ENVIRONMENTAL ASSESSMENT (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Environmental Assessment (Scotland) Bill introduced in the Scottish Parliament on 2 March 2005:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 38–PM.
INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The Bill seeks to support the aims set out in the Policy Memorandum through the extension of current environmental protection measures to additional plans, programmes and strategies. Through the Bill the aim is to improve protection of the environment, to improve public decision making and in particular to implement the commitment in ‘A Partnership for a Better Scotland’ to legislate to introduce Strategic Environmental Assessment across the range of all new strategies, plans and programmes developed by the public sector in Scotland. The use of primary legislation has allowed the extension of scope and wider matters to be subject to extensive public consultation and for the importance of the subject matter to be properly reflected. The term Strategic Environmental Assessment is sometimes shortened to SEA or to environmental assessment. The Explanatory Note uses the term environmental assessment.

THE BILL

5. The purpose of the Bill is to introduce an environmental assessment regime for certain plans and programmes.

COMMENTARY ON SECTIONS

The Main Provisions of the Bill

- **Part 1** of the Bill sets out the requirement on Responsible Authorities to secure the carrying out of an environmental assessment on qualifying plans. It defines the term Responsible Authorities for the purposes of the Bill, and contains provisions for establishing which plans and programmes should be subject to the assessment process. It also provides that any reference to plans and programmes in the Bill includes strategies.

- **Part 2** of the Bill sets out the requirements for performing, scoping and producing the environmental report. Scoping establishes the subject areas to be included in the environmental assessment report and the degree of detail required in respect of each subject. Part 2 further sets out requirements for consultation and the taking into account of consultation responses in reaching a final decision to adopt a particular plan or programme.

- **Part 3** of the Bill makes provision for the announcement of the adoption of any plan that has been subject to environmental assessment. It sets out the arrangements for
the monitoring of the implementation of the plan and requirements for forward monitoring and remedial action in respect of unforeseen effects.

- **Part 4** of the Bill makes general provisions for order making powers and commencement of the Bill. This part revokes The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258) (“the Regulations”).

**THE BILL – SECTION BY SECTION**

**PART 1 – ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES**

**Section 1 – Requirement for environmental assessment**

6. Section 1 sets out the primary requirement of the Bill which is to secure the carrying out of an environmental assessment during the preparation of a qualifying plan or programme. Section 4 identifies which plans and programmes are covered by the provisions of the Bill, and section 4(4) provides that the phrase “plans or programmes” includes “strategies”. Section 1 also defines what constitutes an environmental assessment as the preparation of an environmental report, consultation and the taking into account of the report and the results of the consultations in the decision making process. Further provision on the report and consultation is made in sections 14 and 16 respectively.

7. Subsection (1) makes clear that the environmental assessment must be carried out before adoption or before submission to a legislative procedure for adoption of the plan or programme. It is anticipated that “Adoption” may be something as informal as deciding to act on the final plan or programme developed, or it may be more formal, for example, requiring approval under a statutory regime. The expression “submission for adoption through a legislative procedure” is derived from the Directive and will take Directive meaning. It is understood to mean that the finalised plan or programme is submitted to the Scottish Parliament or other legislative body for endorsement. That body will then make the legislation necessary to allow the plan or programme to be carried out. Whether adopted through a legislative procedure, or in a less formal manner, it is intended that the environmental assessment be carried out before the plan or programme is finalised.

8. More than that, the environmental assessment should be carried out as an integral part of the plan and programme development and decision making process. This is implicit in the description of the environmental assessment given in subsection (2). Whilst the steps that form the parts of an assessment can be taken at any time before a plan or programme is adopted, it is expected that the assessment will be integrated into the early stages of the process. Environmental assessment can then be used to enhance the entire process and help to ensure that the best available outcome is achieved.

**Section 2 – Responsible Authorities**

9. The Bill is focussed solely on the public sector, defined in this section “as any person, body or office-holder exercising functions of a public character”. This phrase seeks to capture the full extent of the public sector from central and local government, across the range of public bodies and to those private persons or bodies which perform functions of a public character, for
example under licence or in accordance with statutory powers. The Responsible Authority is in charge of the qualifying plan or programme and each qualifying plan or programme may only have one Responsible Authority at any one time. Where several authorities have an interest in a particular plan or programme they should agree amongst themselves who should be nominated as the Responsible Authority for that plan or programme. Where agreement cannot be reached, the Scottish Ministers will decide who should be the Responsible Authority.

10. Section 2(4) sets out the public sector bodies to which section 5(4) applies. The bodies listed include most Scottish public sector bodies, but paragraph (f) allows Scottish Ministers to specify further responsible authorities by order. Any additions would be made in respect only of functions of a public character being carried out by a person, body or office holder in Scotland. Any order made by the Scottish Ministers in this respect is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Section 3 – Consultation Authorities

11. The Bill provides for named Consultation Authorities to have particular functions at various stages in the assessment procedure. These authorities are listed in section 3 and they are the Scottish Ministers, Scottish Environment Protection Agency and Scottish Natural Heritage. Although the Scottish Ministers are named, in practice, it is expected that Historic Scotland will be the part of the Executive to fulfil the Consultation Authority functions conferred on Scottish Ministers.

12. A Consultation Authority will not play that statutory role in respect of its own plans and programmes.

Section 4 – Plans and programmes

13. This section describes the plans and programmes, and modifications to them, that are potentially subject to environmental assessment. The plan or programme must relate solely to the whole or any part of Scotland. Those that relate to Scotland and any other part of the UK come within the provisions of The Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633)(“The UK Regulations”)

14. Section 4 (3) details certain absolute exclusions. These are plans or programmes that relate solely to national defence or civil emergency; finance and budgetary plans or programmes and the specified EU co-financed plans and programmes.

