

**ENVIRONMENT ACT 2005****Principal Act**

<b>Act. No. 2005-27</b>	<i>Commencement</i>	29.3.2005
	<i>Assent</i>	29.3.2005

Amending enactments	Relevant current provisions	Commencement date
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None

**EU Legislation/International Agreements involved:**

Directive 75/442/EEC  
Directive 79/409/EEC  
Directive 85/337/EEC  
Directive 91/271/EEC  
Directive 91/689/EEC  
Directive 92/43/EEC  
Directive 97/11/EC  
Directive 97/62/EC  
Directive 2001/42/EC

**English sources:**

None cited

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AN ACT FOR THE PURPOSE OF TRANSPOSING INTO THE LAW OF GIBRALTAR 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 AND TO PROVIDE FOR REGULATIONS TO BE MADE FOR COMPLIANCE WITH EUROPEAN UNION OBLIGATIONS.

## PART 1

### INTRODUCTORY PROVISIONS

#### **Title.**

1. This Act may be cited as the Environment Act 2005.

#### **Interpretation.**

- 2.(1) In this Act unless the context otherwise requires—

“consultation body” has the meaning given to it by section 3;

“Direction” means a direction given by the Minister under section 9(3);

“Directive” means Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment;

“Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora as adapted to technical and scientific progress by Council Directive 97/62/EC;”

“Minister” means the Minister with responsibility for the Environment;

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

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

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

- (a) the authority by which or on whose behalf it is prepared; or
- (b) where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible (solely or jointly with the authority) for taking those steps.

(2) Other expressions used both in this Act and in the Directive have the same meaning in this Act as they have in the Directive.

**Consultation bodies.**

3. In relation to every plan or programme to which this Act applies, each of the following bodies shall be a consultation body–

- (a) the Environment Agency; and
- (b) any statutory body which has a specific environmental responsibility.

**PART 2  
ENVIRONMENTAL ASSESSMENT FOR PLANS AND  
PROGRAMMES**

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

4.(1) Subject to subsections (5) and (6) and section 6, where–

- (a) the first formal preparatory act of a plan or programme is subsequent to 21 July 2004; and
- (b) the plan or programme is of the description set out in either subsection (2) or (3),

the responsible authority shall carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of this Act, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.

(2) A plan or programme under subsection (1)(b) is one 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 Annexes I or II to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC and which are set out in Schedule 3.

(3) A plan or programme under subsection (1)(b) is one which, in view of the likely effect on sites, has been determined to require an assessment pursuant to Article 6 or 7 of the Habitats Directive.

(4) Subject to subsection (5) and section 6, where—

- (a) the first formal preparatory act of a plan or programme, other than a plan or programme of the description set out in subsection (2) or (3), is subsequent to 21 July 2004;
- (b) the plan or programme sets the framework for future development consent of projects; and
- (c) the plan or programme is the subject of a determination under section 8(1) or a Direction under section 9(3) that it is likely to have significant environmental effects,

the responsible authority shall carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of this Act, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.

(5) Nothing in subsections (1) or (4) requires the carrying out of an environmental assessment for—

- (a) a plan or programme the sole purpose of which is to serve national defence or civil emergency;
- (b) a financial or budget plan or programme; or
- (c) a plan or programme co-financed under—
  - (i) the 2000-2006 programming period for Council Regulation (EC) No. 1260/1999; or
  - (ii) the 2000-2006 or 2000-2007 programming period for Council Regulation (EC) No. 1257/1999.

- (6) An environmental assessment need not be carried out—
- (a) for a plan or programme of the description set out in subsections (2) or (3) which determines the use of a small area at local level; or
  - (b) for a minor modification to a plan or programme of the description set out in either of those subsections,

unless it has been determined under section 8(1) that the plan, programme or modification, as the case may be, is likely to have significant environmental effects, or it is the subject of a Direction under section 9(3).

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

- 5.(1) Subject to subsection (2) and section 6, where—
- (a) a plan or programme of which the first formal preparatory act is on or before 21 July 2004 has not been adopted or submitted to the legislative procedure for adoption before 22 July 2006; and
  - (b) the plan or programme is such that, had the first act in its preparation occurred after 21 July 2004, the plan or programme would have required an environmental assessment by virtue of section 4(1); or
  - (c) the responsible authority is of the opinion that, if a determination under section 8(1) in respect of the plan or programme had been made after 21st July 2004, it would have determined that the plan or programme was likely to have significant environmental effects,

the responsible authority shall carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of this Act, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.

