

L.N. 418 of 2005

**ENVIRONMENT PROTECTION ACT
(CAP. 435)**

Strategic Environmental Assessment Regulations, 2005

BY VIRTUE of the powers conferred by article 17 of the Environment Protection Act, the Minister for Rural Affairs and the Environment has made the following regulations:-

1. (1) The title of these regulations is the Strategic Environmental Assessment Regulations, 2005. Citation, commencement and objective.

(2) These regulations shall come into force on such date as the Minister responsible for the environment may by notice in the Gazette appoint.

(3) These regulations transpose the provisions of 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.

(4) The objective of these regulations is to provide for a high level of protection of the environment, including health, and to contribute to the integration of environmental and health considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with these regulations, a strategic environmental assessment is carried out on plans and programmes which are likely to have significant effects on the environment.

2. (1) In these regulations, unless the context otherwise requires: Interpretation.

“the Act” means the Environment Protection Act;

“the Competent Authority” means the Strategic Environment Assessment Audit Team (SEA Audit Team) appointed in accordance with Schedule 6 and which for the purposes of Article 6.3 of Directive 2001/42/EC shall also act as the Designated Authority for Malta;

“environmental” or “environmental, including health” means any effect on the environment, including human health, flora, fauna, biodiversity, soil, climate, air, water, landscape, natural sites,

material assets, cultural heritage and the interaction among these factors;

“environmental report” means the part of the plan or programme documentation containing the information required in regulation 8 and in accordance with Schedule 1 to these regulations;

“identified stakeholders” means departments and agencies of Government, local councils, non-government organisations or any other body identified by the Competent Authority, as having an interest in the plan or programme, or interest in the environmental impacts of the plan or programme, and may include, where applicable, the designated authorities of other Member States referred to in Article 6. 3 of Directive 2001/42/EC which may be affected by the implementation of the plan or programme;

“Designated Authority of another Member State” means any Designated Authority appointed by any Member State in accordance with Article 6.3 of Directive 2001/42/EC which by reason of their specific responsibility is likely to be concerned by environmental effects of implementing plans and programmes”;

“implementing agency” means the agency that is responsible for the implementation of the plan or programme;

“the Minister” means the Minister responsible for the environment;

“make available to the public” means publishing, by electronic means in the Government Gazette or in at least one daily newspaper in the English language and in the Maltese language, a notice indicating where the document may be viewed or acquired; the price of the said document shall not exceed the cost of its printing and distribution;

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

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

“plan or programme description statement” means a description of the proposed plan or programme;

“proponent” means the person responsible for the preparation of the plan or programme, and may include the Chairman or Chief Executive of a Public agency, the Director General of a Division, the Director of a Department, or any other person;

“protected sites” means sites and property, on land and off shore which are protected under the Act or the Development Planning Act, or in subsidiary legislation under these Acts;

“scoping report” means the report that sets out the terms of reference of the strategic environmental assessment and may contain the items listed in Schedule 3 to these regulations;

“significant environmental effects” means the significant effects of plans and programmes as per the criteria indicated in Schedule 4 to these regulations;

“strategic environmental assessment” means 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 these regulations;

“the public” means one or more natural or legal persons and, in accordance with Maltese legislation or practice, associations, organisations or groups.

(2) All other terms shall have the same meaning as is assigned to such word or expression in the Act, the Development Planning Act and subsidiary legislation under these Acts.

Cap. 356.

3. (1) A proponent shall notify the Competent Authority of his intention to prepare a plan or programme before the adoption or submission to the legislative procedure of any plan or programme which requires a strategic environment assessment in accordance with these regulations.

Notification to Competent Authority and submission of a plan or programme description statement.

(2) The proponent shall, after notifying the Competent Authority in accordance with subregulation (1) hereof, submit a plan or programme description statement.

(3) The Competent Authority shall ensure that the plan or programme description statement referred to in subregulation (2) provides sufficient detail for it to be able to identify the likely effects on the environment, such that it may determine whether a Strategic Environmental Assessment is required, and shall ensure that it contains the items referred to in Schedules 2 and 4 to these regulations.