15. As mentioned previously, section 4(4) provides that any reference to plans and programmes in the Bill includes strategies.

Section 5 – Qualifying plans and programmes

16. This section describes in detail the plans and programmes to which the provisions of the Bill apply and provides that these be called “qualifying plans and programmes”. The Bill only applies to plans and programmes for which the first formal preparatory act takes place on or after
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the coming into force of section 5(1)(a) of the Bill, and which are not exempt under sections 7(1) or 8(2).

17. Section 5(2) excludes those parts of plans and programmes that relate to matters that are not of a public character. The intention here is to ensure that the private activities of Responsible Authorities are not affected.

18. Section 5(3) deals with those plans and programmes required by the Directive. Section 5(3)(a) and (b) set out a group of activity areas which, by their nature, mean that plans and programmes relating to them are deemed always to be likely to give rise to significant environmental effects and therefore will always give rise to the requirement to carry out an environmental assessment. Subsection (5) allows Scottish Ministers to amend and update schedule 1 of the Bill, to take account of any further amendments that may be made to Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment ("the EIA Directive" on which schedule 1 is largely based. The additions of Motorway service areas and Golf Courses and associated developments are included to be consistent with the provisions of Environmental Impact Assessment (Scotland) Regulations S.I. 1999/1). Any order made in this respect by the Scottish Ministers is subject to annulment in pursuance of a resolution of the Scottish Parliament.

19. Section 5(3)(c) provides that even though a plan or programmes does not fall within sub-paragraph (a) or (b), it is still necessary to consider whether it sets the framework for future development consent of projects listed in schedule 1 to the Bill. So, for example, a structure plan would not deal directly with the various categories of plans and programmes set out in schedule 1 to the Bill, but it would set the framework for future development consent of those plans and programmes. That being so, the Responsible Authority would then have to determine whether the structure plan would be likely to have significant environmental effects. It is expected that this would usually be the case and so the Responsible Authority would require to have had an environmental assessment carried out for the structure plan before it is adopted.

20. Section 5(4) introduces an additional set of plans and programmes that are subject to environmental assessment beyond those set out in section 5(3) and importantly therefore beyond those subject to assessment under existing regulations. Exclusions to this additional set are detailed in section 6. The ‘public’ bodies listed at section 2(4) are the Responsible Authorities for these additional plans and programmes. These bodies will require to apply pre-screening (see paragraphs 22-24) before entering the formal screening stage (see paragraphs 25-26).

Section 6 – Types of excluded Plans and programmes

21. Section 6(1)(a) provides that plans and programmes relating exclusively to individual schools are excluded because 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. Subsection (2) provides a power to modify section 6(1)(a) should circumstances arise where the exclusion of such plans and programmes, or some of them, from the provisions of the Bill is no longer appropriate.
22. Section 6(1)(b) provides powers for the Scottish Ministers to specify further exclusions by order. The intention of section 6(1)(b) is to ensure 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. The proposed powers in section 6(1)(b) and (2) are limited by section 6(3) so that they may only be used to exclude plans and programmes under sections 6(1)(a) and 6(1)(b) which, in the opinion of the Scottish Ministers, are likely to have no effect or minimal effect in relation to the environment.

**Section 7 – Exemptions: pre-screening**

23. Section 7 introduces pre-screening but only for plans and programmes referred to in section 5(4)(see paragraph 15). 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 programme at the pre-screening stage, Responsible Authorities are not required to consult formally either the Consultation Authorities or the public.

24. When carrying out a pre-screening the Responsible Authority has to decide whether the plan or programme will have no or minimal environmental effects, in which case they may determine that an environmental assessment is not required. Responsible Authorities are required, by section 7 (2) to apply the schedule 2 criteria in making this determination.

25. The intention of the pre-screening provisions is to ensure that the Bill is effectively targeted at those plans and programmes which are likely to have significant effects on the environment. It will also reduce administration.

**Section 8 – Exemptions: screening**

26. Certain plans and programmes as listed in section 8(1) require to undergo a formal screening process to establish whether or not they should be subject to a full environmental assessment. It applies to plans or programmes referred to in section 5(3) which determine the use of small areas at local levels, a minor modification of a plan or programme referred to in section 5(3), a plan or programme described in section 5(3)(c); or a plan referred to in section 5(4) which a responsible authority has decided is not exempt under section 7(1).

27. Section 8(3) provides that the criteria in schedule 2 of the Bill have to be applied when making a determination under section 8(1). Where the determination is that the plan or programme is unlikely to have significant environmental effects, then it is exempt from the requirements of the Bill (section 8(2)). Reasons must be given for reaching that determination, and those must state how the criteria in schedule 2 were applied to reach that determination.

**Section 9 – Screening: procedure**

28. For plans and programmes that are subject to the formal screening procedure, section 9 provides that a Responsible Authority submit to the Consultation Authorities a summary of its views as to whether a particular plan or programme is likely to have significant environmental
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effects. The summary should be prepared with reference to section 8(3) which requires the Responsible Authority to have reached its view by applying the schedule 2 criteria for determining the likely significance of effects on the environment.