- (2) Nothing in subsection (1) shall require the environmental assessment of a particular plan or programme if the responsible authority—
- (a) decides that such assessment is not feasible; and
  - (b) informs the public of its decision.



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

6. The environmental assessment required by any provision of this Part for a plan or programme co-financed by the European Community shall be carried out by the responsible authority in conformity with the specific provisions in relevant Community legislation.

**Restriction on adoption or submission of plans, programmes and modifications.**

7.(1). A plan, programme or modification in respect of which a determination under section 8(1) is required shall not be adopted or submitted to the legislative procedure for the purpose of its adoption—

- (a) where an environmental assessment is required in consequence of the determination or of a Direction, before the requirements of subsection (3) below have been met;
- (b) in any other case, before the determination has been made under section 8(1).

(2) A plan or programme for which an environmental assessment is required by any provision of this Part shall not be adopted or submitted to the legislative procedure for the purpose of its adoption before—

- (a) if it is a plan or programme co-financed by the European Community, the environmental assessment has been carried out in accordance with section 6;
- (b) in any other case, the requirements of subsection (3) below, and such requirements of Part 3 as apply in relation to the plan or programme, have been met.

(3) The requirements of this subsection are that account shall be taken of—

- (a) the environmental report for the plan or programme;
- (b) opinions expressed in response to the invitation referred to in section 12(2)(d);
- (c) opinions expressed in response to action taken by the responsible authority in accordance with section 12(4); and
- (d) the outcome of any consultations under section 13(4).

**Determinations of the responsible authority.**

8.(1) The responsible authority shall determine whether or not a plan, programme or modification of a description referred to in–

- (a) section 4(4)(a) and (b);
- (b) section 4(6)(a); or
- (c) section 4(6)(b),

is likely to have significant environmental effects.

(2) Before making a determination under subsection (1) the responsible authority shall–

- (a) take into account the criteria specified in Schedule 1; and
- (b) consult the consultation bodies.

(3) Where the responsible authority determines that the plan, programme or modification is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), it shall prepare a statement of its reasons for the determination.

#### **Powers of the Minister.**

9.(1) The Minister may at any time before the adoption of a plan, programme or modification or its submission to the legislative procedure for the purpose of its adoption (as the case may be), require the responsible authority to send him a copy of–

- (a) any determination under section 8(1) with respect to the plan, programme or modification;
- (b) the plan, programme or modification to which the determination relates; and
- (c) where section 8(3) applies, the statement prepared in accordance with that subsection.

(2) The responsible authority shall comply with a requirement under subsection (1) within 7 days.

(3) The Minister may direct that a plan, programme or modification is likely to have significant environmental effects (whether or not a copy of it has been sent to him in response to a requirement under subsection (1)).

(4) Before giving a Direction the Minister shall–

- (a) take into account the criteria specified in Schedule 1; and
- (b) consult the consultation bodies.

(5) The Minister shall, as soon as reasonably practicable after the giving of the Direction, send to the responsible authority and to each consultation body—

- (a) a copy of the Direction; and
- (b) a statement of his reasons for giving the Direction.

(6) In relation to a plan, programme or modification in respect of which a Direction has been given—

- (a) any determination under section 8(1) with respect to the plan, programme or modification shall cease to have effect on the giving of the Direction; and
- (b) if no determination has been made under section 8(1) with respect to the plan, programme or modification, the responsible authority shall cease to be under any duty imposed by that section.

## **Publicity for determinations and Directions.**

10.(1) Within 28 days of making a determination under section 8(1), the responsible authority shall send to each consultation body—

- (a) a copy of the determination; and
- (b) where the responsible authority has determined that the plan or programme does not require an environmental assessment, a statement of its reasons for the determination.

(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; and
- (b) within 28 days of the making of the determination, take such steps as it considers appropriate to bring to the attention of the public—

- (i) the title of the plan, programme or modification to which the determination relates;
- (ii) that the responsible authority has determined that the plan, programme or modification is or is not likely to have significant environmental effects (as the case may be) and, accordingly, that an environmental assessment is or is not required in respect of the plan, programme or modification; and
- (iii) the address (which may include a website) at which a copy of the determination and any accompanying statement of reasons may be inspected or from which a copy may be obtained.

