotland as a whole.

3. This consultation document invites comments by Thursday, 11 March 2004. It is in 5 sections.

4. **Section 1** introduces the consultation. It describes what the Scottish Ministers have decided in respect of the legislative vehicles to be used to introduce mandatory SEA and sets the parameters for the consultation. It defines SEA in broad terms and summarises and compares the key provisions of Directive 2001/42/EC and the wider commitment in *A Partnership for a Better Scotland*. It summarises the extent of the devolved powers of the Scottish Parliament and Scottish Executive in respect of SEA.

5. **Section 2** summarises the provisions of the Directive and how the Scottish Executive proposes to give effect to its provisions. It highlights specific issues on which the Scottish Executive would welcome views (these are expanded on in section 4).

6. **Section 3** sets out the principles of the proposed Bill and highlights specific issues (detailed in section 4) on which the Scottish Executives invites views.

7. **Section 4** sets out the specific issues on which the Scottish Executive invites views.

8. For ease of reference, **section 5** lists the questions raised in section 4
9. There are two Annexes:

Annex A – draft Regulations to give effect to the Directive in Scotland

Annex B – the full text of Directive 2001/42/EC

Glossary of terms used in this consultation document

Responsible Authority	the owner of the plan, programme or strategy. A body in the public sector but including any person certain of whose functions are functions of a public nature.
Consultation Authority	specialist body with environmental expertise that is to consider plans, programmes and strategies and agree with the responsible authority the need or otherwise for SEA. Currently proposed as the Scottish Environment Protection Agency, Scottish Natural Heritage, and (to include Historic Scotland), the Scottish Ministers. The Directive refers to consultation authorities in Article 6.
Cumulative Effects	the combination of effects which in some cases may not be significant in themselves but which taken together amount to a significant impact. The effects might be several of the same effects, for example too many houses in one place, or be the combination of different types of effect in one area for example one causing noise; another reducing air quality.
ECJ	the European Court of Justice
EC Guidance	detailed guidance on the implementation of the Directive produced by the European Commission in co-operation with the Member States. That guidance runs to some 63 pages and is therefore not included as part of this consultation document. The guidance is, however, available at http://europa.eu.int/comm/environment/eia
Public	the Directive gives a very specific definition of the public but the Executive prefers to set the definition more widely as meaning one or more natural or legal persons and, without prejudice to that generality, includes unincorporated associations (see draft Regulation 2 at Annex A).
Scoping	the stage in the assessment process which seeks to define what the environmental report should cover and how environmental effects should be assessed and presented.

Screening	the stage in the assessment process which determines whether a particular plan or programme, or alteration to one, should be subject to the assessment process.
Strategic Environmental Assessment (SEA)	the process of assessing plans and programmes (and strategies under the Bill) for their environmental impact.
SEA report or Environmental report	a report detailing all the significant positive and negative environmental impacts of a plan. It will be published along with the plan or programme for public comment.
Sustainable Development	development which meets the needs of the present without compromising the ability of future generations to meet their own needs.

SEA: simple illustrative case studies

1. A responsible authority draws up a new plan and, having considered it against a list of environmental criteria, reports to the statutory consultation authorities that it thinks SEA might be needed. The consultation authorities consider the plan (within a fixed time) and agree with the responsible authority that a SEA should be carried out. The responsible authority works with the consultation authorities to scope the extent of the SEA, ensuring that it is proportionate to the nature of the plan and covers all the environmental areas in which a significant impact, positive or negative, might be felt. As soon as possible the plan and SEA report is made available to the public and their comments and suggestions are sought and recorded. SEA demands that alternative approaches are considered and the responsible authority makes its decision taking into account the views expressed during the consultation. After making public its conclusions and reasons for the approach adopted, the responsible authority puts in place monitoring arrangements to track environmental effects for the short and long term.
2. (As above at 1.), but all agree that SEA is not necessary. The responsible authority need take no further action other than to publish the joint decision that SEA is not needed, with the reasons for that decision.
3. (As above a 1.), but the responsible authority and the consultation authorities cannot agree on whether SEA is necessary. The Scottish Ministers would make a determination and the responsible authority would act in accordance with it.

1. INTRODUCTION

Background

1.1 The Scottish Ministers have already decided to adopt a two-stage approach to SEA legislation:

(a) Regulations to give effect to Directive 2001/42/EC on the Assessment of the Effects of Certain Plans and Programmes on the Environment, by 21 July 2004 followed by;

(b) a Bill to be introduced into the Scottish Parliament in early course to go beyond the requirements of the Directive in order to give effect to the commitment in *A Partnership for a Better Scotland*.

1.2 The two stage approach will allow for transposition of the Directive within the agreed deadline and for full consideration of the wider elements of the Partnership Agreement commitment. That approach is not itself the subject of this consultation and there is no scope for seeking to delay implementation of the Directive beyond July 2004 even with the prospect of a Bill in early course. This consultation therefore seeks views solely on the proposed content of the Regulations, on the principles for the proposed Bill and on the handling of a number of practicalities arising from the Directive and from the wider commitment in *A Partnership for a Better Scotland*.

1.3 Responses to this consultation are requested by Thursday, 11 March 2004 and should be sent to:

SEA Consultation
ERAD/SEA 1-H (North)
Victoria Quay
Leith
Edinburgh
EH6 6QQ
e-mail: SEAconsultation@scotland.gsi.gov.uk

1.4 Responses will be acknowledged and an analysis of them will be published in due course. Individual responses may be made publicly available in the Scottish Executive library unless a respondent asks for confidentiality. **Please indicate in your response if you do not want it to be made more widely available.**

SEA Defined

1.5 For the purposes of this consultation, **SEA in the context of the Directive** is a process for the early identification and assessment of the likely significant environmental effects, positive and negative, of certain programmes and plans developed by the public sector. In line with EC guidance on the Directive, and ECJ case law, the public sector includes private companies which undertake functions of a public nature under the control or direction of Government. **In the context of the Partnership Agreement commitment**, SEA has the same meaning but also applies to public sector strategies. As the term implies, SEA applies at a broad level rather than to individual projects/developments that might arise under any particular strategy, programme or plan. It complements and does not replace environmental impact assessments on individual projects. It allows the cumulative effects of potential developments to be taken into account at an early stage and for alternative approaches to be considered before any decisions are taken at a broad level. Transparency of decision making is key to the SEA process, including public consultation and publication of the assessment.

Key Elements of Directive 2001/42/EC and the Partnership Agreement Compared

1.6 **The Directive** requires SEA¹ (involving the preparation of an environmental report) of certain plans and programmes (which are subject to preparation and/or adoption by an authority at national, regional or local level, or through a legislative procedure by Parliament or Government) which are required by legislative, regulatory or administrative means and which:

(a) are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use **and** which set a framework for future development consent of projects listed in Annexes I and II of the Environmental Impact Assessment Directive (85/337/EEC) as amended by Directive 97/11/EC; **or**

(b) require an assessment under Article 6 or 7 of the Habitats Directive (92/43/EEC) as amended by Directive 97/62/EC.

1.7 Other plans and programmes (outside the specific sectors and/or Directives mentioned in paragraph 1.6 (a) and (b) above) and which also set a framework for future development consent may be subject to environmental assessment if they are determined, by a screening process, as being likely to have significant environmental effects, either positive or negative.

1.8 **The Partnership Agreement** goes beyond those basic provisions in two key respects:

it envisages that public sector “strategies” should also be subject to environmental assessment; and

it applies SEA to all public sector strategies, programmes and plans likely to have significant environmental effects, regardless of whether they are required by legislative, regulatory or administrative means or of whether they set a framework for future development consents.

1.9 Insofar as the Directive contains provisions on screening, consultation, decision making, provision of information and monitoring, the Partnership Agreement commitment would apply those provisions to the wider range of strategies, programmes and plans outlined in paragraph 1.8 above. The Partnership Agreement commitment would involve the same explicit exemptions, extended to include strategies, from the requirement to carry out an SEA as appear in the Directive (ie programmes and plans solely concerned with national defence or civil emergency; financial or budget programmes and plans; and certain programmes or plans co-financed under certain EU Regulations – see paragraph 2.6 below).

1.10 The Partnership Agreement commitment fundamentally broadens the applicability of SEA and gives rise to a range of practical considerations. Part of this consultation document begins to address those practical issues. The various stages of the proposed Bill will allow more detailed consideration to be given to them in due course. It would not be practical to provide the necessary degree of consultation, fully involving all key stakeholders, if the Partnership Agreement commitment was given effect by the Regulations to implement the Directive within the July 2004 deadline.

¹ The Directive does not use the term SEA but it is now in common usage

Devolution Issues

1.11 The Scottish Ministers and Parliament have powers to introduce legislative measures for SEA in respect of strategies, programmes and plans that apply in or as regards Scotland, regardless of whether competence over either the subject matter of such strategies etc or over the public sector body concerned is devolved or reserved. The Scottish Ministers and Parliament cannot legislate for SEA in respect of strategies, programmes or plans that relate to Scotland **and** to another part of the United Kingdom. That is a matter for the UK Government.

1.12 The UK Government do not intend to require SEA beyond the scope of the Directive. The impact of this is that:

a programme or plan within the scope of the Directive and covering Scotland (in whole or in part) and another part of the UK would be subject to the requirements put in place by the UK Government and not to the legislative measures proposed in this consultation document; (The UK government intends to transpose the European Directive into UK legislation, in the form of new Regulations, following its own consultation exercise)

a programme or plan within the scope of the Directive, or a strategy, programme or plan as envisaged by the Partnership Agreement, applicable only in or as regards Scotland would be a matter for the Scottish legislation proposed in this consultation document and not subject to UK legislation; and

a strategy, programme or plan outside the scope of the Directive and extending beyond Scotland to another part of the UK, would not be subject to any SEA requirement.

2. THE PROVISIONS OF DIRECTIVE 2001/42/EC AND PROPOSALS FOR TAKING THEM FORWARD IN SCOTLAND

The draft Regulations referred to in this section are set out in full at Annex A

Context and Objective

2.1 The introductory paragraphs and Article 1 of the Directive set the context for its provisions. Its overall objective is to provide for a high level of protection of the environment through the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development. This is to be achieved by (strategic) environmental assessment of certain plans and programmes as specified in the Directive and which are likely to have significant effects on the environment.

2.2 The objective and the means of achieving it are set against the context of the Fifth Environment Action Programme: Towards Sustainability <http://europa.eu.int/comm/environment/actionpr.htm>; the Convention on Biological Diversity <http://www.biodiv.org/convention/articles.asp>; the United Nations/Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention) <http://www.unece.org/env/eia/eia.htm>; and (although not specified in the Directive) the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters <http://www.unece.org/env/pp/>.

Proposals for implementing these provisions: draft Regulation 3 gives effect to this provision.

Scope

2.3 Article 3 of the Directive (which must be read with Article 2 (definitions), Articles 4 to 9 (dealing respectively with general obligations, environmental reports, consultation, transboundary consultation, decision making and information) and Annex II (criteria for determining the likely significance of effects), sets out its scope. Environmental assessment (a defined term involving the preparation of an environmental report, also a defined term) is required to be carried out during the preparation of public sector plans and programmes (a defined term qualifying such plans and programmes as only those which are subject to preparation and/or adoption, by an authority at national, regional or local level, or through a legislative procedure by Parliament or Government **and** which are required by legislative, regulatory or administrative means) which:

- (a) are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use **and** which set a framework for future development consents of projects² listed in Annexes I and II of the Environmental Impact Directive (85/337/EEC) as amended by Directive 97/11/EC; **or**

² “project” in Directive (85/337/EEC) is defined as the execution of construction works or of other installations or schemes; other intervention in the natural surroundings and landscape including those involving the extraction of mineral resources

(b) require an assessment under Articles 6 or 7 of the Habitats Directive (92/43/EEC) as amended by Directive 97/62/EC.