29. Section 9(3) provides that the Consultation Authorities shall respond to formal screening submissions within 28 days offering their views as to whether the plan or programme is likely to have significant environmental effects. Where agreement is reached between the Responsible Authority and Consultation Authorities then the Responsible Authority should make a determination accordingly. Section 9(6) and (7) make provision for any disagreements to be referred to the Scottish Ministers to make a final determination as to whether the plan or programme is likely to have a significant environmental effect.

30. 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 – Screening: publicity for determinations

31. Section 10 provides for how Responsible Authorities should publicise their determinations under section 8(1). This includes a requirement to send a copy of the determination (and any statement of reasons under section 8(2)(b)) to the Consultation Authorities and to make those items available to the public in various specified ways.

Section 11 – Directions as regards plans and programmes

32. Section 11 provides that Scottish Ministers may, at any time, direct a Responsible Authority to send them a plan or programme and on consideration of it direct the Responsible Authority, as appropriate, to either enter the screening process or to carry out an environmental assessment. Section 11 helps facilitate compliance with the Bill and should help to ensure that no qualifying plan deemed to have significant environmental effects will proceed without an environmental assessment being carried out.

Section 12 – Restriction on adoption or submission

33. Section 12 provides that no qualifying plan or programme shall be adopted or submitted to a legislative procedure for adoption until the requirements of the Bill have been met. The intention of this provision is to ensure compliance with the requirements of the Bill.

Section 13 – Relationship with Community Law requirements

34. Section 13 essentially provides that the requirements of the Bill are without prejudice to any other European Community Law requirements.
PART 2 – ENVIRONMENTAL REPORTS AND CONSULTATION

Section 14 – Preparation of environmental report

35. This section, along with schedule 3, sets out in detail the nature and content of an environmental report. The report should describe and evaluate the likely significant effects on the environment of the proposed plan or programme and of any of the alternative approaches considered. Section 14(5) allows Scottish Ministers by order to modify schedule 3. Any order made by the Scottish Ministers in this respect is subject to annulment by resolution of the Scottish Parliament.

Section 15 – Scoping

36. Section 15 sets out a quality assurance measure referred to as scoping. The Responsible Authority must set out the scope and detail of the information to be included in the environmental report along with the proposed public consultation period. They must then submit this to the Consultation Authorities for their opinions. The Consultation Authorities should respond with their opinions within 5 weeks and Responsible Authorities are bound to take their views into account when preparing, and consulting on, the environmental report. To help ensure the quality of environmental reports and to facilitate compliance with the Bill, Scottish Ministers may adjust the consultation period proposed by the Responsible Authority if they deem it inadequate (section 15(4)).

Section 16 – Consultation procedures

37. Section 16 sets out the framework for formal consultation with the Consultation Authorities and the public. It is intended that it will help to ensure that all stakeholders can contribute effectively, especially those likely to be affected directly by the plan or programme. Consultation must be sufficiently early in the process to allow for that consultation to be effective.

Section 17 – Account to be taken of environmental report etc.

38. Section 17 requires that the Responsible Authority takes account of both the environmental report and consultation responses in its preparation of the plan or programme. This includes those resulting from any transboundary consultations undertaken under the UK Regulations.

PART 3 – POST-ADOPTION PROCEDURES

Section 18 – Information as to adoption of a qualifying plan or programme

39. As soon as is reasonably practicable after the adoption of the plan or programme the Responsible Authority must publicise it along with a clear statement explaining why a particular approach was adopted. Section 18(3) sets out what this statement should include:- 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; and the arrangements for monitoring the significant environmental effects of the plan or programme.

Section 19 – Monitoring the implementation of qualifying plans and programmes

40. The Responsible Authority is placed under a duty to monitor the implementation of the plan or programme to identify and address any unforeseen environmental effects.

PART 4 – GENERAL PROVISIONS

Section 20 – Crown Application

41. This section makes provision for the Act to bind the Crown.

Sections 21 and 22 – Orders

42. Section 21 makes provision for the general powers and procedures for orders which may be made under powers conferred by the Bill. Section 22 separately gives powers to make subordinate legislation which is incidental, supplemental, consequential, transitional or savings in respect of the provisions of the Bill itself. Any order under section 22 which amends primary legislation must follow affirmative procedure.

Section 23 – Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004

43. This section revokes the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (S.S.I. 2004/258). It is intended that the Bill will become the implementing legislation for Directive 2001/42/EC of the European Parliament and Council as regards plans and programmes which relate solely to the whole or any part of Scotland.

44. It is also intended that plans and programmes which fell to be dealt with in accordance with the terms of the Regulations while they were in force will continue to be dealt with under the Regulations. We intend bringing forward provisions in an order to be made under section 22 to ensure that that is achieved.

Sections 24 and 25 – Interpretation, Commencement and short title

45. Section 24 makes provision for interpretation of the terms “The Directive” and “the public”. It also provides that terms used in the Bill which are also used in the Directive will have the meaning in the Bill that they have in the Directive unless the context otherwise requires.

46. Section 25 provides that, except for sections 20, 21, 22, 24 and 25, the provisions of the Bill come into force on a date or dates set by the Scottish Ministers by order. Sections 20, 21, 22, 24 and 25 will come into force on Royal Assent.
SCHEDULES

Schedule 1 – Projects

47. This schedule lists the projects referred to at 5(3)(a)(ii). The schedule largely lists Annexes I and II of the EIA Directive. This is done for the convenience of the reader and removes need to constantly cross refer to other legislation.

Schedule 2 – Criteria for determining likely significance of effects on the environment

48. This schedule sets out the detailed criteria for establishing the likely significance of effects on the environment. 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.