(3) Where the responsible authority receives a Direction it shall—

- (a) keep a copy of the Direction and of the Minister's statement of his reasons for giving it available at its principal office for inspection by the public at all reasonable times and free of charge; and
- (b) within 28 days of the receipt of such a Direction, take such steps as it considers appropriate to bring to the attention of the public—
  - (i) the title of the plan, programme or modification to which the Direction relates;
  - (ii) that the Minister has directed that the plan, programme or modification is likely to have significant environmental effects and, accordingly, that an environmental assessment is required in respect of the plan, programme or modification; and
  - (iii) the address (which may include a website) at which a copy of the Direction and of the Minister's statement of his reasons for giving it may be inspected or from which a copy may be obtained.

(4) Nothing in subsections (2)(b)(iii) or (3)(b)(iii) shall require the responsible authority to provide a copy of any document free of charge; but, where a charge is made, it shall be a reasonable amount.

### PART 3

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**ENVIRONMENTAL REPORTS AND CONSULTATION  
PROCEDURES****Preparation of environmental report.**

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

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

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

(3) The report shall include such of the information referred to in Schedule 2 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 bodies.

(6) Where a consultation body wishes to respond to a consultation under subsection (5), it shall do so within the period of 5 weeks beginning with the date on which the consultation begins.

**Consultation procedures.**

12.(1) Every draft plan or programme for which an environmental report has been prepared in accordance with section 11 and its accompanying

environmental report (“the relevant documents”) shall be made available for the purposes of consultation in accordance with the following provisions of this section.

(2) As soon as reasonably practicable after the preparation of the relevant documents, the responsible authority shall—

- (a) send a copy of those documents to each consultation body;
- (b) take such steps as it considers appropriate to bring the preparation of the relevant documents to the attention of the persons who, in the authority’s opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan or programme concerned, required under the Directive (“the public consultees”);
- (c) inform the consultation bodies and the public consultees of the address (which may include a website) at which a copy of the relevant documents may be viewed, or from which a copy may be obtained; and
- (d) invite the consultation bodies and the public consultees to express their opinion on the relevant documents, specifying the address to which, and the period within which, opinions must be sent.

(3) The period referred to in subsection (2)(d) must be of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the relevant documents.

(4) The responsible authority shall keep a copy of the relevant documents available at its principal office for inspection by the public at all reasonable times and free of charge.

(5) Nothing in subsection (2)(c) shall require the responsible authority to provide copies free of charge; but where a charge is made, it shall be a reasonable amount.

**Transboundary consultations.**

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

- (a) notify the Minister of its opinion and of the reasons for it; and

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

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

(3) Where—

- (a) the Minister, whether in consequence of a notice under subsection (1)(a) or otherwise, considers that the implementation of a plan or programme in Gibraltar is likely to have significant effects on the environment of another Member State; or
- (b) a Member State that is likely to be significantly affected by the implementation of a plan or programme so requests, the Minister shall, before the adoption of the plan or programme or its submission to the legislative procedure for adoption, forward a copy of it and of its accompanying environmental report to the Member State.

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

- (a) agree with the Member State—
  - (i) detailed arrangements to ensure that the authorities referred to in paragraph 3 of Article 6 of the Directive and the public referred to in paragraph 4 of that Article in the Member State likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time; and
  - (ii) a reasonable time for the duration of the consultations;
- (b) enter into consultations with the Member State concerning—
  - (i) the likely transboundary environmental effects of implementing the plan or programme; and
  - (ii) the measures envisaged to reduce or eliminate such effects; and

- (c) where he is not the responsible authority, direct the responsible authority that it shall not adopt the plan or programme, or submit it to the legislative procedure for adoption, until the consultations with the Member State have been concluded.

(5) Where consultations take place pursuant to subsection (4), the Minister shall—

- (a) as soon as reasonably practicable after those consultations begin, notify the consultation bodies of that fact; and
- (b) notify the consultation bodies and, where he is not the responsible authority, the responsible authority, of the outcome of the consultations.