2.4 Minor modifications to plans and programmes outlined in paragraph 2.3 above, such plans and programmes dealing with the use of small areas of land at local level and plans or programmes not covered by paragraph 2.3 above (but which nonetheless set the framework for future development consent of projects³) require environmental assessment only if it is determined that they are likely to have significant environmental effects. Article 3 sets out processes for such determinations. This consultation document refers to those processes as the screening process (see paragraphs 2.7 and 2.8 below).

2.5 In all cases environmental assessment must be carried out before the plan or programme is adopted or submitted to legislative procedures. Where plans and programmes form part of a hierarchy, environmental assessments carried out at other levels within that hierarchy should if relevant be taken into account to avoid duplication (see paragraph 2.11 below). The Directive's requirements are to be integrated into existing procedures for the adoption of plans or programmes, or incorporated in procedures set up to comply with the Directive.

Proposals for implementing these provisions: draft Regulations 1, 2, 6 and 7 set out the scope. Draft Regulation 2 defines plans and programmes in the same terms as Article 2 of the Directive. Draft Regulation 1 makes it clear that the Regulations apply only to plans and programmes within the legislative scope of the Scottish Parliament and Executive (ie only plans or programmes applicable solely in or as regards Scotland, in whole or in part, and including Scottish territorial waters; but regardless of whether the relevant authority is a reserved body, a devolved body or a cross-border body). Draft Regulation 2 defines "authority" (in the context of plans or programmes) to include plans or programmes developed by groups of public sector bodies. Draft Regulation 2 also defines "authority" to include private companies which carry out functions of a public nature. Draft Regulation 2 also sets out a mechanism for the selection of a lead authority in circumstances where a plan or programme is prepared by a group of responsible authorities acting in co-operation.

Issues considered further in section 4: the definition of "authority" and the inclusion of private companies; the definition of plans and programmes; plans and programmes prepared by groups of authorities.

Exemptions

2.6 By virtue of its definitions, the Directive does not apply to:

strategies;

plans and programmes falling outwith the definition in Article 2 (ie plans or programmes: prepared and/or for adoption by organisations which are not national, regional or local level authorities; which are not required by legislative, regulatory or administrative means; or which do not set the framework for future development consent;

³ "project" here has the same meaning as in footnote 2 above

and it explicitly exempts:

plans and programmes solely concerned with national defence or civil emergency;

financial or budget plans and programmes; and

plans and programmes co-financed under the 2000-2006 programming periods of the EC Structural Funds Regulations (No 1260/99) and under the 2000-2006 and 2000-2007 programming period of the EC Regulations on support for rural development from the European Agricultural Guidance and Guarantee Fund (No 1257/99).

Proposals for implementing these provisions: draft Regulation 6 makes it clear that the Regulations do not apply to strategies, or to plans and programmes outwith the definition in Article 2 of the Directive. The explicit exemptions are set out in draft Regulation 1.

The Screening Process

2.7 The determinations referred to in paragraph 2.4 above may be made on the basis of case by case examination or by specifying types of plans and programmes or by a combination of both approaches. It is for Member States to put in place the mechanisms (screening) for making determinations, but in all cases where a determination is required the following criteria (taken from Annex II to the Directive) must be taken into account in determining the likely significance of effects:

1. The characteristics of plans and programmes, having regard, in particular, to
 - the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,
 - the degree to which the plan or programme influences other plans and programmes including those in a hierarchy,
 - the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development,
 - environmental considerations relevant to the plan or programme,
 - the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection).
2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to
 - the probability, duration, frequency, and reversibility of the effects,
 - the cumulative nature of the effects,
 - the transboundary nature of the effects,

- the risks to human health or the environment (e.g. due to accidents),
- the magnitude and spatial extent of the effects (geographical area and size of population likely to be affected),
- the value and vulnerability of the area likely to be affected due to:
 - special natural characteristics or cultural heritage,
 - exceeded environmental quality standards or limit values,
 - intensive land-use,
- the effects on areas or landscapes which have a recognised national, Community or international protection status.

2.8 In all cases consultation authorities (referred to in Article 6) must be consulted and conclusions, including the reasons for not requiring an environmental assessment, must be made available to the public (a defined term, see paragraph 2.14 below).

Proposals for implementing these provisions: draft Regulation 11 sets out a proposed screening mechanism based on the responsible authority carrying out its own assessment against the criteria set out in Annex II to the Directive (reproduced in draft Schedule 1 to the draft Regulations) and submitting that assessment to the consultation authorities. The consultation authorities have 28 days to process an initial assessment. In the event that there is a disagreement about whether the responsible authority should carry out an SEA, draft Regulation 11 provides for the Scottish Ministers to make a determination. Draft Regulation 12 requires the responsible authority to discharge the obligation in the Directive to make conclusions of the screening process available to the public.

Issues considered further in section 4: the proposed screening process and alternatives; timescale for the screening process; and the role of the Scottish Ministers.

Environmental Assessment

2.9 This is defined in Article 2 of the Directive as

“the preparation of an environmental report (*as defined*), the carrying out of consultations, the taking into account of the environmental report and the results of the consultation in decision making and the provision of information on the decision in accordance with Articles 4 to 9”.

2.10 An environmental report is defined as “the part of the plan or programme documentation containing the information requested in Article 5 and Annex I”. That information is:

the identification, description and evaluation of the likely significant effects on the environment of implementing the plan or programme and reasonable alternatives taking into account the objectives and geographical scope of the plan or programme – Annex I sets out the information to be given for this purpose as follows:

- (a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;
- (b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;
- (c) the environmental characteristics of areas likely to be significantly affected;
- (d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;
- (e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;
- (f) the likely significant effects¹ on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;
- (g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;
- (h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;
- (i) a description of the measures envisaged concerning monitoring in accordance with Article 10;
- (j) a non-technical summary of the information provided under the above headings.

¹These effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects.

2.11 The environmental report must include information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision making process and the extent to which certain matters are more appropriately assessed at different levels in the process in order to avoid duplication of the assessment. Relevant information obtained at other levels of decision-making or through other Community legislation may be used to provide the information required in Annex I. (These provisions are designed to avoid duplication in cases where plans and programmes form part of a hierarchy – see paragraph 2.5 above).

2.12 Consultation authorities are to be consulted on the scope and level of detail of the information to be included in the environmental report (see paragraphs 2.14 to 2.19 below).

Proposals for implementing these provisions: draft Regulations 5, 8 and 10 require the environmental assessment to be carried out before the plan or programme to which it relates is adopted or submitted to legislative procedures. Draft Regulation 13 describes environmental assessment and environmental report in line with the Directive's definitions, and sets out the information to be included in the environmental report. Draft Schedule 2 to the draft Regulations reproduces Annex I to the Directive. Draft Regulation 13 provides for information obtained at other levels of the decision-making process or through other Community legislation to be used to provide the information required by Annex I to the Directive. Draft Regulation 13(5) requires the responsible authority to consult the consultation authorities on the scope and level of detail to be included in the environmental report.

Issues considered further in section 4: contents of the environmental report; when assessment should be carried out; avoiding duplication of assessment.

Consultations and Decision Making

2.13 Articles 6 and 7 deal respectively with (i) consultation with consultation authorities and with the public and (ii) consultation between Member States. Articles 8 and 9 deal with decision making and information on decisions.

2.14 Member States are required by Article 6 to designate environmental authorities – “authorities which by reason of their specific environmental responsibilities are likely to be concerned by the environmental effects of implementing plans and programmes” (referred to as consultation authorities in this consultation document and in the draft Regulations at Annex A). Member States are also required to identify the public (as defined in Article 2), including the public affected or likely to be affected by, or having an interest in, the decision-making process relevant to the Directive, including relevant non-governmental organisations. Article 2 defines the public as:

“one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.”

2.15 Draft plans or programmes and the environmental reports prepared for them must be made available to the consultation authorities and to the public, including relevant non-governmental organisations (such as those promoting environmental protection).

2.16 The consultation authorities and the specifically identified public (see paragraph 2.14 above) are to be given an early opportunity, within appropriate time frames, to express opinions on a draft plan or programme and the associated environmental report before its adoption or submission to a legislative procedure.

2.17 Detailed arrangements for consultation are a matter for each Member State.

2.18 There is to be consultation and exchange of documentation between Member States where a Member State considers that the implementation of a plan or programme being

prepared in its territory is likely to have a significant environmental effect in the other Member State.

2.19 The environmental report, the opinions expressed during public consultation, and any transboundary consultation must be taken into account during the preparation of the plan or programme and before it is adopted or submitted to a legislative procedure (ie before final decisions are taken). On adoption, the following must be made available to the consultation authorities, the public and to any Member State consulted under the transboundary consultation procedures:

the plan or programme as adopted;

a statement summarising how environmental considerations have been integrated into the plan or programme; how the environmental report and any opinions expressed during consultation have been taken into account; and the reasons for choosing the plan or programme in the light of other reasonable alternatives considered; and

how the implementation of the plan or programme will be monitored.

Proposals for implementing these provisions: draft Regulation 4 lists the proposed consultation authorities in Scotland (including the Scottish Ministers themselves and certain Scottish Executive agencies). Draft Regulation 2 defines “public”. It is not considered necessary to define a further category of “the public affected or likely to be affected by, or having an interest in, the decision-making” as appears in Article 6(3) of the Directive (see paragraph 2.14 above) because “public” will always include that sub-category. The Regulations define “public” in such a way as to include non-governmental organisations (NGO’s) and Local Authorities. Draft Regulation 14 specifies the nature of the consultation to be carried out, the timescale for consultation and the information to be made available by the responsible authority. Draft Regulation 14 requires that the necessary consultation be carried out by the responsible authority. It is considered that consultation on transboundary issues with other Member States is a reserved matter for the UK Government, so no specific provisions on that are necessary in the draft Regulations, although draft Regulation 16 does require the responsible authority to inform the relevant UK authorities and the Scottish Executive if a transboundary effect is expected from a Scottish plan or programme.

Issues considered further in section 4: the list of consultation authorities; the definition of “public”; timescales for consultation.

Monitoring

2.20 Article 10 requires Member States to monitor the significant environmental effects of the implementation of the plan or programme to identify at an early stage unforeseen adverse effects, and to take remedial action. Existing monitoring arrangements may be used to avoid duplication of effort. Article 9 requires the responsible authority to provide information, when the plan or programme has been adopted, on how monitoring will be carried out.

Proposals for implementing these provisions: draft Regulation 18 places a duty on the responsible authority to monitor the significant environmental effects of its own plan or programme.

Issues considered further in section 4: responsibility for monitoring.

Relationship to other Community Legislation

2.21 Article 11 provides for environmental assessments under the Directive to be without prejudice to any requirements under any other Community legislation. Where the assessment of environmental effects arises simultaneously under the Directive and under other Community legislation, Member States may provide for co-ordinated or joint procedures to avoid duplication of effort. For plans co-financed by the EC, environmental assessment under the Directive must be carried out in conformity with the specific provisions of the relevant Community legislation.

Proposals for implementing these provisions: draft Regulation 9 gives effect to this provision.

Information, Reporting and Review

2.22 Article 12 provides for exchange of information between the Member States and the Commission to ensure that environmental reports are of sufficient quality; for reporting by the Commission, at seven-year intervals, on the effectiveness of the Directive, including as necessary any proposal for amendments to the Directive (including extending its scope); and for the Commission to report on the relationship between the Directive and the EC Structural Funds Regulations (No 1260/99) and the EC Regulations on support for rural development from the European Agricultural Guidance and Guarantee Fund (No 1257/99), ahead of the expiry of the programming periods in those Regulations.

Proposals for implementing these provisions: none. It is not considered necessary to give specific effect to these provisions by way of Scottish legislation.

