Passage of the

Environmental Assessment (Scotland) Bill 2005

SPPB 87
Passage of the

Environmental Assessment (Scotland) Bill 2005

SP Bill 38 (Session 2), subsequently 2005 asp 15

SPPB 87
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. Extracts from the Official Report are re-printed as corrected for the archive version of the Official Report.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.
After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Clerking and Reporting Directorate. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Finance Committee reported to the Environment and Rural Development Committee on the Bill at Stage 1. The Finance Committee report is included in Annexe A of the Stage 1 Report. However, the minutes and the oral evidence for the Finance Committee meeting of 19 April 2005 were not included in that report, and they are therefore included in this volume after the report.

Forthcoming titles

The next titles in this series will be:

- SPPB 88: Licensing (Scotland) Bill 2005
- SPPB 89: Housing (Scotland) Bill 2005
- SPPB 90: Family Law (Scotland) Bill 2005
- SPPB 91: Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill 2005
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Schedule 1—Projects
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Environmental Assessment (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the assessment of the environmental effects of certain plans and programmes, including plans and programmes to which Directive 2001/42/EC of the European Parliament and of the Council relates; and for connected purposes.

PART 1
ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

1 Requirement for environmental assessment
(1) The responsible authority shall—
   (a) during the preparation of a qualifying plan or programme, secure the carrying out of an environmental assessment in relation to the plan or programme; and
   (b) do so—
       (i) where the plan or programme is to be submitted to a legislative procedure for the purposes of its adoption, before its submission; or
       (ii) in any other case, before its adoption.
(2) In this Act, an environmental assessment is—
   (a) the preparation of an environmental report;
   (b) the carrying out of consultations; and
   (c) the taking into account of the environmental report and the result of the consultations in decision-making,
   in accordance with Part 2 of this Act.

2 Responsible authorities
(1) In this Act, a responsible authority is any person, body or office-holder exercising functions of a public character.
(2) The responsible authority in relation to a particular plan or programme is the authority by whom, or on whose behalf, the plan or programme is prepared.
(3) Where more than one authority is responsible for a plan or programme (or part of it) the responsible authority shall be—
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Part I—Environmental assessment for plans and programmes  

(a) the authority determined by agreement between those authorities; or  
(b) if there is no such agreement, the authority determined by the Scottish Ministers.  

(4) But for the purposes of section 5(4)(a) the responsible authorities are—  
(a) the Scottish Ministers;  
(b) any holder of an office in the Scottish Administration which is not a ministerial office;  
(c) the Scottish Parliament;  
(d) the Scottish Parliamentary Corporate Body;  
(e) a Scottish public authority with mixed functions or no reserved functions;  
(f) any other person, body or office-holder of a description (and to such extent) as may be specified by the Scottish Ministers by order.  

3 Consultation authorities  
(1) In this Act, the consultation authorities are—  
(a) the Scottish Ministers;  
(b) the Scottish Environment Protection Agency; and  
(c) Scottish Natural Heritage.  

(2) Where an authority mentioned in subsection (1) is the responsible authority as regards a plan or programme, the authority shall not be a consultation authority in relation to that plan or programme.  

4 Plans and programmes  
(1) This Act applies to plans and programmes (including those co-financed by the European Community) which—  
(a) are—  
(i) subject to preparation or adoption (or both) by a responsible authority at national, regional or local level; or  
(ii) without prejudice to the generality of sub-paragraph (i), prepared by a responsible authority for adoption through a legislative procedure; and  
(b) relate solely to the whole or any part of Scotland.  

(2) In this Act, any reference to plans or programmes includes reference to modification of plans or programmes.  

(3) This Act does not apply to—  
(a) plans and programmes the sole purpose of which is to serve national defence or civil emergency;  
(b) financial or budgetary plans and programmes;  
Environmental Assessment (Scotland) Bill
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(4) In this Act, any reference to plans or programmes includes strategies.

5 Qualifying plans and programmes

(1) In this Act, qualifying plans and programmes are plans and programmes of a description set out in subsection (3) or (4)—

(a) in respect of which the first formal preparatory act is on or after the coming into force of this section; and

(b) which are not exempt by virtue of section 7(1) or 8(2).

(2) But a plan or programme is a qualifying plan or programme only to the extent that it relates to matters of a public character.

(3) The description set out in this subsection is a plan or programme (to which this Act applies) which is required by a legislative, regulatory or administrative provision and—

(a) which—

(i) is prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use; and

(ii) sets the framework for future development consent of projects listed in schedule 1;

(b) which, in view of the likely effect on sites, has been determined to require an assessment pursuant to Article 6 or 7 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (as last amended by Council Directive 97/62/EC); or

(c) which does not fall within paragraph (a) or (b) but sets the framework for future development consent of projects.

(4) The description set out in this subsection is a plan or programme (to which this Act applies)—

(a) which is prepared by a responsible authority as specified in, or by virtue of, section 2(4); and

(b) which—

(i) is not a plan or programme of a description set out in subsection (3); and

(ii) is not of a type specified in, or by virtue of, section 6(1).

(5) The Scottish Ministers may by order modify schedule 1.

6 Types of excluded plans and programmes

(1) The types of plan or programme referred to in section 5(4)(b)(ii) are those which—

(a) consist of plans or programmes each of which relates to an individual school; or

(b) may be specified by order made by the Scottish Ministers.

(2) The Scottish Ministers may by order modify subsection (1)(a).

(3) If specifying a type of plan or programme by virtue of subsection (1)(b) or (2), the Scottish Ministers must be of the opinion that the type of plan or programme is likely to have—
(a) no effect; or
(b) minimal effect,
in relation to the environment.

(4) In this section, “school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980 (c.44).

7 Exemptions: pre-screening

(1) A plan or programme of a description set out in section 5(4) is exempt if the responsible authority is of the opinion that the plan or programme will have—
(a) no effect; or
(b) minimal effect,
in relation to the environment.

(2) In considering whether or not it is of the opinion described in subsection (1), the responsible authority shall apply the criteria specified in schedule 2.

(3) The Scottish Ministers may by order modify schedule 2.

8 Exemptions: screening

(1) The responsible authority shall determine whether or not—
(a) a plan or programme of a description set out in section 5(3) which determines the use of small areas at local levels;
(b) a minor modification to a plan or programme of a description set out in section 5(3);
(c) a plan or programme of the description set out in section 5(3)(c);
(d) a plan or programme of the description set out in section 5(4) which is not exempt by virtue of section 7(1),
is likely to have significant environmental effects.

(2) Where the responsible authority determines under subsection (1) that a plan or programme is unlikely to have significant environmental effects—
(a) that plan or programme is exempt; and
(b) the authority shall prepare a statement of its reasons for the determination.

(3) In making a determination under subsection (1), the responsible authority shall apply the criteria specified in schedule 2.

(4) The statement of reasons under subsection (2)(b) shall, in particular, state how the criteria mentioned in subsection (3) were applied when making the determination.

9 Screening: procedure

(1) Before making a determination under section 8(1), the responsible authority shall prepare a summary of its views as to whether or not the plan or programme is likely to have significant environmental effects.

(2) The responsible authority shall send that summary to each consultation authority for its consideration.
(3) Each consultation authority shall, within 28 days of receipt of that summary, respond to the responsible authority with the consultation authority’s views on it.

(4) If the responsible authority and the consultation authorities agree that the plan or programme is unlikely to have significant environmental effects, the responsible authority shall make a determination to that effect under section 8(1).

(5) If the responsible authority and the consultation authorities agree that the plan or programme is likely to have significant environmental effects then the responsible authority shall make a determination to that effect under section 8(1).

(6) If the responsible authority and the consultation authorities do not reach agreement as to whether or not the plan or programme is likely to have significant environmental effects, the responsible authority shall refer the matter to the Scottish Ministers for their determination.

(7) A determination of the Scottish Ministers under subsection (6) shall have effect as if made by the responsible authority under section 8(1); and, where the determination is that the plan or programme is unlikely to have significant environmental effects, section 8(2)(b) shall apply to the Scottish Ministers as it would to the responsible authority.

10 Screening: publicity for determinations

(1) Within 28 days of a determination having been made under section 8(1), the responsible authority shall send to the consultation authorities—

(a) a copy of the determination; and

(b) any related statement of reasons prepared in accordance with section 8(2)(b).

(2) The responsible authority shall—

(a) keep a copy of the determination, and any related statement of reasons, available at its principal office for inspection by the public at all reasonable times and free of charge;

(b) display a copy of the determination and any related statement of reasons on the authority’s website; and

(c) within 14 days of the making of the determination, secure the taking of such steps as it considers appropriate (including publication in at least one newspaper circulating in the area to which the plan or programme relates) to bring to the attention of the public—

(i) the title of the plan or programme to which the determination relates;

(ii) that a determination has been made under section 8(1);

(iii) whether or not an environmental assessment is required in respect of the plan or programme; and

(iv) the address (which may include a website) at which a copy of the determination and any related statement of reasons may be inspected or from which a copy may be obtained.

(3) Nothing in subsection (2)(c)(iv) shall require the responsible authority to provide a copy of any document free of charge; but where a charge is made, it shall be of a reasonable amount.
11 Directions as regards plans and programmes

(1) The Scottish Ministers may at any time direct a responsible authority to send to them a copy of any plan or programme which—
   (a) is being prepared;
   (b) has been adopted; or
   (c) has been submitted to a legislative procedure for the purposes of its adoption, by that responsible authority.

(2) The Scottish Ministers shall consider any plan or programme sent to them under subsection (1), together with such information relating to it as they may reasonably require the responsible authority to provide.

(3) Where the Scottish Ministers consider that the plan or programme falls within—
   (a) section 5(3)(a) or (b), they may direct the responsible authority to carry out an environmental assessment in accordance with this Act;
   (b) paragraphs (a) to (d) of subsection (1) of section 8, they may direct the responsible authority to carry out a determination in accordance with that subsection.

(4) Where subsection (3) applies, the Scottish Ministers shall send to the responsible authority a summary of the reasons as to why a direction was, or (as the case may be) was not, made.

(5) A responsible authority shall comply with any direction given to it under subsection (1) or (3).

12 Restriction on adoption or submission

(1) A qualifying plan or programme shall not be—
   (a) adopted; or
   (b) submitted to a legislative procedure for the purposes of its adoption,
   before the requirements of such provisions of Part 2 of this Act as apply in relation to that plan or programme have been met.

(2) A plan or programme in respect of which a determination is required under section 8(1) shall not be adopted, or submitted to a legislative procedure for the purpose of its adoption, unless either—
   (a) the requirements of subsection (1) have been met; or
   (b) the determination under section 8(1) is that the plan or programme is unlikely to have significant environmental effects.

13 Relationship with Community law requirements

(1) An environmental assessment carried out under this Act shall be without prejudice to any requirement under Community law.

(2) Where a qualifying plan or programme is co-financed by the European Community, the responsible authority, in carrying out the environmental assessment required by this Act, shall do so in conformity with any relevant provision of Community law that is applicable by reason of that co-financing.
Part 2—Environmental reports and consultation

14 Preparation of environmental report

(1) In relation to any qualifying plan or programme, the responsible authority shall secure the preparation of an environmental report.

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of implementing—
   (a) the plan or programme; and
   (b) any reasonable alternatives to the plan or programme,

taking into account the objectives and the geographical scope of the plan or programme.

(3) The report shall include such of the information specified in schedule 3 as may reasonably be required, taking account of—
   (a) current knowledge and methods of assessment of environmental matters;
   (b) the contents of, and level of detail in, the plan or programme;
   (c) the stage of the plan or programme in the decision-making process; and
   (d) the extent to which any matters to which the report relates would be more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

(4) Information referred to in schedule 3 may be included in the report by reference to relevant information obtained at other levels of decision-making or through Community legislation.

(5) The Scottish Ministers may by order modify schedule 3.

15 Scoping

(1) Before deciding on—
   (a) the scope and level of detail of the information to be included in the environmental report to be prepared in accordance with section 14; and
   (b) the consultation period it intends to—
      (i) specify under section 16(1)(b); and
      (ii) notify under section 16(2)(a)(iv),

the responsible authority shall send to each consultation authority such sufficient details of the qualifying plan or programme as will enable the consultation authority to form a view on those matters.

(2) Each consultation authority shall—
   (a) send to the responsible authority its views on the matters referred to in subsection (1) within the period of 5 weeks beginning with the date on which the details referred to in that subsection are received by the consultation authority; and
   (b) send a copy of those views to the other consultation authorities.

(3) The responsible authority shall—
(a) take account of the views expressed by the consultation authorities under subsection (2)(a); and
(b) advise the Scottish Ministers of the period it intends to specify under section 16(1)(b) and notify under section 16(2)(a)(iv).

(4) If the Scottish Ministers consider that a period referred to in subsection (3)(b) is not likely to give (as the case may be)—
(a) the consultation authorities; or
(b) the public—
   (i) affected or likely to be affected by; or
   (ii) having an interest in,
the plan or programme,
an early and effective opportunity to express their opinion on the plan or programme and the accompanying environmental report, the Scottish Ministers shall, within 7 days of receipt of the advice under subsection (3)(b), specify such other period as the Scottish Ministers consider will give the consultation authorities, or (as the case may be) the public, such an early and effective opportunity.

(5) Where the Scottish Ministers have specified a period under subsection (4), the responsible authority shall specify under section 16(1)(b), or (as the case may be) notify under section 16(2)(a)(iv), that period.

(6) Where the Scottish Ministers are the responsible authority in relation to a qualifying plan or programme, subsections (3)(b), (4) and (5) do not apply.

16 Consultation procedures

(1) As soon as reasonably practicable, and in any event within 14 days of the preparation of the environmental report, the responsible authority shall—
(a) send a copy of the report and the qualifying plan or programme to which it relates (“the relevant documents”) to the consultation authorities; and
(b) invite each consultation authority to express its opinion on the relevant documents within such period as the responsible authority may specify.

(2) The responsible authority shall also—
(a) within 14 days of the preparation of the environmental report, secure the publication of a notice—
   (i) stating the title of the plan or programme to which it relates;
   (ii) stating the address (which may include a website) at which a copy of the relevant documents may be inspected or from which a copy may be obtained;
   (iii) inviting expressions of opinion on the relevant documents; and
   (iv) stating the address to which, and the period within which, opinions must be sent;
(b) keep a copy of the relevant documents available at the authority’s principal office for inspection by the public at all reasonable times and free of charge; and
(c) display a copy of the relevant documents on the authority’s website.
Environmental Assessment (Scotland) Bill

Part 3—Post-adoption procedures

(3) The periods referred to in subsections (1)(b) and (2)(a)(iv) must be of such length as will ensure that those to whom the invitation is extended are given an early and effective opportunity to express their opinion on the relevant documents.

(4) Publication of a notice under subsection (2)(a) shall be by such means (including publication in at least one newspaper circulating in the area to which the plan or programme relates) as will ensure that the contents of the notice are likely to come to the attention of the public—
   (a) affected by or likely to be affected by; or
   (b) having an interest in,
   the plan or programme.

(5) Nothing in subsection (2)(a)(ii) shall require the responsible authority to provide a copy of any document free of charge; but where a charge is made, it shall be of a reasonable amount.

Account to be taken of environmental report etc.

In the preparation of a qualifying plan or programme, the responsible authority shall take account of—
   (a) the environmental report for that plan or programme;
   (b) every opinion expressed in response to the invitations referred to in section 16(1) and (2)(a)(iii); and
   (c) the outcome of any relevant consultation under regulation 14 of the Environmental Assessment of Plans and Programmes Regulations 2004 (S.I. 2004/1633).

PART 3
POST-ADOPTION PROCEDURES

Information as to adoption of a qualifying plan or programme

(1) As soon as reasonably practicable after the adoption of a qualifying plan or programme, the responsible authority shall—
   (a) make available a copy of—
      (i) the plan or programme;
      (ii) the environmental report relating to it; and
      (iii) a statement containing the particulars specified in subsection (3),
      at the authority’s principal office for inspection by the public at all reasonable times and free of charge;
   (b) secure the taking of such steps as it considers appropriate (including publication in at least one newspaper circulating in the area to which the plan or programme relates) to bring to the attention of the public—
      (i) the title of the plan or programme;
      (ii) the date on which it was adopted;
(iii) the address (which may include a website) at which a copy of the plan or programme and its accompanying environmental report, and of the statement containing the particulars specified in subsection (3), may be inspected or from which a copy may be obtained;

(iv) the times at which inspection may be made; and

(v) that inspection may be made free of charge; and

(c) display a copy of—

(i) the documents referred to in paragraph (a); and

(ii) the information referred to in paragraph (b),

on the authority’s website.

(2) As soon as reasonably practicable after the adoption of a qualifying plan or programme, the responsible authority shall inform the consultation authorities of the adoption of the plan or programme and shall send them a copy of—

(a) the plan or programme as adopted; and

(b) the statement containing the particulars specified in subsection (3).

(3) The particulars referred to in subsections (1)(a)(iii) and (b)(iii) and (2)(b) are—

(a) how environmental considerations have been integrated into the plan or programme;

(b) how the environmental report has been taken into account;

(c) how the opinions expressed in response to the invitations mentioned in section 16 have been taken into account;

(d) how the results of any relevant consultation under regulation 14 of the Environmental Assessment of Plans and Programmes Regulations 2004 (S.I. 2004/1633) have been taken into account;

(e) the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives considered; and

(f) the measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme.

(4) Nothing in subsection (1)(b)(iii) shall require the responsible authority to provide a copy of any document free of charge; but where a charge is made, it shall be of a reasonable amount.

19 Monitoring of implementation of qualifying plans and programmes

(1) The responsible authority shall monitor the significant environmental effects of the implementation of every qualifying plan or programme for which it has carried out an environmental assessment.

(2) The responsible authority shall do so in a manner (which may comprise or include arrangements established otherwise than for the express purpose of compliance with subsection (1)) which enables the authority to—

(a) identify any unforeseen adverse effects at an early stage; and

(b) undertake appropriate remedial action.
20 Crown application
This Act binds the Crown.

21 Orders
(1) Any power of the Scottish Ministers to make orders under this Act is exercisable by statutory instrument.
(2) Any such power includes power to make—
   (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient; and
   (b) different provision for different purposes.
(3) A statutory instrument containing an order under this Act except—
   (a) where subsection (4) applies, an order under section 22; or
   (b) an order under section 25,
   is subject to annulment in pursuance of a resolution of the Parliament.
(4) No order under section 22 which amends an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Parliament.

22 Ancillary provision
The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes or in consequence of this Act.

23 Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004
The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (S.S.I. 2004/258) are revoked.

24 Interpretation
(1) In this Act—
   “the public” includes any legal person and any body of persons (whether incorporated or not).
(2) Unless the context otherwise requires, expressions used in both this Act and in the Directive shall be construed in accordance with the Directive.
25 Commencement and short title

(1) The provisions of this Act, except this section and sections 20, 21, 22 and 24, come into force on such day as the Scottish Ministers may by order appoint.

(2) Different days may be so appointed for different provisions and different purposes.

(3) This Act may be cited as the Environmental Assessment (Scotland) Act 2005.
SCHEDULE 1
(introduced by section 5(3)(a))

PROJECTS

PART 1

5 Particular projects

1 (1) Crude oil refineries except undertakings whose sole function is the manufacture of lubricants from crude oil.

(2) Installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2 (1) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more.

(2) Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kilowatt continuous thermal load).

3 (1) Installations for the reprocessing of irradiated nuclear fuel.

(2) Installations designed—

(a) for the production or enrichment of nuclear fuel;

(b) for the processing of irradiated nuclear fuel or high-level radioactive waste;

(c) for the final disposal of irradiated nuclear fuel;

(d) solely for the final disposal of radioactive waste; or

(e) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site other than the production site.

4 (1) Integrated works for the initial smelting of cast-iron and steel.

(2) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

5 Installations for—

(a) the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos;

(b) asbestos–cement products with an annual production of more than 20,000 tonnes of finished products;

(c) friction material with an annual production of more than 50 tonnes of finished products; or

(d) other uses of asbestos having utilisation of more than 200 tonnes per year.

6 Integrated chemical installations, that is to say, installations—

(a) for the manufacture on an industrial scale of substances using chemical conversion processes; and

(b) in which several units are juxtaposed and are functionally linked to one another and which are for the production of—
(i) basic organic chemicals;
(ii) basic inorganic chemicals;
(iii) phosphorus-based, nitrogen-based or potassium-based fertilisers (that is, simple or compound fertilisers);
(iv) basic plant health products and of biocides;
(v) basic pharmaceutical products using a chemical or biological process; or
(vi) explosives.

7 (1) Construction of—
   (a) lines for long-distance railway traffic; or
   (b) airports with a basic runway length of 2100 metres or more.

(2) Construction of motorways and express roads.

(3) The—
   (a) construction of a new road of four or more lanes; or
   (b) realignment or widening (or both) of an existing road of two lanes or less so as to provide four or more lanes,
   where such new road, or realigned or widened section of the road, would be 10 kilometres or more in a continuous length.

8 (1) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.

(2) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.

9 Waste disposal installations for—
   (a) the incineration;
   (b) chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9; or
   (c) landfill,
   of hazardous waste (that is to say, waste to which Directive 91/689/EEC applies).

10 Waste disposal installations for—
   (a) the incineration; or
   (b) chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9,
   of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11 Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

12 (1) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year.
(2) Works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5 per cent of this flow.

(3) In sub-paragraphs (1) and (2), transfers of piped drinking water are excluded.

5 Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2.6 of Directive 91/271/EEC.

14 Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.

15 Dams and other installations designed for the holding back or permanent storage of water where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

16 Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 millimetres and a length of more than 40 kilometres.

17 Installations for the intensive rearing of poultry or pigs with more than—
   (a) 85,000 places for broilers, 60,000 places for hens;
   (b) 3,000 places for production pigs (that is, pigs weighing over 30 kilograms); or
   (c) 900 places for sows.

18 Industrial plants for the—
   (a) production of pulp from timber or similar fibrous materials; or
   (b) production of paper and board with a production capacity exceeding 200 tonnes per day.

19 (1) Quarries and open-cast mining where the surface of the site exceeds 25 hectares.

(2) Peat extraction where the surface of the site exceeds 150 hectares.

20 Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.

21 Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200,000 tonnes or more.

General

22 Any change to or extension of projects listed in this Part of this schedule where the change or extension in itself meets the thresholds (if any) set out in this Part of this schedule.

PART 2

Agriculture, silviculture and aquaculture

23 (1) Projects for the restructuring of rural land holdings.

(2) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes.

(3) Water management projects for agriculture, including irrigation and land drainage projects.
(4) Initial afforestation and deforestation for the purposes of conversion to another type of land use.

(5) Intensive livestock installations.

(6) Intensive fish farming.

(7) Reclamation of land from the sea.

**Extractive industry**

24 (1) Quarries, open-cast mining and peat extraction.

(2) Underground mining.

(3) Extraction of minerals by marine or fluvial dredging.

10 (4) Deep drillings, in particular—

   (a) geothermal drilling;

   (b) drilling for the storage of nuclear waste material;

   (c) drilling for water supplies,

except drillings for investigating the stability of the soil.

15 (5) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores (including bituminous shale).

**Energy industry**

25 (1) Industrial installations for the production of electricity, steam and hot water.

(2) Industrial installations for—

20 (a) carrying gas, steam and hot water; or

   (b) transmission of electrical energy by overhead cables.

(3) Surface storage of natural gas.

(4) Underground storage of combustible gases.

(5) Surface storage of fossil fuels.

25 (6) Industrial briquetting of coal and lignite.

(7) Installations for the processing and storage of radioactive waste.

(8) Installations for hydroelectric energy production.

(9) Installations for the harnessing of wind power for energy production (that is to say, wind farms).

**Production and processing of metals**

26 (1) Installations for the production of pig iron or steel (that is, primary or secondary fusion) including continuous casting.

(2) Installations for the processing of ferrous metals, that is to say—

   (a) hot-rolling mills;

   (b) smitheries with hammers;
(c) application of protective fused metal coats.

3 Ferrous metal foundries.

4 Installations for the smelting of (including the alloyage of) non-ferrous metals except precious metals (including recovered products, for example, by refining or foundry casting).

5 Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process.

6 Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines.

7 Shipyards.

8 Installations for the construction and repair of aircraft.

9 Manufacture of railway equipment.

10 Swaging by explosives.

11 Installations for the roasting and sintering of metallic ores.

Mineral industry

27 (1) Coke ovens (that is to say, dry coal distillation).

2 Installations for the manufacture of cement.

3 Installations for the production of asbestos and the manufacture of asbestos products.

4 Installations for the manufacture of glass including glass fibre.

5 Installations for smelting mineral substances including the production of mineral fibres.

6 Manufacture of ceramic products by burning, in particular—

(a) roofing tiles, bricks, refractory bricks and tiles; and

(b) stoneware or porcelain.

Chemical industry

28 (1) Treatment of intermediate chemical products.

2 Production of chemicals.

3 Production of—

(a) pesticides;

(b) pharmaceutical products;

(c) paint and varnishes;

30 (d) elastomers; and

(e) peroxides.

4 Storage facilities for petroleum, petrochemical and chemical products.

Food industry

29 (1) Manufacture of vegetable and animal oils and fats.
(2) Packing and canning of animal and vegetable products.
(3) Manufacture of dairy products.
(4) Brewing and malting.
(5) Confectionery and syrup manufacture.
(6) Installations for the slaughter of animals.
(7) Industrial starch manufacturing installations.
(8) Fish-meal and fish-oil factories.
(9) Sugar factories.

Textile, leather, wood and paper industries

30 (1) Industrial plants for the production of paper and board.
(2) Plants for the—
   (a) pre-treatment (including operations such as washing, bleaching and mercerization); or
   (b) dyeing,
   of fibres or textiles.
(3) Plants for the tanning of hides and skins.
(4) Cellulose-processing and production installations.

Rubber industry

31 Manufacture and treatment of elastomer-based products.

Infrastructure projects

32 (1) Industrial estate development projects.
(2) Urban development projects, including the construction of shopping centres and car parks.
(3) Construction of railways and intermodal transshipment facilities, and of intermodal terminals.
(4) Construction of airfields.
(5) Construction of roads, harbours and port installations (including fishing harbours).
(6) Inland-waterway construction, canalization and flood-relief works.
(7) Dams and other installations designed to hold water or store it on a long-term basis.
(8) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport.
(9) Oil and gas pipeline installations.
(10) Installations of long-distance aqueducts.
(11) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works.

(12) Groundwater abstraction and artificial groundwater recharge schemes.

(13) Works for the transfer of water resources between river basins.

(14) Motorway service areas.

Tourism and leisure

33 (1) Ski-runs, ski-lifts and cable-cars and associated developments.

(2) Marinas.

(3) Holiday villages and hotel complexes outside urban areas and associated developments.

(4) Permanent camp sites and caravan sites.

(5) Theme parks.

(6) Golf courses and associated developments.

Miscellaneous projects

15 34 Permanent racing and test tracks for motorized vehicles.

35 Installations for the disposal of waste.

36 Waste-water treatment plants.

37 Sludge-deposition sites.

38 Storage of scrap iron, including scrap vehicles.

20 39 Test benches for engines, turbines or reactors.

40 Installations for the manufacture of artificial mineral fibres.

41 Installations for the recovery or destruction of explosive substances.

42 Knackers’ yards.

General

25 43 (1) Any change to or extension of projects listed in Part 1 or this Part of this schedule which—

(a) have already been authorised or executed; or

(b) are in the process of being executed,

and which may have significant adverse effects on the environment.

(2) Projects listed in Part 1 of this schedule which are undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.
Interpretation


(2) References in this Part of this schedule to a project are references to the project in so far as it is not included in Part 1 of this schedule.

SCHEDULE 2
(introduced by section 7(2))

CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

1 The characteristics of plans and programmes, having regard, in particular to—
   (a) 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;
   (b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy;
   (c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development;
   (d) environmental problems relevant to the plan or programme; and
   (e) the relevance of the plan or programme for the implementation of Community legislation on the environment (for example, plans and programmes linked to waste management or water protection).

2 Characteristics of the effects and of the area likely to be affected, having regard, in particular, to—
   (a) the probability, duration, frequency and reversibility of the effects;
   (b) the cumulative nature of the effects;
   (c) the transboundary nature of the effects;
   (d) the risks to human health or the environment (for example, due to accidents);
   (e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);
   (f) the value and vulnerability of the area likely to be affected due to—
      (i) special natural characteristics or cultural heritage;
      (ii) exceeded environmental quality standards or limit values; or
      (iii) intensive land-use; and
   (g) the effects on areas or landscapes which have a recognised national, Community or international protection status.
SCHEDULE 3
(introduced by section 14)

INFORMATION FOR ENVIRONMENTAL REPORTS

1. An outline of the contents and main objectives of the plan or programme, and of its relationship (if any) with other qualifying plans and programmes.

2. The relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme.

3. The environmental characteristics of areas likely to be significantly affected.


5. The environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation.

6. The likely significant effects on the environment, including—
   (a) on issues such as—
      (i) biodiversity;
      (ii) population;
      (iii) human health;
      (iv) fauna;
      (v) flora;
      (vi) soil;
      (vii) water;
      (viii) air;
      (ix) climatic factors;
      (x) material assets;
      (xi) cultural heritage, including architectural and archaeological heritage;
      (xii) landscape; and
      (xiii) the inter-relationship between the issues referred to in heads (i) to (xii);
   (b) short, medium and long-term effects;
   (c) permanent and temporary effects;
   (d) positive and negative effects; and
   (e) secondary, cumulative and synergistic effects.

7. The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.
8 An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of expertise) encountered in compiling the required information.

9 A description of the measures envisaged concerning monitoring in accordance with section 19.

10 A non-technical summary of the information provided under paragraphs 1 to 9.
Environmental Assessment (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the assessment of the environmental effects of certain plans and programmes, including plans and programmes to which Directive 2001/42/EC of the European Parliament and of the Council relates; and for connected purposes.

Introduced by: Ross Finnie
On: 2 March 2005
Bill type: Executive Bill
ENVIROMENTAL 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
These documents relate to the Environmental Assessment (Scotland) Bill (SP Bill 38) as introduced in the Scottish Parliament on 2 March 2005

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
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
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
These documents relate to the Environmental Assessment (Scotland) Bill (SP Bill 38) as introduced in the Scottish Parliament on 2 March 2005

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.
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 5</th>
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<tr>
<td>Sector in which SEAs will arise</td>
<td>SEAs per year if average life cycle of strategy/plan/programme is 5 years</td>
<td>SEAs per year if average life cycle of strategy/plan/programme is 4 years</td>
<td>SEAs per year if average life cycle of strategy/plan/programme is 3 years</td>
<td>Range of total SEAs per year adding together current Reg provisions and new Bill provisions</td>
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<tr>
<td>current Regulatory provisions</td>
<td>additional Bill provisions</td>
<td>Total</td>
<td>current Regulatory provisions</td>
<td>additional Bill provisions</td>
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<td>4</td>
<td>10</td>
<td>8</td>
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<tr>
<td>Local Authorities</td>
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<tr>
<td>Other</td>
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<td>TOTAL</td>
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<td>129</td>
<td>204</td>
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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;
These documents relate to the Environmental Assessment (Scotland) Bill (SP Bill 38) as introduced in the Scottish Parliament on 2 March 2005

- 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.

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<td>SEA costs per year if average life cycle of strategy/plan/programme is 5 years</td>
<td>SEA costs per year if average life cycle of strategy/plan/programme is 4 years</td>
<td>SEA costs per year if the average life cycle of strategy/plan/programme is 3 years</td>
<td>Range of total SEA costs per year adding together current Reg provisions and new Bill provisions</td>
</tr>
<tr>
<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>
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<td>£212,000</td>
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<td>£1,234,000</td>
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<tr>
<td>Other</td>
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<td>£2,104,000</td>
<td>£3,468,000</td>
<td>£1,941,000</td>
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<tr>
<td>TOTAL</td>
<td>£2,563,000</td>
<td>£4,572,000</td>
<td>£7,135,000</td>
<td>£3,403,000</td>
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* 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 every day 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>SEA costs per year for current Regulatory provisions - assuming plan life cycle is 3 years (see table 2 col 4)</th>
<th>SEA costs per year for additional Bill provisions - assuming plan life cycle is 3 years (see table 2 col 4)</th>
<th>SEA costs per year for current Regulatory provisions plus additional Bill provisions assuming plan life cycle is 3 years (see table 2 col 5)</th>
<th>ref: paragraph</th>
</tr>
</thead>
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<tr>
<td>Public Sector</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Executive (Responsible Authority duties)</td>
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<td>£141,000</td>
<td>£394,000</td>
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</tr>
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<td>Local Authorities (Responsible Authority duties)</td>
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<td>£3,843,000</td>
<td>£5,500,000</td>
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<td>Public Sector</td>
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<td>Para 92</td>
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<tr>
<td>Private sector/voluntary sector/individuals</td>
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<td>NIL</td>
<td>NIL</td>
<td>Para 53</td>
</tr>
</tbody>
</table>

Table 3 - SUMMARY OF ESTIMATED ANNUAL SEA COSTS

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.”
INTRODUCTION

1. This document relates to the Environmental Assessment (Scotland) Bill introduced in the Scottish Parliament on 2 March 2005. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 38–EN.

The Bill

2. The Bill seeks to implement the Partnership Agreement on Environmental Assessment. In doing so it will revoke and replace The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 in implementing the Directive 2001/42/EC of the European Parliament and Council on the assessment of the effects of certain plans and programmes on the environment (The Directive). It does so as regards plans and programmes which relate solely to the whole or any part of Scotland

Policy Objective

3. The purpose of this Bill is to improve protection of the environment through better public decision making. In particular, it aims to:-:

   Implement the Partnership Agreement commitment in ‘A Partnership for a Better Scotland’. ‘The commitment was made to legislate to introduce Strategic Environmental Assessment (SEA) across the range of all new strategies, plans and programmes developed by the public sector in Scotland’

   **Part 1** of the Bill sets out the requirement on responsible authorities to secure the carrying out of an environmental assessment on qualifying strategies, plans and programmes. It contains provisions for establishing which should be subject to the assessment process.

   **Part 2** of the Bill sets out the requirements for carrying out scoping. Scoping is the setting out of the subject areas and degree of detail required for inclusion in the environmental report. It further sets out requirements for consultation and the taking into account of consultation responses.
**Part 3** of the Bill makes provision for the announcement of the adoption of any strategy, plan, or programme that has been subject to environmental assessment. It sets out the arrangements for the monitoring of the implementation of the strategy, plan or programme and requirements for forward monitoring and remedial action in respect of unforeseen effects.

**Part 4** of the Bill makes general provisions, including provision for order making powers. This part revokes The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258). Savings Provisions will be made by order to ensure any environmental assessment begun under the Regulations are completed under the terms of the Regulations.

4. The Bill furthers the commitment to place environmental protection at the heart of decision making, supporting the drive for genuinely sustainable development in Scotland. The provisions of the Bill set out a robust means of determining which strategies, plans, and programmes should be subject to SEA along with a consistent and thorough approach to completing an environmental report. The Bill promotes public involvement in the decision making process and by demanding that the public’s views and the environmental report are properly taken into account, SEA delivers real accountability.

**Background**

5. SEA is the commonly accepted abbreviation for the Strategic Environmental Assessment of Strategies, Plans and Programmes. It is an environmental assessment process well established in a number of countries, most notably Canada and Poland. As a result of a recent European Directive it is now in use across the EU, including Scotland where, through the Bill, we will become a leader in this field.

6. Environmental assessment (which we will refer to as “SEA” in the rest of this paper) is defined as the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the consultations in decision making, and the provision of information on the decision. Specific provisions are made in the Bill for all these aspects of the assessment and, also for monitoring the significant environmental effects of the implementation of the strategies, plans and programmes. The Bill provides a set of common procedural requirements necessary to contribute to a high level of protection of the environment and to more sustainable and effective solutions.

**Commitments and Current Regulations**

7. Scottish Ministers are seeking to implement the commitment in A Partnership for a Better Scotland. The commitment was made to legislate to introduce Strategic Environmental Assessment (SEA) across the range of all new strategies, plans and programmes developed by the public sector in Scotland. In meeting the commitment the Bill includes provisions to ensure compliance with European Directive 2001/42/EC "on the assessment of the effects of certain plans and programmes on the environment", known as the Strategic Environmental Assessment
or SEA Directive. The Scottish Ministers have taken the opportunity of using primary legislation to go further and create an even more comprehensive SEA regime.

8. The current Scottish Regulations (The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004) will be revoked by this Bill. Other parts of the UK will retain their current Regulations to implement the Directive.

Relationship with other legislation

9. The implementation of the Directive 2001/42/EC elsewhere in the UK is achieved through the following legislation:

- The Environmental Assessment of Plans and Programmes Regulations 2004, (SI 2004/1633)
- The Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004, (SI 2004/280)

10. Scottish legislation is reliant on The Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633) in respect of the transboundary requirements of the Directive. Where qualifying plans and programmes are geographically of a UK wide application they will be subject to UK regulations. The Consultation Authorities named in the Bill are also named in the UK instrument in order that they can act as Consultation Authorities on any part of a UK wide plan or programme that relates to Scotland.

Consultation

11. An ambitious and very successful consultation has been carried out over the last year. The consultation strategy engaged a wide variety of stakeholders and addressed the real need to capture and take into account the range of views across Scotland. Not least, the consultation exercise sought to embrace the principles in respect of public consultation that SEA will deliver.

12. Two written public consultations have been carried out. Initially, there was a 12 week exercise on SEA Regulations and Bill Principles. This was followed by an 8 week exercise on detailed issues including the Draft Bill. The first consultation on the SEA Regulations and Bill Principles was necessarily complex and technical in nature. Despite this it proved to be a very successful exercise with over 50 responses. The second consultation which was focussed on key provisions and included a draft Bill elicited 90 responses.

13. A major conference event (Edinburgh) brought together over 150 people interested in SEA and direct polling of the audience on key issues was a feature of the event. 2 large public seminars (Glasgow, Aberdeen), stakeholder meetings and presentation events have also been held and a wide range of views and research findings have been received and taken into account.
This document relates to the Environmental Assessment (Scotland) Bill (SP Bill 38) as introduced in the Scottish Parliament on 2 March 2005

14. Consultation response analysis is presented as part of the detailed policy provision explanations in this document. A summary of the consultation with details of how views have been taken into account, and copies of individual responses, are available through the Scottish Executive Library or from the Scottish Executive Consultation web pages.

DETAILED POLICY PROVISIONS

PART 1

15. This part sets out the major requirement of the Bill which is to secure the carrying out of an environmental assessment during the preparation of a qualifying strategy, plan or programme. It defines what constitutes an environmental assessment. The carrying out of an environmental assessment at an early stage of the development of strategies, plans and programmes should improve information available to decision makers, involve the public actively and lead to more transparent decision making. The consideration of alternatives at an early point should lead to decisions that include the greatest degree possible of environmental impact mitigation or avoidance.

16. The Bill is focused solely on the public sector, expressed here as any person, body or office-holder exercising functions of a public character. The 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 companies who perform public functions under licence or regulatory frameworks. The Responsible Authority is the owner of the qualifying strategy, plan or programme and only one authority can be deemed the Responsible Authority at any one time.

17. The Consultation Authorities who have statutory roles under the Bill are as follows:

- The Scottish Ministers
- Scottish Environment Protection Agency
- Scottish Natural Heritage

18. It should be noted that following the decision to include Historic Scotland in the role of Consultation Authority, it is necessary for The Scottish Ministers to appear on the list. This is purely a reflection of Historic Scotland’s legal status and does not imply that other parts of the Scottish Executive will play any statutory role as Consultation Authorities.

19. This part also establishes the nature of strategies, plans and programmes that should be subject to SEA. It is intended that all strategies, plans and programmes that are likely to have a significant environmental effect should be subject to SEA. The sections set out the qualifying criteria intended to allow responsible authorities to establish which of their strategies, plans and programmes are subject to SEA.

Exemptions

20. Exemptions to the assessment process are based on the contents and attributes of an individual strategy, plan or programme. Exemptions are based on an assessment by the
Responsible Authority that a strategy, plan or programme either has no or minimal environmental effects (pre-screening) or on the outcome of screening. The key to interpreting the exemptions is to consider that the overall objective of the SEA Bill is to ensure that only those strategies, plans and programmes likely to have significant effects on the environment are assessed. Only in the case of individual schools has a specific exemption been made outwith the screening processes. This is on the basis that it is considered highly unlikely that any strategy, plan or programme relating to a single school could have significant environmental effects.

**Pre-Screening**

21. ‘Pre-screening’ deals with those strategies, plans and programmes where no doubt exists that they will have at most minimal environmental effect, and allows them to be quickly removed from the need for further assessment. This allows resources to be concentrated on strategies, plans and programmes likely to have significant environmental effects. Pre-screening is an assessment carried out by the Responsible Authority with reference to schedule 2 of the Bill without the need to consult more widely and only applies to certain qualifying strategies, plans and programmes under the Bill. Pre-screening is a tool for administrative efficiency not a means of avoiding obligations under the SEA Bill. The nature of public strategies, plans and programmes is such that in almost every case it will be plain if a public body adopts one that should have been subject to SEA. In the unlikely event that pre-screening is applied inappropriately then under section 11 Responsible Authorities can be subject to direction from the Scottish Ministers to carry out an assessment and/or judicial review should they fail to do so.

**Determinations and Screening**

22. The policy driver behind these sections is to ensure that Responsible Authorities may be able to determine which strategies, plans and programmes are subject to SEA. For many strategies, plans and programmes they will be able to reach this decision themselves, however where an assessment of the likely significance of effects is required or where any doubt exists the screening process is to be used. Strategies, plans and programmes referred to in section 8(1) of the Bill should always be subject to the screening process. A brief report is submitted along with the plan, programme or strategy in question for consideration by the Consultation Authorities. Where agreement is reached between Responsible Authority and Consultation Authorities then the determination should be publicised. Disagreements will be referred to the Scottish Ministers for their decision.

23. Scottish Ministers may at any time direct a Responsible Authority to send them a strategy, plan or programme and, after due consideration, may direct the Responsible Authority to either enter the screening process or to carry out an SEA. This power helps to ensure compliance along with the provision that makes clear that no qualifying strategy, plan or programme deemed to have significant environmental effects may be adopted or acted upon before an SEA is carried out.

**Alternative Approaches**

24. A number of alternative approaches have been considered in arriving at the policies set out above. In particular alternative administrative arrangements have been the focus of discussion. The choice of the 3 Consultation Authorities is believed to provide a range of expert
advice on the environment without creating an unmanageable or unduly costly bureaucracy. Responsible Authorities have a general obligation to consult and may very well want to consult in detail with other specialist bodies as well as the 3 nominated Consultation Authorities depending on the nature of their plan to ensure the quality of their environmental report. To set up a new independent body able to comment on all aspects of the environment would be a hugely expensive undertaking and would duplicate the areas of expertise already catered for in the existing environmental public bodies.

25. The administrative arrangements are largely to be contained in separate non statutory guidance. A small team in the Executive is to act as co-ordinator and manager of the process to minimise the effort for both Responsible and Consultation Authorities. In particular the development of closer links with the Consultation Authorities to keep pressure on turnaround times will be a focus.

26. The omission of Pre-screening was considered to avoid any suggestion that Responsible Authorities might be able to evade their SEA obligations. This option was rejected as the need to exclude those strategies, plans and programmes clearly not requiring SEA is important for efficiency. A very low threshold of no or minimal environmental effect ensures that abuses should be avoided, with screening available as a mechanism if any doubt exists. Further doubt should be reduced by the production of an indicative list, within guidance, of strategies, plans and programmes likely to be subject to SEA.

27. Exemption of specific bodies was considered to see if there might be any groups or single bodies that could be identified as never being able to produce strategies, plans and programmes that could have a significant environmental effect. Individual schools have been excluded. Others, such as universities and hospitals, were considered but they have not been excluded because we could not always be certain that they would not have strategic planning capability under the terms of this legislation.

Consultation Responses

28. The administrative arrangements brought out a range of views but the majority favoured the operation of a single gateway housed in the Scottish Executive, working closely with the three Consultation Authorities. A minority backed another proposed arrangement, essentially that a single expert team be established to speed the administration. A small number of respondents called for the establishment of a new independent body to handle administration and disputes.

29. Pre-screening was commended by the vast majority as a helpful device for taking some non environmentally damaging strategies, plans and programmes out of the assessment process at the earliest opportunity. However, most of the respondents felt that further clear guidance on pre-screening was needed. A few concerns were raised that pre-screening could lead to responsible authorities seeking to avoid assessing strategies, plans and programmes with likely environmental effects.
30. The proposal that screening assessment by the consultation authorities should take place within a fixed period of 28 days was generally popular with a few calls for relaxation of the deadline in complex cases.

31. A very clear message from consultation responses on extending exemptions was that the ability to add exemptions beyond individual schools to other public bodies or even particular strategies, plans and programmes should be retained. It was equally clear that many felt a considerable period of experience would be needed before any consideration was given to extending the list of exemptions.

PART 2

32. An important component of SEA is the environmental report. The report describes and evaluates the likely significant effects on the environment. The Bill provides that reasonable alternatives for delivering any strategy, plan or programme be evaluated within the report. This emphasises the need to carry out SEA at an early and effective point when viable alternatives are still being considered.

33. It is intended that the environmental report is proportionate to the strategy, plan or programme to which it relates. It is important that, as strategies, plans or programmes are often part of a hierarchy, Responsible Authorities consider at which level within that hierarchy each environmental effect is best measured and evaluated. Avoidance of duplication is the key here and consideration of likely effects at the most strategic stage is preferred. The content of the environmental report is central to quality control. A scoping stage (5 weeks) is included to ensure some external advice and scrutiny is brought to bear. The Responsible Authority must submit a scoping report outlining the proposed structure of their environmental report, the Consultation Authorities must offer their views and those views must be taken into account.

34. The need to encourage quality drives the inclusion of a provision demanding that the consultation period be set at the scoping stage. Scottish Ministers may alter the consultation period if they deem it inadequate but this is unlikely to be required. Achieving an early and appropriate public consultation is the desired outcome. Public comment must be invited early in the decision making process and those comments along with the environmental report must be taken into account. A criticism of many consultation processes is that views were sought but it was unclear how they impacted on the final decision and shape of the final plan. The demand placed on responsible authorities here to demonstrate how comments were taken into account is in part designed to address that criticism. Most importantly the provisions will aim to achieve better environmental outcomes.

Consultation Response

35. The use of a standard set of environmental indicators was a subject that provoked a strong reaction in both the written consultation and public meetings. It is the clear view that the use of indicators within environmental reports is nearly always essential. Indicators can improve consistency and comparability and a standard set or menu of indicators can help simplify the environmental reporting. It is not at all clear, however, that there is an agreed and universally applicable core set of environmental indicators. Most felt that this was an area requiring further research and that good practice for use of indicators, not least when being used to measure
cumulative and synergistic effects, should be actively developed. The Executive is already working in this area with respect to Sustainable Development indicators and it is expected that SEA will further drive this activity. Guidance will seek to offer sources of environmental baseline (current state) data from which indicators may be derived but this issue will not be quickly resolved.

**Alternative Approaches**

36. Longer and shorter periods of time for the Consultation Authorities to respond to scoping proposals were considered but key stakeholders have agreed the 5 week limit appears to be a good balance between maintaining the speed of the process and allowing a fair time for scrutiny.

37. Consultation arrangements seek to reflect best practice and offer flexibility for Responsible Authorities, ensuring a high standard of public opportunity. A 12 week fixed consultation period was considered as was a 4 to 12 week range but concern was raised that specifying a range tends to lead to the minimum becoming the standard and that an upper limit might be restrictive on a few very large scale exercises.

**PART 3**

38. In the context of greater openness and transparency of decision making this part ensures relevant strategies, plans and programmes are made available to the public and the Consultation Authorities to gather their views at an early stage in their preparation. Once implemented a clear account of why a particular plan, programme or strategy was adopted, how the views of consultees were taken into account and how the environmental effects are to be handled is also essential. This step demonstrates that consultation is an active participatory process that delivers real change and shows how everyone can influence strategies, plans and programmes that affect them. The taking into account of views expressed by those affected supports the ongoing drive for Environmental Justice.

39. Monitoring of environmental effects of strategies, plans and programmes must be planned and carried out. Monitoring has the dual role of ensuring that unforeseen impacts are quickly identified and action taken to mitigate or avoid them. It helps ensure that the ongoing monitoring of effects can inform future strategies, plans and programmes in terms of impact prediction. A great deal of monitoring is already carried out and so no new regimes are prescribed but where gaps exist responsible authorities will have to make new arrangements. Environmental Information (Scotland) Regulations 2004 set out the rights of access to environmental information held by public authorities in Scotland and makes it very likely that monitoring information should be published and therefore subject to public scrutiny.

**Alternative Approaches**

40. Monitoring has been subject to much consideration and analysis of the consultation responses suggests that this is an area that will require clear guidance. The Bill provisions seek again to balance an obligation to monitor for unforeseen effects with ensuring that the administrative duties associated with this are as light as possible. Alternatives included leaving out monitoring arrangements entirely on the grounds that many monitoring regimes are already in place and a danger of duplication was considerable. However this is likely to be incompatible
with European law and could lead to unforeseen impacts going unnoticed. More detailed and prescriptive obligations could lead to high costs and to several Responsible Authorities operating in one area each monitoring the same environmental effect rather than sharing information. A further possibility is to create a new independent body with monitoring responsibilities but the duplication of effort with existing bodies and the additional cost would be very high.

PART 4

41. The most important policy here is the revoking of The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004, SSI 2004 No.258, making this Bill the means of compliance with the European SEA Directive.

SCHEDULES

Schedule 1

42. Included for the convenience of the reader. This schedule avoids the need to cross refer to existing Environmental Impact (Scotland) Assessment Regulations 1999.

Schedule 2

43. Much of the decision making process in respect of which strategies, plans and programmes should be subject to SEA hangs on the evaluation of the likely significance of environmental effects. This schedule seeks to offer a detailed framework of criteria for establishing significance. The criteria are consistent with those applied across Europe ensuring that while this Bill widens the scope of strategies, plans and programmes considered it does not raise or lower the level of significance at which SEA is applied.

Schedule 3

44. Essentially schedule 3 is a quality standard to ensure that a high degree of consistency of reporting is maintained. Asking the Responsible Authorities to use the environmental receptors and the time and context based criteria as listed for reporting seeks to achieve a more standardised environmental report. Guidance sets out in some detail a methodology for constructing an environmental report but this schedule gives a framework for consistent reporting.

FURTHER POLICY CONSIDERATIONS

Diversity

45. Having considered equality issues it is assessed that the Bill’s provisions are not discriminatory in terms of gender, race, age, disability, marital status, religion or sexual orientation. Responsible Authorities will wish to be careful to address equality issues in relation to the way they carry out consultation and publicise information as required by provisions within the Bill. In considering the mitigation of environmental measures Responsible Authorities will wish to ensure that impacts are not disproportionately felt by any particular group.
Human Rights

46. The provisions of the Bill are compatible with the European Convention on Human Rights.

Island Communities

47. The Bill is designed to ensure scrutiny of all strategies, plans and programmes likely to have significant environmental effects including those affecting island communities. There are no exemptions or differences in treatment in respect of public bodies that have strategic planning responsibilities for island communities.

