



Simpler and Better

The Environmental Planning Act: the main changes

SIMPLER AND BETTER

The Environmental Planning Act (in Dutch: ‘Omgevingswet’ and therefore abbreviated as OW) is a bill which aims to renew the regulation of human activities with an effect on the physical environment. It is part of the Dutch ‘Simpler and Better programme’.

Why an Environmental Planning Act?

The purpose of the Environmental Planning Act (OW) is twofold. With a view to sustainable development it sets out a coherent approach to achieve and maintain a safe and healthy physical environment and a good environmental quality, and it enables the efficient management, use and development of the physical environment for social purposes.

One of the principles in drafting the Act was to align it with EU legislation. An analysis of EU directives revealed a number of recurring elements or building blocks, though they are not all found in every directive. These elements are part of a policy cycle that underlies the structure of the OW. A comprehensive strategy describes the policy objectives and quality standards for the physical environment. These can be achieved through plans/programmes and permits or general binding rules, which will be monitored and enforced. If progress is found to be insufficient, instruments may be tightened, thus ensuring the achievement of objectives.

The OW and its implementing legislation implement or re-implement the Netherlands’ obligations under EU directives. These obligations have in no way been compromised. Where possible, the OW uses EU terms and definitions. The EU obligations are specified in the annex to the Bill and in Chapter 8 of the explanatory memorandum.

Clustering and streamlining

The OW will entirely or partially replace about 15 existing acts of parliament and incorporate the area-based components of eight other acts. In the future, at least ten other acts may be incorporated into the OW by legislative amendments, including components concerning general environmental policy, e.g. on hazardous substances and products. In addition, after parliamentary proceedings on the Nature Conservancy Act have been completed, it too will be incorporated into the OW in its entirety. All planning and decision-making concerning the physical environment will ultimately be regulated by a single Act with a single set of six uniform core instruments. The OW will remove the divisions between laws and prescribe in a systematic way what needs to be regulated by act of parliament and what by order in council, and will offer a uniform terminology. For instance, the new term ‘quality standards for the physical environment’ will replace the current terms target value, limit value and preferential value.

In drafting the Environmental Planning Act, the following principles have been applied:

- maintaining existing levels of protection;
- development-driven and integrated approach;
- more closely in line with EU legislation: the system's working method will be closely aligned with EU directives
- based on existing division of responsibilities of governmental authorities;
- trust in government and private parties as the departure point.

Coherence ensures quality

Currently, every part of the physical environment is 'covered' by several acts with a sectoral basis which serve specific interests. The legislative coherence created by the OW will lead to more consistent government action based on a single strategy on the physical environment at national and provincial levels, and a single (area based) plan at local level. By considering all the aspects necessary for a safe and healthy living environment, sustainable solutions can be developed. The government will be able to integrally assess new developments thanks to integrated environmental permitting and integral decisions at project level.

More room for discretion and flexibility

The new Act will introduce several grounds for flexibility, so that solutions can be tailored to specific situations. These will primarily be laid down by orders in council. The programmatic approach will enable environmental objectives to be pursued through specific programmes, without impeding the progress of individual projects. This increased flexibility at project level is possible because the programmatic approach weighs the effects of all projects together.

The OW will incorporate the Crisis and Recovery Act's provisions concerning local development plans, aimed at opening up areas closed to development; it will also incorporate the provision to create scope for experimental projects, to be identified by order in council. The obligation to periodically update area-based plans will be scrapped, as well as the requirement that new uses must be achieved within ten years. Rules on land development will be relaxed. Taken together, these changes will contribute to a more organic spatial development. Renewal and development will also be promoted by allowing unused space, which was originally earmarked for development under a permit, to be 'freed up' after a certain period of time has lapsed without negative effects in terms of planning blight.

Community responsibility

The explanatory memorandum to the OW explains at length the principle of giving responsibility for spatial planning back to the

community, and working on the basis of trust. The Act prescribes a general duty of care. This means that everyone, including individuals and businesses, has a duty to consider the impact of their activities on the environment. Where the impact is likely to be negative, measures must be taken to prevent, restrict or reverse these effects. Activities are allowed provided this principle is upheld (a 'qualified yes' rather than a 'qualified no').

