The Environmental Assessment (Scotland) Bill [as introduced] Session 2 (2005) was introduced to the Parliament on 2 March 2005 and the Environment and Rural Development Committee has been designated lead Committee for consideration of the Bill at Stage 1.

This paper gives a brief explanation of the process of Strategic Environmental Assessment and its key stages. It then describes the provisions outlined in the Bill, and summarises the views of key organisations from the Bill’s consultation.

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KEY POINTS OF THIS BRIEFING

- SEA is an iterative and systematic process for identifying, predicting, reporting and mitigating the environmental impacts of proposed plans and programmes

- the term Environmental Assessment includes both Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA)

- SEA is carried out on plans and programmes at a strategic level, EIA is carried out on specific development projects

- public consultation and participation is fundamental to SEA

- SEA must also clearly identify feasible alternative plans or programmes

- the SEA Directive was transposed in Scotland by the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 on 20 July 2004

- the Partnership Agreement commits the Executive to go further than obliged by the Directive and include all new and amended strategies as well as plans and programmes

- the Environmental Assessment (Scotland) Bill is the new transposition vehicle for the SEA Regulations; it also goes beyond the Directive by requiring certain organisations to carry out SEA, with some exemptions, on all their plans and programmes

- there is no rigorous legal distinction between plans, programmes or strategies; Section 4(4) states that any reference in the Bill to plans or programmes includes strategies

- Sections 2(4) and 5(4) extend the Bill to include all plans and programmes (that are not already specified in the Bill or subject to some exclusions) prepared by Responsible Authorities such as the Scottish Ministers, the Scottish Parliament, or Scottish public authorities with mixed functions or no reserved functions. It is not clear to what extent the Bill will impact private bodies and individuals who carry out functions of a public character

- the Bill requires SEA to be carried out on plans and programmes in areas such as agriculture, forestry, fisheries, water management and telecommunications

- there is widespread support for this legislation

- the Bill does not apply retrospectively to any plans or programmes
INTRODUCTION

During recent years, there has been considerable development in both the acceptance of the need to manage the way in which humans interact with the environment, and the tools available to achieve such management.

Amongst the assessment tools available are Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA). Collectively known as Environmental Assessment, these procedures are designed to ensure that the environmental implications of certain strategic actions can be taken into account before they are carried out. For example, before undertaking an individual project\(^1\) such as a dam, motorway, airport or factory, an EIA may be required, and for plans and programmes\(^2\) that set a framework for and enable such projects; an SEA may have to be undertaken.

Two briefing papers have previously been published by SPICe on this subject. They are:

- **Strategic Environmental Assessment** (Reid 2004a)
- **Environmental Impact Assessment** (Reid 2004b)

Similarly, the Parliamentary Office for Science and Technology (Scrase 2004) at Westminster has published the following briefing:

- **Strategic Environmental Assessment**

**EU Directive 2001/42/EC** on the Assessment of the Effects of Certain Plans and Programmes on the Environment (commonly known as the SEA Directive) was formally adopted on 5 June 2001. It evolved because of a realisation that although EIA had been required since 1985 (**Directive 85/337/EEC**), it only enters the decision-making process once decisions at policy or planning level that could broadly influence project environmental planning and design have already been taken (João 2004). SEA ensures that cumulative and synergistic\(^3\) environmental consequences of certain plans and programmes and alternatives to these are identified and assessed during their preparation and before adoption. Similarly, fundamental to the preparation phase of both EIA and SEA is public consultation and participation. The Royal Society for the Protection of Birds (RSPB) (2004) also note that another reason for the promotion of SEA is that, in the past, economic and social issues have dominated policy-making processes. SEA therefore establishes a process for assimilating environmental issues into decision-making.

The SEA Directive was transposed by **The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004** on 20 July 2004. The Regulations were considered by the Environment and Rural Development Committee on 23 June 2004, when the Minister for Environment and Rural Development gave evidence (Scottish Parliament 2004).

\(^1\) the execution of construction works or of other installations or schemes; other intervention in the natural surroundings and landscape including those involving the extraction of mineral resources. The framework for a project is set by a plan or programme

\(^2\) general descriptors of frameworks for action set out by Responsible Authorities. Throughout the Bill, reference to plans or programmes also includes **Strategies** as set out in Section 4(4). These terms are broadly interchangeable; the nature of the plan or programme, as set out in Section 5, is more important

\(^3\) synergistic effects are those of activities which act in conjunction with other human activities (eg fishing and crude oil transport)
To date (European Commission 2005), eleven European countries claim compliance with the Directive; these include the UK, Czech Republic, Estonia, Ireland and Denmark. Three claim partial compliance; these are Belgium, France and Austria. Eleven have made no claim; these include Finland, Sweden, the Netherlands, Greece, Spain and Italy.

The European Commission (2005) holds bi-annual meetings with policy experts from all member states to assess the effectiveness and progress of the environmental assessment directives. The next meeting is in June 2005. The 11 countries that have yet to confirm compliance with the SEA Directive have been notified that they are in breach, and the Commission is currently awaiting responses.

No Environmental Reports\(^4\) have been completed in Scotland under the auspices of the Regulations; however 12 are currently known to be underway. Prior to the introduction of the Regulations, and using various methodologies, the assessment of development plans has been undertaken voluntarily in a few instances in Scotland; these are highlighted in Interim Planning Advice on the Environmental Assessment of Development Plans (David Tyldesley and Associates 2003), and are examined in more detail, along with those currently registered under the Regulations, in Appendix 1.

The Partnership Agreement (Scottish Labour Party and Scottish Liberal Democrats 2003) makes a commitment to go further than obliged to by the Directive, and introduce legislation for Strategic Environmental Assessment that includes all new and amended strategies as well as programmes and plans. It states that the Executive will:

...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.

The Environmental Assessment (Scotland) Bill [as introduced] Session 2 (2005) (the Bill) encompasses the provisions of the 2004 Regulations. A key difference between the Bill and the Regulations is that the Bill provides that certain authorities and bodies, such as local authorities or the Scottish Executive, will be required to carry out an SEA for all of their plans and programmes, as opposed to just certain plans and programmes, unless they believe them to have no or minimal environmental effects or they have no likely significant effects. Some specific exclusions and exemptions still apply; these are explored later in this document.

The other key difference is that the Bill now specifically includes “strategies”. Historically, the overriding principle of SEA is that it should apply to 3 decision-making levels: policies (i.e. including strategies in Scotland), plans and programmes (João 2005). The SEA Directive only applies to the latter 2.

It should however be noted that there is no rigorous legal distinction between the terms “plans, programmes, or strategies”. Therefore Section 4(4) of the Bill ensures that any reference to plans or programmes includes strategies. Similarly, in this paper, any reference to plans or programmes includes strategies. The Minister for Environment and Rural Development (Finnie, R 2004) states:

...it is important not to be concerned so much with the name (plan, programme or strategy) but with the nature of the document and the degree of significance of environmental effects to result from any actions flowing from the document.

\(^4\) a report detailing all the significant positive and negative environmental impacts of a plan. It will be published along with the plan or programme for public comment
Due to the specific nature of some of the definitions in environmental assessment, it will be useful to refer to the glossary in Appendix 2 before reading the briefing.

**WHAT IS STRATEGIC ENVIRONMENTAL ASSESSMENT?**

In the context of the Bill, Strategic Environmental Assessment (SEA) is a systematic process for predicting, assessing, reporting, mitigating, and monitoring the environmental effects of certain proposed plans and programmes with significant environmental effects. In pure terms, the process of SEA could be applied to any high level decision making.

João (2004) states two fundamental principles for implementing SEA; firstly, it must clearly identify feasible alternative plans or programme options and compare them in an assessment context, and secondly, SEA must improve, rather than just analyse, the plan or programme. It is further explained that alternatives at a strategic level should not solely be concerned with choosing between different types of development to achieve the same aims eg choosing between producing energy by coal or biomass, but about demand reduction, for example reducing the demand for energy production by insulating buildings. The following alternatives might be considered at a strategic level (Thérivel and Partidário 1996):

- do nothing, or continue with present trends
- demand reduction eg reduce the demand for water through metering
- different location approaches eg build new houses elsewhere
- different types of development which achieve the same objective eg produce energy by nuclear power or wind
- introduce fiscal measures eg toll roads or congestion charges
- different forms of management eg waste management by incineration or recycling

European Commission guidance (2001) on the interpretation of the SEA Directive concurs that:

> It is essential that the authority or parliament responsible for the adoption of the plan or programme as well as the authorities and the public consulted, are presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option.