Local Government

48. The Bill lays responsibilities on all those carrying out functions of a public character and as such local government will be expected to comply with the provisions of the Bill. The Financial Memorandum sets out the expected cost to the public sector. The provisions are applied equally to all public bodies. The Bill extends obligations on local authorities currently set out in The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 SSI 2004/258.

Sustainable Development

49. The Bill seeks to support sustainable development. SEA helps ensure that comprehensive environmental information is available to be directly taken into consideration at an early stage in the decision making process.

50. The objectives of the SEA Directive include the promotion of sustainable development. The following paragraphs consider what SEA provisions add to the requirements currently in place in regard to sustainable development. In A Partnership for a Better Scotland, which sets out its programme for 2003-07, the Scottish Executive highlighted the priority it attaches to sustainable development:

- We want a Scotland that delivers sustainable development; that puts environmental concerns at the heart of public policy and secures environmental justice for all of Scotland’s communities.

51. In April 2002, the Executive reaffirmed its commitment to sustainable development - development that meets the needs of the present without compromising the ability of future generations to meet their own needs - in Meeting the Needs... Priorities, Actions and Targets for Sustainable Development in Scotland. (Work on a Scottish Sustainable Development Strategy is due to commence in early 2005 with a view to publication in the autumn of 2005.) This set out the vision and principles to be applied across the Executive and our main priority areas for action: resource use, energy and travel. It also identified twenty-four indicators to help monitor progress, on which we report annually. SEA adds to this by ensuring that at the strategic level the environmental aspects of sustainable development are fully explored and consequences of
This document relates to the Environmental Assessment (Scotland) Bill (SP Bill 38) as introduced in the Scottish Parliament on 2 March 2005

particular actions understood at an early stage, for example in assessing plans, programmes and strategies for their impact on climate change.

52. The new requirements on public bodies, including the Executive and its Agencies, to take account of sustainable development in their work will help to drive a more consistent approach across the public sector in Scotland. In particular:

- the **duty of best value** requires public sector bodies to have regard to the need to contribute to sustainable development in carrying out their work;
- **strategic environmental assessment**, to ensure that the environmental dimension of sustainable development is more consistently and more thoroughly taken into account across all new strategies, plans and programmes developed by the public sector; and

53. SEA sets out to ensure that the environmental effects of alternative means of implementing strategies, plans and programmes are detailed in full so that they can play a proper part in the decision making process. No provision is made within the Bill to widen the scope of assessment to include the full range of social and economic effects. Ministers may by order alter schedule 3 which could affect this but have no current plans so to do. Responsible Authorities may choose to assess social and economic effects of their strategies, plans and programmes in addition to environmental effects but this is not part of the SEA provisions. When seeking to integrate SEA with appraisal of other types of effects, the following principles may be helpful:-

- Opportunities to optimise information collection processes so that information collected can be used to satisfy all appraisal requirements;
- The environmental report must be clearly identifiable to ensure compliance with the terms of the Bill;
- Consistency amongst objectives used;
- Compatibility of information generated through forecasting and prediction techniques to generate comparable results between social, economic and environmental information;
- Integrating staging of assessment to create a single process wherever possible, taking advantage of synergies;
- Facilitating transparency in decision making through analysis techniques that generate comparable findings;
- Implementing a consistent level of rigour throughout assessment and appraisal.
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20 April (11th Meeting, Session 2 (2005))

Written Evidence
Professor Colin T Reid
Dr Elsa João
David Tyldesley and Associates
COSLA
Society of Chief Officers of Transportation in Scotland

Oral Evidence
Professor Colin T Reid, Professor of Environmental Law, University of Dundee
Dr Elsa João, Director of Research, Graduate School of Environmental Studies, University of Strathclyde
David Tyldesley, Principal, David Tyldesley and Associates
Councillor Alison Hay, Environment, Sustainability and Community Safety Spokesperson, COSLA
John Rennilson, Director of Planning and Development, Highland Council, COSLA
Kathy Cameron, Policy Manager, COSLA
Iain Sherriff, Head of Transportation, Dundee City Council, representing the Society of Chief Officers of Transportation in Scotland

Supplementary Written Evidence
Professor Colin T Reid
Dr Elsa João

27 April (12th Meeting, Session 2 (2005))

Written Evidence
RSPB Scotland
Friends of the Earth Scotland
Scottish Water
Communities Scotland
Scottish and Southern Energy
J P Hartley, Hartley-Anderson Ltd
Scottish Enterprise

Oral Evidence
Anne McCall, Planning and Development Manager, RSPB Scotland
Dr Dan Barlow, Head of Policy and Research, Friends of the Earth Scotland
Professor Alan Alexander, Chair, Scottish Water
Geoff Aitkenhead, Asset Management Director, Scottish Water
Craig McLaren, Director, Scottish Centre for Regeneration, Communities Scotland
Gordon Wilson, Corporate Planner, Communities Scotland
Dr Keith MacLean, Head of Sustainable Development, Scottish and Southern Energy
Dr John Hartley, Director/Principal Consultant, Hartley-Anderson Consultants
Liz Bogie, Senior Manager, Knowledge Management, Scottish Enterprise

11 May (13th Meeting, Session 2 (2005))

Written Evidence
- Historic Scotland
- Scottish Natural Heritage
- Scottish Environment Protection Agency

Oral Evidence
- Amanda Chisholm, Strategic Environmental Assessment Team Leader, Historic Scotland
- Dr Bill Band, National Strategy Manager, Scottish Natural Heritage
- Neil Deasley, Principal Policy Officer, Scottish Environment Protection Agency

Supplementary Written Evidence
- Consultation Authorities

18 May (14th Meeting, Session 2 (2005))

Oral Evidence
- Ross Finnie MSP, Minister for Environment and Rural Development
- Malcolm Chisholm MSP, Minister for Communities

ANNEXE E: OTHER WRITTEN EVIDENCE
- Big Lottery Fund
- British Aggregates Association
- CBI Scotland
- Energy Action Scotland
- Highland and Islands Enterprise
- Highland Council
- Institute for Environmental Management and Assessment
- National Biodiversity Network Trust
- Scottish Badgers
- Scottish Environment LINK
- Scottish Wildlife Trust
- Shetland Islands Council
- Strategic Rail Authority
- TRANSform Scotland
Remit:

To consider and report on matters relating to rural development, environment and natural heritage, agriculture and fisheries and such other matters as fall within the responsibility of the Minister for Environment and Rural Development.

Membership:

Sarah Boyack (Convener)
Rob Gibson
Karen Gillon
Alex Johnstone
Richard Lochhead
Maureen Macmillan
Mr Alasdair Morrison
Nora Radcliffe
Mr Mark Ruskell (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
Mark Brough

Senior Assistant Clerk
Katherine Wright

Assistant Clerk
Christine Lambourne
The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Environmental Assessment (Scotland) Bill (SP Bill 38, Session 2) was introduced in the Parliament on 2 March 2005 by Ross Finnie MSP, Minister for Environment and Rural Development. The Bill is accompanied by Explanatory Notes (SP Bill 38-EN) and a Policy Memorandum (SP Bill 38-PM) as required by Standing Orders. The Parliamentary Bureau subsequently referred the Bill to the Environment and Rural Development Committee as lead committee. Under Rule 9.6 of Standing Orders, it is for the lead committee to report to the Parliament on the general principles of the Bill.

2. The provisions of the Bill that confer powers to make subordinate legislation were referred to the Subordinate Legislation Committee under Rule 9.6.2. In addition, the Finance Committee took evidence on matters relating to the Financial Memorandum accompanying the Bill. The reports of these committees are attached as Annexe A to this report.

BACKGROUND AND CONSULTATION


4. SEA is a process designed to ensure that the environmental implications of certain strategic decisions are taken into account before they are carried out. It involves preparing an environmental report, carrying out consultations, and taking the report and consultations into account in the decision-making process.

5. As well as replacing the Regulations, the Bill also extends the assessment regime to cover a wider range of plans and programmes than required by the EU Directive. The Policy Memorandum states that the purpose of the Bill is to improve protection of the environment through better public decision-making and to
implement the Partnership Agreement commitment made by the Executive to “legislate to introduce strategic environmental assessment to ensure that the full environmental impacts of all new strategies, programmes and plans developed by the public sector are properly considered”. The Directive requires SEA to be undertaken only on those public sector plans and programmes which stem from a regulatory requirement.

6. The First Minister announced to the Parliament on 7 September 2004¹ the Executive’s intention to introduce the Bill as part of its legislative programme for 2004-05 and a draft Bill was published on 15 September 2004.

7. The Executive undertook two public consultation exercises on SEA. The first consultation (in December 2003) was on the proposed regulations to implement the EU Directive and on the proposed principles of a Bill, and the second (in September 2004) on the draft Bill. Fifty responses were received to the first consultation and 90 to the second. The Executive also held a conference, public seminars, stakeholder meetings and presentation events. The Committee had the benefit of receiving a copy of submissions to these consultations along with a summary.

EVIDENCE TAKEN BY THE COMMITTEE

Written Evidence

8. Following introduction of the Bill, the Committee issued an open call for written evidence, inviting respondents to focus their comments on the provisions in the Bill that were new or had changed since the draft Bill was published in September 2004.

Oral Evidence

9. The Committee received a private briefing from Executive officials before it began to take oral evidence on the Bill.

10. The Committee took oral evidence over the course of four meetings. On 20 April 2005, the Committee took evidence from a panel of experts on environmental law and environmental assessment – Professor Colin Reid of the UK Environmental Law Association, Dr Elsa João, Director of Research, Graduate School of Environmental Studies, University of Strathclyde, and David Tyldesley, Principal of David Tyldesley and Associates. On that date, it also took evidence from COSLA and The Society of Chief Officers of Transportation in Scotland. On 27 April, the Committee took evidence from RSPB Scotland, Friends of the Earth Scotland, Scottish Water, Communities Scotland, Scottish and Southern Energy and Dr John Hartley, Director and Principal Consultant of Hartley-Anderson Consultants. On 11 May, the Committee took evidence from Historic Scotland, Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA). On 18 May, the Committee took evidence from Ross Finnie MSP, Minister for Environment and Rural Development, and Malcolm Chisholm MSP, Minister for Communities.

11. Witnesses also provided written submissions. In total, evidence was received from 29 organisations and individuals. The written and oral evidence from these

individuals and organisations is published separately as Annexes D and E in Volume 2. The Committee would like to record its thanks to all those who provided written or oral evidence.

PART 1 – ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

12. Part 1 of the Bill sets out the requirement on various bodies ("responsible authorities") to carry out environmental assessment on qualifying strategies, plans and programmes, and provides a set of criteria for establishing which strategies, plans and programmes should be subject to the assessment process. It provides for Consultation Authorities - Scottish Ministers (through Historic Scotland), SEPA and SNH – to have statutory roles in the process. It also sets out pre-screening and screening processes to ensure that the assessment is targeted at those strategies, plans and programmes which are likely to have significant environmental effects.

13. The Committee heard evidence on a number of key issues, focussing on a degree of confusion and concern about exactly what the Bill would mean in practice. This reflected the early stage of development of the SEA regime in general, but also some confusion about the implications of the Bill going beyond the requirements of the EU Directive.

14. Evidence centred around:

- which authorities would be designated as "responsible authorities";
- which strategies, plans and programmes should qualify for, and which should be excluded from, the requirement to carry out an SEA;
- the pre-screening process which enables responsible authorities to exempt strategies, plans and programmes from the screening procedure on the grounds that they will have no, or minimal, effect on the environment, and
- the number, and expertise, of consultation authorities.

These issues are considered in turn below.

Responsible authorities

15. Section 2 of the Bill specifies the bodies which are to be responsible for carrying out SEA. The Bill states at section 2(1) that "any person, body or office-holder exercising functions of a public character" is a responsible authority if they are responsible for preparing a plan or programme which falls within section 5(3) – those plans and programmes which are covered by the EU Directive. However, a narrower group of bodies (specified in section 2(4)) are defined as responsible authorities for all plans and programmes they prepare. The effect of this extension beyond the requirements of the EU Directive on which bodies may be responsible authorities appeared to cause some confusion.

16. The main concern raised in evidence related to when, or in fact whether, private bodies exercising public functions would be required to carry out SEA. Private bodies carrying out public functions are included in the definition of responsible authorities in
section 2(1). However, they are not included in the definition for the purposes of section 5(4)(a), which is the section that extends the requirements for SEA beyond that set out in the EU Directive. It therefore appears that SEA may not apply to all plans and programmes prepared by private bodies exercising functions of a public character.

17. The RSPB stated that it was the Executive’s policy intention that private bodies that undertake public functions should be excluded from SEA requirements unless they are subject to the mandatory requirements of the Directive\(^2\). Highlands and Islands Enterprise stated that the SEA process would be too costly for small and medium-sized businesses.

18. Scottish Environment Link (SE Link) welcomed the broad definition of the responsible authorities set out in section 2(1), but was disappointed that the definition was narrower in section 2(4). It questioned whether private companies were ever likely to produce plans that would fall within section 5(3), as they would not “set the framework for future development consents”. It therefore suggested that the Bill as currently drafted may effectively exclude any strategies, plans and programmes that are of a public character but which emanate from a private body\(^4\).

19. Scottish Environment Link (SE Link) also welcomed the broad definition of the responsible authorities set out in section 2(1), but was disappointed that the definition was narrower in section 2(4). It questioned whether private companies were ever likely to produce plans that would fall within section 5(3), as they would not “set the framework for future development consents”. It therefore suggested that the Bill as currently drafted may effectively exclude any strategies, plans and programmes that are of a public character but which emanate from a private body\(^4\).

20. SNH indicated that if private sector bodies developed plans that were applicable to Scotland, then it would encourage Ministers to use the subordinate legislation power in section 2(4)(f) to designate such bodies as responsible authorities\(^6\).

21. The Explanatory Notes state that the Bill is focussed solely on the public sector, and seeks to capture the full extent of the public sector. The Minister for Environment and Rural Development stated that the Bill should cover the private sector where organisations were developing plans as part of regulated activity. “I will use a utility as an example. If a private company conducts a regulated activity, matters that come under that activity will come within the mischief of the bill. Any other service that the company has developed and provides, and that comes within its private and

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\(^2\) Official Report, 27 April 2005, col. 1818
\(^3\) Written submission
\(^4\) Written submission
\(^5\) Official Report, 27 April 2005, col. 1834
\(^6\) Official Report, 11 May 2005, col. 1855
unregulated activity, will not come within the mischief of the bill, as it would not for every other private company”.7

22. It appears that this does not entirely answer the concerns raised above, and that some confusion remains, for example, in cases where a private body may be contracted to carry out what is clearly a public function but not one which is ‘regulated’.

23. The Committee believes that, in the context of significant public projects being undertaken by private companies or partnerships, it is particularly important that the issue of when private bodies will be responsible authorities is clarified so that all relevant strategies, plans and programmes are subject to SEA. Therefore, the Committee recommends that the Minister should clarify before Stage 2 the expected responsibilities in respect of SEA of private bodies carrying out public functions.

Which plans and programmes are subject to SEA

24. Confusion over which bodies may be responsible authorities relates closely to the confusion over exactly which plans and programmes are subject to SEA. The Bill provides that it is for responsible authorities to decide which plans and programmes will be subject to SEA, and specifies how this will depend on the nature of the particular plan or programme.

25. Section 5 sets out the strategies, plans and programmes to which the Bill applies. Section 5(3)(a) and (b) and Schedule 1 list types of projects which are deemed always to be likely to give rise to significant environmental effects, and therefore will always give rise to a requirement to carry out an SEA. Any other plan which “sets the framework for future development consent”, for example a structure plan, is also included. Section 5(4) sets out the additional strategies, plans and programmes to which the Bill will apply beyond those which are subject to SEA under the EU Directive (and the 2004 Regulations which transposed that Directive).

26. The Minister for Environment and Rural Development described stopping at the boundaries of the Directive as illogical. He stated that “plans do not have to emanate from a regulatory requirement to be subject to it [the Bill]; it applies to all public policies that are developed by all public agencies. That gives us a logical framework and not a situation in which a plan arising from a regulatory requirement comes within the mischief of the bill but any major policy that is developed by Government falls outwith it.”8 He also emphasised that the Bill gives Ministers the power to insist on an SEA for any particular plan.

27. A number of witnesses were, however, unclear about the level of qualifying strategies, plans and programmes that would attract SEA and discussion centred on whether, and how, the Bill would apply to top-level plans and how the process would filter down and co-ordinate with the project-specific environmental impact assessment.

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7 Official Report, 18 May 2005, col.1893
8 Official Report, 18 May 2005, col.1890
28. The Big Lottery Fund (BLF) drew a distinction between a body that makes decisions about allocating funding and one that delivers a programme with the funds. It argued that, as the BLF did not carry out the programmes it funds, it was not liable to carry out SEA on those programmes. It stated “although we facilitate the development and delivery of projects, we are not ourselves a delivery organisation nor are we able to identify the exact nature and location of the projects that we will fund.”

29. Scottish Water suggested that its capital investment programme was owned by a wider group of stakeholders (including the regulators and the Scottish Executive). Any SEA to be carried out on that programme should, therefore, be carried out by that wider group. However, carrying out an SEA at strategic level would not relieve Scottish Water’s obligation to carry out environmental impact assessments on individual projects. Professor Alexander stated that Scottish Water was concerned that “if we do not get the differentiation between the two levels right there will be duplication of effort and greater expenditure than is necessary.”

30. In relation to potential duplication of effort, Scottish Water stated that “elements of the SEA philosophy are already being practised, and we need to be clear as we go forward about the added value of SEA and about what is already happening through the quality and standards process, through the forthcoming water framework directive processes, particularly the river basin management plans, and through the development of structural and local plans. We must ensure that we all have a common understanding of what SEA adds to those.”

31. The potential hierarchy of assessment of plans has been recognised. The intention is that those setting the framework should be subject to SEA, and then individual projects within that framework would be subject to environmental impact assessments. SEPA suggested that it was still early in the process and stated that “over the coming two years, we will learn how the interface between the strategic process and the more project-based process works.” SNH described the difference as “EIA is used in conjunction with a consent process, such that the EIA forms the material on which the decision maker makes a decision. With SEA, by contrast, the decision on what the final plan will be is made by the promoter of the plan.”

32. While it is expected that this will become clearer with experience, it is important that the relationship between SEA and EIA is absolutely clear. Evidence to the Committee revealed a considerable amount of uncertainty and unease amongst those who will be required to comply with the Bill’s provisions. It is clear that not all the boundaries and levels are fully understood. This creates the potential for achievement of the Bill’s aims to be partial.

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9 Written submission
10 Official Report, 27 April 2005, col. 1822
12 Official Report, 27 April 2005, col. 1823
33. The Committee welcomes the Minister’s assurance that comprehensive guidance on the Bill will be produced, and recommends that he considers carefully how this will address all the concerns raised above.

34. The Committee requests that the Minister provides, in advance of Stage 2, concrete illustrations of how SEA will work in practice including, for example, the level at which he expects SEA to be carried out and how SEA and EIA will interact.

Resource implications of extending the scope of SEA

35. Specifically financial issues are addressed at paragraphs 109-118 below. However, the Committee also heard evidence which raised wider questions about the resources, capacity and readiness of various authorities to implement the Bill.

36. Some witnesses expressed concern about the impact the extension of SEA would have on responsible authorities. CBI Scotland stated that it was “very disappointed” that the EU Directive would be extended and considered that it was at “odds with [the Executive’s] public statements that the economy is its number one priority” and “counter to the commitments made to the business community by the UK Government that there would be no further “gold plating” of EU legislation”15.

37. Scottish Enterprise stated in its written evidence that the Bill should not undermine economic growth and in oral evidence indicated that its concern was based on the need to “avoid adding to the process delays or excess bureaucracy that might slow down decision making”16. Scottish Enterprise stated that it does, however, support the SEA process and believes that it will bring significant environmental benefits.

38. A substantial majority of evidence supported the Bill. For example, TRANSform Scotland stated that the Bill “could make a significant contribution towards better-informed public sector decision-making and consequently progress towards delivering sustainable development”. Dr Elsa João referred to the Bill in her written submission as “innovative” and that it would put Scotland “a step ahead of most other member states”.

39. However, Highlands and Islands Enterprise raised issues about the scope and content of the SEA process and the resources and skills needed to fulfil the requirements of the legislation. COSLA suggested that before proceeding with implementation of the Bill it should be piloted in specific areas to assess the full implications of the proposals.

40. One of the main issues raised by local authorities was the lack of suitably qualified staff to carry out SEA and the need for, and cost of, employing external consultants to carry out the work while in-house experience was being developed. COSLA also flagged up the lack of staff experienced in carrying out SEAs, particularly in local authority departments other than planning who would now be required to take environmental considerations into account in their programmes.

15 Written submission
16 Official Report, 27 April 2005, col. 1833
Evidence suggested that there is already a shortage of qualified planning staff and, as a result, it would be difficult to provide assistance to other departments which lacked the expertise to fulfil the requirements of the SEA process. Although the preference would be to carry out the work in-house, it is likely that local authorities would employ consultants while staff gained the necessary expertise.

41. SCOTS also expressed a preference to carry out the work in-house. It emphasised that “it is only by engaging and developing our own staff and addressing their training needs that we can get that culture change so that it is instinctive for staff to think environmentally as well as financially, technically and professionally”\(^\text{17}\). Some other examples of positive engagement with SEA were also evident. Communities Scotland stated that it was trying to mainstream SEA across the organisation\(^\text{18}\).

42. In response to concerns about the training available, Dr Elsa João provided supplementary written evidence setting out courses available at the University of Strathclyde. She also cited a case study that had been carried out by Falkirk Council in July 2004 where no extra resources had been required in carrying out an SEA and stated that “it was simply part of best practice and the council did not view SEA as an extra burden”\(^\text{19}\). The consultation authorities also indicated that they had been engaged widely in preparing responsible authorities for the requirements of SEA, and were involved in developing pilot studies (such as the Pathfinder Project) based on real experience so far in implementing SEA under the existing Regulations.

43. The Committee welcomes the assurance from the Minister for Communities that extra resources have been targeted at increasing the numbers of planning professionals.

44. However, the Committee believes that there is a wider issue about ensuring that authorities and their staff are prepared to implement the Bill and that they overcome the evident nervousness about what SEA means for them. SEA will be triggered at an early stage in the decision-making process and therefore staff throughout all local authority departments, not only planning departments, must be made fully aware of the requirements of the legislation.

45. The culture change required to implement this Bill successfully requires training for the staff upon whom the responsibility for implementation falls. The Committee therefore recommends that the Executive takes ownership of the provision of training for local authorities and other responsible authorities. The Executive should prepare an overarching training package aimed at equipping senior officials and councillors with the knowledge necessary to instruct staff in the new procedures. The package should comprise the basic training materials which local authorities and (other responsible authorities) can then customise to suit their own particular requirements. The Executive should also develop detailed plans for how this will be rolled out with its own staff and other responsible authorities, and also consider particularly the role of the Gateway in launching and disseminating this.

\(^{17}\) Official Report, 20 April 2005, col. 1799
\(^{18}\) Official Report, 27 April 2005, col. 1829
\(^{19}\) Official Report, 20 April 2005, col. 1781
Plans and Programmes to which the Bill does not apply

46. The Committee heard evidence on the strategies, plans and programmes to which it is the Executive’s intention that the Bill will not apply. Section 4 sets out some categories of plans and programmes that are absolutely excluded from the Bill. These include those for which the sole purpose is to serve national defence or civil emergency, and financial or budgetary plans and programmes. In addition, section 4 also states that the Bill will apply only to plans and programmes that relate solely to the whole or any part of Scotland.

Financial and budgetary plans

47. A number of witnesses suggested that financial and budgetary plans should not be excluded from the SEA process. For example, Professor Colin Reid argued in his written submission that it would be wrong to exclude all financial and budgetary plans and programmes on the grounds that policy content (and hence the likely environmental effects) of plans and programmes have been often significantly moulded by budgetary allocations.

48. The arguments related to whether a budget or high level resource allocation decision is itself a plan which might have environmental effects which could usefully be assessed, or whether it was only likely to be other plans which flowed from budget decisions which merited assessment. SEPA stated that SEA should be carried out where it is most meaningful\(^{20}\). Historic Scotland also stated that there was a need to focus on those plans that are most likely to have significant environmental effects. The Minister for Environment and Rural Development stated that SEA would be required when a resource allocation was used as the basis for preparing a plan for what to do with the resources. In financial processes, such as a spending review, it may be that the plan (and hence the SEA) would be prepared before the decision on allocating resources to different priorities\(^{21}\).

49. The interpretation of a financial plan as being one entirely separate from choices and alternatives which may have environmental impacts is not completely clear. Some witnesses raised the concern that there should be no scope for avoiding the obligation of SEA by ‘disguising’ an otherwise qualifying plan as a financial one, “The last thing we want to see is a fully fledged plan or programme that purports to be a financial plan by dint of its having a table of financial figures at the back of the document.”\(^{22}\).

50. The Committee was concerned that the exclusion should not be used as a means to avoid the SEA process. The Committee therefore requests that the Minister provides greater clarity on the intention behind the exclusion of financial and budgetary plans. In particular, the Committee requests clarification on whether the Bill reflects the Minister’s intention that an SEA would be required when a resource allocation was used as the basis for preparing a plan. The Committee requests that the Minister provides practical examples of the types of financial and budgetary plans that would, and those

\(^{20}\) Official Report, 11 May 2005, col. 1858  
\(^{21}\) Official Report, 18 May 2005 cols. 1892-93  
\(^{22}\) Official Report, 11 May 2005, col. 1859
that would not, be excluded under this heading. The Committee requests this information in advance of Stage 2.

51. The Committee also recommends that the Minister considers whether the Bill should allow for the exclusion of financial and budgetary plans from SEA to be judged more flexibly on a case-by-case basis, and whether this should be achieved either as an amendment at Stage 2 or whether it can adequately be provided through guidance which makes the intention absolutely clear.

Plans by the Ministry of Defence

52. Some witnesses also suggested that plans by the Ministry of Defence (MoD) should not be excluded. Section 4(3)(a) excludes “plans and programmes the sole purpose of which is to serve national defence and civil emergency”. However, the Minister for Environment and Rural Development emphasised that the MoD is not exempt from the Bill in itself, but that some of its plans are likely to be.

53. The Committee heard that the MoD had already carried out SEA on the strategic defence review, although under no obligation to do so, and other plans relating to the MoD estate, for example, might usefully be subject to SEA. Professor Reid stated that there has been a general trend towards including these matters as part of the planning system, although he noted that “there are additional problems with the MoD because of the question of devolved and reserved matters and the extent to which any cross-border policy can be classed as reserved.” David Tyldesley argued that subjecting some plans to SEA would not compromise security as “an SEA will not alter the decisions that must be taken about defence and emergency planning but it will inform [the public] about the environmental implications.”

54. The Committee welcomed evidence that the MoD has carried out SEA on some of its strategies, plans and programmes. The majority of the Committee is content with the Bill’s exclusion of plans whose sole purpose is to serve national defence or civil emergency.

Plans that relate solely to the whole or any part of Scotland

55. Section 4(1)(b) provides that the Bill only applies to those strategies, plans and programmes that relate solely to the whole or any part of Scotland. Responsible authorities preparing plans that have cross-border implications will therefore be subject to the UK SEA regulations (which follow the terms of the EU Directive) and do not go further in the way that the Bill proposes.

56. Some concern was expressed that the different SEA regimes in England and Scotland would mean that potentially significant environmental effects in Scotland of some UK-wide plans would not be assessed. SNH stated that “UK plans that have an environmental effect in Scotland but which do not come under the UK regulations

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23 Official Report, 18 May 2005, col. 1884
24 Official Report, 27 April 2005, col. 1817
26 Official Report, 20 April 2005, col. 1787
27 The Committee divided at its meeting on 25 May 2005. See Annexe B, Extracts from the Minutes – Record of Division in Private. The dissenting members felt that the exclusion of such plans should be judged more flexibly on a case-by-case basis.
might not fall under the Bill, because they do not apply purely to Scotland. … I hope that the passage of the Bill will show leadership and that the UK will eventually follow.\textsuperscript{26}

57. The need to understand exactly where the effect of this Bill interacts with other legislation was illustrated by evidence on how SEA might apply to a UK decision about energy strategy, including potential questions such as the need for, and siting of, nuclear power stations. The Minister for Environment and Rural Development indicated that “The Scotland Act 1998 does not give us responsibility or powers over the determination of energy policy per se, so that is a reserved matter. If the question is how the reserved matter will be determined, the answer is that it will be determined by the Westminster Parliament. I can add only that the Westminster Parliament has passed the statutory instrument that brings into effect the European directive on strategic environmental assessment. As you are aware, the Environmental Assessment (Scotland) Bill goes beyond that and will apply only to matters that are within the purview of the Scottish Executive\textsuperscript{29}.

58. The Committee noted that policy and practice was likely to develop over time and requests that the Minister should keep the issue under review for the future\textsuperscript{30}.

Exemptions – Pre-screening and Screening

Pre-screening

59. Pre-screening is a method designed to filter out some plans covered by the extended SEA obligation in section 5(4), so that SEA effort focuses only on those plans which are likely to have significant environmental effects. The pre-screening procedure requires responsible authorities to determine whether the strategies, plans and programmes will have “no effect, or minimal effect” in relation to the environment. In making such a determination, responsible authorities must apply the criteria set out in Schedule 2, but are not obliged to advise the consultation authorities or publish any pre-screening decision they make.

60. Certain plans that are not filtered out by the pre-screening process are subject to screening to determine whether they should be subject to full environmental assessment. In the screening process a responsible authority is required to determine whether or not the plan is “likely to have significant environmental effects”. Consultation authorities are consulted and the decisions must be publicised.

61. A number of witnesses regarded pre-screening as a helpful process. For example, SCOTS stated in its written submission that the process should act as an “environmental check to assist in reducing the burden for responsible authorities and consultation authorities”.

\footnotesize{\textsuperscript{26} Official Report, 11 May 2005, col. 1857  
\textsuperscript{29} Official Report, 18 May 2005, col. 1888  
\textsuperscript{30} A written answer by the Minister, Ross Finnie MSP, on 31 May 2005 to parliamentary question S2W-16669, provided further detail on the extent to which the provisions of the Bill would apply to the example of the building of new nuclear power stations and associated facilities. The answer provided by the Minister is reproduced at Annexe C.}
62. Many witnesses, however, sought guidance on the application of the pre-screening process and, in particular, on the definition of “minimal” environmental effect. Some witnesses suggested that this phrase was untested in legal terms.

63. The Committee notes the concerns about the use of the term “minimal effect” and requests the Minister to provide clarification on the interpretation of the term in advance of Stage 2.

64. The RSPB took a stronger line and stated that the pre-screening process was “pointless” because it may simply verify decisions that have already been made, therefore not necessarily reducing the burden on responsible authorities. Some witnesses suggested that all plans should proceed simply to a screening stage. The RSPB’s main concern was that pre-screening could be “used and exploited as a loophole by those who do not want to have to do SEA”\(^{31}\). It suggested that dispensing with the requirement to undertake pre-screening would also eliminate the need to define “minimal effect”, as this terminology does not apply to any other part of the Bill.

65. However, virtually all the witnesses and written submissions that commented on the pre-screening process were of the opinion that, if a pre-screening process is to exist, pre-screening decisions should be made publicly available through the establishment of a register. Evidence suggested that such a register would aid the establishment of the SEA process as it would eventually provide a list of the types of strategies, plans and programmes that would probably not require an SEA, thus reducing the workloads of responsible authorities. It was also suggested that not having a register ran counter to the aims of the rest of the Bill which emphasised transparency.

66. The Committee believes that a published register would be very valuable and would enable more effective monitoring to be carried out. The Committee welcomes the Minister for Environment and Rural Development’s commitment to consider the operational aspects of pre-screening further, including a requirement to notify or register decisions.

**Screening**

67. Sections 8–10 set out the screening process. Some witnesses considered that the pre-screening and screening process should be amalgamated so that every plan and programme was screened to assess whether it requires a full environmental assessment. As in the pre-screening process, many of the witnesses sought guidance on the phrase “significant effect”. The EIA process uses the phrase “significant effect” which was described the RSPB as the “Achilles’ heel”\(^{32}\) of environmental impact assessment work.

68. The Committee recognises the importance of the term “significant effect” to the screening process and asks the Minister to provide clarification on the interpretation of this phrase in advance of Stage 2.

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\(^{31}\) Official Report, 27 April 2005, col. 1810

\(^{32}\) Official Report, 27 April 2005, col. 1812
69. The screening process is more formalised than pre-screening, and the Committee received less evidence on this process. Section 9(6) provides for Scottish Ministers to arbitrate in situations where the responsible authority and consultation authorities cannot reach agreement about whether a plan or programme has significant environmental effects. SE Link called for a specific timescale to be applied to this arbitration role. Others, for example Dr Elsa João, SE Link and the RSPB, suggested that an independent body should carry out the arbitration function.

70. The Committee requests that the Minister provides clarification on what he considers to be a reasonable timescale for the arbitration process, again to be provided before Stage 2.

Consultation Authorities

71. Scottish Ministers (for the functions of Historic Scotland), SEPA and SNH are designated by section 3 as consultation authorities, with specified advisory functions in the SEA process. Two main concerns about the role of consultation authorities were raised in evidence.

72. Firstly, SE Link questioned whether the small number of designated consultation authorities could advise adequately on the whole range of issues that Schedule 3 requires to be considered in the environmental report, or all the criteria in Schedule 2 for determining whether a plan or programme is likely to have significant environmental affects. Some witnesses called for the number of consultation authorities to be extended, for example, to include bodies with experience on human health and population issues.

73. SE Link suggested that consideration should be given to whether the SEA Gateway – or an independent body – should have the power to select additional appropriate consultation authorities as required in particular cases. The Institute of Environmental Management and Assessment, in its written submission, stated that “the Bill should also identify relevant local authorities as consultation authorities since they are likely to be either indirectly or directly affected by a plan or programme”.

74. Friends of the Earth Scotland adds to those comments stating that it would be useful if there was the capacity to draw in additional consultation bodies for issues such as health, and that there could also be advantages in being able to consult a body that is based outside Scotland on the transboundary environmental impacts of plans which are themselves located wholly in Scotland.

75. SEPA agreed that the consultation authorities do not necessarily hold information about, or have competence on, all of the issues requiring to be assessed. In its written submission it suggests that guidance will be necessary “to assert the need for responsible authorities to ensure that they have sufficient information … before completing an environmental report”.

76. SEPA stated that responsible authorities must ensure that they have the appropriate level of advice and are free to, and should, contact bodies other than the

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consultation authorities if necessary. SEPA is also working to develop practical guidance on assessing health issues.

77. Secondly, a consultation authority may also be a responsible authority for plans and programmes of its own. In these circumstances, the authority cannot also play its statutory consultation authority role, which will then be performed by the other two consultation authorities. This raises the potential for very significant gaps in the expertise available to consultation authorities in these circumstances. All the consultation authorities, however, indicated that they were undertaking pilot studies over the summer and anticipated that internal procedures would be established to ensure that the proper expertise would be available in such cases. However, it was clear that, despite the Regulations having been in force for nearly a year, their preparation for this situation is at an early stage.

78. The Committee considers that the main issues for the consultation authorities centre on the resources required to implement the Bill and on capacity building. The Committee welcomes the pilot projects to be carried out by the consultation authorities over the summer period and requests that the Minister provides early indications of the issues that emerge during this process.

79. The Committee, however, expressed concern about how consultation authorities would consider the full range of issues set out in schedules 2 and 3 (for example on health issues) in order to fulfil their role. The Committee requests that the Minister clarifies exactly how he expects the linkages between the consultation authorities and other bodies to develop in order to achieve this. The Committee requests this information in advance of Stage 2.

PART 2 – ENVIRONMENTAL REPORTS AND CONSULTATION

80. Part 2 sets out the requirements for carrying out scoping, which is the process of determining the content and degree of detail required in the environmental report. It also provides for consultation and how responses should be taken into account.

81. The Policy Memorandum states that environmental reports should describe and evaluate the likely significant effects on the environment of the plans and programmes and of any of the alternatives considered. The categories of information that environmental reports should address are set out in Schedule 3.

Environmental Reports

82. Some concerns were expressed on the availability of appropriate data for reports. Some witnesses suggested that emphasis was needed on the ability of environmental reports to capture the positive environmental benefits of plans as well as the negative impacts. Some witnesses highlighted the need for adequate data to inform environmental reports and the difficulties associated with obtaining the right information. Some witnesses suggested that further development in data sources was required, but others argued that this should not affect the obligation to conduct SEA. The National Biodiversity Network Trust stated that it would be able to supply

34 Official Report, 11 May 2005, col. 1854
essential biodiversity information for all wildlife in the UK. Dr Elsa João stated that, “The reality is that one can carry out SEA without data. Data must not be a stumbling block to undertaking SEA … One can still carry out an analysis without data….There need not necessarily be a huge data collection exercise before one can undertake SEA.”

83. The Committee also heard evidence about the impact the environmental report should have on the actual decision-making process, and thus about the relationship between environmental assessment, sustainable development and sustainability appraisal processes.

84. The Committee heard evidence about the impact SEA would have on the consideration of the social and economic factors of plans and programmes. COSLA suggested that SEA could create tension between different strands of Executive policy. Professor Colin Reid suggested that the SEA might create a lop-sided process as consideration of social and economic factors would not be subject to the same transparency as the consideration of the environmental factors would be under the Bill. The Policy Memorandum, however, makes clear that the Executive intends the Bill to be a key strand of supporting sustainable development. TRANSform Scotland stated that SEA would make a significant contribution to delivering sustainable development.

85. Some witnesses suggested that guidance would be needed to make clear the relationship between the Scottish regime and sustainability appraisal adopted in the rest of the UK. Scottish Enterprise, in its written submission, states that adopting a different process from that which is applicable in the rest of the UK will “limit the opportunities to learn from each other and meaningfully benchmark progress and environmental benefits”. However, SEPA notes in its written submission that it supports the Executive’s position of not widening the scope to sustainability appraisal because of “concerns [that have been] expressed about its robustness, transparency and focus”. SNH highlighted the need for guidance to make clear the relationship between the Scottish regime and sustainability appraisal adopted in the rest of the UK, particularly in light of the needs of UK-wide plans that affected Scotland.

86. Other witnesses suggested that the SEA process may create a need to raise the quality of the social and economic evaluations carried out on plans and programmes and that the three factors should not be in competition with each other. Indeed, it was suggested that the SEA process did not preclude responsible authorities from carrying out a sustainability appraisal on their plans, only that the environmental factors must be considered separately as required by the Bill. SNH suggested in its written submission that SEA would assist in integrating environmental and other objectives earlier in the planning process.

87. It was suggested by David Tyldesley that many plans had social and economic objectives as their key drivers, and that these objectives tended to be well

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35 Written submission
36 Official Report, 20 April 2005, col. 1780
38 Written submission
39 Written submission
40 Written submission
understood (if not necessarily identified and assessed in a transparent way). The benefit of SEA is that it would allow environmental factors to be brought to the table in a more explicit way. SEPA suggested that as the environment was the least understood of the three issues, the Bill would help decision-making on sustainable development. It would give the environment the same prominence as social and economic factors. However, it was emphasised that this does not equate to any ‘weighting’ of factors in the actual decision about proceeding with a plan or programme. SEA does not constrain the decision in any way; it simply ensures that the environmental factors are understood.

88. Some witnesses suggested that environmental reports should be obliged to take account of national and local level targets and environmental objectives. The Minister for Environment and Rural Development emphasised that this would be an inevitable part of the process and that SEA should be seen as a means of ironing out potential conflicts between objectives.

89. The Committee requests that the Minister ensures that guidance addresses the point made by Dr Elsa João that data deficiencies should not prevent SEA being carried out effectively. The Committee believes that there is a need for greater clarity on what would be best practice in the linkages in the decision processes between SEA, sustainable development and sustainability appraisal. The Committee requests that the Minister provides information in advance of Stage 2 on how these linkages work in practice, perhaps illustrated by some kind of flow chart.

PART 3 – POST-ADOPTION PROCEDURES

90. Part 3 provides for the announcement of the adoption of any strategy, plan or programme, for monitoring of its implementation and for any remedial action required to deal with unforeseen environmental effects.

Monitoring

91. Responsible authorities are required to monitor the implementation of their strategies, plans and programmes to identify and address any unforeseen environmental effects. Section 19 of the Bill requires monitoring so as to enable appropriate remedial action, but does not require any particular response. Evidence to the Committee centred on whether the monitoring requirements needed to be strengthened to include enforcement action. Dr Elsa João stated that “we should check that the mitigation and enhancement measures are working and see whether we are getting better plans, whether human health and biodiversity are improving and whether air pollution is decreasing. We want to achieve those things, but if we are just producing reports and not checking them out, what is the point.”

92. The Scottish Wildlife Trust suggested that responsible authorities should be required to produce reports and statements on performance against the environmental report during the lifetime of the plan. The Minister for Environment and Rural Development was satisfied that “the Bill has a sharp set of enforcement

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teeth”. Again, the Committee heard calls for guidance to be produced on the monitoring arrangements.

93. It appeared that monitoring was required at two levels. Firstly there was a need for individual monitoring of decisions to be undertaken by the relevant responsible authority and, secondly, there may be a need for a further level of monitoring to assess the overall impact of SEA throughout Scotland.

94. **Given the nervousness and reservations expressed by some witnesses, the Committee considers that it is important that there is a satisfactory monitoring programme aimed at ensuring the effectiveness and quality of the SEAs produced and the overall importance of the legislation. The Committee recommends, therefore, that the Executive review the monitoring provisions one year after the Bill has been implemented.**

**THE SEA GATEWAY**

95. The Committee sought evidence on the SEA ‘Gateway’ - the administrative process which the Executive has established to support implementation of SEA. The Gateway is a team situated within the Executive. It acts as a co-ordinating body, performing secretarial, advisory, processing and information functions. Provision for the Gateway is not included on the face of the Bill. It will not, therefore, have statutory force. The model adopted by the Executive was selected after a number of options were presented in previous consultations on SEA, but there was no consensus from witnesses to the Committee about the way in which the task of implementing SEA should be administered.

96. The RSPB argued that good administrative processes were essential in order to avoid the problems that had arisen because of the poor quality of environmental impact assessments. All evidence indicated that the function of the Gateway is a vital element of establishing acceptance of, and effective engagement with, SEA throughout the public sector.

97. A substantial proportion of witnesses suggested that the role of the Gateway should be expanded to include additional responsibilities. For example, it was suggested that it should support best practice networks and should monitor the quality of environmental reports. The consultation authorities all supported the Gateway, and agreed that there were a number of areas where the Gateway might usefully extend its responsibilities. Other witnesses, including SE Link, argued strongly for the establishment of an independent body which would oversee the whole process and have a range of additional powers. It was suggested that one of the most important functions of an independent body would be to have an arbitration role, particularly given that there are no formal appeal mechanisms set out in the Bill.

98. Some witnesses argued for the Gateway to be given statutory force. SEPA, however, suggested that establishing a statutory body may in fact hinder flexibility in the future operation of the Gateway. Some witnesses expressed concern that the
lack of statutory force could mean that the Gateway may be withdrawn in the future as experience of SEA developed in the responsible authorities.

99. Others were of the view that the Executive’s sustainable development directorate could take on some of the suggested new roles for the Gateway. However, the Minister for Environment and Rural Development stated that he considered “the gateway to be a more than adequate method of supporting strategic environmental assessment”\(^{47}\). However, he also regarded the gateway as “embryonic” and was “committed to developing its role and to responding to the lessons that have been learned from the operation of SEA in practice”\(^{48}\).

100. The Committee notes that the function of the Gateway may change over time, with the initial focus being on building up expertise to implement the Bill effectively and the later emphasis perhaps being on monitoring compliance (perhaps including monitoring the quality of environmental reports and other aspects of the system). The Committee considers that there are a number of areas where the need for a Gateway has been established - for example, holding a register of decisions at the pre-screening stage, perhaps incorporating a monitoring function and providing an input into training staff of responsible authorities as suggested in paragraph 45.

101. The Committee believes that there is a long-term need for a Gateway system and wants to see it remain as a key element of making sure that SEA delivers the benefits it is intended to achieve. The Committee therefore recommends that the Minister gives further consideration to the functions and the processes of the Gateway, including whether the Bill or guidance should make provision for a light framework that sets out the core responsibilities of the Gateway but which allows it to evolve over time. The Committee also welcomes the Minister’s statement that he is happy to reflect on the need for robust monitoring of the Gateway itself, and requests that he provides further information on this before Stage 2.

SUBORDINATE LEGISLATION

102. The Bill contains a number of powers to make subordinate legislation. Section 21 outlines the Parliamentary procedure to which instruments under the Bill will be subject. The Subordinate Legislation Committee examined these provisions in detail at its meetings on 26 April and 3 May 2005 and raised three issues with Scottish Executive officials. The Committee reported that it was satisfied with the Executive’s explanation on all three points. That Committee’s report is reproduced in full at Annexe A.

103. The Committee endorses the report of the Subordinate Legislation Committee.

\(^{47}\) Official Report, 18 May 2005, col. 1884
\(^{48}\) Official Report, 18 May, 2005, col. 1895
POLICY MEMORANDUM

104. Under Rule 9.6.3 the Committee is required at Stage 1 to consider and report to the Parliament on the Policy Memorandum.

105. As noted in paragraph 7 above, there have been two consultation exercises during the development of this Bill. However, as already noted throughout this report, there are a number of areas where witnesses have suggested that the Executive’s explanation for its approach needs to be strengthened and supported by detailed guidance. Nonetheless, the Policy Memorandum does provide information which effectively supplements the information on the face of the Bill.

106. The Policy Memorandum is also required to set out an assessment of the effects of the Bill on (among other things) equal opportunities. The Committee notes that the Memorandum does this in only the briefest of ways at paragraph 45. It would have been helpful if the Memorandum had included some more detailed assessment of how the policy of the Bill relates to the six questions on equalities (recommended by the Parliament’s Equal Opportunities Committee as requiring explanation in all policy initiatives).

107. The Policy Memorandum is also required to set out an assessment of the effects of the Bill on sustainable development. The Committee has considered above the implications of the Bill for promoting sustainable development, and has noted that some further explanation of how SEA will fit with other sustainability tools would have been helpful.

108. The Committee is disappointed that the Policy Memorandum does not contain the detail it would expect on equality issues and recommends that the Minister provides further information on how the Bill will affect such issues before Stage 2. With that reservation, the Committee considers that the information contained in the Policy Memorandum is adequate.

FINANCIAL MEMORANDUM

109. Under Rule 9.6.3 the Committee is also required at Stage 1 to consider and report to the Parliament on the Financial Memorandum. The Finance Committee sought written evidence from interested parties and took evidence from Scottish Executive officials at its meeting on 19 April. Its report is reproduced in full at Annexe A. Two points of particular significance arise from that report.

110. Firstly, the Finance Committee noted disagreements between COSLA and the Executive over the total costs of implementing the Bill, and recommended that the lead committee pursue this point with the Minister.

111. The Environment and Rural Development Committee also received evidence about the likely costs of implementing the Bill. The costs of complying with the Regulations clearly already exist. However, these are not yet fully apparent due to the short time they have been in force. The additional costs of implementing the Bill are closely related to which organisations are likely to be designated as responsible authorities and which strategies, plans and programmes will qualify. The Committee
was concerned to note the very substantial level of uncertainty over costs which was evident from witnesses to the Committee.

112. The Financial Memorandum states that only a small number of companies who perform functions of a public character, for example utilities and telecoms, would incur limited costs and that local authorities (and the Executive itself) are likely to carry out the highest number of SEAs. Local authorities are likely to bear the majority of the costs. COSLA and individual local authorities expressed concern that the Financial Memorandum underestimated both the costs, and the number, of SEAs likely to proceed each year. Highland Council stated that “budget constraints will force Local Authorities to choose between delivering frontline services and meeting their statutory duty to SEA”\(^{49}\). However, no alternative estimates were put forward.

113. The Committee also heard that the costs of the SEA process were likely to be “far lower than the cost of remedying environmental harm”\(^{50}\) and the RSPB set out in its written submission the costs of addressing environmental damage. Professor Colin Reid raised the possibility that effective implementation of SEA would actually result in efficiency savings or economies of scale as the work then required at the project-specific EIA level may well be reduced\(^{51}\). The Minister for Environment and Rural Development stated that he “would be very disappointed if it was not easier for a body that had gone through SEA to fulfil some of the detailed requirements of an EIA”\(^{52}\).

114. The Committee considers that early guidance on how responsible authorities will meet the responsibilities that the Bill places on them is essential to ensure the smooth implementation of the Bill.

115. The Committee recommends that the Minister reflects on the cost implications of the Bill as the Pathfinder Projects progress over the summer period and, if necessary, revises the estimates given in the Financial Memorandum on the likely costs to the responsible authorities and consultation authorities.

116. Secondly, the Finance Committee noted that a Planning Bill is likely to be introduced later in the year and the likelihood is that the Environmental Assessment (Scotland) Bill could have a significant impact on the planning process. The Committee suggested that the lead committee seeks further clarification on this issue from the Minister.

117. The interaction of this Bill with the planning system was a significant theme during evidence to the Environment and Rural Development Committee. A number of witnesses expressed concern that SEA should not in any way create delay or extra bureaucracy in the planning system. However, others emphasised that SEA would over time develop into a process that automatically happened alongside the normal planning processes, and would not add to delay. It may even reduce delay if it identified issues at an early stage which might, in other circumstances, become apparent later and require a plan to halt until they were resolved. The Committee

\(^{49}\) Written submission
\(^{50}\) Written submission by David Tyldesley
\(^{51}\) Official Report, 20 April 2005, col. 1783
\(^{52}\) Official Report, 18 May 2005, col. 1899
welcomed the assurance from the Minister for Communities that, while the concept of considering environmental issues in plans is not new, the new formalised, systematic and transparent process associated with SEA would be fully integrated into his thinking on reform of the planning system. The Minister said “The requirements to carry out environmental assessment systematically and to engage in early and effective public consultation accord closely with the principles that underpin our proposals for modernisation and reform of the planning system.”

118. The Committee requests that the Minister for Communities monitors these issues as the proposed Planning Bill develops, and that he provides the Committee with further information in due course on how that Bill dovetails with the Environmental Assessment (Scotland) Bill.

CONCLUSION

119. This Bill replaces the existing regulations on SEA, and also extends the scope of SEA to cover more plans. The Minister for Environment and Rural Development argued that the extension of SEA was highly logical and coherent as there was no logic in a distinction “between a plan that comes from a regulatory requirement and a plan that comes from a policy requirement of a Government that is concerned about the environment.” The Committee was struck by the fact that, with the exception of one or two witnesses raising concerns about the possible effect of additional unnecessary regulation, there was very substantial support from witnesses for the Bill. Most witnesses regard the Bill as a very positive development, and Dr Elsa João stated that “sooner or later, when the directive is revised, it will include policies. When that happens, Scotland will be far ahead, because it is already doing what is needed.”