Implementation and Entry into Force

2.23 Articles 13 and 14 require that measures to implement the Directive must enter into force on 21 July 2004. The measures used to give effect to the Directive must contain a cross reference to the Directive. The Directive's requirements shall apply:

to plans and programmes for which the first formal preparatory act is after that date; and

to plans and programmes for which the first formal preparatory act was before that date and which are adopted or submitted to the legislative procedure after 21 July 2006 unless Member States decide on a case by case basis that this is not feasible (and inform the public of that decision)

2.24 Each Member State must inform the Commission of plans and programmes which are subject to the Directive, and the Commission will make that information available to all Member States.

Proposals for implementing these provisions: the draft Regulations in their entirety will give effect to the Directive in Scotland by 21 July 2004. Draft Regulation 3 contains a cross reference to the Directive. Draft Regulation 5 concerns the Directive requirement to apply to

plans and programmes for which the first formal preparatory act will be after 21 July 2004. Draft Regulation 8 provides for the Scottish Ministers to apply the Directive to plans and programmes for which the first formal preparatory act will be before 21 July 2004 but which are adopted after 21 July 2006. It is not considered necessary to give effect, by way of Scottish legislation, to the Directive's provision on passing information to the Commission.

Issues considered further in section 4: whether to define "first formal preparatory act".

Addresses

2.25 The Directive is addressed to (ie is binding on) the Member States.

Proposals for implementing these provisions: none. It is not considered necessary to give specific effect to these provisions by way of Scottish legislation.

3. THE PRINCIPLES OF THE PROPOSED BILL TO GIVE EFFECT TO THE SEA COMMITMENT IN A *PARTNERSHIP FOR A BETTER SCOTLAND*

3.1 *A Partnership for a Better Scotland* produced by the Labour and Liberal Democrat parties following the 2003 elections to the Scottish Parliament includes a commitment in the following terms

“We will legislate to introduce strategic environmental assessment to ensure that the full environmental impacts of all new strategies, programmes and plans developed by the public sector are properly considered.”

3.2 The intention to legislate was announced in Parliament as part of the Scottish Executive’s programme on 28 May 2003. This announcement did not indicate whether the legislation would be in the form of a Bill or Regulations. Ministers have subsequently decided on the 2 stage implementation described in section 1 of this consultation document, and an announcement to that effect was made to the Scottish Parliament on 23 October 2003 (in response to question S2W-03101 about SEA). It is too soon to say exactly when the Bill will be introduced into the Scottish Parliament or how soon it will come into force after it receives Royal Assent, beyond the commitment that it will be in early course.

3.3 The key principles proposed for the Bill are that:

- it will be free standing and not seek to introduce requirements on SEA into existing legislation
- it will extend the scope of application of the Directive but not materially affect the SEA process, allowing for a smooth transition from one regime to the other (eg it will not modify the criteria for determining the likely environmental effects of a strategy, plan or programme that appear in Annex II to the Directive; it will apply the Directive’s provisions on consultation, information, decision making and monitoring to the wider range of strategies, plans and programmes)
- it will include a pre-screening mechanism to allow strategies, plans or programmes with no possible significance to the environment to be exempted from the screening, and therefore the further SEA, process
- given the desired consistency of process, it will incorporate and extend the provisions of the Scottish Regulations made to implement the Directive which will then be revoked

- it will extend the scope of the Directive to include “strategies” to be defined as

“strategies which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government”.

- it will remove the qualification in the Directive that plans and projects are to be subject to SEA only if they are required by legislative or other means and only if they

set a framework for future development consent of projects. Strategies will also not be subject to those qualifications

- it will include provisions to ensure that voluntary strategies, plans and programmes developed by a number of authorities working in co-operation are subject to SEA and that a lead authority is identified (in effect, extending the provision in draft Regulation 2 that make a similar provision for “required” plans and programmes)
- it will include provisions allowing the Scottish Ministers to exempt certain categories of authority from the SEA requirement (eg smaller bodies such as individual schools or hospitals), as long as compliance with the Directive is maintained.
- in extending the scope of the Directive, it will require environmental reports for a wider range of strategies, plans and programmes but it will not add to the information required to form part of such reports (ie there will be no modification to Annex I of the Directive). It will, however, include an enabling provision allowing the Scottish Ministers to add to the requirements in Annex I if this becomes appropriate.
- it will apply to the wider range of strategies, plans and programmes for which the first formal act is after a certain date (on or after Royal Assent but to be specified) and to the wider range of strategies, plans and programmes for which the first formal act is before that date but which are not adopted by another specified date (probably, like the Directive, 2 years after the first specified date). It will, however contain transitional provisions allowing for any SEA begun under the Regulations implementing the Directive to be continued under the provisions of the Bill.

Issues considered further in section 4: the definition of "strategies"; applying the screening process to strategies and to plans/programmes outside the scope of the Directive (including proposals for pre-screening); the impact on private companies carrying out public functions; whether the Bill should modify Annexes I and II to the Directive; whether socio-economic factors should be taken into account in preparing environmental reports; enabling provisions for exemptions.

4. SPECIFIC ISSUES AND QUESTIONS ON WHICH THE SCOTTISH EXECUTIVE INVITES VIEWS

4.1 The Scottish Executive welcomes comments and views on any aspect of the proposals in this consultation document. We would, however, particularly invite comments and views on the following aspects of both the draft Regulations at Annex A and the principles of the proposed Bill. For ease of reference, all of the specific questions raised under the various headings below are listed in order in section 5 of this consultation document.

The Proposed Regulations

Scope

a) The definition of "authority" and the inclusion of private companies

4.2 The Directive refers to plans and programmes ‘subject to preparation by an authority at national, regional or local level or which are prepared by an authority for adoption’. There is no doubt that central government (the Scottish Executive & UK Government), local authorities, non-departmental public bodies (such as Scottish Natural Heritage and the Scottish Environment Protection Agency), the National Health Service Scotland, and Scottish Water (a publicly-owned company), fall into the category of “authority”.

4.3 However, EC guidance indicates that the concept of an ‘authority’ has been given a large scope in the case law of the ECJ and can be defined as a body, whatever its legal form and regardless of the extent (national, regional or local) of its powers, which has been made responsible by the State for providing a public service under the control of the State. Privatised utility companies required to carry out some tasks or duties (such as preparing long-term plans for ensuring water resources) which in non-privatised regimes would be carried out by public authorities are given as examples of private bodies which may be regarded as an “authority” for some of the Directive’s purposes. The Scottish Executive accepts that view.

4.4 Voluntary organisations which may be regarded as carrying out functions of a public nature are not subject to the Directive unless they are carrying out functions directly under the control or direction of the Government. It is important to note that a private company would be subject to the draft Regulations only in respect of plans or programmes that relate, in whole or in part, to the company’s public functions – plans and programmes wholly relevant to private business would not be subject to the draft Regulations. We would welcome comments on:

- Q1: the extent to which private companies carrying out public functions develop plans or programmes as defined in the Directive (ie required by legislative, regulatory or administrative means and setting a framework for future development consents)?

4.5 The responsibilities of private companies carrying out public functions will be significantly widened by the proposed Bill. The implications of that are covered in paragraph 4.64 below.

b) The definition of plans and programmes

4.6 The terms “plan” and “programme” may be interchangeable. The type of document regarded in some Member States as a “plan” is one which sets out how it is proposed to carry out or implement a scheme or a policy. This could include, for example, land use plans setting out how land is to be developed or laying down rules or guidance on the type of development permitted in particular areas, or establishing criteria for designing new development. Waste management plans and water resource plans would also fall within the scope of the Directive (insofar as they are required by legislative, regulatory or administrative means and set a framework for future development consent of projects).

4.7 A programme is usually considered as a wider plan, covering a set of projects in a given area, for example an urban regeneration scheme comprising a number of separate construction projects. However, some Member States regard a programme as the way in which it is proposed to carry out a policy – the same meaning that others give to “plan”. EC guidance makes clear that documents displaying the characteristics of a plan or programme may be found under a variety of names and that, while not synonymous, no clear distinction between a plan and a programme is possible as both have a broad range of meanings which may overlap.

4.8 This potential interchangeability raises a question of whether it is sensible to seek to define “plan” and “programme”. The draft Regulations use the Directive’s definition of plans and programmes, effectively relying on the self-assessment element of the screening process to identify what needs to be subject to SEA. The Scottish Executive regards the definition of plans or programmes in the Directive as already sufficiently robust for the Regulations, given that the definition is qualified by the need for such plans or programmes to be both (a) required by legislative, regulatory or administrative means and (b) to set a framework for future development consents of projects. However, we would welcome comments on this, in particular:

- Q2: are you content with the definition of plan or programme and with our view that it is sufficiently robust to close a potential loophole in the Regulations, that might otherwise allow responsible authorities to by-pass SEA for certain activities they do not regard as either a plan or a programme even if that activity is required by legislative, regulatory or administrative means and sets a framework for future development consents?
- Q3: is the definition clear enough to ensure the screening process is not overwhelmed with submissions from responsible authorities anxious to ensure that they do not fall foul of the Regulations?

4.9 Broadening the scope of the Directive to include “strategies” (as envisaged by the proposed Bill) may further reduce the potential for authorities to contrive to fall outside the scope of the SEA process but may have other impacts on the screening process. This is explored further at paragraphs 4.54 to 4.58 below.

c) Handling plans and programmes prepared by groups of authorities

4.10 Certain plans or programmes required by legislative provisions are developed by groupings of responsible authorities in which no single authority has sole “ownership” (for example, structure plans are commonly prepared by groups of neighbouring local authorities). Draft Regulation 2 allows such grouping of authorities to determine among themselves a lead authority responsible for compliance with the Regulations and for the Scottish Ministers to make a determination in cases where there is disagreement among the authorities concerned. The Scottish Executive would welcome views on:

- Q4: the assumption that the likely number of groupings of authorities which would be developing plans or programmes within the scope of the Directive is small
- Q5: the proposed mechanism for identifying a lead responsible authority in such cases and proposals for alternative mechanisms

The Screening Process

The Process

a) The proposed process and possible alternatives

4.11 Screening is a key element of the SEA process and features, in different forms and for different forms of plans or programmes, in all of the current international examples of SEA implementation. In all cases SEA starts early in the development cycle of plans and programmes. The purpose of screening within the terms of the Directive is to ensure that, for plans and programmes not automatically required to undergo SEA by virtue of their relationship to Directive 85/337/EEC (the Environmental Impact Assessment Directive) <http://europa.eu.int/comm/environment/eia/full-legal-text/85337.htm> or Directive 92/43/EEC (the Habitats Directive) <http://europa.eu.int/comm/environment/nature/habdir.htm> :

those with likely significant environmental effects are identified at an early stage in their preparation and are subject to SEA

those with no likely significant effects are identified and are not subject to SEA

they enter the screening process at an early stage to allow, where it is necessary, for SEA that is rigorous but relatively straightforward and in a way which avoids delay in the plan or programme development process

4.12 Against that background, draft Regulation 11 provides for a screening process that would be largely driven by the body responsible for the plan or programme (the “responsible authority”). The responsible authority would be required to consider the proposed plan or programme against the criteria in Annex II to the Directive, which are intended to help determine the likely significant environmental effects. On the basis of a short report against those criteria, the responsible authority would consult the consultation authorities (see paragraphs 4.35 to 4.41 below). If the responsible authority and the consultation authorities agree that there are no significant environmental effects, that would be the end of the process, except for the publication of the decision and the reasons for it. If all agree that there are likely significant environmental effects, a full SEA would be required involving the

preparation of an environmental report (see paragraphs 4.24 to 4.27 below). If there is disagreement, the matter would be referred to the Scottish Ministers for a determination (see paragraph 4.23 below).