Scope and main obligations.

Screening.

(4) The Competent Authority shall, after the submission of the plan or programme description statement by the proponent, indicate to the proponent whether the plan or programme requires a strategic environmental assessment, in accordance with the provisions of these regulations and the criteria laid down in Schedule 5 to these regulations.

Strategic environment assessment to be carried out.

4. (1) The proponent shall ensure that a strategic environment assessment in accordance with these regulations is carried out during the preparation of a plan or programme and before its submission to the legislative procedure:

Provided that in preparing the strategic environment assessment the proponent shall carry out an evaluation of the likely significant environmental effects, including health. This would comprise the determination of the scope of an environmental report and its preparation, the carrying out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in decision-making, and the provision of information on the decision in accordance with these regulations.

(2) The proponent shall carry out a strategic environmental assessment in accordance with these regulations for all plans and programmes referred to in Schedule 5 to these regulations, which are likely to have significant environmental effects:

Provided that plans and programmes referred to in Schedule 5, which determine the use of small areas at local level and minor modifications to such plans and programmes shall require a strategic environmental assessment only where the Competent Authority determines that they are likely to have significant environmental effects.

(3) The Competent Authority may require the proponent of plans and programmes, other than those referred to in paragraph (b) of Schedule 5, including those which set the framework for future development consent projects, that they be subjected to a strategic

environmental assessment if it determines that such plans and programmes are likely to have significant environmental effects.

(4) The Competent Authority shall assess whether plans or programmes 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:

Provided that the Competent Authority shall in all cases take into account relevant criteria set out in Schedule 4, in order to ensure that plans and programmes with likely significant effects on the environment are covered by these regulations.

(5) The Competent Authority shall ensure that when carrying out the case-by-case examination and in specifying types of plans and programmes in accordance with subregulation (4), the designated authorities shall be consulted.

5. The following plans and programmes are not subject to any of the obligations under these regulations:-

Plans and programmes not subject to obligations.

(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 that are co-financed under the current respective programming periods for Council Regulations (EC) No. 1260/1999 and (EC) No. 1257/1999.

6. Any person acting as a proponent under these regulations, shall ensure that the procedures established under these regulations are complied with:

Persons acting as proponents.

Provided that where plans and programmes form part of a hierarchy, the Competent Authority shall in order to avoid duplication of the strategic environment assessment take into account the fact the assessment will be carried out in accordance with these regulations at different levels of the hierarchy.

7. The Competent Authority shall inform the proponent of its decision to require the plan or programme to be subjected to a strategic environmental assessment within eight weeks from the receipt of the plan or programme description statement, and in accordance with regulation 10 shall make this decision available to the public:

Requirement that plan be subjected to assessment.

Provided that such time limit can be extended in the event that the Competent Authority needs to consult or requires further information from the proponent prior to taking a decision on the matter.

Environmental report.

8. (1) Where a strategic environmental assessment is required under regulations 3 and 4 of these regulations, 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 Schedule 1 to these regulations.

(2) The environmental report prepared pursuant to subregulation (1) hereof 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 legislation in force may be used for providing the information referred to in Schedule 1 to these regulations.

(4) The designated authorities shall be consulted, where applicable, when deciding on the scope and level of detail of the information, which must be included in the environmental report.

Date of formal preparatory acts.

9. These regulations shall apply to the plans and programmes of which the first formal preparatory act was subsequent to 21st July 2004. 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 paragraph (a) of Schedule 5 unless the Competent Authority decides on a case by case basis that this is not feasible and informs the public of its decision.

Conclusions to be made available to public.

10. The Competent Authority shall ensure that its conclusions pursuant to subregulation (3) of regulation 4, including when it decides that the plan or programme does not require a strategic environmental assessment in accordance with these regulations, will be made available to the public.

11. In the event that the Competent Authority decides that the plan or programme does require a strategic environmental assessment, the proponent shall upon notification of the decision, taken by the Competent Authority in accordance with regulation 4, prepare a draft scoping report and send it to the Competent Authority.

