

*Guidance on procedures for
environmental assessments
of bills and other
Government proposals*

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- cf. Administrative Order
No. 31 of 26 February 1993
(later replaced by Administrative Order
No. 12 of 11 January 1995)
issued by the Danish Prime Minister's Office

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Preface

This Guidance is the English Translation of the Danish publication "Råd om fremgangsmåde ved miljøkonsekvensvurdering af lovforslag og andre regeringsforslag" printed in 1993.

The purpose of the Guidance is to facilitate environmental assessments for other ministries.

Changes has been made compared with the Danish publication, due to the fact that The Administrative Order No. 31 of 26 February 1993 recently has been replaced by The Administrative Order No 12 of 11 January 1995.

We want to thank Patrice LeBlanc, Director General at The Canadian Environmental Assessment Agency (CEAA) for his review of the English Translation.

1. Introduction

On 26 February 1993, the Prime Minister's Office issued a new Administrative Order regarding commentaries made on bills and other government proposals. The new administrative order requires all ministries to prepare a statement on the environmental consequences of bills and other proposals introduced after October 1, 1993 if they are likely to have significant environmental effects. In addition, assessments of environmental effects should be made when administratively feasible and when data are available. The ministry putting forward the proposal is responsible for evaluating and explaining whether the bill/government proposal has significant environmental effects and for undertaking an assessment of the environmental effects, if necessary. The Administrative Order is based on Report No. 1243 1992 prepared by the Danish Ministry of Finance on "The Effects of Public Regulations for Business, Industry and Environment".

On 23 June 1993, the Folketing Committee on the Environment and Physical Planning delivered a report on B 69 "Motion for parliamentary resolution concerning strengthening of environmental planning and priorities (The Ecological Perspective)".

In this Guidance, the Ministry of Environment and Energy provides advice on the assessment of environmental effects. However, it is the individual ministry which decides whether the Ministry of Environment and Energy is to be involved. The provisions of the Administrative Order is supportive of the general trend towards integrating environmental considerations in planning and decision-making processes. The aim of this is to support the goal of sustainable development as outlined in the Brundtland Report, at the RIO Conference on Environment and Development and in the EU's Fifth Environmental Action Programme and to support the requirements

of the UN-ECE's Convention on Environmental Impact Assessment in a Trans-boundary Context. Consequently, this is consistent with the need and trend at the international level to apply the principles of environmental assessment to policy, plan and programme proposals or what is known as strategic environmental assessment.

Recently, the EU adopted an internal decision to integrate the environment protection requirements into the development of EU policies, for example through the use of strategic environmental assessments. The UN-ECE published a report of a task force which contains a number of recommendations on the environmental assessment of policies, plans and programmes. In this report, public reviews or hearings are recommended as part of the strategic environmental assessments, one of the purposes being to ensure that local opinions and expertise are included in the planning and decision-making process.

The Administrative Order issued by the Prime Minister's Office requires the Danish Government and Folketing to assess the environmental effects of bills/government proposals in the same way as other effects of bills/government proposals are assessed. The Administrative Order aims to introduce on a gradual basis a procedure for integrating environmental considerations into the planning and decision-making process. Thus an evaluation should be made of the environmental effects of various options of implementing the specific regulations and for defining any preventive and/or remedial measures.

Experience with the environmental policy so far shows that it is less costly and easier to prevent adverse environmental effects than it is to repair the damage afterwards. At the same time, a large number of effects will be long-term or even irreversible so that it will not be possible to restore the damage in the short term.

The Administrative Order provides for a flexible process to be applied to the environmental assessment of bills/government proposals. To facilitate the process, the Ministry of Environment and Energy has prepared this publication together with a check-list. The check-list can be used to determine which bills/government proposals may have a significant effect on the environment and which, therefore, should be subjected to a more detailed assessment of the environmental effects.

2. Contents of strategic environmental assessments

The strategic environmental assessment should include an evaluation of the beneficial and adverse changes in pollution and health and the possible effects on resources, natural and cultural conditions. For some years, the application of environmental assessment to projects has been carried out in connection with physical planning and environmental protection measures (e.g. environmental impact statements (EIS)).

In Denmark, there has not previously been any requirements for strategic environmental assessments of bills/government proposals. Nevertheless a good many analyses incorporating the principles and elements of environmental assessment have been carried out by the Danish Ministry of Environment and Energy, e.g. the environmental action plan for energy and the Aquatic Environment Programme and by other ministries, e.g. environmental action plans for transport and agriculture.

However, there is a need to further develop procedures and methods for the application of environmental assessment to bills/government proposals. The Danish Ministry of Environment and Energy regards environmental assessment as a systematic process which enables better data and information resulting in better bills/government proposals being developed. Procedures and methods have already been developed, both for specific projects and for general regulations, and the Danish Ministry of Environment and Energy has initiated further development activities in this area. Strategic environmental assessment, which will be carried out in the years to come in the individual ministries will be an important area requiring further development of principles, procedures and methods.