4.13 This process would allow the responsible authority to manage the consultation with the consultation authorities and then act on their collective decision (or on a determination of the Scottish Ministers in the event of a disagreement). This provides a relatively light-touch, and fully transparent, approach with an in-built dispute settlement mechanism.

4.14 There are alternative approaches:

the Scottish Executive could operate as a secretariat to provide a single gateway for all cases. In other words, the responsible authority would submit its outline plan or programme to the secretariat which would then arrange circulation to and consultation with the consultation authorities. The decision would remain a joint one for the consultation authorities (with disputes settled by the Scottish Ministers); or

the responsible authority could submit its outline plan or programme to the Scottish Ministers for a decision on whether SEA is required. The Scottish Ministers alone would reach a decision following consultation with the consultation authorities. This is the model the UK Government intends to adopt for plans and programmes relevant solely to England or to England and any other part of the UK; or

a separate screening authority/agency could be established with a duty to reach decisions on whether SEA is required, taking into account consultation with the consultation authorities. The Scottish Ministers could be the appellate authority in cases where the decisions of the screening authority were challenged.

4.15 The Scottish Executive has a preference for the approach proposed in draft Regulation because it would appear to offer the least bureaucratic and most expeditious route to screening, keeping downward pressure on administrative costs. However, we would welcome views on:

- Q6: the proposed screening process in draft Regulation 11
- Q7: the possible alternatives outlined in paragraph 4.14 above
- Q8: other possible alternatives
- Q9: whether each consultation authority would have to set up a specialised unit to respond to the demand of the screening process

Types of plans and programmes to be subject to screening

4.16 Article 3(4) of the Directive allows for the screening process to be applied on a case-by-case basis or by specifying the types of plans and programmes to be subject to screening, or a combination of both approaches.

4.17 The screening process in draft Regulation 11 (and described in paragraphs 4.11 to 4.13 above) is based on a case-by-case approach. The Scottish Executive has a preference for

that approach because it avoids potential loopholes being inadvertently created by a deficient pre-determined list. We recognise, however, that applying screening to all plans and programmes (which are not automatically subject to SEA by virtue of their relationship to the Environmental Impact Assessment and Habitats Directives) places more of a burden on the responsible authorities and on the consultation authorities. We would therefore welcome views on:

- Q10: whether the case-by-case approach offers the most practical method of screening or if listing the types of plans and programmes to be screened would be more effective
- Q11: the likely impact of the case-by-case approach on the responsible authorities and on the consultation authorities

Engaging with the Process

4.18 The most effective, and most useful, SEAs are likely to be those prepared in parallel to developing a plan or programme itself, and Article 4(1) of the Directive accordingly requires environmental assessment to be carried out during the preparatory stage. The responsible authority should therefore seek the views of the consultation authorities at an early stage in the preparation of plans or programmes, preferably as soon as the likely scope of the plan or programme is known. Plans or programmes which clearly do not create likely significant environmental effects could quickly be ruled out of needing an environmental assessment at that stage. For other plans or programmes, where likely significant environmental effect can only be determined once the precise content of the plan or programme is clearer, the consultation authorities should still be consulted from an early stage so that a decision on whether an environmental assessment is needed can be made as quickly as practicable. In practice, the process will work best if it involves early and frequent discussion between the responsible authority and the consultation authorities, seeking to achieve consensus.

4.19 This approach should mean that the screening process, and any necessary SEA, need not introduce delay into the preparation of plans and programmes. Moreover, introducing SEA at an early stage and in parallel to the development of plans and programmes can make any subsequent specific environmental impact assessment at project level more efficient and less likely to produce unexpected results.

4.20 The Scottish Executive would welcome comments on this approach. **(See question 12 in section 5).**

Timescales for screening

4.21 Screening can be carried out in parallel with the development of plans or programmes and the Directive does not suggest any time limits for it. However, the Scottish Executive considers that it might be useful to set a deadline and draft Regulation 3 proposes 28 days (for consistency with the minimum period of consultation on plans, programmes and environmental reports outline at paragraph 4.48 below). The draft Regulations do not make any provision on the timescales within which the responsible authority must proceed with its plan or programme after a decision has been made by the screening process. The Scottish Executive would welcome views on:

- Q13: whether 28 days is a suitable time period for the consultation authorities to process an SEA screening report
- Q14: whether the relevant authority should have to resubmit to screening if it does not pursue a plan within a certain time period and/or if external factors affecting the plan change significantly

4.22 It is not proposed that the screening process itself will be significantly modified by the proposed Bill. Its scope will be widened to include strategies and to remove the qualification about plans and programmes having to be required and having to set a framework for future development consent of projects; it may require modifications to allow for a pre-screening of strategies, plans or programmes not covered by the Directive. These aspects are explored further at paragraphs 4.59 to 4.63 below.

b) The role of the Scottish Ministers

4.23 The draft Regulations, which at this stage assume a screening process based on the approach outlined in paragraphs 4.11 to 4.13 above, provide for the Scottish Ministers to make a determination about the need, or otherwise, for an SEA in circumstances where the consultation authorities and the responsible authority cannot agree. This is expected generally to be a workable proposition, and it is expected that the nature of the screening process described in paragraphs 4.11 to 4.13 above would result in very few instances where the Scottish Ministers would be required to make a determination. The Scottish Executive would welcome views on:

- Q15: whether the processes described here are sufficient to allow Scottish Ministers to deal with disagreements about the need for SEA in respect of plans or programmes prepared by the Scottish Executive or its agencies on behalf of the Scottish Ministers themselves

Environmental Assessment

a) The form and contents of the environmental report

4.24 The environmental report does not have to be a physically separate document from that containing the programme or plan, as long as it forms a distinct and easily identifiable section within it, on which consultees' comments are to be explicitly sought. Its length will be dependent on the amount of environmental information available, and the complexity of likely environmental effects of the plan or programme. It must, however, include "information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process to avoid duplication of the assessment". Annex I to the Directive specifies the information to be provided in the report (see paragraph 2.10 above).

4.25 EC guidance indicates that the reference in Annex I to 'contents and level of detail in the plan or programme' is a recognition that, in the environmental report for a broad-brush plan or programme, very detailed information and analysis may not be necessary, (for

example, a plan or programme at the top of a hierarchy which descends from the general to the particular), whereas much more detail would be expected for a plan or programme that itself contained a higher level of detail. So the environmental report for a national plan might not need to assess the effects of the plan on, say, every river in the country; but the environmental report underpinning a local plan would certainly be expected to address its implications for rivers or other water-bodies in or near the town.

4.26 Article 12 of the Directive requires environmental reports to be of sufficient quality to meet the requirements of the Directive.

4.27 Draft Regulation 13 will give effect to the requirement in the Directive that the consultation authorities must be consulted on the scope and level of detail of the environmental report. The Scottish Executive regard that requirement as a sufficient check on the content of the environmental report and it is not the intention to provide further elaboration of the content of the environmental report in the Regulations. The Scottish Executive also regard the consultation mechanisms to be put in place in respect of the Directive as sufficient to ensure quality of environmental reports without any need for additional legislative measures. However, the Executive would welcome views on:

- Q16: whether additional guidance is necessary on any aspect of Annex I
- Q17: whether the measures described here are sufficient to ensure the quality of environmental reports
- Q18: what remedial measures should be taken if an environmental report is considered not to be of sufficient quality

b) The point by which assessment should be carried out

4.28 Article 4.1 of the Directive states that

‘The environmental assessment...shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure’.

4.29 Article 8 provides that the environmental report and the opinions expressed during consultation are also to be taken into account during the preparation of a plan or programme and before its adoption or submission to the legislative procedure. This raises some questions about when a plan or programme can be said to have been adopted/submitted and therefore by which point SEA should be complete.

4.30 EC guidance does not specify what is meant by ‘adoption’ but emphasises that it is important that the assessment informs the way plans and programmes are drawn up and is done while they are at a relatively fluid stage. It also says that the preparation of a plan or programme covers a process which lasts right through to its adoption (adoption through a legislative procedure is one method in some Member States). The Scottish Executive considers both the Directive and the EC guidance to mean that, in the case of plans or programmes submitted to a legislative procedure, the environmental report should be completed prior to the date of submission and that the provisions of Article 8 therefore do not apply during the course of the legislative procedure itself (ie the environmental report does

not have to take account of opinions expressed during the legislative procedure). This is not to devalue the importance of legislative scrutiny. It simply recognises that the legislative procedure would either endorse a plan or programme put to it, throw out a plan or programme in its entirety, or require modifications to be made. In the latter case, if those modifications were likely to create significant environmental impacts, the revised plan or programme would be subject to a new SEA.

4.31 The Scottish Executive would welcome views on:

- Q19: whether it might be necessary to define “adoption” and/or “submission to the legislative procedure” in the draft Regulations and if so, how those terms might best be defined
- Q20: whether the Regulations should specify that the consideration of plans and programmes, and the opinions expressed on them, during the legislative process are not subject Article 8 of the Directive

c) Avoiding duplication of assessment

4.32 Article 4.3 of the Directive provides that:

‘where plans and programmes form part of a hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with the Directive, at different levels of the hierarchy. For the purpose of, *inter alia*, avoiding duplication of assessment, Member States shall apply Articles 5.2. and 5.3’.

4.33 These latter articles are respectively a provision that the environmental report ‘shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process to avoid duplication of the assessment’, and a provision that information gathered at other levels of the decision-making process may be included in an environmental report.

4.34 It is clearly desirable for unnecessary duplication to be avoided. However, a potential difficulty with using SEA at one level to inform SEA at another is that information quickly goes out of date. The Scottish Executive would welcome views on:

- Q21: the degree to which a less detailed SEA might be carried out on a plan or programme because the same subject matter is already subject to SEA at another level
- Q22: whether any time limit should be set for the use of information procured as part of an earlier SEA
- Q23: whether provisions should be introduced to provide a check on the value of information procured as part of an earlier SEA, or whether the consultation mechanisms in place already provide a sufficient control mechanism

Consultations and Decision Making

a) The list of consultation authorities

4.35 An important element of SEA is consultation with consultation authorities. Those authorities are to be consulted at the following stages:

- *Article 3(6) (on the plans/programmes to which the Directive applies):* ‘In the case by case examination and in specifying types of plans and programmes in accordance with paragraph 5, the authorities referred to in Article 6(3) will be consulted.’
- *Article 5(4):* ‘The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report.’
- *Article 6(1):* ‘The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.’
- (and further refs in Article 6 about giving authorities opportunity to express opinions and making detailed arrangements for consulting authorities and public)
- *Article 7* on transboundary consultations: equivalent authorities in an affected member state must be given an opportunity to express their opinions

and must also be informed when the plan or programme is adopted and given details of results of consultations, how environmental considerations have been integrated into the plan or programme, how the final decision was reached and what the arrangements for monitoring are.

4.36 It is clear that consultation authorities must be public sector authorities of some sort. EC guidance defines environmental authorities as ‘formal governmental or public authorities, defined by administrative or legal requirements...’.

4.37 One of the aspects that the environmental report must address is ‘the likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between those factors’. This combines with assessment of the current state of the environment and what would be likely to happen to it if the plan or programme were never implemented, to build up a picture of the consequences of the proposed action or policy.

4.38 The consultation authorities therefore need to be capable between them of judging and advising on all these issues. The two most obvious bodies with environmental responsibilities in Scotland are Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA).

4.39 The body primarily dealing with ‘cultural heritage including architectural and archaeological heritage’ is Historic Scotland. This is an agency of the Scottish Executive rather than an independent body, but as its function is so distinct, it would be possible to designate it in its own right. However, a general designation of Scottish Ministers/the Scottish Executive is regarded as essential, so specific designation of Historic Scotland might not be necessary.

4.40 The Directive clearly includes non-governmental organisations, such as those promoting environmental protection, as the “public” (Article 6(4)). It would therefore not be appropriate to designate such organisation as consultation authorities for the purposes of the Directive.