Similarly, in their Guidance for Planning Authorities on the Strategic Environmental Assessment Directive the Office of the Deputy Prime Minister (ODPM) (2004a) states that “Assessment always involves comparison. The effects of a plan or policy can only be understood by comparing it with a state, an option or an objective.”

However, Interim Planning Advice on the Environmental Assessment of Development Plans (David Tyldesley and Associates 2003) states:

> There is no expectation on planning authorities to assess options that would be incompatible with national planning guidance or the structure plan.

Levett and Therivel (2003) note that SEA should not be thought of as separate from the plan-making process, rather as a tool to aid decision making during the design cycle of the plan or programme. They further advise that best practice assumes that strategic actions are subject to multiple stages of decision-making, and SEA should be integrated into each of these decisions, rather than adjusting strategy-making to include a single SEA stage. It is because of this that Levett and Therivel (2003) state “preparation of an SEA report is probably the least important part of the SEA”.

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(providing research and information services to the Scottish Parliament)
After a Structure Plan has been finalised or other policy decisions, eg on waste management or fisheries, have been informed by the SEA process, an EIA can be carried out to assess and mitigate against the environmental impact from specific projects or operations resulting from strategic plans or programmes.

**THE KEY STAGES OF STRATEGIC ENVIRONMENTAL ASSESSMENT**

It is generally felt that SEA works best as an iterative process, ie as potentially significant environmental effects are revealed, the assessment will return to earlier stages to consider reasonable alternatives to the plan or programme and decide whether policies and proposals need altering. The plan is subsequently improved and reassessed, taking into account its original objectives and geographical scope. David Tyldesley and Associates (2003) consider a stage-by-stage approach to SEA of development plans, summarised below:

1. **Screening**<sup>5</sup> to decide whether there are significant environmental effects, and whether SEA is necessary
2. Collating and forecasting baseline environmental information
3. Scoping<sup>6</sup> the environmental report and likely significant environmental effects
4. Adopting environmental objectives and criteria for use in assessment
5. Assessing the plan’s aims and vision
6. Assessing alternative policy frameworks and strategies
7. Assessing the plan’s policies and proposals
8. Preparing and publishing the environmental report with the consultation draft plan
9. Modifying the draft plan and revising the environmental report
10. Depositing the environmental report with the submitted structure/finalised local plan
11. Monitoring and review

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<sup>5</sup> the stage in the assessment process which determines whether a particular plan or programme, or alteration to one, is likely to have significant environmental effects and should therefore be subject to the full environmental assessment process

<sup>6</sup> the stage in the assessment process which seeks to define what the scope and level of detail should be for the environmental report
It should be remembered that the above model is not linear, and alternative courses of action can be considered at any of the previous stages to alter the plan or programme, and avoid or mitigate against environmental impacts.

It should also be noted that the above diagram is adapted from a document (Davis Tyldesley and Associates 2003) that applies primarily to planning authorities, and Area Structure Plans. The majority of SEA experience in the UK to date has been in a planning context. This is expected to change in the future, as the Bill requires SEA in sectors such as tourism, fisheries and energy. These requirements are fully explored later in this briefing.

**What are the benefits of SEA?**

Fundamentally, SEA, by considering environmental effects at plan or programme level, identifies those areas of environmental concern that may not be obvious if considering impacts resulting from individual projects or operations in isolation. For example, the Department of Trade and Industry (DTI) recently carried out an SEA as part of their offshore energy strategy, entitled Future Offshore (DTI 2003). The SEA allowed the consideration of multiple issues relating to the development of offshore wind energy, such as visual impact, the impact on birds and marine ecology, and the possible impact on other marine activities on a regional level. Similarly, the DTI have carried out SEAs of future strategies for offshore energy licensing. These are considered in more detail in Appendix 1.

A Discussion paper on Strategic Environmental Assessment by The Wildlife Trusts/WWF-UK Joint Marine Programme (2003) highlights how SEA for offshore developments can involve habitat mapping, risk analysis and visual and ecological sensitivity mapping, and ultimately determine appropriate and inappropriate sites for projects. The paper further states that SEA can help with interpretation of cumulative impacts, for example the visual impact of two or three offshore wind farms. The Wildlife Trusts/WWF-UK (2003) further believes that SEA:


Facilitates consultation between various government bodies and stakeholders and enhances public involvement in the evaluation of environmental and social aspects of policies, plans and projects

Full public consultation and participation are fundamental to the SEA process. The United Nations Economic Commission for Europe (UNECE) (2005) recognises that this can promote the timely disclosure of relevant information to participants in the environmental decision making process; help people understand and respect the final decisions on projects, and give an insight into environmental protection and long term environmental problems.

Furthermore, Fischer (2002) considers the 5 key benefits of SEA to be:

- wider consideration of impacts and alternatives
- pro-active assessment - SEA as a supporting tool for strategic action formulation for sustainable development
- strengthening project EIA - increasing the efficiency of tiered decision making
- systematic and effective consideration of the environment at higher tiers of decision-making
- consultation and participation on SEA-related issues
The RSPB (2003) notes that SEA can help to strengthen, streamline and shorten Environmental Impact Assessments by the early identification of potential impacts and cumulative effects, and by addressing strategic issues relating to the justification and location of proposals.

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7 the combination of effects which, in some cases, may not be significant in themselves, but which taken together amount to a significant impact. There might be several of the same effects, for example too many houses in one place, or the combination of different types of effect in one area, for example one causing noise, another reducing air quality.
THE ENVIRONMENTAL ASSESSMENT (SCOTLAND) BILL

This Bill aims to improve protection of the environment and to improve decision making. It will become the new transposition vehicle for Directive 2001/42/EC (the SEA Directive) which requires an SEA of certain plans and programmes to be undertaken. The Bill extends the current provisions 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), unless they believe them to have no/minimal environmental effects or no significant environmental effects. Some specific exclusions and exemptions still apply; these are explored later in this document.

The Scottish Executive (2004b) published a consultation paper on the draft Bill in September 2004, and a summary of consultation comments and Scottish Executive response (Scottish Executive 2005) was published in January 2005. A previous Consultation on Proposed Legislative Measures to Introduce Strategic Environmental Assessment in Scotland (Scottish Executive 2003) was held between December 2003 and March 2004. A summary of responses to this is considered in SPICe briefing 04/46 (Reid 2004a).

A total of eighty-eight written responses to the 2004 consultation were received from a variety of commentators, including academics, environmental organisations, the NHS, and local authorities. There was broad support for the principles of the Bill from Scottish Natural Heritage, the Scottish Environment Protection Agency, Scottish Environment LINK, Scottish and Southern Energy, COSLA and many others.

The Scottish Executive (2005a) echoes this when it states:

There was widespread support for SEA and respondents recognised the contribution it will make to environmental protection, the quality of public policy and decision making, open government and environmental justice.

Friends of the Earth Scotland (Scottish Executive 2005b) said:

We are fully supportive of the Executive’s Partnership Agreement commitment to introduce Strategic Environmental Assessment which goes beyond the requirements of the European Regulations and Directive and believe that it can make a significant contribution towards sustainable development and environmental justice.

The following quotations are not wholly supportive of the Bill.

Scottish Enterprise (Scottish Executive 2005c) supported the Bill in general, however stated that:

…one important aspect of this…would be to ensure that…the process is not cumbersome and does not undermine the Executive’s top priority with regard to economic growth. For example, it is essential to avoid any further constraints and lengthening of timeframes in the planning and development cycle.

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8 general descriptors of frameworks for action set out by Responsible Authorities. Throughout the Bill, reference to plans or programmes also includes strategies as set out in Section 4(4). These terms are broadly interchangeable; the nature of the plan or programme, as set out in Section 5, is more important.
However, Shell UK (Scottish Executive 2005d) stated:

*Having just implemented the EC Directive... on SEA... the Scottish Executive now wants to go beyond the existing Regulations in such a short space of time. This looks like overregulation and will possibly create confusion in the minds of the bodies concerned...*

It further stated that:

*It is difficult to get a clear view on how the proposals will impact the industry... The obvious ones are the local authority structure plans and local plans under town and country planning legislation but it is difficult to get a clear view beyond that.*
SEA: A SIMPLIFIED PROCESS

The following diagram provides a simplified visual reference to the SEA process as set out in the Bill. It should be remembered that, in practice, SEA is iterative, and not linear; reasonable alternative courses of action can be considered at any stage to alter the plan or programme. There are also exclusions and exemptions which might apply at different stages.