The Administrative Order identifies that the appropriate ministries are responsible for carrying out the strategic environmental assessments and for their contents. The analysis can be carried out by the ministry itself or by consultants. The two research institutions of the Ministry of Environment and Energy, the National Environmental Research Institute and the Geological Survey of Denmark, have large data collection and expertise which can be utilised in conducting strategic environmental assessments.

3. What environmental effects should be described

In the following, a description is given of the factors which should be included in a strategic environmental assessment.

The following areas should, according to the Administrative Order, be addressed for the purposes of strategic environmental assessments:

- health and safety;
- flora and fauna;
- soil;
- water;
- air;
- climate;
- landscape;
- resources;
- buildings; and
- cultural heritage.

The Ministry of Environment and Energy recommends, if significant effects are involved, that an assessment of these on quantities of waste should be included, too. The effects on human health (e.g. noise level) should also be included.

The activities can have direct or indirect effects on the different components of the environment. The effect may be beneficial or adverse. In certain situations, the effects on the environment may interact in such a way that the overall effect on the environment is increased.

The Report on "The Effects of Public Regulations for Business, Industry and Environment" identifies that, in the preparation of strategic environmental assessments, consideration be given to the fact that the environmental effects of public regulations can be at different geographical scales:

- The local environment

Environmental effects in the local environment comprises all those in the immediate vicinity, e.g. local pollution of air, soil, water and ecosystems; local consumption of resources and waste generation; changes in noise and traffic patterns; and modifications to the landscape, countryside, open spaces and aesthetics (the visual aspects).

- The regional environment

Environmental effects on the regional environment typically comprise those over a large area and region and include flows of substances in the air, soil, water and ecosystems; and major changes of natural areas and the flora and fauna mostly of a national or transboundary scale.

- The global environment

Environmental effects of a global scale comprises effects which are spread all over the globe. By way of example, these can mentioned include climate change; depletion of the ozone layer; changes in marine current and the marine environment, global resources (e.g. fossil fuels, metals and rain forests); desertification; and biodiversity.

In most cases, the environmental effects of national rules will be at a local and regional scale. With respect to the global environment, the description will include Denmark's share of the responsibility for the international environmental effects, where this is relevant.

4. Determining the need for a strategic environmental assessment

The Ministry of Environment and Energy recommends the following method based on the attached check-list to determine if a strategic environmental assessment is needed:

- First, the principal issues in the check-list (heading level) are used to determine whether the bill/government proposal will have significant environmental effects or if it is necessary to examine the potential effects in more detail. If the use of the check-list leads to the conclusion that the bill/government proposal may have significant environmental effects in relation to one or more of the issues or that it should be examined in detail, a more detailed analysis should be carried out. If the bill/government proposal is found to have minor or insignificant environmental effects, no further analysis is required. If, on the other hand, the bill/government proposal involves multiple environmental effects, each of which is minor, these may, taken together or cumulatively, represent a significant environmental effect which should be further assessed.

This means:

- If, in the opinion of the relevant ministry, it is determined that there are no significant environmental effects, this should be stated in the commentaries on the bill/government proposal.

- In the case of bills/government proposals having significant effects or which require further analysis, the appropriate ministry must decide the scope and level of the environmental assessment to be carried out. This can be done by means of the sub-questions of the check-list.
- Finally, the detailed analysis or assessment should be carried out for specific issues which, according to the check-list, the effects are considered as significant, and should be examined more closely.

At present, it is not possible to give an overall description of when environmental effects are significant. It depends on a number of factors which should be reviewed, including:

- Does the bill/government proposal affect the possibilities of ensuring sustainable development or preventing environmental damage?
- Are the environmental effects contrary to or will they make it difficult to comply with established environmental objectives, policies or guidelines, e.g. for discharges into water or emissions to the air; for environmental quality; noise; and preservation of habitats and the diversity of the flora and fauna?
- Does the effect in question involve any particular risk or is it particularly harmful or irreversible, e.g. emission of heavy metals or toxic substances?
- Will the effect in question affect large geographical areas or involve particularly radical changes in the ecological or landscape structures or in the land use of local areas?
- Is the area affected particularly vulnerable or sensitive, for example, areas like coastal zones, habitats for rare or endangered species or areas of a specific recreational value?

The Ministry of Environment and Energy expects that, in time, as specific strategic environmental assessments are carried out and the information and knowledge base and methods improved and the environmental objectives, policies and guidelines developed, it will be possible to define more precisely the significance of the environmental effects.

Check-list for determining the need for a strategic environmental assessment of a bill or any other government proposal

The check-list is to enable a quick evaluation as to whether a bill/government proposal will have any significant environmental effects. If the conclusion is that the bill/government proposal is found to have minor or insignificant environmental effects, it should be stated in the documentation attached to the bill/government proposal that it is not likely to have any significant environmental effects. If, on the other hand, the bill/government proposal involves multiple environmental effects, each of which is minor, these may, taken together, represent a significant environmental effect which would require the proposal to be subject to a more detailed analysis or assessment.

If the results of the analysis based on the check-list leads to the conclusion that the bill/government proposal may have significant environmental effects in relation to one or more of the issues or to the conclusion that a more detailed assessment is required, a strategic environmental assessment should be carried out.