4.41 Against this background, the Scottish Executive would welcome views on:

- Q24: the proposed list of consultation authorities in draft Regulation 4
- Q25: whether the Regulations should specifically list the consultation authorities as draft Regulation 4 does, or simply provide for the Scottish Ministers to determine the relevant consultation authorities on a case by case basis
- Q26: whether all those on any list should be involved in every case, or whether the Regulations should provide for relevant environmental authorities to be consulted – if the latter, how should relevant environmental authorities be selected; should there be a requirement to consult the Scottish Ministers and SEPA in all cases?

b) The definition of the "public"

4.42 Involving the public and non-governmental organisations is a key component of SEA. Like other measures such as the Freedom of Information (Scotland) Act 2002 and the Aarhus Convention, the Directive seeks to make environmental information more accessible and facilitate involvement in decision-making.

4.43 In the Directive (and in the Aarhus Convention), there are two levels of ‘public’ (in Aarhus, ‘the public’ and ‘the public concerned’) and there is a possibility that the right to participate in the SEA process may not be unrestricted. The Directive includes a provision for Member States to identify ‘the public affected, or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned’ (Article 6.4). It is this ‘public’ who are to be given ‘an early and effective opportunity within appropriate time frames’ to express their opinion on a draft plan or programme and accompanying environmental report.

4.44 This suggests that it would be possible to exclude some members of the public, not from having access to the draft plan or programme and the environmental report, but from making comments that would require to be taken into account when a decision is being made. That would go against Scottish Executive policy on consultation. It would also seem to contravene the provisions of the Aarhus Convention.

4.45 We therefore anticipate that all comments on environmental reports and accompanying documents will be able to be taken into account. These comments would not

necessarily have to come from persons resident in Scotland or having UK citizenship, as the Aarhus Convention states that

...the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

4.46 Detailed arrangements regarding how consultation is to be carried out are not specified in the Directive but may be made by the Member State. EC guidance says:

There are many different methods and techniques for public consultation. These range through seeking written comments on draft proposals, public hearings, steering groups, focus groups, advisory committees or interviews. It will be important to select the most appropriate form of consultation for any given plan or programme.

4.47 The Scottish Executive would welcome views on:

- Q27: the proposal to define “public” in the Regulations in broad terms
- Q28: possible mechanisms for making plans and programmes and environmental reports available to the public
- Q29: whether the Regulations should specify the mechanisms for making plans and programmes and environmental reports available to the public; leave this up to the responsible authorities; or include a menu from which the responsible authorities must select the most appropriate option(s)

c) Timescales for consultation

4.48 The Directive requires the consultation authorities and the public to have the opportunity “within appropriate time frames” to express opinions on draft plans and programmes and on environmental reports before adoption of plans or programmes. Member States are required to lay down the timeframes in legislation. There are various precedents in existing legislation for setting timeframes for consultation, ranging from 4 weeks to 6 months. As a general rule, consultations undertaken by the Scottish Executive have a 12 week consultation window. However, given the scope of the Directive and the potential nature of the plans and programmes that might fall within it, the Scottish Executive would prefer not to set a blanket consultation period but instead to provide for a minimum period of 28 days and of sufficient length to allow consultees to express their opinions. The Scottish Executive would welcome views on this proposal. (See question 30 in section 5).

Monitoring

a) Responsibility for monitoring

4.49 The Directive makes clear the Member State must ensure that once a plan or programme has been adopted a range of information, including how the significant environmental effects will be monitored, is to be made available to the consultation

authorities and to the public. It also requires information on the monitoring measures to be made available by the responsible authority once a plan or programme has been adopted.

4.50 Draft Regulation 17 gives effect to the Scottish Executive's obligation under the Directive by requiring the responsible authorities to specify the monitoring methods to be used for each plan or programme. We would welcome views on whether:

- Q31: this proposal fully meets the monitoring requirement
- Q32: the Regulations should provide for the Scottish Ministers to determine the monitoring methods to be used in specific cases, if they do not consider the measures proposed by the responsible authority to be sufficiently robust

Implementation and Entry into Force

a) The definition of "first formal preparatory act"

4.51 The Directive applies to plans and programmes from the point of their "first formal preparatory act". The draft Regulations do not define this term.

4.52 The Scottish Executive would welcome views on whether a definition of the term is necessary and, if so, how it might be constructed. (See **question 33 in section 5**).

The Proposed Bill

4.53 In addition to the above considerations for the proposed Regulations (which will in due course be incorporated into the Bill) the Scottish Executive would welcome comments and views on the following aspects of the proposed Bill.

a) The definition of "strategies"

4.54 'Strategies' are not altogether separate from 'policies': the terms are often used interchangeably. For example, in statute, the National Waste Strategy is described as a 'statement' containing 'policies'. 'Strategies' are generally understood to refer to higher level, more important policy, in distinction from lower level policy-making that happens on a daily basis in the exercise of Ministerial etc functions. A strategy could also be described as a coherent collection of policies operating in conjunction with each other and presented as such.

4.55 In practice, there may be little difficulty in separating strategies from routine business, but expressing this in legislation is more difficult. The Scottish Executive has considered whether strategies might be limited only to those high level policies which are subject to public consultation prior to adoption, but have concluded that this could exclude certain strategies that it might be preferable to subject to SEA. We therefore propose that the Bill should adopt a fairly broad definition of strategies as those which are:

subject to preparation by an authority at national, regional or local level or which are prepared by an authority for adoption through a legislative procedure by Parliament or Government

this follows the pattern of the draft Regulation's definition of plan or programme for the purposes of the Directive, but removes the qualification about being required by legislative, regulatory or administrative means. It also excluded any requirement that such voluntary strategies should set a framework for future development consent of projects. As with the draft Regulations giving effect to the Directive, "authority" would include private companies carrying out public functions under the control or direction of the Government (see paragraph 4.64 below).

4.56 A further consideration arising from the application of SEA to strategies and to plans and programmes outwith the scope of the Directive is the application of the screening process. The Directive's screening process is intended for the assessment of plans and programmes required by legislative, regulatory or administrative means and which set the framework for future development consent or projects. Under the terms of the Partnership Agreement commitment, the qualifications about being required by legislative etc means and setting the framework for future development consent will be removed by the Bill, and SEA will be applied to strategies (voluntary or obligatory and regardless of whether they set the framework for future development consent or projects).

4.57 This raises two broad issues:

- (a) extending the range of plans and programmes may not in itself be problematic in respect of the screening process (in particular applying the criteria in Annex II to the Directive) but it will increase the number of plans and programmes to be screened;
- (b) applying the screening process to strategies (voluntary and obligatory) may, by virtue of a strategy's broader nature, mean that the consideration of environmental affects will have to be at a more general level (perhaps making it more difficult to apply all of the criteria, eg those in paragraph 2, of Annex II to the Directive).

4.58 The Scottish Executive would welcome comments on:

- Q34: the proposed definition of strategies
- Q35: the likely extent of the Bill if that definition were to stand (eg how many voluntary strategies, plans and programmes might fall within its scope?)
- Q36: whether any modifications are required to the criteria in Annex II (see paragraph 4.65 below)

b) The application of the screening process: pre-screening

4.59 For strategies, and for plans and programmes not covered by the Directive, it is open to the Scottish Executive to devise a different screening process. We take the view that the process set out in paragraphs 4.11 to 4.13 above and in draft Regulation 11 is generally applicable to the wider range of strategies, plans and programmes to be covered in the Bill but that it could be supplemented by a prior stage allowing those strategies, plans and programmes with no possible significant environmental effects to be exempted even from the screening process. This decision could be taken by the responsible authority itself, which might raise the risk that it would be taken without due process.

4.60 The Scottish Executive therefore proposes that the Bill should provide for a pre-screening mechanism as described in paragraph 4.59 above, but that it should be qualified in such a way as to require the responsible authority to take the decision having regard to the factors in Annex II to the Directive (as it would do in the full screening process). The responsible authority would be required to disclose its assessment against Annex II factors.

4.61 There would be no role in this process for the consultation authorities, or any scope to challenge the decision made by the responsible authority other than through judicial review. Putting in a role for the consultation authorities, eg to challenge the responsible authority's decision, would only lead to uncertainty and would have no advantage over the normal screening process.

4.62 This proposal would have some advantages in reducing the burden on the responsible authorities and on the consultation authorities. But it may create difficulties insofar as it would establish a separate regime for plans and programmes within the scope of the Directive (to which pre-screening could not apply) and for strategies, plans and programmes within the scope of the wider provisions of the Bill.

4.63 The Scottish Executive would welcome views on:

- Q37: the general applicability of the screening process described in paragraphs 4.11 to 4.13 above to strategies, plans and programmes outwith the scope of the Directive
- Q38: whether a pre-screening process as described in paragraphs 4.59 and 4.60 above is desirable
- Q39: the potential implications of separate regimes for plans and programmes within the scope of the Directive and wider strategies, plans and programmes within the context of the Partnership Agreement

c) The impact on private companies carrying out public functions

4.64 The Bill would apply to voluntary and obligatory strategies, plans and programmes prepared by private companies that refer in whole or in part to the carrying out of their public functions. Voluntary and obligatory strategies, plans and programmes relating wholly to private business would not be subject to the Bill. The Scottish Executive would welcome views on:

- Q40: whether such companies should be subject to the provisions of the Bill
- Q41: the likely number of strategies, plans and programmes to which the Bill might apply if its provisions extend to such companies

d) Whether to modify Annex I and II to the Directive

4.65 The Scottish Executive does not propose to modify Annex I (information required for inclusion in the environmental report) or Annex II (screening criteria) when they are subsumed into the Bill, other than to broaden their scope to apply to strategies. However, we intend for the Bill to contain an enabling provision giving the Scottish Ministers the ability to

add to the information required by Annex I if they determine that this is necessary in specific circumstances. We would welcome comments on these proposals. (See **question 42 in section 5**).

e) Whether socio-economic factors should be taken into account in the preparation of environmental reports

4.66 The Directive clearly intends that SEA should be predicated solely on environmental considerations and there is no scope for allowing environmental reports, prepared for plans or programmes within the scope of the Directive, to include socio-economic factors. In extending the scope of the Directive in the proposed Bill, it would be possible to provide for factors other than purely environmental ones to be included in environmental reports prepared for strategies and for the wider range of plans or programmes. However, as with the Directive, the Scottish Executive intends for the Bill to have a clear environmental focus. We do not, therefore, propose to include a provision in the Bill to allow for socio-economic factors to be included in the environmental report as part of the SEA process. As a key element of sustainable development, socio-economic factors should continue to be taken fully into account in reaching decisions on whether and how a strategy, plan or programme is implemented and the Bill will not change that. The Scottish Executive would welcome views on this approach. (See **question 43 in section 5**).

f) Possible additional exemptions

4.67 The Directive contains certain explicit exemptions which, for the purposes of plans and programmes within the scope of the Directive, it is not possible to extend. However, the Scottish Executive would be able to include further exemptions, if appropriate, from the additional requirements of the Bill (ie from the requirements in respect of strategies and of plans and programmes outwith the scope of the Directive). There may be arguments in favour of exempting strategies, plans and programmes drawn up by small individual bodies (eg schools, hospitals). The Bill would therefore contain a provision allowing the Scottish Ministers to make such exemptions if they considered them appropriate. The Scottish Executive would welcome views on:

- Q44: whether such a provision would be appropriate
- Q45: whether the Bill should go further than that and list those organisations whose strategies, plans and programmes are exempt from the wider SEA requirement (but not from the requirements of the Directive)
- Q46: which organisations might sensibly be exempted from the wider provisions of the Bill

Likely numbers of strategies, plans and programmes to be subject to SEA and the likely costs

4.68 Although many public bodies already consult on their strategies, plans and programmes and a variety of mechanisms for taking into account likely effects on the environment already exist, the systematic demands of SEA will inevitably place some new demands on the public sector and on the privatised utilities. Those most strongly affected will be Scottish Executive, local authorities and the consultation authorities. The additional demands as a result of the Directive will increase in numbers terms under the wider scope of the Bill, but by the time the Bill's provisions come into effect there should be a good deal of experience of the process established by the Directive which might help to limit the additional impact.