Pre-screening\(^9\) to ascertain whether there are no, or minimal environmental effects, and whether SEA is necessary. There is no obligation to publish or publicise the decision

\[\text{Screening}^{10}\] by Responsible Authority\(^{11}\) and Consultation Authorities\(^{12}\) via the SEA Gateway\(^{13}\) to ascertain whether there are significant environmental effects, and whether SEA is necessary. There is an obligation to publish and publicise this decision

Collating and forecasting baseline environmental information by Responsible Authority

Scoping report\(^{14}\), detailing likely significant environmental effects for assessment, submitted to the Consultation Authorities via the SEA Gateway for comments

Scoping report returned to Responsible Authority with comments, and proposed changes if necessary

Assessment of likely significant environmental impacts, and reasonable alternative plans or programmes (in practice this should happen at every stage)

Preparing and publishing the environmental report with the consultation draft plan or programme

Modifying the draft plan or programme and revising the environmental report if necessary following consultation

Publishing the finalised environmental report and plan or programme

Monitoring and review

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\(^9\) the exemption of a plan or programme from SEA, only if there are no or minimal environmental effects

\(^{10}\) the stage in the assessment process which determines whether a particular plan or programme, or alteration to one, is likely to have significant environmental effects and should therefore be subject to the full environmental assessment process

\(^{11}\) the owner of the plan or programme, any person, body or office holder that exercises functions of a public character

\(^{12}\) specialist body with environmental expertise that will consider the environmental effects of the plan or programme; ie SNH, SEPA and Historic Scotland

\(^{13}\) team based within the Scottish Executive who advise on the administration of SEA, and liaise with Consultation Authorities

\(^{14}\) the stage in the assessment process which seeks to define what the scope and level of detail should be for the environmental report
PART 1. ENVIRONMENTAL ASSESSMENTS FOR PLANS AND PROGRAMMES

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

Section 4 of Part 1 establishes that the Bill applies to plans, programmes (and strategies as referred to in Section 4(4)), 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.

REQUIREMENT FOR ENVIRONMENTAL ASSESSMENT

The primary requirement of the Bill is set out in Section 1, and ensures that an environmental assessment is carried out during the preparation of qualifying plans and programmes. Also defined are the required component parts of an assessment. These include:

- the preparation of an environmental report
- the carrying out of consultations
- the taking into account of the environmental report and the result of the consultations in decision-making

Section 1 provides that the environmental assessment shall be carried out during the preparation of a qualifying plan or programme. Section 12 provides that the qualifying plan or programme should be neither adopted by nor submitted to the legislative procedure before the Bill provisions have been met. This effectively places a restriction on the adoption or submission of the plan (Environmental Assessment (Scotland) Bill: Explanatory notes (and other accompanying documents) Session 2 (2005) (Explanatory notes)). This requirement aims to ensure that SEA should be integrated into the early stages of the decision making process, and used to enhance the whole process.

RESPONSIBLE AUTHORITIES AND CONSULTATION AUTHORITIES

Section 2 focuses the responsibility for environmental assessment on any person, body or office-holder exercising functions of a public character. It is intended that this will cover the full extent of the public sector, including central and local government, all public bodies, and private bodies and individuals who carry out functions of a public character.

Responsible Authorities will be required to carry out an SEA on certain qualifying plans and programmes described in Sections 5(1) to (3). Some Responsible Authorities (listed in Section

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15 A report detailing all the significant positive and negative environmental impacts of a plan or programme. It will be published along with the plan or programme for public comment.

providing research and information services to the Scottish Parliament
2(4)) will be required to carry out an SEA on all plans and programmes to which the Bill applies\textsuperscript{16}.

The Responsible Authorities listed in Section 2(4) are:

- *the Scottish Ministers*
- *any holder of an office in the Scottish Administration which is not a ministerial office*
- *the Scottish Parliament*
- *the Scottish Parliamentary Corporate Body*
- *a Scottish public authority with mixed functions or no reserved functions*
- *any other person, body or office-holder of a description (and to such an extent) as may be specified by the Scottish Ministers by order*

The significance of Section 2(4) (in conjunction with 5(4)) is such that a number of plans and programmes that will not previously have been subject to SEA will now qualify. However, it appears that there is some concern over the requirement for private bodies and individuals who carry out functions of a public character to carry out SEA. Commenting on this, the RSPB (2005) stated that:

…”the Executive have successfully excluded almost any document produced by a private company even if they were about issues of a public character…”

To put this into context, a private energy utility is likely to not be required to carry out SEA on their corporate plan. The Explanatory Notes state that the policy intention is to ensure that the private activities of Responsible Authorities are not affected. However, if they were to publish a plan or programme for upgrading the transmission system, it is unclear whether the Bill would apply. The ambiguity lies in Section 5(3)(a)(ii) whereby an SEA is required if a plan or programme sets the framework for future development consent, and the RSPB (2005) query whether a plan or programme for upgrading the transmission system sets a framework for development consents or does it set out a programme of action for which they will be seeking development consents? Professor Colin Reid (Scottish Parliament Environment and Rural Development Committee 2005) states:

*Although the structure may make sense from the drafting point of view, the interaction between sections 2, 5 and 6 does not make it easy for those reading the legislation to work out exactly what plans and programmes are covered by the requirement for an environmental assessment, and a less complex way of constructing the boundaries should be considered.*

The further significance of Sections 2(4) and 5(4) is discussed later in this document.

Under the Bill there can only be one Responsible Authority per plan or programme; therefore, where numerous authorities have an interest, they are obliged to decide between themselves who should act to carry out the environmental assessment. If there is a dispute over this, Scottish Ministers decide who should carry it out. Similarly, Scottish Ministers may also designate further Responsible Authorities if necessary.

The 3 Consultation Authorities are named in Section 3. They are:

- *Scottish Ministers (in practice Historic Scotland)*

\textsuperscript{16} unless the Responsible Authority believes there are no or minimal environmental effects, there are no likely significant environmental effects, or it relates to an individual school
• Scottish Environment Protection Agency
• Scottish Natural Heritage

If one of the above authorities is also the Responsible Authority, then it may not act as consultee for its own plan or programme. In this situation, the Consultation Authority owning the SEA (Responsible Authority) would step back and the appropriate duties would be performed by the other two. For example, SNH and Historic Scotland would act in conjunction as Consultation Authorities for SEPA’s forthcoming River Basin Management Plan (required under the Water Environment and Water Services (Scotland) Act 2003), which is required by 2006.

Friends of the Earth Scotland (Scottish Executive 2005b) called for additional consultee bodies:

…to be consulted for information on specific plans, programmes or strategies where it is deemed that SEPA, SNH, or the Scottish Ministers may not be best placed to provide the information to adequately consider the impacts…

Examples of additional consultee bodies might include the Forestry Commission or NHS Scotland.

PLANS AND PROGRAMMES

Sections 4, 5, and 6 concern plans and programmes that may qualify for SEA, and those that are directly excluded.

Section 4 relates to the plans and programmes to which the Bill applies. It provides that the Bill applies to plans and programmes which are subject to preparation or adoption (or both) by a Responsible Authority at a national, regional, or local level. The qualifying plans and programmes must relate solely to the whole of, or any part of, Scotland. Those plans and programmes that relate to all or any part of Scotland and any other part of the UK fall under The Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633). Section 4(4) states that any reference in the Bill to plans or programmes includes strategies.

Section 5 goes on to describe qualifying plans and programmes. The following plans and programmes qualify for SEA due to their specific subject matter and character.

• plans and programmes required by legislative, regulatory or administrative provision that are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and set the framework for future development consent of projects listed in Schedule 1

They do not have to submit to the screening process, and can move directly to the scoping stage (unless they relate only to a small local area or are a minor modification of an existing plan in which case screening is required).

Also included in this Section are plans or programmes which are likely to affect Natura 2000 sites designated under EU Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna.

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17 the execution of construction works or of other installations or schemes; other intervention in the natural surroundings and landscape including those involving the extraction of mineral resources providing research and information services to the Scottish Parliament
The following plans and programmes have to be screened to establish whether there are significant environmental effects before determining whether an SEA is required:

- plans and programmes listed for the subjects above but which only relate to a small local area or are a minor modification of an existing plan

- plans and programmes required by legislative, regulatory or administrative provision which are not in the list of subjects above, but which do set the framework for future development consent of projects listed in Schedule 1. (These include crude oil refineries, power stations, quarries, ski developments, transport projects, golf courses, and brewing and malting projects). Schedule 1 may be amended by the Scottish Ministers

SEA is required if the plan or programme is likely to have significant environmental effects.