Draft scoping report.

12. (1) The proponent shall make a copy of the plan or programme description statement and a copy of the draft scoping report available to the identified stakeholders and the public, requesting them to send their comments to the Competent Authority within eight weeks from receipt of the plan or programme description statement, and the draft scoping report, or according to such timeframe agreed with the Competent Authority.

Consultations on draft scoping report.

(2) The Competent Authority shall send these comments to the proponent within ten days from receipt.

13. Where the Competent Authority is aware that a plan or programme 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 Competent Authority shall before any plans or programmes are adopted or submitted to the legislative procedure send to the Designated Authority of the other Member State as soon as possible and before its adoption or submission to the legislative procedure the following:

Procedures to be followed when a plan or programme is likely to have transboundary impacts.

(a) a copy of the draft plan or programme, the plan or programme description statement, together with any other available information on the possible transboundary impacts;

(b) a copy of the relevant environment report;

(c) relevant information regarding the strategic environmental assessment procedure;

(d) information on the nature of the decisions which may be taken:

Provided that the Competent Authority shall give the Designated Authority of the other Member State, eight weeks or any other reasonable time in agreement with the proponent and the affected State in question, in which to indicate whether it wishes to enter into consultations before the adoption of the plan or programme or its submission to the legislative procedure:

Provided further that if the Designated Authority of the other Member State indicates that it wants to enter into consultations, the Competent Authority shall ensure that the affected Member State would be able to enter into such consultations concerning the likely transboundary effects of the plan or programme and the measures envisaged to reduce or eliminate such effects.

Plans and programmes that are likely to have significant environmental effects in another State.

14. (1) Whenever the proponent sends documentation pertaining to the plan or programme or the relative strategic environmental assessment to an affected Member State, the proponent shall enter into consultations with the identified stakeholders, indicated by the Designated Authority of the other Member State, concerning the likely transboundary environmental effects of implementing the plan or programme and the measures, including the adoption of alternatives, envisaged to reduce or eliminate such effects.

(2) Where such consultations take place, the proponent shall agree with the identified stakeholders on detailed arrangements to ensure that these identified stakeholders and the public in the State likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable timeframe.

(3) The proponent shall inform and give the opportunity to the Designated Authority of the other Member State likely to be significantly affected, to forward its opinion, within a reasonable timeframe:

Provided that during consultations, the proponent shall agree with the identified stakeholders of the other Member State at the beginning of such consultations, on a reasonable timeframe for the duration of the consultations.

Plans and programmes of another State that are likely to have significant environmental effects in Malta.

15. (1) In the event that the Competent Authority is informed of the preparation of a plan or programme in another Member State, the Competent Authority as the Designated Authority for Malta in accordance with Article 6.3 of the Directive, if it deems that the implementation of the plan or programme is likely to have significant effects on the environment in Malta, the Competent Authority shall inform the Designated Authority of the other Member State concerned accordingly. Moreover, the Competent Authority, prior to the adoption of the plan or programme or its submission to the legislative procedure for adoption, shall seek to enter into consultation with the Designated Authority of the State concerned in respect to:

(a) the likely effects of the implementation of the plan or programme on Malta; and

(b) the measures envisaged to reduce or to eliminate such effects.

(2) The Competent Authority shall if it deems it necessary, seek to agree with the Designated Authority of the other Member State concerned on:

(a) detailed arrangements to ensure that the identified stakeholders and the public in Malta 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.

(3) Where such consultations take place, the Competent Authority shall request the Designated Authority of the Member State concerned to forward the draft plan or programme and the relevant environmental report. The Competent Authority shall make these available to the identified stakeholders and the public, and shall invite them to forward their opinions within a specified timeframe.

16. The proponent shall revise the draft scoping report in the light of consultations with the Competent Authority, the identified stakeholders, the public and any transboundary consultations. The proponent shall send the revised scoping report to the Competent Authority and shall also make it available to the consultees prior to commencing work on the environmental report.