120. The Committee has, however, noted throughout this report that the generally positive reaction to the Bill is tempered by a significant degree of nervousness amongst responsible authorities about what it will actually mean for them, in terms of financial resources and other factors such as staff capacity. It is clear that, despite the experience of several months of the existing SEA Regulations, the Scottish Executive has to effect a huge culture change.

121. The Committee was also struck by the need for a culture change within responsible authorities if the Bill is to result in an effective SEA process. There will be a need for effective leadership from the centre in order to effect such a culture change and the Committee urges the Executive to undertake that role.

122. The Committee recommends at paragraph 45 that an overarching training package be developed for use by local authorities to ensure that senior officials have the necessary skills to train their staff in the requirements of the Bill. This is a critical issue and the Committee urges the Executive to address the need for training as a matter of urgency.

53 Official Report, 18 May 2005, col. 1886
54 Official Report, 18 May 2005, col. 1890
123. The Committee has emphasised the role of a robust and effective SEA Gateway in supporting the implementation of the Bill. It has also stressed the need for further clarity on a number of very significant matters, and the urgent need for comprehensive guidance which is backed by practical support mechanisms. Some concerns will clearly only be addressed with experience. However, resolving these major issues is vital if the Bill is to be implemented effectively and SEA is to achieve its aim of improving environmental protection by integrating environmental factors into strategic decision-making. The Committee welcomes the indications from the Ministers that they are aware of these issues, and urges the Executive to address them.

124. Taking account of the above reservations and the issues requiring further explanation and consideration in advance of Stage 2, the Committee recommends that the general principles of the Bill be agreed to.
ANNEXE A – REPORTS FROM OTHER COMMITTEES

Finance Committee

Report on the Financial Memorandum of the Environmental Assessment (Scotland) Bill

The Committee reports to the Environment and Rural Development Committee as follows—

Introduction

1. Under Standing Orders, Rule 9.6, the lead committee in relation to a Bill must consider and report on the Bill’s Financial Memorandum at Stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee on the Financial Memorandum of the Environmental Assessment (Scotland) Bill, for which the Environment and Rural Development Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.

3. At its meeting on 19 April, the Committee took evidence from Scottish Executive officials. In addition, the committee received written submissions from COSLA, Historic Scotland, the Scottish Environmental Protection Agency (SEPA) and Scottish Natural Heritage (SNH). These submissions are attached as an appendix to this report.

4. The Committee would like to express its thanks to all those who submitted their views.

Objectives and the Financial Memorandum

5. The Bill implements a commitment made in the Partnership Agreement ‘to legislate to introduce Strategic Environmental Assessment (SEA) across the range of all new strategies, plans and programmes developed by the public sector in Scotland’. The legislation builds on existing provision to implement European Directive 2001/42/EC and the Policy Memorandum of the Bill states that this legislation will enable Scotland to become ‘a leader in this field.’

6. The Bill requires all public bodies (the “Responsible Authorities”) to carry out an environmental assessment on all ‘qualifying’ strategies, plans or programmes. The Bill establishes a set of criteria to determine which strategies, plans or programmes should be subject to an environmental assessment and provides for Consultation Authorities (Scottish Ministers (through Historic Scotland), SEPA and SNH) to have statutory roles in the assessment process (Part 1). It sets out the requirements for ‘scoping’ assessments, to ensure proportionality (Part 2), and establishes arrangements for announcing strategies, plans or programmes which have been subject to an assessment (Part 2). The Bill also sets out monitoring arrangements for implementation, as well as forward monitoring and remedial action for unforeseen effects (Part 3). Finally, the Bill revokes the current legislation (The Environmental
7. The Financial Memorandum sets out the estimated additional costs of the Bill. There are already costs being incurred as a result of the secondary legislation enacted to implement the Directive. The bulk of the additional costs will arise from the provisions in Section 5, which set out the types of plan and programme which will qualify.

8. The summary Table 3 (following paragraph 102 of the Financial Memorandum) sets out the costs of the Bill. The Environmental Assessment regime is already in operation under regulations; the Financial Memorandum has identified some areas where Bill costs will be additional. Those areas where uncertainties remain relate to the costs on ‘Consultation Authorities’, which are Scottish Ministers (Historic Scotland), SEPA and SNH. The Financial Memorandum states that current regulation costs were taken into account in spending plans for SEPA and SNH as published in “Building a Better Scotland”. Additional Bill costs are not separately identified, although total costs for Consultation Authorities are estimated at £1,650,000 per annum, with a margin of error of +/- 25% (ie in the range £1,237,500 to £2,062,000).

Summary of Evidence

Consultation Authorities

9. In its submission, SEPA questioned the estimate of £1.65m which represents the total annual cost for Consultation Authorities. It stated that £675,000 of this amount would be attributable to SEPA and that this was “rather less than SEPA’s own £0.9m estimate of total cost”.\footnote{Submission from SEPA} In addition, SEPA expressed concern that it would be expected to provide wider support than merely carrying out its statutory duties and that this was not reflected in the estimated costs.

10. Executive officials responded that they believed SEPA was in agreement with the figure of £1.35m quoted for both SEPA and SNH and any disagreement may arise from SEPA feeling its funding allocation was lower than it expected. On the issue of additional duties, the Executive responded that work regarding the provision and explanation of data was already undertaken and that additional work arising from giving advice about the process was part of the existing relationship SEPA has with stakeholders.\footnote{Rathjen, Official Report, 19 April 2005, Col 2486}

Responsible Authorities

11. The Financial Memorandum states that the Scottish Executive and Local Authorities will be the Responsible Authorities who will have the largest number of Strategic Environmental Assessments to deal with. In its submission to the Committee, COSLA stated that “it does not believe that the assumptions made accurately reflect the cost to responsible authorities, specifically local authorities.” COSLA goes on to say that “it is demonstrably difficult for local authorities to anticipate the likely costs involved…..however, given the scope of the legislation and
our suggestion as to the scale of the resources likely to be required, we believe that the financial assumptions are unrealistic. 58

12. When questioned about this, the Executive responded that they have tried to show the maximum, gross costs in the Financial Memorandum and that the maximum figure of around £14m is at the top end. Therefore, the Executive stated that “we do not share COSLA’s concerns that we are underestimating costs.” 59

13. Whilst the Committee recognised that COSLA has not produced alternative figures, it was concerned that the bill appears to create a right for assessments to be carried out and therefore, creates an expectation that may be difficult to meet. The Partnership Agreement made a commitment to introduce SEAs for all policies, plans and programmes however, the Executive believes that Responsible Authorities will be able to determine that only cases where there is a reasonable argument that there will be significant environmental effects will be taken forward. However, the Executive also says this will involve “significant work for local authorities”. 60

14. COSLA also suggested that the Executive should not rush into extending SEA beyond the regulations and that a more measured approach would be more beneficial for Responsible Authorities. Additionally, COSLA stated that they had offered to trial SEA across council service in two or three local authorities but that such a pilot exercise had not started. The Executive confirmed that they have met with COSLA to discuss suitable cases and have put together a project plan. 61

15. The Committee was also concerned that further financial burden could be placed on councils where SEAs are developed across local authority areas or parts of local authority areas. One example given was that of Scottish Water which might produce a plan for its water infrastructure investment and such a plan would impact on a number of local authorities. In addition, private developers could have an interest in such a plan but the onus is on local authorities.

16. The Executive responded that in such situations it can be difficult to identify a specific individual private sector developer who would create a development under a particular project. Further, the Bill is specific in that there must be one identified responsible authority for each plan. The Executive did say that it hoped people would work in collaboration to develop SEAs, but the Committee remains concerned that the financial burden will have to be picked up by local authorities.

17. The Committee recommends that the lead Committee pursue this matter with the Minister. In addition, the Committee recommends that the lead Committee seek further information from the Minister as to whether disagreements between COSLA and the Executive over the total costs have been resolved in discussion between the two bodies, outlined in evidence.

Relationship with the proposed Planning Bill
18. The Committee noted that a planning Bill is likely to be introduced later in the year and the likelihood is that the Bill could have a significant impact on the planning

58 Submission from COSLA
59 Cameron, Official Report, 19 April 2005, Col 2487
60 Cameron, Official Report, 19 April 2005, Col 2488
61 Rathjen, Official Report, 19 April 2005, Col 2491
process. However, this Bill will make changes which will impact on the planning system and which will be implemented before the introduction of the planning Bill. It was put to the Executive that “the planning process is likely to be disturbed significantly when the legal elements of the application of SEA come through.”

19. The concern is that this will present further burdens for local authorities and that there is an urgent need for work on this Bill and on planning reform to be co-ordinated in terms of assessing the overall implications for local authorities. The Executive officials confirmed that there had been close working between this Bill team and planning officials in the Executive and that “there is no doubt that the full consequences of SEA will be taken into account in the planning bill.”

20. The Committee recognises that this Bill’s impact is wider than planning but it believes this is why it is essential that there is co-ordination between various departments, both in the Executive and local authorities and notes that there is no specific requirement for such co-ordination contained in the Bill.

21. The Committee suggests that the lead Committee seeks further clarification on this issue from the Minister.

Conclusions

22. The Committee recognises that the Executive has sought to quantify all costs associated with SEA and understands why the research, upon which the figures in the Financial Memorandum are based, included a +/-25% margin for error.

23. However, it is very concerned that local authorities, upon whom major costs will fall in their role as Responsible Authorities, appear to have deep reservations about the costs outlined in the Financial Memorandum and about future burdens that may be placed on them. The Committee is also concerned that the situation could be further exacerbated by a gap between the implementation of this Bill and the introduction of a planning Bill.

24. The Committee therefore recommends that the lead Committee pursues these issues with Ministers and urges the Executive to reach agreement with COSLA on the financial implications of the Bill.

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62 McNulty, Official Report, 19 April 2004, Col 2489
63 Rathjen, Official Report, 19 April 2004, Col 2489
APPENDIX 1: WRITTEN EVIDENCE

SUBMISSION FROM SCOTTISH NATURAL HERITAGE (SNH)

ENVIRONMENTAL ASSESSMENT (SCOTLAND) BILL – FINANCIAL MEMORANDUM

Response by Scottish Natural Heritage to the consultation by the Scottish Parliament Finance Committee on the Environmental Assessment (Scotland) Bill – Financial Memorandum

Responses by Scottish Natural Heritage to the Questionnaire on the Financial Memorandum for the Environmental Assessment (Scotland) Bill

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

SNH responded to consultations by the Scottish Executive on the implementation of both the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 and the Environmental Assessment (Scotland) Bill 2005. In responding to these consultations SNH welcomed the considerable benefits that it saw arising from the introduction of SEA, which include “downstream” resource savings arising from the proper consideration of environmental factors at the plan-making and programme design stages. We did, however, draw attention to the fact that the effective implementation of the proposals would place significant new demands on the consultation bodies. The measures would represent a significant step-change in our current involvement in strategy, plan and programme making, for which we would have to find additional resources.

Provisional estimates of the scale of the effort likely to be required to implement both the Regulations and the Environmental Assessment (Scotland) Bill suggest that to meet its new obligations, SNH will, at a minimum, require the equivalent of four members of staff at an approximate cost of £173,096 per annum (assuming one E and three D grades). Although we have not sought to allocate this resource between the Regulations and the Bill, we have no doubt the greater part of this new need will arise from the Bill, which will bring us in contact with a far wider range of strategies, plans and programmes than hitherto.

As indicated, we would hope that this additional resource requirement would be to a greater or lesser degree offset by savings arising as the more environmentally sensitive plans and programmes that should result from SEA generate fewer problematic projects. But our involvement in SEA would in the short-term be an addition to our overall workload and it is difficult to predict just how soon the offsetting savings will be realised.

We recognised that a number of factors will influence the level of total resources required to undertake Strategic Environmental Assessment (SEA). These include the volume of strategies, plans and programmes submitted to us; the relative proportion that will be pre-screened out or which will only require screening; the additional information requirements generated; and whether or not we are currently involved in developing or commenting on the preparation of the strategy, plan or programme.

In relation to the wider costs of implementing the SEA proposals, SNH considered that the creation of a freestanding administrative body would incur considerably greater costs. We preferred proposals for central administration of SEA, supported by strong working relations with the consultation authorities and central access to sources of information, advice and guidance on approaches to SEA perhaps through a dedicated website. We considered that this approach would provide the most effective and efficient mechanism for the implementation of SEA in Scotland.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

As one of the three designated consultation authorities for SEA in Scotland, SNH has worked closely with the SE Bill Team and was consulted by them on the financial implications of the legislation. We
consider that our comments on financial assumptions have been accurately reflected in the Financial Memorandum.

Did you have sufficient time to contribute to the consultation exercise?

SNH considers that sufficient time was given to the consultation exercise on the Bill, especially as this consultation followed on from extensive consultation on the implementation of the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

SNH considers that the financial implications for the organisation have been accurately reflected in the Financial Memorandum, which clearly identifies the uncertainties and possible variances in the complexity of SEA and their relevance to each Consultation Authority. We agree with the statement in paragraph 82 of the Financial Memorandum that the exact number and grades of staff required by Consultation Authorities will not be entirely clear until we have more experience of the SEA procedures in operation.

Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

In the short term, SNH will ensure that it prioritises work so that it meets its responsibilities under the Bill. As to the future we would hope that the Scottish Executive, in allocating funds to SNH, would recognise the additional resources that will be required for ongoing delivery of these responsibilities. We would welcome a review of this situation once we have experience of the demands placed on us under the new legislation.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

SNH considers that the Financial Memorandum reflects the margins of uncertainty associated with the implementation of the Bill.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The implementation of SEA is closely related to the Government’s programmes for sustainable development, open government and freedom of information. We agree with the statement in paragraph 57 of the Financial Memorandum that an increase in requests for data/advice is likely to become part and parcel of the evolution of new information provision regimes developed in response to the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so. Is it possible to quantify these costs?

The preparation of guidance and the introduction of monitoring regimes for SEA may well give rise to future costs. At this stage we do not believe it possible to quantify these costs.

Scottish Natural Heritage
March 2005
SUBMISSION FROM SCOTTISH ENVIRONMENTAL PROTECTION AGENCY (SEPA)

Thank you for your letter of 9 March 2004 inviting SEPA to provide its view to the Committee on the financial issues raised within the Environmental Assessment (Scotland) Bill.

Under the existing Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004, SEPA is identified as a Consultation Authority, giving the Agency new statutory duties to provide guidance and information at key stages in the strategic environmental assessment (SEA) process. The Bill also identifies SEPA as a Consultation Authority and confers similar statutory duties. In addition to these duties, SEPA will also require to act as a Responsible Authority when undertaking SEA for its own plans, programmes and strategies that fall within the scope of the Bill.

The purpose of the Bill is to extend the scope of SEA to account of a broader range of public plans programmes and strategies, beyond that required by the EC Directive and the consequent 2004 Regulations. SEPA strongly supports the Bill and very much welcomes the desire of Ministers to bring environmental considerations into the heart of Scottish plan-making. The effect of the Bill will significantly increase SEPA’s SEA activities as both a Consultation Authority and a Responsible Authority and, accordingly, there are resource implications for the Agency.

SEPA’s response to the specific questions detailed in your letter are set out below:

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

SEPA responded to the draft Bill and made extensive comments regarding the resource impact that it would be likely to have on the Agency. At the draft Bill stage, there was only basic information about the financial implications upon which to comment.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The Financial Memorandum now includes much more detailed assumptions regarding the costs of the Bill. Many of the assumptions regarding cost and number of SEAs per year were derived from research commissioned by SEPA (undertaken by Babtie Group) to inform our own resource planning activities. We are concerned that the interpretation of this work set out in the figures in paragraph 84 and table 2 may be light (see Question 4 below).

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

64 SEPA’s statutory duties are:
Screening – SEPA must within 28 days reply to a screening consultation advising its view on whether a plan or programme will have significant environmental effects
Scoping – SEPA must within 35 days reply to a scoping consultation advising on the scope and level of detail that Responsible Authorities should include within Environmental Reports
Environmental Report – SEPA must be consulted on all Environmental Reports and the plan to which they relate and has the opportunity to comment on them within the timescale agreed at the Scoping stage.
Data Provision – This is statutory under other legislation (Freedom of Information (Scotland) Act and the Environmental Information (Scotland) Regulations) however the Bill will likely increase the number of requests.
Responsible Authority – Undertaking SEA for all of its qualifying plans, programmes and strategies

Wider Non Statutory activities include:
Pre-SEA meetings, discussions and advice
Assistance in preparing documents such as Scoping Reports
Attending stakeholder meetings to agree SEA approach and methodology
Requests from Responsible Authorities to assist development of SEA method and contribute to assessment
Assistance with “spin off” work such as State of the Environment Reports
Administration/tracking of SEA casework, internal policy, guidance, research etc
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

As noted above, SEPA commissioned Babtie Group in January 2004 to provide an assessment of the likely number of plans and programmes that would be subject to SEA, under both the Regulations and the Bill. This assessment was then used to estimate the likely cost for SEPA in fulfilling its Consultation Authority and Responsible Authority duties, in order that it could effectively resource plan.

From this work, SEPA estimated that the total cost to the Agency for statutory activities proposed in the Bill would be around £1.25m (+/- 25%) per annum. When factors such as diminishing costs over time, efficiency gains and taking account of similar work already undertaken (eg planning liaison) were accounted for, it was estimated that the additional cost to SEPA would be around £0.9m (+/- 25%) per annum. This figure accounts only for statutory duties set out in the Bill and it has been SEPA’s experience, thus far with SEA, that we are generally expected to provide much wider support to Responsible Authorities beyond the statutory SEA stages.

Para 84 states that the total annual cost for Consultation Authorities may be up to £1.65m (+/- 25%) of which £675,000 is attributable to SEPA. This is rather less than SEPA’s own £0.9m estimate of total cost, which was derived from the same work.

With respect to duties as a Responsible Authority, the Memorandum states that the cost of preparing an Environmental Report may be £20k - £60k. SEPA considers that this is probably a reasonable range, although it would be useful to keep this figure under review since there are examples that have cost considerably beyond the upper figure. Given the complex nature of many of the SEPA plans which will qualify under the Bill (eg River Basin Management Plans, National and Area Waste Plans), it is anticipated that the cost to SEPA of its duties as a Responsible Authority will often be within the most expensive 10% of plans cited in para 61.

Paras 86 – 91 set out the miscellaneous and administrative costs to the Scottish Executive. The Finance Committee should note that such costs will similarly apply (albeit to a lesser extent) to SEPA and the other Consultation Authorities. Like the Executive, each Consultation Authority operates a gateway to administer the consultations and to provide a one stop shop for the Responsible Authorities. In addition, there are other miscellaneous tasks for consultation authorities, such as staff guidance to ensure consistent and quality-assured responses, awareness raising/capacity building within SEPA and partner organisations, and the development of SEA policy and procedures.

In summary, SEPA considers that the estimated costs provided in the Financial Memorandum do not fully reflect the estimated costs projected by SEPA. The committee should note that the actual confirmed allocation of funding for SEPA’s SEA duties over the next three years falls well short both of SEPA’s projected cost and the lesser figure given in the Financial Memorandum (see Question 5)

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

As part of SEPA's 2004 spending review settlement £187,000 (2005/06), £266,000 (2006/07) and £377,000 (2007/08) was allocated to resource SEA activities. While welcome, this is clearly short of both SEPA’s estimate of total resource need and the estimate set out in the Financial Memorandum. Accordingly, SEPA resources to meet SEA duties under the Bill will be considerably stretched. While experience will provide a clearer signpost to actual resource requirements, it is possible that SEPA will have to prioritise its Consultation Authority activities to match available resources. This may include:

- prioritising consultation resources to those plans and programmes most closely aligned to SEPA’s core business or greatest environmental risk;
- adoption of “do minimum statutory requirement” in some cases or when casework loads dictate – this has already had to be adopted in the early stages of SEA when no resource was available;
- greater utilisation of standard letters and standing advice; and
limiting or prioritising wider non-statutory duties.

From experience to date, it is clear that Responsible Authorities are very keen to involve the Consultation Authorities at very many stages in the SEA process. While this is very positive and enables closer working with partner agencies, the resource constraints upon us may mean SEPA is not able to maintain the level of service both we and our Responsible Authority partners aspire to in this regard.

SEPA would reassert the point made in its response to the draft Bill, that if the Ministers’ objective of making Scotland a world leader on SEA is to be achieved, then appropriate resources will need to be put in place. Recognising the high degree of uncertainty about the level of resources required to implement the Bill, SEPA considers that it would be prudent to undertake a thorough review as experience develops over the first year or two of the Bill coming into force. If it is found that SEA practice is compromised due to resource constraints then it should be incumbent upon the Executive to make available appropriate resources. The proposed SEA pathfinder project involving CoSLA, the Scottish Executive and the Consultation Authorities will assist greatly in this regard.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

There is considerable uncertainty regarding the estimates. This is reflected in the +/- 25% uncertainty figure attributed to both the volume of SEAs and the likely costs. SEPA considers such an error margin is sensible. SEPA does not, however, consider there is great uncertainty regarding timescale – it is clear that the volume of plans and programmes to which SEA will apply will increase markedly pretty much as soon as the Bill is enacted and in force.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

As noted above, SEPA considers that a review of costs should be undertaken as experience develops in order to ensure that the right resources are available to the right authorities at the right time.

Specific Issues

Para 53 – The term “lesser costs” is used to describe those attributable to other public bodies such as SEPA. As noted above, SEPA considers that its Responsible Authority duties will be significant – SEPA may have a substantial number of plans and programmes that may fall under the Bill: eg National Waste Plan and Area Waste Plans (14), River Basin Management Plans (2), Sub Basin Plans (9 or 10 and potentially more) and strategy documents and policy frameworks (10-20).

Para 57 – This section identifies the likely increase in requests for data and advice as a result of the increase in SEA activity brought forward by the Bill. It suggests that such additional work is likely to become integrated into the wider context of the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. While this is true for data requests, it is less so for the provision of advice. As noted above, experience suggests the Consultations Authorities are expected to engage in non-statutory activities connected with preparation of screening reports, scoping reports and environmental reports and these, when multiplied by the volume of plans, programmes and strategies under the Bill, represent a considerable body of work. While SEPA understands that the Financial Memorandum only relates to the statutory provisions of the Bill, it would wish to assert to the committee that the success of SEA will, in part, depend upon these wider areas of work.

Table1 – It is surprising to note that the projected additional Bill provisions applicable to the Scottish Executive amount only to 4 plans. SEPA would question this figure given the wider range of qualifying plans, programmes and strategies prescribed by the Bill.

Para 90 – 92 - As noted above, such administrative and miscellaneous costs also apply, albeit to lesser degree, to the Consultation Authorities for SEA administration, capacity building, guidance preparation and research work.
I hope that these comments are helpful to the Committee in their consideration of the financial implications of the Environmental Assessment (Scotland) Bill. I would reassert SEPA’s strong support for the Bill and the very positive benefits it will bring for protecting and enhancing the environment in Scotland. For SEA in Scotland to realise its true potential, however, there are resource issues which do need to be fully assessed and addressed. If you have any queries regarding this letter, please do not hesitate to contact Neil Deasley on 01786 452431 in the first instance.

Dr Campbell Gemmell
Chief Executive

RESPONSE BY HISTORIC SCOTLAND TO THE CONSULTATION BY THE SCOTTISH PARLIAMENT FINANCE COMMITTEE ON THE ENVIRONMENTAL ASSESSMENT (SCOTLAND) BILL – FINANCIAL MEMORANDUM

Historic Scotland

As in the SEA Regulations, the Scottish Ministers are identified as one of the Consultation Authorities under the SEA Bill, and have designated Historic Scotland to represent their interests in matters relating to the historic environment. Historic Scotland is an Executive Agency within the Scottish Executive’s Education Department and is directly responsible to the Scottish Ministers for safeguarding the nation’s built heritage and promoting its understanding and enjoyment.

Consultation

Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Two consultation exercises have asked for views on the Bill. The first (2003/31), in Autumn 2003, considered Bill principles and the second (2004/12), in Autumn 2004, considered the details of the Bill. Historic Scotland has responded to both consultations. A copy of each of our responses is attached.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Please see the response to Question 4.

Did you have sufficient time to contribute to the consultation exercise?

A response period of approximately 6 weeks was allowed from the date of publication (15 September - 29 October 2004). After agreement from the SEA Team, Historic Scotland responded on 5 November 2004.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Historic Scotland will have two roles in the SEA regime, as a Responsible Authority and as a Consultation Authority. As a Responsible Authority we anticipate Historic Scotland’s plans/programmes will be subject to SEA, the costs of which can be absorbed into the cost of plan/programme preparation.

As a Consultation Authority, additional costs will accrue to Historic Scotland. These have been identified to the Scottish Executive’s SEA Team, and we are satisfied that these are reflected in the Financial Memorandum.
Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

As an Executive Agency, Historic Scotland’s budget is allocated by Scottish Ministers.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes.

Wider Issues

If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The Bill is part of the wider Sustainable Development initiative being taken forward by Environment Group. HS’s understanding is that the other costs associated with this initiative are not part of this Financial Memorandum.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so. Is it possible to quantify these costs?

No.

Historic Scotland
March 2005

SEA Bill Consultation
Sustainable Development Directorate (SEA Bill Team)

Strategic Environmental Assessment A Consultation On The Proposed Environmental Assessment (Scotland) Bill (Paper 2004/12)

Hereewith please find Historic Scotland’s response to the above consultation. This is provided on a question-by-question basis and reflects our historic environment interests and role both as a Consultation Authority and a potential Responsible Authority for certain of our own strategies, plans and programmes under the proposed Bill.

Definitions

In addition to the ten questions posed by the consultation paper, there is an issue about the definition of “plans”, “programmes” and “strategies”. HS’s response to consultation 2003/31 has already raised concerns regarding the definition of plans and programmes, and the need for additional guidance on the interpretation of these terms. HS’s concern about definitions in the Bill is that the widening of the scope of SEA to include “strategies” (as set out in the Partnership Agreement) is not reflected in the wording of the Bill. It is not made clear to Responsible Authorities that the requirements of the Bill also capture “strategies” and “policies”. HS would therefore seek additional definition and/or clarification within the Bill regarding “strategies” and “policies”, as well as guidance on interpretation. Our original request for guidance on the interpretation of “plans” and “programmes” is also reiterated.

Q1. Should we have pre-screening?

It is possible that the need for SEA of some plans/programmes will not be recognised due to a misunderstanding of their potential environmental impact. The work undertaken on SEPA’s behalf by Babtie Group asked Local Authorities to identify which of their plans/programmes would be captured by the Bill. Examples of those which could benefit from pre-screening include strategies on drugs, plans for women’s equality, children’s services and literacy and numeracy. However, some plans/programmes identified as unlikely to be subject to SEA may indeed have environmental impacts.
e.g. winter gritting and/or winter maintenance plans, and strategies for replacement and disposal of computer equipment.

HS therefore consider that a reporting mechanism should be introduced to the pre-screening process to resolve this potential difficulty. This could involve notification by the Responsible Authority to the SE SEA Gateway that a plans/programme is deemed not to have significant environmental effects. After consultation with the Consultation Authorities, SE could then consider whether it would be necessary to direct that SEA be undertaken of any of the identified plans/programmes.

It seems that one of the purposes behind pre-screening is to avoid an unnecessary administrative burden on both the Responsible Authorities and the Consultation Authorities. It is worth noting that another way of so doing would be to amend the requirement that a screening report for all plans/programmes screened be prepared and sent to the Consultation Authorities. For plans/programmes deemed to require SEA, this requirement could be removed to allow the Responsible and Consultation Authorities to move straight to the scoping stage. Thus the Consultation Authorities would only need to be concerned about screening issues for those plans/programmes which were deemed not to require SEA, or where there was some doubt over its requirement.

Guidance on the proposed pre-screening process will be helpful.

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

HS supports the continuing of Option 1, particularly in the interests of maintaining continuity between the Regulations and the Bill.

Option 2 is a free standing administrative body. It is not clear how this would work when most of the issues arising from SEA are of a professional and subject-specific rather than an administrative nature. There would be no clear benefits over the current system.

HS agrees with the consultation paper discussion on the disbenefits of Option 3 in terms of poorer tracking of cases, and lack of clarity/consistency in administrative processes.

We do not see a role for HS in Option 4 and would not support it.

Option 5 would not be cost-effective or workable. It implies a loss of staff from HS who deal not only with SEA but other issues. It would militate against a consistency of approach between consultation on the SEA and on the plan itself, and would result in much duplication of effort. HS could not afford to lose staff in this way and we suspect that would also apply to the other Consultation Authorities. In addition, it is unclear what standing or authority such a specialist team would have: only HS can speak for matters relating to Ministers’ role over the historic environment, and we expect SEPA and SNH would say the same for their areas of interest.

Q3. What plans etc should be subject to screening?

HS support the proposed approach of screening on a case-by-case basis, whilst at the same time building up an indicative list of plans/programmes which will require screening. We believe that the combination of these two approaches will prove most effective.

Q4. Should there be a timescale for screening?

HS agree that a timescale should be set for this. Whether or not 28 days proves feasible will depend on the number of screening reports submitted to the Consultation Authorities and the resources available to deal with them.

Q5. Should Scottish Ministers determine in cases of dispute?

HS agree that Scottish Ministers are best placed to exercise the function of determination in the case of disagreement between the Responsible and Consultation Authorities on whether full SEA is required.
Q6. What should be in environmental reports?

HS agree that scoping will assist in achieving high quality reports. As in our previous consultation response, we suggest that advice on Annex I be included in the Bill Guidance. Guidance should include information on scoping, as well as setting out what the Consultation Authorities will expect from the Responsible Authorities in the way of a scoping report.

In theory the adoption of a standard set of environmental indicators for the SEA process may be useful in achieving a consistency of approach across the different sectors, and be of assistance to some Responsible Authorities. However, given that indicators are a means of measuring progress towards the achievement of objectives, this implies a standard set of environmental objectives to be used by all the public bodies. The objectives used by the Responsible Authorities will relate to the individual plan/programme under review and the characteristics of the geographical area affected. HS therefore takes the view that the Responsible Authorities should develop their own objectives and indicators, with assistance provided in the Bill guidance including examples such as those provided in the extant Interim Planning Advice.

If the view is that a standard set of indicators should be established, HS considers that a consultation exercise would be required as part of this process to identify both environmental objectives and indicators, and gain some agreement. Adoption of the Scottish Sustainable Development Indicators as they currently stand would not provide the environmental focus required by the SEA process.

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

HS agrees with the position set out in the consultation document that environmental reports should not include social and economic factors. It is our view that inclusion of these factors will place an undue burden on the Consultation Authorities in trying to “tease out” the environmental issues from the social and economic issues.

The purpose of SEA is to identify the environmental implications of certain courses of action, so that this information can be considered in the decision-making process. Inclusion of social and economic factors may cloud the issue, and work against fulfilling the requirements of the Directive. However, on occasion, SEA is confused with Sustainability Appraisal and HS consider that advice on the role of SEA should be provided in the Bill guidance to provide clarification.

Q8. What should be the arrangements for monitoring?

HS concur that the provision of information on monitoring data and contingency measures to the Consultation Authorities and the public would be useful, particularly as a means of identifying unforeseen impacts and ensuring that those identified are being addressed. However, reliance on the Environmental Information Regulations may not be the most appropriate vehicle. HS consider clear requirements for information provision should be included in the Bill.

We note that the SEA Directive makes monitoring the responsibility of Member States, as well as the identification of unforeseen adverse effects, and being able to undertake appropriate remedial action. Whilst this responsibility has legitimately been passed to the Responsible Authorities, we are of the view that Scottish Ministers should be in a position to provide information on monitoring to the European Commission as and when necessary, to fulfil the requirements of the Directive. Inclusion of requirements for passing such information to the Scottish Executive and the Consultation Authorities in the Bill would secure this position.

In terms of administrative arrangements, HS is of the view that information should be provided to the SE SEA Gateway and then circulated to the Consultation Authorities.

Q9. Should we have additional exemptions?

HS would find it difficult to identify additional exemptions at this time. However, we take the view that a list of plans/programmes to be exempt from SEA could be prepared at the same time as the list of plans/programmes to be subject to screening, to assist in pre-screening.
Q10. How can we improve the administration and operation of SEA?

As noted in preceding answers, HS is of the view that guidance on the Bill is essential.

We consider that the Bill should set out clearly its requirements of the Responsible Authorities, the Consultation Authorities and the Scottish Ministers. The “non-statutory” administrative arrangements can be included in the Bill guidance. As experience is gained of undertaking and administering SEA, the guidance can be changed if this is considered necessary.

Amanda Chisholm
Strategic Environmental Assessment Team Leader
Historic Scotland
5 November 2004

Strategic Environmental Assessment
Scottish Executive Consultation Document 2003/31
Comments From Historic Scotland

Historic Scotland (HS) has the following comments to offer on this consultation document which cover our potential dual role in the SEA process as both a responsible authority and a consultation authority. We wish to highlight two principle points, and append more detailed comments below on some of the specific questions raised in the consultation paper. In this we have not attempted to provide an answer to every question, but only to those where we felt we had a contribution to offer.

Principle Issues

HS Role as a Responsible Authority
We simply accept that that will be the case, though we currently have some difficulty in determining precisely how many, and which, of our plans and programmes might be caught by the proposed Regulations, and additionally, strategies under the proposed Bill. We suspect that numbers in the former category are likely to be extremely small, and might not extend much beyond our Corporate Plan, though any major management and development plans for significant regional groups of monuments in State Care might also fall within this category. The widening out of the SEA remit under the proposed Bill to also include strategies, and the very broad definition currently offered for that term suggests that considerably more of our output might be caught. We have highlighted our difficulties in interpreting the various terms in our more detailed comments below, and would in general welcome more guidance. However whatever the final outcome, we would wish to be seen to be adopting best practise in that role.

HS Role as a Consultation Authority
We welcome, in principle, the identification of HS, through Scottish Ministers, as a consultation authority for the purposes of SEA. We see this as a positive opportunity to mainstream historic environment issues into the work carried out by the public sector. However we must also record our very real concerns about the resource implications for the Agency of the significant levels of new work which would arise from this role under both the proposed Regulations and Bill. We very much doubt that we would be able to engage fully with the process under current staffing levels.

Detailed Comments

The Proposed Regulations

Definition of Plans and Programmes
Q3. As a potential producer of SEAs we do have some difficulty in applying the definitions to our own work and in determining clearly which potential plans/programmes might be subject to SEA. That may be a problem wider than HS, and might suggest that the screening process might, at least initially, be overwhelmed by submissions from responsible authorities who are simply uncertain...
but wish to err on the side of caution. We do not necessarily see any clear answer to this, or any way in which the definition offered could be made clearer, given the terms set out in the Directive. This is perhaps an issue which the proposed further guidance might help clarify: alternatively it might settle down in due course, and in the light of further experience. However we feel that at present it adds to the uncertainties of the resource implications which lie at the heart of our concerns, wearing our other hat, as a potential consultation body. The potential problem as we see it is not the potential for authorities to contrive through a potential loophole to fall outside the scope of the SEA process, but that it has the potential to draw in too much. We also feel that this problem will be exacerbated by the introduction of “strategies” within the Bill - see answer to Q 34-36

The Screening process

Q6. As noted above, for the screening process to be “largely driven by the responsible authority” (para 4.12) we feel that further guidance is required on the nature of plans and programmes, outside the obvious contenders covered by the issues discussed in para 4.11. We are concerned that the screening process may, at least initially, be overwhelmed.

We welcome the proposition that cases sent for screening must be accompanied by a short report prepared by the Responsible Authority.

As discussed at an earlier meeting on this issue, we do not believe it should be necessary, or that it will necessarily be possible, for the consultation authorities to reach agreement or a collective decision over the need for SEA. SNH, SEPA and HS (and any other identified body) will be dealing with very different environmental concerns, and all will not necessarily be significant in all potential SEA cases. It should be sufficient for one of those authorities to determine that there will be significant environmental effects for an SEA to go ahead (subject to appeal to Scottish Ministers).

Q7. We have had the benefit of sight of SNH draft comments on this paper, and should indicate that we support their position on the need for a secretariat within SE to act as a single gateway for all cases, to co-ordinate the views of the consultation bodies, and to notify that decision to the responsible authority. We also think that such a unit should be responsible for bringing in other organisations as necessary, beyond the consultation bodies identified in section 3. Taking our own area as an example, as noted in HS response to Q24/25 below, although in principle (and putting aside our resource concerns) we welcome the opportunity for historic environment issues to be at the forefront of the SEA process, we recognise that our statutory remit only covers part of the wider term “cultural heritage” used in both the Directive and the draft Regulations. For certain types of SEA it may well be necessary to seek views from other consultation bodies to cover gaps not dealt with by the 3 identified consultation authorities.

Q9. HS has yet to give this detailed consideration. Much depends on how the resource implications are to be met. In principle we envisage that at least a specialised gateway will need to be set up to develop the necessary expertise and co-ordinate HS corporate response.

Q10. To address some of the potential problems we have identified in our answers to Q3 above, we believe that a combination of both approaches outlined in para 4.16 may be necessary, rather than simply relying on a case-by-case approach.

Q11. Our concerns about the likely impact of solely relying on a case-by-case approach are set out in our answer to Q3: - uncertainty amongst responsible authorities, and overwhelming consultation bodies at the screening stage.

Q13. We agree that a timescale should be set for this. Whether or not 28 days proves feasible will depend on the number of screening reports submitted to the consultation authorities and the resources available to deal with them.

Q14. If factors do change substantially within any intervening period, them in principle further screening should be required. It is not clear what measure or process would determine whether there have been substantial changes. That would not necessarily relate closely to any specific lapsed period of time. Significant change could occur within a very short time scale if the nature of the plan changed within that period. Self assessment may need to be relied upon.
Environmental Assessment

Q16. In order to avoid uncertainty about the precise nature of the items of information to be provided, additional guidance will almost certainly be required on the information set out in annex 1.

Q17. On analogy with the EIA process, the scoping requirement set out in draft Regulation 13(5) is likely to be a particularly significant procedure for ensuring that the final report meets the requirements of the process as a whole, and in preventing abortive work on an unacceptable report. We suggest that further guidance is required to highlight the importance of this step. As with the screening procedures we would recommend that a request for a scoping opinion (and it is unclear whether that will be mandatory) should be accompanied by a Scoping Report prepared by the responsible authority.

Q18. The EIA Regulations require the provision of further information to make good any uncertainties or failings of any submitted ES. That might be an issue which requires to be considered here.

Q21. We consider that the avoidance of duplication of assessment is a key issue in ensuring that best use is made of what may prove to be limited resources. We are also concerned that SEA should be meaningful and add value, and not simply be carried out for forms sake. In this regard there will be a level at which there is insufficient information or certainty to carry out any meaningful SEA. Thus a less detailed SEA at a very strategic level might add nothing if the same subject matter is to be subject to SEA at another level.

Q22. For the same reasons set out in our answer to Q14, we do not believe that setting a fixed time limit will be meaningful.

Q23. We do not believe that the introduction of such provisions would be feasible: they would simply add to the bureaucracy. We consider that the consultation mechanisms in place should be able to address this.

Consultations and Decision Making

Q24 - Q25. We agree with the proposition in para 4.39 that Historic Scotland, as the primary body dealing with the area defined in both the Directive and draft Regulations as the “cultural heritage including the architectural and archaeological heritage” should be identified, through Scottish Ministers, as a consultation authority. We also welcome in principle the opportunity this presents to ensure that historic environment issues are fully integrated into the work carried out by the public sector. However we do have two caveats.

1. The most significant is the resource implications of undertaking this work. Clearly the resources required will ultimately depend upon the number of potential plans/programmes under the Regulations, and strategies under the Bill which will require SEA, and the work required to undertake the necessary scrutiny at the points identified in para 4.35. Initial indications are that the additional workload is likely to be considerable, and that seems to be born out by the findings of the research commissioned from Babtie by SEPA. On this basis we must conclude that HS will be unable to engage meaningful with the SEA process on the basis of current staff resources. As already indicated this is a significant concern to the Agency.

2. The definition used in Annex I of the Directive, and Schedule 2 of the draft regulations - “cultural heritage, including architectural and archaeological heritage” – whilst subsuming our statutory interests, also goes beyond them into other areas which we do not cover – see for example, the wider definition which attaches to the term “cultural heritage” in the National Cultural Strategy, and the definition included in the National Parks Act. In general HS will deal with those issues which comprise the historic environment – a term defined in National Planning Policy Guideline 18 Planning and the Historic Environment, para 1. HS remit also overlaps into the other Annex 1 criterion of “landscape”, where our remit covers the historic dimension of the landscape. I have already set this issue out at greater length in a response to a query from Charles Gorman specifically on HS remit. The implications of this is that whilst HS might be the primary body, we are not the only body which covers cultural and wider built heritage issues, including modern architecture and design. There may thus be a need to undertake consultation in addition with other bodies should those areas outwith our specific remit be significant factors in any proposed SEA. There must therefore be provision within the
Regulations to require consultation with other bodies beyond those already identified, and a mechanism which will identify when this might be required, and which additional bodies will require to be consulted. This issue is touched upon in our response to Q7.

Q26. From our experiences of EIA we do not believe it is possible to select which consultation bodies need to be consulted in individual cases. Whilst it will be the case that some SEAs will only affect some interests, that is often difficult to predict or pre-select without detailed knowledge of the consultees subject areas, and the nature of the submitted SEA. Current practise in the case of EIA is that HS is consulted, through Scottish Ministers, in every case, and it is for us to determine whether our interests are affected. We see no way of avoiding this in the case of SEA.

The Proposed Bill

Q30 - Q35. As indicated in our answer to Q2 we have had some difficulty within HS in understanding how these various terms might apply to own strategic documents. The potentially very wide scope of the term “strategy” and the removal of the qualification that they set the framework for future development consents of projects compounds that difficulty and suggests that potentially most strategic documents could be caught. Without fully understanding the intentions behind this proposal within the Partnership Document we find it difficult to offer any guidance on how the term “strategy” should be defined. However without further refinement we are concerned that this has a very real potential to overwhelm the screening process.

Q36. We do not foresee any need to modify the criteria in Annex II

Q37. We do not see any need to modify the screening process adopted for the regulations in the case of the Bill, though we do have some problems with the detail of that screening process: comments on that are already set out in comments above.

Q38. We have some concerns about the additional burden on the consultation authorities of a pre-screening process, whilst recognising the problem it is intended to address. That problem is inherent in the very wide definition of “strategy” and perhaps could, in part, be tackled though its tighter definition, and the provision of further guidance on the types of strategy which are unlikely to require SEA, and those which are not.

Q39. We would not wish to see a separate regime in operation for plans and programmes under the Directive and strategies, plans and programmes under the Bill, and that perhaps confirms our view that a pre-screening process in the case of the Bill is undesirable.

Q43. We support the approach set out in para 4.66 that the SEA report should only contain environmental factors.

Q47-Q50. We have no meaningful information to provide, either in our role as a responsible authority or as a consultation authority. As already noted we have had considerable difficulty in determining how many, and which of our strategies, plans and programmes are likely to require SEA under the current definitions and there has been some split in opinion within the Agency. As a potential consultation authority we have just received a copy of the Babtie Report for SEPA and have no reason to depart from its findings.

Lily Linge
11 March 04

RESPONSE BY COSLA TO THE CONSULTATION BY THE SCOTTISH PARLIAMENT FINANCE COMMITTEE ON THE ENVIRONMENTAL ASSESSMENT (SCOTLAND) BILL – FINANCIAL MEMORANDUM

COSLA

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
COSLA did take part in the consultation exercise, commenting on both the financial assumptions made and the resource implications in terms of staff time. COSLA has made direct representations to the Minister for the Environment and Rural Affairs on the implementation in Scotland of the European Directive on SEA, as well as the Minister’s ambitions under primary legislation to extend the scope of the SEA process beyond that envisaged by the Directive.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

COSLA does not believe that the assumptions made accurately reflect the cost to responsible authorities, specifically local authorities. It is demonstrably difficult for local authorities to anticipate the likely costs involved, since these will change on a case by case basis and will depend inter alia, on the ability to resource the purchase of relevant datasets, as well as a level of knowledge on the delivery of the SEA process, as yet to be achieved in many council departments and services, other than in development planning. Councils have been unable to plan for this process in terms of staff time and associated resource requirements because there has not been enough clarity as to the types of plans and programmes that might be subject to the SEA process.

However, given the scope of the legislation, and our suggestion as to the scale of the resources likely to be required, we believe that the financial assumptions are unrealistic.

3. Did you have sufficient time to contribute to the consultation exercise?

Frankly, given the nature of the Minister’s ambitions to put Scotland forward as a ‘world leader’ on this matter, and given the confusion already occurring as to what requires SEA scrutiny, COSLA would suggest that far more time should have been spent working with local authorities and others affected by this proposed legislation, to determine what can realistically be achieved within current resources. Had such action been undertaken, the proposals for primary legislation would have been better informed and more positively accepted.

COSLA welcomes the principles behind SEA and believes in the longer term that this will become a useful tool to support the environment. We do feel though that taken together with all of the other environmental initiatives thrust as a duty on local authorities, as for example Core Path Planning; to extend the scope of SEA beyond that prescribed by the European Directive so as to encompass ‘all new strategies, plans and programmes’ is not, in COSLA’s view going to achieve sufficient added value to the environment, and will be resource intensive for council departments already under pressure to deliver more for less.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Scotland wide costs will be determined by the total number of SEAs conducted. Research carried out by the Scottish Executive estimates that approximately 94 to 156 assessments per year are likely. However, these figures are subject to an error of 25%, which could lead to between 66 and 195 annual assessments. This is a very large discrepancy and makes any quantification of the costs difficult.

Based on this research the total costs for all assessments in Scotland would range from £3.3 million to £5.5 million (+/- 25%). Since there is an assumption, which has yet to be countered, that all local authorities will prepare a similar number of assessable plans, then this cost will be divided equally between all 32 councils. It is considered likely that due to the frequency of plan preparations a figure to the higher end of the range will a reasonable approximation. This could lead to a figure of £172,000 (+/- 25%) for each Local Authorities, and is largely independent of council size and geography. This would therefore have a disproportionate effect on smaller councils.

There is also an issue of staff time. Local authority staff will have to be moved from other responsibilities, at least temporarily, to deal with SEA. Councils have very limited staff capacity and
any movement of staff may be to the detriment of other essential work, and may require additional ‘back filling’ of vacated posts.

Given that all local authority projects and plans will be subject to SEA, it is the belief of COSLA, as stated in answer to question 2, that the above figures are likely to be an underestimate and do not reflect the real costs for councils.

For example the Scottish Executive figures suggest that on average, local authorities can expect to conduct around 5 SEAs per year. A response from one council suggests that the true figure may be even double this number i.e. 10 SEAs per year. This could lead to a figure of £344,000 (+/- 25%). COSLA would suggest that even this larger estimate may be an underestimate, as despite best efforts, there is still a lack of understanding of the full implications of this Bill across the public sector.

There is sufficient uncertainty to warrant increased research, and time for comprehensive pilot projects. To rush into extending SEA beyond the regulations is likely to strain all responsible authorities considerably, where a more measured approach will, in the long run, deliver the same environmental benefits but allow all those affected to adapt.

COSLA in meetings with the Minister voluntarily offered to trial SEA across council services in two or three local authorities. We believe that this would help quantify the resource implications of the Bill. Regrettably, we still await the start of this pilot.

The true costs must be quantified before passing any primary legislation. Local Government recognises the importance of protecting the environment, and COSLA was extremely positive during the passage of the recent Nature Conservation (Scotland) 2004 Act through Parliament. However, the uncertainty of cost and resource implications of this legislation puts Local Government in a difficult position. Local authorities want to protect the environment and deliver on sustainable development, but are being asked on the extension of SEA to take a leap into the unknown.

COSLA therefore recommends taking time to consider the full implications of this Bill, before going beyond the regulations. This will ensure that Scotland can become a ‘World Leader’ in Strategic Environmental Assessment, but in a measured and steady way.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

For member councils it will be a significant burden, at the very least in the short to medium term. COSLA acknowledges that, in time, skills will be acquired and economies of scale achieved in the delivery of SEA. However, to ask local authorities, from a standing start in services/departments (apart from development planning) to undertake this process, without specific financial support, is asking for a delay in delivering programmes and strategies, at a time when councils are being pressed on all sides to deliver more efficiently and with greater speed.

In addition the full costs must be met by the Scottish Executive.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

As stated above, since COSLA does not believe that the burden on councils can be accurately identified at this stage, the margins of uncertainty offer little or no comfort especially since there can have been no anticipation on the part of local authorities, in the recent spending round, as to the need to allocate significant resources to the SEA process. We also believe that the Scottish Executive itself is hugely underestimating the scale of SEA.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
COSLA has already stated its support for the principles of environmental protection and sustainability. COSLA supports the principles of renewable energy and is working with its member councils to support local actions. But these councils have to be given the resources to support this work — nothing is going to be gained by placing greater burdens, especially those that may not achieve the environmental benefits that were originally envisaged by the European Directive. Thus, if environmental improvements or protection measures emerge as necessary from the SEA process, then these should be able to be reflected in the Financial Memorandum with the same degree of accuracy as those produced by the consultants regarding the SEA process itself.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Should the Scottish Executive determine in the future that further types of plans and strategies on additional themes with potential environmental impact be required to be subject to SEA, the cost implications, if relevant to councils will have to be borne by them. At this stage, it is not possible for COSLA accurately quantify future costs, as the full scale of the financial implications will only become apparent when SEA begins to be rolled out.

For further information contact:

Kathy Cameron
Policy Manager
COSLA
Introduction

25. At its meetings on 26 April and 3 May 2005, the Subordinate Legislation Committee considered the delegated powers provisions in the Environmental Assessment (Scotland) Bill at stage 1. The Committee submits this report to the Environment and Rural Development Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

26. The Executive provided a memorandum on the delegated powers provisions in the Bill, which is reproduced at Annex 1.

27. The Committee’s correspondence to the Executive and the Executive’s response to points raised are reproduced at Annex 2.

Delegated Powers Provisions

28. The Committee considered each of the delegated powers provisions in the Bill. The Committee approves without further comment: sections 2(4)(f), 6(1)(b), 22 and 25.

“Henry VIII” powers at section 5(5), 6(2), 7(3) and 14(5)

29. The Committee generally considers that affirmative procedure should be used for Henry VIII powers, that is, powers to amend primary legislation by secondary legislation. The Committee therefore asked the Executive for an explanation of its choice of negative procedure for the Henry VIII powers contained at sections 5(5), 6(2), 7(3) and 14(5) of the bill, as it did not consider that the delegated powers memorandum fully explained why this approach had been taken.

