

SEA Bill Consultation
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Response by the Scottish Environment LINK to the Consultation on the Proposed Environmental Assessment (Scotland) Bill

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Scottish Environment LINK is the forum for Scotland's voluntary environment organisations comprised of 36 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society. The organisations listed below have expressed support for this response.

We welcome this consultation as a significant step towards meeting the 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'*. It marks an important step towards putting the environment at the heart of government and is markedly better than the limited scope for SEA introduced by the Regulations and Directive. In seeking to broaden the application of SEA, we should avoid many of the long-term costs of having to rectify environmental damage arising from inappropriate policy decisions.

Key points

- The term 'strategies' has not been included in the legislation – this gives cause for concern and does not reflect the Partnership Agreement commitment. While we appreciate that defining the term 'strategies' may be difficult there are no definitions for plans and programmes in the legislation therefore we do not see any valid reason why the term strategies should be excluded. We strongly recommend that the term strategies or policies be included in the bill if the Partnership Agreement is to be fully met;
- We strongly recommend the establishment of an independent body with the ability to ensure quality and consistency in the use of SEA;
- The effective application of the bill will depend on those implementing it understanding exactly what they are being required to do. At this stage the bill is very light on definitions, many of which will be critical to its effective implementation, for example
 - S.6 (2)(a) 'minimal significance'

- S.5 (1)(a) 'first formal preparatory act'
- S.11 (1)(c) 'adopted' or 'submitted to a legislative procedure'

Scottish Environment LINK are currently considering undertaking further work on the issue of definitions and we will be happy to advise the Executive of any results in due course.

Consultation Paper Questions

Q1. Should we have pre-screening?

No. Having considered Sections 5 and 6 of the draft Bill it appears that there are three tiers of plans and programmes under this new legislation:

- Those which are subject to exemptions e.g. plans or programmes which relate to individual schools, financial or budgetary plans and programmes etc;
- Those which the responsible authority decide will be of no or minimal significance in relation to the environment; and
- Those which responsible authorities will determine need or do not need SEA. This conclusion will be reached using the criteria set out in Schedule 2, in consultation with the consultation authorities and will be subject to a requirement to publicise the decision.

Those plans and programmes falling into the 2nd tier cause confusion – how does the responsible authority reach the conclusion that their plan or programme will have no or minimal significance for the environment given that there is no requirement to use the criteria in Schedule 2? There is no requirement to publicise the decision so how can the public find out what decision was made and why? We appreciate that this is an attempt to reduce the administrative burden upon the Executive and on the consultation bodies but we believe it undermines confidence in the process and is neither open nor transparent decision-making.

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.

We do not recommend pre-screening but instead recommend that as part of the Executive's ongoing monitoring and review process that further exemptions could be added in accordance with the power given to Scottish Minister in Section 5(b) to modify the list of plans and programmes subject to exemptions. In the interim, the process will benefit from all applicable plans, programmes and strategies being subject to the expert scrutiny of the consultation authorities. Alternatively the pre-screening process should be altered to provide transparency and an opportunity to challenge decisions.

Q2. How should we administer screening and other elements of the SEA system?

Effective administration of this process is critical. In order of preference:

Option 2: Offers the greatest range of benefits. We appreciate a free standing body may at first appear to demand additional costs but we believe it offers significant added value and avoids concerns regarding impartiality. Experience of meeting the EIA Directive has shown that many bodies are forced to duplicate expertise, causing unnecessary expense; there has been an absence of any quality control and huge amounts of data have been gathered only to sit on shelves rather than be collated in any sensible way.

Will it really cost more? If it can absorb part or all of the demands on the consultation bodies will it not simply mean that the costs, which would have been met by three separate bodies, will be pooled to create a more effective and less bureaucratic body?

The structures set up to implement the SEA process must provide not only effective and streamlined administration of a new process but ensure that process itself actually delivers. The form this body takes may need further consideration but there is significant merit in establishing a body, which can oversee, direct and support a new and effective process. In the Netherlands, Canada and Poland, for example, bodies of this type have been established to support and oversee SEA or EIA work.

The question of impartiality must arise when Scottish Ministers are acting as judge and jury over their own plans, programmes and strategies – a separate/arms length body will overcome public doubts and avoid legal challenges.

Option 5: A specialist team housed together as a single gateway – essentially very similar to Option 2 but suggesting less autonomy.

Option 1: Scottish Administrative gateway with the Scottish Executive. Not an ideal solution but we welcome the indication that this gateway would provide guidance on SEA to those preparing plans. With additional duties relating to quality control and monitoring the SEA Gateway would be significantly improved.