4.69 It is only possible at this stage to make a general estimate in monetary terms of the impact of the Directive and then of the Bill. Our current estimate is that an annual impact on the Scottish Executive could be in the order of £2.6 million to £5.5 million, depending on the methods adopted to carry out assessment (eg in-house or contracted out). We estimate that the cost including the rest of the public sector could be at least double that, although we accept that much more detailed work is required in order to establish a more precise figure. A full Regulatory Impact Assessment will be produced by the Scottish Executive once some of these issues are clearer following responses to this consultation document, and following more detailed discussions with public sector bodies. The Scottish Executive would however welcome views at this stage on:

- Q47: our estimate of resource impact based on the likely annual numbers of plans and programmes within the scope of the Directive that might require SEA, and the associated costs to the responsible authorities (including the private companies carrying public functions) of preparing such SEAs
- Q48: the likely additional annual numbers of strategies, plans and programmes within the scope of the Bill that might require SEA, and the associated costs to the responsible authorities (including private companies carrying out public functions) of preparing such SEAs
- Q49: the likely costs, for each consultation authority, of the screening and other consultation processes under the provisions of the Directive and the Bill
- Q50: the likely costs, for each non-governmental organisation with a particular interest in environmental protection, of the public consultation process under the provisions of the Directive and the Bill

5. LIST OF THE SPECIFIC QUESTIONS RAISED IN SECTION 4

For ease of reference, this section sets out in order all of the specific questions raised in the various sub-sections of section 4 above.

a. The Proposed Regulations

Scope

- Q1 To what extent do private companies, carrying out public functions under the control or direction of the Government, develop plans or programmes as defined in the Directive (ie required by legislative, regulatory or administrative means and setting a framework for future development consents)?

Definition of Plans and Programmes

- Q2 Are you content with our proposed definition of plan or programme and our view that it is sufficiently robust to close a potential loophole in the Regulations, that might otherwise allow authorities to bypass SEA for certain activities they do not regard as either a plan or a programme even if that activity is required by legislative, regulatory or administrative means and sets a framework for future development consents?
- Q3 Is the definition clear enough to ensure the screening process is not overwhelmed with submissions from responsible authorities anxious to ensure that they do not fall foul of the Regulations?

Handling plans and programmes prepared by groups of authorities

- Q4 What are your views on the assumption that the likely number of groupings of responsible authorities which would be developing plans or programmes within the scope of the Directive is small?
- Q5 What views do you have on the proposed mechanism for identifying a lead authority in such cases and what proposals do you have for alternative mechanisms?

The screening process

- Q6 What are your views on the proposed screening process described in paragraphs 4.11 to 4.13 above?
- Q7 What are your views on the alternative approaches described in paragraph 4.14 above?
- Q8 What other alternatives do you suggest for a screening process?
- Q9 Will each consultation authority need to establish a specialised unit to respond to SEA demands?

- Q10 Does the case-by-case approach to screening offer the most practical method of screening or would listing the types of plans and programmes to be screened be more effective?
- Q11 What is the likely impact of the case-by-case approach to screening on the responsible authorities and on the consultation authorities?
- Q12 What are your views on the approach described in paragraphs 4.18 and 4.19 above for the responsible authorities to engage with the screening process?
- Q13 Is 28 days a suitable time period for the consultation authorities to process an SEA screening report?
- Q14 Should the responsible authority have to resubmit to screening if it does not pursue a plan within a certain time period and/or if external factors affecting the plan change significantly?

The role of the Scottish Ministers

- Q15 Are the processes described sufficient to allow Scottish Ministers to deal with disagreements about the need for SEA in respect of plans or programmes prepared by the Scottish Executive or its agencies on behalf of the Scottish Ministers themselves?

Environmental assessment

- Q16 Is any additional guidance necessary on any aspect of Annex I to the Directive?
- Q17 Are the measures described in paragraph 4.27 sufficient to ensure the quality of environmental reports?
- Q18 What remedial measures should be taken if an environmental report is considered not to be of sufficient quality?

The point by which assessment should be carried out

- Q19 Is it necessary to define “adoption” and/or “submission to the legislative procedure” in the draft Regulations? If so, how those terms might best be defined?
- Q20 Should the Regulations specify that the consideration of plans and programmes, and the opinions expressed on them, during the legislative process are not subject to Article 8 of the Directive?

Avoiding duplication of assessment

- Q21 To what degree might a less detailed SEA be carried out on a plan or programme because the same subject matter is already subject to SEA at another level?
- Q22 Should any time limit be set for the use of information procured as part of an earlier SEA?

- Q23 Should provisions be introduced to provide a check on the value of information procured as part of an earlier SEA, or do the consultation mechanisms in place already provide a sufficient control mechanism?

The list of consultation authorities

- Q24 Who should the consultation authorities be for the purposes of the draft Regulations?
- Q25 Should the Regulations specifically list the consultation authorities or simply provide that the Scottish Ministers determine the relevant consultation authorities on a case-by-case basis?
- Q26 Should all those on any list be involved in every case, or should the Regulations provide for relevant consultation authorities to be consulted – if the latter, how should relevant consultation authorities be selected; should there be a requirement to consult the Scottish Ministers and SEPA in all cases?

The definition of the “public”

- Q27 What views do you have on the proposal to define “public” in the Regulations in broad terms?
- Q28 What mechanisms do you suggest for making plans and programmes and environmental reports available to the public?
- Q29 Should any mechanisms for making plans and programmes available to the public be specified in the Regulations; should the Regulations leave this to the responsible authorities; or should the Regulations include a menu from which the responsible authorities must select the most appropriate mechanism?

Timescale for consultation

- Q30 What are your views on the proposal for a period of a minimum of 28 days and of sufficient length to allow consultees to express their opinions?

Monitoring

- Q31 Do the proposals for monitoring fully meet the Directive’s requirements?
- Q32 Should the Regulations provide for the Scottish Ministers to determine the monitoring methods to be used in specific cases, if they do not consider the measures proposed by the responsible authority to be sufficiently robust?

Implementation and entry into force

- Q33 Is it necessary to define “first formal preparatory act”?

b) The Proposed Bill

The definition of “strategies”

- Q34 What is your view of the proposed definition?
- Q35 What will be the likely extent of the Bill if that definition of strategies were to stand (eg how many voluntary strategies, plans and programmes might fall within its scope?)
- Q36 Are any modifications required to the criteria in Annex II to the Directive?

The application of the screening process

- Q37 Do you agree that the screening process described in paragraphs 4.11 to 4.13 above is generally applicable to strategies, plans and programmes outwith the scope of the Directive?
- Q38 What are your views on whether a pre-screening process as described in paragraphs 4.59 and 4.60 above is desirable?
- Q39 What are the potential implications of separate regimes for plans and programmes within the scope of the Directive and wider strategies, plans and programmes within the context of the Partnership Agreement?

The impact on private companies carrying out public functions under the control or direction of the Government

- Q40 Should such companies be subject to the provisions of the Bill?
- Q41 What is the likely number of strategies, plans and programmes to which the Bill might apply if its provisions extend to such companies?

Whether to modify Annex I and II to the Directive

- Q42 What are your views on whether modifications are necessary, and on the proposal to create an enabling provision in the Bill for future modifications?

Whether socio-economic factors should be taken into account in the preparation of environmental reports

- Q43 Do you agree with the approach set out in Paragraph 4.66 that notwithstanding the importance of socio-economic factors in reaching final implementation decisions, the SEA report should only contain environmental factors?

Possible additional exemptions

- Q44 Should the Bill enable the Scottish Ministers to make additional exemptions?

- Q45 Should the Bill should go further than enabling provisions and list those organisations whose strategies, plans and programmes are exempt from the wider SEA requirement (but not from the requirements of the Directive)?
- Q46 Which organisations might sensibly be exempted from the wider provisions of the Bill?

Likely numbers of strategies, plans and programmes to be subject to SEA and the likely costs

- Q47 What are your views the Scottish Executive's estimate of resource impact based on the likely annual numbers of plans and programmes within the scope of the Directive that might require SEA, and the associated costs to the responsible authorities (including private companies carrying out public functions) of preparing such SEAs?
- Q48 What are the likely additional annual numbers of strategies, plans and programmes within the scope of the Bill that might require SEA, and the associated costs to the responsible authorities (including private companies carrying out public functions) of preparing such SEAs?
- Q49 What are the likely costs, for each consultation authority, of the screening and other consultation processes under the provisions of the Directive and the Bill?
- Q50 What are the likely costs, for each non-governmental organisation with a particular interest in environmental protection, of the public consultation process under the provisions of the Directive and the Bill?

SCOTTISH STATUTORY INSTRUMENTS

2004 No.

ENVIRONMENTAL PROTECTION

The Environmental Assessment (Plans and Programmes) (Scotland)
Regulations 2004

<i>Made</i> - - - -	2004
<i>Laid before the Scottish Parliament</i>	2004
<i>Coming into force</i> - -	2004

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SCHEDULE 1	Criteria for determining the likely significance of effects on the environment
SCHEDULE 2	Information for environmental reports

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 ⁽¹⁾, and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART 1
INTRODUCTORY PROVISIONS

Citation, commencement, application and extent

- 1.—(1) These Regulations may be cited as the Environmental Assessment (Plans and Programmes) (Scotland) Regulations 2004 and shall come into force on 2004.
- (2) Subject to paragraph (4) these Regulations apply to plans and programmes which relate to the whole or any part of Scotland.
- (3) These Regulations do not apply to—
- (a) plans and programmes the sole purpose of which is to serve national defence or civil emergency;
 - (b) financial or budget 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. 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (O.J. L 160, 26.6.1999 p.80).
- (4) The Regulations extend to Scotland only.

Interpretation

- 2.—(1) In the following provisions of these Regulations—
- “an authority” means any person certain of whose functions are functions of a public nature;
- “consultation authority” has the meaning given by regulation 4;
- “the Directive” means Directive 2001/42/EC ⁽²⁾ of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment;
- “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⁾;

¹ S.I. 200 [3] [4].

² O.J. No. L 197, 21.07.2001, p.30.

³ O.J. No. L 206, 22.7.1992. The latest amending Directive is at O.J. No. L 305, 8.11.1997, p.42.

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

(a) which are—

(i) subject to preparation and/or adoption by an authority at national, regional or local level; or

(ii) prepared by an authority for adoption, through a legislative procedure by Parliament or Government; and,

(b) which are required by legislative, regulatory or administrative provisions;

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

(c) the authority by which, or on whose behalf, it is prepared;

(d) where more than one authority is responsible for a plan or programme, or part of it, the responsible authority shall be the authority agreed upon amongst those authorities with an interest in the plan or programme, which failing, shall be the authority determined to be the responsible authority by the Scottish Ministers; and

“the public” means one or more natural or legal persons, and without prejudice to that generality, includes unincorporated associations.

(2) Other expressions used both in these Regulations and in the Directive have the same meaning in these Regulations as they have in that Directive.

Implementation of Directive

3. These Regulations make provision for the purpose of implementing the Directive.

Consultation authorities

4.—(1) Subject to paragraph (2), in relation to every plan or programme, each of the following shall be a consultation authority—

(a) the Scottish Ministers;

(b) the Scottish Environment Protection Agency; and

(c) Scottish Natural Heritage.

