Environmental Assessment (Scotland) Bill

Bill Number: SP Bill 38
Introduced on: 2 March 2005
Introduced by: Ross Finnie (Executive Bill)
Passed: 9 November 2005
Royal Assent: 14 December 2005

2005 asp 15

Passage of the Bill

The Environmental Assessment (Scotland) Bill [SP Bill 38] was introduced in the Parliament on 2 March 2005. Stage 1 began on 20 April 2005 with the Environment and Rural Development Committee as the lead committee. The Stage 1 (general principles) debate took place on 16 June 2005, and the Bill was passed following the Stage 3 parliamentary debate on 9 November 2005.

Purpose and objectives of the Bill

The Bill makes provision for the assessment of the environmental effects of certain plans and programmes. EU Directive 2001/42/EC (the SEA Directive) was initially transposed into Scots law by the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SEA Regulations) which require an environmental assessment of certain plans and programmes to be undertaken. The Bill is the new transposition vehicle for the SEA Directive.

The Bill aims to improve protection of the environment and to improve decision making. It extends on the provisions of the SEA Regulations by specifically stating that plans and programmes include "strategies" and by requiring certain authorities and bodies to carry out an SEA on all their plans and programmes, as opposed to just certain plans and programmes as required by the Regulations.

Provisions of the Bill:

Part 1 of the Bill establishes a requirement for environmental assessment of plans and programmes by Responsible Authorities. A Responsible Authority is any person, body or office holder that exercises functions of a public character. It also:

- describes the plans and programmes which qualify for SEA, and includes provisions for exemptions for certain plans and programmes
• defines the Scottish Ministers (Historic Scotland), Scottish Environment Protection Agency, and Scottish Natural Heritage as Consultation Authorities for environmental assessment

• allows for a pre-screening process to exempt plans or programmes that have no or minimal environmental effects

• allows for a screening process to ensure that SEA is only targeted at plans or programmes that are likely to have significant environmental effects

Part 1 establishes that the Bill applies to plans and programmes subject to preparation and/or adoption by a Responsible Authority at a national, regional or local level (or prepared by a Responsible Authority for adoption through a legislative procedure). The Bill only applies to plans and programmes that relate solely to the whole or any part of Scotland. There are plans and programmes to which the Bill does not apply. It does not apply to those solely concerned with national defence or civil emergency, finance or budget proposals. The Bill does apply to plans and programmes in areas such as agriculture, forestry, fisheries, water management and telecommunications.

Part 2 of the Bill introduces four Sections concerning the process of carrying out an SEA; preparation of environmental reports, scoping, and consultation procedures. Importantly, there is also a requirement for Responsible Authorities to take account of the environmental report during the decision-making process.

Parliamentary consideration

The Environment and Rural Development Committee took evidence on the Bill between April and May 2005. Based on the evidence taken, the committee raised concerns regarding the following issues:

• the applicability of the Bill to private companies carrying out public functions
• the relationship between environmental impact assessment of projects, and strategic environmental assessment of plans and programmes
• the provision of adequate training for Responsible Authorities to successfully implement the Bill
• the exclusion of financial plans
• the use of the term ‘minimal effect’, and a lack of clarity over the term ‘significant effect’
• the lack of a public register to effectively monitor plans and programmes that have been exempted under pre-screening
• a lack of monitoring provisions to ensure the effectiveness and quality of SEAs

The main changes made to the Bill during its progress through Parliament are:

• the inclusion of a pre-screening register
• provision for an annual report to be laid before Parliament up to and including 2010