The check-list can be used to first evaluate whether the bill/government proposal has potential effects within any environmental area identified under the heading level. In the case, where there are significant environmental effects, only then should the sub-questions be considered.

The environmental effects can be both beneficial and adverse, and account should be taken of short-term and long-term as well as direct and indirect effects. Direct environmental effects include those associated with construction projects, e.g. the building of power stations, and increased production/consumption, e.g. car purchases. Indirect environmental effects include those associated with using the construction project/product, e.g. the effect of increased energy consumption or motoring.

Account should also be taken of transboundary environmental effects. This applies especially to issues associated with air and water pollution, climate change and wildlife.

Identification of the environmental effects of the bill or any other government proposal

Is the bill/government proposal believed to cause a change in or an effect on:

should be minor
significant examined significant insignificant

- 1. **Water**
- 1.1 **Surface water**
 - Discharges of organic or inorganic substances, including toxic substances, into lakes and watercourses?
 - Discharges into coastal areas or marine waters?
 - Quantity of surface water or water level?
 - Quality of salt water or freshwater?
 - Natural ecosystems and habitats in salt water or freshwater?
 - Drinking water supply or reserves?
 - Consumption/withdrawal of water?
- 1.2 **Groundwater**
 - Percolation to groundwater?
 - Groundwater quality?
 - Quantity of groundwater?
 - Drinking water supply or reserves?
 - Consumption /withdrawal of water?
- 2. **Air**
 - Emissions into the air?
 - Air quality (e.g. acid gases, particulate or toxic substances)?
 - Obnoxious smells?
 - Change in precipitation quality ?
- 3. **Climate**
 - Emissions of greenhouse gases or other substances affecting the climate, temperatures?
 - Other factors, including deforestation, which may cause local or global changes in climate?

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- 4. **Surface of the earth, soil and percolations**
 - Applicability or cultivation value of the soil?
 - Percolation or accumulation of toxic or hazardous substances in the soil?
 - Water or wind erosion?
 - Soil in the case of changes in groundwater level?
 - The structure of the strata?
- 5. **Flora and fauna, including habitats and biodiversity**
 - The number of wild plants or animals of any species or the distribution pattern of species?
 - The number or distribution pattern of rare or endangered species?
 - Import or export of new species to/from this country for deliberate release into the environment, including the deliberate release of genetically modified organisms ?
 - Quality or quantity of habitats for fish and wildlife?
 - Structure or function of natural ecosystems?
 - Vulnerable natural or uncultivated areas (e.g. bogs, heaths, uncultivated dry meadows, salt marshes, swamps and coastal meadows, watercourses, lakes, humid permanent grasslands and coasts)?
 - The reproduction or natural patterns of movement or migration of fish and wildlife species?
 - Cultivation methods or land use in the agricultural or forestry sectors?
 - Fisheries, catches or the methods applied in deep-sea or freshwater fishing?
 - Open-air activities or traffic in the countryside which may affect the flora and fauna or cause wear and tear on the vegetation?

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Is the bill/government proposal believed to cause a change in or an effect on:

6. Landscapes

- The total area or the land use within areas used, for example, for farming, towns, summercottages, industrial plants and installations as well as forests or coastal and natural areas (dunes, heaths, bogs, etc.)?
- Geological processes such as formation and erosion of the coast, sand drifts, soil drifts, water erosion?
- Geological structures in the landscape like river valleys, ridges, coastal structures (e.g. cliffs and dunes)?
- Permanent restrictions on the land use which reduce the future possibilities of use of the open land?
- The extent or appearance of archaeological or historical sites, buildings and plants, parks or other material assets?

7. Other resources

- Cultivation, cutting, catching or use of renewable resources, e.g. trees, fish or wildlife?
- Exploitation or use of non-renewable resources such as fossil fuels, minerals, raw material, (gravel, sand, stone)?

8. Waste

- Wastes, residues or quantities of waste disposed of, incinerated, destroyed or recycled?
- Treatment of waste or its application on land?

9. Historical buildings

- Buildings, with architectural, culture or historical value and with possibilities of preservation and restoration?

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- Buildings and historical monuments which require repair because of a change of the groundwater level or air pollution?

10. Population's health and well-being

- Acute and/or long term health risk (including mental health) in connection with food, drinking water, bathing water, soil, air, noise or handling of hazardous or toxic substances etc.?
- Risk associated with ionising or non-ionising radiation?
- Risk associated with exposure to noise?
- Recreational experiences and facilities, including changes in the physical appearance of landscapes, natural or uncultivated areas?
- The function and environment of towns, including green areas in towns and recreational facilities?
- Aesthetic values or visual experiences (e.g. scenery, urban environment or cultural/historical monuments)?

11. Production, handling or transport of hazardous or toxic substances

- Risk of fire, explosions, breakdowns or accidents and emissions?
- Risk of leaks of environmentally alien or genetically engineered organisms?
- Risks associated with the effects of electromagnetic fields?
- Risk of radioactive leaks?
- Risk of breakdowns or accidents during transport of substances and materials?
- Other effects related to the security and safety of the population (e.g. traffic, accidents, chemical substances or leaks)?

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