

Scottish Environment LINK evidence to the Environment and Rural Development Committee on the Environmental Assessment (Scotland) Bill

April, 2005

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.

We welcome this bill as a significant step towards putting the environment at the heart of government and note that it 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.

Ensuring an effective and efficient SEA process

The success or failure of the SEA process in Scotland will be highly dependent 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.

An independent body to oversee SEA

Scottish Environment LINK has commissioned a report from the University of Strathclyde to consider the issues surrounding the creation of an independent body to co-ordinate work on SEA. This report has been previously circulated to the committee and is also available from the LINK website (www.scotlink.org).

This research concludes that 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 as possible there are four key functions which must be considered, namely:

- **The creation and management of a publicly available internet-based SEA register** which is 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, and 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 the quality of environmental reporting and implementation of SEA**

The SEA Gateway, as currently proposed, will receive screening and scoping opinions, environmental reports and the plans, programmes and strategies to which they relate. This does not appear to apply to public notices, ministerial directions or any monitoring work, nor is there an obvious requirement to make these documents publicly available via a searchable, web-based register. 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.

Critically the roles, function and future of the SEA Gateway are not fixed in legislation; there is therefore no guarantee that even those critical functions, which the Gateway does currently undertake, will be maintained.

The Gateway will have no arbitration role in the event of disputes nor will it undertake any monitoring or quality control. It would appear that the Gateway 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 and guidance we understand that each of the Responsible Authorities are currently 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. We believe this represents a duplication of effort and not the most effective use of public money. An independent SEA body need not duplicate the expertise of consultation authorities but instead more effectively co-ordinate and support the work they will continue to undertake.

Recommendations:

- 1. That the Committee consider the many benefits arising from our proposal for the creation of an independent SEA body to undertake the four key functions listed above.**
- 2. Should the committee not be minded to create an independent body to oversee the SEA process that statutory provision be made for the SEA Gateway including the identification of key functions as listed above.**

PART 1 – ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

Definitions and Scope

We welcome the inclusion of the term ‘strategies’ in the bill. However, there remain a number of important definitional gaps in the legislation, in particular:

s.7(1)(b) ‘*minimal effect*’ – we have been unable to identify any precedent for this concept in other legislation and have concerns that it could lead to unnecessary debate resolvable only through the courts. If the committee were to adopt our recommendation that pre-screening be dropped there would be no need to define this concept further.

s.12(1) (a)&(b) ‘*adopted*’ and ‘*has been submitted to a legislative procedure for the purposes of its adoption*’ – many plans, programmes or strategies are never formally adopted or submitted to a legislative procedure, for example the National Planning Framework, or the Agriculture Strategy, both documents we feel are covered by this legislation.

Recommendations

- 3. We recommend the removal of the term ‘minimal effect’ and the combination of the screening and pre-screening procedures.**
- 4. That the committee consider how the matter of adoption might be clarified in order to prevent responsible authorities utilising any appropriate plans, programmes or strategies, which have not been produced using SEA.**

Responsible Authorities s.2(4) and s.5(4)

We welcome the very broad definition of responsible authorities set out in s.2(1) but it is disappointing that this definition is then significantly narrowed by s.2(4). Section 5(4) then uses this narrower definition to exclude private companies producing strategies which are not covered by the mandatory requirements of the Directive. While this is open to interpretation the extent to which private companies will ever produce documents which ‘*set the framework for development consents*’, thereby making SEA a mandatory requirement, is doubtful. Even a strategy setting out options for transmission upgrades, while falling clearly into one of the stated sectoral categories in s.5(3)(a)(i), is likely only to set out a series of proposals for which development consent will be sought, **NOT** set a framework for those consents.

If this analysis is correct then the legislation as currently drafted appears to exclude almost any document produced by a private company even if those plans, programmes or strategies were about issues of a public character.

Recommendation:

- 5. That the committee consider the extent to which it wishes to exclude documents produced by private bodies relating to activities of a public character.**

Limited range of Consultation Authorities s.3

In s.3 the bill identifies the three Consultation Authorities, a list which was not the subject of a question during the consultation on the bill. While each of these bodies have a significant range of skills it would not be fair to suggest that between them they can adequately address all of the information which is required for the Environmental Reports. In particular, we question the extent to which any of the Consultation Authorities can adequately deal with issues relating to human health or population?

Recommendation

- 6. That the committee consider the limitations of listing only three Consultation Authorities with remits which clearly do not cover the information required for the Environmental Reports.**
- 7. That the committee consider whether greater flexibility in selecting appropriate Consultation Authorities might be an appropriate function for the SEA Gateway or an independent SEA body.**

Exclusions s.4

We are surprised by the exclusion of financial or budgetary plans or programmes from the SEA process (s.4(3)(b)). Given that the Executive has clearly decided to extend the scope of this legislation beyond the requirements of the Directive it is unclear why financial or budgetary plans, programmes or strategies should remain excluded from SEA. The allocation of resources between sectors can have critical environmental implications and should be subject to the same screening provisions as other plans, programmes and strategies. We believe SEA would make the budgetary process more transparent to both Parliament and the public, thereby improving scrutiny and accountability. Such an approach could also ensure that the Executive's commitment to incorporate Sustainable Development principles into its budgeting process is, in practice, delivered using a widely accepted and recognised approach.

Recommendation:

- 8. That the committee consider the advantages of including financial or budgetary plans within the bill in order to improve transparency and accountability of the budget process.**

We welcome the fact that further exclusions can only be made if they have no or minimal effects in relation to the environment, however, we believe that Ministers should be required to apply the criteria listed in Schedule 2 before reaching this decision (s.6).