Section 5(5)

30. The Executive advised the Committee that the power at section 5(5) would only be used should the Environmental Impact Assessment Directive be amended, in order that those amendments would be transposed into domestic law. The Executive anticipates that it will not have any discretion in such matters as it has a duty to implement changes to the Directive, and that therefore negative procedure is appropriate in these circumstances. The Committee was content with the Executive’s explanation.
Section 6(2) Types of excluded plans and programmes

31. The Committee sought clarification on the Executive’s intention in relation to sections 6(1)(a) and 6(2), as it considered that it was unclear as to whether orders modifying section 6(1)(a) would be exercised solely in relation to individual schools. The Committee was content with the Executive’s clarification that this was the case.

32. In its response to the Committee’s concern about the choice of negative, rather than affirmative procedure, the Executive explained that the power at section 6(2) is specifically circumscribed by the requirement that it may only be exercised where Scottish Ministers are of the opinion that the particular type of plan or programme is likely to have no, or minimal, impact on the environment. The Executive also argued that the criteria used by Scottish Ministers when exercising this power will have been approved by the Parliament, and therefore reasoned that negative procedure was the most appropriate procedure. The Committee accepted the Executive's explanation of this matter.

Sections 7(3) and 14(3)

33. Section 7(3) gives the Scottish Ministers power to modify schedule 2. The Executive advised that schedule 2 sets out the criteria referred to in Annex I of the Directive, and it anticipates that this power will only be used to reflect amendments to that Annex. As with section 5(5), the Executive doesn’t anticipate that it will have any discretion and will be required to amend the schedule to implement an EU obligation. For that reason, it argues, negative procedure is the most appropriate.

34. The Executive offered the same explanation in respect of the procedure applicable to the power at section 14(3), which would allow Scottish Ministers to modify schedule 3. Schedule 3 sets out Annex II to the Directive.

35. The Committee was content with the explanation for using negative procedure in these instances.
ANNEX 1

Environmental Assessment (Scotland) Bill
Memorandum to the Subordinate Legislation Committee

Purpose

This Memorandum has been prepared by the Scottish Executive in accordance with Rule 9.4A of the Scottish Parliament’s Standing Orders.

The contents of this Memorandum are entirely the responsibility of the Scottish Executive and have not been endorsed by the Scottish Parliament.

This Memorandum describes provisions of the Environmental Assessment (Scotland) Bill which confer power to make subordinate legislation. It sets out:

- the persons upon whom, or the body upon which, power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision;
- the Parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

Outline and scope of the Environmental Assessment (Scotland) Bill 2005

The Bill makes public sector plans and programmes subject to strategic environmental assessment ensuring that any problems are identified and addressed early in the decision making process. It will revoke and replace The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258) (The Regulations). The Bill will then become the instrument by which EC Directive 2001/42/EC of the European Parliament and Council (The Directive) is implemented, as regards plans and programmes which relate solely to the whole or any part of Scotland.

The purpose of this Bill is to introduce an environmental assessment regime. The key policy outcomes desired of this regime are the enhancement of environmental protection, the improvement of public policy making and early, more effective civic participation in the decision making process. By extending the plans and programmes subject to environmental assessment beyond those provided for in the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004, the provisions of the Bill are intended to ensure that these outcomes are achieved and that the Partnership Agreement commitment to environmental assessment is met:

“We will legislate to introduce Strategic Environmental Assessment to ensure that the full environmental impacts of all new strategies, programmes and plans developed by the public sector are properly considered.”

The following paragraphs outline the main provisions of the Bill. These 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 are not intended to be a comprehensive description of the Bill’s provisions, they do not form part of the Bill and have not been endorsed by the Scottish Parliament. Further information about the Bill’s provisions are offered in the Explanatory Notes, Policy Memorandum and Financial Memorandum, all of which are available on the Scottish Parliament website.

Part 1 of the Bill sets out the requirement on Responsible Authorities to secure the carrying out of an environmental assessment on plans and programmes. 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 assessment 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).

Description of Delegated Powers

Section 2(4)(f) - Provision for the Scottish Ministers to specify further Responsible Authorities in addition to those listed at section 2(4)

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Section 5(4) extends the range of public sector plans and programmes subject to environmental assessment beyond that required by the current Regulations to include certain others plans and programmes prepared by the particular Responsible Authorities listed at section 2(4)—

- 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.
It is considered premature to make further specifications of Responsible Authorities to which the duties in respect of this extended range of plans and programmes applies in the Bill at this point. Such additions cannot reasonably be made until after the emergence of evidence from the operation of the environmental assessment regime as provided for in the Bill. Therefore, the Bill makes provision in section 5(4) to allow the Scottish Ministers to specify further Responsible Authorities as the need for that specification is identified. This power will provide an opportunity to ensure that the Partnership Agreement commitment to apply environmental assessment to all public sector plans and programmes is met.

Any further specification of Responsible Authorities in addition to those listed at section 2(4) would be made in respect only of functions of a public character being carried out by a person, body or office holder in Scotland.

The basic principle that further specifications of Responsible Authorities may be made will already have been subject to the Bill procedure. Therefore, it is considered that negative resolution will afford a sufficient level of Parliamentary scrutiny of any order proposing to make further specifications.

Section 5(5) - Provision for the Scottish Ministers to amend schedule 1

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Section 5(3)(a) sets 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. Section 5(3)((a)(i) refers to schedule 1, which lists projects by reference to which some of these plans and programmes are defined. Subsection (5) allows the Scottish Ministers to amend and update schedule 1 of the Bill.

It is considered appropriate to delegate these powers to allow the Scottish Ministers to take account of any further amendments that may be made to the Directive. These powers are also necessary to ensure the Bill remains consistent with any new Community and domestic legislation (such as the anticipated Planning Bill) on, or affecting, the subject area of the Bill. They are also necessary to allow changes to be made to schedule 1 to reflect developing case law.

Negative resolution procedure is considered appropriate as the power will be used to take account of case law, or changes in Community or domestic law.

Section 6(1)(b) - Provision for the Scottish Ministers to make additional exclusions

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure
Section 6(1)(b) provides powers for the Scottish Ministers to exclude specified types of plans and programmes from the description of plans and programmes set out in section 5(4). These are the plans and programmes which are prepared by the Responsible Authorities caught by section 2(4), and which are not referred to in section 5(3). The intention of section 6(1)(b) is to ensure that it will be possible to exclude plans and programmes which are considered not to be likely to have significant environmental effects and so to have no need to submit to formal screening or to perform an environmental assessment. The aim here is to ensure that the Scottish Ministers have an ongoing opportunity to ensure that provisions of the Bill are proportionate, targeted, and cost effective.

The proposed power is limited in that it may only be used to exclude plans and programmes which, in the opinion of the Scottish Ministers, are likely to have no effect or minimal effect in relation to the environment.

As the basis on which further exclusions may be made will already have been subject to the Bill procedure it is considered that negative resolution will afford a sufficient level of Parliamentary scrutiny of any order proposing to make further exclusions.

Section 6(2) - Provision for the Scottish Ministers to modify the provisions to exclude plans and programmes

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Section 6(1)(a) provides that plans and programmes which relate to individual schools are excluded because is not considered that there are any circumstances in which a plan or programme for an individual school is likely to have significant environmental effects. Section 6(2) provides powers for the Scottish Ministers to modify section 6(1)(a). The purpose of this power is to ensure that, should it become clear that any plans and programmes, or some particular aspect of them, which relate to individual schools would be likely to have significant environmental effects then the Bill may be amended accordingly.

The proposed power is limited in that it may only be used to exclude plans and programmes which, in the opinion of the Scottish Ministers, are likely to have no effect or minimal effect in relation to the environment.

The negative resolution procedure is considered an appropriate level of Parliamentary scrutiny because the principles of environmental assessment will already have been subject to Bill procedure and any order made under this provision will simply apply those principles as was intended by the Bill.
Section 7(3) - Provisions for the Scottish Ministers to amend schedule 2 to the Bill

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

In some cases which are not automatically subject to environmental assessment, the Responsible Authority is required to consider whether the plan or programme is likely to have a significant environmental effect before determining whether an environmental assessment is required, whether that be by applying their own judgement (section 7 – Exemptions: pre-screening) or after taking formal advice from the Consultation Authorities (section 8 - Exemptions: screening). In making such a determination the Responsible Authority shall apply the criteria for determining the likely significance of effects on the environment set out in schedule 2. Section 7(3) provides that the Scottish Ministers may amend schedule 2.

These powers are necessary to ensure the Scottish Ministers have an opportunity to ensure that the Bill remains consistent with any new Community or domestic legislation on, or affecting, the subject area of the Bill. They are also necessary to allow changes to be made to schedule 2 to reflect developing case law and scientific thinking on how to assess significant environmental effects.

Negative resolution procedure is considered appropriate as the power will either be used to take account of case law and changes in Community or domestic law or in response to emerging scientific thinking.

Section 14(5) - Provisions for the Scottish Ministers to amend schedule 3 to the Bill

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Section 14 (along with schedule 3) provides for the contents of an environmental assessment report. The report should describe and evaluate the likely significant effects on the environment of the proposed plan or programme and of alternative approaches considered. Section 14(5) allows the Scottish Ministers to modify schedule 3.

The powers are necessary to provide the Scottish Ministers with an opportunity to ensure that the Bill remains consistent with any new Community or domestic law on, or affecting, the subject area of the Bill. They are also necessary to allow changes to be made to schedule 3 to reflect developing case law and scientific thinking on how to assess significant environmental effects and the information which should be usefully contained in an environmental report.

Negative resolution procedure is considered appropriate as the power will either be used to take account of case law, changes in Community or domestic law, or in response to emerging scientific thinking.
Section 22 – Provision for the Scottish Ministers to make incidental, supplemental, consequential, transitional, transitory and saving provisions

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Order made by Statutory Instrument  
**Parliamentary procedure:** Negative resolution procedure, unless the order amends primary legislation, in which case Affirmative procedure

Section 22 gives powers to make subordinate legislation which is incidental, supplemental, consequential, transitional or savings in respect of the provisions of the Bill itself.

These powers are required to ensure that the Scottish Ministers may modify existing provisions in other legislation, as necessary, to ensure that the provisions of the Bill as enacted are allowed to operate effectively in relation to other pieces of legislation and the general law. For example it may prove necessary, with experience of operating the Bill, to amend existing legislation in areas affected by it. We have not identified such areas yet, but it is considered necessary to have these powers available to ensure that the provisions of the Bill as enacted are allowed to operate effectively in relation to other pieces of legislation and the general law.

Section 23 revokes the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004 /258). It is intended to use the powers in section 22 to provide that all plans and programmes falling within the requirements of the Regulations prior to their revocation, will continue to be dealt with under the Regulations.

It is considered that, in general, negative resolution procedure is appropriate for this power. However, where the power is used to amend primary legislation, section 21(4) provides for affirmative procedure to apply.

Sections 25 - Commencement orders

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Order made by Statutory Instrument  
**Parliamentary procedure:** No parliamentary procedure

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. Section 25(3) provides that different days may be appointed for different purposes.

This is a standard order-making power to allow flexibility in commencement of the provisions of the Bill. As is usual for commencement orders, no provision is made Parliamentary scrutiny, as the power is simply to commence provisions that the Parliament has already scrutinised fully.
ANNEX 2

On 26 April 2005, the Committee asked the Executive for further explanation of the following matters:

“Henry VIII” powers at sections 5(5), 6(2), 7(3) and 14(5)

The Committee noted that the powers at sections 5(5), 6(2), 7(3) and 14(5) are currently subject to negative rather than the affirmative procedure which is generally considered appropriate for such powers to amend primary legislation. The Executive will be aware that the Committee would normally recommend affirmative procedure for all “Henry VIII” powers. The Executive is asked to explain why it has chosen this approach in relation to each of these powers.

Section 6(1)(a)

The Committee also seeks clarification on the Executive’s intention in relation to sections 6(1)(a) and 6(2). The Committee considered that it was unclear as to whether any orders modifying section 6(1)(a) will only be exercised in relation to individual schools.

The Scottish Executive responded as follows:

“Henry VIII” powers at sections 5(5), 6(2), 7(3) and 14(5)

The Committee noted that the powers at sections 5(5), 6(2), 7(3) and 14(5) are currently subject to negative rather than the affirmative procedure which is generally considered appropriate for such powers to amend primary legislation. The Executive will be aware that the Committee would normally recommend affirmative procedure for all “Henry VIII” powers. The executive is asked to explain why it has chosen this approach in relation to each of these powers.

The Department responds as follows:

We are grateful for the views of the Subordinate Legislation Committee and note the points raised in the letter of 26 April. As we set out in the Memorandum on Delegated Powers, the order making powers in the sections referred to above were considered to be appropriately set at negative procedure level.

(a) Schedule 1 sets out Annexe I and II of the Environmental Impact Assessment Directive ("the EIA Directive"), with some minor amendments to reflect the terms of the Environmental Impact Assessment (Scotland) Regulations 1999. It is anticipated that the power in section 5(5) to amend that schedule would only be used if and when the EIA Directive is amended so that those amendments would be transposed into domestic law for the purposes of this legislation. We do not anticipate that there will be any scope for exercise of discretion by the Executive in those circumstances, and so considered that negative procedure is appropriate.
(b) The order-making power referred to in section 6(3) is specifically circumscribed by the requirement that it may only be exercised where the Scottish Ministers are of the opinion that the particular type of plan or programme is likely to have no, or minimal, effect in relation to the environment. That will involve an assessment of fact and circumstances in each case, but only on the basis of criteria which the Parliament would be setting in the power itself. In those circumstances it is thought that negative procedure is appropriate.

Schedule 2 sets out the criteria referred to in Annex I to the Strategic Environmental Assessment Directive (“the Directive”). It is anticipated that the power in section 7(3) will only be used if Annex I to the Directive is amended, and for the reasons given at paragraph (a) above, we consider the use of negative procedure appropriate.

Schedule 3 sets out Annex II to the Directive. It is also anticipated that the power in section 14(3) will only be used if Annex II to the Directive is amended, and for the reasons given at paragraph (a) above, we consider the use of negative procedure appropriate.

We understand and note that you consider an affirmative procedure would be appropriate in amending Primary Legislation. In light of what we say above, however, we hope that in the circumstances described the Committee will accept that negative procedure is appropriate.

**Section 6(1)(a)**

The Committee also seeks clarification on the Executive’s intention in relation to sections 6(1)(a) and 6(2). The Committee considered that it was unclear as to whether any orders modifying section 6(1)(a) will only be exercised in relation to individual schools.

The Department responds as follows:

We confirm that we intend the power in section 6(2) to allow Scottish Ministers to modify section 6(1)(a) will only be exercised in relation individual schools.
ANNEXE B: EXTRACTS FROM THE MINUTES

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

EXTRACT FROM THE MINUTES

8th Meeting, 2005 (Session 2)

Wednesday 9 March 2005

Present:

Sarah Boyack (Convener)  Rob Gibson
Karen Gillon            Alex Johnstone
Richard Lochhead        Maureen Macmillan
Mr Alasdair Morrison    Nora Radcliffe
Mr Mark Ruskell (Deputy Convener)

The meeting opened at 10.35 am.

1. Item in private: The Committee agreed to take item 4 in private.

4. Environmental Assessment (Scotland) Bill (in private): The Committee considered its approach to the Bill at Stage 1 and agreed—
   o the terms of a call for written evidence on the Bill;
   o a timetable and programme of evidence, including proposed witnesses, for its Stage 1 consideration of the Bill; and
   o to delegate to the convener authority to approve any claims under the witness expenses scheme arising from the evidence programme.

The meeting closed at 12.43 pm.

Mark Brough
Clerk to the Committee
ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

EXTRACT FROM THE MINUTES

11th Meeting, 2005 (Session 2)

Wednesday 20 April 2005

Present:

Sarah Boyack (Convener)  Rob Gibson
Karen Gillon  Richard Lochhead
Maureen Macmillan  Mr Alasdair Morrison
Nora Radcliffe  Mr Mark Ruskell (Deputy Convener)

Apologies were received from Alex Johnstone.

The meeting opened at 10.31 am.

Environmental Assessment (Scotland) Bill: The Committee took evidence at Stage 1 from—

Panel 1
Professor Colin T Reid, Professor of Environmental Law, University of Dundee;

Dr Elsa Joao, Director of Research, Graduate School of Environmental Studies, University of Strathclyde;

David Tyldesley, Principal, David Tyldesley and Associates;

Panel 2
Councillor Alison Hay, Environment, Sustainability and Community Safety Spokesperson, COSLA;

John Rennilson, Director of Planning and Development, Highland Council, COSLA;

Kathy Cameron, Policy Manager, COSLA; and

Iain Sherriff, Head of Transportation, Dundee City Council, representing the Society of Chief Officers of Transportation in Scotland.

The meeting closed at 1.07 pm.

Mark Brough
Clerk to the Committee
ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

EXTRACT FROM THE MINUTES

12th Meeting, 2005 (Session 2)

Wednesday 27 April 2005

Present:
Sarah Boyack (Convener)  Rob Gibson
Karen Gillon                  Richard Lochhead
Maureen Macmillan         Mr Alasdair Morrison
Nora Radcliffe             Mr Mark Ruskell (Deputy Convener)

Apologies were received from Alex Johnstone.

The meeting opened at 9.48 am.

Environmental Assessment (Scotland) Bill: The Committee took evidence at Stage 1 from—

Panel 1
Anne McCall, Planning and Development Manager, RSPB Scotland;
Dr Dan Barlow, Head of Policy and Research, FoE Scotland;

Panel 2
Professor Alan Alexander, Chair, Scottish Water;
Geoff Aitkenhead, Asset Management Director, Scottish Water;
Craig McLaren, Director, Scottish Centre for Regeneration, Communities Scotland;
Gordon Wilson, Corporate Planner, Communities Scotland;

Panel 3
Dr Keith MacLean, Head of Sustainable Development, Scottish and Southern Energy;
Dr John Hartley, Director/Principal Consultant, Hartley-Anderson Consultants; and
Liz Bogie, Senior Manager, Knowledge Management, Scottish Enterprise.

The meeting closed at 12.34 pm.

Mark Brough
Clerk to the Committee
ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

EXTRACT FROM THE MINUTES

13th Meeting, 2005 (Session 2)

Wednesday 11 May 2005

Present:

Sarah Boyack (Convener)  
Alex Johnstone  
Maureen Macmillan  
Nora Radcliffe  
Rob Gibson  
Richard Lochhead  
Mr Alasdair Morrison  
Mr Mark Ruskell (Deputy Convener)

Also present: Mr Brian Monteith.

Apologies were received from Karen Gillon.

The meeting opened at 9.45 am.

**Environmental Assessment (Scotland) Bill:** The Committee took evidence at Stage 1 from—

- Amanda Chisholm, Strategic Environmental Assessment Team Leader, Historic Scotland;
- Dr Bill Band, National Strategy Manager, Scottish Natural Heritage; and
- Neil Deasley, Principal Policy Officer, Scottish Environment Protection Agency.

The Committee agreed to consider the evidence received to date at Stage 1 in private at its next meeting.

The meeting closed at 11.24 am.

Mark Brough  
Clerk to the Committee
ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

EXTRACT FROM THE MINUTES

14th Meeting, 2005 (Session 2)

Wednesday 18 May 2005

Present:

Sarah Boyack (Convener) 
Janis Hughes (Substitute) 
Richard Lochhead 
Mr Alasdair Morrison 
Mr Mark Ruskell (Deputy Convener) 

Rob Gibson 
Alex Johnstone 
Maureen Macmillan 
Jeremy Purvis (Substitute) 

Also present: Lewis Macdonald, Deputy Minister for Environment and Rural Development, and Mr Brian Monteith.

Apologies were received from Karen Gillon and Nora Radcliffe.

The meeting opened at 10.03 am.

Environmental Assessment (Scotland) Bill (in private): The Committee considered the evidence received to date at Stage 1.

Environmental Assessment (Scotland) Bill: The Committee took evidence at Stage 1 from—

Ross Finnie MSP, Minister for Environment and Rural Development; and

Malcolm Chisholm MSP, Minister for Communities.

The Committee agreed to consider its draft report in private at future meetings.

The meeting closed at 12.37 pm.

Mark Brough
Clerk to the Committee
ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

EXTRACT FROM THE MINUTES

15th Meeting, 2005 (Session 2)
Wednesday 25 May 2005

Present:
Sarah Boyack (Convener)  Rob Gibson
Karen Gillon  Alex Johnstone
Richard Lochhead  Maureen Macmillan
Mr Alasdair Morrison  Nora Radcliffe
Mr Mark Ruskell (Deputy Convener)

Also present: Jackie Baillie

The meeting opened at 9.48 am.

Environmental Assessment (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. A number of changes were proposed and agreed to, one by division. The Committee also agreed to consider a further draft at its next meeting.

The meeting closed at 12.52 pm.

Record of Division in Private

The Committee divided on a proposal by the Convener:

That the Committee accepts the Bill’s exclusion of plans whose sole purpose is to serve national defence or civil emergency.

The proposal was agreed to by division: For 5, Against 2, Abstentions 0

For: Sarah Boyack, Karen Gillon, Alex Johnstone, Maureen Macmillan, Nora Radcliffe.
Against: Rob Gibson, Mr Mark Ruskell

Mark Brough
Clerk to the Committee
ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

EXTRACT FROM THE MINUTES

16th Meeting, 2005 (Session 2)

Wednesday 1 June 2005

Present:

Sarah Boyack (Convener)  Rob Gibson
Alex Johnstone           Richard Lochhead
Maureen Macmillan        Mr Alasdair Morrison
Nora Radcliffe           Mr Mark Ruskell (Deputy Convener)

Apologies were received from Karen Gillon.

The meeting opened at 10.03 am.

Environmental Assessment (Scotland) Bill (in private): The Committee considered a further draft report, agreed a number of changes and agreed the report. The Committee also agreed arrangements for the publication of the report.

The meeting closed at 11.02 am.

Mark Brough
Clerk to the Committee
ANNEXE C – ANSWER TO PARLIAMENTARY QUESTION S2W-1669

SCOTTISH PARLIAMENT
WRITTEN ANSWER

31 May 2005

Index Heading: Environment and Rural Affairs Department

Richard Lochhead (North East Scotland) (SNP): To ask the Scottish Executive to what extent the provisions of the Environmental Assessment (Scotland) Bill will apply to the building of new nuclear power stations and associated facilities.

(S2W-16669)

Ross Finnie:

Individual consideration must be given to each plan, programme or strategy before the Responsible Authority can determine whether the Bill will apply to it. Whilst emphasising that case by case approach I can make the following general points:-

- Plans, programmes and strategies which relate solely to the whole or any part of Scotland and deal with nuclear power stations and associated facilities are not exempted;

- Qualifying plans, programmes and strategies which could (depending on the outcome of the screening procedure) fall within the provisions of the Bill, include those prepared for energy which set the framework for future development consent of nuclear power stations and other installations referred to in paragraphs 2(2) and 3 of schedule 1 to the Bill.

- Any qualifying plan, programme or strategy which has been determined by a Responsible Authority, after screening, to be likely to have a significant environmental effect, will require to comply fully with Part 2 (environmental reports and consultation) and Part 3 (post-adoption procedures) of the Bill.

SCOTTISH EXECUTIVE
ANNEXE D: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

20 April (11th Meeting, Session 2 (2005))

Written Evidence

Professor Colin T Reid
Dr Elsa João
David Tyldesley and Associates
COSLA
Society of Chief Officers of Transportation Scotland

Oral Evidence

Professor Colin T Reid, Professor of Environmental Law, University of Dundee
Dr Elsa João, Director of Research, Graduate School of Environmental Studies, University of Strathclyde
David Tyldesley, Principal, David Tyldesley and Associates
Councillor Alison Hay, Environment, Sustainability and Community Safety Spokesperson, COSLA
John Rennilson, Director of Planning and Development, Highland Council, COSLA
Kathy Cameron, Policy Manager, COSLA
Iain Sherriff, Head of Transportation, Dundee City Council, representing the Society of Chief Officers of Transportation Scotland

Supplementary Written Evidence

Professor Colin T Reid
Dr Elsa João

27 April (12th Meeting, Session 2 (2005))

Written Evidence

RSPB Scotland
Friends of the Earth Scotland
Scottish Water
Communities Scotland
Scottish and Southern Energy
J P Hartley, Hartley-Anderson Ltd
Scottish Enterprise
Oral Evidence
Anne McCall, Planning and Development Manager, RSPB Scotland
Dr Dan Barlow, Head of Policy and Research, Friends of the Earth Scotland
Professor Alan Alexander, Chair, Scottish Water
Geoff Aitkenhead, Asset Management Director, Scottish Water
Craig McLaren, Director, Scottish Centre for Regeneration, Communities Scotland
Gordon Wilson, Corporate Planner, Communities Scotland
Dr Keith MacLean, Head of Sustainable Development, Scottish and Southern Energy
Dr John Hartley, Director/Principal Consultant, Hartley-Anderson Consultants
Liz Bogie, Senior Manager, Knowledge Management, Scottish Enterprise

11 May (13th Meeting, Session 2 (2005))

Written Evidence
Historic Scotland
Scottish Natural Heritage
Scottish Environment Protection Agency

Oral Evidence
Amanda Chisholm, Strategic Environmental Assessment Team Leader, Historic Scotland
Dr Bill Band, National Strategy Manager, Scottish Natural Heritage
Neil Deasley, Principal Policy Officer, Scottish Environment Protection Agency

Supplementary Written Evidence
Consultation Authorities

18 May (14th Meeting, Session 2 (2005))

Oral Evidence
Ross Finnie MSP, Minister for Environment and Rural Development
Malcolm Chisholm MSP, Minister for Communities

ANNEXE E: OTHER WRITTEN EVIDENCE

Big Lottery Fund
British Aggregates Association
CBI Scotland
Energy Action Scotland
Highland and Islands Enterprise
Highland Council
Institute for Environmental Management and Assessment
National Biodiversity Network Trust
Scottish Badgers
Scottish Environment LINK
Scottish Wildlife Trust
Shetland Islands Council
Strategic Rail Authority
TRANSform Scotland
The following comments are made in a purely personal capacity and do not represent the views of any institution or organisation.

General
The extension of environmental assessment to plans, policies and strategies is to be welcomed, since by the time the individual projects covered by the existing environmental impact assessment rules are proposed, fundamental choices of environmental significance will already have been made. The proposals do largely meet the standards set out in the Aarhus Convention.

Where there may be some uncertainty over the application of the Bill because of rather general wording, 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.

Relationship with Sustainable Development
In relation to the wider policy of promoting sustainable development, there will need to be clarification of the relationship between the new legal obligation to carry out an environmental assessment and other aspects of sustainability appraisal. In the first place it is important to assert the importance of environmental assessment remaining as a distinct element. Although sustainability appraisal offers the advantage of a more integrated approach, there is a real danger that this can lead to a dilution of attention to specific aspects and a return to the position where economic and social concerns always override environmental ones.

In One future - different paths: The UK’s shared framework for sustainable development (March 2005) five principles are stated to help governments to achieve sustainable development. Environmental assessment as set out in the Bill will make a major contribution to one (Living within Environmental Limits) reflects two others through its scientific basis (Using Sound Science Responsibly) and opportunities for public participation (Promoting Good Governance), but touches only one aspect of a fourth (the environmental costs of Achieving a Sustainable Economy) and is silent in relation to the fifth (Ensuring a Strong and Healthy and Just Society). These other aspects of sustainability will have to be assessed through some other process which does not have the same legal status. It is only in very rare circumstances that there is a legal obligation to carry out a wider sustainability appraisal, e.g. in relation to Regional Spatial Strategies in England (Planning and Compulsory Purchase Act 2004, s.5(4)).

This creates a rather lop-sided process, where the environmental assessment is the result of a legal procedure with statutory provisions on consultation, clear responsibilities in terms of publishing initial reports and reasoned conclusions on how environmental issues have been taken into account, and definite opportunities for legal challenge in the event of unreasonable decisions. Meanwhile for the other aspects of sustainability, even though in practice a similar process may be adopted, the position is much less formal and there will be no legal rights to guarantee public participation etc. The determination of the final content of the plan will involve balancing various considerations, the environmental ones that are the product of an open, legal process and the others that have emerging by other means. This difference may have an effect on how the different considerations are viewed, and perhaps more significantly on perceptions of how the balancing exercise has been undertaken. To maintain public confidence, thought will have to be given to how the assessment of the non-environmental factors is done and the final decisions made to ensure public confidence that appropriate conclusions are being reached. The comments in the final paragraphs of the Policy Memorandum show that the issue has been identified but a clearer and more consistent approach to sustainability appraisal across the range of responsible authorities would be beneficial.
Administrative Procedures
The incorporation of environmental assessment into the process of making plans and policies will be comparatively straightforward where there already exists a clear procedure for producing the plan, as is the case with development plans and river basin management plans. In such cases there are clearly defined procedural stages and it is simply a question of making sure that these are adapted to include an environmental report that is subject to consultation in the same way as the draft plan is at present. The task is much harder where there is no formal procedure in existence, such as for forestry or waste strategies (and indeed sustainable development policies). This was the experience when project-based environmental assessment was first introduced, with its ready assimilation into the mainstream planning system where it could be added to established procedures but long delays and in some cases (e.g. forestry) at least one false start in areas where no formal procedure was already in place.

For most plans where there is no formal approval mechanism the practice has been to go through what is in effect a similar procedure, including a full opportunity for consultation at a suitable stage, but nevertheless the change from an informal process to a formal legal procedure, with a set timetable and the opportunity for legal challenge in the event of things going awry, is a very significant change. The fact that such a process must on occasions be repeated for subsequent modifications, not just when a wholesale revision is contemplated, again will be a significant change. This suggests that there will have to be a major exercise carried out by all responsible authorities to categorise and to some extent standardise the various forms of plans, programmes and strategies that they produce and the processes they use for their preparation and adoption, so that those that fall within the new rules can be clearly identified and appropriate formal procedures put in place.

Potential for Legal Challenges
Given the experience of project-based environmental impact assessment, legal challenges to aspects of the assessment and plan-making procedure can be expected. These may be inspired by genuine environmental concerns or (as the experience in planning has shown) flaws in the environmental assessment process might be identified as providing the means of challenging a plan where the real objection to it is based on other grounds. Given that judicial review does not allow a challenge based solely on the merits of the decision, challenges have to be based on some legal flaws in the decision-making process and points that may form the basis of challenge include:

- whether particular plans meet the criteria for “qualifying plans and programmes” (s.5);
- whether there has been an “irrational” or “unreasonable” determination
  o of whether environmental effects exist or are “minimal” (ss.6-7),
  o of whether the scale of a plan or modifications are such that the environmental assessment requirement is triggered (s.8), or
  o of the exclusion of matters as a result of a scoping exercise (s.15)
- failure to follow the correct procedure in terms of time-limits or consultation arrangements;
- the adequacy of the reasons and explanations provided as required by s.18(3);
- whether all aspects of the environmental report and every opinion expressed in response to the consultation (s.17(b)) have been taken into account;
- whether there has been adequate monitoring of the implementation of the plan (s.19).

Authorities must be aware of the possibility of such challenges, even if they prove to be ill-founded, and ensure that their procedures allow them to demonstrate their compliance with the law. At present the courts tend to set a high threshold before being willing to declare that an authority’s judgment has been unreasonable – some might argue too high to ensure adequate protection for the environment – but especially as noted below, this may change.

A further dimension to potential judicial challenge is presented by the constitutional limitations on the powers of the Scottish Parliament and Executive. The fact that action cannot be taken that is incompatible with Community law or the European convention on Human Rights may provide a basis for challenge if European courts require different approaches to those initially favoured here. For the European Court of Justice this is likely to arise from interpretations of the Directive requiring environmental assessment of plans itself (Dir. 2001/42/EC) or from the interpretation of related issues in the project-based environmental impact assessment Directive (Dir. 85/337/EEC as amended) or the assessment provisions in the habitats and species Directive (Dir. 92/43/EEC).
For the European Court of Human Rights the fact that the adoption of plans and programmes may affect the rights of individuals (and companies) to respect for their health, homes and property might further justify intervention in the process leading to the adoption of plans (cf. the original decision in *Hatton v UK* (2002) 34 EHRR 1). The further restrictions on action that has effects outwith Scotland or that relate to reserved matters may provide additional scope for argument, especially as the divide between devolved and reserved matters can create difficulties for creating the sort of integrated approach called for if sustainable solutions are to be promoted (e.g. if any aspect of energy or transport is affected).

**Access to Justice**

The reliance on judicial review as the means of challenging decisions under this Bill raises questions of the adequacy of this in terms of the access to justice requirements under the Aarhus Convention. The Executive’s view that this is generally an adequate remedy may be questioned in terms of the costs of this procedure, but a more significant issue may be standing to sue. The requirement that a party can demonstrate title and interest to sue (some direct connection with the issue) before being able to mount a challenge may cause problems in this context.

There are clearly people with standing to raise actions once the process has reached the stage of public participation process since any person who has made representations is entitled to ensure that these representations have been properly taken into account in accordance with the statutory procedure. However (other than the consultation authorities) there will be no party with such a direct connection with the matter at the stage of determining whether a proposal is a “qualifying plan or programme” or should have an exemption or at the stage of subsequent monitoring. It would be open to the courts to take the view that the obligations on responsible authorities are owed to the public at large and can therefore be enforced by any member of the public (cf. *Wilson v IBA* 1979 SLT 274), but this is far from certain and may be seen as creating too wide an opportunity for those seeking to “put a spanner in the works” for political or other motives, rather than to reflect the public interest in proper environmental consideration.

It is interesting that this issue has been considered in the recent consultation paper *Public Participation in Environmental Matters*, where in relation to Pollution Prevention and Control it is proposed that non-governmental organisations promoting environmental protection should be given access to the courts. A role for such bodies is also provided in the EC Directive on Environmental Liability (Dir. 2004/35/EC). A similar move might be considered in this context.

**Plans and Programmes**

It could be argued that it is wrong to exclude all financial and budgetary plans and programmes (s.4(2)). In the same way as it is recognised that environmental impact assessment of projects is limited because these have been shaped by the content of plans and programmes, so it could be argued that in turn the plans and programmes have often been significantly moulded by budgetary allocations. By not subjecting the financial plans to environmental assessment the proposals will fall short of trying to ensure that at all important stages of policy formulation the environmental consequences of the decisions are taken into account.

The exclusion of plans, programmes and strategies that extend beyond Scotland (s.4(1)(b)) and of authorities with reserved functions (s.2(4)(e)) similarly mean that some important strategies that affect Scotland will be omitted, since the UK Regulations (SI 2004 No.1633) adopt a narrower definition than that in the Bill. Whilst accepting that this is beyond the powers of the Bill to alter, this difference, when coupled with point noted above about the various elements that contribute to an integrated sustainability appraisal mean that there will not be a single, unified approach for all important policy-making processes.

**Qualifying and Excluded Plans and Programmes**

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.

Given the countless different ways in which public and private sector bodies (and partnerships involving both) are nowadays engaged in the provision of public services, the fact that such
arrangements change frequently and the inevitable scope for argument over what counts as “matters of a public character”, it must be accepted that no clear and sharp boundary can be provided by simple definitions in the legislation. The uncertainty that this produces can be eased by guidance that identifies what plans are and what are not covered by the requirement (always subject to the reminder that it is the courts’ interpretation of the law (and the underlying EC law) that must have the final say). The provision in s.2(4)(f) provides a clear way of expressly including a number of plans whose status might be arguable.

A specific issue is the interpretation of s.5(3)(a)(ii) – “which sets the framework for future development consent of projects”; this wording comes from the Directive itself. One view would be to say that it is only the plans of the body responsible for awarding consent that can “set the framework” in this way, so that any plans or strategies produced by operational bodies do not qualify, since these set the framework for the proposals that are going to be submitted for consent, not for the consent itself. Yet if there is to be an environmental assessment of the overall pattern of development, this is probably best directed at that underlying plan rather than taking place indirectly when individual proposals are submitted for consent and alternatives have to be discussed, or when the consent-awarding body itself decides to formulate a plan to deal with the issue. This is a question which might ultimately fall to be determined by the European Court of Justice, where it is not wholly inconceivable that a purposive interpretation (see, for example, recitals 4 and 5 in the Preamble to the Directive), coupled with a desire not to allow the national choice of private or public sector responsibility for certain utilities and services to override the practical impact of planning decisions, may lead to the view that since the important decisions are being taken when the operational body formulates its plan, then that is the stage at which environmental assessment should be required.

The relationship between sections 5(3), 5(4) and 6 could be more clearly expressed. It is conceivable that a plan for an individual school could have a significant effect on a European Site. In such a case it is not wholly clear what takes priority - its inclusion as a qualifying plan under section 5(3)(b) (the probable answer) or its initial inclusion under section 5(4) but then exclusion through the operation of section 6(1)(a). This is typical of the less than straightforward process of analysis needed to apply the law as currently drafted.

A separate issue is the treatment of plans that develop in several stages: a strategy produces a plan that leads to a programme of works that generates specific projects. Whilst it is sensible to avoid duplication of assessments, it must be recognised that different issues and levels of detail may be appropriate at different stages and that trying to limit the assessment to a single stage may not achieve the objectives of the Directive (cf. the problems over environmental impact assessment and outline planning permission). More than one assessment may be appropriate, but at each stage the presence of the others should help to simplify the process, providing a sharper focus and avoiding the need to reopen issues already thoroughly examined.

Screening and Cumulative Effects
A possible weakness of the provisions in the Bill is in relation to the cumulative effect of small-scale plans and of modifications to plans. In themselves these may be minor and as such exempted from the environmental assessment (s.8(1)), but when added together a series of these may have a significant impact. As part of the consideration of whether an exemption is justified, there should be a requirement to consider the combined impact of the particular minor plan or modification and any other such developments, judging either against the position today or against the last fully assessed plan or programme.

Monitoring
The provisions on monitoring the implementation of plans and programmes appear very weak. Any pre-decision environmental assessment is inevitably an estimate of the likely effects, which in practice may turn out to be much more or less severe than originally predicted. There should be a stronger requirement to monitor the actual effects and to consider revisions to the plan (whether a tightening or a relaxation of environmental constraints) where the reality is different from the predicted position. Although creating a formal review mechanism may be unduly burdensome, the present obligation is very vague and it is uncertain who would be able to enforce it (see above).
The inclusion of Schedule 1 for the convenience of the reader as opposed to simply referring to other legislation is a stylistic feature of the drafting that is very welcome.

SUBMISSION FROM DR ELSA JOÃO

(Please note that this written evidence should be read in conjunction to my answers given to the questions raised in the consultation paper "Environmental Assessment (Scotland) Bill").

1. What the effect will be of extending the implementation of SEA to cover a broader range of plans and programmes than is applicable to the rest of the UK? The most innovative aspect of the Environmental Assessment (Scotland) Bill is that it includes higher-level strategic actions (what the Partnership document calls “strategies” and the SEA literature usually refers to as “policies”). This ties in more closely to the ultimate aim of SEA. SEA should apply to the three main levels of decision-making that come before the project level: policies, plans and programmes (sometime called, in an abbreviated way, PPP). One serious omission of the European SEA Directive is that it only applies to plans and programmes and fails to address policies. It is likely that in future years when the SEA Directive is revised then the higher-level policy level will be included, as it should, in the SEA Directive. When that happens Scotland will be a step ahead of most other member states (e.g. Ireland) that have not done the same as Scotland. It is important to bear in mind that the SEA Directive does not mark the start of SEA legislation in Europe and that other countries have done SEA at the higher-level policy level for a long time (see Schmidt, João and Albrecht 2005). For example, the Netherlands has had SEA since 1987 and the Czech Republic since 1992 (João 2005).

The fact that the Environmental Assessment (Scotland) Bill includes higher-level strategic actions (“strategies” or “policies”, depending of terminology) should make it a more efficient system. The SEA of policy should affect and inform the SEA of plans, which in turn should affect and inform the SEA of programmes, which in turn should affect and inform the EIA of projects. This linkage is called ‘tiering’ (see João 2005). Tiering means that aspects of decision-making and SEA carried out at one level do not necessarily need to be subsequently revisited at ‘lower’ levels, so that “tiering can potentially save time and resources” (Therivel 2004 p. 13). In California, for example, the SEA experience has been that certain aspects of subsequent projects have not then needed to be assessed in detail (see João 2005).

2. What the effect will be of the proposed system of administrative arrangements chosen to implement SEA, e.g. pre-screening and screening?

Screening is an established process in both SEA and Project EIA. In the case of SEA, screening is the process of separating the strategies with potential significant (i.e. important) environmental impacts (positive or negative), from those that would not benefit from the SEA process. Very importantly, it is possible that responsible authorities might not need to perform SEA according to the law but might still choose to carry it out as part of “best practice”. This has happened in the past – for example Scottish Power carried out an SEA because their environmental managers felt it was a good idea to do so – see Marshall and Fischer 2005. I would argue therefore that the results of screening only need to be checked if a responsible authority is screening a strategic action out of the SEA process. This would be an obvious way to simplify the screening process – only include the consultation authorities if you are taking a particular strategy, plan or programme out of the SEA process.

What is also crucial to consider is that the key aim of SEA is to improve the proposed strategic action. This means that even if a strategic action has positive impacts, carrying out SEA could enhance the strategic action even further. It is important that screening does not only select strategic actions that have potential negative impacts that need mitigating but also selects strategic actions that have potential positive impacts that could be enhanced.

3. Is the provision of a SEA Gateway within the Executive a sufficient method of managing the SEA process?
Before deciding if the SEA Gateway, an independent SEA body or other mechanism is a good way to manage the SEA process, it is necessary to discuss what does it mean “to manage the SEA process”. What main tasks need to be performed? I suggest that the following needs to be done:

a) Administration of screening.
b) Administration of scoping.
c) Prepare guidance.
d) Record examples of good practice.
e) Be an arbiter in cases of dispute.
f) Audit the quality of Environmental Reporting.
g) Monitor SEA effectiveness and procedures overall.
h) Monitor the appropriateness and quality of the alternatives considered.
i) Support linkages between SEA and Project EIA.
j) Check that monitoring that is proposed by the Environmental Report is done.
k) Make sure that monitoring that was not proposed by the Environmental Report but is later found to be necessary is also carried out.
l) Ensure that mitigation and enhancement measures are put in place as was suggested in the Environmental Report.
m) Ensure that data is gathered that was missing so data gaps in future SEA work are solved.
n) Decide what to do when monitoring shows that things are not going according to plan and negative environmental effects are larger than expected or positive effects are smaller than it was hoped.
o) Create and maintain a database for data that can be used for SEA purposes – this would grow as monitoring increases.
p) Create and update list of targets and thresholds to be used in the SEA process.
q) Review the quality of the strategic actions themselves – are they achieving what they proposed? Are mitigation and enhancement measures really working?

As defined at the moment, the SEA Gateway at the Executive is doing less than half of these tasks. The current SEA Gateway role could be extended to cover the rest of the tasks. Alternatively, an additional system could be put in place that might involve consultation authorities, an accredited list of SEA experts (this could include both academics and practitioners – this system is used in the Czech Republic and in Belgium with good success), and/or an independent SEA body.

A key task of the SEA Gateway at the Executive is to monitor the appropriateness and quality of the alternatives considered, and to help linkages between different sectors and different levels of decision-making (e.g. local, regional, and national) in terms of alternatives. It is important to note that alternatives at the strategic level are not just about different types of development which achieve the same objective (e.g. produce energy by coal or by wind), they are also about demand reduction (e.g. reduce the demand for energy production by insulating buildings). In other words true SEA alternatives are also about obviating development, e.g. making new power stations redundant (João 2005). However, responsible authorities only need to consider alternatives that they are responsible for. Unfortunately this will eliminate many innovative alternatives that might be better at achieving the aims of the strategic action (e.g. the sensible alternative of insulating buildings to make more energy available might not be the responsibility of a energy producer and therefore will slip through the gap). This is when the SEA Gateway at the Executive could have a crucial holistic view of what is the best alternative (or combination of alternatives) and help the dialogue between different sectors and different levels of government.

References:


Introduction

1. I welcome the opportunity to assist the Committee in its examination of the Bill. I commend the initiative of the Scottish Ministers in seeking to exceed minimum compliance with the SEA Directive. The Ministers wish to lead in Europe on SEA. To the best of my knowledge, Scotland is leading in Europe; it was the first country to produce guidance to local authorities and others, following the making of the SEA Directive. The Scottish Executive, in my opinion, has the most positive approach to SEA of any EU Government that I am aware of. However, to stay in front Scotland must continue to work hard to extend and develop SEA. The Bill is a major step to achieve that aim.

2. I would like to comment on the following issues that are relevant to the Committee’s deliberations:
   - Whether the Bill will achieve the aims of the Scottish Ministers;
   - How SEA fits in with other environmental law;
   - Resources;
   - Engaging the community in SEA;
   - The SEA Gateway; and
   - The need for a register of Pre-Screening Decisions.

3. To keep this submission succinct I do not enlarge on any of the points at length, but I would be pleased to justify or explain any of the matters in this submission.

Whether the Bill will achieve the aims of the Scottish Ministers

4. The Bill should achieve the aims of the Scottish Ministers and fulfill their commitment in A Partnership for a Better Scotland. It extends the range of plans and programmes (and strategies) beyond that required to be assessed by the Directive. The critical sub-section is 5(4). The system of exclusion, exemption and screening is not easy to follow at first reading but essentially I see the effect of the Bill would be to require the assessment of all strategies, plans and programmes unless they are:
   - Absolutely excluded (S.4 (3)); or
   - Excluded by a reference in the Bill that could be amended by Order (individual schools and those specified in an Order (S.6 (1) & (2)); or
   - Exempt by pre-screening (S.7); or
   - Exempt by screening (S.8).

5. The criteria that would be applied by the Ministers in making an Order under S.6, and by Responsible Authorities in pre-screening opinions, are logical; no effect or only a minimal effect could not be a “significant effect”, within the meaning of the Directive. However, when considering the effects that should trigger the need for assessment, the Directive refers to both significance and likelihood. Thus, a further criterion may need to be added after Section 6 (3)(b) “in relation to the environment or that any potentially significant effect would be unlikely.” This is a matter for lawyers to consider, but I believe that likelihood of effects will, in practice, prove to be as important a consideration in pre-screening opinions and Order making as the scale of the effect.

How SEA fits in with other environmental law

6. As a key mechanism helping to deliver better environmental protection and more sustainable development, SEA fits well with other environmental law. This is not surprising because much of Scotland’s environmental law has been introduced to give effect to EC Directives and these, in turn, are meshed and coordinated at European level. There are particularly strong links between SEA and

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2. The Bill S.6 (3)(a) and (b) and S.7 (1)(a) and (b)
• Environmental Impact Assessment of plans and projects\(^3\); and
• Assessments required of plans and projects likely to have a significant effect on a Natura 2000 (European) Site\(^4\).

The Bill does not inhibit these links, or those with other environmental protection legislation\(^5\). The interaction with the UK-wide SEA Regulations should be adequate.

**Resources**

7. To date, SEA has been used almost entirely for assessing planning authorities’ development plans. The SEA process fits well with the pre-existing procedures for development plan production. No new steps in development plan making were required in order to accommodate SEA. Rather, it was a matter of ensuring that existing consultation, publicity, examination, modification and adoption stages of development plans were adapted to embrace the requirements of SEA\(^6\).

8. However, one of the inevitable effects of extending the application of SEA is that it will involve a number of public bodies that may not have such detailed procedures for plan making as planning authorities. It is almost certain that they will need to introduce new steps in their procedures to ensure compliance with the provisions set out in the Bill. It will also require flexibility and innovation in its application to ensure it is fit for purpose at all levels of strategies, plans and programmes, from the National Planning Framework to small-scale local strategies.

9. If the objectives of the Scottish Ministers are to be achieved through the Bill and the assessments that flow from it, the system must be properly resourced. SEA obviously incurs additional costs, as recognised in the Bill’s Explanatory Notes, but the estimates in the Financial Memorandum are too low. The tasks of drafting an adequate scoping report (S.15-16), environmental report (S.14) and the statement on adoption of the plan (S.18(3)), are underestimated. The Memorandum estimates costs for only one report in the process. The idea that the SEA process as a whole would only produce a single report of 20 pages is neither realistic nor compliant with the Bill\(^7\).

10. Time will tell, but in addition to the Environmental Report, a scoping report is likely to be 5-20 pages long, depending on the plan. I am not aware of a published SEA adoption statement, but to fulfill its statutory purpose\(^8\) it is going to have to be a significant document, another 5-10 pages. Whilst I accept that production costs of SEA documents do not amount to a high proportion of the overall anticipated costs of SEA, it is nevertheless significant to most public bodies. The underestimation of the scale of documentation leads me to think that the scale of the effort required to produce it has been similarly underestimated. There is an urgent need for examples to be made available of reports that the SEA Gateway and Consultation Authorities have found to be acceptable, together with their comments on those reports.

11. However, the additional cost of extending SEA to other plans and programmes is likely to be far lower than the cost of remediying environmental harm that could be caused by not assessing the plans and programmes. At the very least it is a low-cost environmental insurance policy that will lead to better informed decisions.

**Engaging the community in SEA**

12. In my view engaging the community in SEA will be the biggest challenge in the application of SEA to a wider range of plans and programmes for two reasons. Firstly, SEA does not particularly inspire public interest! Secondly, some Responsible Authorities will not have

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\(^3\) For example, the Environmental Impact Assessment (Scotland) Regulations 1999
\(^4\) Regulation 48 The Conservation (Natural Habitats &c) Regulations 1994
\(^5\) For example, integrated pollution prevention and control
\(^6\) Scottish Executive Development Department, Interim Planning Advice *Environmental Assessment of Development Plans* August 2003
\(^7\) Explanatory Notes, para 62, Financial Memorandum
\(^8\) The Bill section 18 (3)
such effective procedures for community involvement as planning authorities, where most of the SEA experience lies.

13. I do not have a panacea for the problems of community involvement, but I can foresee it will be very difficult for some Responsible Authorities to engage the public meaningfully. I have thought about whether there is anything that the Bill might do to assist or recognise this. My only suggestion is that consideration could be given to adding after “the consultation authorities” in both cases in S.16 (1) “and any other organisations with a particular interest in the environment of the area that may be affected”. It can be argued that such bodies could respond to the general publicity under the provisions of S.16 (2), but I wonder if this explicit reference may be a better reflection of Article 6.4 of the Directive, and a more enticing invitation to be involved. It is probably what a good authority would be doing anyway.

The SEA Gateway

14. I strongly support the principle of the SEA Gateway. It is an innovative, simple and effective idea. From a small number of enquiries I have made, I understand it is working efficiently. The lack of a similar system in England is a considerable impediment to the efficient operation of the SEA (and in England the Sustainability Appraisal) process.