#### **Plans and programmes of other Member States.**

14.(1) This section applies where the Minister receives from a Member State a copy of a draft plan or programme—

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

(2) The Minister shall indicate to the Member State whether, before the adoption of the plan or programme or its submission to the legislative procedure for adoption, he wishes to enter into consultations in respect of that plan or programme concerning—

- (a) the likely transboundary environmental effects of implementing the plan or programme; and
- (b) the measures envisaged to reduce or eliminate such effects.

(3) Where the Minister so indicates, he shall agree with the Member State concerned—

- (a) detailed arrangements to ensure that the consultation bodies and the public in Gibraltar that is likely to be significantly affected by the implementation of the plan or programme, are informed and given an opportunity to forward their opinion within a reasonable time; and
- (b) a reasonable time for the duration of the consultations.



(4) Where such consultations take place under this section, the Minister shall—

- (a) inform the consultation bodies of the receipt of the draft plan or programme;
- (b) provide them with a copy of the draft plan or programme and the relevant environmental report provided under Article 7.1 of the Directive or specify the address (which may include a website) at which those documents may be inspected;
- (c) take such steps as he considers appropriate to bring the receipt of the draft plan or programme to the attention of such persons as, in his opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan or programme concerned, required under the Directive (“the transboundary consultees”);
- (d) inform the transboundary consultees of the address (which may include a website) at which a copy of the draft plan or programme and the relevant environmental report provided under Article 7.1 of the Directive may be inspected, or from which a copy may be obtained; and
- (e) invite the consultation bodies and the transboundary consultees to forward to him their opinions within such period as he may specify.

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

(6) Nothing in subsection (4)(d) shall require the Minister to provide copies free of charge; but where a charge is made, it shall be of a reasonable amount.

#### **PART 4**

#### **POST-ADOPTION PROCEDURES**

##### **Information as to adoption of plan or programme.**

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

- (a) make a copy of the plan or programme and its accompanying environmental report available at its principal office for inspection by the public at all reasonable times and free of charge; and
  - (b) take such steps as it considers appropriate to bring to the attention of the public—
    - (i) the title of the plan or programme;
    - (ii) the date on which it was adopted;
    - (iii) the address (which may include a website) at which a copy of it and of its accompanying environmental report, and of a statement containing the particulars specified in subsection (4), may be viewed or from which a copy may be obtained;
    - (iv) the times at which inspection may be made; and
    - (v) that inspection may be made free of charge.
- (2) As soon as reasonably practicable after the adoption of a plan or programme—
- (a) the responsible authority shall inform—
    - (i) the consultation bodies;
    - (ii) the persons who, in relation to the plan or programme, were public consultees for the purposes of section 12; and
    - (iii) where the responsible authority is not the Minister, the Minister; and
  - (b) the Minister shall inform the Member State with which consultations in relation to the plan or programme have taken place under section 13(4), of the matters referred to in subsection (3).
- (3) The matters are—
- (a) that the plan or programme has been adopted;
  - (b) the date on which it was adopted; and
  - (c) the address (which may include a website) at which a copy of—

- (i) the plan or programme, as adopted,
- (ii) its accompanying environmental report, and
- (iii) a statement containing the particulars specified in subsection (4), may be viewed, or from which a copy may be obtained.

(4) The particulars referred to in subsections (1)(b)(iii) and (3)(c)(iii) are—

- (a) how environmental considerations have been integrated into the plan or programme;
- (b) how the environmental report has been taken into account;
- (c) how opinions expressed in response to—
  - (i) the invitation referred to in section 12(2)(d);
  - (ii) action taken by the responsible authority in accordance with section 12(4),  
  
have been taken into account;
- (d) how the results of any consultations entered into under section 13(4) have been taken into account;
- (e) the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with; and
- (f) the measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme.

**Monitoring of implementation of plans and programmes.**

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

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

**PART 5****GENERAL****Relationship with other Community Legislation.**

17.(1) Subject to subsection (2), where a Community provision other than the Directive requires that an environmental assessment be carried out this Act shall not affect that requirement.

(2) In respect of a plan or programme in respect of which the Directive and another Community provision simultaneously require that an environmental assessment be carried out, the responsible authority may take appropriate measures to ensure that the environmental assessment is not duplicated.

**Regulations.**

18. The Government may make regulations—

- (a) for the purposes of giving effect to the provisions of the Directive;
- (b) for any purpose connected with or incidental to this Act; or
- (c) for compliance with any European Union obligation.