**Which plans and programmes will qualify?**

It is difficult to make bold statements regarding the applicability of the Bill to individual plans and programmes due to the fact that the screening determination to decide whether an environmental assessment is required depends on its specific details. It is the duty of the Responsible Authority to make this determination.

However, the significance of Sections 2(4) and 5(4) is such that, under the Bill, a number of plans and programmes that will not previously have been subject to SEA will now qualify. The Scottish Environment LINK, in written evidence submitted to the Scottish Parliament Environment and Rural Development Committee (2004b) for consideration of the Regulations, identified a list of plans and programmes which (potentially) had significant environmental effects, and which might be subject to SEA. Appendix 3 provides a summary of this evidence.

Notwithstanding the extension of the Bill to cover plans and programmes beyond the scope of the Directive, it appears that this is limited by the definition in Section 2(4) of Responsible Authorities who will be required to carry out SEA on all plans and programmes to which the Bill applies. Private bodies and individuals who carry out functions of a public character will be excluded from the application of the extension to all plans and programmes in practice. It should however be noted that Section 2(4)(f) allows Scottish Ministers to include any other person, body or office-holder of a description (and to such an extent) as may be specified.

There are plans and programmes to which the Bill does not apply. Section 4(3) ensures that the Bill does not apply to those solely concerned with national defence or civil emergency, finance or budget proposals. Plans and programmes co-financed under the 2000-2006 European Regional Development Funds, and European Social Fund, or those funded under the 2000-2007 Rural Development Plan are also exempt. The latter exemptions are to avoid duplication because they already contain a similar environmental assessment mechanism. Future rounds of regional development, rural development and social funding will be covered under the Bill.

Section 6 details types of excluded plans and programmes over and above those set out above. These are those relating to an individual school, and any others specified by order of Scottish Ministers. With reference to schools, the Explanatory Notes state:

...it is considered that such developments will have no strategic element to which environmental assessment could be applied and would not be likely to have significant environmental effects.
With reference to those excluded by Scottish Ministerial order, the Explanatory Notes state that:

…it will be possible to exclude certain types of plans and programmes, which are proved, over time, to have no need for an environmental assessment. This will help to ensure that the Bill provisions are targeted appropriately at plans and programmes which are likely to have significant effects on the environment.

This exclusion can only be applied if Scottish Ministers are of the opinion that the plan or programme is likely to have no effect or minimal effect in relation to the environment.

The consultation exercise produced minimal comment on the above exclusions; however Scottish Environment LINK (Scottish Executive 2005e) stated:

We are disappointed that financial and budgetary plans are still excluded and recommend that this be modified.

The NHS Scotland Centre for Infection and Environmental Health (Scottish Executive 2005f) stated:

The introduction of additional exemptions is a necessary step to ensure the effective running of the process. However, the exemptions must only be made in the light of clear evidence.

If the Bill is passed, non statutory guidance will be provided by the Scottish Executive. This guidance will include an indicative list of plans and programmes which are likely to be covered by the Bill. Professor Colin Reid (Scottish Parliament Environment and Rural Development Committee 2005) states:

…the proposed provision of guidance to clarify the position is an acceptable way forward rather than trying to produce more precise, but inevitably very complex and technical, definitions. It must always be remembered, though, that ultimately it is the words of the statute, not the guidance that must be observed and there must be a willingness to accept the possibility of legal challenges and to introduce amending legislation if the current wording produces unacceptable levels of uncertainty or results quite different from those envisaged.

PRE-SCREENING

Pre-screening only applies to plans and programmes that fall under Section 5(4). Pre-screening aims to ensure that SEAs are not carried out for plans or programmes which will have no or minimal environmental effects.

Section 5(4) provides that a plan or programme qualifies for SEA if it is owned by a Responsible Authority listed in Section 2(4) and is not already caught by Sections 5(3) or exempted by Section 6(1) (individual schools). If, in the opinion of the Responsible Authority such a plan or programme, has no or minimal environmental effects they may exempt the plan on their own (this is called pre-screening). There is no requirement to consult on, publicise or report such exemptions.

The Explanatory Notes state:

This is essentially an in-house review carried out by the Responsible Authority to determine whether an environmental assessment is required. When exempting a plan or
Pre-screening engendered considerable and wide ranging discussion during the consultation exercise. The Executive (2005a) further stated that:

In line with most respondents the Executive believes pre-screening is a legitimate and practical tool which will help to target resources effectively. To address concerns raised the Executive will provide guidance on pre-screening and consider administrative procedures for the recording of pre-screened cases.

Schedule 2 of the Bill lists criteria for determining the likely significance of effects on the environment. It includes:

- the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources
- the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development
- the transboundary nature of the effects
- the risks to human health or the environment
- the effects on areas or landscapes which have a recognised national, Community or international protection status

Responsible Authorities are required to apply these criteria when determining whether a pre-screening exemption under Section 7 should apply. The Explanatory Notes state:

The intention of this schedule is to assist Responsible Authorities in their determinations as to whether an environmental assessment is required and to facilitate the transparency, consistency and quality of those determinations.

Friends of the Earth Scotland (Scottish Executive 2005b) are against pre-screening, and stated:

Inclusion of a pre-screening opt-out clause for Responsible Authorities who deem that a proposal would not have a significant environmental impact should not be considered. The weakness of such a system would be compounded by the lack of i) a requirement to publicise the decision itself and the reasons for it and ii) an opportunity for the decision to be challenged. This process would therefore compromise the Government’s commitment that SEA should both improve Scotland’s environment, achieve better policy making and a more open government.

Similarly, RSPB Scotland (Scottish Executive 2005m) stated that this provision gives cause for concern as:

There is no requirement to publicise the decision so how can the public find out what decision was made and why?

COSLA (Scottish Executive 2005g) welcomed the principle of pre-screening, however:

…would like to see more detail on what criteria could be used as part of this process. We have a concern that a Responsible Authority may have a view that an SEA is not necessary, a view that then could be challenged by environmental lobbyists, which might
include not only organisations, but also individuals, in particular, those given to vexatious objections, as experienced in the development planning system. To that end…draft Schedule 2 seems a reasonable starting point, but more quantification linked to the criteria would be necessary to make this effective. For example, a clear, quantified definition of the minimum land area that would be appropriate for environmental assessment would be helpful.

Dr Elsa João (Scottish Executive 2005h) stated:

The concept of pre-screening is, in a way, a contradiction in terms. Screening at SEA level is the process of separating the strategies with potential significant (i.e. important) environmental impacts (positive or negative), from the ones that would not benefit from the SEA process. By doing “pre-screening” you are really doing screening, except without the required support and transparency. I would therefore suggest that it is better not to have pre-screening.

A number of the consultation responses highlighted that the Bill did not define either minimal or significant environmental effects. For example, Friends of the Earth Scotland (Scottish Executive 2005b) stated:

The absence of definitions of what constitutes ‘minimal’ or ‘significant’ environmental impact within the Bill or accompanying guidance may lead to difficulties in robustly delivering SEA and ensuring a uniform implementation across all plans, programmes and strategies.

Further guidance on the definition of “significant” will be provided by the Executive as part of non statutory guidance if the Bill is passed. Specific criteria for determining likely significant effects are listed in Schedule 2 of the Bill.

SCREENING

The screening process intends to ensure that SEA is targeted only at plans and programmes that are likely to have significant environmental effects.

Therefore, screening is not required for plans and programmes under Section 5(3). This is because they are deemed to have significant environmental effects and can therefore bypass screening and go straight to the scoping stage. An example of this might be a transport plan that is required by a legislative provision, and which sets the framework for future development consent of projects in Schedule 1.

Screening involves the Responsible Authority seeking the views of the Consultation Authorities as to whether a plan or programme is likely to have significant environmental effects, in which case an SEA will be required. The Responsible Authority makes the determination as to whether an SEA is required, and the screening process informs that determination.

Screening is required for plans and programmes that are described in Section 5(3) but only for those which determine the use of small areas at local levels or are a minor modification of one of those plans. It is also required for plans or programmes that are not specifically listed, but which still set a framework for future development consent of projects.