Revision of the scoping report following consultations.

17. The proponent shall prepare the draft environmental report in accordance with the revised scoping report and including the information in Schedule 1 to these regulations. Preparation of environmental report.

Preparation of environmental report.

18. (1) The proponent may enter into consultation with departments and agencies of Government, including local councils, to determine whether they have in their possession any information which the proponent considers relevant to the preparation of the environmental report and, if they have such information, such departments and agencies of Government shall make it available to the proponent, provided that such departments and agencies of Government shall not be required to disclose any information which, in terms of any law, is considered to be confidential or secret.

Information held by departments and agencies of Government.

(2) A reasonable charge reflecting the cost of making the relevant information available may be made by a body supplying information sought by the proponent.

Review of the environmental report.

19. (1) The proponent shall send a copy of the draft environmental report and the draft plan or programme to the Competent Authority, the identified stakeholders.

(2) The Competent Authority and the identified stakeholders shall review the draft environmental report against the scoping report and the items in Schedule 1 to these regulations.

(3) The Competent Authority shall establish a time limit within which the identified stakeholders shall submit their comments to the Competent Authority. Such time limit shall not be more than 16 weeks from the date of receipt of the draft environmental report.

(4) The Competent Authority may specify in its comments any additional information that is required and, where relevant, the level of detail required.

(5) The Competent Authority shall send a report incorporating these comments, to the proponent for his/her consideration within 24 weeks from receipt of the draft environmental report.

First revision of the environmental report and consultations.

20. (1) The proponent shall revise the environmental report in the light of consultations with the Competent Authority and identified stakeholders.

(2) The proponent shall send a copy of the revised environmental report to the Competent Authority and identified stakeholders, explaining how the comments of the Competent Authority and the identified stakeholders have been taken into consideration.

(3) The proponent shall make the revised environmental report and the draft plan or programme available to the public. The proponent shall also notify the public of the preparation of the environmental report and of the relevant plan or programme, and invite the public to submit its comments on the environmental report within eight weeks from the date of this notification.

Second revision of the environmental report, and of plan or programme.

21. (1) Following this consultation period the proponent shall amend the environmental report and the related plan or programme as necessary.

(2) The proponent shall send the Competent Authority and the identified stakeholders a report setting out:

(a) all comments made by the identified stakeholders and the public;

(b) how these comments were, or were not, taken into consideration and integrated in the plan or programme;

(c) how environmental considerations were integrated into the plan or programme;

(d) how the environmental report was taken into account into the plan or programme;

(e) any monitoring measures that will be adopted during the implementation of the plan or programme.

(3) The proponent shall make this report available to the public.

22. (1) Within 30 days from receipt of the report in regulation 21, the Competent Authority shall send an opinion report to the Minister and the proponent indicating: Opinion report to Minister.

(a) whether the obligations in these regulations have been followed by the proponent;

(b) the envisaged significant impacts on the environment resulting from the implementation of the plan or programme. In providing this opinion, the Competent Authority shall not be bound by the conclusions reached in the environmental report:

Provided that the Competent Authority shall give due regard to the conclusions reached in the environmental report when providing this opinion. Moreover, the Competent Authority shall provide the reasons why it accepts or does not accept the conclusions reached by the said environmental report.

(2) The Competent Authority shall make this opinion report available to the public.

(3) It is the responsibility of the proponent to address any issues identified in regulation 22(1)(a) of these regulations.

23. (1) The implementing agency shall monitor the implementation of the plan or programme as indicated in the environmental report. Monitoring of implementation.

(2) The implementing agency shall send monitoring reports to the Competent Authority, and as agreed with the Competent Authority.

(3) The implementing agency shall make a non-technical summary of the monitoring report; the implementing agency shall make this non-technical summary available to the public.

(4) The Competent Authority shall review these monitoring reports and advise the implementing agency accordingly.

(5) The implementing agency shall take remedial measures in agreement with the Competent Authority in the event that the monitoring reports reveal significant unforeseen environmental impacts.