**Amendment of schedules.**

19. The Government may amend the schedules to this Act by a notice published in the Gazette.

**SCHEDULE 1**

Sections 8(2)(a) and 9(4)(a)

**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.

**SCHEDULE 2**

Sections 11(3) and (4)

**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 conservation of wild birds 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. The likely significant effects on the environment, including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects, on issues such as—
  - (a) biodiversity;
  - (b) population;
  - (c) human health;
  - (d) fauna;
  - (e) flora;
  - (f) soil;
  - (g) water;
  - (h) air;

- (i) climatic factors;
- (j) material assets;
- (k) cultural heritage, including architectural and archaeological heritage;
- (l) landscape; and
- (m) the inter-relationship between the issues referred to in subparagraphs (a) to (l).

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.

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 section 16.

10. A non-technical summary of the information provided under paragraphs 1 to 9.



**SCHEDULE 3**

Section 4(2)(b)

This Schedule reproduces Annexes I and II of Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC.

**Annex I****Projects subject to Article 4 (1)**

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2. Thermal power stations and other combustion installations with a heat output of 300 megawatts or more, and

- nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors<sup>1</sup> (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3.(a) Installations for the reprocessing of irradiated nuclear fuel.

(b) Installations designed:

- for the production or enrichment of nuclear fuel,
- for the processing of irradiated nuclear fuel or high-level radioactive waste,
- for the final disposal of irradiated nuclear fuel,
- solely for the final disposal of radioactive waste,
- solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4. - Integrated works for the initial smelting of cast-iron and steel;

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<sup>1</sup> Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

- Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilization of more than 200 tonnes per year.
6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:
- (i) for the production of basic organic chemicals;
  - (ii) for the production of basic inorganic chemicals;
  - (iii) for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);
  - (iv) for the production of basic plant health products and of biocides;
  - (v) for the production of basic pharmaceutical products using a chemical or biological process;
  - (vi) for the production of explosives.
- 7.(a) Construction of lines for long-distance railway traffic and of airports<sup>2</sup> with a basic runway length of 2,100 m or more;
- (b) Construction of motorways and express roads<sup>3</sup>;
- (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 km or more in a continuous length.

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<sup>2</sup> For the purposes of this Directive, 'airport' means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

<sup>3</sup> For the purposes of the Directive, 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

8.(a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes;

(b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.

9. Waste disposal installations for the incineration, chemical treatment as defined in Annex IIA to Directive 75/442/EEC<sup>4</sup> under heading D9, or landfill of hazardous waste (i.e. waste to which Directive 91/689/EEC<sup>5</sup> applies).

10. Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

12.(a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;

(b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 % of this flow.

In both cases transfers of piped drinking water are excluded.

13. Waste water treatment plants with a capacity exceeding 150 000 population equivalent as defined in Article 2 point (6) of Directive 91/271/EEC<sup>6</sup>.

14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 m<sup>3</sup>/day in the case of gas.

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<sup>4</sup> OJ No L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 94/3/EC (OJ No L 5, 7.1.1994, p.15).

<sup>5</sup> (2) OJ No L 377, 31.12.1991, p.20. Directive as last amended by Directive 94/31/EC (OJ No L 168, 2.7.1994, p.28).

<sup>6</sup> OJ No L 135, 30.5.1991, p.40. Directive as last amended by the 1994 Act of Accession.

15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
16. Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km.
17. Installations for the intensive rearing of poultry or pigs with more than:
  - (a) 85 000 places for broilers, 60 000 places for hens;
  - (b) 3 000 places for production pigs (over 30 kg); or
  - (c) 900 places for sows.
18. Industrial plants for the
  - (a) production of pulp from timber or similar fibrous materials;
  - (b) production of paper and board with a production capacity exceeding 200 tonnes per day.
19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.
20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.
21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.
22. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.

## **ANNEX II**

### **PROJECTS SUBJECT TO ARTICLE 4 (2)**

#### **1. Agriculture, silviculture and aquaculture**

- (a) Projects for the restructuring of rural land holdings;
- (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;

(c) Water management projects for agriculture, including irrigation and land drainage projects;

(d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;

(e) Intensive livestock installations (projects not included in Annex I);

(f) Intensive fish farming;

(g) Reclamation of land from the sea.