Pre-screening s.7

We are disappointed that the bill introduces pre-screening for 'non-mandatory' plans, programmes and strategies. There is no requirement to publicise pre-screening decisions, nor is there an opportunity to challenge these decisions.

While this may be an attempt to reduce the potential administrative burden it could result in Responsible Authorities submitting their plans, programmes and strategies to the Consultation Bodies regardless of their pre-screening decision in order to feel secure about the decision reached and thereby not addressing the administrative burden. Alternatively third parties will seek to challenge a system with no transparency or accountability. We believe it has the unfortunate potential to undermine confidence in the process and is neither open nor transparent decision-making.

We are not convinced that all public bodies will have the capacity to make sound pre-screening decisions. We welcome the fact that 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 support the introduction of pre-screening but if it is to remain part of the administrative process, it must be done in an open and accountable manner and be subject to challenge.

Recommendation:

- 9. That the committee consider whether pre-screening offers any real benefits to the SEA process given that it is neither accountable nor challengeable.**
- 10. Should the committee not be minded to remove the opportunity to pre-screen certain plans, programmes and strategies we recommend that the pre-screening process be made transparent and accountable by the requirement to publish screening decisions (potentially on the SEA register) and offer the opportunity for challenge to these decisions.**

Screening s. 9

The bill indicates no time limit for Scottish Ministers seeking to determine whether an SEA is required in the event that responsible authorities and Consultation Authorities fail to reach a decision (s.9(6)). The bill also requires Scottish Ministers to act as arbiter in the event of a dispute between the Consultation Authorities and Responsible Authorities, even if Scottish Ministers are the Responsible Authorities.

Recommendation

- 11. That a timescale be set for decision making by Scottish Ministers on those occasions where responsible authorities and consultation authorities do not agree on whether a plan programme or strategy is likely to have significant environmental effects.**
- 12. That an independent body or a modified version of the SEA Gateway be given the power of arbitration in the event of a dispute.**

Relationship with Community law requirements s.13

The requirements in the regulations for transboundary effects to be considered in the SEA process is critical to the delivery of environmental justice. We would therefore wish to see an opportunity for additional consultation bodies and indeed the public, outwith those in Scotland, to be consulted on the environmental impacts of plans, programmes and strategies which are likely to have an environmental impact beyond Scotland.

PART 2 – ENVIRONMENTAL REPORTS AND CONSULTATION

Scoping s.15

We note that s.15(2)(b) requires consultation authorities to send copies of scoping responses to the other consultation authorities, no similar requirement appears to exist for screening, making co-ordination of responses more complicated.

Responsible authorities are able to determine an appropriate consultation period for the environmental report (specified under 16(1)(b)) which Scottish Ministers may then alter should it be deemed inadequate. However, there appears to be no mechanism to modify consultation periods for Environmental Reports from Scottish Ministers.

Recommendation

- 13. That screening responses be circulated between consultation authorities as well as scoping responses.**
- 14. That a mechanism be adopted to enable the consultation periods identified by Scottish Ministers for their Environmental Reports to be modified.**

Consultation s.16

We welcome the fact that responsible authorities are required to place a copy of the relevant documents on their own websites but believe that such information should also be stored and available from a central point.

See recommendation relating to SEA Gateway functions.

Account to be taken of environmental report etc. s. 17

We welcome the fact that in the preparation of a qualifying plan or programme the responsible authority shall 'take account of' the environmental report and the opinions expressed during the consultation period. However, we are concerned that the duty to 'take account of' does little to advise responsible authorities of the level of consideration they are required to give to the environmental report or consultation responses.

Recommendation

- 15. That s.17 be amended to indicate that responsible authorities must 'consider and take account of' to provide responsible authorities with a clear indication of the level of consideration which should be given to environmental reports and consultation responses.**

PART 3 – POST ADOPTION PROCEDURES

Monitoring s.19

Effective monitoring will be a critical quality control mechanism for all plans, programmes and strategies. The draft bill requires it to be carried out and for responsible authorities to take remedial action.

Recommendation

- 16. That the committee consider whether responsible authorities should provide reports or statements during the lifetime of the plan, programme or strategy.**

Schedule 2: Screening Criteria for Environmental Assessments

Schedule 2 provides no reference to the implications of a plan, programme or strategy for national environmental goals and targets, for example renewable targets, emissions targets etc.

Recommendation

- 17. That the committee consider including national targets and legislation to the criteria included in Schedule 2.**

Local Information Schedules 2 & 3: Criteria and Information for Environmental Reports

We appreciate that the listed schedules have been taken from European Directives but believe they could be improved by some minor modifications. In particular, by extending the scope of the criteria and information required for environmental reports to include locally protected sites and local plans, in order to ensure that environmental reports take account of locally developed environmental objectives.

Recommendation

- 18. That locally protected sites and local plans be incorporated into Schedules 2&3.**

Data Issues

We note that the various consultations regarding SEA have emphasised the possibility of using existing data sources in order to inform the SEA process and monitor implementation. We believe this to be sound advice and strongly emphasises the need to make use of information collated by many NGOs. We also understand that a number of local authorities are considering the production of an annual State of the Environment Report which could be used to inform many plans, programmes and strategies. We support this undertaking and any other initiative which will aid the efficient use of existing data.

However, not all environmental issues will be subject to existing data collection and it is imperative that a lack of data does not amount to a tacit assumption that there is no environmental issue.

Recommendation

- 19. That the SEA Gateway or an independent SEA body 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.**
- 20. That the Executive issue guidance on appropriate sources and use of data.**

**This evidence is submitted on behalf of Scottish Environment LINK
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