Schedule 3 – Information for Environmental Reports

49. This schedule sets out in detail the information required to be included in Environmental Reports.

FINANCIAL MEMORANDUM

INTRODUCTION & OVERVIEW OF WHERE COSTS FALL

50. Strategic Environmental assessment (SEA) is a key component of sustainable development. SEA provides a systematic method for early consideration of the likely environmental effects of public sector strategies, plans and programmes and for meaningful early public consultation. As such, SEA will lead to improved policy making and better environmental protection throughout Scotland.

51. The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 transposed European Directive 2001/42/EC. The Environmental Assessment (Scotland) Bill extends the number and type of public sector strategies, plans and programmes to include others which, although not subject to the Directive, are likely to have significant environmental effects (please refer to para 20 of the Explanatory Note for further details).

52. No costs are anticipated for the voluntary sector or individuals. A general overview of areas where costs may arise is provided below. In later paragraphs, to ensure that there is an understanding of costs associated with the new Bill provisions, separate estimates are provided for the current Regulations (which will be encompassed by the Bill) and for the new additional strategies, plans and programmes provided for in the Bill (please refer to para 20 and 51 for explanation of additional plans etc).
Public sector - Scottish Executive, Local Authorities and others (Responsible Authority statutory duties)

53. The Bill provides that any person, body or office-holder performing functions of a public character be termed a “Responsible Authority” (RA). RA duties include: notification/publicity; producing/consulting on SEA reports; demonstrating how comments have been taken into account; and monitoring strategies, plans and programmes for unforeseen environmental impacts in order to consider mitigation. RAs likely to perform the highest number of SEAs are local authorities and the Scottish Executive. Some lesser costs may arise for other public bodies - for instance - Scottish Environment Protection Agency (SEPA), Scottish Natural Heritage (SNH), Historic Scotland (HS), the Forestry Commission and Scottish Water.

54. A small number of companies who perform functions of a public character (e.g. utilities /telecoms) may incur limited costs. Only work of a public character will be affected – SEA will not impinge on private sector work. The competition filter tests in the Regulatory Impact Assessment good practice guide suggests that costs will not be high enough to give competitive advantage to other same sector firms. (ref: The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 RIA).

Public sector - Scottish Executive, SNH, SEPA (Consultation Authority duties)

55. The Bill provides that the Scottish Ministers (Historic Scotland), Scottish Natural Heritage and the Scottish Environment Protection Agency shall have statutory duties as “Consultation Authorities”. Duties involve advising on whether SEA is applicable (“screening”), the level of detail required (“scoping”) and responding to consultations on SEA reports.

Public sector - Scottish Executive (central administration and miscellaneous costs)

56. The majority of respondents in the consultation on the draft Bill said that a focal point for advisory, co-ordinating and management information functions is crucial to ensuring quality. Most favoured a central SEA Gateway in the Executive saying that this would be the most cost effective option. The Executive therefore proposes to proceed with a central Gateway. However, in recognition of many respondents’ views, it will be underpinned by the principles of option 5 in the consultation (i.e. effective utilisation of expertise and sound communications with Consultation Authorities).

Public sector – various bodies performing functions of a public character (non-statutory work)

57. Consultation Authorities, some public bodies and environmental organisations may experience an increase in requests for data/advice as a result of the additional plans, programmes and strategies included by the new Bill provisions but this is impossible to quantify. It is anticipated that, to a large extent, such additional work is likely to become integrated into the general context of the new information provision regime arising out of such provisions as the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.
COSTING METHODOLOGY

Outline of further work performed to refine estimates

58. Substantial additional work has been done since the Regulations RIA to further refine cost estimates. For instance we have utilised extensive recent research conducted by the Babtie Group which set out to identify the potential number of strategies, plans and programmes subject to the current Regulations (now to be encompassed by the Bill) plus, in addition, the number of other strategies, plans and programmes caught by the Bill’s extended provisions. We have also utilised comments from the most recent consultation on the draft Bill along with additional updated information obtained through close liaison with Consultation Authorities and Responsible Authorities, including CoSLA. Further collaboration with Scottish Executive Departments such as the Development Department (Planning) also assisted us to refine our estimates of SEA numbers and the associated costs for the Regulations and for the Bill.

METHOD FOR FORECASTING NUMBER AND COST OF ENVIRONMENTAL ASSESSMENTS

Overall approach

59. The key piece of research which we utilised adopted a systematic approach (Babtie Group 2004). The first step was to identify organisations whose strategies, plans and programmes may be subject to SEA. Next, data on the number, type and nature of relevant strategies, plans and programmes was gathered on two separate levels: 1) those strategies, plans and programmes that may be subject to the current Regulatory SEA provisions (now to be encompassed in the Bill) and; 2) those additional strategies, plans and programmes that may be subject to the extended provisions of the Bill. The research returns, along with advice from the Scottish Executive Development Department (Planning) plus indicative lists of strategies, plans and programmes, provided a basis for the estimates in this document.

Approach to estimation of resource requirements

60. The next step was to consider the resources required for the current Regulatory provisions (now to be encompassed by the Bill) and, separately, for the additional strategies, plans and programmes that may be subject to the extended provisions of the Bill. The key piece of research (Babtie Group 2004) based its conclusions largely on experience of Environmental Impact Assessment (EIA). While a useful indicator, EIA differs from SEA. Therefore, in estimating costs/number of SEAs the Scottish Executive utilised not only this research but also emerging SEA experience plus views and evidence from Consultation Authorities and Scottish Executive Departments including the Development Department (Planning).