15. However, not surprisingly at this stage, it is largely reactive. I am in favour of the Gateway being much more proactive. Like the majority of consultation respondents, I am against the establishment of a single body overseeing and auditing all SEA processes and products. However, the Gateway could be more than the coordinator of the Consultation Authorities and point of contact for Responsible Authorities. The Gateway should be the home of a body of expertise, employing (or being able to direct enquiries to) people with practical experience of SEA - a sort of SEA helpline. I understand this role is already beginning to develop, if it is, I am not surprised because it is necessary. The Gateway should also:

- Encourage capacity building and quality to speed the SEA process;
- Be the main catalyst for the development of good practice including examples of scoping reports, environmental reports and SEA adoption reports;
- Monitor the provision of training for those involved in SEA;
- Motivate research, for example, into better predictive techniques and mitigation measures; and
- Provide advice to Responsible Authorities on how and where to find baseline data (without handling the data themselves in any way)

16. The Executive is seeking to achieve some of these things as cost mitigation measures. However, these measures should be the explicit responsibility of the Gateway, so that there is a single, integrated, proactive, coordination of all aspects of SEA nationally, with a sound knowledge base. I urge the Ministers to ensure that the Gateway is able to give positive direction for all of these vital elements of SEA. Indeed, I urge that the Gateway is given statutory status and statutory roles in the Bill.

The need for a register of Pre-Screening Decisions

17. There is a need for a pre-screening process. The process in S.7 has the potential to achieve its objective. I cannot suggest a different process that would be better and proportional to the purpose. However, I believe that the Scottish Ministers' power of Direction (S.11) and the possibility of judicial review, are not a complete response to the potential for non-compliance. If, as I assert, costs are significant, there could be a tendency for public bodies to seek to avoid SEA where they can. It is essential to monitor pre-screening decisions, not merely to audit the compliance of the Responsible Authorities but, more importantly, to provide consistency of decisions across Scotland. It would also be an invaluable check on the efficacy of the Act.

18. The Bill should require Responsible Authorities to send all of their pre-screening decisions, within say 14 days, to the SEA Gateway for entry on a central register. This could be done

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9 The Bill's Explanatory Notes, para 94 Financial Memorandum
entirely electronically, it would take very little time and incur negligible costs. The register could be on the Gateway web site and open for all to see. It would be a transparent and effective quality control. It would be a huge advantage to Responsible Authorities when they are making pre-screening decisions (e.g. they could see how similar plans and programmes had been judged by other Responsible Authorities). It would allow periodic review to check the implementation and efficacy of the Act. The register is needed from the outset.

Annex

Introduction to the Witness

I am David Tyldesley. I am a Chartered Town Planner, a Member of the Institute of Ecology and Environmental Management and a qualified Landscape Architect. I had 17 years experience in local government planning and environment departments, before establishing the practice of David Tyldesley and Associates 21 years ago. With my Associate Ian Collis, I worked with the Gordon District Council and SNH on the first SEA of a development plan in Scotland (1995). As a result of that project we prepared a draft guide to the SEA process. It was used, informally, by the Scottish Office and the Executive to help planning authorities develop SEA. I wrote the first published guidance for development plan assessments in Ireland, which was published by the Heritage Council and supported by the Department of Environment and Irish Planning Institutes. I was the lead author of the Scottish Executive Development Department’s Interim Planning Advice to Planning Authorities on the Environmental Assessment of Development Plans (August 2003). With Dr. Graeme Purves and others of the Executive, I facilitated the SEA of the National Planning Framework for Scotland (2003-2004). I have been involved in the SEA or Sustainability Appraisal of over 70 plans of various kinds but mainly local authority development plans. I contributed to an international article describing the experience of drafting guidance for the SEA Directive with fellow authors of guidance for England, Iceland, the Lombardia Region of Italy and Portugal (2004 see footnote 1).

SUBMISSION FROM COSLA

INTRODUCTION

COSLA welcomes the chance to give evidence on the Environmental Assessment (Scotland) Bill to the Scottish Parliament’s Environment and Rural Development Committee.

COSLA has no objections to the principles of Strategic Environmental Assessment (SEA), in terms of the original objectives as laid down by the European Directive. COSLA has been supportive of the need for environmental awareness, the need for renewable energy and the need to address waste management and recycling.

COSLA’s member councils have done much to promote these issues and recognise their importance in terms both of sustainable development and their responsibility as service providers to their communities.

SUMMARY OF KEY POINTS

A summary of the key points of this submission are:

- Local authorities are taking positive action to protect and enhance the environment, while also delivering efficiency savings;

- The EU Directive already covers local authority development plans. These have the greatest and most direct effect on the environment. Extension of the regulation may, in comparison, add little of value to environmental protection;

- Extension of the regulations will be extremely resource and time intensive for local authorities;
• There is a lack of understanding across the public sector as to the full impact of Strategic Environmental Assessment.

• The resource implications are likely only to be fully realised after implementation, or by having a small number of comprehensive pilot projects. Indeed COSLA volunteered to help set up pilot projects, but the Scottish Executive’s response on this proposal would have failed to fully test the proposed legislation;

• Strategic Environmental Assessment may divert resources from other initiatives, and delay environmentally beneficial plans, programmes and strategies;

• COSLA believes that since the legislation will apply to ‘all new strategies, plans and programmes’ the financial memorandum underestimates the costs to councils.

• COSLA recommends taking time to fully quantify the costs, and the practical implications of the Bill. An incremental and properly planned approach to extending SEA is required.

**POSTITIVE ENVIRONMENTAL ACTION**

Local Government is taking practical steps to protect and enhance the environment, not only for the benefit of wildlife and habitats, but because people deserve to live in a high quality environment. The health, community safety and economic reasons for looking after the environment are clear, but local authorities face the unenviable challenge of balancing positive action on the environment against the available resources.

Councils are taking up this challenge, and alongside delivering efficiency savings, are promoting initiatives such as:

• Energy conservation and efficiency in council buildings and domestic homes;

• Renewable generation of heat and power, including biomass and small scale wind;

• Local delivery of the aims of the Scottish Biodiversity Strategy;

• Countryside access and core path planning; and

• Eco-schools.

Local Authorities are also dealing with the huge rise in the number of wind farm planning applications, and in the last year have had to adapt to the new duties of the Land Reform (Scotland) Act 2003 and the Nature Conservation (Scotland) Act 2004.

COSLA strongly supported the Nature Conservation (Scotland) Act 2004 and has also been actively working with Scottish Natural Heritage, Scottish Environment LINK and the British Geological Survey to prepare new guidance for local authorities on local biodiversity and geodiversity sites.

We feel however that the new legislation on Strategic Environmental Assessment, although admirable in its intentions, is unnecessary and will in fact impede practical action on the environment by diverting resources, and slowing the implementation of positive plans, programmes and strategies.

**RESOURCES**

COSLA finds it difficult to understand the need to place an unnecessary burden on local authorities, by demanding that they undertake resource intensive exercises to determine environmental impact, not just on issues such as development planning, but on a range of other policies and strategies, where the processes suggested run at odds with the need to deliver services efficiently and effectively, a demand placed on local authorities by Ministers.
Councils are reporting to COSLA that they are finding it difficult to estimate the extent of financial impact that the proposed legislation would have on their ability to deliver council services, except to say it would be substantial.

There is extreme concern at the lack of financial resource and guidance by the Scottish Executive to deal with this legislation in the manner that it is intended. It goes without saying, therefore, at the very least in the short to medium term, there will be

- Delays to the timing of plans, programmes and strategies;
- The need for an extensive staff training programme to conduct and evaluate SEAs;
- A requirement to set up a corporate environmental database;
- The need to buy in information and expertise; and
- A requirement for the allocation of additional resources to cover extended public consultation.

**COSLA PROPOSED PILOT PROJECTS**

COSLA has tried to make these concerns known to the Minister for Environment and Rural Affairs on a number of occasions, and indeed COSLA suggested to the Minister that it would be helpful if a pilot exercise be carried out to determine the impact of this proposed legislation on local authorities and demonstrate both the ability to deliver the terms of the proposals, while identifying key issues that would cause problems in terms of delivery. It would seem, however, that the interpretation of this proposal by the Executive has taken the pilot process along a route that will not identify these issues. Additionally no offer of financial assistance has been made, in any way other than ‘in kind’, by the offer of access to external consultants to assess the work of those councils that have volunteered to take part in the exercise.

**FINANCING THE LEGISLATION**

The Scotland wide costs will be determined by the total number of SEAs conducted. Research carried out by the Scottish Executive estimates that approximately 94 to 156 assessments per year are likely. However, these figures are subject to an error of 25%, which could lead to between 66 and 195 annual assessments. This is a very large discrepancy and makes any quantification of the costs difficult.

Based on this research the total costs for all assessments in Scotland would range from £3.3 million to £5.5 million (+/- 25%). Since there is an assumption, which has yet to be countered, that all local authorities will prepare a similar number of assessable plans, then this cost will be divided equally between all 32 councils. It is considered likely that due to the frequency of plan preparations a figure to the higher end of the range will a reasonable approximation. This could lead to a figure of £172,000 (+/- 25%) for each Local Authority, and is largely independent of council size and geography. This would therefore have a disproportionate effect on smaller councils.

There is also an issue of staff time. Local authority staff will have to be moved from other responsibilities, at least temporarily, to deal with SEA. Councils have very limited staff capacity and any movement of staff may be to the detriment of other essential work, and may require additional ‘back filling’ of vacated posts.

Given that all local authority projects and plans will be subject to SEA, it is the belief of COSLA, as stated in answer to question 2 of the response on the financial memorandum, that the above figures are likely to be an underestimate and do not reflect the real costs for councils.

For example the Scottish Executive figures suggest that on average, local authorities can expect to conduct around 5 SEAs per year. A response from one council suggests that the true figure may be even double this number i.e. 10 SEAs per year. This could lead to a figure of £344,000 (+/- 25%). COSLA would suggest that even this larger estimate may be an underestimate, as despite best
efforts, there is still a lack of understanding of the full implications of this Bill across the public sector.

There is sufficient uncertainty to warrant increased research, and time for comprehensive pilot proposed by COSLA and detailed previously. To rush into extending SEA beyond the regulations is likely to strain all responsible authorities considerably, where a more measured approach will, in the long run, deliver the same environmental benefits but allow all those affected to adapt.

COSLA therefore recommends taking time to consider the full implications of this Bill, before going beyond the regulations. This will ensure that Scotland can become a ‘World Leader’ in Strategic Environmental Assessment, but in a measured and steady way.

CONCLUSION

In conclusion, COSLA acknowledges that the EU Directive on SEA is in place and that planning authorities are already subject to the provisions under secondary legislation. However, it would have been better for all concerned, including the consultative authorities, which have their own issues regarding resources to deliver the relevant aspects of this proposed Bill, if more time had been taken to assess the impact that the Minister’s proposals would have, notwithstanding the Partnership Agreement. In essence, ‘legislation’ has already been laid on this matter, being the secondary legislation to implement the EU Directive.

It is COSLA’s view, that, given time to develop expertise and with sufficient additional resources to do so, local authorities would be able to implement SEA, to the extent that Scotland could be seen as a ‘world leader’. However, this will only happen if more time is given to develop the proposals and the best way to do that, would be for the Minister and the Scottish Executive to engage with local authorities more fully on this matter, rather than rush to deliver something that will have little or no value to the work of the public sector and will simply increase paperwork for the sake of it.

Local authorities are extremely positive about the environment, but are placed in the difficult position of delivering efficiency savings, implementing new legislation while also attempting to protect and enhance the environment. COSLA therefore asks that the Environment and Rural Development Committee helps produce legislation that is practical and deliverable. As stated previously time must be taken to build understanding, full quantify the costs, and to allow councils to adapt to any extension of the EU Directive. If this can be done then Scotland will become a ‘world leader’ in Strategic Environmental Assessment, but it will have been achieved in a way that adds true value to environmental protections, and which lessens the implications for local authorities.

COSLA looks forward to building on this response in positive discussion with the Environment and Rural Development Committee on Wednesday 20 April 2005.

SUBMISSION FROM THE SOCIETY OF CHIEF OFFICERS OF TRANSPORTATION SCOTLAND

The Society of Chief Officers of Transportation Scotland (SCOTS) welcomes the opportunity to give evidence on the Environmental Assessment (Scotland) Bill.

General Comments

Whilst supporting the implementation of SEA legislation in Scotland, it is clear that with the introduction of the SEA (Scotland) Bill the impact on service delivery for most, if not all, Responsible Authorities will be significant. Both Responsible Authorities and Consultation Authorities will have to find ways of incorporating these new duties into their existing management frameworks with no additional resources to train Officers in the administrative and environmental reporting processes for SEA. This is notwithstanding the lost opportunity of staff time.

It must be said that SEA approach is not new to transport and transportation. DMRB and STAG have incorporated environmental appraisals as a fundamental part of the process. What this new approach offers is transportation’s environmental awareness in sureness to other plans. What is
not clear is the weighting of "importance" that is given against other measures of eg the economy, accessibility and land use.

Having undertaken a scoping exercise to determine the number and type of strategies, plans and programmes that Council's have that are likely to be subject to the Directive and forthcoming Bill, an average of over 50 were identified. We therefore still have particular concerns that without additional funding for Responsible Authorities to deal with the legislation, the Bill could prove onerous in terms of resources and the time it will take to complete assessments for individual strategies, plans and programmes, in addition to the actual plan making process. The Executive also states in the consultation document that most bodies will have to raise their game to be able to implement SEA which "will inevitably raise costs" (P1, Para 5). If the Executive want to adopt an approach to SEA that minimises bureaucracy and develop a streamlined system as outlined in the consultation document, then financial assistance to Responsible Authorities will be required as they will be placed at the heart of SEA and seen as the key element to ensuring that the SEA process in Scotland is run effectively and efficiently.

Other key issues include:

There is no mention of the term 'Strategy' in the wording of the Bill itself. This needs to be included and explicitly defined as the key aim of implementing the SEA Bill is to extend the scope of the Directive to include strategies. Clear examples should also be given to enable Responsible Authorities to work to the same meaning of the statement and ensure uniformity in the screening process across the country.

In the Scottish Executive's previous consultation for the SEA Directive (Para 4.69) it was estimated that the annual impact on the Scottish Executive could be in the order of £2.6 m - £5.5 m (depending on whether Environmental Reporting is carried out in-house or contracted out). The estimated cost to the rest of the public sector could be at least double that. It was stated that a full Regulatory Impact Assessment would be produced by the Scottish Executive to help estimate in monetary terms the impact of the Directive and the Bill. There is no mention of this Assessment in the SEA Bill document, yet it is vital that Responsible Authorities are made aware of its results and outcomes. Has the Regulatory Impact Assessment been carried out and if so what were its findings? If it has not been under undertaken, why not and when is the Executive likely to carry this work out?

We have been asked to consider amongst the general topic three distinct questions viz:

- What the effect will be of extending the implementation of strategic environmental assessments to cover a broader range of plans and programmes than is applicable to the rest of the UK?

  To quote G B Shaw

  "Some people see things that are and say why -
  I see things that never were and say why not?"

  We should all strive for the highest level and not the lowest common denominator therefore in the context of the rest of the UK - why not?

  That is the good news.

  The financial impact on the Councils are extremely difficult to predict however it is estimated that the costs associated with environmental reporting alone could be at least £0.5 m if contracted out to consultants. Additional costs will apply to procedural requirements of the legislation in respect of screening, scoping, publicity and consultation. Both administration and environmental reporting costs will have to be met out of existing Council budgets.

  I have attached a draft structure proposed within my own Council which attempts to minimise financial costs as far as possible particularly in respect of environmental reporting. Getting back to the "positive" mind set the application of SEA is something that good practice processes have already been doing albeit in a less structured manner.
• What the effect will be of the proposed system of administration arrangements chosen to implement this obligation eg pre-screening and screening?

Pre-screening is a key element. The process should be included to act as an 'environmental check' to assist in reducing the burden for Responsible Authorities and Consultation Authorities by removing from the process those plans and programmes that are likely to have no or minimal environmental significance. It will also serve the dual purpose of raising awareness of wider environmental issues across the Responsible Authority.

Whilst agreeing that the central administrative gateway should be hosted/located in the Scottish Executive there is a body of opinion that a specialist team comprising members of the Consultation Authority together as a single gateway would provide the most efficient system for Responsible Authorities. This team would receive plans, collect statistics but also be able to offer specialist advice required by the Responsible Authorities without hopefully a complex bureaucracy.

• Is the provision of a Strategic Environmental Assessment (SEA) Gateway within the Executive a sufficient method of managing the SEA process?

I have dealt with most of this question above however would summarise as follows as suggestions to improve administration and operation of SEA.

1 Ensure the SEA is suitably financed. Provide Responsible Authorities and the SEA Gateway with sufficient funding to ensure efficient implementation of the new Bill.

2 Provide further guidance on pre-screening screening and monitoring including benchmarks for measuring significant environmental effects to ensure consistency of approach throughout Scotland.

3 Minimise bureaucracy with the SEA Gateway by adopting a streamlined administration structure with representatives from Consultation Authorities who can reply directly to Responsible Authorities.

4 Minimise delays to the plan making process by establishing a time period for commencing pre-screening and screening as soon after plan preparation begins. Establish a reasonable time period for determination procedures by Scottish Ministers.

5 Standardise formats for press notices to facilitate publicity and consultation across Scotland.

6 Guidance is required on how any weightings will be applied in relation to Scottish Transport Appraisal Guidance.
1 Where SEA is likely to affect various Divisions (e.g., Planning and Transportation), Departments may elect to nominate 1 Facilitator per Division to coordinate SEA administration in liaison with the team responsible for producing the plan or programme and, where necessary, the Departmental Assessor. The Assessor will form part of the SEA Core Team for Environmental Reporting purposes.

2 Where SEA is likely to affect plans and programmes produced by only one Division, each of these identified Departments will be required to nominate one Assessor to form part of the SEA Core Team for Environmental Reporting purposes. Departments may also wish to elect a separate Facilitator, responsible for co-ordinating administration in liaison with the “responsible team”. If Departments choose to have only an Assessor, then this person would be required to co-ordinate the administration and form part of the Core Team for Environmental Reporting.

3 Departments that produce plans and programmes less frequently should nominate a Facilitator who will coordinate SEA administration at Departmental level and be pulled into the Core Team as appropriate to contribute to Environmental Reporting.

4 For each Environmental Reporting exercise, a chair should be identified from outwith the Department responsible for producing a plan or programme.

Note
Facilitators will monitor draft Committee Reports to ensure that relevant plans and programmes do not escape the SEA process. Where SEA Core Departments do not have a Facilitator, the Assessor will adopt this role.
The Convener (Sarah Boyack): Good morning. I welcome members, members of the public who are with us this morning and representatives of the press. I remind everyone to turn off their mobile phones. We have received apologies from Alex Johnstone.

Our first agenda item this morning is the first of our oral evidence sessions at stage 1 of the Environmental Assessment (Scotland) Bill. We are the lead committee, so it is our job to report to the Parliament on the principles of the bill. We have a series of witnesses lined up for the next few weeks and we intend to finish considering evidence on 18 May, when we will have Scottish ministers in front of us—I think that we have called Ross Finnie.

There is an open call for evidence on the bill. Indeed, evidence is coming in as we speak. It will be passed directly to members and will also be published on the committee’s web page so that people can see how the debate flows.

I welcome our first panel. Colin Reid is professor of environmental law at the University of Dundee, Dr Elsa João is director of research at the graduate school of environmental studies at the University of Strathclyde and David Tyldesley is principal of David Tyldesley & Associates. Thank you all for giving us your evidence in advance. It was useful to be able to read it before you came along this morning. We do not take opening statements from our witnesses, but we will address the comments that you made in your submissions.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): What features should the strategic environmental assessment gateway have if the bill is to be successful?

David Tyldesley (David Tyldesley & Associates): The gateway could have a range of roles, but the bill would require to be amended to allow for some of them. At the moment, the gateway is largely administrative. As you will have seen from my submission, I believe that that administrative role is crucial. The gateway is an efficient way of dealing with the link between the responsible authorities and the consultation authorities and I understand that it is working well. I commend the Executive for putting it in place. There is no equivalent in England, where the system does not work nearly as efficiently. The administrative role is important.

I believe that the gateway should go further and be proactive about disseminating good practice, monitoring training and developing SEA in Scotland, particularly in relation to the wider range of plans, programmes and strategies that are to be considered. I know that others think that it should go even further and become a monitoring, auditing and enforcing body. I am not so sure that that is right at this point. I would not rule it out in the future, but to fulfil that role the gateway would have to take on a completely different shape and be a statutory body with enforcing powers—if it did not have such powers, there would be no point in monitoring the enforcement of the legislation. I am a strong supporter of the gateway carrying out administration, promotion and good practice training, but it should stop short of adopting a formal enforcing role. The auditing probably lies somewhere in the middle.

Mr Ruskell: Who should undertake the formal analysis of the process?

David Tyldesley: We have had 15 years or so of environmental impact assessments for projects and nobody is carrying out enforcement, so the first question is whether that is essential for SEA or whether the system is self-policing, as it is for the EIA projects. There is an important role for the gateway—or another body—to play not in carrying out an official audit of every environmental report that comes through, but in monitoring and disseminating good practice in the decisions taken by responsible authorities and consultation authorities. That is the role that the gateway can play. The idea of auditing and enforcing is completely different and we have not had it for projects with EIA.

Dr Elsa João (University of Strathclyde): I agree with most of what David Tyldesley has said. It is great that the gateway exists, but its role could be improved and widened. There should be a transparent register, which could be set up easily on a web page and which could set out the plans that were coming through screening and scoping and the answers that were being given.

The auditing of the quality of SEA reporting and the SEA process overall is important and either the gateway or another body needs to do it. If such an audit is not carried out, what is the point of our doing SEAs? If we are doing SEAs because we want better plans, policies or strategies, we should check that the mitigation and enhancement measures are working and see whether we are
getting better plans, whether human health and biodiversity are improving and whether air pollution is decreasing. We want to achieve those things, but if we are just producing reports and not checking them out, what is the point?

It is important that we monitor whether mitigation and enhancement measures are working. I like to talk about mitigation and enhancement, because I see the SEA process as a way of improving the policies, plans and programmes—not just as a way of mitigating negative impacts, but also as a way of improving positive impacts. Who will carry out that monitoring? Will it be the SEA gateway or someone else? The monitoring role is important and we should not postpone it, because it is about gathering the data and starting the process. Someone has to do it.

The Institute of Environmental Management and Assessment has carried out monitoring of EIA, albeit informally. Consultants who want to be registered with IEMA say, “Aren’t we brilliant, aren’t we doing a great job?” and they submit environmental impact statements. Those statements are classified and graded by two independent people, who say, “You’re doing really well,” or, “You’re not doing so well.” That can work well for the consultants, who want to attract more jobs. The process is slightly different with SEA, because often SEAs will be carried out by the responsible authority alone. We have to consider how to monitor that. There is not really much competition. Many consultants carry out monitoring of projects with EIA and there is some competition with that.

Mr Ruskell: So you mean that self-policing is harder with SEA than with EIA.

Dr João: Exactly. For project EIA, consultants undertake the EIA reports and they compete for tenders, so the quality issue is important. How will that apply when, most of the time, responsible authorities alone will undertake SEA? Someone must perform that important role.

Professor Colin T Reid (University of Dundee): I support what my colleagues said. The gateway could fulfil several roles, which include the supportive role—the advice and guidance role, the simple administrative role of co-ordination and the role of monitoring and auditing. Does the auditing role sit easily in the same body—the same place—as the supportive role? Problems with relationships could arise.

How strong people want the auditing and monitoring role to be depends partly on their vision for what should happen. The role is not undertaken for projects; because projects are more specific, it has been easier to rely on legal challenges as a way of coping when people think that the process has gone badly wrong.

I have concerns about the more strategic environmental assessments, for which legal challenges may be harder, because of issues of standing, for example. The committee may want to make the monitoring and auditing element stronger, especially because, as Dr João said, the same market does not exist. Because fewer players are involved, bad practice or a consensus on how to operate that is not ideal could build up more quickly. Because different people in different places at different times work in the project base, diversity is greater and that feeds off itself.

Nora Radcliffe (Gordon) (LD): The discussion on the gateway has led us to talk about monitoring and auditing. Will the bill provide a tool for better decision making? If so, should the decision rather than the tool be monitored and audited?

Dr João: The bill should deal with both. The tool must work well, but you are right: we want better decision making. That is what is special about SEA. It provides a way in which to make policies, plans and programmes better. It should be closely integrated with the decision-making process. SEA will affect processes that are being undertaken by—I hope—making them better. We want to ensure that we get things right. Many times, we predict that, if a mitigation measure is taken, human health will improve, for example. We want to monitor that and to say whether the mitigation measure is doing what it is supposed to do. Two years down the line, we might find that it is not working and that people still have poor health, so we will have to ask what we can do.

Monitoring raises all those issues. If a mitigation or enhancement measure is not working as we think it should, do we act before a plan is revised? If a plan is for five years, we can take into account results only when we revise it. That is all about thresholds, too. If things go really badly in relation to what we predicted, do we have a warning system that says that a plan is not working and tells us to act earlier? Who will monitor the data and say that a plan needs to be changed because it is not working?

Professor Reid: Problems may also arise with determining what constitutes better decisions, given that the environmental component is just one aspect of the decision making by bodies for which political accountability is often meant to provide the way of making better decisions. Issues arise with what is monitored and how that is done. It can be argued that monitoring at the environmental assessment stage is more objective—it will never be completely objective—and provides quality control, as it is easier to apply without going into complicated political decisions and trade-offs between environmental and other benefits.
The Convener: I presume that we want monitoring at two levels. Individual monitoring of decisions should be undertaken by the authority that produced a plan, which should have a robust monitoring mechanism. Then there is your point about whether the bill will make a difference and how the SEA gateway or the Executive will monitor its impact throughout Scotland. We are almost trying to do two things—we are trying to get an overview of what SEA has achieved, but we also want to ensure that there is an incentive for the authorities that carry out the SEA to check their own process. That cannot all be done centrally. Presumably there has to be a mix.

10:45

David Tyldesley: Experience tells us that the legislation will need to be reviewed and perhaps amended in future, just as all environmental legislation has had to be amended over long periods. The bill is a great step forward, but it is not the be-all and end-all. I am sure that it is not the final word on SEA in Scotland.

We should also bear in mind the fact that, unlike project EIA, monitoring is a statutory requirement of the regulations and the bill. There is a big difference between our experience of enforcing and monitoring EIA on projects and the statutory monitoring that we will have under the bill and regulations. We should not rush into a formal auditing and enforcement monitoring system yet. Let us see how things go. Of course IEMA is doing a great job. I agree entirely with Elsa João that things are different with SEA, but we should not rush into a formal mechanism of audit and enforcement. I would much sooner see how things go. We should see what is necessary in future and give the responsible authorities the chance to police the system themselves and to raise standards in response to the bill.

Rob Gibson (Highlands and Islands) (SNP): I would like to tease out the relationship between SEA and existing attempts to place sustainable development at the core of Government policy. Professor Reid, how do you see the bill more fully integrating environmental considerations in the decision-making process?

Professor Reid: The bill is a big improvement, because it will ensure that the environmental component is properly considered. The difficulty that I foresee is that the final weighing up of the various elements of sustainability will inevitably involve different considerations that have been developed by different processes. That may lead to the same problem arising as there is in the planning system, in which the reporter’s conclusions can be overturned by Scottish ministers.

Because the public inquiry part of the process—in this case, the environmental assessment—is public, there will be a lot of participation. People will see the evidence and how the input to the decision making is working. However, the other elements—in this case, the social and economic aspects—will not be developed in such a public way. When people see the environmental evidence being outweighed by social and economic arguments, they may think that the decision is not a good one, because they will be unable to judge those arguments in the same way as the environmental part of the inquiry, in which they have participated. They may think that the decision maker ignored the environmental side rather than carefully weighed it and put it in the balance.

Dr João: It is an interesting point that, thanks to SEA, we may need to raise the quality of economic and social evaluations. On the link between SEA and sustainability appraisal, the English approach integrates the two systems. My instinct tells me that that might not be such a good idea, because the environment might lose out. I like the idea that Scotland is pursuing at present, which is to keep SEA as a separate process and to make the process more transparent.

When we come to make decisions, we cannot just consider the environment. The issues are interlinked, so in some cases we have to consider social and economic issues. Indeed, the directive is not exclusively biophysical; it covers human health, material assets and other social and economic issues. It also mentions as one of its aims sustainable development. Things are not very clear. At this stage, those who are involved in academic research are waiting to see what will happen; they are especially keen to see how the English system works out. It is not clear to people whether it is a good idea to mix the two processes or to keep them separate. Is the environment going to lose out or will that approach make for an efficient system?

David Tyldesley: The question is absolutely critical in the context of the bill. If you are going to go down the route of sustainability appraisal, you will have to do it now and not at some point down the line. In my view, the wider sustainability appraisals tend to tell responsible authorities what they already know. They are already promoting the plans for social and economic reasons—that is often their role—and they understand those factors well. Experience shows that it is perhaps the environmental implications of the plans and programmes that are less well understood. That is where SEA plays an absolutely vital role in sustainable development. Although the social and economic aspects are obviously important, they are better understood and the plans often promote them in the first place.
More than half the appraisals that have been carried out on Scottish local plans and development plans have been full sustainability appraisals—they have not been limited to SEA. I see nothing in the bill that precludes a local authority from carrying out a sustainability appraisal. The only difference between the English and Scottish systems is that the Planning and Compulsory Purchase Act 2004 requires all the plans of local authorities in England to go through the sustainability appraisal process. I believe that any responsible authority that feels the need to carry out a full appraisal of the socioeconomic effects as well as the environmental ones can and will do that—the evidence is that authorities will do that.

Rob Gibson: You are saying that SEA is a catalyst to make the whole range of environmental regulation work in an integrated way.

David Tyldesley: Yes, it is a part of that.

The Convener: That is an interesting point, which brings us back to the purpose or the benefits of the bill as a whole—why we need it and what it will do in practice. It will effectively ensure a much more rigorous, coherent environmental assessment and a tiered approach, but with the SEA report and the consultation it will push up the bar on decision making more generally.

Do you have views on the resource intensiveness of the process? Our next witnesses are from the local authorities and one of their core issues is the need for funding to make the process work—whether that is funding for training or staff time—and the need for more time in which to make decisions. How can we get a virtuous circle on that instead of delaying everything, incurring huge costs and making it difficult to carry out the process?

David Tyldesley: As a practitioner in the field for many years, I have my views on that question. I believe, as I said in my written submission, that the cost estimate in the papers that I have read underestimates the resources that will be required to service what the bill will provide for. There is no doubt in my mind that the bill will cost responsible authorities more than is being anticipated. However, I still say that is worth while as an environmental insurance policy for the future and that the costs are justified. The costs are not unjustified, but they will be higher than anticipated.

My greatest fear is that the estimates have concentrated far too much on the environmental report stage. My experience shows that the screening and scoping stages—and, although it has yet to be tried, the statement that responsible authorities must produce on the adoption of a plan or programme—will be substantial documents. They will not be a side of A4; they will need to be documents of five or 10 pages, for example, and will require a time input that I think is being underestimated.

I fully understand the concerns of the responsible authorities about resources. Nonetheless, the evidence is that they have been successfully completing environmental appraisals and sustainability appraisals in Scotland for approximately the past 10 years. I sympathise on the resource issue and accept that the costs are being underestimated. However, that will not bring the system to a grinding halt or delay plans and programmes, as might be feared. There is no evidence of that happening in recent years when similar procedures have been followed.

The only caveat to add is that it is clear that the programming of a plan is more likely to be delayed by SEA in those areas that do not currently have in place the rigorous statutory procedural arrangements that apply to local authority development plans, for example. Therefore, the effect will not be at the development plan end; it will occur in regard to other plans and projects where, as my submission states, new procedural steps might be required. That will be a resource issue.

Dr João: That is very interesting. I accept that there will be a resource issue; the question is how large it will be. While David Tyldesley has more experience than I have on the issue, my instinct is that local authorities sometimes get in a bit of a panic and feel that the problem is much bigger than it actually is. One of the problems for local authorities is that they think that they will need a lot of data. The reality is that one can carry out SEA without data. Data must not be a stumbling block to undertaking SEA.

A key area in carrying out SEA is deciding what issues need to be analysed. One can still carry out an analysis without data. As an example, one of the key issues in an assessment might be human health. Even without data, one can still evaluate the situation and conclude, for example, that an increase in the use of cars might affect people’s health. It might be possible to make that link without health data, by using qualitative-type knowledge.

There need not necessarily be a huge data collection exercise before one can undertake SEA. In her book “Strategic Environmental Assessment in Action”, the practitioner Riki Therivel says that the first SEA carried out for a local authority could be an exercise in finding out what kind of data needs to be collected in the future. The directive states that one will often undertake SEA with data gaps. The environmental report must point out the data gaps and suggest possible links between different evidence. The report might note that any link discovered had been estimated qualitatively,
but also that in the future it might be possible to obtain quantitative data. Therefore, monitoring would be recommended so that, for example, five years from now data would have been collected. The SEA process can indicate what kind of data may need to be collected in the future.

In some cases, people are panicking unnecessarily and are thinking, “Oh my goodness, we are going to have to hire all these consultants.” However, that is not necessary. Indeed, SEA cannot be done by just passing it 100 per cent to consultants, as that will not help a plan. It can be done hand in hand, as a mixed team, with the consultant and local authority working together on improving a plan. However, it should not be passed completely to consultants.

Professor Reid: As the introduction of project-based EIA showed, there were transitional problems in those areas that had not had a structured plan-making process. We must encourage organisations to consider which of the documents they produce are plans, programmes or strategies and then think back to how they produced them or at what stage they would put in the appropriate assessment or consultation period. In areas such as planning, it was easy to slot in the EIA, because procedures already existed. However, for other areas, such as forestry, slotting in the EIA was a huge problem and we were many years late—we had several false starts—in coming up with a process that fitted the European Community requirements.

Dr João: I should point out that not all local authorities think alike. An interesting case study is provided by the SEA that was carried out by Falkirk Council in, I think, July 2004. When I asked the council whether resources had been an issue, I was told that no extra resources were required for carrying out the SEA. It was simply part of best practice and the council did not view SEA as an extra burden.

The Convener: However, the bill will clearly mean a change from business as usual. It will require people to do things differently and to think about them differently. The accounting process will also require people to be transparent about what they do. We can perhaps ask the Convention of Scottish Local Authorities about the transitional process for going from where we are now to where the bill will require us to be. The regulations have been in place for a year, but the bill will up things substantially. How we manage that process is a subject that we will come to.

Maureen Macmillan (Highlands and Islands) (Lab): The tension between environmental and socioeconomic matters is an issue that has been raised not only by local authorities. The business community believes that the bill tips the balance too far in favour of the environment and is anxious about the bill going beyond the directive’s requirements. What is the value of going further than is required by the directive and further than the rest of the United Kingdom has gone? What are the implications of that? Will we be faced with two sets of regulations, one of which will cover the whole of the UK and the other of which will cover only Scotland?

David Tylidesley: I have heard, and I understand, the argument that the bill will tip the balance too far in favour of the environment. However, we can look at the experience of what happened in the first 10 to 15 years of project environmental impact assessments—which are a slightly different process—between the mid-1980s and the point at which the range of projects that were required to be assessed was increased by the amendment to the directive. The research that we carried out in the early 1990s showed that almost a third of all environmental statements that were submitted to planning authorities were unnecessary in terms of the law. In other words, various sectors of industry saw the EIA process as beneficial to their projects: it was seen as beneficial to the decision maker because it helped to show that a project was environmentally benign or acceptable. Therefore, I do not hold to the idea that the bill will tip the balance. There is no evidence to show that the weight given to socioeconomic aspects by decision makers has diminished in any way because of environmental assessment of any kind.

I believe that the bill will add value. From my perspective, the greatest value that the bill will add is that it will widen the range of strategies, plans and programmes that will be subject to the environmental assessment process. That key added benefit will mean that Scotland’s environment will be better protected in the future from decisions that are made in good faith but with a poor understanding of their environmental implications.

Dr João: I agree with David Tylidesley, in that I disagree with the idea that the bill will tip the balance, for the simple reason that the SEA process does not make decisions but simply informs them. Ultimately, decisions will still be made by the decision maker; SEA just puts the facts on the table. As Colin Reid suggested, perhaps we need the quality of our economic and social assessments to match up to that of environmental assessments.

I do not like the idea that the environment goes against the socioeconomic when we make decisions. The two do not necessarily fight against each other. A decision that is good on
environmental grounds may be good overall. We can have a win-win situation, in which something that is good for the environment is also good for economic reasons. There are many examples in which that is the case. If we insulate buildings so that they lose less energy, that is good for both the environment and the economy. We can think of many decisions like that and many people say that the process should be about creativity and about thinking, “This is a good decision; this is great.” It need not be a fight; it is a question of working together and coming to a better decision overall.

On broadening the plans, programmes and policies, I think that the fact that Scotland is going to include the policy level is fantastic. That is what SEA should be doing. The SEA directive is obviously short-legged, and because different countries could not agree about including policies, they thought that, rather than postpone the directive any further, it would be better to produce a directive that was essentially incomplete and would cover just plans and programmes. That should not have happened; the directive should also have covered policies. However, that was done so that discussion of the directive did not go on and on. In fact, it was discussed for so long that, at one point, the EIA directive was going to cover SEA as well. That tells you that it has been discussed since the 1980s.

I believe that a pragmatic decision was reached that it was better for the directive to come out now, even if it does not include policies, than to postpone it any further. My gut feeling is that, sooner or later, when the directive is revised, it will include policies. When that happens, Scotland will be far ahead, because it is already doing what is needed.

Professor Reid: I would add only that many of the plans and programmes that have been covered will ultimately lead on to individual projects. If the plan and programme are dealt with, that should make the later stages a lot easier—you will not have to consider some of the more radical alternatives because the framework will be set up already. That means that you will be able to be much more focused at a later stage and that there will be savings later on. When a number of assessments have been done, there should be some cross-fertilisation, some data and some arguments that can be used to tie things together and to ease the process, rather than ignoring the process and then hitting the buffers when you come across something that is caught by a project EIA. If authorities and the people who are making proposals to authorities are thinking along those lines, that should help you towards a more integrated approach that will ease decision making later on when proposals come up against other controls.

Nora Radcliffe: What are your views on pre-screening? Pre-screening is intended to take everything out that need not be included and to cut down on bureaucracy, but I think that David Tyldesley was suggesting the need for a register. It seems to me that that might pre-empt a lot of work on freedom of information requests to local authorities that were pursuing information—they would see that the information was benign, if you like, if they had a register. Could you expand on why you thought that a register was a good idea?

David Tyldesley: Quite simply, I have indicated that I cannot think of a better pre-screening system than the one that is proposed in the bill. Therefore, I am not suggesting that there should be a different pre-screening procedure. However, what I am saying is that, when the bill is passed, all over Scotland there will be responsible authorities taking possibly dozens and dozens of decisions—hundreds over the years—screening out strategies, plans and programmes that they honestly believe will not have an environmental effect. I am suggesting that we will never have a record of those decisions. Nobody will ever know what is being screened out, because the responsible authorities will just make a decision and that will be the end of the matter.

We have to be a little bit cautious. We have already talked about resources and there will sometimes be a tendency for responsible authorities to say, “It’s a very marginal decision and we won’t do an SEA because of the resource implications.” That may well happen. However, much more important than monitoring those decisions is having a public record of what responsible authorities across Scotland have decided will have minimal or no significant effects or will be unlikely to have effects. That would save responsible authorities from reinventing wheels. If it is clear from such a register that three similar bodies have already looked at a similar kind of plan and have concluded that it would have no significant effects on the environment, it seems to me that it would be helpful for a fourth responsible authority to have the benefit of that information.

I have already indicated that I think that the bill is the first step and that the legislation will have to be reviewed in future. If we do not establish proper recording systems now, how will we assess the efficacy of the bill that the committee is now considering?

I believe that we should put in place a simple registry system at the very beginning. After all, it would not take any effort or cost anything simply to register with the SEA gateway a decision that says that such and such a strategy was considered by such and such a responsible authority and that it was decided to screen it out because it would have no significant effects on the environment. I am talking about a record.
The Convener: Do the other witnesses agree?

Dr João: Yes. It is crucial to have a register. Indeed, such a transparent system will save resources, because it is all about learning from one another and finding out what people are doing.

To me, pre-screening is really screening. I find the concept of pre-screening slightly strange because, after all, screening is an established process in project EIA and SEA. As with scoping, its key purpose is to screen out things that have no implications. The environmental impact assessment process should be about saving resources while concentrating on the things that matter. As a result, the most important thing is to have a register of what has been screened out because, as David Tyldeley and I have said, people can choose to carry out an SEA even if they do not have to. Doing so might simply be best practice. Although for various reasons a particular industry might not be required to carry out an SEA, it might be a good idea to do so. For example, Scottish Power has carried out SEAs because it thought that that was good for the decision-making process.

The Convener: Do members have any other comments? I think that we have already covered quite a lot.

Mr Ruskell: I want to ask about exemptions to the bill, which defines responsible authorities as "any person, body or office-holder exercising functions of a public character".

Should the Ministry of Defence be classed as a responsible authority under that definition? I am concerned about how the MOD’s plans and programmes in Scotland can be captured by SEA.

I am also interested to hear the witnesses’ views on the exemption of financial programmes and budgets. Given that policies and programmes will be analysed anyway, is such a measure relevant or appropriate?

Professor Reid: There are additional problems with the MOD because of the question of devolved and reserved matters and the extent to which any cross-border policy can be classed as reserved.

What the MOD does clearly has an environmental impact. Indeed, the relationship involving national security, the MOD, the Crown and environmental protection has been a long-running element in a wide range of environmental issues. The general trend has been towards including those matters more and more as part of the planning system, but essentially it all comes down to a political decision about where the boundary lies.

On financial exemptions, we come back to the point that the process is largely incremental. This is not going to be the final word on the role of environmental assessment. Ideally, we should reach a point at which environmental assessment legislation is not necessary at any stage, because people automatically carry out such assessments. After all, no company or authority would do anything without thinking about the economic implications of its plans, and there is no need for legislation that expressly tells them to do that. Ideally, environmental thinking should be so embedded in everyday thinking that legislation is not needed. Indeed, we could get rid of all this legislation in due course if people learned certain lessons.

The question is how far you want to push matters up the chain. Financial decisions and allocations will clearly play a huge role in moulding strategies, plans and programmes, because no authority will make plans that it knows are completely unfeasible. One could argue that, in the same way that individual projects are shaped by plans and programmes, plans and programmes are shaped by budgetary and other allocations. As a result, they should also be subject to the legislation. However, the question is whether the incremental process has reached the stage at which we can push matters. Will doing so be counterproductive? Do we have the depth of experience and expertise to do that properly now or should we think about making that the next stage?

Dr João: I agree that financial plans and budgets are crucial in determining what comes next. If there is no SEA at that level and if how things should be is imposed, when people get to the next stage, they will be constrained and their hands will be tied as far as considering alternatives is concerned—they cannot think about them because they have to take a certain approach. As soon as the alternatives that can be considered as a means of achieving objectives are determined at a higher level, people will be constrained in their innovation. They should be thinking of innovative ways of achieving the objectives of the plan, while at the same time minimising environmental impacts and maximising improvements in human health and so on. That is what an SEA should do. It is not a good idea when the alternatives are constrained because the decisions have been made earlier. It seems obvious that an SEA should be done of budgets and financial plans.

Mr Ruskell: How can the role of the MOD be captured?

Dr João: The same point applies. Why should the MOD be excluded? The activities that it undertakes will obviously have environmental implications, and perhaps those should also be
considered. The matter of defence is excluded from the SEA directive; I reckon that that is why defence has also been excluded from the bill. When the countries involved sat round the table, they could not come to an agreement, so it was easier just to decide to exclude certain areas. All the different countries that came up with the SEA directive agreed to exclude those matters, but in terms of the principle the area should be included.

Certain activities of the MOD might be included, but I am not certain which, as that is a legal matter. If land has two purposes—if it is used by the MOD and for recreational purposes—there might not be an exemption: it might be necessary to do an SEA because the land has a recreational use. However, I am not 100 per cent certain about that, so do not quote me on it.

David Tyldesley: I agree with what both Colin Reid and Elsa João have said.

I did not comment on the issue of exemptions in my written submission, because I could see that the bill reflected the directive. However, now that I am asked the question, I see no reason why there should be exemptions for the majority of what the MOD does or for any defence or civil emergency requirement. An SEA will not alter the decisions that must be taken about defence and emergency planning, but it will inform us about the environmental implications. There is no logic to excluding those matters from the bill, but such exemptions reflect the directive. There may have to be restrictions on some of the information that is available to the public in respect of some aspects of the MOD’s work that may have implications for national security. I do not have any difficulty with that, but a great deal of what is done by the MOD and other bodies that deal with civil emergencies has significant effects on the environment, so a blanket exclusion is not appropriate. It is in the public interest for those effects to be properly considered. That will not change what needs to be done, but it will inform the public about the implications of those decisions.

On finance and budgets, I confess that I do not have considerable expertise on those matters—I do not think that any of us has much experience of that area. However, that is one of the reasons why we need to monitor pre-screening carefully and why I suggested that there should be a register. We need to know if finance and budgets are being used as a reason for not taking plans, projects and strategies through the process. I agree that often finance and budgets will determine what flows out by way of, for example, a programme of capital works.

Nora Radcliffe: Perhaps my thinking on the finance and budget issue is a bit simplistic but my view is that by doing strategic assessment the assessment is being done at a level at which the strategy will inform the budget. The budget is not a separate entity; surely it is tied to a policy or strategy. We do not say, “This is the budget” and then make the policy. Surely the sensible approach is to assess the policy or strategy, rather than try to make a strategic assessment of the budget. I cannot get my head round how you would assess the budget in that way.

Professor Reid: The process is multi-layered. If you decided, for example, that Scottish Natural Heritage’s budget next year would be £1 million, your financial decision would clearly affect all the organisation’s plans, projects and strategies. However, if you said, “We won’t give any money to schools next year because we are giving all the money to SNH so that it can make the environment perfect,” your financial decision would have a huge impact on the organisation’s strategies. However, as you said, in reality the two areas feed off each other all the time. Throughout the process there is an issue, particularly for areas in which there are no formal decision-making processes and where plans and strategies have emerged from a mixture of evolving elements, with different elements coming and going. Now that there must be a more formal process in some areas, there is a degree of thinking to be done about how we integrate the formal elements with those that are less structured.

The Convener: I do not see any member who is desperate to ask a question, so I thank the witnesses not just for being prepared to answer many questions, not all of which might have been anticipated, but for the extremely useful written evidence that you supplied before the meeting, which helped us to think about the issues that we would follow up with you today. Thank you for taking the time to come and make your contribution. You are welcome to stay on in the public seats to hear what the next witnesses say.

11:21

Meeting suspended.

11:23

On resuming—

The Convener: I thank our second panel of witnesses for coming and for their written submissions, which were extremely useful to us as we thought about the issues and what we might want to ask. I welcome Councillor Alison Hay, who is the Convention of Scottish Local Authorities’ spokesperson on the environment, sustainability and community safety; John Rennison, who is the director of planning and development at Highland Council; Kathy Cameron, who is the policy manager at COSLA; and Iain Sherriff, who is the head of transportation at Dundee City Council, but
The Executive has... to the meeting and I invite members to kick off with questions.

Maureen Macmillan: I had better not ask the witnesses whether they are panicking, as a previous witness suggested.

What is your experience of SEAs under the current regulations? I note from Highland Council’s submission that just one of its departments expects to have to commence a minimum of three SEAs in the forthcoming financial year. That contrasts with the Executive’s suggestion that each local authority will have to carry out about three SEAs per year in total. Do local authorities agree with the Executive on the number of SEAs that they will have to deal with?

Councillor Alison Hay (Convention of Scottish Local Authorities): The Executive has underestimated the number of SEAs that councils will have to undertake. Like the Highlands, Argyll and Bute is a devolved area and most of our policies and programmes will have to be scrutinised. The process of scrutinising all the documents and deciding whether to proceed to a full SEA will take time and will be resource intensive. I know that Argyll and Bute Council is undertaking an SEA for its local plan, which will take us quite some time and will cost us a considerable amount of money. Different councils have different views on the number of SEAs that they will have to undertake, but Highland Council has done some detailed work in that area.

The Convener: It is my understanding that it has for many years been standard practice for some level of EIA to be done for structure plans and local plans. John Rennilson might want to comment on that. Is there, as I presume there is, such expertise in local authorities?

John Rennilson (Convention of Scottish Local Authorities): There is some expertise, especially in the planning service, but that is not necessarily true of all council departments and services. A whole range of plans, policies and strategies, including local housing strategies, renewable energy strategies and schools estate strategies will be caught by the bill. We believe that the Executive underestimates the number of SEAs that will have to be produced.

We started a Wester Ross local plan before the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 came into force and we hope that it will be adopted before 2006, so the production of an SEA was not mandatory, but we have done it. The process has been time consuming and, in sub-council areas, acquisition of relevant data has proved to be difficult. We have worked with the people who will be the consultation authorities, but they do not collect material on the basis of the geographic areas to which the council has devolved much of its organisation; they collect a wide range of environmental data on river basin areas or sites of special scientific interest, for example. That means that even when data are available, they have to be reworked. It is stretching things too far to say that we have done it all. Very few authorities would be honest enough to admit that their monitoring of material that they collect on structure and local plans is not as good as it might be. That is another area in which there will be underestimation in the Executive’s financial figures.

Councillor Hay: I want to add something about the capacity of local authorities to undertake such work. Local authorities vary in size. Some local authorities, such as Highland Council, have done the work in-house, which is fine; Highland Council has built up that knowledge in-house. Other councils that are pretty lean as far as staffing is concerned have found that they just do not have the staff to do the work in-house and have therefore had to use consultants. The ability of councils to build up expertise varies widely.

Maureen Macmillan: I wonder whether either of the other two witnesses want to respond to my question. You mentioned that there would be resource implications, but you were vague about what it takes to do such an assessment. Can you give us figures on the resource implications?

11:30

Councillor Hay: The resource implications would depend on what sort of SEA you are talking about. The costs will not just be confined to our planning department, but will be cross-departmental at strategic level across the council. Education, social work and the other big departments—transportation particularly—will all be involved. The problem that some councils experience is that it is difficult to convince departments—other than planning departments—that this will affect them. Once they have become convinced of that, we face a problem in getting staff to understand the process that they have to go through. Planners are fairly familiar with the processes, but other staff are not.

Maureen Macmillan: Will there have to be a culture change in local authorities before the change can be delivered? Will such a change be difficult to achieve?

Councillor Hay: That is what I am saying, to some extent. One of the previous speakers mentioned sustainability: councils are now particularly aware of the need to consider...
sustainability when they assess their plans and projects. We are aware that we have to consider the implications for the environment of our policies and plans and, for example, whether we will use up a resource that we should not use. However, for the rest of the council, there will have to be a culture change.

Iain Sherriff (Society of Chief Officers of Transportation in Scotland): I would like to say something in relation to transportation. I emphasise that I speak on behalf of the Society of Chief Officers of Transportation in Scotland, not on behalf of Dundee City Council. I say that because my elected-member colleague cannot reach me to hit me if I say something that is contrary to our basic statements.