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18 agriculture, forestry, fisheries etc
Additionally, screening is required for those plans or programmes described in Section 5(4) and owned by a Responsible Authority in 2(4) which have not already been excluded (individual schools) or exempted by pre-screening. An example of this might include a local authority plan not required by a legislative provision and which cannot be exempted by pre-screening because it will have more than minimal environmental effects.

Sections 9 and 10 make provisions for the formal screening procedure. Screening gathers views on whether there are likely to be significant environmental effects. These views then inform the Responsible Authority’s determination as to whether an SEA is required. If it is likely that there will be significant environmental effects their determination should be that an SEA is required, and the determinations of this procedure should be published.

Section 9 requires that Responsible Authorities apply the criteria set out in Schedule 2 to determine whether the plan or programme is likely to have significant environmental effects. A summary of this view is then sent to the Consultation Authorities (via the SEA Gateway described below) who have 28 days to respond with their view as to whether the plan or programme is likely to have significant environmental effects. On receipt of the views from the Consultation Authorities, the Responsible Authority determines whether an SEA is required. Any disagreement may be referred to Scottish Ministers who will make a final determination.

The Explanatory Notes state:

The intention behind the screening provisions is to ensure that due and transparent consideration is given to whether an environmental assessment is required. Moreover, they are designed to ensure that the Bill environmental assessment requirements are targeted effectively at plans and programmes that are likely to have significant environmental effects.

Section 10 requires the Responsible Authority to publicise their determination, and a statement of the reasons for it. Various media routes should be employed by the Responsible Authority to publicise their determination, including a hard copy available for free consultation at the Responsible Authority’s principal office, digital copies on their websites, and an advertisement in at least one local newspaper, drawing the public’s attention to the decision, and the availability of the determination documents.

Almost 75% of those who responded to the Bill consultation agreed that there should be a timescale in the Bill for screening. Of those who stated a specific period, 28 days was favoured.

The possibility of a conflict of interest arising from Scottish Ministers determining on disagreements did attract some comment.

SEPA (Scottish Executive 2005i) asked:

…whether the Scottish Ministers were best placed to exercise this function in respect of plans, programmes and strategies being prepared by the Scottish Executive given the potential for dual interest… Whatever mechanism is used, the arbitration body should be required to clearly explain the reasons for its decision.

COSLA (Scottish Executive 2005g) stated:

The dispute process should be a clear, transparent process that leaves no party open to legal challenge. Equally there should be a clear timescale set out for this action, which needs to be quantified in the same manner as the other stages of consultation…COSLA
would also point out that there is potential for conflict of interest to arise in terms of such adjudication. Has the Scottish Executive considered the transparency of seeking comment from the consultative bodies, during an adjudication, when they have already made their determination?

The Executive (2005a) responded that it remained of the belief that Scottish Ministers should determine on screening disputes as it was the most cost effective and efficient approach. Furthermore, it highlighted that:

…the risk of a situation arising where the Scottish Ministers will be required to determine on their own dispute is negligible. Moreover, we believe that concerns about impartiality will be met by the fact that determinations will be evidence based and made public. However…the Executive will give consideration to administrative provisions for the Scottish Ministers to make their determination within a specific period.

SEA Gateway

The SEA Gateway is an administrative team based within the Scottish Executive. Its structure and functions are still under development but its key activities will include; advising on administration of SEA; co-ordinating screening and scoping submissions; liaising with Consultation Authorities; and collating management information.

Question 2 of the Bill consultation gave 5 options for administering the SEA system, and over 50% of respondents favoured option 1. Some respondents favoured option 2 (Scottish Environment Link, Friends of the Earth Scotland, Scottish Wildlife Trust), and have published a report (Scottish Environment LINK 2005) to inform the debate. This is entitled: An independent body to oversee strategic environmental assessment in Scotland: bureaucratic burden or efficient accountable administration?

One of the report’s authors (Dr Elsa João), in her consultation response (Scottish Executive 2005h) stated:

When evaluating the options available it is important to consider that in some cases the Consultation Authority will be the same as the Responsible Authority. The issue of bias and lack of independence can therefore arise. Option 2, that would involve a freestanding independent body, sounds the best. This is because this potential new body would be dealing not only screening but it could also deal with the administration of scoping, prepare guidance, record examples of good practice, be an arbiter in cases of dispute, and it could audit the quality of Environmental Reporting. Overall, it could monitor SEA effectiveness and procedures, and could support linkages between SEA and Project EIA.

The Scottish Executive (2005a) recognised these views, but believed that it would not be a cost effective approach; it therefore committed to giving further consideration to effective liaison between the SEA Gateway and Consultation Authorities and to give further consideration to the structure and duties of the SEA Gateway to ensure that it offers as efficient and transparent a service as possible.

SNH (Scottish Executive 2005j) supported the Executive’s view by stating that:

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19 option 1 the use of a focal point performing advisory, co-ordinating and management functions
option 2 setting up an independent body to oversee the SEA process
option 3 suggested Responsible Authorities making submissions direct to Consultation Authorities
option 4 suggested a gateway operated by a Consultation Authority
option 5 suggested a gateway in the Executive, but including staff from Consultation Authorities

providing research and information services to the Scottish Parliament
...a strengthened Option 1 supported by strong working relations with the Consultation Authorities and central access to sources of information, advice and guidance on approaches to SEA (perhaps via a dedicated website) would provide the most effective and efficient mechanism for the implementation of SEA in Scotland.

It further stated that:

...the creation of a free-standing administrative body would incur considerably greater costs and that the establishment of such a body could detract from joint working between the Responsible Authority and the consultation bodies. This could have negative implications for the SEA process and the preparation of the plan or programme itself. It would also remove responsibility for involvement in SEA from those directly involved in guiding the policy process and could hamper the integration of SEA into policy planning and hinder the development of expertise and organisational capacity building.

MISCELLANEOUS

Section 11 makes provision for Scottish Ministers to direct a Responsible Authority to submit a plan or programme to them, and to subsequently require that authority to enter the screening process, or carry out an environmental assessment. This is to help to ensure that no qualifying plan deemed to have significant environmental effects will proceed without an environmental assessment being carried out (Explanatory Notes).

Section 12 ensures that no qualifying plan or programme will be adopted or submitted to legislative procedure until the requirements of this Bill have been met.

Section 13 ensures that the Bill does not prejudice other European Community Law requirements.
PART 2. ENVIRONMENTAL REPORTS AND CONSULTATION

Part 2 of the Bill introduces 4 Sections concerning the preparation of environmental reports, scoping, consultation procedures, and a requirement for Responsible Authorities to take account of the environmental report during the decision-making process. Appendix 2 provides a glossary of terms, to which it may be useful to refer before reading this Section.

ENVIRONMENTAL REPORTS

Section 14 requires Responsible Authorities to prepare an environmental report which describes and evaluates the likely significant effects on the environment of the plan or programme, and any alternative approaches considered.

Schedule 3 of the Bill sets out in detail the requirements for an environmental report by setting out what information should be included. These provisions are outlined below.

An environmental report must state the contents and main objectives of the plan or programme, and detail its relationship, if any, with other qualifying plans and programmes. It should also outline the current state of the environment, the environmental characteristics of areas likely to be significantly affected and its future condition, should the plan or programme not go ahead.

Furthermore, the assessment should explore and highlight existing environmental problems and environmental protection objectives or considerations that have been taken into account. The impact (positive or negative) of plans or programmes on Natura 2000 designations is of particular importance to the report, as are the following issues:

- biodiversity, flora, fauna
- population, & human health
- soil, water, air & climatic factors
- material assets, architectural & archaeological heritage (cultural heritage)
- landscape
- the inter-relationship between the above factors

The above should be considered, whatever the nature of the impacts\(^\text{20}\). For example, SEA of the National Waste Strategy might highlight increased recycling, reduced landfill rates, and positive effects on landscape whilst recognising the negative issues surrounding new waste facilities in order to minimise adverse impacts on landscape, biodiversity and communities.

Central to these issues is the consideration, at any stage of the assessment process of reasonable alternatives to the plan or programme options and an assessment of their environmental effects. The consideration of all of the issues in the context of the strategic objectives and geographical scope of the plan or programme is also imperative.

The environmental report should also set out the proposed measures to prevent, reduce, and, as fully as possible, offset the significant environmental effects of implementing the chosen plan or programme. It should also outline the reasons for selecting these measures and describe the SEA methodology, whilst detailing deficiencies in technical knowledge or lack of expertise in compiling the assessment.