Approach to costing an environmental assessment report

61. The Office of the Deputy Prime Minister (ODPM) RIA based calculations on average costs per environmental report of £10k-£50k. The Executive’s understanding, from early discussions with consultants in the field, is that £20k-£60k is also a reasonable estimate if the environmental report is produced in-house or by a consultancy. An exact split is not available but our judgment, based on the size of strategies, plans and programmes to date, is that a useful working assumption is that 10% of environmental reports may cost £60k with the remainder
costing an average of £30k. (It was noted that, in a small number of cases, costs may be higher but it has not been possible to quantify these). It is important to note that reliance on external consultants is expected to diminish because in-house SEA capability is developing rapidly. Therefore, it is expected that SEA costs will diminish as organisations begin to conduct increasing numbers of SEAs in house.

**Approach to costing SEA consultation documents and notification/publicity requirements**

62. Costs will also arise for printing of consultation documents. Documents will vary in length and style. However, on average, it is considered that a SEA may require 500, 20 page monochrome documents at a total cost of around £250. On this basis, printing costs are included in the estimate of overall SEA costs.

63. The Bill requires publicity/notification by RAs at certain stages, including newspaper adverts. Depending on the nature of the SEA and the geographical area covered, complying with advert requirements may vary. Our review of newspaper advert costs suggests that, on average publicity costs may be around £2000 per SEA.

**Uncertainties**

64. It is important to note that, because SEA practice is emergent, there are inevitably some risks and uncertainties associated with forecasting. Estimates of core SEA numbers and costs are reasonably certain. However, strategies, plans and programmes at the outer fringes of those that will caught by the Bill are more difficult to predict given that it will depend entirely on the as yet unknown characteristics of such plans. Given this, the figures in this document are presented as estimates rather than exact costings.

65. It has not been possible to identify/take into account UK wide plans which may require SEA input from Scottish bodies. However, we do not consider that the number of UK wide plans would significantly increase the figures used in this Memorandum and their absence is not, therefore, a major concern when considering the overall cost impact of SEA across Scotland.

66. Given the above uncertainties, a view has come to the fore amongst stakeholders that, until we have more experiential evidence, it will be impossible to predict, with accuracy, the exact number, nature and cost of SEAs. This is reflected in the most recent consultation responses with the majority of respondents favouring an initial case by case approach before firming up indicative lists of strategies, plans and programmes that may be subject to SEA.

**Level of confidence in estimates**

67. Every effort has been made to remove the uncertainties associated with the estimates in this document. For instance, we have utilised extensive research completed by the Babtie Group in April 2004. The Babtie research set out to reduce uncertainties specifically by identifying core strategies, plans and programmes for which SEAs were considered to be certain and those for which SEAs were considered less likely. Further advice was also taken from the Scottish Executive Development Department and Government Agencies and this further increased the
certainty and level of confidence around the estimates. Therefore, we are confident that the approach adopted to forecasting SEA numbers is as robust as possible.

**Removal of costing uncertainties over time**

68. Experience of the current Regulations will allow Responsible Authorities and Consultation Authorities to develop more accurate costings in time for the implementation of the Bill. It is anticipated that, very quickly, experience will build and knowledge will develop, allowing understanding of the costs and the types of strategies, plans and programmes subject to SEA to be identified more readily. This work has already begun with the inclusion of an indicative list of strategies, plans and programmes in the draft Bill Guidance. We seek to build on this early list over the first few months and years, further removing doubt from the cost estimates of future SEAs.

69. In addition, the Executive is in discussion with CoSLA to run a SEA case evaluation exercise which will consider both costs and process to refine our knowledge of both. It was considered best, to evaluate a real case in order to produce real data. As real cases are only just emerging, this case evaluation could not have been done before now. Information from this case evaluation exercise will begin to emerge late in 2005. Full findings will not be available until perhaps 2006/07, given the length of the planning process to which SEA applies.

**Incorporation of consultation comments into costing methodology**

70. In establishing this costing methodology the Scottish Executive has made every effort to take into account comments received during consultation on the Bill. For instance, we have provided further information on a number of points on which clarification was sought - e.g. the difficulties relating to forecasting the number and costs of strategic environmental assessments. Also, following discussions with CoSLA, the Executive has committed to refining costings through a case evaluation (see para 69).

**FORECASTING THE NUMBER OF ENVIRONMENTAL ASSESSMENTS**

71. The number of strategies, plans and programmes identified by the Babtie research were not annualised. To obtain indicative annualised estimates it was necessary to apply two working assumptions based on experience of similar practices and emerging SEA knowledge: -

- average plan life cycles of 5, 4 and 3 years may be usefully applied to the indicative number of SEAs to obtain a range of annualised estimates; and
- it was considered reasonable that not all of the “possible” and “unlikely” SEAs identified in research will actually be subject to SEA, therefore estimates are based on 75% of “possible” SEAs and 2% of “unlikely” SEAs
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TABLE 1 - NUMBER OF SEAs PER YEAR

Note 1 - Given the uncertainties, a margin of error of +/- 25% is advised by the Babtie group who carried out the core research.