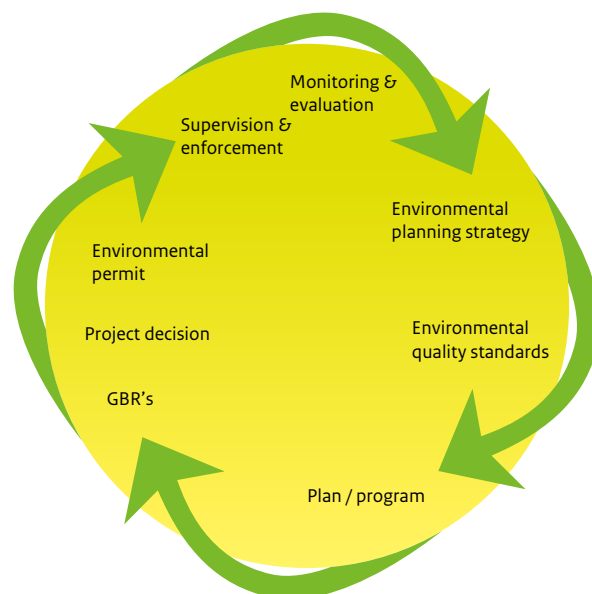
The instruments

Environmental Planning Strategies

The environmental policy plan, strategic water policy, the transport plans, the planning policy strategy and parts of the nature policy plan will all be incorporated into the environmental planning strategy. Central and provincial authorities will be required to draft comprehensive strategies for their territories, which weigh all the interests together.

Plans and programmes

Water authorities will be responsible for tasks in the water domain. Water programmes drafted by national and provincial authorities and water authorities will include implementing policy. The Bill also incorporates spatial and environmental plans based on EU directives, such as the action plan on noise, which implements the Environmental Noise Directive.



This figure shows the main instruments in the OW; the application of these instruments is a cyclical process. Some of these instruments are described in more detail here below.

Local authorities, water authorities, and provincial and national authorities also work according to programmes. These programmes are not necessarily comprehensive. A bicycle programme, for

instance, is a specific (sectoral) plan, as is a landscape quality plan. A programme can also combine different sectoral interests, e.g. water and nature. A programme contains concrete measures which are currently laid down in sections on implementation in strategic plans or policy strategies. A programme also describes how standards or area-based objectives will be pursued. Except in a few special cases, only the administrative authority that adopts a programme is bound by it, and they may draft programmes according to need. Sometimes, however, a programme must be drafted in order to satisfy EU requirements, for instance on noise, catchment area management, flood management, water management in general, and nature management.

A programmatic approach is a special type of programme, setting out a specific roadmap for achieving quality standards for the physical environment and policy objectives. A programmatic approach is not just a set of economic or other projects – it also sets out measures to achieve policy objectives. Though standards may initially be exceeded, projects in a programmatic approach may be carried out because there are plausible grounds for assuming that this will be compensated elsewhere in the programme or brought into line at a later date. The programme must also identify additional measures that may be taken if it appears likely that required values or objectives will not be achieved.

Integrated environmental permit

Integrated environmental permits grant permission for activities relating to, for instance, construction, the environment, cultural heritage, spatial planning, water and earth removal. The developer independently decides for which activities he wishes to apply for permission. He can decide to submit a single application for all the activities for which a permit is required, or submit multiple applications over a period of time. The developer bears responsibility for ensuring that he has the right permits at the right time. Other features of the new permitting system are the dedicated website for lodging applications and one competent permitting authority. The government will ensure uniform procedures are in place for processing applications and issuing permits. The new permitting system is based not on establishments, but on activities. This enables standards to be adopted that have a stronger focus on 'actions' and tie in better with EU terminology.

Project decisions

The OW will introduce a single procedure for large-scale complex projects, known as the project decision. The project decision will ensure that central and provincial authorities issue all required planning permissions in a coordinated manner at the same time. If necessary, permission may be issued in stages, in consultation with the developer. The project decision will replace existing instruments for complex projects that serve a public interest, such as power plants, wind farms or motorway reconstruction. Central government and the provincial authorities have the power to carry a project through if other tiers of government fail to issue the necessary permits when they are required.