\(^{20}\) permanent or temporary, primary or secondary, cumulative, synergistic, positive or negative and in the short, medium and long-term
Section 19 requires the Responsible Authority to carry out ongoing monitoring of the significant environmental effects of the implementation of the plan or programmes for which an SEA has been carried out. The key purpose of the monitoring is to identify any unforeseen adverse effects and to undertake appropriate remedial action. The environmental report should therefore also contain a description of the monitoring measures. A non-technical summary of the entire document should be included. The report should consider each of the alternative implementation options contained in the plan or programme.

In order to avoid duplication of assessment with other parallel studies, and make best use of existing data, Responsible Authorities are expected to take into account available information and to make qualitative judgements in the absence of firm data, within the scope agreed with the consultation bodies.

These provisions mirror those of the original Directive, and the Scottish Executive (2005a) reported that the vast majority agreed with the basic provisions regarding the contents of environmental reports. There was some debate amongst consultation respondents surrounding the question of whether indicators should be included in the environmental report. The Strategic Rail Authority (Scottish Executive 2005k) stated:

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.

The RSPB (Scottish Executive 2005m) stated:

The use of core set of environmental indicators may aid simplicity of appraisal across differing plans and programmes, but runs the risk of introducing a mechanistic process which undermines the principles established earlier that plans and programmes should only examine significant environmental effects relevant to a particular plan or programme.

SEPA (Scottish Executive 2005i) highlighted their view that the environmental report is the very heart of SEA. However, COSLA (Scottish Executive 2005g) were concerned that:

...there may be difficulty to differing degrees for individual local authorities in both accessing the relevant datasets and interpreting the necessary information. COSLA is also concerned that councils will be challenged under the Freedom of Environmental Information legislation, on issues that they cannot themselves access, for want of resource.

The Scottish Executive (2005a) responded:

Given the importance of indicators to respondents, and to the Executive, we will commit to giving this complex issue further consideration. In the meantime, the expectation is that Responsible Authorities will make every effort to set environmental objectives and utilise available indicators as appropriate.

A further consultation question asked whether social and economic factors should also be considered in environmental reports. Views on this varied. West Lothian Council (Scottish Executive 2005l) stated:

A true SEA should include social and economic information if it is to be undertaken in the spirit of sustainable development. In this context social and economic drivers may...
justifiably take precedence over environmental impacts. That is the nature of the balance that has to be addressed in policy. An environment report may well have to determine negative environmental impacts arising from social and economic decisions when responding to, for example, Structure Plan housing requirements. How this is reconciled, to minimise environmental impact is part of the reporting process. However, the Consultation Authorities are not selected on their social and economic expertise but are purely environmental.

The RSPB (Scottish Executive 2005m) disagreed:

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.

The Executive (2005a) responded:

The Executive acknowledges that consideration of social and economic factors is important to the quality of public policy making. However, the Executive also accepts respondents’ concerns that a statutory requirement for their inclusion in environmental reports risks obscuring the environmental considerations that we are setting out to identify.

Therefore, the Executive’s proposal is to make no statutory provision for the inclusion of social and economic factors in environmental reports.

**SCOPING**

Section 15 makes provision for a quality assurance measure (Explanatory Notes) called scoping.

This is essentially a requirement for the Responsible Authority to detail the scope and level of detail that they propose to address in the environmental report. They should also propose a suitable public consultation period for the completed report and submit this to the Consultation Authorities for their opinions.

The next step requires the Consultation Authorities, within 5 weeks, to respond with comments on the scope and level of the environmental report, having taken into account their expert knowledge of the environmental impacts of the plan or programme. To ensure a combined approach on cumulative and synergistic effects, Consultation Authorities are required to send a copy of their views to each other.

Section 15(3) binds the Responsible Authority to taking the views of the Consultation Authorities into account when preparing and consulting on the environmental report. Section 15(4) allows Scottish Ministers to adjust the proposed consultation period if they deem that the Consultation Authorities or the public have not had an early and effective opportunity to express their opinion on the plan or programme and the accompanying environmental report.
CONSULTATION PROCEDURES

Section 16 provides for a formal consultation procedure with the Consultation Authorities and the public.

Specifically, it requires Responsible Authorities, within 14 days, to send a copy of the environmental report and the plan or programme to which it relates to the Consultation Authorities, and invites them to express their opinion within a specified time.

Furthermore, this Section requires them to advertise and carry out a public consultation within 14 days of the preparation of the environmental report. The process for this commences with the publication of a notice giving details of the environmental report, the plan or programme to which it relates, and stating where it can be accessed so that expressions of opinion from the public may be submitted. Additionally, Responsible Authorities are required to publish the notice in such a way as to ensure that the contents of the notice are likely to come to the attention of the public eg in at least one newspaper circulating in the area to which the plan or programme relates.

This Section defines “public” as those affected or likely to be affected by; or having an interest in, the plan or programme.

As noted above, public consultation and participation are fundamental to the SEA process.

ACCOUNT TO BE TAKEN OF ENVIRONMENTAL REPORT

Section 17 is fundamental to this legislation as it requires the Responsible Authority to take account of both the environmental report and consultation responses in its preparation of the plan or programme (Explanatory Notes). Transboundary effects notified by consultation under the UK Regulations also have to be taken into account.

Failure to apply this correctly would open up the Responsible Authority to a challenge through judicial review, and any failure to comply with this Section will be transparent because the following Section (18) requires the publication of a statement declaring (amongst other issues) how opinions expressed in the consultation have been taken into account. Section 17 is further supported by Section 12’s restriction on the adoption of qualifying plans and programmes that have not been subjected to SEA.
PART 3. POST ADOPTION PROCEDURES

This part of the Bill introduces 2 Sections which make provision for the publication of a statement bringing the plan or programme to the public’s attention and detailing the methodology of the environmental assessment. This part also makes provision for the implementation of a monitoring programme.

Section 18 requires the Responsible Authority, as soon as is reasonably practicable after the adoption of the qualifying plan or programme to publicise it, advise where it might be viewed, and set out (Explanatory Notes):

- how environmental considerations have been integrated
- how the environmental report and consultation responses have been taken into account
- the reasons for choosing the selected approach over the alternatives considered
- the arrangements for monitoring the significant environmental effects of the plan or programme

Section 19 places a duty on the Responsible Authority to monitor the significant environmental effects of its plan or programme. The key purpose is to identify unforeseen environmental effects and to take remedial action. In many cases Responsible Authorities may already have environmental monitoring arrangements in place; the use of these is encouraged to avoid duplication of effort. A description of these monitoring measures should have been included in the Environmental Report and the finalised proposals must be included in the SEA statement discussed above.

PART 4. GENERAL

Part 4 introduces 5 Sections of general provisions, the most important being Section 23 which revokes the Regulations.

The others make provision for:

- Crown application (Section 20)
- general powers and procedures for orders which may be made under powers conferred by the Bill (Sections 21 and 22)
- interpretation, commencement and short title (Sections 24 and 25)
APPENDIX 1. STRATEGIC ENVIRONMENTAL ASSESSMENT IN SCOTLAND TO DATE

The following Sections provide a brief summary of SEA in Scotland to date.

BEFORE THE INTRODUCTION OF THE SEA REGULATIONS

Prior to the introduction of the Regulations in July 2004, certain local authorities had carried out some type of environmental assessment of their structure plans. These include (David Tyldesley and Associates 2003):

- Clackmannanshire/Stirling in 2000
- Fife in 2001
- Highland in 1999
- Falkirk in 2001
- Perth and Kinross in 2002

Differing methodologies were applied to all of these; however certain parts of the assessment process are relevant. For example, they all used environmental indicators as part of the assessment criteria. The methodology for the Finalised Fife Structure Plan asked questions such as (David Tyldesley and Associates 2003):

- Does the policy or project have significant implications for the conservation or enhancement of biodiversity (eg habitat protection, designated sites etc)?
- Does the policy or project provide information on environmental impacts and support mitigation?

Similarly, an assessment of policy options, and alternative strategies for the Perth and Kinross Structure Plan recorded the examination of three development strategy options to accommodate future growth. Option 1 concentrated on focusing development primarily on Perth, its immediate edges and key transport corridors. Option 2 considered widely dispersing new development across the area in other towns and villages whilst tightly constraining Perth and Option 3 favoured selective growth of Perth and key towns such as Aberfeldy or Blairgowrie. Each option was appraised against the following criteria:

- existing development pattern
- energy efficiency
- efficient use of infrastructure
- access to employment
- relationship to services and amenities
- reducing travel
- impact on landscape
- impact on cultural heritage

Option 3 (selective growth of Perth and key towns) came forward as the favoured option and was subsequently promoted in the Consultative Draft Structure Plan.