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<th>Col 1</th>
<th>Sector in which SEAs will arise</th>
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<th>SEAs per year if average life cycle of strategy/plan/programme is 5 years</th>
<th>Col 3</th>
<th>SEAs per year if average life cycle of strategy/plan/programme is 4 years</th>
<th>Col 4</th>
<th>SEAs per year if the average life cycle of strategy/plan/programme is 3 years</th>
<th>Col 5</th>
<th>Range of total SEAs per year adding together current Reg provisions and new Bill provisions</th>
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<td>47</td>
<td>109</td>
<td>156</td>
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<td>Other</td>
<td>41</td>
<td>59</td>
<td>100</td>
<td>65</td>
<td>74</td>
<td>139</td>
<td>87</td>
<td>99</td>
<td>186</td>
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<td>204</td>
<td>108</td>
<td>160</td>
<td>268</td>
<td>144</td>
<td>212</td>
<td>356</td>
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</table>

PUBLIC SECTOR COSTS: - SCOTTISH EXECUTIVE, LOCAL AUTHORITIES & OTHERS (“RESPONSIBLE AUTHORITY” DUTIES)

Duties of Responsible Authorities

72. The Bill provides that any person, body or office-holder performing functions of a public character be termed “Responsible Authorities” (RAs).

73. The Scottish Executive and Local Authorities will be the RAs with the largest number of SEAs but other bodies producing relevant strategies, plans and programmes of a public character will also be required to perform RA duties - e.g. Govt Agencies, NGOs, Public Corporations and some companies such as utilities and telecommunications.

74. Responsible Authority duties will include:

- determining whether SEA applies;
- notifying any determinations as to whether SEA applies;
- deciding on the scope of the SEA and then producing an environmental assessment report;
- public notification of the environmental assessment report;
- consulting on the environmental assessment report;
- demonstrating how consultation comments have been taken into account;
- publicising adoption of the strategy, plan or programme;
- monitoring strategies, plans and programmes, for unforeseen environmental impacts in order to consider mitigation.

**Annual Costs to Responsible Authorities**

75. To estimate costs to Responsible Authorities we applied the costing methodology described above. Bearing in mind the uncertainties, annual fluctuations, and variances, the early indications are that a realistic working figure for the annual SEA costs for all Responsible Authorities totalled would be up to £12,451,000. This figure includes such factors as preparation/commissioning of a SEA Report, consultation, notification and publicity. We are confident that this figure is the most robust available. However, given the uncertainties, a margin of error of +/- 25% is advised (Babtie Group 2004).

76. Annual running costs associated with SEA are expected to reduce as we continue through the initial implementation phase following July 2004 Regulations and now a Bill, due to: standard organisational efficiencies; capacity building resulting in fewer training needs and swifter processing of work; utilisation of administrative tools/guidance provided by the Executive; and the bedding in of SEA procedures into every day practices.

77. Please refer to table 2 for further details of costs that may arise for Responsible Authorities.

**PUBLIC SECTOR COSTS: - SCOTTISH EXECUTIVE, LOCAL AUTHORITIES & OTHERS (“RESPONSIBLE AUTHORITY” DUTIES) (CONT)**

78. Table 2 below summarises the estimated range of annual SEA costs for Responsible Authorities. The calculations are based on the costing methodology explained above and on table 1 (forecast of SEA numbers). The figures in table 2 below include factors such as preparing/commissioning an environmental report, printing a SEA consultation document and publicity costs (e.g. cost of placing newspaper adverts in accordance with the provisions of the Bill). Given the uncertainties, it is advised that a margin of error of +/- 25% be applied to this table (Babtie Group 2004)
These documents relate to the Environmental Assessment (Scotland) Bill (SP Bill 38) as introduced in the Scottish Parliament on 2 March 2005

TABLE 2 - ESTIMATE OF ANNUAL SEA COSTS TO RESPONSIBLE AUTHORITIES

Note 1 - Given the uncertainties, a margin of error of +/- 25% is advised by the Babtie group who carried out the core research.

<table>
<thead>
<tr>
<th>Sector in which SEAs will arise</th>
<th>Col 1</th>
<th>Col 2</th>
<th>Col 3</th>
<th>Col 4</th>
<th>Col 5</th>
</tr>
</thead>
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<tr>
<td></td>
<td>current Regulatory provisions</td>
<td>additional Bill provisions</td>
<td>Total</td>
<td>current Regulatory provisions</td>
<td>additional Bill provisions</td>
</tr>
<tr>
<td>Scottish Executive</td>
<td>£212,000</td>
<td>£141,000</td>
<td>£353,000</td>
<td>£228,000</td>
<td>£141,000</td>
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<tr>
<td>Local Authorities</td>
<td>£987,000</td>
<td>£2,237,000</td>
<td>£3,314,000</td>
<td>£1,234,000</td>
<td>£2,891,000</td>
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<tr>
<td>Other</td>
<td>£1,364,000</td>
<td>£2,104,000</td>
<td>£3,468,000</td>
<td>£1,941,000</td>
<td>£2,609,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£2,563,000</td>
<td>£4,572,000</td>
<td>£7,135,000</td>
<td>£3,403,000</td>
<td>£5,641,000</td>
</tr>
</tbody>
</table>

* Other – such as public bodies and private companies such as utilities/telecoms performing work of a public character

PUBLIC SECTOR COSTS: - SCOTTISH EXECUTIVE (HISTORIC SCOTLAND), SEPA AND SNH - “CONSULTATION AUTHORITY “DUTIES

Consultation Authorities - statutory duties

79. The Bill provides that the Scottish Ministers (Historic Scotland), Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA) shall have statutory duties as “Consultation Authorities” including:

- advising on whether SEA is applicable (“screening”)
- advising on the appropriate level of detail for environmental assessment reports (“scoping”)
- responding to SEA consultations

Consultation Authorities – other duties

80. Consultation Authorities already have responsibilities under the existing Regulations but may well experience an increase in requests for data/advice but this is impossible to quantify. It is anticipated that, to a large extent, such additional work is likely to become integrated into the general context of the new information provision regime arising out of such provisions as the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.
Consultation Authorities - costs

81. We can confirm that the current Regulations have been identified as a priority and that costs were taken into account in the current spending plans for SEPA and SNH as published in “Building a Better Scotland”.