General binding rules at national level

General binding rules at national level are usually sufficient to regulate activities by individuals and businesses in the interests of protecting the physical environment. Such general binding rules mean that individuals and businesses do not have to apply to the government for permission on a case-by-case basis, so that they can start the desired activity more quickly. The Act accordingly provides that, where possible, activities should be regulated by means of general binding rules rather than permitting. Permitting will still be required for activities which are likely to have a significant impact on the physical environment and where an assessment of the specific situation is required. Permitting is always required where this is laid down in EU directives.

The national government lays down general binding rules in orders in council. Local and provincial authorities and water authorities may also draw up general binding rules concerning certain activities if national rules on the issue are incomplete. In addition to the general binding rules, there may be an obligation to notify the authorities of the implementation of certain activities.

Environmental impact assessment (EIA)

The OW will simplify the use of existing EIA instruments, enhancing their use as a decision-making aid while reducing the research burden on businesses. Currently, EIA is widely regarded as a hurdle to be overcome before an activity can be started, not as an instrument to ensure careful preparation. By clarifying the procedure and integrating it into other decision-making processes, the instrument will probably be applied more effectively. In any case, the procedure will comply with the EIA and SEA Directives. The EIA Directive sets out what activities are likely to have significant environmental effects. These are always subject to EIA. Where it is not certain what the environmental effects of a project will be, a screening must first be performed on a case-by-case basis.

The introduction of a screening, instead of mandatory assessment, for plans or programmes at local level, involving smaller areas or small changes, will also reduce the research burden. The administrative authority concerned has the freedom to decide, in consultation with the developer, what environmental information is required – the scope, the level of detail and alternatives – in order to make a sound decision. Aligning the EIA procedure as closely as possible with the rest of the decision-making procedure will avoid overlap and ensure that the environmental information required complements other information needed in order to decide on the plan or project.

If the screening reveals there is no need for an EIA for a particular project, this does not need to be laid down in a separate decision, but may be explained, giving reasons, in the draft project decision. The EIA Committee's mandatory advice for projects will be converted into discretionary advice (advice for plans will still be mandatory).

Currently, the Environmental Management Act describes two separate procedures for an EIA for projects. These have been

integrated into a single procedure in the OW, in order to enhance transparency and clarity for users, administrative authorities and developers. Research into the effects of alternatives is an important component of EIA, and is prescribed in the SEA Directive. Further rules on research into alternatives will be laid down by order in council. Under the EIA Directive, such research is not mandatory for individual projects, but it may significantly enhance the quality of decision-making in certain cases. The OW will enable the competent authority to arrange tailor-made research into alternatives, focusing on those alternatives that are most relevant for the decision to be made.

Implementing legislation

The OW will achieve legislative integration. Its level of abstraction is unavoidably high, in view of the multitude of provisions to be included in it from the 15 sectoral acts. Further details will largely be delegated to implementing legislation (orders in council and ministerial orders), with a view to ensuring good legislative quality wherever possible.

The orders in council relating to existing sectoral, area-based legislation and the orders in council setting out further rules with regard to the OW will be integrated and fleshed out in three decrees ('clusters'). There will probably be a fourth cluster once environmental legislation on products and substances is also incorporated into the OW. The decrees will be drawn up in accordance with the principles underpinning the OW: EU law will be taken as the point of departure, existing levels of protection will be maintained, existing divisions of responsibilities of governmental authorities will be retained, and procedures will be simplified and streamlined. In addition, orders in council will in principle be incorporated into one of the decrees unless there are good reasons for not doing so.

The three decrees will be:

- the Environmental Planning Decree, which will contain general and procedural provisions applicable to all (individuals, businesses and administrative authorities);
- the Physical Environment (Quality) Decree, which will contain practical rules, standards and administrative instructions. It will apply to administrative authorities responsible for applying the instruments of the OW;
- the Physical Environment (Activities) Decree, which will contain general binding rules with direct effect concerning activities in the human environment, applicable to the actions of individuals, businesses and government authorities.

Colofon

Ministry of Infrastructure and the Environment

Simpler and Better programme

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