An Environmental Assessment (Scottish Executive 2004c) of Scotland’s first National Planning Framework (Scottish Executive 2004d) has also been carried out. This is considered in Appendix 1 of SPICe Briefing 04/46 (Reid 2004a) on Strategic Environmental Assessment.
UK LEVEL STRATEGIC ENVIRONMENTAL ASSESSMENT BY THE DTI

Across the UK, the DTI has voluntarily carried out 8 SEAs (others are underway) to determine future strategies for offshore energy licensing. These were prepared to assess the implications of licensing oil and gas exploration; therefore, they were sector specific rather than completely comprehensive. A comprehensive SEA would have addressed all of the environmental implications of all activities in the area. The DTI’s SEA archive gives detailed information on all of the assessments.

Of the above 8, SEA 2 is most pertinent to Scotland as it includes the majority of the UK’s North Sea oil and gas fields. This was undertaken in line with the SEA Directive, and aimed to facilitate the consideration of environmental protection and sustainable development objectives in the decisions relating to oil and gas licensing in parts of the North Sea (DTI 2004). The assessment process considered issues such as:

- contaminant status
- existing activities
- fish and fisheries
- geology
- marine mammals
- plankton

The alternatives to the proposed licensing were not to offer any blocks, to license a restricted area, or to stagger the timing of activity in the area. Consultation was facilitated with the public, environmental authorities, other bodies and neighbouring states by making the assessment document available in a number of different formats and media. The formal public consultation phase extended for ninety days from the date of publication. Some of the environmental impacts identified were as follows:

- physical damage
- noise
- atmospheric emissions
- accidents

It was found that the cumulative overlapping of “footprints” of detectable contamination or biological effects were limited or unlikely. No synergistic effects were identified that were considered to be potentially significant.

The areas studied are adjacent to the continental shelves of Norway, Denmark, Germany and the Netherlands. Prevailing winds and water circulation in the North Sea will result in the transboundary transport of underwater noise, produced water, drilling discharges, atmospheric emissions and oil spills. The scale and consequences of these environmental effects was determined to be comparable to those in UK waters; therefore, only oil spills were regarded as having the potential to result in significant negative environmental effects.

The environmental and safety consequences of accidental gas releases were considered; it was decided that these depend both on scale, and on whether the released gas ignites. The DTI states (2004):

*The major constituent of natural gas is the greenhouse gas methane, and gas releases on all scales will therefore contribute to global climatic effects. Any foreseeable contribution of methane, including a sustained gas blowout, to global emissions will be negligible.*

providing research and information services to the Scottish Parliament
Project-specific licences can specify timing, spatial and activity constraints relevant to the environmental sensitivities of the area. Therefore, interference with and damage to seasonal seabird vulnerability, actual or potential conservation sites, and other users of the sea and other marine resources can be taken into account and mitigated against.

As a result of the SEA, some gaps in information about and understanding of potential environmental sensitivities have been identified. These are being addressed through industry cooperation and ongoing monitoring. The DTI (2004) therefore concluded that there:

...are no overriding reasons to preclude the consideration of further oil and gas licensing within the SEA 2 areas.

SEA IN SCOTLAND SINCE THE INTRODUCTION OF THE REGULATIONS

Since 20 July 2004, the SEA Gateway has received 10 screening, and 3 scoping reports. No environmental reports have been completed under the SEA Regulations.

Of the 10 screening requests, the following is currently with the Consultation Authorities for consideration under the 28 day statutory deadline:

- Cairngorms National Park Authority; National Park Plan and Local Plan

The other 9 have been responded to by the Consultation Authorities within the 28 day deadline.

- West Dunbartonshire Council; Local Plan
- Aberdeen City Council; Local Transport Strategy
- Glasgow City Council; Review of the City Plan
- Falkirk Council; Revised Sustainability Strategy
- Communities Scotland; Corporate Plan
- East Ayrshire Council; Alteration to the adopted Local Plan
- City of Edinburgh Council; Granton Waterfront Masterplan
- Deer Commission Scotland; Corporate Plan 2005-2015
- Highlands and Islands Airports Ltd; Corporate Plan 2005-2015

In all of the above cases the Consultation Authorities have confirmed that the plan or programme is likely to have significant environmental effects. Of the above 9, only one has so far been submitted to the Consultation Authorities, via the SEA Gateway for the next stage (scoping). This was:

- West Dunbartonshire Council; Local Plan

The two remaining Scoping requests received by the SEA Gateway are from, Loch Lomond and Trossachs National Park, (Draft National Park Plan) and Moray Council (Development Plan) these were both submitted directly for Scoping, without having to go through Screening. The Regulations allow a Responsible Authority to submit a plan directly to scoping if they relate to a specific subject and set the framework for future development consent. The Consultation Authorities replied to West Dunbartonshire Council and Loch Lomond and Trossachs National Park within the 35 day statutory deadline and have provided their views on the content of the scoping report.

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21 this was subsequently withdrawn because the screening process ascertained that the first formal preparatory act had taken place before 21 July 2004; therefore SEA was not required
West Dunbartonshire Local Plan Case Study

The first formal preparatory act for this was in August 2004, and as such this was the first to be submitted for screening to the SEA Gateway. Following the statutory 4-week consultation period the determination was returned indicating that SEA was required. On 12 October, a determination advert, and a notice of intention to prepare the West Dunbartonshire Local Plan was placed in a local newspaper.

Work then began on establishing baseline data; this involved collating in-house information and contacting and working closely with external organisations such as SEPA, HS, SNH and Scottish Water to gather additional relevant data.

It was agreed with the Consultation Authorities that a draft scoping report would initially be submitted for informal consultation and then formally submitted through the SEA Gateway. The draft scoping report was submitted on 7 December with a week given for comments. The scoping report was then formally submitted to the Consultation Authorities, via the Gateway, on 23 December. The comments made about the scoping report were felt to be constructive but no major changes were proposed by any of the Consultation Authorities.

Following this, consultation was opened up to a wider audience to engage local interest groups and other interested parties from an early stage. 73 organisations/individuals were contacted with a 3-week consultation period. A number of consultees did not respond formally but of those who did a considerable number were particularly interested in renewable energy and how it was being taken into consideration in the SEA and the local plan. West Dunbartonshire Council (2005) state:

> The consultation process was an awareness raising activity as much as it was seeking constructive comments on the scope and level of detail of the SEA. The true benefit of this exercise is that at latter stages of the SEA and local plan process local interest groups will already be aware of SEA and they will feel that they have been offered sufficient information and opportunity to influence the process.

Subsequently, it was identified that the local plan objectives were not consistent with the SEA objectives. The local plan objectives have been modified to narrow their focus, emphasise the importance of the environment and reduce the scope for interpretation. West Dunbartonshire Council (2005) state:

> Changing the objectives to have a more environmental emphasis was the first positive outcome of the SEA and it represents an important change that would not have occurred without the influence of the SEA.

Constraint, supply and expansion were initially considered as suitable spatial strategic alternatives to the local plan; however these were thought to be unrealistic on their own, and a number of alternative topic options (housing, transport, education) are also being assessed. These are being agreed with the Consultation Authorities. West Dunbartonshire Council (2005) state:

> To date the SEA has had a very positive influence on the local plan, to the extent that changes have been made to the local plan objectives and the SEA is currently helping to determine the most environmentally beneficial and reasonable options... The SEA

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22 the information for this case study was supplied by West Dunbartonshire Council (2005)
involves a significant amount of time and thought, but it is a positive process and one that fits well with the established local plan process.

Following the approval of the scoping report, the Council is currently assessing alternatives, and policy options. The next output will be the environmental report.

It is difficult to effectively estimate costs for this exercise, however since December 2004 (5 months into the project), the SEA has accounted for 100% of the workload of one staff member on a scale of £27,054 - £29,541 per annum. It has also reduced the capacity of the Local Plan Team by 22%, and therefore indirectly increased the time taken to complete the plan by an estimated 3 months. Additionally, an independent audit of the environmental report will cost £1,500. The Council (2005) noted that because this is their first SEA, the collation of baseline information has cost more than it will in the future. In the future, because of the time consuming nature of carrying out a SEA, It is likely that it will be more cost effective to employ private consultants.