82. In considering Consultation Authority SEA costs, the risks and uncertainties surrounding the data and costing methodology must be borne in mind. Also, it must not be forgotten that the annual number of SEAs will fluctuate and there will be variances in the complexity of SEAs and their relevance to each Consultation Authority. Given these uncertainties and variances, it is generally accepted that the exact number and grades of staff required by Consultation Authorities will not be entirely clear until we have more experiential evidence of the SEA procedures.

Consultation Authorities - costs

83. Uncertainties notwithstanding, we considered it useful to offer indicative annual estimates based on:

- recent research commissioned by SEPA and the Scottish Executive;
- advice from Scottish Executive Departments (e.g. Planning);
- advice from Consultation Authorities;
- the indicative list of strategies, plans and programmes in the draft Guidance.

84. We focussed mainly on recent research and on estimates for full time equivalent staffing hours required for SEA. We concluded that the total annual costs for all Consultation Authorities totalled may be up to £1,650,000, around £300,000 of which is likely to fall to the Scottish Executive (Historic Scotland), with the remainder falling to SNH and SEPA. However, given the uncertainties, an error margin of +/- 25% is advised.

85. Consultation Authority annual costs are reflected by the SEA volumes predicted under the Regulations and then rising under the Bill as described elsewhere in this paper but are expected to reduce over time due to efficiencies, organisational capacity building, utilisation of administrative tools/guidance to be provided by the Executive and the bedding in of SEA procedures into everyday practice.

PUBLIC SECTOR COSTS – SCOTTISH EXECUTIVE - ADMINISTRATION & MISCELLANEOUS COSTS)

Central Administration costs

86. The recent public consultation on the Bill confirmed that the favoured approach to central administration is a co-ordinating “Gateway” situated in the Scottish Executive performing secretariat, advisory, processing and management information functions.
87. The option of a central “Gateway” based in the Executive is option 1 from the consultation document but it also embraces the principles underpinning option 5 (need for effective co-ordination easy access to expertise, sound communication between experts/Consultation Authorities and swift resolution of enquiries).

88. The “Gateway” from option 1 in the consultation (underpinned by the principles of option 5) was favoured because it is the least burdensome in terms of cost and administrative duties. Moreover, it streamlines procedures and provides a focal point for SEA without the costly creation of an independent body.

89. The annual costs for a SEA “Gateway” situated in the Scottish Executive is estimated at approximately £95,000 per year. The additional provisions of the Bill do not alter these costs significantly. The working assumption here is that a small central team will be required to administer SEA and operate the “Gateway”. The £95,000 figure is based on average gross pay costs for, a B2 and 2 A3-A1 (£29k and £33,00k respectively). In addition to annual running costs, there will be initial costs – e.g. training.

Miscellaneous Administrative costs

90. Miscellaneous one off costs will arise for the Scottish Executive from activities designed to mitigate overall costs, minimise the administrative burden, ensure compliance and achieve consistent high quality SEAs. For example the Scottish Executive is investing in:- written guidance; administrative tools such as SEA templates; awareness materials such as leaflets; case studies and a case evaluation in collaboration with CoSLA, these costs relate to the Bill but cannot be wholly split from activity to support current Regulations.

91. The total cost is estimated at £65,000 - £105,000. These figures are based on: staff time; indicative printing costs; and consultancy fees for development of SEA templates/procedures.

PUBLIC SECTOR COSTS:- PUBLIC BODIES (non statutory work)

92. There is a general view amongst environmental bodies, including NGOs and Government Agencies, that SEA may increase informal requests for data/advice, in particular from Responsible Authorities preparing SEA reports. While this view is acknowledged, such costs are considered unquantifiable at this stage and, therefore, we have not offered an estimate. It is considered that, to a large extent, such work is likely to become integrated into the general context of the new information provision regime arising out of such provisions as the Freedom of Information (Scotland) Act 2002 and The Environmental Information (Scotland) Regulations 2004.

SAVINGS AND PRO-ACTIVE COST MITIGATION MEASURES

SAVINGS

93. Although they are difficult to quantify, it is anticipated that the early consideration of the environment in the SEA process will minimise the costly remedial work that can arise from
environmental problems being recognised too late in the planning process. Although unquantifiable, there has been a view expressed generally by stakeholders that such savings are expected to be significant both in terms of environmental protection and cost.

Cost mitigation measures

94. In addition to the anticipated savings noted above, the Scottish Executive is doing everything possible to mitigate SEA costs. These pro-active cost mitigation measures include:

lightening the administrative load:-

- minimisation of bureaucratic requirements in the Bill;
- provision of admin tools such as templates to streamline the process;
- collaboration with CoSLA on case studies and a case evaluation exercise to review SEA administrative processes.

Cost mitigation measures

provision of a central “Gateway”:-

- the creation of a central SEA “Gateway” based in the Scottish Executive will be less costly than an independent body and will lighten the administrative load by providing a central focus and by streamlining procedures.

encouraging capacity building and quality to speed the SEA process:-

- encouragement of: capacity building in organisations;
- support for training & awareness events;
- provision of awareness materials;
- guidance;
- admin tools such as templates;
- and support for the establishment of a good practice network.

embedding of SEA procedures in every day current practice:-

- this will be achieved through the encouragement of a culture that integrates SEA into current practice.