(2) Where an authority mentioned in paragraph (1) 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 a consultation authority in relation to that plan or programme; and references to the consultation authorities in the following provisions of these Regulations shall be construed accordingly.

PART 2

ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

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

5.—1) Subject to regulation 9, where—

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

(b) the plan or programme is of the description set out in regulation 6,

the responsible authority shall carry out 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

Description of plans and programmes

- 6.- The description referred to in regulation 5 and 8 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/EC⁴; or
 - (c) 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; or
 - (d) does not fall within paragraph (a) to (c), but is a plan or programme which sets the framework for future development consent of projects, and is the subject of a determination under regulation 11(1) that it is likely to have significant environmental effects.

Exemptions from assessment

7. An environmental assessment need not be carried out–
- (a) for a plan or programme of the description set out in regulation 6 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 regulation 6(a),(b) or (c),
- unless it has been determined under regulation 11(1) that the plan or programme or, as the case may be, the modification, is likely to have significant environmental effects.

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

- 8.—(1) Subject to paragraph (2) and regulation 9, where a plan or programme is of a description set out in regulation 6, and is
- (a) a plan or programme of which the first formal preparatory act is on or before 21st July 2004 and which 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 after 21st July 2004, the plan or programme would have required an environmental assessment by virtue of regulation 5(1),

the responsible authority shall 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) Nothing in paragraph (1) shall require the environmental assessment of a particular plan or programme if the Scottish Ministers–
- (a) decide that such assessment is not feasible; and
 - (b) informs the public of their decision.

Environmental assessment for plans and programmes co-financed by the European Community

- 9.—(1) An environmental assessment carried out under these Regulations shall be without prejudice to any requirement under Directive 85/337/EEC and to any other Community law requirements.
- (2) An environmental assessment required by these Regulations 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.

⁴ O.J. No. L 175, 5.7.1985, p.40. The amending Directive is at O.J. L73, 14.3.1997, p.5.

Restriction on adoption or submission of plans and programmes where environmental assessment required

- 10.**—(1) 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 until the requirements of such provisions of Part 3 as apply in relation to the plan or programme, have been met.
- (2) Without prejudice to the generality of paragraph (1), a plan or programme shall not be adopted or submitted to the legislative procedure for the purposes of its adoption unless account has been taken of—
- (a) the environmental report for that plan or programme; and
 - (b) the opinions (if any) expressed pursuant to the invitations referred to in regulation 14.

Determinations of whether environmental assessment required

- 11.**—(1) The provisions of these Regulations apply in respect of the determination of whether a plan, programme or modification of a description referred to in regulations 6(d), 7(a) or 7(b) is likely to have significant environmental effects.
- (2) The responsible authority shall apply the criteria specified in Schedule 1 to these Regulations 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 authorities for consideration.
- (4) The consultation authorities shall, within 28 days of receipt of the report prepared in accordance with paragraph (2), respond to the responsible authorities with their views on that report.
- (5) If the responsible authority and the consultation authorities 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 authorities 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 3 of these Regulations, 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 authorities cannot reach agreement as to whether or not the plan, programme or modification is likely to have significant environmental effects, the authority shall refer the matter to the Scottish Ministers for their determination, together with the report prepared under paragraph (2) and any views of the consultation authorities given under paragraph (4).
- (8) A determination of the Scottish Ministers 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) or (6) as the case may be.

Publicity for determinations

- 12.**—(1) The responsible authority shall within 28 days of a determination having been made under regulation 11, send to the consultation authorities—
- (a) a copy of the determination; and

- (b) where it has been decided that the plan, programme or modification does not require an environmental assessment, a statement of the reasons for that decision.
- (2) The responsible authority shall –
 - (a) keep a copy of the determination, and any accompanying 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 accompanying statement of reasons on the authority's website; and
 - (c) within 14 days of the making of the determination publish (including publication on the authority's website), or secure the publication of, in at least one newspaper circulating in its area, of a notice stating–
 - (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 at which a copy of the determination and any accompanying statement of reasons may be inspected or from which a copy may be obtained.

PART 3

ENVIRONMENTAL REPORTS

Preparation of environmental report

- 13.**—(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.
- (2) The report shall identify, describe and evaluate the likely significant effects on the environment of implementing–
 - (a) the plan or programme; and
 - (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.
- (3) The report shall include such of the information referred to in Schedule 2 to these Regulations as 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 authorities.

Consultation procedures

- 14.**—(1) Every draft plan or programme for which an environmental report has been prepared in accordance with regulation 13 and its accompanying environmental report (“the relevant documents”) shall be made available to the consultation bodies and to the public in accordance with the following provisions of this regulation.

- (2) As soon as reasonably practicable, and in any event within 14 days, after the preparation of the relevant documents, the responsible authority shall send a copy of the relevant documents to the consultation bodies and invite them to express their opinion on the relevant assessment
- (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 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 their 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 period referred to in paragraph (3)(a)(iv) must be—
- (a) not less than 28 days; and
 - (b) 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 (including publication on the authority's website) as will secure 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

Account to be taken of environmental report and responses to consultation

- 15.** Without prejudice to regulation 11, in preparing a plan or programme for which an environmental assessment is required, account shall be taken of—
- (a) the environmental report for that plan or programme; and
 - (b) the opinions (if any) expressed in response to the invitations referred to in regulation 14 or regulation 16.

Transboundary consultations

- 16.—**(1) Where a responsible authority, is of the opinion that a plan or programme for which they are the responsible authority is likely to have significant effects on the environment of another Member State, they shall, as soon as reasonably practicable after forming that opinion—
- (a) notify the Scottish Ministers and the Secretary of State of it and of the reasons for it; and
 - (b) supply the Scottish Ministers and the Secretary of State with a copy of the plan or programme concerned, and of the accompanying environmental report.
- (2) Where the Secretary of State has been notified under paragraph (1)(a), the responsible authority shall, within such period as the Secretary of State may specify by notice in writing to the authority, provide the Secretary of State with such other information about the plan or programme or its accompanying environmental report as he may reasonably require, and shall copy such other information to the Scottish Ministers.

PART 4

POST-ADOPTION PROCEDURES

Information as to adoption of plan or programme

- 17.**—(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) keep 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;
 - (b) publish a copy of the plan or programme and of the notice referred to in sub-paragraph (c) on the authority's website; and
 - (c) publish, or secure the publication, in at least one newspaper circulating in the area to which the plan or programme relates, of a notice stating—
 - (i) the title of the plan or programme;
 - (ii) the date on which it was adopted;
 - (iii) the address 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, the responsible authority shall inform—
- (a) the consultation authorities;
 - (b) where a plan or programme has been notified under regulation 16(1), the Secretary of State,
- of the adoption of the plan or programme.
- (3) The responsible authority shall send to each of the persons informed pursuant to paragraph (2) as soon as reasonably practicable –
- (a) a copy of the plan or programme as adopted;
 - (b) a statement containing the particulars specified in paragraph (4).
- (4) The particulars referred to in paragraphs (1)(c)(iii) and (3)(b), 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 13 have been taken into account;
 - (d) the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with; and
 - (e) 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

- 18.**—(1) The responsible authority shall monitor the significant environmental effects of the implementation of each plan or programme for which it has carried out an environmental assessment under these Regulations.

(2) Without prejudice to the generality of paragraph (1), the responsible authority's monitoring arrangements (which may comprise or include arrangements established otherwise than for the express purpose of compliance with this regulation) must enable the authority—

- (a) to identify any unforeseen adverse effects at an early stage; and
- (b) to undertake appropriate remedial action.

St Andrew's House,
Edinburgh

2004

A member of the Scottish Executive

CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

1. The characteristics of plans and programmes, having regard, in particular, to—
 - (a) the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources;
 - (b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy;
 - (c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development;
 - (d) environmental problems relevant to the plan or programme; and
 - (e) the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste management or water protection).
2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to—
 - (a) the probability, duration, frequency and reversibility of the effects;
 - (b) the cumulative nature of the effects;
 - (c) the transboundary nature of the effects;
 - (d) the risks to human health or the environment (e.g. due to accidents);
 - (e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);
 - (f) the value and vulnerability of the area likely to be affected due to—
 - (i) special natural characteristics or cultural heritage;
 - (ii) exceeded environmental quality standards or limit values; or
 - (iii) intensive land-use; and
 - (g) the effects on areas or landscapes which have a recognised national, Community or international protection status.

INFORMATION FOR ENVIRONMENTAL REPORTS

1. An outline of the contents and main objectives of the plan or programme, and of its relationship (if any) with other relevant plans and programmes.
2. The relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme.
3. The environmental characteristics of areas likely to be significantly affected.
4. Any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Council Directive 79/409/EEC on the Wild Birds Directive⁽⁵⁾ and the Habitats Directive.
5. The environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation.
- 6.—1) The likely significant effects on the environment, including—
 - (a) on issues such as—
 - (i) biodiversity;
 - (ii) population;
 - (iii) human health;
 - (iv) fauna;
 - (v) flora;
 - (vi) soil;
 - (vii) water;
 - (viii) air;
 - (ix) climatic factors;
 - (x) material assets;
 - (xi) cultural heritage, including architectural and archaeological heritage;
 - (xii) landscape; and
 - (xiii) the inter-relationship between the issues [referred to in paragraphs (i) to (xii)]; and
 - (b) short, medium and long-term effects;
 - (c) permanent and temporary effects;
 - (d) positive and negative effects; and
 - (e) secondary, cumulative and synergistic effects.
7. The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.

⁽⁵⁾ O.J. No. L OJ L 103, 25.4.1979, p. 1. Directive as last amended by Directive 97/49/EC (OJ L 223, 13.8.1997, p. 9).

- 8.** An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.
- 9.** A description of the measures envisaged concerning monitoring in accordance with regulation 18.
- 10.** A non-technical summary of the information provided under paragraphs 1 to 9.

EXPLANATORY NOTE

(This note is not part of the Regulation)

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DIRECTIVE 2001/42/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 27 JUNE 2001 ON THE ASSESSMENT OF THE EFFECTS OF CERTAIN PLANS AND PROGRAMMES ON THE ENVIRONMENT

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the Economic and Social Committee(2),

Having regard to the opinion of the Committee of the Regions(3),

Acting in accordance with the procedure laid down in Article 251 of the Treaty(4), in the light of the joint text approved by the Conciliation Committee on 21 March 2001,

Whereas:

(1) Article 174 of the Treaty provides that Community policy on the environment is to contribute to, inter alia, the preservation, protection and improvement of the quality of the environment, the protection of human health and the prudent and rational utilisation of natural resources and that it is to be based on the precautionary principle. Article 6 of the Treaty provides that environmental protection requirements are to be integrated into the definition of Community policies and activities, in particular with a view to promoting sustainable development.

(2) The Fifth Environment Action Programme: Towards sustainability - A European Community programme of policy and action in relation to the environment and sustainable development(5), supplemented by Council Decision No 2179/98/EC(6) on its review, affirms the importance of assessing the likely environmental effects of plans and programmes.

(3) The Convention on Biological Diversity requires Parties to integrate as far as possible and as appropriate the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans and programmes.

(4) Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.

(5) The adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by providing a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision making. The inclusion of a wider set of factors in decision making should contribute to more sustainable and effective solutions.

(6) The different environmental assessment systems operating within Member States should contain a set of common procedural requirements necessary to contribute to a high level of protection of the environment.

(7) The United Nations/Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991, which applies to both Member States and other States, encourages the parties to the Convention to apply its principles to plans and programmes as well; at the second meeting of the Parties to the Convention in Sofia on 26 and 27 February 2001, it was decided to prepare a legally binding protocol on strategic environmental assessment which would supplement the existing provisions on environmental impact assessment in a transboundary context, with a view to its possible adoption on the occasion of the 5th Ministerial Conference "Environment for Europe" at an extraordinary meeting of the Parties to the Convention, scheduled for May 2003 in Kiev, Ukraine. The systems operating within the Community for environmental assessment of plans and programmes should ensure that there are adequate transboundary consultations where the implementation of a plan or programme being prepared in one Member State is likely to have significant effects on the environment of another Member State. The information on plans and programmes having significant effects on the environment of other States should be forwarded on a reciprocal and equivalent basis within an appropriate legal framework between Member States and these other States.