Transportation is at the root of environmental issues—I say that as a transportation professional. We in transportation have been incorporating a level of environmental assessment over many years. We now have the Scottish transport appraisal guidelines and the “Design Manual for Roads and Bridges”, for example. It could be said, however, that a bit of a box-ticking approach has been taken to such issues. For example, we once resolved a noise problem when we were constructing a new road by giving people double or triple glazing. I do not think that that is the kind of solution that we would consider if we were constructing a new road today.

The essence of the bill is welcome, but there will be resource implications for transportation. I do not want to stray too far from the agenda, but as we move towards regional transport partnerships in the next 18 months to two years, many of the current responsibilities and powers of local authorities might shift to RTPs. However, as has been said, the skills base that exists in local authorities might not transfer to the RTPs. I do not mind admitting that I am panicking a bit; it might just be fear of the unknown, but an awful lot is going on in transportation. Although I welcome the bill, I am not sure that the full focus should be on the bill at this point.

Mr Ruskell: Maureen Macmillan asked about resources and about the need for a culture change. I would like to pursue those issues.

The COSLA submission talks about the need for pilot projects before the legislation is introduced. We have had the regulation for a number of months and quite a few local authorities are engaging with it and are submitting plans for SEA analysis. Does not that constitute a pilot project? Are local authorities learning from that experience?

Councillor Hay: When we spoke to the minister nearly a year ago, we suggested that there should be pilot projects. At that point, we thought that it would be wise to examine the possible problems and benefits of the proposal in a structured way. We thought that if we ran a small number of pilots—we suggested two, but three councils have offered to run them—we could work with those councils in a way that would ensure that we could examine the process, the pre-screening and the gamut of activities that the bill asks us to do. Both sides would gain experience from the process and we could have rolled out the proposal across Scotland in a more measured and structured way. We felt that that would be of benefit to us and to you.

Mr Ruskell: Are you working with the local authorities that have submitted plans under SEA?

Councillor Hay: We are working with some. Orkney is one but I cannot remember the other two.

Kathy Cameron (Convention of Scottish Local Authorities): Orkney Islands Council, West Dunbartonshire Council and West Lothian Council have offered their assistance. In some cases that assistance is through their existing work on SEAs and in some cases it is through work that is about to start on specific strategies that the councils will promote.

Mr Ruskell: How is that experience being rolled out to other local authorities?

Councillor Hay: It is not being rolled out to other authorities because the pilots have not started yet. We have had only one meeting with the Executive to discuss the matter and we are starting to move forward.

John Rennilson: The committee should be aware of how stretched the planning service already is. Planning applications in Scotland are at a record high across the board. At the moment, we are working with the 2004 regulations on delivery in relation to planning transport. Recruitment is exceedingly difficult right across the planning service. With a planning bill coming before the Parliament shortly, there is significant difficulty in meeting our requirements to fulfil the 2004 regulations without spreading that expertise across colleague services such as housing, waste, the education estate, school-catchment planning and so on. This will be a new field for such staff to consider from an environmental, rather than social or financial, point of view.

Mr Ruskell: What kind of practical assistance would you require?

John Rennilson: There are not enough planners coming out of planning schools to fill the vacant posts. There is an argument for going step by step: let us have complete competence in delivering on the requirements of the 2004 regulations and direction, and let us roll that out
stage by stage. The approach that is suggested by the bill seems to be a scattergun approach—everything will be covered and we will then look back and remove whatever is deemed to be unnecessary. That means that SEA is in danger of having to go ahead in an unsatisfactory way, and none of us wants that.

The Convener: What would you take out of the bill to encourage a more transitional approach? Previous witnesses talked about an incremental approach that starts off at a base point; we would learn from experience. If there is too much in the bill as it stands, which sections would you delete?

Councillor Hay: It is not a question of there being too much in the bill; it is about our being able to work through what is in the bill with one or two authorities in order to find out what we need to exclude or to add. Once we have been through that process, we can see where we are and we can consider rolling the legislation out while taking the necessary action to address the problems that we come up against during the pilot period.

We welcome the bill—it will add to environmental benefit. However, there is a problem with the slightly scattergun approach, as John Rennilson said. If we could concentrate on a couple or three councils for a time and allow them to work through the bill, that would make life easier for everyone concerned. The minister certainly seemed to be enthusiastic about that when we suggested it to him.

The Convener: Can you clarify what you mean? Should we consider the experience of three authorities, say, but not implement the rest of the bill—

Councillor Hay: We should work through the bill with two or three authorities and tease out what might be problems for them, in conjunction with the consulting authorities.

The Convener: Would you therefore put the bill on ice for one or two years?

Councillor Hay: We cannot put the bill on ice; we are where we are. That said, we have been making the point to the minister for the best part of a year and a half to two years that there needs to be some structure to the bill and that local authorities need to know where they are going. If the minister wants to get the best out of local authorities and the public sector, we will all have to work through the process bit by bit. We have to consider what local authorities need by way of training, resources and so forth.

Karen Gillon (Clydesdale) (Lab): I suppose that the follow-up question to that is this: if you have been working through this with the minister for a year and a half, why have you not been considering those matters?

Councillor Hay: What do you mean?

Karen Gillon: If you have, with the minister, been working through the content of the bill and where you think the bill should go, and given that you knew the bill was coming, why has work on training needs and gaps not been done by now?

Councillor Hay: We met the minister a year and a half ago, when we offered the pilots, but we have not got much further forward.

Although councils offered themselves for the pilots—as my colleague Kathy Cameron said—we managed to get only one meeting with Executive staff. That was it. We are doing our best to co-operate. It is not an us and them situation; the local authorities are willing to co-operate with everyone. We can see the benefits and we want to try to make the process work, but we can work only with people who are willing to work with us and who want to progress matters fairly swiftly. However, swiftness has not been at the top of the Executive’s priority list.

Karen Gillon: To be honest, if you offered the pilots to the Executive a year and a half ago and, as you said earlier, you are enthusiastic about SEAs, surely it is slightly contradictory that we do not have the pilots by now?

Councillor Hay: It is not contradictory; that is how long such things take.

Karen Gillon: If the Executive wanted to go for the pilots, surely it would have included them in the bill? Surely the Executive would have written into the bill that there would be a pilot for a year and that that would be followed by different implementation dates for the other authorities?

Councillor Hay: The pilots are written into the documents.

Karen Gillon: I am not saying that COSLA is not talking about the pilots. However, if the minister had been enthusiastic about them, surely the pilots would have been part of the process that he put in place?

Councillor Hay: The pilots are part of the process.

Kathy Cameron: The pilots are referred to in the explanatory notes. Our difficulty was in engaging with staff in the Executive to initiate discussions on them.

Karen Gillon: Perhaps we can clarify with the Executive where it is with those discussions and whether the pilots form part of the minister’s plans.

The Convener: We have had the best part of a year’s practical experience of the regulations. Has COSLA undertaken any monitoring of its members in respect of the impact of the regulations on different local authorities? Is not the basis of our
new expertise the fact that local authorities have been undertaking the process for a year?

**Councillor Hay:** I might be speaking out of turn, but local authorities have been doing that for the past year only as far as the planning authorities are concerned. The bill is meant to have a great impact not only on the planning process but on other parts of council policies and strategies, but that has not been happening.

**John Rennilson:** It is also fair to say that, in the absence of a response from the minister, other environmental legislation has appeared in the intervening period. I am thinking of natural heritage legislation and the access provisions of the Land Reform (Scotland) Act 2003, both of which have placed on local authorities new duties that relate to environmental issues. New duties are coming into effect on the preparation of core path network plans and so forth, and we have also had to keep our eye on this statutory ball. While this bill doesn’t really matter.

**Karen Gillon:** On education, most authorities have embarked on a fairly radical programme—at least, such is the case in the local authority area that I represent—of school building. Has environmental assessment taken place as part of that process? If so, could it not be assessed as part of this process or have people just said, “It doesn’t really matter.”

**Kathy Cameron:** We have received no reports of any such exercise.

**The Convener:** That does not mean that it has not happened; only that it has not been reported to COSLA.

11:45

**Rob Gibson:** We discussed with the previous panel how sustainable development as a concept from Government feeds into strategic environmental assessment processes. Highland Council is concerned that an opportunity has been missed because the bill fails to take socioeconomic factors into account in environmental reports. I presume that you would be more at ease if the Government had done more work on SEA policy before you were presented with work about which you complain that you do not have the staff to deal with. Will you expand on your idea that sustainable development, which is becoming a cornerstone of public sector policies and planning, is only a part of the process? If SEA is a catalyst for the process, should it be properly funded from the top and its impact on councils properly estimated?

**John Rennilson:** There is an argument for the social element to be better specified. To put the matter in a planning context, the environmental considerations suggest that we should cut car travel and that we concentrate population and communities but, in a place such as Wester Ross, the counterargument to that is that we want to keep smaller communities alive. To do so, we need housing and we need to keep small schools, but that might involve greater travel. There is a conflict between the two objectives. If we were to take environmental considerations in isolation, we would concentrate as much of the population as possible in larger communities, which would be cost effective. There is a dichotomy in that situation, and we face that dichotomy in responses from the Scottish Executive: its planning division tells us one thing in “Scottish Planning Policy 15: Planning for Rural Development”, but the response on individual planning applications and environmental impact assessments that accompany planning applications for roads is different and seeks concentration. That tension will not be resolved simply by introducing an SEA into the policy, because it needs to take account of the social dimension and overall sustainability.

**Iain Sherriff:** Yesterday, I was at a meeting in London on future technologies in transportation. Like all transportation professionals, I get excited about the thought of new urban traffic-control systems. The discussion at that meeting kept coming back to the environment, carbon emissions and how to stop them. One speaker got an extremely hard time—which was a shame—because he used the phrase “a sustainable car journey” because the vehicle to which he was referring did something like 82 miles per gallon. Two or three years ago, nobody would have picked him up on that, but transportation professionals are now picking people up on such comments.

Land use is critical. The transportation agenda is about protecting the environment. The strategy must come from the highest level to start with and the guidelines have to be clear about priorities. The message that came from my meeting yesterday is that we do not have time to wait for improvements in the environment; we need to take strategic decisions that protect the environment now.

**The Convener:** That, I presume, is what the bill is about.

**Iain Sherriff:** SCOTS fully supports the bill. I agree with my colleagues from COSLA to an extent but, in transportation, we start from a different level because, by default, environmental considerations are embedded in the process, although not in the structured way in which they are in the bill. In some areas, SEA is embedded and understood; in other areas, there will be nervousness, because it is not only about
transportation or land-use planning, but about education, housing and joining everything up. That is where the problems arise. One of the earlier speakers said that they hoped that such legislation would not be required in 10 years because SEA would be a natural process that people would go through. That was a profound comment.

Rob Gibson: You say that different documents suggest contradictory aims and approaches—John Rennilson spoke about SPP15 and the roads issue. Has COSLA raised such concerns in its discussions with the Executive?

Councillor Hay: Time and again.

Rob Gibson: What has the response been?

Councillor Hay: We keep hearing, “Yes, we understand.”

We keep saying that we would like policies to be joined up and under one umbrella, so that we know where we are. As it is, the policies keep coming at us from all directions. I do not know how many times we have mentioned to the minister that it would be nice if environmental legislation could be wrapped together, so that we know from guidance and criteria exactly what is expected of us. The minister is sympathetic, but here we are.

Rob Gibson: This is a period of development for environmental legislation, so there could not be a definitive statement at the moment. We all live with that.

Councillor Hay: Yes.

Rob Gibson: However, you know of specific examples of the Government making things very difficult by being contradictory in what it is asking you to do.

Councillor Hay: Yes.

Kathy Cameron: I would like to reinforce what John Rennilson said. The driving force behind the current review of planning legislation is to make the process faster, thus satisfying the public’s need for applications to be dealt with quickly, notwithstanding any other considerations. However, there is a potential—I emphasise that it is only a potential—for the review to contradict the need to speed up the process. That has to be acknowledged.

Mr Ruskell: I want to ask Iain Sherriff whether the Scottish transport appraisal guidance is somehow at odds with SEA. Is more guidance needed?

Iain Sherriff: Not particularly. Assumed weightings tend to be used. I am from an engineering background and I always like two and two to make four. It should be as simple as that, but once we get into the abstract territory of using weightings, we have to consider different effects.

For example, is it worth having an impact on the environment just to allow someone’s journey time to their work or leisure to be two or three minutes less? A lot of value judgments have to be made.

Such matters are political. In my authority area, if we had a possible inward investment of 1,000 jobs that would cause an environmental impact because of increased congestion, increased journey times and, as a result, increased use of fossil fuels, I know what the politicians would say. They would say, “Take the 1,000 jobs.”

Political decisions have to be made. As professionals, we can provide information, but this is the kind of area where you guys have to make the hard decisions.

Mr Ruskell: So you believe that clear weightings should be established through the STAG process, so that if trade-offs are required, we can make the right decisions. Ideally, however, we should be looking for win-wins.

Iain Sherriff: Win-wins are obviously utopia. That is what we all want. Articulating the guidelines would be a very difficult political process. An example would be the Edinburgh congestion charge. I am not calling Edinburgh people turkeys, but turkeys were not going to vote for Christmas, were they? The effects have to be quantified and articulated, but the decisions thereafter have to be political.

The Convener: I want to ask about the SEA gateway, which is the process round which the bill hinges. How useful will the gateway be to you, in terms of guidance, training and the overall implementation of the bill’s provisions?

Councillor Hay: I have agreed with some of what previous speakers have said. The gateway could give local authorities a lot of support. It is always helpful to have a single point of contact. The dissemination of good practice is vital, because we tend to live in little shells. We talk to one another quite a lot, but when it comes to the nitty-gritty of policies, it would be useful to exchange information and find out what others are doing because that might help us to improve what we do. The previous panel talked about quality and monitoring, and I think that that would be a good role for the gateway—that would be helpful to both councils and other public authorities that have to do SEA. The previous panel also mentioned auditing, but I have a slightly different view of the auditing process. All councils are subject to a best-value process, and I think that SEA should perhaps be subject to such a process too, but that is a matter for discussion.

Nora Radcliffe: To me, the issue that stood out from your submissions was the staff implications. Someone mentioned capacity building. Setting aside all the practicalities, will you comment on the
desirability of doing the work in-house rather than putting it out to consultants? What is the value of embedding it rather than handing it over?

Councillor Hay: In an ideal world, we would want to do the work in-house. I agree that we want to build up in-house capacity. As Kathy Cameron said, it needs to become part of what we do without even thinking about it, and that will happen only if we can build up staff to do the work in-house. However—and it is a big however—councils vary in size, they cover different geographical areas and they have different staffing levels. To be slightly parochial for a moment, my council is pretty tight as far as staffing is concerned and we have had to go out to consultancies. That is useful in itself, because they are experts in their field and they can provide the support that our staff need. They can teach our staff and give them an insight into how our staff should be doing SEA. Ideally, we would like it to be done in-house, but sometimes that is not possible because of the nature of councils, so consultants have a role to play.

John Rennilson: We try to keep SEA in-house wherever possible so that we develop our staff. For some time, we have had a sustainable development officers group, which is trying to drive forward the council’s overall sustainability agenda.

Kathy Cameron: That position is reflected in the views that we have had from individual authorities. In managing the resources that they have, they would prefer to operate SEA in-house, but given the lack of experience in departments other than planning and development, they may be forced to go outside. However, I hope, and they hope, that they will eventually achieve their own expertise so that they can manage the process in-house.

Iain Sherriff: SCOTS agrees with that. You will recall that in my written evidence I gave an example of what Dundee City Council is doing to try to embed the process. Earlier, the committee heard about culture change, and it is only by engaging and developing our own staff and addressing their training needs that we can get that culture change so that it is instinctive for staff to think environmentally as well as financially, technically and professionally.

Mr Ruskell: We talked about the cost of implementing SEA. I presume that in the long run money can be saved. For example, if you make the correct decisions to reduce congestion, that will save you money and improve health. What cost savings will you make from SEA? Do you believe that they could be substantial?

Kathy Cameron: Analysis will be done of that, but it cannot be done until we have a clearer idea of what action has to be taken by authorities, and the jury is still out on that. Until we get that information, it will be difficult to identify the longer-term savings that can be made. I agree that, in principle, that should be possible. However—we have been making this point for some time—it is difficult from a standing start for those departments and services other than development and planning to have an idea of what actions they will have to take, what impact that will have on strategies and programmes and, as you have said, what the longer-term savings might be.

12:00

Mr Ruskell: You will not know that until councils start to implement SEA. Each council is different, and it would be difficult for you to take one example of a pilot project and say that it applied to another council. You are not really going to know what the savings are until you bite the bullet and start implementing the bill at a local level.

Kathy Cameron indicated agreement.

Councillor Hay: I would not use the phrase “bite the bullet”. As I keep repeating, we are happy to enter into this process and we have already started to do that. However, until we are further down the line and have a few years under our belts, we will be unable to measure definitively how much we are saving. We are signed up to the policy—there is no doubt about that. We just need to think out how we do it properly.

Iain Sherriff: The term “savings” is being used in a financial sense, but everybody in the transportation profession knows that we cannot afford not to have full environmental assessments and costs taken into account when we are doing things. It is not a saving; we cannot afford not to be doing things.

The Convener: That is a good point on which to finish. In the context of the committee’s climate change inquiry, which we are pursuing with our other hats on, we know about the target to reduce carbon emissions by 60 per cent by 2050. At some point, that will have to start to be addressed, and I presume that the bill provides a framework for that. I thank you for giving your evidence this morning.

A range of issues has been raised. Those include the benefits of the bill; the nature of the SEA gateway and the support that it may provide for implementing authorities; the issue of resources, which we will have to tease out with other witnesses and the minister; issues of transparency and the extent to which the proposals can lead to better decision making; and the relationship between SEA and sustainable development. There was a bit of a discussion on exemptions, to which we will want to return, and a fundamental question was raised at the end of COSLA’s evidence about where we want to go in
terms of the aspirations of the bill and concerns about its deliverability in practice.

There are two issues on which it would be useful to get some follow-up information. The first is the question of pilot work and the gathering of existing expertise, which COSLA raised. The second is the need to tease out a bit more on the planning authorities recruitment question, as that particular burden may have been exacerbated by the introduction of regulations last year. It would be useful for us to have more information on that as we go forward.

I thank all our witnesses for the evidence that they have given this morning and for the written papers that they submitted in advance of the meeting, which have been extremely useful.

12:02

Meeting suspended.
SUPPLEMENTARY WRITTEN EVIDENCE FROM PROFESSOR COLIN T REID

Thank you for the opportunity to contribute to your consideration of the Environmental Assessment (Scotland) Bill. I foresee some interesting discussions on points of principle and detail, but also an encouraging willingness to grapple to with these.

Following this morning's session, I would like to make six brief points:

1. It must be emphasised to those critical of the assessment process that the environmental assessment does not detract from the final political decision-making about what is the most appropriate decision to take. It is about inputs to the decision-making process, not outputs and serves to ensure that environmental considerations are not overlooked, not that they must dominate.

2. We are in the middle of the evolution of environmental assessment processes, which are growing from a limited and voluntary beginning to a wider and mandatory status and moving towards the ultimate situation where no legal rules are necessary because it is unthinkable that the environmental aspects of any decisions would be overlooked. This Bill marks another step in that evolution, not necessarily the final word.

3. It is inevitable that the Bill will not be perfect and will need fine tuning later on to ensure that all of the important plans are covered, that no unnecessary work or duplication is taking place, and that the procedures do actually work well in practice. Whether or not enshrined in the law, the Executive should be pressed for a commitment to review what happens in practice and to make the necessary adjustments.

4. In the early part of our discussions there was a risk of confusion as the same terms can be used for different things. There is a need to distinguish between monitoring of the implementation of specific plans (as required by s.19), audit of the quality of assessments and monitoring of the overall compliance with and impact of law.

5. In relation to the specific point made in para.5 of David Tyldesley's written evidence, the European Court of Justice has decided in the context of the Habitats Directive that only where the authority has made certain (i.e. no reasonable scientific doubt remains) that there will be no adverse effects can it proceed on the basis that no such effects are "likely" (Landelijke Vereniging tot Behoud van de Waddenzee & Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij (C-127/02) ECJ 7 Sept. 2004).

6. In relation to the final question asked of the COSLA representatives, exploring the long-term savings that will arise from better plans that no longer create environmental problems, a difficulty in asking anyone to quantify this is that often the benefits are felt not by the authority responsible for the plan but by others - the local authority bears the cost of the environmental assessment to produce better transport plans that result in fewer cases of asthma caused by traffic-pollution, but it is the NHS and employers that see the financial benefit in a healthier population and workforce.

Thank you again for the opportunity to participate in a stimulating morning's discussion and best wishes for the rest of your consideration of the Bill.

SUPPLEMENTARY WRITTEN EVIDENCE FROM DR ELSA JOAO

SEA Training Courses that have been provided between October 2003 and May 2005 by the Graduate School of Environmental Studies (University of Strathclyde, Glasgow) – this shows that many people have already been trained in SEA, including students graduating with a planning degree.
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**Total people trained to date** 212

**Confirmed Future Courses**

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<td>Applied Strategic Environmental Assessment</td>
<td>Compulsory module of the MSc in Environmental Studies (GSES, Univ of Strathclyde)</td>
<td>Oct-Dec 2005</td>
<td>30 (estimate)</td>
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(1) Because SEA has become so crucial, the SEA module became a compulsory element of the MSc in Environmental Studies degree on the session 2004/2005.

(2) These 212 people were from 51 different organisations from the UK and Ireland. Staff from the following Scottish Local Authorities have received training from GSES: Clackmannanshire Council, East Ayrshire Council, Falkirk Council, Fife Council, Glasgow City Council, Highland Council, Midlothian Council, North Ayrshire Council, Perth and Kinross Council, Renfrewshire Council, South Lanarkshire Council, Stirling Council, Western Isles Council.
27 April (12th Meeting, Session 2 (2005))

SUBMISSION FROM RSPB SCOTLAND

RSPB Scotland
The RSPB in Scotland is supported by some 73,000 members and employs 160 staff to promote the conservation of birds and biodiversity throughout the countryside and seascape. We have practical experience of managing land and coast for conservation, farming, forestry, tourism and other enterprises. We undertake biological and economic research to underpin our policy analysis and advocacy. We also have experience of environmental education and training for all ages. RSPB Scotland is the BirdLife International partner in Scotland.

We have wide-ranging practical experience of undertaking Strategic Environmental Assessment and have been involved with the progress of the Directive since it was originally proposed.

Introduction
RSPB Scotland welcomes the introduction of this as a very real and tangible mechanism whereby the public sector in Scotland can avoid creating long-term, expensive, environmental problems through poorly informed policy making. We commend the Executive for recognising that the SEA Directive provides a useful tool, which can be applied more widely. The successful implementation of this legislation, taking on board our comments below, will, we believe, mark a significant step towards putting the environment at the heart of government in Scotland.

We note that the explanatory note accompanying the bill specifically recognises that the bill is likely to reduce the likelihood of expense and unexpected environmental mistakes. For example, our estimated cost of restoring the damaged blanket peatlands of the Flow country by the felling of commercial forestry plantations amounts to over £41 million, excluding land acquisition costs (see Section 13 for further details). Given that this was the result of activities in only one policy area the potential costs savings are enormous. Other potential areas where the costs of well-intentioned but ultimately environmentally costly plans, programmes or strategies could include areas of flooding or the relocation/removal of aquaculture installations.

Summary of Recommendations
A. That the Committee recommend the creation of an independent SEA body in line with the priority activities listed in the Strathclyde University Report.
B. As a minimum, the SEA Gateway should be established in legislation identifying they key activities it will be required to undertake.
C. We recommend that the pre-screening process be amalgamated into the screening process thereby removing the need to define or use the term ‘minimal effect’.
D. That the phrases ‘adopted’ and ‘submitted to a legislative procedure’ be amended to include the phrase ‘acted upon’ to cover those plans, programmes and strategies which are never formally adopted or submitted to a legislative procedure.
E. That the committee consider whether a level-playing field should be provided for all bodies undertaking public functions.
F. That s. 3 be amended to extend the list of consultation authorities to include an appropriate body with expertise on health issues and that greater flexibility be provided to either the SEA Gateway or an independent SEA body to identify appropriate consultation bodies as is necessary.
G. That s.4(3)(b) be amended to remove the exclusion currently applied to financial or budgetary plans and programmes.
H. That the pre-screening requirements in s.7 be deleted.
I. In the event that pre-screening is retained we recommend that the pre-screening process be made transparent and accountable by the requirement to publish screening decisions (potentially on the SEA register) and offer the opportunity for challenge to these decisions.
J. Where responsible authorities and consultation authorities fail to agree on whether a plan, programme or strategy is likely to have a significant environmental effect a timescale for determination should be set for Scottish Ministers.

K. That an enhanced version of the SEA Gateway, or an independent SEA body be given the power to arbitrate in the case of disputes. This is particularly important in cases where Scottish Ministers are a party to such a dispute.

L. That the committee seek reassurance from the Executive that supporting guidance will make specific reference to the inter-relationship with the requirements of the Habitats and Birds Directives in order to ensure a practical approach to these dual obligations.

M. That consultation authorities routinely advise all other consultation bodies of the screening, scoping and consultation responses they issue.

N. That the committee consider an appropriate mechanism to enable modification of consultation periods determined by Scottish Ministers acting as responsible authorities, for example by the SEA Gateway or an independent SEA body.

O. That the committee consider how responsible authorities may be more clearly directed in legislation with regard to weight and consideration to be given to environmental reports and consultation responses in order that they are not left vulnerable to legal challenge.

P. That the committee consider how effective monitoring can be delivered in order to ensure that lessons can be learned from past mistakes and remedial action put in place as quickly as possible.

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

Administration of the SEA system

From the summary of consultation responses issued by the Executive in February 2005 it is clear that the mechanism preferred by the Executive for administering the SEA system is through a Gateway in the Executive underpinned by principles which will ensure the effective utilisation of expertise and sound communication with Consultation Authorities. However, the precise role of the Gateway remains unclear. The Bill Consultation document from September 2004 states that the Gateway will:

- Offer guidance on SEA to those preparing plans;
- Receive and record plans submitted;
- Distribute plans to the consultation bodies;
- Receive the views of the consultation bodies and communicate these to the responsible authority;
- Ensure that deadlines are met; and
- Collect management information and statistics on the operation of SEA.

Best Value

The success or failure of the SEA process in Scotland will largely stand or fall by the system which underpins it. Experience from Environmental Impact Assessment (EIA) processes has shown that EIAs are hugely variable in quality and reliability. Inevitably, individual EIAs, produced primarily by private developers, also result in significant duplication of effort, limited data sharing and poor post construction verification.

The SEA bill applies to the public sector where such a failure to adopt best value approaches which are cost effective and consistent across all sectors will not be acceptable.

An independent body to oversee SEA

As a member body of the SEA Task Force for Scottish Environment LINK, we commissioned a report form the University of Strathclyde to consider the issues surrounding the creation of an independent body for SEA. This report has previously been circulated to the committee and is available from the LINK website (www.scotlink.org).
From this research it is clear that if Scottish Ministers are to achieve their stated goal of making Scotland a world leader in SEA, and if the system is to operate as effectively as possible there are four key functions which must be considered, namely:

- **The creation and management of a publicly available internet based SEA register** which is capable of being searched, which provides copies of relevant reports, scoping and screening decisions, public notices and the results of any monitoring work.
- **A central access point providing guidance and advice** in order to ensure consistency and avoid duplication.
- **A body to act as an arbiter in case of dispute.**
- **A body to audit the quality of environmental reporting and implementation of SEA.**

The SEA Gateway, as currently proposed will be in receipt of a number of screening and scoping opinions, environmental reports and the plans, programmes and strategies to which they relate but this does not appear to apply to public notices, ministerial directions or any monitoring work, nor is there an obvious requirement to make these documents publicly available via a web-based register. The obligation to place these documents on the various websites operated by responsible authorities is a welcome first step but will not encourage cross-sectoral co-operation or aid the identification of cumulative impacts. **Critically the roles, function and future of the SEA Gateway are not fixed in legislation; there is therefore no guarantee that even those critical functions, which the Gateway does currently undertake, will be maintained.**

From the four key functions listed it would appear that the Gateway will be responsible for recording plans submitted but not necessarily in a format or location which can be accessed by the public. In terms of advice and guidance we understand that each of the Responsible Authorities are currently undertaking their own individual training and development work for SEA which is not necessarily being co-ordinated or run in conjunction with the SEA Gateway. The Gateway will have no arbitration role in the event of disputes nor will it undertake any monitoring or quality control. An independent SEA body need not duplicate the expertise of consultation authorities but instead more effectively co-ordinate and support the work they will continue to undertake.

**Recommendations:**

A. That the Committee recommend the creation of an independent SEA body in line with the priority activities listed in the Strathclyde University Report.

B. As a minimum the SEA Gateway should be established in legislation identifying the key activities it will be required to undertake.

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

**1. Definitions and Scope**

We note that the term ‘strategies’ has been included in the legislation and we warmly welcome this. In general, the legislation is very definition ‘light’ and we are concerned that a number of the terms used will prove critical to the effective implementation of the legislation.

In particular, we are concerned at the use of:

s.7(1)(b) ‘minimal effect’ – we are not aware of any legislation where this concept has been used before and are concerned that it is open to a great deal of misinterpretation. Given that ascertaining whether something is of minimal significance is a core part of the ‘pre-screening’ exercise undertaken without publicity or consultation this is particularly worrying;

S.5(1)(a) ‘first formal preparatory act’ – this term is critical to understanding whether a plan, programme or strategy is covered by the legislation. Would this include the first public announcement of the intention to produce a plan, programme or strategy, or would it require a formal decision to have been taken? Inevitably, this will become less of an issue as time elapses.

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

We recognise that it is clearly difficult to establish meaningful definitions for some of these phrases, in particular the issue of minimal effect.
Recommendations

C. We recommend that the pre-screening process be amalgamated into the screening process thereby removing the need to define or use the term 'minimal effect'.

D. That the phrases 'adopted' and 'submitted to a legislative procedure' be amended to include the phrase 'acted upon' to cover those plans, programmes and strategies which are never formally adopted or submitted to a legislative procedure.

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

We believe that it is the Executive's policy intention is to exclude plans, programmes and strategies produced by private companies undertaking public functions unless they are required to do so by the Directive.

Sections 2(1) and 2(4) of the draft bill sets out two definitions of responsible authorities, the first is welcome and very broad, the second is narrower and seeks to specifically exclude private bodies undertaking public functions. Section 5(4) then appears to ensure that private companies producing plans, programmes or strategies which are not covered by the mandatory requirements of the Directive are exempt from SEA.

The extent to which private companies will ever be subject to the mandatory elements of the Directive depends on the plan, programme or strategy fulfilling all the requirements of the legislation, i.e. is it required by legislative, regulatory or administrative provisions, does it apply to one of the identified sectors (e.g. energy, tourism etc) and finally does it 'set the framework for development consent of projects listed in schedule 1'? We believe that this final test will mean that very few plans, programmes and strategies produced by private bodies regarding their public functions will ever be subject to SEA. While this test could obviously be interpreted either narrowly or widely the extent to which private companies will ever produce documents which 'set the framework for development consents', thereby making SEA a mandatory requirement, is doubtful. For example, many of plans, programmes and strategies Scottish Water currently produces are likely to be subject to SEA under the bill, were it to be privatised it is unlikely that this obligation would continue.

Assuming this is correct then the draft bill excludes most plans, programmes and strategies produced by private companies even if those plans, programmes or strategies were about issues of a public character.

Recommendation:

E. That the committee consider whether a level-playing field should be provided for all bodies undertaking public functions.

3. Consultation bodies

Section 3 of the bill identifies three Consultation Authorities. We recognise that each of these bodies have a specific remit and scope of expertise, but this is not comprehensive. In particular, Schedule 3 requires environmental reports to look at the likely significant effects on the environment including 'human health' which clearly does not fall within the remit of any of the named consultation bodies.

Recommendation

F. That s. 3 be amended to extended the list of consultation authorities to include an appropriate body with expertise on health issues and that greater flexibility be provided to either the SEA Gateway or an independent SEA body to identify appropriate consultation bodies as is necessary.

4. Exclusions s.4

We agree that it is appropriate to exclude plans, programmes or strategies which relate to individual schools. However, we remain concerned about the exclusion of financial or budgetary plans or programmes (s.4(3)(b)). Given that the Executive has clearly decided to extend the scope of this legislation beyond the requirements of the Directive it is unclear why financial or budgetary plans, programmes or strategies should remain excluded from SEA. The allocation of resources
between sectors can have critical environmental implications and should be subject to the same screening provisions as other plans, programmes and strategies.

Recommendation:

G. That s.4(3)(b) be amended to remove the exclusion currently applied to financial or budgetary plans and programmes.

5. Pre-screening s.7

The bill introduces pre-screening for ‘non-mandatory’ plans, programmes and strategies. There is no requirement to publicise pre-screening decisions, nor is there an opportunity to challenge these decisions.

While this may be an attempt to reduce the potential administrative burden it could have two unanticipated results. Either, Responsible Authorities will submit their plans, programmes and strategies to the Consultation Bodies regardless of their pre-screening decision in order to feel secure about the decision reached and thereby not addressing the administrative burden, or third parties will seek to challenge a system with no transparency or accountability. We believe it has the unfortunate potential to undermine confidence in the process and is neither open nor transparent decision-making. It is hardly designed to give confidence to external observers, or those seeking to use the process.

We are not convinced that all public bodies will have the capacity to make sound pre-screening decisions. We welcome the fact that this legislation seeks to bring an understanding of the environmental consequences of policy making to those areas of the Scottish Administration, which may not previously have appreciated the environmental impact they may have. Consequently they may not be in a position to adequately assess whether their plan, programme or strategy is of no or minimal significance to the environment.

We do not support the introduction of pre-screening but if it is to remain part of the administrative process, it must be done in an open and accountable manner and be subject to challenge.

Recommendation:

H. That the pre-screening requirements in s.7 be deleted.
I. In the event that pre-screening is retained we recommend that the pre-screening process be made transparent and accountable by the requirement to publish screening decisions (potentially on the SEA register) and offer the opportunity for challenge to these decisions.

6. Screening s. 9

The bill indicates no time limit for Scottish Ministers seeking to determine whether an SEA is required in the event that responsible authorities and consultation authorities fail to reach a decision (s.9(6))

Recommendation

J. Where responsible authorities and consultation authorities fail to agree on whether a plan, programme or strategy is likely to have a significant environmental effect a timescale for determination should be set for Scottish Ministers.
K. That an enhanced version of the SEA Gateway, or an independent SEA body be given the power to arbitrate in the case of disputes. This is particularly important in cases where Scottish Ministers are a party to such a dispute

7. Relationship with Community law requirements s.13

We note from the summary of consultation responses that the Executive is considering whether guidance on the relationship between Appropriate Assessments under the Habitats and Birds Directives and SEA would be useful. We welcome this and seek reassurance that guidance will be forthcoming.

Recommendation:

L. That the committee seek reassurance from the Executive that supporting guidance will make specific reference to the inter-relationship with the requirements of the
Habitats and Birds Directives in order to ensure a practical approach to these dual obligations.

PART 2 – ENVIRONMENTAL REPORTS AND CONSULTATION

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

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

Recommendation
M. That consultation authorities routinely advise all other consultation bodies of the screening, scoping and consultation responses they issue.
N. That the committee consider an appropriate mechanism to enable modification of consultation periods determined by Scottish Ministers acting as responsible authorities, for example by the SEA Gateway or an independent SEA body.

9. Consultation s.16
We welcome the fact that responsible authorities are required to place a copy of the relevant documents on their own websites but believe that such information should also be stored and available from a central point.

See recommendation relating to SEA Gateway functions.

10. Account to be taken of environmental report etc. s. 17
We welcome the fact that in the preparation of a qualifying plan or programme the responsible authority shall ‘take account of’ the environmental report and the opinions expressed during the consultation period. However, we are concerned that the duty to ‘take account of’ could be taken at a very superficial level.

Recommendation
O. That the committee consider how responsible authorities may be more clearly directed in legislation with regard to the weight and consideration to be given to environmental reports and consultation responses in order that they are not left vulnerable to legal challenge.

PART 3 – POST ADOPTION PROCEDURES

11. Monitoring s.19
Effective monitoring will be a critical quality control mechanism for all plans, programmes and strategies. The draft bill requires it to be carried out and for responsible authorities to take remedial action.

Recommendation
P. That the committee consider how effective monitoring can be delivered in order to ensure that lessons can be learned from past mistakes and remedial action put in place as quickly as possible.

12. Schedule 2: Screening Criteria for Environmental Assessments
Schedule 2 provides no reference to the implications of a plan, programme or strategy for national environmental goals and targets, for example renewable targets, emissions targets etc.
**Recommendation**

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

**Costs**

13. In the accompanying explanatory notes the Executive have indicated that the estimated potential costs to responsible authorities is between £7,135,000-£12,451,000 (+/-25%). Looking at the figures available this breaks down to between £103, 562 - £171, 875 per local authority. It is not possible to further break down the individual costs for other responsible authorities as figures for the number of authorities included are not available.

In terms of the costs saved the explanatory note indicates (para 93) that it is anticipated that SEA will minimise the costly remedial work that can arise from environmental problems being recognised too late in the planning process. For the benefit of the committee we have undertaken an estimation of the costs involved in addressing the environmental impacts of the economic and forestry policies which resulted in 67,000ha of the Flow country being planted with commercial forestry.

The figures below give a conservative estimate of the financial cost of rectifying these policies by felling commercial plantations and blocking drains, based on expenditure at RSPB Scotland’s Forsinard Reserve. From these statistics, it is clear that to completely rectify the environmental damage caused by commercial forestry would cost approximately £41,647, 200. This figure does not include land acquisition costs and is likely to double within the next five years as trees increase in size and the cost of removal escalates. Clearly, this is only one area of environmental damage, from a single policy sector.

| Estimated costs of addressing environmental damage of Plantation Forestry in the Flow Country |
|------------------------------------|---------------------------------------------------|
| Felling                            | £550 per hectare                                  |
| Drainage                           | £30 per hectare                                   |
| Regeneration control               | £80 per hectare                                   |
| Fencing work                       | £37 per hectare                                   |
| Staff costs                        | £80 per hectare                                   |
| TOTAL per hectare                  | £777 per hectare excluding land purchase          |
| TOTAL FOR THE FLOWS (53,600 ha)    | £41,647,200                                       |

This also excludes any initial costs of implementing and supporting the policy which resulted in these plantations in the past. These costs are likely to double in the next 5 years as trees mature and associated removal costs escalate.

* 67,000ha of the Flows were planted, at RSPB Forsinard Reserve between 80-90% of the trees are in areas damaging to peatland habitats. A conservative 80% average has been applied to the total area of the Flows to assume 53,600 ha of the plantations are in areas damaging to peatland.

**SUBMISSION FROM FRIENDS OF THE EARTH SCOTLAND**

Friends of the Earth Scotland welcomes the opportunity to give evidence to the Environment and Rural Development Committee on the Environmental Assessment (Scotland) Bill. We are fully supportive of the implementation of Strategic Environmental Assessment (SEA) and welcome the proposals to extend implementation in Scotland beyond the requirements of the European Directive to include strategies through primary legislation. We believe that it can make a significant contribution towards delivering sustainable development and environmental justice and also that the robust implementation of SEA offers the potential to avoid the potential financial burden of tackling environmental damage which results from inadequately considered policy decisions on a
Environmental and Rural Development Committee, 9th Report, 2005 (Session 2) - ANNEX D

Summary

• SEA has a critical role to play in delivering sustainable development and environmental justice.

• The Bill should make provisions for the establishment of an independent, arms-length SEA co-ordinating and administrative body to ensure impartial and efficient implementation of SEA.

• We are concerned at the inclusion of a pre-screening opt-out clause in the Bill which enables responsible authorities who deem that a proposal would have either 'no' or 'minimal' significant environmental impact to avoid undertaking an SEA. We believe that this weakness in the Bill is further compounded by the lack of:
  i) a requirement to publicise the decision itself and the reasons for it
  ii) an opportunity for the decision to be challenged (other than through judicial review or at the discretion of Ministers)

This process would therefore compromise the Government's commitment that SEA should improve Scotland's environment, achieve better policy making and a more open government process. The Section 7 pre-screening component should therefore be removed and thus all eligible plans, programmes and strategies would be subject to the screening process outlined in Section 8 and the accompanying Section 10 requirements on publicity.

• The Bill should make provisions 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 the best placed to provide the information to adequately consider the impacts as listed in Schedule 3 (e.g. 'population' or 'health'). Section 3 should therefore be amended to enable this.

• Implemented robustly SEA should ensure that the environmental implications of a proposal and potential alternatives are not only fully considered but should the impact be deemed incompatible with European, Member State, National or local environment objectives and targets, proposals should be rejected or amended. This implies that changes in the Bill are necessary to require SEA to be used in this manner, including:

  Incorporation into Schedule 2 and 3 a requirement to consider the impacts of a proposal on national environmental commitments and targets.

  Section 14 (3) should be amended to ensure that the lack of data does not constitute an easy opt-out for inclusion in an SEA. Instead the assessment process should require that data be obtained if necessary to evaluate the full environmental impact of a proposal.

  Where there are weaknesses or an absence of data with which to judge the extent to which a proposal will have a significant environmental impact the environmental assessment report should highlight these and precautionary principle should underpin decision making process.

• Section 4 (3) b should be removed to enable financial and budgetary plans to be included.

• Sections 2 (4) and 5 (4) should be amended to ensure that private companies undertaking public functions are subject to the SEA process.

• Include a requirement in Section 19 to require the responsible authority to report unforeseen environmental effects during implementation of a qualifying plan or programme to the consultation bodies, public and SEA co-ordinating body.
1) Administration of Strategic Environmental Assessment:
Friends of the Earth believe that effective SEA implementation in Scotland should be underpinned by:

i) Efficient co-ordination and administration of the SEA process
ii) Transparency and accountability
iii) Robust mechanisms for monitoring and assessment

This should be done through the establishment of an independent body. In the absence of establishing such a body we fear that the process will lack sufficient independence, quality assurance and public confidence and are concerned that the proposed SEA Gateway function is inadequate.

We believe that the key functions can be best delivered through the establishment of a co-ordinating, arms-length body to ensure impartiality, public trust, quality control, data gathering and monitoring functions. Such an independent body should co-ordinate the administration and operation of SEA and also have a responsibility to ensure the quality and integrity of the SEA process by providing a function on:

i) Evaluating the monitoring proposals, uptake of mitigation measures, actual effects of plans, programmes and strategies against the expected effects of these proposals as considered in the SEA;
ii) Ensuring quality control of the assessments through sampling of these, providing guidance, training and advice on undertaking assessments;
iii) Ensuring that a consistent approach is taken both to screening, drafting of reports, monitoring of effects etc. Those bodies undertaking SEA should be operating to the same standards;

Friends of the Earth recognise the concerns of additional costs of establishing such a body but believe that the net additional costs would be offset by reducing the workload of proposed statutory consultees, improving co-ordination of the process and reducing Ministerial time associated with arbitration that the current proposals necessitate.

With a number of plans, programmes and strategies the Scottish Executive are actually the proposers. Independence of the SEA administration function is therefore essential if the Executive is to maintain public confidence in the impartiality in the system and avoid it being placed in the position of acting as both proposer, consultation authority and final judge of a proposal, especially in the absence of any mechanism for public challenge of such decisions. In their response to the consultation SEPA themselves raise the question of dual interest where Scottish Ministers are expected to arbitrate over decisions upon plans, programmes and strategies being prepared by the Executive.

SEA performance criteria elsewhere suggest that 'independent checks and verification' are a prerequisite of a good quality SEA system and an independent review body has been critical to the success of SEA.

**Recommendation:** The Bill should make provisions for the establishment of an independent, arms-length SEA co-ordinating and administrative body to ensure impartial and efficient implementation of SEA.

2) Pre-screening:
Friends of the Earth are highly concerned at the inclusion of a pre-screening process which would enable a responsible authority to decide that the proposal will have 'no' or 'minimal' environmental significance and opt out of undertaking SEA. Given that SEA is supposed, with a limited set of exemptions, to apply to all plans, programmes and strategies we are concerned that not all of the

responsible authorities involved in developing such proposals will necessarily have sufficient expertise and skills to be able to ascertain whether a proposal 'is likely to have significant environmental effects'. This is of particular concern where significant impacts are indirect or secondary.

We also believe that the absence of a requirement to publish the reasons why it has been deemed that SEA need not be undertaken coupled to the lack of opportunity for anyone to challenge this decision (other than through judicial review) mean that this approach will not deliver the aspirations of the SEA partnership commitment or the aspirations as set out in the Policy Memorandum which states that the purpose of the Bill is to 'improve protection of the environment through better public decision making' and further adds 'The Bill promotes public involvement in the decision making process and by demanding that the public's views and the environmental report are properly taken into account, SEA delivers real accountability.'

Friends of the Earth believe that the screening process instead should be the mechanism for identifying whether SEA is required. As noted in a report produced for Scottish Environment LINK\(^\text{12}\) the only difference between pre-screening out a proposal or screening within the legislative proposals as proposed is the requirement to 'write down the brief assessment and making publicly available the information that an SEA is, or is not, required.'

The Section 7 pre-screening component should therefore be removed and thus all eligible plans, programmes and strategies would be subject to the screening process outlined in Section 8 and the accompanying Section 10 requirements on publicity.

3) Consultation Bodies
Friends of the Earth Scotland are concerned that limiting consultation bodies to SNH, SEPA and Scottish Ministers may not enable sufficient input/consideration of all potential impacts of a specific proposal as set out in the Directive and listed in Schedule 3. The Bill should make provisions for additional 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 the best placed to provide the information to adequately consider the impacts as listed in Schedule 3 (e.g. 'population' or 'health'). Section 3 should therefore be amended to enable, for example Health Protection Scotland to be consulted on proposals with potential human health impacts.

Similarly the requirements (as listed in Schedule 2) for transboundary effects to be considered in the SEA process is a critical to the delivery of environmental justice. We would therefore see it as essential that additional consultation bodies and indeed the public, out with those in Scotland, should be consulted on the environmental impacts of plans, programmes and strategies which are likely to have an environmental impact beyond Scotland. We would therefore suggest that the SEA Bill, be amended (Part 1, section 3 (1)) to enable information to be sought from additional consultee bodies, including those out-with Scotland, for specific proposals.

An independent body would also be ideally placed to perform the function of deciding whether input should be sought from additional consultee bodies for a particular plan, programme or strategy.

We are concerned that other than for the scope of the Directive the Bill appears to exclude those plans, programmes and strategies which are produced by private companies undertaking public functions. Section 2 (4) should be amended to ensure that private companies undertaking public functions are subject to the SEA process.

Recommendation: Section 3 should be amended to enable 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 the best placed to provide the information to adequately consider the impacts as listed in Schedule 3 (e.g. 'human health').

4) Exemptions

Section 4 (3) b should be removed to enable financial and budgetary plans to be included. These plans influence actions and often commit to specific outcomes or projects themselves. Inclusion of financial and budgetary plans would also assist the Executive’s existing commitment to design the Spending Review process so that it contributes to sustainable development.

Recommendation: Financial and budgetary plans should be included

5) Definitions
We are concerned that the term ‘minimal’ environmental impact is very difficult to define. In line with our recommendation that the pre-screening process be removed the term ‘minimal significant’ could also be removed.

6) Preparation of environmental reports
In preparation of an environmental report Friends of the Earth believe that the responsible authority should be required to consider whether the objectives of the plan, programme or strategy are compatible with strategic environmental objectives, and amend the former if they are incompatible thus ensuring that SEA contributes to the genuine integration of environmental, social and economic objectives.

We would wish to see a duty placed on the responsible authority to use information gathered as part of the SEA process to amend the proposals in light of this information. In particular, where the SEA reveals likely breaches of EU Directive limit values for pollution or significant impacts on designated sites then it is essential that the proposal is rejected or amended to eliminate such impacts.

Recommendation: National and local targets/legislation should be included in Schedules 2 and 3 to ensure that implications of any proposals are assessed against compatibility with these objectives (for example Scottish commitments on tackling climate change or stabilising traffic growth).

Recommendation: Should the impact be incompatible with either international, European, member state or national Government environment objectives and targets proposals should be rejected or amended. This implies that changes in the Bill are necessary to require SEA to be used in this manner.

Section 14 (3) should be amended to ensure that the lack of data does not constitute an easy opt-out for inclusion in an SEA. Instead the assessment process should require that data be obtained if necessary to evaluate the full environmental impact of a proposal. Where there are weaknesses or an absence of data with which to judge the extent to which a proposal will have a significant environmental impact the environmental assessment report should highlight these and the precautionary principle should underpin the decision making process.

Recommendation: Section 14 (3) should ensure that data necessary to ascertain the environmental impact of a project is secured.

The current wording of section 17 is weak. Without a stronger requirement than that requiring a responsible authority to 'take account of' the environmental report when preparing a plan, programme or strategy it could be readily ignored.

Recommendation: Section 17 c should be strengthened, responsible authorities should 'fully consider and take account of' the environmental report.

7) Monitoring and reporting
Monitoring and post-implementation evaluation are essential to the plan, programme or strategy making process and essential in order to evaluate whether the SEA undertaken was useful. The Environmental Report should clearly set out monitoring proposals and these should be evaluated by the SEA co-ordination/administration body as outlined above. We support Section 19 but believe that in addition to a requirement to monitor the significant environmental effects of the implementation of the qualifying plan or programme and identify unforeseen adverse effects and
undertake remedial action, it is also essential that there is a requirement to report unforeseen effects to the consultation bodies, public and SEA co-ordination body. Such reporting should highlight particularly where these may compromise Community, national or local environmental commitments or objectives.

Recommendation: Include a requirement in Section 19 to require the responsible authority to report unforeseen environmental effects during implementation of a qualifying plan or programme to the consultation bodies, public and SEA co-ordinating body.

SUBMISSION FROM SCOTTISH WATER

This paper is submitted as part of the written evidence from Scottish Water on the aforementioned Bill. It contains initial comments on some aspects of the Bill which the committee may find useful. Scottish Water will submit more detailed comments prior to formal attendance at the Committee.

Scottish Water is generally supportive of the principles of the Environmental Assessment (Scotland) Bill, which will ensure that the full environmental impacts of all new strategies, programmes and plans developed by the public sector are properly considered. However Scottish Water would like to note concerns around a number of points which make it difficult to assess the impact of the Bill. These points are summarised below.

**Duplication of Effort**
Scottish Water is concerned over the issue of duplication of effort. For example, the Water Framework Directive River Basin Management Plan process will require competent authorities to work together to develop catchment management plans, in tandem with Scottish Environment Protection Agency (SEPA) and Scottish Natural Heritage (SNH). To require these plans to be further evaluated by SEPA and SNH may be unnecessary and could be considered a waste of public money.

Similarly, the Quality & Standards III (Q&S III) process for the Scottish Water Investment Programme for 2006-2014 has included public consultation. Scottish Water will need clarification of the requirements for SEA in relation to the finalised investment plan which will be produced after the Water Industry Commission’s final determination, due in November 2005.