DIMINISHING OF COSTS OVER TIME

(These diminishing costs and savings are applied more widely under the Bill but would apply to the existing narrower Regulations.)
Anticipated improvements in baseline environmental data

95. The Executive believes that the anticipated improvements in baseline environmental data will lead to speedier and more effective production of SEAs leading to a diminishing of costs.

Anticipated potential for re-use of information

96. The exposing of key environmental effects early in the SEA process will provide information that can be re-used later in the SEA and planning processes and also in later SEAs. This means that it is anticipated that, once processes are bedded in, the early effects of SEA on overall costs will diminish and will, in fact, contribute to savings.

DIMINISHING OF COSTS OVER TIME

Embedding of SEA processes into every day practice

97. An underpinning principle of SEA is that it will encourage better decision making and hence better use of resources. Moreover, SEA procedures should, as far as possible, be integrated into every day good practice and current procedures - e.g. the planning process and the information provision regimes arising from the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. Therefore, it is anticipated that, as experience develops, SEA will become integrated into normal practice, and costs will diminish as SEA will become a routine part of business.

Proactive support for capacity building in organisations

98. The Executive is proactively supporting a number of capacity building activities and is committed to the production of guidance, SEA Templates and other awareness material which will speed and simplify the process for organisations. It is important to note that the Executive has taken the initiative to begin this work now to help ensure that organisational capacity and support materials will be developed in time for the Bill’s commencement. Because these measures will be in place from the outset, it is anticipated that they will help to ensure that any initial cost curve falls away steeply and rapidly.

99. Given the potential savings and the proactive cost mitigation measures outlined above it is anticipated that the SEA provisions will be integrated into normal practice rapidly. Therefore, it is not considered necessary to identify separate funding for SEA duties because it is anticipated that, being a part of every day business, it will be included in the standard budget rounds.

SUMMARY

Cost areas

100. The Bill’s provisions are focused on the public sector. Costs will fall to:

- The Scottish Executive, Local Authorities & Others performing functions of a public character (Responsible Authority duties)
• The Scottish Executive (i.e. Historic Scotland), SEPA and SNH (Consultation Authority duties)
• The Scottish Executive (central administration and miscellaneous functions e.g. Gateway and SEA templates)
• Others performing functions of a public character (there is no statutory duty here but there may be an increase in enquiries to some environmental organizations)

SUMMARY

Costing methodology

101. Substantial research carried out since the Regulations RIA underpins the costings. Uncertainties centering on the unpredictability of the nature and number of SEA have been explained. The Executive has done everything possible to remove these uncertainties to produce the most robust estimates possible. However, a +/- 25% margin of error is advised.

Costs

102. If we take the top of the range figures (tables 1&2 and paras 79-90), the total annual SEA costs are estimated at £14,196,000. Table 3 below summarises costs including: the assessment report, consultation and publicity costs (e.g. newspaper notices). In addition to costs in table 3, one off costs will arise for the Executive of up to £105,000 for materials such as templates and guidance. It should be noted that the administrative and consultation authority costs are not all new but represent an amalgam of new Bill provisions and existing Regulation costs, given that the Regulations are only very recently in force accurate figures are not available to allow a split of costs but these figures seek to quantify total resource expectation for SEA.

<table>
<thead>
<tr>
<th>SECTOR</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SEA costs per year for current Regulatory provisions - assuming plan life cycle is 3 years (see table 2 col 4)</td>
<td>SEA costs per year for additional Bill provisions - assuming plan life cycle is 3 years (see table 2 col 4)</td>
<td>SEA costs per year for current Regulatory provisions plus additional Bill provisions assuming plan life cycle is 3 years (see table 2 col 5)</td>
</tr>
<tr>
<td>Public Sector</td>
<td>Scottish Executive (Responsible Authority duties)</td>
<td>£253,000</td>
<td>£141,000</td>
</tr>
<tr>
<td></td>
<td>Local Authorities (Responsible Authority duties)</td>
<td>£1,657,000</td>
<td>£3,843,000</td>
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<td>Others performing functions of a public character (Responsible Authority duties)</td>
<td>£3,067,000</td>
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<td>Scottish Executive (central admin duties)</td>
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<td></td>
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<tr>
<td></td>
<td>6,722,000</td>
<td>7,474,000</td>
<td>£14,196,000</td>
</tr>
</tbody>
</table>

Note 1 - Given the uncertainties, a margin of error of +/- 25% is advised by the Babtie group who carried out the core research.
Savings Cost Mitigation Measures and Diminishing of Costs Over Time

103. It is anticipated that SEA’s early identification of environmental impacts will result in savings by minimising remedial costs that can arise from problems being discovered too late. The Executive seeks to mitigate any costs through a comprehensive package of measures including:- case studies and a full case evaluation in collaboration with CoSLA to identify streamlining opportunities; support materials to ease the process (e.g. templates); awareness materials and guidance; support for capacity building events; the minimising of bureaucratic requirements in the Bill. These measures will be in place in time for the Bill’s commencement and it is expected that they will help to ensure that SEA becomes integrated into normal practice as soon as possible resulting in a steep diminishing of costs early on in the Bill’s life.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

104. On 2 March 2005, the Minister for Environment and Rural Development (Ross Finnie) made the following statement:

“In my view, the provisions of the Environmental Assessment (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

105. On 1 March 2005, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Environmental Assessment (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
ENVIRONMENTAL ASSESSMENT (SCOTLAND) BILL

EXPLANATORY NOTES

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