(8) Action is therefore required at Community level to lay down a minimum environmental assessment framework, which would set out the broad principles of the environmental assessment system and leave the details to the Member States, having regard to the principle of subsidiarity. Action by the Community should not go beyond what is necessary to achieve the objectives set out in the Treaty.

(9) This Directive is of a procedural nature, and its requirements should either be integrated into existing procedures in Member States or incorporated in specifically established procedures. With a view to avoiding duplication of the assessment, Member States should take account, where appropriate, of the fact that assessments will be carried out at different levels of a hierarchy of plans and programmes.

(10) All plans and programmes which are prepared for a number of sectors and which set a framework for future development consent of projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment(7), and all plans and programmes which have been determined to require assessment pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna(8), are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment. When they determine the use of small areas at local level or are minor modifications to the above plans or programmes, they should be assessed only where Member States determine that they are likely to have significant effects on the environment.

(11) Other plans and programmes which set the framework for future development consent of projects may not have significant effects on the environment in all cases and should be assessed only where Member States determine that they are likely to have such effects.

(12) When Member States make such determinations, they should take into account the relevant criteria set out in this Directive.

(13) Some plans or programmes are not subject to this Directive because of their particular characteristics.

(14) Where an assessment is required by this Directive, an environmental report should be prepared containing relevant information as set out in this Directive, identifying, describing and evaluating the likely significant environmental effects of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme; Member States should communicate to the Commission any measures they take concerning the quality of environmental reports.

(15) In order to contribute to more transparent decision making and with the aim of ensuring that the information supplied for the assessment is comprehensive and reliable, it is necessary to provide that authorities with relevant environmental responsibilities and the public are to be consulted during the assessment of plans and programmes, and that appropriate time frames are set, allowing sufficient time for consultations, including the expression of opinion.

(16) Where the implementation of a plan or programme prepared in one Member State is likely to have a significant effect on the environment of other Member States, provision should be made for the Member States concerned to enter into consultations and for the relevant authorities and the public to be informed and enabled to express their opinion.

(17) The environmental report and the opinions expressed by the relevant authorities and the public, as well as the results of any transboundary consultation, should be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

(18) Member States should ensure that, when a plan or programme is adopted, the relevant authorities and the public are informed and relevant information is made available to them.

(19) Where the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Community legislation, such as Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds⁽⁹⁾, Directive 92/43/EEC, or Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy⁽¹⁰⁾, in order to avoid duplication of the assessment, Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community legislation.

(20) A first report on the application and effectiveness of this Directive should be carried out by the Commission five years after its entry into force, and at seven-year intervals thereafter. With a view to further integrating environmental protection requirements, and taking into account the experience acquired, the first report should, if appropriate, be accompanied by proposals for amendment of this Directive, in particular as regards the possibility of extending its scope to other areas/sectors and other types of plans and programmes,

HAVE ADOPTED THIS DIRECTIVE:

Article 1 Objectives

The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

Article 2 Definitions

For the purposes of this Directive:

(a) "plans and programmes" shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them:

- which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and

- which are required by legislative, regulatory or administrative provisions;

(b) "environmental assessment" shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;

(c) "environmental report" shall mean the part of the plan or programme documentation containing the information required in Article 5 and Annex I;

(d) "The public" shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

Article 3 Scope

1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.

4. Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.

5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive.

6. In the case-by-case examination and in specifying types of plans and programmes in accordance with paragraph 5, the authorities referred to in Article 6(3) shall be consulted.

7. Member States shall ensure that their conclusions pursuant to paragraph 5, including the reasons for not requiring an environmental assessment pursuant to Articles 4 to 9, are made available to the public.

8. The following plans and programmes are not subject to this Directive:

- plans and programmes the sole purpose of which is to serve national defence or civil emergency,

- financial or budget plans and programmes.

9. This Directive does not apply to plans and programmes co-financed under the current respective programming periods(11) for Council Regulations (EC) No 1260/1999(12) and (EC) No 1257/1999(13).

Article 4

General obligations

1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.
2. The requirements of this Directive shall either be integrated into existing procedures in Member States for the adoption of plans and programmes or incorporated in procedures established to comply with this Directive.
3. Where plans and programmes form part of a hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, inter alia, avoiding duplication of assessment, Member States shall apply Article 5(2) and (3).

Article 5

Environmental report

1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.
2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.
3. Relevant information available on environmental effects of the plans and programmes and obtained at other levels of decision-making or through other Community legislation may be used for providing the information referred to in Annex I.
4. The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report.

Article 6

Consultations

1. The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.
2. The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be

given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.

3. Member States shall designate the authorities to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes.

4. Member States shall identify the public for the purposes of paragraph 2, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned.

5. The detailed arrangements for the information and consultation of the authorities and the public shall be determined by the Member States.

Article 7

Transboundary consultations

1. Where a Member State considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other Member State.

2. Where a Member State is sent a copy of a draft plan or programme and an environmental report under paragraph 1, it shall indicate to the other Member State whether it wishes to enter into consultations before the adoption of the plan or programme or its submission to the legislative procedure and, if it so indicates, the Member States concerned shall enter into consultations concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects. Where such consultations take place, the Member States concerned shall agree on detailed arrangements to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the Member State likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time-frame.

3. Where Member States are required under this Article to enter into consultations, they shall agree, at the beginning of such consultations, on a reasonable timeframe for the duration of the consultations.

Article 8

Decision making

The environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of any transboundary consultations entered into pursuant to Article 7 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

Article 9

Information on the decision

1. Member States shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3), the public and any Member State consulted under Article 7 are informed and the following items are made available to those so informed:

(a) the plan or programme as adopted;

(b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with, and

(c) the measures decided concerning monitoring in accordance with Article 10.

2. The detailed arrangements concerning the information referred to in paragraph 1 shall be determined by the Member States.

Article 10

Monitoring

1. Member States shall monitor the significant environmental effects of the implementation of plans and programmes in order, inter alia, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action.

2. In order to comply with paragraph 1, existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication of monitoring.

Article 11

Relationship with other Community legislation

1. An environmental assessment carried out under this Directive shall be without prejudice to any requirements under Directive 85/337/EEC and to any other Community law requirements.

2. For plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Community legislation, Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community legislation in order, inter alia, to avoid duplication of assessment.

3. For plans and programmes co-financed by the European Community, the environmental assessment in accordance with this Directive shall be carried out in conformity with the

specific provisions in relevant Community legislation.

Article 12

Information, reporting and review

1. Member States and the Commission shall exchange information on the experience gained in applying this Directive.
2. Member States shall ensure that environmental reports are of a sufficient quality to meet the requirements of this Directive and shall communicate to the Commission any measures they take concerning the quality of these reports.
3. Before 21 July 2006 the Commission shall send a first report on the application and effectiveness of this Directive to the European Parliament and to the Council.
With a view further to integrating environmental protection requirements, in accordance with Article 6 of the Treaty, and taking into account the experience acquired in the application of this Directive in the Member States, such a report will be accompanied by proposals for amendment of this Directive, if appropriate. In particular, the Commission will consider the possibility of extending the scope of this Directive to other areas/sectors and other types of plans and programmes. A new evaluation report shall follow at seven-year intervals.
4. The Commission shall report on the relationship between this Directive and Regulations (EC) No 1260/1999 and (EC) No 1257/1999 well ahead of the expiry of the programming periods provided for in those Regulations, with a view to ensuring a coherent approach with regard to this Directive and subsequent Community Regulations.

Article 13

Implementation of the Directive

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 21 July 2004. They shall forthwith inform the Commission thereof.
2. When Member States adopt the measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
3. The obligation referred to in Article 4(1) shall apply to the plans and programmes of which the first formal preparatory act is subsequent to the date referred to in paragraph 1. Plans and programmes of which the first formal preparatory act is before that date and which are adopted or submitted to the legislative procedure more than 24 months thereafter, shall be made subject to the obligation referred to in Article 4(1) unless Member States decide on a case by case basis that this is not feasible and inform the public of their decision.
4. Before 21 July 2004, Member States shall communicate to the Commission, in addition to the measures referred to in paragraph 1, separate information on the types of plans and programmes which, in accordance with Article 3, would be subject to an environmental assessment pursuant to this Directive. The Commission shall make this information available

to the Member States. The information will be updated on a regular basis.

Article 14 **Entry into force**

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 15 **Addressees**

This Directive is addressed to the Member States.

Done at Luxembourg, 27 June 2001.

For the European Parliament
The President
N. Fontaine

For the Council
The President
B. Rosengren

Footnotes

(1) OJ C 129, 25.4.1997, p. 14 and
OJ C 83, 25.3.1999, p. 13.

(2) OJ C 287, 22.9.1997, p. 101.

(3) OJ C 64, 27.2.1998, p. 63 and
OJ C 374, 23.12.1999, p. 9.

(4) Opinion of the European Parliament of 20 October 1998 (OJ C 341, 9.11.1998, p. 18), confirmed on 16 September 1999 (OJ C 54, 25.2.2000, p. 76), Council Common Position of 30 March 2000 (OJ C 137, 16.5.2000, p. 11) and Decision of the European Parliament of 6 September 2000 (OJ C 135, 7.5.2001, p. 155). Decision of the European Parliament of 31 May 2001 and Decision of the Council of 5 June 2001.

(5) OJ C 138, 17.5.1993, p. 5.

(6) OJ L 275, 10.10.1998, p. 1.

(7) OJ L 175, 5.7.1985, p. 40. Directive as amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5).

(8) OJ L 206, 22.7.1992, p. 7. Directive as last amended by Directive 97/62/EC (OJ L 305, 8.11.1997, p. 42).

(9) OJ L 103, 25.4.1979, p. 1. Directive as last amended by Directive 97/49/EC (OJ L 223, 13.8.1997, p. 9).

(10) OJ L 327, 22.12.2000, p. 1.

(11) 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 1257/1999.

(12) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ L 161, 26.6.1999, p. 1).

(13) Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations (OJ L 160, 26.6.1999, p. 80).

Information referred to in Article 5(1)

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

- (a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;
- (b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;
- (c) the environmental characteristics of areas likely to be significantly affected;
- (d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;
- (e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;
- (f) the likely significant effects⁽¹⁾ on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;
- (g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;
- (h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;
- (i) a description of the measures envisaged concerning monitoring in accordance with Article 10;
- (j) a non-technical summary of the information provided under the above headings.

⁽¹⁾ These effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects.

Criteria for determining the likely significance of effects referred to in Article 3(5)

1. The characteristics of plans and programmes, having regard, in particular, to

- the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,
- the degree to which the plan or programme influences other plans and programmes including those in a hierarchy,
- the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development,
- environmental problems relevant to the plan or programme,
- the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection).

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to

- the probability, duration, frequency and reversibility of the effects,
- the cumulative nature of the effects,
- the transboundary nature of the effects,
- the risks to human health or the environment (e.g. due to accidents),
- the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected),
- the value and vulnerability of the area likely to be affected due to:
 - special natural characteristics or cultural heritage,
 - exceeded environmental quality standards or limit values,
 - intensive land-use,
- the effects on areas or landscapes which have a recognised national, Community or international protection status.



Small changes in the way we perform everyday tasks can have huge impacts on Scotland's environment.

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This butterfly represents the beauty and fragility of Scotland's environment. The motif will be utilised extensively by the Scottish Executive and its partners in their efforts to persuade people they can do a little to change a lot.

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