## **2. Extractive industry**

(a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);

(b) Underground mining;

(c) Extraction of minerals by marine or fluvial dredging;

(d) Deep drillings, in particular:

— geothermal drilling,

— drilling for the storage of nuclear waste material,

— drilling for water supplies,

with the exception of drillings for investigating the stability of the soil;

(e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

## **3. Energy industry**

(a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);

(b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);

(c) Surface storage of natural gas;

(d) Underground storage of combustible gases;

(e) Surface storage of fossil fuels;

- (f) Industrial briquetting of coal and lignite;
- (g) Installations for the processing and storage of radioactive waste (unless included in Annex I);
- (h) Installations for hydroelectric energy production;
- (i) Installations for the harnessing of wind power for energy production (wind farms).

#### **4. Production and processing of metals**

- (a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;
- (b) Installations for the processing of ferrous metals:
  - (i) hot-rolling mills;
  - (ii) smitheries with hammers;
  - (iii) application of protective fused metal coats;
- (c) Ferrous metal foundries;
- (d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);
- (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;
- (f) Manufacture and assembly of motor vehicles and manufacture of motor vehicle engines;
- (g) Shipyards;
- (h) Installations for the construction and repair of aircraft;
- (i) Manufacture of railway equipment;
- (j) Swaging by explosives;
- (k) Installations for the roasting and sintering of metallic ores.

#### **5. Mineral industry**

- (a) Coke ovens (dry coal distillation);
- (b) Installations for the manufacture of cement;
- (c) Installations for the production of asbestos and the manufacture of asbestos-products (projects not included in Annex I);
- (d) Installations for the manufacture of glass including glass fibre;
- (e) Installations for smelting mineral substances including the production of mineral fibres;
- (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

## **6. Chemical industry (Projects not included in Annex I)**

- (a) Treatment of intermediate products and production of chemicals;
- (b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;
- (c) Storage facilities for petroleum, petrochemical and chemical products.

## **7. Food industry**

- (a) Manufacture of vegetable and animal oils and fats;
- (b) Packing and canning of animal and vegetable products;
- (c) Manufacture of dairy products;
- (d) Brewing and malting;
- (e) Confectionery and syrup manufacture;
- (f) Installations for the slaughter of animals;
- (g) Industrial starch manufacturing installations;
- (h) Fish-meal and fish-oil factories;
- (i) Sugar factories.

## **8. Textile, leather, wood and paper industries**

- (a) Industrial plants for the production of paper and board (projects not included in Annex I);

- (b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;
- (c) Plants for the tanning of hides and skins;
- (d) Cellulose-processing and production installations.

### **9. Rubber industry**

Manufacture and treatment of elastomer-based products.

### **10. Infrastructure projects**

- (a) Industrial estate development projects;
- (b) Urban development projects, including the construction of shopping centres and car parks;
- (c) Construction of railways and intermodal transshipment facilities, and of intermodal terminals (projects not included in Annex I);
- (d) Construction of (projects not included in Annex I);
- (e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);
- (f) Inland-waterway construction not included in Annex I, canalisation and flood-relief works;
- (g) Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);
- (h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;
- (i) Oil and gas pipeline installations (projects not included in Annex I);
- (j) Installations of long-distance aqueducts;
- (k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
- (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;



(m) Works for the transfer of water resources between river basins not included in Annex I.

### **11. Other projects**

- (a) Permanent racing and test tracks for motorized vehicles;
- (b) Installations for the disposal of waste (projects not included in Annex I);
- (c) Waste-water treatment plants (projects not included in Annex I);
- (d) Sludge-deposition sites;
- (e) Storage of scrap iron, including scrap vehicles;
- (f) Test benches for engines, turbines or reactors;
- (g) Installations for the manufacture of artificial mineral fibres;
- (h) Installations for the recovery or destruction of explosive substances;
- (i) Knackers' yards.

### **12. Tourism and leisure**

- (a) Ski-runs, ski-lifts and cable-cars and associated developments;
- (b) Marinas;
- (c) Holiday villages and hotel complexes outside urban areas and associated developments;
- (d) Permanent camp sites and caravan sites;
- (e) Theme parks.

13. Any change or extension of projects listed in Annex I or Annex II, already authorized, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I);

- Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.