

## Environmental Assessment (Scotland) Bill

### Briefing for Stage 1 Debate – 16 June 2005

Scottish Environment LINK welcomes this bill. Strategic Environmental Assessment is a tool for factoring in environmental consideration at the beginning of the decision making process. Enshrining SEA in primary legislation, fit for Scotland, is a significant step towards factoring the environment into decision making. The introduction and application of Strategic Environmental Assessment should help us avoid many long-term costs of having to rectify environmental damage arising from inappropriate policy decisions. It should implement the **Partnership Agreement** commitment to:

*... legislate to introduce strategic environmental assessment to ensure that the full environmental impacts of all new strategies, programmes and plans developed by the public sector are properly considered.*

**1. Gateway or independent body.** Success or failure of the Strategic Environmental Assessment process in Scotland will depend on the system which underpins it. Experience from Environmental Impact Assessment (EIA) procedures has shown that EIAs are highly variable in quality and reliability. Inevitably, individual EIAs, produced primarily by private developers result in significant duplication of effort, limited data sharing and poor post-construction verification or monitoring.

The SEA bill applies to the public sector where such a failure to adopt best value approaches which are cost effective and consistent across all sectors will not be acceptable. If Scottish Ministers are to achieve their stated goal of making Scotland a world leader in SEA, and if the system is to operate as effectively and efficiently as possible four key functions will be needed:

- **The creation and management of a publicly available internet-based SEA register** capable of being searched, which provides copies of relevant reports, scoping and screening decisions, public notices and the results of any monitoring work.
- **A central access point to co-ordinate activity, provide guidance and advice** in order to ensure consistency and avoid duplication.
- **A body to act as an arbiter in case of dispute**
- **A body to audit quality of environmental reporting and implementation of SEA**

An SEA Gateway, as currently proposed, will receive screening and scoping opinions, environmental reports and the plans, programmes and strategies to which they relate. The obligation to place these documents on the various websites operated by responsible authorities is a welcome first step but will not encourage cross-sector co-operation, data-sharing or aid the identification of cumulative impacts.

The roles, function and future of the SEA Gateway are not fixed in legislation; so there is no guarantee that even the critical functions, which the Gateway undertakes, will be maintained. Previous experience has shown that after legislation passes, such support can be lost. With community planning; a year after the focus on it passed - the task force and website ceased.

A Gateway will have no arbitration role in the event of disputes nor undertake any monitoring or quality control. It appears that it will be responsible for recording plans submitted but not necessarily in a format or location which can be accessed by the public. In terms of advice, guidance and support, each of the Responsible Authorities are undertaking their own individual training and development work for SEA which is not necessarily being co-ordinated or run in conjunction with the SEA Gateway. This represents a duplication of effort, could lead to a lack of consistency and is not the most effective use of public money.

Without duplicating the expertise of consultation authorities, an independent SEA body or commission would co-ordinate and support the work they will continue to undertake more effectively. It could provide co-ordinated training, advice and guidance more efficiently as well as provide some of the effective monitoring that will be critical quality control for all plans, programmes and strategies. An independent body or a modified version of the SEA Gateway could be given the power of arbitration in the event of a dispute.

**An independent SEA body** undertaking these four key functions would make sure the system works properly and provide other benefits. A report commissioned from Strathclyde University examined this and can be found at [www.scotlink.org](http://www.scotlink.org) or by clicking on this link –

[An independent body to oversee strategic environmental assessment in Scotland: bureaucratic burden or efficient accountable administration?](#) Elsewhere (Netherlands, Latvia, Canada, Hong Kong etc.), Environmental Assessment Commissions have been established as independent bodies, improving the effectiveness and efficiency of these SEA systems.

**Without an independent body, statutory provision should be made for the SEA Gateway, at the very least , with the identification of key functions as listed above.**

**2. Pre-screening** Screening for whether a strategy, programme or plan is subject to SEA should be done once and done properly, in an open and accountable way. There are concerns that pre-screening (which could be used as an easy opt out) would not be transparent. We do not support the introduction of pre-screening. If it is to remain, it should be done in an open, accountable manner and be subject to challenge with decisions published, perhaps on the SEA register.

The bill introduces the term, 'minimal effect'. We have been unable to identify any precedent for this concept in other legislation. If '*..all new strategies, programmes and plans..*' are subject to an assessment, then this will determine whether there is an environmental effect or not. Allowing a subjective judgement by the authority responsible for the plan, programme or strategy as to whether the effect is going to be minimal or not beforehand undermines the whole process. This legislation seeks to bring an understanding of the environmental consequences of policy making to those areas of the Scottish Administration, which may not previously have appreciated the environmental impact they may have. Consequently they may not be in a position to adequately assess whether their plan, programme or strategy is of no or minimal significance to the environment.

**3. Financial or budgetary plans:** It is unclear why financial or budgetary plans, programmes or strategies have been excluded from screening for potential environmental impact. The allocation of resources can have critical environmental implications and should be subject to the same screening provisions as other plans, programmes and strategies. As a tool, SEA could help make the implications of budgetary process more transparent to both Parliament and the public, thereby improving scrutiny and accountability. As it stands, changes to spending plans, for example to cut the budget to deliver the warm deal, recycling or public transport programmes would have significant environmental implications, but would not be screened.

**4. Public Accountability:** Any document produced by a private company appears to be excluded, even if the plans, programmes or strategies are about issues of a public character. It seems it is the Minister intention that public functions are covered by the legislation, but as drafted, the legislation does not cover these. For example, Scottish Water plans would be covered while those for the Grid – such as the upgrade of the Beaulieu Denny line – would not.

**5. Environmental Justice:** As drafted, this system may be unable to address environmental effects on health or across boundaries. Three Consultation Authorities are identified - Scottish Natural Heritage, Historic Scotland and Scottish Environment Protection Agency. These have a significant range of skills, but it would not be fair to suggest that they can address all of the information which is required for the Environmental Report. In particular, the extent to which they can deal with issues relating to human health or population may be questioned. The requirement for transboundary effects to be considered is critical to the delivery of environmental justice. Greater flexibility in selecting appropriate Consultation Authorities may be an appropriate function for the SEA Gateway or an independent SEA body.

**6. Data Issues:** We support any initiative which will aid the efficient use of existing data in order to inform the SEA process and monitor implementation. However, not all environmental issues will be subject to existing data collection. A lack of data should not amount to an assumption that there is no environmental issue. The SEA Gateway or an independent body should be tasked with evaluating and identifying any obvious data gaps, enabling data sharing and advising responsible authorities when additional data collection or monitoring is required and the Executive issue guidance on appropriate sources and use of data.

**Scottish Environment LINK recommends that Parliament supports the general principles of the Environmental Assessment (Scotland) Bill.**

LINK supports the progressive move to legislate properly for SEA in Scotland, but is concerned that the issues outlined above need to be addressed in order not to undermine the system as a whole. This legislation presents an opportunity for Scotland to become a leader in Europe while becoming more efficient and effective in its own decision making. If SEA had been used in the past, we would not be unravelling costly mistakes like inappropriate sitka afforestation across the country. Fundamentally, this step forward should demonstrate that Scotland values its natural environment.

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