**Further Guidance**
Although UK wide draft guidance to the Strategic Environmental Assessment (SEA) Directive will be available, Scottish Water suggests that the Scottish Executive consider developing further guidance for the additional requirements of the SEA Bill.

This guidance should clarify the duties of the responsible authority, and the levels of plan affected by the Bill, i.e. is an SEA required for overarching strategic plans, or will each policy within such a plan also require an SEA?

Further definition of the term ‘Strategy, Programme or Plan’ may be appropriate, plus inclusion of an indicative list of plans & programmes.

Scottish Water has been involved in the process of developing templates for the screening, scoping and environmental reporting process, and is awaiting the outcome of this process.

**Resource/Financial implications**
Scottish Water is concerned that the resource and financial implications on organisations may not have been fully considered. For example:

- There will be additional workloads to organisations preparing strategies, plans and programmes. Increased administrative work due to undertaking screenings and full SEA’s, addressing comments from the public and interested parties and explaining how comments have been dealt with will be just some of the additional duties on affected organisations.
There will be additional workload for statutory consultees. Affected organisations may have limited resources to engage in pre-screening and consultations, therefore there is the possibility that affected organisations may find difficulties in meeting the required obligations.

A further concern regards the impact on Scottish Water’s investment programme for 2006-2014 (Q&S III). If Q&S III is to be subject to SEA on the final investment programme (or at sub-programme level, i.e. water infrastructure programme) then there is a concern that this could delay an already challenging programme.

It is likely that there will also be a negative impact on resourcing issues within Scottish Water. As this is a relatively specialised field it is likely that consultants will be required to cater for the addition workload, resulting in increased costs. In addition, as a result of the impact of these requirements, it is possible that there may be a nationwide lack of resources if all government and NGO bodies are being instructed to carry out assessments.

The resource and financial implications of the Strategic Environmental Assessment (Scotland) Bill are not presently funded within Scottish Water’s current or planned operating costs.

**Monitoring**
Scottish Water supports the need for further guidance on the monitoring requirements of SEA, particularly in area where there is commercial sensitivity.

Monitoring of environmental impacts is routinely undertaken for all regulated processes under the requirements of other regulations, to add to this seems unnecessary. The public will have access to all relevant information under the Environmental Information Regulations early next year, so there appears to be little need for additional reporting requirements.

In addition to this, monitoring the delivery of outputs of Scottish Water’s Investment Programme is carried out by the Scottish Executive through SEPA and the Drinking Water Quality Regulator.

**Strategic Alternatives**
Developing strategic environmental alternatives within Scottish Water programmes and plans will be problematic as a large degree of the proposed programmes and plans are driven by EU Direction and external regulation. This offers very limited flexibility.

Mitigation of adverse effects may be difficult under the current Regulatory Regime, as many investment requirements are set by Regulators.

**Revocation of Regulations**
The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 are being revoked by Part 4, Regulation 23 of the Environmental Assessment (Scotland) Bill as introduced. Following the Royal Assent of the Bill, clarification is sought as to whether the Act will be enacted through further Regulations?

**Extension of SEA requirements under the Bill**
Scottish Water has concerns over the extension of the SEA requirements in Scotland under the Bill, to cover a broader range of plans and programmes than is applicable to the rest of the UK. The potential impact of this extension on Scottish Water could be considerable, owing to the regulatory comparison made between Scottish Water and the Water Companies in England and Wales.

Please see below written submission from Scottish Water on the aforementioned Bill, further to written evidence submitted by 13th April 2005:

Scottish Water is generally supportive of the principles of the Environmental Assessment (Scotland) Bill, which will ensure that the full environmental impacts of all new strategies, programmes and plans developed by the public sector are properly considered. Scottish Water has submitted written evidence on general concerns around a number of points which make it difficult to assess the impact of the Bill. However, please find specific comments on the questions asked summarised below:
• What the effect will be of extending the implementation of strategic environmental assessment to cover a broader range of plans and programmes than is applicable to the rest of the UK?

Scottish Water has concerns over the extension of the SEA requirements in Scotland under the Bill, to cover a broader range of plans and programmes than is applicable to the rest of the UK. The potential impact of this extension on Scottish Water could be considerable, owing to the regulatory comparison made between Scottish Water and the Water Companies in England and Wales.

The resource and financial implications of the Strategic Environmental Assessment (Scotland) Bill are not presently funded within Scottish Water's current or planned operating costs.

Further Guidance
Although UK wide draft guidance to the Strategic Environmental Assessment (SEA) Directive will be available, Scottish Water suggests that the Scottish Executive consider developing further guidance for the additional requirements of the SEA Bill.

This guidance should clarify the definitions of the terms ‘Strategy, Programme or Plan’, plus include an indicative list of plans & programmes to limit the implications of broadening the requirements in Scotland.

• What the effect will be of the proposed system of administrative arrangements chosen to implement this obligation e.g. pre-screening and screening?

Scottish Water supports the self determining pre-screening stage to exempt those strategies, plans and programmes with no or minimal effect on the environment.

However Scottish Water seeks further clarification within the screening process as to the definition of ‘significant environmental effects’. Without a clear definition of this critical element of the legislation there could be constant disagreement between the responsible authorities and the individual consultation authorities as to the effects of the plans or programmes. Does this infer a detrimental effect to the environment, or will strategies for the improvement of the environment also be included?

Clear, concise guidance on methods to assess the likely significant environmental effect of plans & programmes would be welcomed.

If the significant environmental effects are due to programmes to meet outputs set by Quality and Environmental Regulators, then Scottish Water believes that the requirements for screening and any subsequent SEA sits with the Regulators. This will need confirmation.

Within the screening procedure, Regulation 9(6) covers situations where the responsible authority and the consultation authorities do not reach agreement as to whether or not the plan or programme is likely to have significant environmental effects. The matter is to be referred to Scottish Ministers for their determination; however clarification is sought as to the timescales to be set for this determination.

• Is the provision of a strategic environmental assessment (SEA) Gateway within the Executive a sufficient method of managing the SEA process?

In principle Scottish Water supports the provision of an SEA Gateway for the management of the SEA process. However the Bill sets timescales for responses from the consultation authorities to screening, scoping, etc, to be from the date of receipt of the information.

Scottish Water seeks clarification on the status of the SEA Gateway – will the Gateway act as a review forum for information, or as a post box for information dissemination. Bearing this in mind will the timescales begin on receipt of the information at the SEA Gateway, or when the Gateway passes the information to the individual consultation authorities.
INTRODUCTION

1. Communities Scotland was established in November 2001 as the Scottish Executive’s housing and regeneration delivery agency. We work, with others, to improve the quality of life for people in Scotland. Our national remit covers a diverse range of functions, as a funder, advisor, facilitator and regulator as we implement Ministerial policy. We manage targeted investment programmes to make additional resources available to tackle housing issues, and poverty and regeneration in disadvantaged communities. Through our regulatory role we work with a range of organisations to raise standards in the delivery of housing services and improve the understanding of the problems faced by disadvantaged communities. Our housing development programme helps to build new and improved homes, increase the supply of housing in areas of high demand and for people with particular needs whilst our regeneration programmes aim to improve the quality of life in our most disadvantaged communities. This is done through working with key partners such as registered social landlords and Community Planning Partnerships respectively.

2. The Agency therefore has a particular management and monitoring role within the supply chain between policy making and the delivery of services at the local level, working with partners who provide these services at the local level. While the Minister for Communities and the Scottish Executive determine policy and funding, our partners: the voluntary sector, registered social landlords, the private sector and local community representatives deliver the services e.g. housing developments or regeneration programmes which we fund in line with Ministerial priorities.

OUR CURRENT OBJECTIVES AND KEY ACTIVITIES

3. The Agency has identified six key objectives in its Corporate Plan 2005-08, which will be published this month. In summary, our objectives (in bold text) and the key activities underlying each, are detailed below:

To increase the supply of affordable housing where it is needed most.
This will be achieved through the annual investment of over £400M of development funding, through registered social landlords (RSLs). We aim to approve 21,500 new and improved homes for social rent and low cost home ownership over the Plan period.

To improve the quality of existing houses and ensure a high quality of new build.
On behalf of the Scottish Ministers we manage, assess and monitor the implementation of the Scottish Housing Quality Standard which requires local authorities and registered social landlords to bring their properties up to that standard by 2015. The quality of properties in the private sector will be improved through the £80M Private Sector Housing Grant scheme (2005-06) that we manage, local authorities making bids to us to cover work that they have identified in that sector in their area. We also monitor the Scottish Executive’s central heating and warm deal programmes.

We set standards within the various grant mechanisms we operate for RSLs and assess their submissions for development funding for new build against these standards.

To improve the quality of housing and homelessness services.
Communities Scotland is responsible for regulating and inspecting over 250 RSLs and the housing management and homelessness services of all 32 local authorities.

To improve the opportunities for people living in disadvantaged communities.
The Scottish Executive recently established the Community Regeneration Fund (CRF) with a budget of £320M over the next 3 years. This fund is strategically managed by Communities Scotland on behalf of the Scottish Executive and we monitor and provide guidance for Community Planning Partnerships on drawing up and delivering on their Regeneration Outcome Agreements.
To support the social economy to deliver key services and create job opportunities. The social economy sector consists of community and voluntary organisations that do not distribute any profit to private shareholders. We manage and allocate the £18M (over 3 years) Futurebuilders fund providing financial assistance to these organisations so they can deliver better public services and increase their financial sustainability.

To use our experience of delivering housing and regeneration programmes to inform and support the development of Ministerial policies. We work directly with Ministers and Scottish Executive colleagues providing information on existing programmes and experiences, to inform future policy and its implementation.

COMMUNITIES SCOTLAND’S APPROACH TO SUSTAINABILITY

4. Communities Scotland has a proven track record in environmental and sustainability issues, having had a Sustainable Development Policy since 2001. This has provided a framework both for us and our partners to take account of these issues in a positive manner, while working to achieve the delivery of Ministerial targets. Our Sustainable Development Policy is currently being revised and our environmental activity is due to be formalised in our Environmental Policy which is currently under consideration by our Corporate Management Team. The policies are being developed in unison, ensuring that they complement each other as they will set out what we will do and what we will expect of those receiving funding from us. We also produce practical tools for those involved in developing and implementing community regeneration strategies and commissioning, designing and constructing housing.

5. It is anticipated that key elements of the revised sustainable development policy will be:

Improving Standards in Housing
Our role in helping to achieve the Scottish Housing Quality Standard by 2015 aims to contribute to sustainable development.

Improving the Thermal Performance of Housing
Minimum energy ratings are set for all houses which we fund. The following are examples of targets set and outcomes for development funding approval in 2003/04:

- 97.0% of Housing Association Grant (HAG) new build properties achieved the target Standard Assessment Procedure (SAP) rating of at least 85-90 on a scale 0-120; 54% achieved a SAP rating of 100 or more;
- 99.6% of HAG rehabilitation properties met the target SAP rating of at least 65-70.

The Central Heating and Warm Deal programmes contribute positively to environmental objectives, increasing the thermal performance of housing and reducing the need for physical resources in the form of energy consumption.

Reducing the Need for Physical Resources in Housing Construction
Projects need to have a clear commitment to achieving and undertaking developments that are sustainable. Our standard grant application guidelines set out normative standards for topics including energy efficiency (SAP ratings), space and water heating costs and fuel costs per year.

Influencing the Location and Mix of Housing
We work to meet housing need and minimise adverse impacts on the environment. e.g. promoting use of brownfield sites or sites within existing settlement envelopes. In 2003/04 78.2% of Housing Association Grant new build approvals were on brownfield sites.

Funding Sustainable Community Regeneration
Improving environmental quality while minimising the negative impacts of resource use, should be part of the strategic aims of regeneration programmes and this is reflected in our Community Regeneration Fund Guidance.
Minimising the Impact of Communities Scotland’s Business Activities
Through continual improvement we aim to eliminate waste, adopt more energy efficient practices, minimise the impact of our transport, be more sustainable in procuring materials and provide the necessary resources and training to our staff to deliver this policy effectively.

Regulating Social Landlords (RSLs)
We assess, among other things, if RSLs’ policies and actions are underpinned by a commitment to sustainability.

Improving Practice and Skills
We help people working to achieve sustainable development in community regeneration and housing by supporting them to develop their skills and improve their effectiveness.

6. Communities Scotland is contributing to the development of the Scottish Sustainable Development Strategy through our involvement in the Advisory Group established to take this process forward.

7. Given the diversity of activity within Communities Scotland it is currently assessing the impact of the Strategic Environmental Assessment (SEA) process across the Agency. We do and will work alongside partners and Scottish Executive colleagues in particular, to ensure environmental issues are considered fully in the policy/delivery context and responsibilities are clearly defined and to ensure that the SEA process is broad based in its application.

8. SEA is welcomed by Communities Scotland and we look forward to integrating into the Agency, believing that it is consistent with our approach to environmental issues.

COMMITTEE QUESTIONS

What the effect will be of extending the implementation of strategic environmental assessment to cover a broader range of plans and programmes than is applicable to the rest of the UK?

9. The broader application of SEA proposed in Scotland requires organisations to consider the environmental impact of their activities across the full range of their plans and programmes so they can fulfil their statutory obligations. The profile of environmental issues should be raised across the organisations’ activities, but will impact on resources such as staff and time. However, if the scoping and screening of the plans at the higher levels is completed effectively it has the potential to minimise duplication and non-productive time spent on other plans lower down the hierarchy. If the top level plan is properly screened and scoped, key principles operating within other plans should be identified and their impact determined. We are currently assessing the impact on our own operations, having already submitted a previous Corporate Plan to scrutiny by the Consultation Authorities.

10. SEA has the potential for more joined-up thinking in organisations on environmental issues but this may come at a cost of slower but arguably better informed decision making. The proposal only to implement the SEA process and potentially update the Environmental Report when there is a significant change in a strategy or plan is welcome.

11. Similarly, where organisations work in partnership as we do, partners will need to be alert to their respective responsibilities under SEA, ensuring that the process is appropriately managed between them and reflected in their respective reports, plans and programmes.

12. The SEA process provides an audit trail in the decision making process for each plan/programme, encouraging its adoption within the organisation’s culture.

What the effect will be of the proposed system of administrative arrangements chosen to implement this obligation e.g. pre-screening and screening?

13. We view this positively, helping to determine a framework for organisations to work with as they strive to meet their respective environmental obligations. However, while the screening and
scoping stages are important within the process, our focus will be on achieving better environmental outcomes.

Is the provision of a strategic environmental assessment (SEA) Gateway within the Executive a sufficient method of managing the SEA process?

14. We welcome the introduction of the Gateway being that it, as well as the Consultation Authorities, require adequate resources to ensure that the Gateway does not become a ‘bottleneck’. We would, moreover, see benefit from the Gateway developing further as an information ‘hub’/point of primary reference and contact.

GENERAL COMMENTS

15. Consideration could be given to the flexibility of the timescales involving the Consultation Authorities, which could add up to 2 months to the overall process of preparing strategies and agreed plans. The Scottish Executive’s own timetable for public consultations is currently 3 months.

16. There is a question regarding the measures that organisations will use for assessing their environmental impact and how organisations address the issue will be influenced by their perspective on environmental issues in general.

17. Communities Scotland does not claim any expertise in either implementing or completing the SEA process and sees itself as being very much in the learning phase while endorsing the principles that lie behind the proposed Bill.

SUBMISSION FROM SCOTTISH AND SOUTHERN ENERGY

Scottish and Southern Energy (SSE) is grateful for the invitation to present oral evidence to the committee and to have the opportunity to comment on the proposed Environmental Assessment (Scotland) Bill.

As one of Scotland’s largest companies, involved in the generation, transmission, distribution and supply of electricity, SSE is already subject to, and welcomes, detailed environmental scrutiny by the Scottish Environment Protection Agency (SEPA) and Scottish Natural Heritage (SNH). In addition, proposed developments by SSE’s generation or transmission businesses generally require consent from Scottish Ministers under Section 36 or Section 37 of the Electricity Act 1989 and these are subject to the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000.

SSE supports the principle of strategic environmental assessment. Indeed, if delivered effectively and in a non-bureaucratic way – strategic environmental assessments (SEAs) could deliver positive benefits, as - looking in hindsight - the example of the Renewables Obligation (Scotland) (the ROS) illustrates.

The ROS has, as the Executive has acknowledged, created a huge demand for electricity generated from renewable sources, which developers are moving to meet. The Executive has also recognised the importance of electricity grid upgrading if the renewable energy sector is to reach its full potential.

The development of the Executive’s renewables-based policy would clearly have met any reasonable definition of “strategies, plans or programmes” and the development stage of the ROS would have been an appropriate point at which the Executive could have undertaken a SEA of its impacts. This could have covered both generation and transmission.

Indeed, a SEA of the kind envisaged in the draft Bill, undertaken at that early stage, could have made a significant contribution towards understanding the Scotland-wide issues surrounding the development of renewable energy. It would certainly have met the Executive’s objective of...
achieving better policy making by ensuring that environmental effects were fully considered at an early stage in policy formulation.

SSE also considers that a SEA of renewable energy undertaken by the Scottish Executive would have addressed the perception, reflected in the report of the Scottish Parliament’s Enterprise and Culture Committee in June 2004, and reinforced in the debate in the Scottish Parliament in October 2004 and the House of Commons Scottish Affairs Committee in March 2005, that the Executive should have provided a national strategic framework for renewable energy developments. Perhaps partly in response to this perception, the Deputy First Minister’s statement on 14 February 2005 - 'Reports of likely windfarm development over-stated' - emphasised the 'high standards' of the Scottish Executive's planning guidelines.

In addition, undertaking SEAs at an early stage could, with a well-devised model, have had the additional benefit of reducing the bureaucracy associated with completing Environmental Impact Assessments in support of applications for consent under Section 36 and Section 37 of the Electricity Act 1989. This would have delivered a more streamlined system and could have ensured the swifter delivery of the policy objectives, such as growth in renewable energy, which the ROS is designed to achieve. The reason for this is that once a SEA from the Executive is in place, each individual project could be aligned against this strategy and the EIA submission accompanying the individual projects could be focussed on any missing or modified elements.

The risk, of course, is that the reverse happens: that in a drive to become a world leader in SEA, the Executive places a bureaucratic burden on the wrong organisations at the wrong stage of development. In other words, SSE believes it – and organisations like it - should only have to complete one environmental assessment in respect of an electricity generation or transmission development. It accepts that assessment should be thorough and comprehensive (but believes that the SEA should not be designed in such a way as to create additional bureaucracy, but to reduce it).

With an appropriate national strategy in place, SSE does not believe that, as one generation company among a large number, it operates at the level at which strategic environmental assessment is appropriate or feasible. The development of, for example, an individual wind farm is not strategic: it is in response to the ROS, which most certainly is. Because it is dependent on specific issues such as location, layout and viewpoints, an individual wind farm development does require detailed environmental assessment, but that is provided for in the context of Section 36 of the Electricity Act 1989.

As stated above, strategic developments of the transmission infrastructure generally take place in response to public policy developments. SSE’s view is that the SEA should take place at the time of such policy developments, and not during the subsequent work required to deliver that policy in practice. As indicated above, there would still be a requirement for individual EIAs on elements not already covered by the SEA.

It should be clearer how the basic requirements for SEA from the EC Directive 2001/42/EC as implemented on 21 July 2004 are extended by this Bill and how these extensions more strictly apply to the public sector. More specifically, since it is clear that the intention of the Bill will be to include companies like SSE as a “relevant authority”, the company would be grateful for a more explicit and exact definition of the circumstance where this will occur, and greater clarity on what it means. We would welcome a more detailed description of the interaction and interface between SEA and EIA (eg as required by Electricity Works (Environmental Impact Assessment) Regulations 2000).

There is, in pursuing this legislation, the possibility of a significant benefit: that effective environmental assessment by the public sector at a strategic level could reduce the burden on individual organisations seeking to deliver the Executive’s public policy goals by altering existing environmental assessment requirements to reflect the strategic work that will already have been done. In finalising the Bill to take account of the responses to its consultation, SSE hopes that the Executive will have that prize in sight.
SUBMISSION FROM DR JOHN HARTLEY

Experience base – 30 years of environmental monitoring, EIA and environmental management. Since 1999, developed and implemented the Strategic Environmental Assessment process for UK DTI offshore energy programme.

Points on Environmental Assessment (Scotland) Bill as introduced:

1. The European SEA Directive is a welcome extension of the environmental assessment process. However, there is a danger of public and stakeholder consultation overload and hence potential to render SEA and EIA consultation processes significantly less effective. It is suggested that the bar triggering SEA of a plan, programme or strategy (or modification to these) is set higher rather than lower to focus consultation exercises to those with real potential to cause significant environmental effects
2. Definition of the area to which the Bill has application would be helpful
3. Definition of what constitutes a strategy is important – the Bill contains but a single reference to this potentially important extension of the European Directive
4. The text of Part 1 Section 5.4 is confusing and apparently circular
5. Part 2 Section 15.4 – suggest general guidance is provided from the outset on required timescale for consultation; otherwise there may be uncertainty over the duration of the SEA process and expected time of decisions regarding a plan/programme/strategy
6. Part 3 Section 18.4 - suggest the timeframe during which the responsible authority is required to supply copies of an Environmental Report is defined; otherwise there is an open ended commitment extending well beyond the span of the plan/programme/strategy

Points on Environmental Assessment (Scotland) Bill Explanatory Notes

1. Part 3 Section 19 the text contains a non sequitur and importantly, does not reflect the requirements of the European Directive or usefully expand the text of the Bill
2. Financial Memorandum – the costs suggested are regarded as unrealistic, certainly at the upper end of the scales. The full costs of undertaking an SEA exercise are dependant on the scale of plan/programme/strategy being considered, public interest in the topic, availability of adequate environmental information base etc. For small scale terrestrial plans/programmes/strategies, the costs are potentially of the right magnitude; for marine plans/programmes/strategies requiring basic information collection they are not – and to fail to collect such information would carry the risk of legal challenge to the process and decisions taken.
3. The projected 20 page size of SEA Environmental Report (FM Section 62) suggests just a superficial consideration of the subject areas required by the European Directive and reflected in Schedule 3 of the Bill. This document length is similar to the non-technical summary of individual project EIAs and raises the question of whether this provides a valid basis for public consultation
4. FM Section 89 (and elsewhere) – staff costs must also reflect overhead costs otherwise they are misleading
5. The costs of developing, commissioning, reviewing, implementing monitoring programmes require consideration

SUBMISSION FROM SCOTTISH ENTERPRISE

1. Executive Summary

- We welcome the environmental benefits that will be delivered through Strategic Environmental Assessment (SEA) but this must not undermine the Executive’s top priority of economic growth.
- We believe that the SEA Gateway could be usefully supplemented by a strategic steering committee to oversee the implementation process and take account of environmental, social and economic implications.
- We are experiencing a number of critical uncertainties that make it difficult for us to prepare for the introduction of the extended SEA. These uncertainties relate to the coverage of SEA,
definitions of the level of environmental impact, difficulties applying SEA in less traditional areas such as business development, and the resources needed both within the Network and in terms of the capacity of external consultants.

2. Introduction

2.1 Scottish Enterprise (SE) is the main economic development agency for lowland Scotland. Our strategic direction is provided through *Smart Successful Scotland* which is organised around the three main themes of growing businesses, skills & learning and global connections, and a number of cross-cutting themes including sustainable development. It is recognised in *Smart Successful Scotland* that economic growth and environmental protection are not mutually exclusive, with win-wins that can increase productivity and drive economic growth. This message will be outlined in more detail in the forthcoming *Green Jobs Strategy* which will supplement the existing strategic guidance and reflect the contribution that we make to sustainable development through resource efficiency activity and support for businesses in environmental sectors such as renewable energy and waste.

2.2 We have been closely following the development of strategic environmental assessment (SEA) legislation in Scotland. We responded to the initial consultation in Autumn 2004, participated in a number of events/meetings/training courses with an SEA focus and instigated a number of meetings with other public sector agencies to enhance our understanding and discuss emerging issues. Our attention was further captured by a report *Working Together for a Sustainable Scotland*, published by the Centre for Scottish Public Policy in May 2004, that recommended as an early priority the application of SEA to Scottish Enterprise.

2.3 Our response focuses on a number of issues which we raised during the initial consultation process in Autumn 2004 and which continue to be of concern to us at this time and then addresses the specific questions posed by the Committee.

3. General Comments

3.1 We recognise the contribution that SEA makes to sustainable development through the early consideration of the likely environmental effects of public sector strategies, plans and programmes. We are pleased that Scottish Ministers want Scotland to be a world leader in the extended application of SEA. A key element of this leadership is to ensure that SEA delivers environmental benefits but that the process is not cumbersome and does not undermine the Executive’s top priority of economic growth. We believe that it is essential to avoid any further constraints and lengthening of timeframes in the planning and development cycle. We support the planning policy reforms which seek to address these issues and believe that it is imperative that SEA is implemented within this context.

4. Critical Uncertainties

4.1 We believe that there are a number of critical uncertainties where much greater clarity would help us to better prepare for the implementation of the extended SEA.

4.2 Strategies, plans and programmes: We would like more clarity on the level and nature of strategies, plans and programmes that will be covered by SEA, to enable us to establish how many strategies plans and programmes led by the Network are likely to be covered by SEA.

Paragraph 18 of the explanatory notes states that:

“.....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.... “

4.3 It would appear that Section 5(3)(a) and (b) would capture many of the strategies, plans and programmes that we develop as a Network. In practice, it may prove to be the case that there are instances where such strategies, plans or programmes have minimal environmental impacts. It would be useful to have the option of using the screening process to establish this. In principle, we believe that the legislation should place emphasis on those strategies, plans and programmes where most environmental benefit can be secured. We are also concerned that it will be difficult in practice to undertake a meaningful SEA of high level strategies, plans
and programmes which cover a broad range of issues, such as the Network Operating Plan or Smart, Successful Scotland.

4.4 Definition of environmental effects: We would like more guidance on what is meant by minimal and significant environmental effects particularly in less traditional areas for the application of SEA such as business development, skills & learning, careers guidance, etc.

4.5 Pilots: There could be a number of unexpected practical issues which could arise in non-traditional areas for the application of SEA, where there appears to be little or no practical experience to learn from. We would welcome a series of pilot projects in these areas to build capacity in responsible authorities and the consultancy base. Scottish Enterprise would be willing, in principal, to participate in any such pilot projects.

4.6 Resource needs: It is difficult to estimate the scale and nature of the additional administrative burden of compliance, including the preparation of environmental reports, consultation, data collection and monitoring, given the critical uncertainties above. The Financial Memorandum (one of the accompanying documents) goes some way to addressing these issues and establishes some useful rules of thumb but is of limited practical help to Scottish Enterprise when planning for the introduction of the extended SEA process. It also unclear how much expertise there is within the consultancy community in Scotland and beyond.

5. Committee’s Issues

5.1 Q. What the effect will be of extending the implementation of SEA to cover a broader range of plans and programmes than is applicable to the rest of the UK?

5.2 A. In the rest of the UK they have adopted sustainability appraisal (SA), that integrates environmental and socio-economic assessment, to fulfil their more limited SEA obligations. These differences in application between the rest of the UK, Scotland and other EU countries will limit the opportunities to learn from each other and meaningfully benchmark progress and environmental benefits. It will also mean that consultants will need to tailor their knowledge and tools to suit the differing approaches, which could limit the development of expert consultancy capacity in Scotland.

5.3 Q. What the effect will be of the proposed system of administrative arrangements chosen to implement this obligation e.g. pre-screening and screening?

5.4 A. There are already a number of processes which have to be undertaken as strategies, plans and programmes are developed. These take time particularly where a number of partners are involved. It is vital that SEA delivers environmental benefits but does not undermine Scotland’s ability to compete in the context of a fast moving, global economy. We are not sure how often these screening arrangements will apply to Scottish Enterprise as many of our strategies, plans and programmes would seem to be within categories where there will be a legislative requirement to undertake an environmental assessment (see paragraph headed Strategies, Plans and Programmes above).

5.5 Q. Is the SEA Gateway within the Executive a sufficient method of managing the SEA Process?

5.6 A. We believe that the SEA Gateway could be usefully supplemented by the introduction of a strategic steering committee comprising representatives of the main public sector bodies affected by SEA and key departments within the Scottish Executive, to oversee the implementation process and bring the social and economic dimensions into focus. Scottish Enterprise would like to play an active role in any such committee. The role of this committee would be to:

- Ensure that the process is as simple and nimble as possible by building on existing mechanisms, expertise and experience at policy and operational levels;

- Review and address strategic issues and rub points between policies and mechanisms with the SEA Gateway and the appropriate departments of the Executive;

- Highlight best practice, particularly in less traditional areas for SEA.
The Convener: I welcome our first panel to the second of four evidence sessions on the Environmental Assessment (Scotland) Bill at stage 1. Our three panels today include representatives of environmental organisations and organisations that have undertaken, or are likely to undertake, environmental assessments.

Following on from last week, additional written submissions have been circulated to colleagues. They include the submission by the Convention of Scottish Local Authorities to the Finance Committee, which was mentioned last week and at which we said that we wanted to have a look.

I welcome the members of panel 1. Anne McCall is planning and development manager at RSPB Scotland and Dr Dan Barlow is head of policy research at Friends of the Earth Scotland. Thank you for your written submissions, which we have read. My colleagues will now ask questions.

Nora Radcliffe: Will you elaborate on your reservations about the pre-screening process? If there was a registration scheme for anything that had been pre-screened out, would that mitigate what you might consider to be the downside of having a pre-screening process?

Anne McCall (RSPB Scotland): Essentially, our point of view is that pre-screening is a little pointless. The stated function of pre-screening is to try to reduce the administrative burden. From talking to a number of the responsible authorities that will produce the plans, programmes and strategies, I know that there seems to be an assumption among those that are enthusiastic about SEA that they will probably use the pre-screening mechanism just to verify decisions that they have already made. The extent to which pre-screening will reduce the perceived administrative burden is probably quite modest. Our concern is that the mechanism would be used and exploited as a loophole by those who do not want to have to do SEA. Given that the bill is based on consultation and transparency, pre-screening stands out as an odd mechanism, in that a responsible authority will be able to evaluate its own plan, programme or strategy, decide that it does not have to do SEA and then not tell anyone about that decision, which there will be no opportunity to challenge.

The second part of your question was about registration. As you will know from our submission, we are keen either that the SEA gateway should have wider functions or that a separate arm’s-
length body should be established, perhaps along the lines of the Scottish Executive inquiry reporters unit. As part of its functions, that body should keep a register that is available for public scrutiny, on which would be placed all plans, programmes, strategies and environmental reports, along with all ministerial directions and decisions on pre-screening. That would significantly improve transparency. If we were to have a pre-screening process that involved evaluation against criteria and the publication of decisions, the difference between that and screening would be academic. That is why we regard pre-screening as a pointless exercise.

Dr Dan Barlow (Friends of the Earth Scotland): I concur. As it stands, the pre-screening proposal would be counter to the aspiration that SEA should be an open and transparent process, particularly as there would be no opportunity to challenge pre-screening decisions and no information would have to be provided on why such decisions were taken. Pre-screening is not necessary, given that the screening process can fulfil its purpose.

Maureen Macmillan: My question has probably partly been covered. I was rather alarmed to read your criticism of the present system of environmental impact assessments, which you say are “hugely variable in quality and reliability.”

You claim that because they are “produced primarily by private developers,”

they “result in significant duplication of effort”.

I thought that that was rather a sweeping statement, and I do not know what evidence you have for that. I have not heard evidence to suggest that EIAs are so worthless, but that seems to have coloured what you think about the bill. It is perhaps a side issue, but I would be keen to know what you think the problems are at present that need to be addressed.

10:00

Anne McCall: My judgment is based partly on personal experience and partly on a five-year review that the European Commission undertook into how the EIA directive was being rolled out in every member state.

I oversee all the RSPB’s involvement with planning applications throughout Scotland. At the moment, we are looking at between 200 and 300 different planning applications. There are some incredibly good environmental impact assessments and there are some incredibly poor ones. There have been a series of legal challenges, largely in England, and a large number of planning decisions have been thrown out because of poor environmental impact assessments. Essentially, my written evidence presents the conclusions of the Commission’s EIA review.

The quality of EIAs is a problem. Given the fact that the SEA directive and the bill apply to public bodies with a duty to deliver best value, we are particularly concerned that we get an administrative process that ensures that the same problems do not occur again.

Maureen Macmillan: As you said to Nora Radcliffe, you feel that having an independent body to oversee the process would be part of the answer.

Let me ask you about definitions. You want to remove the phrase “minimal effect” from the bill. Do you feel that such phrases are too subjective? What criteria would you use instead?

Anne McCall: Essentially, the problem with the concept of minimal effect is that it has not been used in legislation before. Environmental impact assessment legislation has been debated at length because of the concept of significant effect, and how we define “significant effect” has become an Achilles’ heel of environmental impact assessment work. The same burden would be placed on defining “minimal effect”. Our recommendation is that, rather than try to define “minimal effect”, which will mean all things to all men, you should simply remove the requirement for pre-screening, so that you no longer have to define “minimal effect”.

Maureen Macmillan: You think that that would solve the problem.

Anne McCall: It would solve one of the definitional problems, yes.

Dr Barlow: I concur with that. If you take out the pre-screening process, you will no longer have concerns about different interpretations of such a definition, which does not seem to have been tested in law previously.

Maureen Macmillan: However, even if there is no pre-screening—or any kind of screening—somebody will come up with the answer that there is minimal effect; and if everything is screened, there will still be minimal effect in some way. If “minimal effect” cannot be defined before screening, how can it be defined afterwards?

Anne McCall: The concept of minimal effect is introduced in the bill only for the pre-screening exercise. In the screening exercise, what is sought is significant effect. We already have one definitional problem with the phrase “significant effect”; the bill would add another difficult-to-define term relating to environmental effects.
I would criticise the use of the term “significant” as well, as it is problematic. However, it is in the directive, and to meet the obligations of the directive the bill has to cover what is in the directive. Our concern about the phrase “minimal effect” is that it has not been tested in law, whereas there is a significant amount of guidance and advice relating to significant effect. We also think that the phrase “minimal effect” is attached to a process that is essentially pointless. You could get rid of both a definitional problem and a pointless administrative exercise by getting rid of pre-screening.

At the screening stage, there is a requirement to publish an explanation of why a decision has been taken and an opportunity for that decision to be challenged whereas, at the pre-screening stage there is not. Someone could decide that something had a minimal effect, but they would not have to give information on why they had made that judgment and there would be no opportunity for someone to challenge the decision. At the screening stage, that information has to be made available, and if someone disagrees, they can challenge the decision.

Surely, at the pre-screening stage, it could be decided that something had a minimal effect and it could be put on a register that the decision had been made.

Dr Barlow: I agree that we could reach a compromise and at least have a register outlining which strategies, plans and programmes had been considered and pre-screened. Many strategies, plans and programmes might come up again in future and it would be useful to have an idea of how they had been considered previously.

Maureen Macmillan: Surely, at the pre-screening stage, it could be decided that something had a minimal effect and it could be put on a register that the decision had been made.

Dr Barlow: At the screening stage, there is a requirement to publish an explanation of why a decision has been taken and an opportunity for that decision to be challenged whereas, at the pre-screening stage there is not. Someone could decide that something had a minimal effect, but they would not have to give information on why they had made that judgment and there would be no opportunity for someone to challenge the decision. At the screening stage, that information has to be made available, and if someone disagrees, they can challenge the decision.

Dr Barlow: I agree that we could reach a compromise and at least have a register outlining which strategies, plans and programmes had been considered and pre-screened. Many strategies, plans and programmes might come up again in future and it would be useful to have an idea of how they had been considered previously.

Maureen Macmillan: Yes—we do not want people to do work that is obviously unnecessary.

Rob Gibson (Highlands and Islands) (SNP): I am concerned that we should get to the heart of this now. We are setting up a superstructure for an important part of environmental proofing, but other bodies—such as the Executive’s sustainable development directorate—already exist. You want a series of ways in which to register and monitor the SEA process, but that will have to relate to the work of the sustainable development directorate. Should the monitoring process drive the work of the directorate, or should the directorate have some part in the monitoring arrangements?

Dr Barlow: We have questioned the current proposals for the SEA gateway because of our concerns about independence and transparency. Many of the current programmes and plans have come from groups within the Executive. If one body decides how satisfactory an SEA has been, and the same body decides whether something can or cannot be challenged, issues of transparency and independence arise.

SEAs should be used to ensure that any plans, programmes or strategies are compatible with national, European and international targets and obligations. That is lacking at the moment. An SEA must cross-reference to a set of indicators—either indicators produced by the Scottish Executive or ones that have already been agreed to. When an SEA is undertaken, we will have to assess the extent to which it contributes to, or hampers, nationally agreed commitments. Many of those commitments have, of course, been driven by, or monitored by, the sustainable development directorate.

Rob Gibson: Have they? The directorate is at such an early stage of development that it is hard to say.

The Scottish Government has to make proposals and it has to be transparent, but another part of the Government can be monitoring what is going on. Are you seriously suggesting that we need another body, separate of Government, to oversee the process of SEA?

Anne McCall: You cut right to the heart of the issue when you suggested at the beginning that we are setting up a process that could bring enormous environmental benefits. It could also save us an enormous amount of money. On the last page of my written evidence, you will see our estimate of the cost of rectifying the environmental damage done by the planting in the flow country. It is a very conservative estimate, but we think that it will cost around £41 million. That figure excludes the cost of land acquisition and it is likely to double in the next five years. That is an example from one policy decision in one policy area; if we extrapolate, we can see that the potential savings are gigantic.

We are focusing on the management of the SEA process because the process will stand or fall on the effectiveness of that management. At the moment, there is the very welcome proposal to have the SEA gateway. That is great; it is a quantum leap from the proposals of the Office of the Deputy Prime Minister. In England and Wales, there is no equivalent of the gateway; as a result, all the responsible authorities and all the consultation bodies are having significant problems in co-ordinating their activities.

The gateway proposal is good, but it is, in essence, administrative. We draw a comparison with the community planning task force. The task force provided a great deal of support to local government but was ended only 12 months after
its inception. The community planning task force website and the support that the task force provided are no longer available. My concern is that that might happen with the gateway, because the proposal is purely administrative and is not enshrined in legislation.

To investigate how SEA is being managed elsewhere, we commissioned a report from the University of Strathclyde. The committee heard evidence last week from Elsa João, who co-wrote that report. From that examination of how Canada, the Netherlands, Latvia and a host of other countries are implementing SEA effectively, it became clear that four main tasks must be undertaken if SEA is to work. We do not want a pointless box-ticking exercise. We need a body that provides guidance and advice; a body to arbitrate disputes; a body that can monitor quality; and a publicly available register, so that people know what is going on.

If those functions were secured in the gateway and the gateway was secured in legislation, we would be two thirds of the way towards creating a system that we know would deliver the bill's intention.

**Rob Gibson:** Are you saying that we need an authority for SEA as well as the sustainable development directorate?

**Anne McCall:** Yes.

**Rob Gibson:** You are beginning to suggest the creation of a plethora of bodies that will attempt to do the same sorts of tasks. All right—one must initiate policy, but a department will do that. Would developing the sustainable development directorate to monitor the process not be far better than creating the separate body that you propose?

**Anne McCall:** The proposal concerns the functions. As long as the body in which the functions lie has some distance from decision makers and that body undertakes the functions, putting it in the sustainable development directorate might be an option.

**Dr Barlow:** I will draw an analogy. The Scottish Executive inquiry reporters unit offers a similar function in planning as a separate entity, but it is part of the Executive, which has a commitment to deliver on planning issues. A similar body could fulfil the requirement for a high-quality SEA administrative and co-ordinating body.

**The Convener:** I question that. The reporters unit exists because planning is a quasi-judicial issue. That is not necessarily what we are considering. With our witnesses last week, we explored where we are now, where the bill will take us and the process of going from kicking off with the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 just last year to aspiring to an all-singing, all-dancing bill that will require all public authorities to implement SEA on everything. How is the knowledge captured? How do we push people ahead?

I am attracted to the witnesses' discussion with Rob Gibson about the gateway advising people and the sustainable development directorate or another part of the Executive monitoring and evaluating work and pushing knowledge round the system. The strong message from COSLA last week was that we start from a low level. People are doing many environmental things, but not in the rigorous, process-orientated way that the bill will require. Is building the capacity to deliver the bill an issue? If we want to do many things, it will more difficult for the system to start and to deliver on our objectives.

**Anne McCall:** Our evidence is based largely on the four key functions that we think are needed. Dividing those functions among separate bodies may have advantages, because an arbiter does not necessarily want to provide advice. It is critical for the four functions to be enshrined in the bill as part of the bill's delivery mechanism. Otherwise, the underpinning administrative process that we need will not exist. We must have a public register, an arbiter, someone who monitors and controls quality and someone who can provide guidance and advice.

The three consultation authorities are already initiating training programmes and are following different procedures. Co-ordination with the SEA gateway is difficult because resources are limited and some duplication is involved. That is the situation eight or nine months after the regulations came into force. It would be unfortunate not to note that and to take action now.

**The Convener:** That does not automatically lead to an independent process, does it?

**Anne McCall:** There are many attractions to having an independent process, especially if it involves an arbitration function.
avoid some of the issues that have arisen with the EIA process.

Rob Gibson: You said that there were issues with, and court cases on, the EIA process in England, but you did not say that there had been any issues in Scotland.

Anne McCall: They were English decisions, but the Executive sent an advisory note to all heads of planning detailing the nature of the decisions and indicating that, because the legislation is essentially the same in England, the decisions also applied in Scotland and, therefore, the heads of planning should be cognisant of them when they make planning decisions.

The Convener: It might be useful to have a look at the European Union review to which you referred—I do not think that we have seen it. We could examine the gap between SEA and EIA and referred—I do not think that we have seen it. We would be able to influence the plan, programme or strategy that will be developed. Therefore, it would be appropriate to do strategic environmental assessment at a higher level on some occasions.

Anne McCall: I imagine that having an SEA of any budgetary process would enhance parliamentary scrutiny by making the decision-making process a little clearer. I find the Executive’s budgetary process somewhat impenetrable, and having an SEA of it would help me to understand better how decisions have been made.

Mr Ruskell: That is a challenge with which the committee has had to wrestle on numerous occasions.

My last question concerns private sector bodies that are undertaking public functions. Does the bill capture plans and programmes that have public character but are delivered by the private sector?

Anne McCall: No. One of the surprising differences between the regulations and the bill is that the bill introduces SEA for all strategies, plans and programmes that are developed by public sector bodies, but excludes private bodies that undertake public functions, unless they are subject to the mandatory requirements of the directive. I checked with the Executive and that is the policy intention. It is probably easier to illustrate that with an example, but you will hear from Keith MacLean from Scottish and Southern Energy later and I am sure that he will give you more evidence on this.

From our reading and interpretation of the bill and the Executive’s policy intention, it appears that bodies such as SSE, which is proposing a series of transmission upgrades, will not have to undertake SEA for their proposals. For example, SSE’s recent consultation would not be subject to SEA whereas Scottish Water, because it is a public body, will have to make most of its strategies, plans and programmes subject to SEA until a time when it might be privatised, when large chunks of what it does would no longer be subject to SEA. There is a large gap; many private bodies undertake functions that are public in nature, but...
from our detailed reading of the bill it seems that they are excluded.

Mr Ruskell: Why is that? Is it because they do not fit into the form of words about the setting of a framework for development consent? Is that how those plans and programmes are exempted? I do not understand at what level the decision is made.

Anne McCall: It is a bit technical. There is a definition of public, which is broad, and there is a definition of public bodies, which is narrower and specifically excludes private bodies that undertake public functions. The bill moves beyond the mandatory requirements of the directive to cover all the strategies that are captured by the partnership agreement commitment, but private bodies that undertake functions of a public character, such as SSE and ScottishPower, are excluded. Obviously, there is lots of mandatory SEA activity in the energy sector, but, as you say, the key test is whether a strategy sets a framework for future development consents. I argue that a strategy that comes from SSE, as a private body, does not set a framework for development consents. It sets out a list of things for which it may seek development consent from someone else, but SSE is not setting a policy framework. The wording in the bill seems specifically to exclude private bodies that have public functions.

Mr Ruskell: So, for example, the decision to upgrade the Beauly to Denny transmission line does not constitute a framework from which specific planning proposals can flow.

Anne McCall: The individual project will be subject to project EIA, but the decision to upgrade that line as opposed to other lines will not be subject to SEA. It will get some scrutiny from the Office of Gas and Electricity Markets, which is the regulator, but under the bill there is no obvious obligation for the decision to upgrade the line to be subject to SEA.

The Convener: That is a good example. We can use it as a test or a case study and see whether other witnesses give us the same answer. That will tell us whether everyone understands the bill in the same way. We will speak to Keith MacLean from Scottish and Southern Energy later and we will have the minister in front of us in a couple of weeks’ time. There is an issue about where SEA stops and environmental impact assessment starts. We want to get to the heart of the question about duplication: how does SEA help the process up front, so that inquiries and decisions are not duplicated? We need to test that.

You both criticise the bill for not including among the consultation authorities organisations that you regard as relevant, particularly in relation to health. You do not state who would be the consultation authority on health; in the absence of any other suggestion, my guess is that it would be health boards. Do you agree? How could they carry out that work in addition to all the other things that they do?

Dr Barlow: I have concerns because the consultation bodies are currently limited to the Scottish Environment Protection Agency, Scottish Natural Heritage and the Scottish ministers—who cover the function of Historic Scotland—but the list in schedule 2 to the bill of impacts that are supposed to be considered includes health and transboundary impacts, for example. It would be useful if a body—whether or not it was the coordinating gateway or independent body—had the capacity to draw in additional consultation bodies when, for example, it thought that a proposed plan, programme or strategy should involve consultation with a body on a health issue. It would be useful to ask SEPA about the extent to which it is comfortable with covering the health remit. I mean no disrespect to SEPA, but my provisional discussions with it suggest that it has limited resources and limited capacity to cover such issues, and it would be useful if a body such as Health Protection Scotland—which now exists in statute—could be consulted on proposals. I understand that that would be necessary in order to demonstrate that the requirement to consider the issues that are listed in schedule 2—which include health and transboundary impacts—has been fulfilled.

It would be useful to be able to consult a body that is based outside Scotland on transboundary impacts, particularly on the delivery of environmental justice. If, for example, a plan or programme for coal-fired power stations was developed in Scotland and the effects of acidic deposition or fallout were going to be felt more heavily in other countries, it would be useful to seek advice from those countries on how their ability and commitments to protect their environment or even to meet EU or international targets and objectives, for example, might be compromised. It would be useful if the coordinating body could seek input from additional consultation bodies on specific plans, programmes or strategies when it thought that that was appropriate.

The Convener: Would the Executive not pick that up by following its own sustainable development indicators? That particular example would be picked up by EU environmental regulations on carbon emissions.

Dr Barlow: There is a commitment to look at the Community’s wish that the directive should consider EU and United Kingdom objectives, but I am concerned that there is no commitment to ensure that commitments and targets at the
Scottish level are assessed. The impact of meeting some objectives might be considered, but I am not convinced that that is enough. For example, if there were to be a major transport programme that would particularly affect urban areas, would the current assessment be enough to determine whether that programme would have a detrimental impact on health as a result of increased concentrations of PM10 in a particular area? If there were a requirement to consider whether EU limit values would be exceeded and it was therefore possible to veto a plan, programme or objective on that basis, that would assist, but that possibility does not exist at the moment. We should consider the compatibility of the programmes that we are drawing up with the commitments that we have made, for example to EU directives on air quality and climate.

The Convener: You mentioned human health, and population has been mentioned too. Why is that?

Dr Barlow: In schedule 2, the impact on population is one of the characteristics that plans, programmes and strategies must be assessed against. There was a question in my mind about which authority it would be appropriate to consult about that. I am not sure that SNH, SEPA and Historic Scotland alone would be able to provide the required input. I cannot give an example off the top of my head of a strategy, plan or programme that would be affected, but if that is one of the criteria that must be considered as a result of the directive, I am not sure what body would be best placed for consultation.

The Convener: Okay. We will probably have to raise one or two issues with the minister. For example, I have not heard of Health Protection Scotland.

Dr Barlow: Apparently it was set up very recently—within the last year.

The Convener: That makes me feel not so bad.

As no other members have questions, I thank the first panel for attending and for going into such depth in their submissions. Having those submissions in advance was useful.

We will have a break for a couple of minutes to allow the second panel to take their seats. Members of the first panel are welcome to stay if they want to hear the rest of the evidence.

10:29

Meeting suspended.
Geoff Aitkenhead (Scottish Water): The only other thing that I would say is that you will be aware that we have raised concerns in our submissions about duplication of effort. We could argue at this stage that elements of the SEA philosophy are already being practised, and we need to be clear as we go forward about the added value of SEA and about what is already happening through the quality and standards process, through the forthcoming water framework directive processes, particularly the river basin management plans, and through the development of structural and local plans. We must ensure that we all have a common understanding of what SEA adds to those.

Mr Ruskell: Obviously, there are plans and programmes into which other stakeholders, including ministers, have input. What is your involvement in those plans and programmes? Do you assist in the making of decisions regarding, say, infrastructure plans and programmes? Do you have an opinion on certain elements of those plans and programmes?

Geoff Aitkenhead: Yes. We played a full part in the quality and standards III process that was set up by the Executive and which involved a wide range of stakeholders, in particular SEPA, which was the promoter of the environmental improvement programme that we implement, and the drinking water quality regulator, which was the promoter of the public health programme.

Our role in that process was to analyse the capability of Scottish Water’s assets to comply with forthcoming requirements. That means that, whenever changes in European legislation or changes in the requirements of the Scottish regulators come down the track, we need to do some detailed work. That is what we have been doing over the past year and a half in relation to the new standards.

Where we can foresee a gap in capability, we come forward with investment proposals. We prepare the detail of those proposals and cost them.

Mr Ruskell: Presumably, that will throw up options that will have differing environmental impacts. Unless you apply SEA to your own thinking, how do you know what the environmental impact of different choices would be?

Geoff Aitkenhead: So far, a lot of that work has been done at a project level, project by project. As Alan Alexander has already said, we routinely carry out environmental assessments and prepare reports for planning authorities in particular, and conduct full environmental impact assessments when we are required to do so.

One of the key questions in terms of moving into SEA is the level at which we set the bar, by which I mean the degree to which we assess programmes and plans rather than individual projects.

Mr Ruskell: Presumably, though, by the time that you get to an EIA stage, you have already determined the route that you are going to go down. At that point, the issue will be to do with the detail of that project and the choices that you will be able to make at a project level about the mitigation measures that will be put in place and so on. I am asking about your decision to go for a particular route. That is beyond the EIA and is pushing more towards SEA again. How do you analyse the environmental consequences of your decision to go for something like a development in the first place?

Geoff Aitkenhead: It is important to understand the roles of the various players. As we said in our submission, we believe that the quality regulators have the initial role in terms of the cost-benefit analysis.