Property of the Authority.

24. (1) Any document submitted by the proponent or on behalf of the proponent in connection with these regulations shall be deemed to be the property of the Competent Authority insofar as the Competent Authority shall be empowered to reproduce the contents of any such document at the Competent Authority's discretion.

Access of information to the public.

(2) The Competent Authority shall provide access to these documents to the public in accordance with Legal Notice 116/2005 on Freedom of Access to Information on the Environment.

Commercial and industrial confidentiality.

(3) The provisions of these regulations shall not affect the obligation of the Government of Malta to respect the limitations imposed by any law in force in Malta with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

Advisory and quality control function of the Authority.

25. (1) The Competent Authority may provide the proponent and his consultants, as applicable, with an advisory and quality control function throughout this process and may levy such fees and charges it may deem appropriate.

(2) The Competent Authority may formulate, adopt and publish guidance for the better implementation of these regulations.

SCHEDULE 1

Information to be included in the Environmental Report

The following information shall be provided in the Environmental Report:

(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 protected sites;

(e) the environmental protection objectives, established at international, European or national 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 transboundary effects on such issues 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 scheme to monitor the impacts of the implementation of the plan or programme, any records which the owner of the plan or programme shall keep for the purpose of monitoring the environmental impacts of the plan or programme;

(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.

SCHEDULE 2

Items that may be included in the Plan or Programme Description Statement

- (i) title of the plan or programme;
- (ii) details of the proponent;
- (iii) details of the implementing agency, if different from (ii);
- (iv) a brief description of the matters to be covered by the plan or programme, including its general economic, social and environmental objectives;
- (v) a description of the general strategy to be employed, and any alternative methods considered, in reaching the social, environmental and economic objectives of the plan or programme;
- (vi) an indication of the proposed timing of the plan or programme and why this timing was preferred;
- (vii) an indication of the environmental implications of the plan or programme;
- (viii) the boundaries of the plan or programme;
- (ix) whether and how it sets framework for future development consent as required by the Development Planning Act, as amended;
- (x) links with other plans or programmes, existing or proposed;
- (xi) applicability of other relevant legislation, such as the Flora, Fauna and Natural Habitats Protection Regulations, 2003;
- (xii) a list of identified stakeholders;
- (xiii) an opinion whether the plan or programme will have any transboundary effects;
- (xiv) an opinion on whether a strategic environmental assessment of the plan or programme is required.

SCHEDULE 3

Items that may be included in the Scoping Report

- Relation with existing legislation, policies, and other plans or programmes and their objectives, with information on potential synergies or conflicts:
- Baseline information, either already collected or still needed, with notes on sources and any problems encountered:
- Likely significant environmental effects and constraints, and how these were identified:
- Proposed SEA objectives, indicators and targets, where these are proposed, and how they were chosen:
- The alternative options which it is proposed to consider in more detail:
- Proposals for monitoring
- Proposals on assessment methodologies, including consultation strategy:
- Proposals for the structure and level of detail of the Environmental Report.

SCHEDULE 4

Criteria to determine the likely significance of effects on the environment of plans and programmes

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 Regulations 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, European or international protection status.

SCHEDULE 5

Criteria to determine if a plan or programme requires to be subjected to a Strategic Environmental Assessment

A strategic 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 of the 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

SCHEDULE 6

1. The Competent Authority shall be the Strategic Environment Assessment Audit Team that will be composed of a Chairperson and two other members. The competent authority shall be serviced by MEPA.

2. The Chairperson and the members of the Team shall be appointed by the Prime Minister from among persons who in the opinion of the Prime Minister are persons of known integrity and who appear to him to have knowledge and experience in matters relating to the strategic environment assessment of plans and programmes.

3. The Chairperson and the members of the Team shall hold office for a period of three years and shall be eligible for reappointment.

4. The Chairperson and a member of the team may only be removed from office by the Prime Minister on the grounds of gross negligence, incompetence or acts, omissions or conduct unbecoming a member of the Board.