

Law In Force

### 9.— Determinations of the responsible authority

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

- (a) paragraph (4)(a) and (b) of regulation 5;
- (b) paragraph (6)(a) of that regulation; or
- (c) paragraph (6)(b) of that regulation,

is likely to have significant environmental effects.

(2) Before making a determination under paragraph (1) the responsible authority shall—

- (a) take into account the criteria specified in Schedule 1 to these Regulations; 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.

#### Commencement

Pt 2 reg. 9(1)-(3): July 20, 2004

#### Extent

Pt 2 reg. 9(1)-(3): United Kingdom

#### The level of scrutiny to be applied to SEA Environmental Reports

Criticism was also made in the *Seaports Investments* case of the substantive content of the environmental reports. Weatherup J. gave useful guidance on the approach of the court to allegations that SEA environmental reports were substantively defective:

"26.

The responsible authority must be accorded a substantial discretionary area of judgment in relation to compliance with the required information for environmental reports. The court will not examine the fine detail of the contents but seek to establish whether there has been substantial compliance with the information required by Sch.2. It is proposed to consider whether specified matters have been addressed rather than considering the quality of the address."

Thus the court will look not to the fine detail but instead to whether particular matters have actually been addressed. This is in keeping with the approach adopted in this jurisdiction as regards the sufficiency of environmental statements required under the EIA Regulations. See per Ouseley J. in *R. (Bedford & Clare) v Islington LBC and Arsenal FC* [2003] Env. L.R. 22, at para.203:

"203.