ONGOING MONITORING

The Minister for Environment and Rural Development has agreed in principle to carry out a case evaluation exercise, in conjunction with COSLA and the Loch Lomond and Trossachs National Park Authority, to review and understand better how the SEA process is working.
### APPENDIX 2. GLOSSARY OF TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Consultation Authority</td>
<td>Specialist body with environmental expertise that will consider the environmental effects of the plan or programme when asked to do so by the Responsible Authority at the screening and/or scoping stage. They are the Scottish Environment Protection Agency, Scottish Natural Heritage, the Scottish Ministers (in practice, Historic Scotland). The Bill makes provision for Consultation Authorities in Section 3.</td>
</tr>
<tr>
<td>Cumulative Effects</td>
<td>The combination of effects which, in some cases, may not be significant in themselves, but which taken together amount to a significant impact. There might be several of the same effects, for example too many houses in one place, or the combination of different types of effect in one area, for example one causing noise, another reducing air quality.</td>
</tr>
<tr>
<td>Environmental report</td>
<td>A report detailing all the significant positive and negative environmental impacts of a plan or programme. It will be published along with the plan or programme for public comment.</td>
</tr>
<tr>
<td>Pre-screening</td>
<td>This allows Responsible Authorities to exempt a plan or programme from SEA on their own cognisance, if they are of the opinion that there are no or minimal environmental effects.</td>
</tr>
<tr>
<td>Plan or Programme</td>
<td>The terms <em>Plan</em> and <em>Programme</em> are general descriptors of frameworks for action set out by Responsible Authorities. Throughout the Bill, reference to plans or programmes also includes <em>strategies</em> as set out in Section 4(4). These terms are broadly interchangeable; the nature of the plan or programme, as set out in Section 5, is more important.</td>
</tr>
<tr>
<td>Project</td>
<td>The execution of construction works or of other installations or schemes; other intervention in the natural surroundings and landscape including those involving the extraction of mineral resources. The framework for a project is set by a plan or programme; examples of qualifying projects can be found in Schedule 1.</td>
</tr>
<tr>
<td><strong>Responsible Authority</strong></td>
<td>A body or person exercising functions of a public character. In relation to plans and programmes, it is the authority by which, or on whose behalf, the plan or programme is prepared. Defined in Section 2.</td>
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<td>--------------------------</td>
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<tr>
<td><strong>Scoping</strong></td>
<td>The stage in the assessment process which seeks to define what the scope and level of detail should be for the environmental report.</td>
</tr>
<tr>
<td><strong>Screening</strong></td>
<td>The stage in the assessment process which determines whether a particular plan or programme, or alteration to one, is likely to have significant environmental effects and should therefore be subject to the full environmental assessment process.</td>
</tr>
<tr>
<td><strong>Synergistic</strong></td>
<td>Synergistic effects are those of activities which act in conjunction with other human activities (e.g., fishing and crude oil transport)</td>
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</table>
APPENDIX 3. LIST OF PLANS AND PROGRAMMES THAT MIGHT BE SUBJECT TO SEA

This is a summarised list of plans and programmes which Scottish Environment LINK (Scottish Parliament Environment and Rural Development Committee 2004b) members have identified as having (potentially) significant environmental effects, and which might be subject to SEA.

It should be noted that this list is indicative, not definitive. Also, many of the plans listed have already been adopted, and therefore will not be subject to retrospective SEA. Some of these plans may be re-issued or altered in the future; at this point, they may qualify for SEA subject to the usual procedures.

KEY:  
+ May be subject to SEA under this legislation  
- Is not likely to be subject to SEA under this legislation  
? Uncertain

<table>
<thead>
<tr>
<th>Plan or Programme</th>
<th>Subject to SEA under the Regulations?</th>
<th>Subject to SEA under the Bill?</th>
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<tbody>
<tr>
<td><strong>Town and Country Planning</strong></td>
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<tr>
<td>Structure Plans Statutory, prepared by local planning authorities under the Town and Country Planning Act</td>
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<tr>
<td>Local Development Plans Statutory, prepared by local planning authorities under the Town and Country Planning Act</td>
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<tr>
<td>Supplementary Planning Guidance Non-statutory. Discretionary, limited to supplements to statutory plan policy and to be clearly cross referenced to it</td>
<td>-</td>
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<tr>
<td>Local Agenda 21 Strategies Sustainable Development strategies, prepared by Local Authorities and partners including local communities Non-statutory, Community Planning</td>
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<tr>
<td><strong>WASTE</strong></td>
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<tr>
<td>National Waste Strategy</td>
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<td>Area Waste Plans</td>
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<tr>
<td><strong>HISTORIC ENVIRONMENT</strong></td>
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<tr>
<td>Passed to the Future: Historic Scotland policy for sustainable management of the historic environment 2002</td>
<td>-</td>
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<tr>
<td>Architecture policy for Scotland 2001</td>
<td>-</td>
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<tr>
<td><strong>WATER MANAGEMENT</strong></td>
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<td></td>
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<tr>
<td>River Basin Mgt plans and sub basin plans (from 09) arising from WEWS Act 2003</td>
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<tr>
<td>Water Company Infrastructure or Abstraction Plans</td>
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<tr>
<td><strong>ACCESS AND RECREATION</strong></td>
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<tr>
<td>A Walking Strategy for Scotland 2003 (SE)</td>
<td>-</td>
<td>+</td>
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<tr>
<td>Scottish Outdoor Access Code</td>
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<tr>
<td><strong>MARINE ENVIRONMENT</strong></td>
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<tr>
<td>Harbour plans: Non-statutory plans prepared by Harbour Authorities for management of recreation, watercraft etc.</td>
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<tr>
<td>Strategic Framework for Scottish Aquaculture 2003</td>
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<tr>
<th><strong>ENVIRONMENT</strong></th>
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<tr>
<td>SNH Policy Statements on topic areas– e.g. Agriculture, renewable energy, opencast mining, sustainable development etc.</td>
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<tr>
<td>SEPA Corporate Plan</td>
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<tr>
<td>SSSI Management Statements</td>
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<th><strong>TOURISM</strong></th>
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<tr>
<td>A Strategy for Scottish Tourism 2000</td>
<td>-</td>
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<tr>
<td>VisitScotland Corporate Plan</td>
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<tr>
<th><strong>ECONOMIC DEVELOPMENT</strong></th>
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<tr>
<td>Scottish Executive Expenditure Plans/budget?</td>
<td>-</td>
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<tr>
<td>A modern regional policy for the UK: consultation on the future of structural funds, 2003</td>
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<th><strong>TRANSPORT</strong></th>
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<td>“Transport delivery report.” nonstatutory, was published first in March 2002 as ‘Scotland’s Transport: Delivering Improvement’, and had an update entitled ‘Building Better Transport’ published in 2003.</td>
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<tr>
<td>National Cycling Strategy</td>
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<tr>
<td>Local Authority Transport Strategies: Non-strategy, prepared by all local planning authorities</td>
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<tr>
<th><strong>ENERGY</strong></th>
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<tr>
<td>UK Energy Strategy 2003</td>
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<td>UK Fuel Poverty Strategy</td>
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<tr>
<td>A Climate Change Mitigation Strategy for Scotland 1999 (due for review 04)</td>
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<th><strong>DEFENCE</strong></th>
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<td>Rural Estate Strategy: prepared by MOD, identifying objectives for use of the Rural Estate. Government policy, non-statutory.</td>
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<tr>
<th><strong>OTHER AREAS</strong></th>
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<tbody>
<tr>
<td>Social Justice Strategy 1999</td>
<td>-</td>
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<tr>
<td>Scotland’s Health Strategy 2000</td>
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SOURCES


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Scottish Executive (2005b) *A Consultation on the Proposed Environmental Assessment (Scotland) Bill. Response by Friends of the Earth Scotland [Unpublished].*

Scottish Executive (2005c) *A Consultation on the Proposed Environmental Assessment (Scotland) Bill. Response by Scottish Enterprise [Unpublished].*

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Scottish Executive (2005j) *A Consultation on the Proposed Environmental Assessment (Scotland) Bill. Response by SNH [Unpublished].*

Scottish Executive (2005k) *A Consultation on the Proposed Environmental Assessment (Scotland) Bill. Response by The Strategic Rail Authority [Unpublished].*


Scottish Executive (2005m) *A Consultation on the Proposed Environmental Assessment (Scotland) Bill. Response by RSPB Scotland [Unpublished].*


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