We currently see very limited merit in Options 3 or 4.

Q3. What plans etc should be subject to screening?

We recommend all plans, programmes and strategies should be subject to screening unless the responsible authority has already determined that they will undertake SEA – much like the EIA Regulations there seems little point in seeking a screening opinion if the responsible authority has already determined to undertake SEA. The decision should, of course be publicised in accordance with Section 9 of the draft Bill.

Q4. Should there be a timescale for Screening?

The suggested 28 days seems appropriate, assuming there would be scope to modify this in circumstances where the scale or scope of the plan, programme or strategy meant that a longer time period was necessary.

Q5. Should Scottish Ministers determine in cases of dispute?

Only if the screening process is delegated to an arms-length body as discussed in Question 2. Some form of dispute resolution is necessary, however, for the public to have confidence in the process Scottish Ministers cannot perform every function in the chain of decision making – responsible authority, consultation authority and final arbiter.

Q6. What should be in environmental reports?

The suggestion that each environmental report would be enhanced by the use of a core set of indicators is interesting. We are concerned that SEA will rapidly become devalued as a useful process if those undertaking it feel that they cannot use reliable and appropriate baseline data. The use of a core set of indicators would not only allow a comparison between Environmental Reports but would help ensure that for at least some aspect of the ER sufficient, accurate baseline data is available to encourage informed assessments. Obviously, the indicators produced by the Scottish Executive are intended to cover economic and social issues as well as environmental; therefore, it may be necessary to expand upon some of the environmental indicators listed.

Whatever form of administration is established for the SEA process we strongly recommend that effective co-ordination of data either currently available or generated by future SEAs should be a key role for the administrative body.

Q7. Should environmental reports also include social and economic information?

No. The development of SEA was caused by past policy making processes where economic and social issues dominated decision-making. The SEA Directive establishes a clear process for incorporating environment into decision-making and appropriate methodologies have been developed to support this. While public bodies are obviously free to address economic and social issues should they so wish we do not support any statutory requirement to do so.

Q8. What should be the arrangements for monitoring?

Monitoring is critical to the plan, programme or strategy making process and to evaluating whether the SEA undertaken was of any worth. We recommend that monitoring proposals should be clearly set out in the Environmental Report and evaluated by the arms-length body discussed above.

Q9. Should we have additional exemptions?

We would recommend that exemptions be used rather than pre-screening unless pre-screening is modified to include public notification and an opportunity for challenge.

Q10. How can we improve the administration and operation of SEA?

As noted above either the SEA Gateway or an arms length body should undertake all the actions listed with the addition of the following:

- Quality control (Article 12 of Directive)– random sampling of ER's, guidance, advice, training etc.
- Monitoring – evaluation of monitoring proposals,
- Consistency – ensure consistent approach to screening, reports etc.

Additional Comments on the Draft Bill

- We welcome the power of Scottish Ministers to call for a plan or programme at any time in order to carry out a determination;
- We welcome the fact that Scottish Ministers can also modify the consultation period if they believe it to be inadequate;
- We are disappointed that financial and budgetary plans are still excluded and recommend that this be modified;
- We remain perplexed that there is still no explanation of the relationship with Appropriate Assessment under Habitats Directive (Article 11 of Directive)
- We suggest that an opportunity has been missed under Article 13(4) which asks Member States to communicate to the Commission information on the types of plans and programmes which would be subject to SEA – to be updated on a regular basis. Member States had to do this before 21 July 2004 and will be asked to keep doing so. We believe this presents an opportunity for Scotland to share best practice with the rest of Europe and are surprised that no reference is made to this reporting element in the legislation.

Scottish Environment LINK has 36 member bodies with a joint membership of over 500,000 individuals. Many of these member bodies anticipate that the introduction of a SEA will offer Scotland a significant advantage by identifying potential environmental issues at the earliest possible stage in policy making.

Yours sincerely



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LINK SEA Task Force Convenor

The following LINK member organisations support this statement:

Association of Regional and Island Archaeologists
Biological Recording in Scotland
Butterfly Conservation Scotland
Cairngorms Campaign
Council for Scottish Archaeology
Friends of the Earth Scotland
John Muir Trust
Marine Conservation Society
The National Trust for Scotland

Plantlife Scotland
Ramblers Association Scotland
RSPB Scotland
Scottish Countryside Activities Council
Scottish Countryside Rangers Association
Scottish Native Woods
Scottish Wild Land Group
Scottish Wildlife Trust
Sustrans Scotland
Woodland Trust Scotland
WWF Scotland