Under quality and standards III, ministers set objectives for Scottish Water and the Scottish water industry. For example, one of those objectives is to improve stretches of coastal and riverine waters in Scotland totalling 530km. SEPA translates that objective into specific investment needs. That is the starting point for Scottish Water. SEPA has translated that objective into a requirement to improve approximately 160 waste water treatment works. The strategic environmental assessment needs to be part of the cost-benefit analysis that relates to the question of the benefit of improving 530km of coastal and riverine waters.

The Convener: That makes sense. It replicates the points that were made in the discussion that we had with the previous panel about the need to work out who does SEA and at which point the environmental impact assessment comes in, so that people are not duplicating the same process. Your understanding would be that SEA would kick in at the point at which the policy framework requirements—or, in your case, the quality and standards III objectives—are set and that at that point, you would run every outcome through an EIA process.

Professor Alexander: It is important to emphasise that nothing that is put in place at the strategic level relieves us of our obligation to conduct EIAs in respect of specific projects. I emphasise again that we are concerned that if we do not get the differentiation between the two levels right there will be duplication of effort and greater expenditure than is necessary. As a tightly regulated business, we do not have anything in our regulatory settlement to pay for more than what we are statutorily obliged to pay for.
The Convener: We will check that understanding with the Minister for Environment and Rural Development when we hear from him. We have private and public sector comparators and we want to ensure that everyone has the right understanding of the bill.

Maureen Macmillan: As you might have heard from my questioning of the previous panel, I was concerned that they had said that the environmental impact assessments were not robust enough. What is the use in having SEA if the EIAs are not doing the job properly? I would like you to comment on that and on the pre-screening process, which I see that you are in favour of. You argue about definitions, but from the opposite perspective to that of the previous panel. You say that the word “significant” needs to be defined properly, but you are quite happy with the word “minimal.” Do you think that it is possible to know what a minimal impact would be, but not to know what a significant impact would be?

Geoff Aitkenhead: I will start with the question about the robustness of EIAs, which are carried out to allow us to understand fully the environmental impact of a project and to explore ways of delivering a particular output. The EIAs of which we have experience are produced by specialists—we always employ specialists to do such work for us—and are subject to what I believe is robust scrutiny through the planning process. In our view, the environmental impact assessments that we carry out are sufficiently robust for the purpose for which they are intended.

We believe that pre-screening is of value within the SEA process. On the definitions, one of the things on which we would like clarity is the way in which positive benefits are handled. A lot of what Scottish Water does is to improve the environment. The needs are defined by ministers and translated into more specific outputs by SEPA and we deliver them to huge environmental benefit. In implementing SEA we need to understand how those significant environmental benefits are brought into the equation, as well as the potential detrimental impacts of short-term construction activity, for example.

Maureen Macmillan: How many strategies or plans would fall at the pre-screening stage? How often do you think that there would not be some kind of screening, because something was thought to be of minimal impact?

Geoff Aitkenhead: That is difficult to foresee, but I suspect that it would not happen often.

The Convener: I kick that question across the table to get the perspective of the Communities Scotland witnesses. Do you have a take on the pre-screening issue and on where SEA and EIAs kick in?

Gordon Wilson (Communities Scotland): We see pre-screening as a positive step forward from the point of view of asking organisations to consider programmes and provide an internal audit trail as a justification for their actions. We appreciate that there are issues about the definitions, which you have discussed in detail this morning. The pre-screening process would certainly help us to integrate the SEA principles into the organisation as more staff take on the idea of reviewing the environmental impact being the important issue that the bill aims to ensure that it becomes.

10:45

Craig McLaren (Communities Scotland): I will touch on the crossover between EIA and SEA. Communities Scotland is very different from Scottish Water and many other organisations in that, as an executive agency, we must deliver ministerial policy. We do that not directly but through a range of other organisations. Our housing functions are delivered mainly through registered social landlords and our regeneration functions are generally delivered through community planning partnerships. We manage, monitor and set criteria for programmes, but because we do not deliver the programmes on the ground, EIA does not directly affect us.

The Convener: Do you anticipate that SEA will kick in for you?

Craig McLaren: Yes. We carried out pre-screening on our corporate plan, for example, and concluded that it would be subject to SEA.

The Convener: Gordon Wilson said that the benefit of pre-screening is that it provides “an internal audit trail”, whereby organisations must justify why they are not including a plan or strategy in the SEA process. Would you have a problem with such information being logged in a register, so that people could see what was included and what was not?

Gordon Wilson: We would have no problem with that. We recently had to come to terms with the coming into force of the Freedom of Information (Scotland) Act 2002, and we are building more and more freedom of information into the organisation’s activities.

Rob Gibson: In its submission, Communities Scotland says:

“Our national remit covers a diverse range of functions, as a funder, advisor, facilitator and regulator as we implement Ministerial policy.”

Ministerial policy dictated what Scottish Water would do on each of its programmes. Does ministerial policy dictate what you must do in your programmes?
Craig McLaren: Obviously, ministerial policy is set by ministers. Our job is to work with ministers to ascertain how we can implement policy. It is our job to come up with solutions for the implementation of policy locally, in conjunction with the range of different partners that I mentioned. Our role is to do with the practical implementation of policy, rather than the development of policy.

Rob Gibson: Is that what differentiates Communities Scotland from Scottish Water? You expect to undertake SEA and you say that you are already doing so. How and by whom is that activity being monitored?

Craig McLaren: We are still in the early stages. We are monitoring the process, to ascertain the resources that it will need. The first thing that we did was consider whether some of our key plans would be subject to SEA, which is why we carried out pre-screening on the corporate plan. The process is on-going.

Rob Gibson: What stage is the SEA process at in your corporate plan?

Gordon Wilson: The corporate plan was exempt from the SEA regulations, because discussions around it started prior to their coming into force, but as the corporate plan developed, we were very aware of the SEA principles. The plan is being published today and will be available to members through the Scottish Parliament information centre in the next couple of days.

Rob Gibson: You are at such an early stage that I cannot envisage how we might question—

Gordon Wilson: Sorry, but may I add a comment about housing policy? The setting of ministerial policy would involve discussions between us and Scottish Executive colleagues about principles of policy to do with affordable housing and homelessness, for example. We would then work with Executive colleagues to consider how to meet the prime targets over the next three years.

Rob Gibson: Will your revised sustainable development policy be subject to SEA?

Craig McLaren: It is likely to be.

Rob Gibson: Is that as much as you can say just now?

Craig McLaren: We are at a very early stage, to be honest.

The Convener: I think that witnesses from both organisations have picked up on the impact of the bill on staffing, given that staff will have to undertake the process, make the right decisions and be accountable for their decisions. To what extent will guidance or the SEA gateway help you to make internal, strategic decisions about staffing in relation to the delivery of SEA? What resources will you need to allocate, to ensure that staff are geared up to implement the bill? You made cautionary remarks along the lines of, “We know that resources will be needed, but we do not know how much.” Have you thought about how you will implement the provisions of the bill when it comes into force, and is timing an issue? We got the impression from COSLA that it would help if the training was required later rather than sooner. You have clearly thought in great depth about how the bill will apply. What is your conclusion about how you can make it work?

Professor Alexander: In a sense, later is always better than sooner, especially when people are operating in a tightly regulated environment. I make that point seriously. Any additional work that the bill will lay on Scottish Water will fall mainly on our operating budget, if we get the levels right. If the SEA were done at the strategic level by the stakeholder group, much of the implementation would be done at our level. We need guidance to tell us how much we will be involved, which is why we are in favour of pre-screening. We need to reduce the amount of work that our people do.

We are not in a position to say how much extra work it will be likely to require because, until we know what the guidance is and what the administrative processes are, it is difficult to make that estimate. However, we will have to make a case to our economic regulator for that to be part of our permitted operating expenditure, and we need some clarity on that. My guess is that getting that clarity will take some time.

Gordon Wilson: I tend to agree with what has been said. We have not assessed the impact, in pounds and pence, on staff time, but we realise that, to be sure of implementing SEA as intended across the raft of programmes and plans, the whole organisation will need to adopt the principle, so that it becomes second nature to staff and is not something that is imposed once a year or whatever, but is intrinsic to their work as they carry out their various roles. We are conscious that we will need to take a broad-based approach and that, initially, we will have to work closely with Scottish Executive policy colleagues. Therefore, there will also be an impact back within the Executive. It is difficult for us to cost that because discussions are at an early stage.

Nora Radcliffe: I have a resource-related question. Both your organisations have obviously thought a lot about implementation of the bill. How far do you see it as being an in-house function and how far do you feel that you will have to bring in consultants? Related to that, do you have any feel for the training opportunities for your staff and whether there are courses available that would allow you to train your staff to take up these responsibilities?
Geoff Aitkenhead: As I said earlier, our experience of environmental impact assessments to date is at a more detailed level, with regard to planning applications. To date, we have used external consultants and specialists to carry out that sort of work. I think that that will continue in future, until we understand fully our role in SEA and can give some consideration to building the capability within the business. In the short term, I see such work being externally resourced, but training opportunities may well flow, in the future, if we think that we need to build capability within the business.

I return to the earlier part of your question, on the benefits of guidance and the gateway. We will look to guidance to give us the clarity that we need on the areas of potential duplication that we see and to clarify Scottish Water’s role and the role of SEPA, the drinking water quality regulator and the Executive, as the promoters of much of the work that we do. Until we have that clarity, it is difficult for us to firm up on the quantity of resources and the skills base that we will need.

Craig McLaren: I will answer the question on training. As Gordon Wilson says, we are trying to mainstream SEA across the organisation. We are trying to ensure that our staff are more aware of environmental and sustainable development issues, and we have piloted some training on that, along with colleagues in Scottish Natural Heritage, Scottish Enterprise, SEPA and other organisations. There is a one-day pilot programme to increase awareness of environmental issues and sustainable development.

We have another role in trying to use the sustainable development policy that we are developing as a basis for considering our internal mechanisms and determining how we can make sustainable development work internally as well as externally. Training will be considered as part of that review process.

Thirdly, the department that I am responsible for in Communities Scotland has a role in ensuring that people, including the organisation’s staff, are properly skilled and have awareness of regeneration issues, which will obviously include the environment and sustainable development. We are trying to do a bit more work on those matters.

Gordon Wilson: As far as consultants are concerned, we are conscious of our current budgetary restrictions and are looking to carry out as much of the work as we can in-house. When we set off down the road of SEA, we thought that it would be too much for anyone to get into. Although there might be external options that we could consider, what happens is that the person who reads up on such matters almost becomes the in-house expert on them.

We must take stock of what SEA means for the organisation’s internal mechanisms. Until that happens, we will not be able to determine fully whether we need to get the work done externally. However, we certainly think that we will cover most aspects internally to the best of our ability. Specific aspects of the work might well be sent out to consultants, or our review of the process could be assessed externally to ensure that what we are doing is on the right lines.

Nora Radcliffe: I do not know whether this is related, but are you concerned about the collection or availability of data to underpin all your environmental assessments?

Geoff Aitkenhead: That is a significant issue for Scottish Water, because much of what we do results in long-term benefits to the aquatic environment. Measuring the prospective benefits of a piece of work and monitoring its actual benefits require some extremely complex water-quality modelling work of the marine environment and inland waters. We look to SEPA in that regard, because it has a particular skill and competence in such work. The data requirements are quite significant.

Gordon Wilson: That might also be an issue for Communities Scotland. Because we are very much geared up for reporting on ministerial targets both internally and back to the Scottish Executive, we have well-honed internal processes for those specific areas. However, as we pointed out earlier, our work cuts across quite a range of relationships and we might well have to gather data to validate whether we are implementing the SEA directive effectively or will meet our statutory obligations at a later date.

Mr Ruskell: I want to pursue Nora Radcliffe’s point about costs. I appreciate that SEA and EIA can be conducted on different tiers and that SEA needs to be conducted at the level of the stakeholder groups that you work with. However, you seem to be concerned about costs. Regardless of whether SEA is initiated by a stakeholder group or is conducted in-house, the costs of implementing it might well be similar. After all, you will still have to feed into the process significantly.

Professor Alexander: That issue must be considered from the perspective of how we control costs which, as a regulated business, we must do. Our economic regulator sets tough targets, which means that we have to minimise the cost of everything we do. Although things have to be done effectively, they must also be done as economically as possible. As a result, we have an interest in ensuring that Scottish Water does not do anything more in-house than it has to do. I am being as blunt about it as I can.
Furthermore, when we have to do something, we have to decide about the best way of doing it. Is it best to do it in-house or is it best to employ short-term consultants to do it for us? Such a judgment must be made almost on a case-by-case basis. One of my colleagues from Communities Scotland said that his first assumption would be that his staff could take on the work in addition to what they already do. However, given the cost pressures that we have been under, that would not be our working assumption. Given what we already have to do, we simply could not do that as well.

The committee will know that we have already taken 30 per cent out of opex; we will have taken 40 per cent out by next year and we expect that we will be given further targets in the next regulatory period. Both of those decisions are crucial. We must do only what is clearly ours to do and we must make case-by-case decisions on the best way to resource it.

11:00

Mr Ruskell: You will be aware that, under the Water Services etc (Scotland) Act 2005, the water industry commission will have to have regard to the sustainable development guidance that is issued to Scottish Water by the minister. Surely the WIC is going to view your sustainable development duty within that context.

Professor Alexander: I hope so. The determining principle is funding; if we are funded to do something, we will do it, but if we are not funded to do it, we cannot do it. You are right; if economic regulation works as it should, all the obligations that fall on Scottish Water should be funded, but we need to be sure that we are obliged to do only the things that we are statutorily obliged to do.

The Convener: So the key thing in relation to the bill is to work out whether Scottish Water is carrying out a ministerial function or is a consulting authority.

Professor Alexander: Absolutely.

The Convener: Therefore the guidance will be absolutely critical; it will not be in the bill. There will have to be discussion between the Scottish Executive and all public sector bodies about training, how the guidance will work and how we equip agencies to pick up the guidance and run with it.

Professor Alexander: Yes, and until we have clarity, it is difficult to answer the kind of questions that Maureen Macmillan and Nora Radcliffe were asking about what it will cost us. We just do not know.

The Convener: We will attempt to find that out from the minister.

Maureen Macmillan: I seek clarification. When Q and S III and priorities were being discussed, was SEA never mentioned as being part of what would have to be included?

Geoff Aitkenhead: Yes, there was a discussion about SEA in the early stages of the Q and S III programme.

Maureen Macmillan: Of the possible financial implications as well?

Geoff Aitkenhead: They were not discussed in great detail, perhaps because of the lack of understanding of the things that we have been discussing this morning.

The Convener: Thank you all for giving us your submissions in advance. It has been helpful to hear about work in progress and to see how you are beginning to think about how the bill will work and how you might make it be of benefit. That was one question that we did not ask you; do you think that the bill will be helpful and worthwhile, given that you already have regulations? No one has come out and said no, although you have had the opportunity.

Professor Alexander: Any concerns that we might have are procedural rather than substantive. We are very much in favour of the principles behind the bill.

The Convener: It sounds as if Communities Scotland is doing the work already and the question is just how best to do it in the context of the new bill.

Thank you. The session has been really helpful. We will try to test those questions and the clarity issues later on in the process as part of our scrutiny of the bill.

11:03

Meeting suspended.

11:05

On resuming—

The Convener: I welcome the third panel, which comprises Dr Keith MacLean, head of sustainable development at Scottish and Southern Energy; Dr John Hartley, director and principal consultant at Hartley Anderson consultants; and Liz Bogie, senior manager of knowledge management at Scottish Enterprise. Thank you for the helpful written submissions that you have provided.

Richard Lochhead (North East Scotland) (SNP): I apologise for being late.
The Scottish Enterprise submission states that SEA "must not undermine the Executive’s top priority of economic growth."

I thought that the top priority was sustainable economic growth. Why did Scottish Enterprise not include the word “sustainable”? Does Liz Bogie see a conflict between SEA and economic growth?

Liz Bogie (Scottish Enterprise): I do not see a conflict between sustainable development and economic growth. There will be many win-win situations, and the forthcoming green jobs strategy will highlight some of those situations. That strategy has also strengthened the smart, successful Scotland strategy by emphasising the positive links.

The comment on economic growth is based on our concern that we must avoid adding to the process delays or excess bureaucracy that might slow down decision making. We are conscious that we are operating in a global environment; therefore, we need to be nimble and move quickly. We are concerned to ensure that SEA is undertaken in a smart way and at the appropriate level, and that we get as many environmental benefits as possible from it. However, we do not want SEA to become a hurdle to making progress on the economic agenda.

Richard Lochhead: If it serves only to add bureaucracy, is SEA required?

Liz Bogie: The Scottish Enterprise submission makes it clear that we are very supportive of SEA and that we welcome its introduction and expansion in Scotland. We think that it will bring significant environmental benefits. If SEA is carried out at strategy, programme and plan level, it will introduce the environmental focus at the right level. It will also ensure that a range of options are considered at the early stages of development. Therefore, retrofits, which were sometimes required in the past, will be avoided.

However, while we are supportive of SEA, this gold-plated approach is new. We must make sure that we learn as we go forward and that we do not build in too many hoops and hurdles as we progress. That is the message we are trying to put across.

Mr Ruskell: There seems to be some difference between Dr MacLean’s submission and the RSPB Scotland submission. Dr MacLean seems to say that Scottish and Southern Energy is a body that exercises functions of a public character and which would therefore be captured by SEA. Is that correct?

Dr Keith MacLean (Scottish and Southern Energy): The submission made the point that SSE would like to have the clarity to which Sarah Boyack referred. With regard to the directive, the work of SSE is largely that of a private company carrying out a public function. We are not totally clear how the bill will extend requirements to SSE, but there is a potential issue for us, particularly for the transmission and distribution work that SSE carries out.

We want clarity and to avoid the duplication of effort that other speakers have mentioned. There is already a clear requirement for environmental impact assessment of work in certain areas. SSE believes that that is appropriate for the type of project work that it carries out.

Mr Ruskell: You make a distinction in your submission between the policy of the renewables obligation Scotland scheme and the project-based EIA proposals that are put forward as part of planning applications. I will ask you about the Beauly to Denny power line, which we have already touched on, as an example of such a project.

There seems to be a big gap between the policy being set that because renewable energy is being developed, an upgrade of the transmission line is required, and the specific project that you put forward, in respect of which specific details of routes—whether the line goes to the west or east of Stirling, for example—are dealt with by the environmental impact assessment.

What role have you had between the establishment of the policy and that specific project? For example, when did you say, “Yes. We want to develop a pylon line as opposed to an underground cabling system”? Did you have a role in that decision?

Dr MacLean: You raised a lot of points there.

There is a gap, which we highlighted in our submission. In the case of renewable energy development for Scotland, it would have been appropriate for a strategic environmental assessment to have been carried out when the renewables obligation Scotland scheme was being developed. That would have made the implementation of individual projects easier. A reflection of our difficulty, as a transmission company, is that we must react to the market in generation and make proposals that satisfy the requests that are made of us to provide a connection to generators. We must put forward appropriate schemes, but they are determined in their size and location by the generation schemes, which—apart from the few that we develop ourselves—are outwith our control. We are very reactive in that sense. We must put together a proposal to respond to the market and then carry out the environmental impact assessment within that framework.
Mr Ruskell: Is your specific proposal for a Beauly to Denny pylon line upgrade derived from a plan on how you will upgrade transmission networks in Scotland?

Dr MacLean: The proposal is derived from the need to provide additional capacity to deal with the applications that have been made. Many projects are now being built because they have had permission to proceed. According to our licence condition, we have to provide connection and capacity if projects request that of us.

Mr Ruskell: Does that provide a framework for development proposals that then go through the planning system?

Dr MacLean: No. The process is still entirely reactive: we cannot control it ourselves. We believe that an SEA would be appropriate and have been pushing for that. We believe that it is important that aspects such as transmission, which are in effect ancillary developments to many of the generation projects, are taken into account in the production of a policy that is assessed for its environmental impact. In the absence of that happening, we try to include some strategic environmental impact. In the production of a policy that is assessed for its environmental impact. In the absence of that happening, we try to include some strategic environmental impact assessments. An EIA would examine issues such as whether the line should go east or west or underground, overground or undersea, and it would weigh up those options for delivering projects, as opposed to examining issues such as the strategic aim of locating, in this example, generation in Scotland.

Rob Gibson: You are saying that an SEA should have been performed on the renewables obligation Scotland scheme.

Dr MacLean: Had the legislation been in place, the ROS would have fallen under it. That would have resulted in a more detailed policy that took the issues into account up front, rather than one that required them to be taken into account over time. SEA would have been appropriate for that policy and made it better.

Rob Gibson: So it would be possible to perform a strategic environmental assessment now on wave and tidal power, before people become involved in developing it.

Dr MacLean: I believe that the Executive is looking at carrying out SEA work on marine developments at the moment.

Rob Gibson: How do you view your position in comparison with that of Scottish Water, which commented on the receiving of instructions and the fact that it is a tightly regulated organisation? In many ways the functions that you carry out are similar, because you have to deliver services in what is almost a monopoly.

Dr MacLean: In many ways, we are as heavily regulated as Scottish Water is in carrying out our transmission and distribution activities. We support Scottish Water’s position that the environmental impact assessment of individual projects is its direct responsibility. If we were involved in policy development, we would expect, as part of a wider stakeholder group, that that work would be covered by SEA. However, when it comes to the delivery of a project on the ground, there is already more than adequate coverage of environmental impacts through EIA legislation.

Rob Gibson: So the bureaucratic burden could become onerous.

Dr MacLean: That is our big fear.

Rob Gibson: To sum up, you fear the wrong organisation undertaking SEA at the wrong stage of development.

Dr MacLean: Yes. We also share Scottish Enterprise’s view with regard to ensuring that we
do not allow a bureaucratic process to get in the way of development.

We, too, are interested in the concept of the pilot introduction of SEA to ensure that there is no overload. There was much talk earlier about consultants. There is a shortage of appropriately skilled capacity in the EIA work that is being done at the moment. We do not want to add to that. Phasing will be necessary if we are to move from no SEAs to SEAs for everything. Several projects are proceeding without SEAs, so introducing pilots would be sensible.

**Dr John Hartley (Hartley Anderson Ltd):** I echo what was just said. The policy decision was to promote renewable energy development in Scotland. When that decision was made, an SEA should have been done. That would have flagged up the key issues such as access to the grid and capacity. It would not have fixed the precise route or construction methods, but it would have flagged up the range of issues, which would have allowed the public to have an input. EIA deals with the detail of the routing and the construction method. Perfectly adequate legislation is in place for that.

**The Convener:** I will move on to the scale on which SEA should operate. Scottish Enterprise's submission talks about the need to ensure that SEA is undertaken at the right level. In her first response, Liz Bogie said that she did not want to do anything that would prevent Scottish Enterprise from being a nimble organisation and expressed reservations about gold plating Scottish Enterprise's work.

Liz: I would like to press you on your submission, which expresses the concern that "it will be difficult in practice to undertake a meaningful SEA of high level strategies, plans and programmes which cover a broad range of issues" and refers to "A Smart, Successful Scotland". Is the legislation to introduce SEA not meant to force or encourage such an approach?

**Liz Bogie:** We have examined SEA for the past two years and tried to get our heads round it and to understand its benefits and how we will implement it in the network. A document such as our operating plan, which might be a natural subject for SEA, covers a huge range of activities and geographies. One of our concerns and uncertainties is that most experience of SEA relates to land use and land planning. When we move on to matters such as the skills and learning agenda, careers guidance and business development, it becomes more difficult to find case studies and to consider how SEA might be applied.

We have a range of uncertainties on which we would like to do pilots. We have waited for guidance. Each iteration of the SEA process has been accompanied by more guidance from the Scottish Executive, such as the explanatory notes that accompany the bill, and further guidance will be forthcoming. We are reaching the stage at which we probably have enough information to start undertaking pilots on the less traditional matters, which are the concern for us. We are reasonably comfortable with how SEAs might be done in the more traditional land planning work and our physical infrastructure work, but we are less comfortable about some other parts of our work, which are big chunks of enterprise network activity.

We are interested in examining and learning from plans that are following the process, such as the Communities Scotland corporate plan. Uncertainty exists over high-level strategies and how a sensible SEA is performed for the less traditional matters, for which the gut instinct might be in some cases that they do not have a significant environmental impact, unlike other matters.

**The Convener:** Listening to Communities Scotland made me think that it was taking ownership and trying to work out how SEA will become a benefit to its work, whereas SEA comes across as being much more of a threat or a potential threat for Scottish Enterprise. How do you turn that round? One of your comments is that emphasis should be placed "on those strategies, plans and programmes where most environmental benefit can be secured."

That makes a lot of sense, but I presume that you must also consider environmental disbenefits and how you work the circle around. The committee is in the middle of a climate change inquiry, for which carbon emissions are a huge issue. SEA provides an excellent opportunity to run such issues through all sorts of organisations, and Scottish Enterprise is critical to that.

**Liz Bogie:** We are supportive of SEA. We have been considering it for a couple of years and have had sessions with other public sector organisations and Elsa João from the University of Strathclyde to try to get the best understanding that we can. However, there comes a point when we must decide whether we have enough information to do some sensible pilots that will help us to move forward or whether we still have too little information and too many uncertainties. Until reasonably recently, we felt that there were too many uncertainties for us to be able to do anything helpful. However, we are getting to the tipping point at which we have a level of comfort, but there are still issues with definitions and exactly how many of our plans, programmes and strategies will be covered by SEA.
There are also issues with the less traditional areas; there is a lot of learning to be done in those areas, but we want to be able to share that and learn from others as part of the process, and it would be great if the gateway or another body could help us to do that.

**The Convener:** You suggest that we should establish a strategic steering committee—no one else has made that suggestion, although there is clearly a big issue with how everybody takes SEA on board and learns from one another. Such a committee would provide a way for all the key public sector organisations to share their expertise and work with the gateway, but would a formal committee be necessary, or is it more a matter of networking and having a regular opportunity to raise problems and challenges and to work out how to solve them? Will you say a bit more about that proposal? It is an interesting idea.

**Liz Bogie:** We come at the proposal from two angles. One is the need for a good practice network in which to share issues, problems and solutions. A natural group for us to share issues with would be the regional development agencies in England but, because of differences in SEA legislation, there would be limits to how well we would be able to learn from one another. The strategic steering committee would be very much about sharing good practice, sharing knowledge and tackling issues together. The witnesses from Communities Scotland mentioned training, and the steering committee would also be about joint training programmes on sustainable development, such as those in which some of the public sector has already been involved.

The other angle is the need for a strategic steering committee to take an overview of SEA and consider how it fits in the wider context of economic policy, social policy and the forthcoming sustainable development strategy. That is necessary to ensure that sustainable development is considered in the round, that any points are addressed early on and that the potential for joining things up is realised early on. We are not precious about whether that is achieved through a committee or by some other means, but we thought that it would be useful to have a way of getting a wider range of voices to have conversations on SEA, how it fits into the broader context and how we make it work well in Scotland.

**The Convener:** That fits in nicely with a previous comment that the gateway could provide guidance and have an overview while the Scottish Executive’s sustainable development directorate could perform a monitoring role. Is your point simply that somebody is required to fill those roles so that bodies can be brought into the SEA process?

**Liz Bogie:** That is right.

**Mr Ruskell:** Do you envisage the Executive’s sustainable development directorate filling that role? You talk about the need to bring together the environmental aspects with the economic and the social. That is what sustainability means, so would it make sense to bring a strategic steering committee under the remit of the sustainable development directorate?

**Liz Bogie:** It might well make sense. We would need to consider how best to bring to the table all the key players that need to be round it, but I am not in a position to comment on whether the sustainable development directorate could do that or whether it would be a useful function for the directorate. However, we need to ensure that all the voices are heard and that all three legs of the sustainable development stool are represented so that we have a nice steady stool, not a shooglie one.

**Mr Ruskell:** Your written submission seemed to be defensive on economic growth. I presume that you are talking about gross domestic product rather than any other sustainable measures.

**Liz Bogie:** GDP is one of the measures that we used. It is a headline indicator for us and we accept its imperfections, but CO₂ emissions are also an indicator.

**Mr Ruskell:** The convener pointed out that you highlighted the need to focus on the plans that have the most environmental impact, but surely we also need to consider those that have the least environmental impact. My understanding is that SEA is about the need to understand the environmental impacts of the direction in which the Government is pushing continued economic growth. Are you keen for all plans to be assessed?

**The Convener:** Before you answer, Ms Bogie, I should point out that I was quoting from the submission, which talks about environmental benefits. My point was that we need to consider the full impact of plans and not only the benefits.

**Mr Ruskell:** The submission says that you “believe that the legislation should place emphasis on those strategies, plans and programmes where most environmental benefit can be secured.” I wonder whether we should look at things the other way round, and consider the plans and programmes that offer the least environmental benefit. We should at least be aware of what the impacts will be before we decide to go ahead with a plan.

**Liz Bogie:** Behind the statement that you quoted lies the desire to find where we can make the most difference. We are saying that, if a plan or programme could have negative environmental impacts, how could SEA spin it towards positive impacts? If we could do that, we could make a
huge difference. If the impacts were already reasonably positive, SEA might make only a marginal difference. We want to focus on where we can make the most difference.

11:30

Mr Ruskell: Is it still important to consider the plans and programmes that will have a negative environmental impact?

Liz Bogie: Absolutely. We were not saying that we should not do that; we were saying that we should focus on where we can make the most difference. We are not saying that we should simply focus on the plans and programmes that will have positive impacts anyway. We want SEA to lead to the biggest changes and the most positive outcomes.

For example, there can be environmental impacts in the skills and learning agenda. Off the top of your head, it is difficult to think of significant impacts, but that does not mean that you will not find significant impacts as you go through the process. Off the top of your head, it seems like an area in which there might be fewer environmental impacts than there would be in, for example, a cluster strategy in a business agenda.

The Convener: You might not get instant answers, but it is worth while going through the process.

Nora Radcliffe: Surely, if you incorporate environmental awareness in all your skills and learning training, it will have a huge impact. We are not asking people to go down the traditional route; the bill tries to make people think about many different routes. That is the whole point. We need to consider the big impacts and the little impacts. If we think about climate change, we need to consider every improvement that we can get.

What is Scottish Enterprise doing to address the skills gaps that we have been hearing about in the environmental area?

What do all the panelists feel about the timescales? Are the timescales that have been imposed realistic? Should timescales be imposed where they have not been imposed?

Liz Bogie: Just over a year ago, we mapped out the environmental industries in Scotland. We wanted to get a feel for how many companies there were, how big they were, what issues they thought were important, where they saw growth potential and where they saw barriers. We specifically wanted to find out about skills issues, but very little information came back.

There is a forum called the UK forum for the environmental industries. It brings together all the English RDAs, and we are a member as well. We are also a member of a specialist sub-group on skills within the forum. The sub-group has been working with the sector skills councils on how to embed skills throughout the range of training areas. Forward Scotland is actively involved in that sub-group.

We have not yet heard of major skills problems, but we hear a lot of anecdotal evidence. Our survey covered about 800 companies. We talked in detail with a couple of hundred of them, and we talked to 30 industry experts from different sectors, but skills did not emerge as a big issue. However, we pushed the issue, because we felt that it was important.

The Convener: That is interesting. In evidence that we heard on climate change, environmental skills in housing were often mentioned. I suppose that it depends on what question is asked.

Liz Bogie: It also depends on the definition of environmental industries.

The Convener: Nora Radcliffe asked about timescales. Dr Hartley, you mentioned timescales and consultations. Can we square the circle?

Dr Hartley: I am sensitised to the issue because industry often looks for precise guidance on how long it will take before it knows the direction in which it is going, and whether such-and-such a project will get the go-ahead. The way in which the bill is drafted leaves it rather too open. There is Cabinet Office guidance on the duration of the public consultation period, which is 90 days. I do not suggest that you just accept that without thinking through what it means, but from an industry standpoint it would be helpful to define the normal consultation period for a plan or programme.

Echoing the rest of our conversations, I do not see SEA as an end in itself. There is a danger of it being applied mechanistically. The idea that there is some screening group that says, “In our judgment, there won’t be significant environmental effects from this plan, programme or strategy, and therefore, for these reasons, we’re not proposing that an SEA is done”, does not mean that the environment has not been considered, because quite clearly it has been. The process should be documented so that it is transparent. However, there is a danger of overloading competent authorities, such as Government organisations, the people doing SEAs, the people who are supposed to be reviewing and making feedback, the public and SEA stakeholders. Let us try to ensure that there is a streamlined process that goes for the important policies and programmes and ensures that their environmental implications are adequately assessed.
The Convener: That is a good point on which to finish. I thank the final panel of witnesses for coming in this morning, and being prepared to pick up all the questions that we have been testing out on everyone else, to see whether you would come up with the same answers.

The session has been useful. We touched on the importance of guidance and of clarifying the legislation, particularly in relation to the definition of a minimal impact. We touched on the level of SEA, how high up it goes, whether there is a gap between SEA and EIA, and how we can avoid unnecessary duplication. We touched, in that final point, on the danger of taking a mechanistic approach and on how making the process less mechanistic should not make it less accountable and auditable. We touched on how the gateway works, the issue of pre-screening, the ability to monitor and issues of transparency. We also touched on the culture shift, which seems to me to be the big issue and which you all picked up on.

Our next session on the bill will be with the three consultation authorities that are named in the bill; the session will involve representatives from SEPA, SNH and Historic Scotland, who will have a different perspective.

11:38

Meeting suspended.
11 May (13th Meeting, Session 2 (2005))

SUBMISSION FROM HISTORIC SCOTLAND

1. Historic Scotland is an Executive Agency of the Scottish Executive and part of the Scottish Executive Education Department (SEED). We are responsible for the administration of Scottish Ministers’ functions and statutory powers in relation to the protection of Scotland’s historic environment and for advising Ministers on policy. The Scottish Ministers have designated Historic Scotland to act as a SEA Consultation Authority on their behalf, on matters affecting the historic environment.

2. Historic Scotland welcomes the opportunity to provide evidence to the Environment and Rural Development Committee on the Environmental Assessment (Scotland) Bill. As the Committee will be aware, Historic Scotland responded to the two consultation papers which dealt with the Bill (2003/31 and 2004/12). The evidence submitted here relates to the key questions asked by the Committee and we will be happy to answer more detailed questions when we come to give oral evidence. Our comments here are from the perspective of a Consultation Authority; as a Responsible Authority we will follow the requirements for SEA set out in the Bill.

Provisions of the Bill which have been changed

3. Historic Scotland welcomes the inclusion of “strategies” in the definition of plans and programmes, in line with the commitment set out in the Programme for Government. We also welcome the clarified wording in the Bill, including the identification of Responsible Authorities.

What will the effect be of extending the scope of SEA to a broader range of plans and programmes than is applicable to the rest of the UK?

4. The Consultation Authorities have been undertaking a significant amount of informal consultation and discussion with a variety of Responsible Authorities since the SEA Regulations came into effect in July 2004. A point which has been made several times is that the strategic context for their activities is often set by Scottish Executive policy and/or strategic frameworks. However, one of the concerns of the Responsible Authorities is that this strategic-level policy is not subject to SEA. Extending the scope of SEA in the way proposed by the Bill will address this matter and ensure that SEA is applied consistently and fairly to the hierarchy of plans, programmes and strategies taken forward by all levels of government.

5. It is inevitable that extending the scope of SEA in this way will require additional resources from all the stakeholders involved. Historic Scotland has raised this matter in its consultation responses, as have many of the potential Responsible Authorities and others. The Consultation Authorities have been working closely with the Scottish Executive and others to increase understanding and awareness of SEA and to assist the Responsible Authorities in building capacity in this area.

What will the effect be of the proposed system of administrative arrangements chosen to implement this obligation e.g. pre-screening and screening?

6. It is important that the focus of SEA be on those plans, programmes and strategies which may give rise to significant environmental effects. Historic Scotland therefore supports the use of pre-screening as a means of sifting out those which would be unlikely to result in adverse environmental effects. However (as noted in our consultation response) early indications are that guidance is needed on pre-screening, to assist Responsible Authorities in undertaking the process and to ensure that it is applied consistently across the public sector. We understand that guidance will be prepared by the Scottish Executive Gateway in conjunction with the Consultation Authorities and others.

7. We consider that a reporting mechanism for pre-screening results would be useful, both as a means of monitoring the SEA process and as a way of sharing information. We therefore support
calls made by others for a register (such as that used by the Canadian Environmental Assessment Agency) which, amongst other things, would record pre-screening results.

8. As noted in our consultation response, we support the proposed approach of screening on a case-by-case basis. There have been calls from the Responsible Authorities to provide an indicative list of plans, programmes and strategies to be subject to SEA; however, this would best be prepared once sufficient experience of the process has been gained by all the stakeholders. While considerable effort has been expended by the Executive and others to identify the potential plans, programmes and strategies, it is only the Responsible Authorities who have the necessary and sufficient knowledge of their activities.

Is the provision of a SEA Gateway within the Scottish Executive a sufficient method of managing the SEA process?

9. The SEA Gateway is important in that it provides a central known point of contact for Responsible Authorities and Consultation Authorities, and facilitates efficient and effective communication between the two. This is particularly crucial in light of the deadlines by which the Consultation Authorities must respond to screening and scoping requests.

10. The Scottish Executive, in recognition of consultation comments received, proposes to proceed with a gateway located in the Scottish Executive, which will take forward administrative and management functions, as well as some specialist functions. To a certain extent this is already occurring. The Consultation Authorities are being asked for specialist advice on SEA as much as, if not more than, on our specialist areas of environmental expertise. Indeed, a significant amount of time has been spent on informal consultations, awareness-raising and training sessions, and review of draft screening and scoping reports and discussions of these with the relevant Responsible Authorities. We are also working closely with the SE Gateway in the preparation of the templates and Bill guidance, and expect to be involved in the case studies to be taken forward between the Executive and COSLA.

Historic Scotland
4 May 2005

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

Thank you for the opportunity to provide evidence to the Environment and Rural Development Committee on the general principles of the Environmental Assessment (Scotland) Bill.

As one of the three specified Consultation Authorities SNH welcomes the Environmental Assessment (Scotland) Bill, which will extend strategic environmental assessment to all new strategies, programmes and plans developed by public sector organisations. SNH considers that the implementation of SEA will, through a more rigorous and transparent policy planning process, help to place environmental considerations at the heart of decision-making and thus to make future development more sustainable. We shall do our best to ensure that these benefits are achieved with the minimum of bureaucracy and delay.

Our comments on the specific questions raised by the consultation paper are contained in the Annex to this letter. In summary SNH welcomes the proposed Bill; the main points that we wish to make can be summarised thus:

- SNH supports the comprehensive approach to the application of SEA being adopted for Scotland by the Scottish Executive. We believe that this will in the long run reduce the friction between environmental and other objectives by encouraging their integration at an earlier stage in the planning process. In this respect we believe that Scotland will be giving a lead that we would hope and expect the rest of the UK to follow. We recognise, however, that guidance will be necessary, particularly to make clear the relationship between the Scottish and UK regimes for UK-based Responsible Authorities;
SNH supports measures for pre-screening and screening but considers that their application will need to be supported by guidance and monitoring and incorporate a review mechanism; and

SNH supports a strong central administration of SEA with wide-ranging duties of advice, co-ordination and monitoring and information, closely supported by the Consultation Authorities in offering advice on environmental impacts.

I confirm that SNH will be pleased to provide oral evidence to the Environment and Rural Affairs Committee at its meeting on Wednesday 11 May and that we may submit a further written submission by 4 May 2005, as invited in your letter of 19 March 2005.

Annex 1

Response by Scottish Natural Heritage to the consultation by the Environment and Rural Affairs Committee on the Environmental Assessment (Scotland) Bill.

1. SNH's detailed responses to the questions raised in the consultation paper are given below.

What will be the effects of extending the implementation of strategic environmental assessment to cover a broader range of plans and programmes than is applicable to the rest of the UK?

2. SNH strongly supports the Scottish Executive’s aim of making Scotland a ‘world leader’ in the application of strategic environmental assessment. We accept that diverging approaches to environmental assessment reflect differing devolved approaches to the achievement of sustainable development as set out in ‘One future – different paths. The UK’s shared framework for sustainable development’. We consider that the proposed approach in Scotland, which extends assessment to higher tiers of policy development and maintains a strong focus on ‘environmental’ assessment, will provide a focused, robust and consistent approach.

3. The proposed Scottish approach will help to place the environment at the heart of decision-making. At a time when environmental threats such as climate change are increasingly prominent and when there is growing recognition of environmental quality as a key component of “place competitiveness”, this should pay real dividends, especially in the medium to long term.

4. Some people have argued that SEA is too narrow in focus and that instead of applying it widely the aim should be to move straight to a regime of Sustainability Appraisal (SA). This is the approach currently being explored south of the Border. SNH regards this criticism as mistaken. It sees a comprehensive system of SEA as a sensible, and indeed necessary, stepping-stone to a fully-fledged regime of SA. SEA itself is a relatively immature technique; SA is even more in its infancy. This is reflected in the current lack of consensus over a suitable methodology for conducting it. The over-simplification that is currently a feature of SA creates a risk that environmental considerations are skated over and given inadequate weight in the overall assessment. This would do a grave disservice to the cause of sustainable development.

5. In our response to earlier consultations on SEA, we indicated our support for SEA as the best means at present to properly integrate environmental considerations into policy making. We believe that SEA will make a substantial contribution to the integrated decision-making essential to sustainable development by highlighting the environmental implications of proposals. Its potential in this respect could be further realised if the legislation placed decision-makers who chose to disregard any significant adverse environmental effects under an explicit obligation to specify clearly, in setting out the reasons for choosing the plan or programme as adopted (S18(3)(e)), the nature and extent of any social or economic goals that had led them to do so.

6. The Consultation Authorities will have a dual role in responding to screening and scoping requests under the UK Regulations and the Environmental Assessment (Scotland) Act. We
anticipate that further guidance and clarification of our roles and responsibilities will be necessary and intend to make this available via our website. Guidance on the different regimes will also be required, particularly for private companies operating on a UK wide basis and carrying out public functions under the control or direction of the Government.

**What will be the effect of the proposed system of administrative arrangements chosen to implement this obligation e.g. pre-screening and screening?**

7. SNH accepts the principle of pre-screening as a means to reduce the potential burden on responsible authorities. At the same time, we would be very concerned if the pre-screening mechanism was systematically misused. We therefore suggest that the use of the pre-screening mechanism should be carefully monitored and a commitment given to reviewing the process, assessing implementation and identifying improvements if the system does not seem to be working in practice. SNH considers that Responsible Authorities should be required to report on pre-screening exercises. There may also be a case for providing Scottish Ministers with a power to call in cases for screening and to remove pre-screening powers if a Responsible Authority was using them routinely to avoid its obligations on SEA.

8. A further safeguard should be provided through the preparation and active dissemination of guidance prepared by the Scottish Executive and the Consultation Authorities. SNH suggests that the application of pre-screening should be supported by guidance on a comprehensive and systematic approach to the application of criteria in determining potential environmental effects, whether of a ‘significant’, ‘minimal’, ‘positive’, or ‘negative’ effect etc. This should ensure that significance implies a degree of importance in relation to the impact on the environment. There may also be some merit in giving guidance on the types of strategies, plans and programmes that could be subject to the proposed pre-screening procedures.

9. SNH supports the aim of achieving a simple, streamlined and effective system for SEA in Scotland. We agree that the current system should be reviewed at regular intervals, and that further streamlining should be possible through the provision of readily accessible sources of baseline data and monitoring indicators; advice on effective methodological tools for implementation; and the harmonising of stages of SEA with stages in policy planning procedures. We also agree that areas of overlap and duplication should be identified and addressed through joint procedures wherever possible.

**Is the provision of a Strategic Environmental Assessment (SEA) Gateway within the Executive a sufficient method of managing the SEA process?**

10. SNH’s experience in the implementation of the SEA Regulations leads us to conclude that the existence of the SEA Gateway is a vital component in ensuring a visible focus and a supportive and effective system for administering SEA in Scotland. In addition it needs to be supported by strong working relations with the Consultation Authorities. Formal status might be considered for the Scottish Liaison Group, through which representatives from the Consultation Authorities meet the Scottish Executive to share experience. This might provide central access to sources of information, advice and guidance on best practice, perhaps via a dedicated website.

11. Such a central source of information would allow for comprehensive guidance on SEA across all levels of government, and allow scope for consultation with other organisations where such wider engagement may be necessary e.g. in the field of health where the competence of the currently identified Consultation Authorities is limited. A Gateway also provides a one-stop shop approach for Responsible Authorities and confirms the Scottish Executive’s commitment and leadership in this area.

12. SNH considers that, by contrast, any proposal for the creation of a freestanding administrative body would give rise to considerably greater costs. In addition, the establishment of such a body could detract from joint working between Responsible Authorities and the Consultation Authorities. This could have negative implications for the SEA process. It would 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 in-house expertise and organisational capacity building within the Consultation Authorities.

13. For SEA to be effectively implemented it will need to permeate working practices across organisations and will involve staff at all levels, including operational personnel as well as those with a policy perspective. There is some danger that the creation of a specialist agency would work against the full integration of SEA into everyday public sector practice.

SUBMISSION FROM SCOTTISH ENVIRONMENT PROTECTION AGENCY (SEPA)

1. Background

1.1 Thank you for the invitation to SEPA to submit both written and oral evidence to the Committee in respect of the Environmental Assessment (Scotland) Bill

1.2 SEPA welcomes the Bill and the principle that it establishes to require strategic environmental assessment (SEA) for all public plans, programmes and strategies where they may have significant environmental effects. In particular, SEPA welcomes the very positive ambition expressed by Ministers to exceed minimum compliance with the SEA Directive and to make Scotland a world leader in this field. SEPA considers that the Bill is a major step in achieving this ambition.

1.3 Under the existing Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004, *(the SEA Regulations)* SEPA is identified as a Consultation Authority, which gave the Agency new statutory duties to provide its view at key stages in the SEA process. The Bill also identifies SEPA as a Consultation Authority and confers similar statutory duties. SEPA is also a Consultation Body for UK wide plans under the UK SEA Regulations. In addition to these Consultation Authority duties, SEPA will also require to act as a Responsible Authority when undertaking SEA for its own plans, programmes and strategies that fall within the scope of the Bill.

1.4 This submission gives views upon:

- The effect of widening the scope of SEA;
- The role of the SEA Gateway;
- Pre-Screening;
- SEA and Sustainable Development;
- Resources;
- Schedule 3(6)(a); and
- Screening

2. The effects of extending SEA to cover a broader range of plans and programmes than is applicable to the rest of the UK

2.1 SEPA considers that the effects of the Bill in extending the scope of SEA in Scotland to cover a broader range of plans, programmes and strategies will be extremely positive. The purpose and spirit of the original EC Directive was to ensure that environmental effects are considered in decision making at the earliest possible stage in the process and the Bill continues this aim by applying this purpose to a wider range of Scottish plans.

2.2 SEPA believes that the approach being adopted will result in:

- more informed decision making in respect of the environmental effects of plans, programmes and strategies;
- robust, consistent and integrated consideration of environmental effects throughout the process of plan-making;
- more transparency and greater involvement of the public and other stakeholders in plan-making;
• the environmental aspects of sustainable development being fully explored, and, ultimately
• more environmentally positive plans that will make a real contribution to achieving the goal of sustainable development.

2.3 As noted above, SEPA is a Consultation Authority under the existing Regulations, the proposed Bill and the UK Regulations. There are already differences in SEPA’s consultation authority responsibilities under the two Regulations, and these may be exacerbated by the Bill. This does create potential for confusion, however this should be able to be addressed effectively through guidance. The Executive has committed to prepare guidance to accompany the Bill when it is enacted and the Scottish Consultation Authorities are already working on a joint service statement/guidance – both of these initiatives will address these issues.

3. Role of the SEA Gateway

3.1 SEPA strongly supports the SEA Gateway. Practical experience with the SEA Regulations since July 2004 has proven that the SEA Gateway is an extremely valuable mechanism for effective consultation. In association with the similar, but simpler gateways set up within each of the Consultation Authorities, this approach has proven to allow consultation documents to be circulated quickly and efficiently, while Responsible Authorities are provided with a single point of contact.

3.2 In its response to the draft Bill, SEPA suggested that there were a wider range of activities, each designed to make the process more efficient and more effective, which could, we considered at that time, be undertaken by some sort of separate SEA body. Experience with SEA to date has convinced us that a separate body is probably unnecessary and might actually hinder the need for Responsible Authorities to integrate SEA fully into their plan-making systems. However, we feel that these tasks are important to the overall success of SEA and are ones which could, in fact, be undertaken at limited additional cost by the Gateway. Such activities might include:

• Operation of the existing gateway facility – casework administration, recording, enforcement of deadlines etc;
• Publication of SEA guidance and advice – best practice, SEA process etc;
• Periodically reviewing quality of Environmental Reports;
• Central point for environmental information (not handling data, but providing links to it and facilitating access for Responsible Authorities);
• Assist capacity building initiatives through contribution to training etc
• Management of consultations via the UK Regulations (for UK wide plans);
• Pre-screening tasks (see below);
• Developing/advising on possible indicators for Environmental Reports; and
• Stimulating/undertaking research into SEA process and method.

3.4 SEPA considers extension of the Gateway’s remit along these lines would give a strong lead and focus for SEA. It would also, we consider, enable a proactive, integrated approach which would aid its successful implementation and reinforce Scotland’s position as an aspiring world leader in this field.

3.5 We suggest that there may be a case for the Gateway to be made statutory with respect to some of these functions in order to ensure its continued existence as a focus and champion for SEA in Scotland, however we also recognise the limitations such statutory status may have in constraining the evolution of the Gateway as experience with SEA develops.

4. Pre-Screening

4.1 SEPA agrees that there is a need to introduce pre-screening as set out in Section 7 of the Bill in order that those plans with no, or minimal, environmental effects are not required to be subject to SEA. We have some concern that the pre-screening does not require Responsible Authorities to publish or justify the pre-screening determinations they make.
SEPA considers that this is a weakness in pre-screening as it reduces transparency and takes place without any regulation regarding quality and consistency of decision making.

4.2 SEPA considers that this could be easily addressed by monitoring the use of the pre-screening process. For example, Responsible Authorities could be obliged to publish within a prescribed period a short summary of their pre-screening assessment and a very brief statement of reasons for determining that there will be no, or minimal, environmental effects. It may be useful for such statements to be sent to the Gateway which could in turn keep a simple register and do periodic assessments of pre-screening activity to check for consistency and robustness.

4.3 Statutory powers are available under Section 11 for Ministers to direct that a plan be subject to either screening or full assessment, which we would expect to be used where a Responsible Authority fails to undertake pre-screening appropriately.

4.4 The pre-screening process rests on interpretation of "no or minimal effects". Clearly, to be effective, detailed definition of how to determine “no or minimal effects” will be required.

5. **SEA and Sustainable Development**

5.1 In Scotland, the focus of the Bill is strongly environmental and does not incorporate wider social or economic objectives. SEPA supports the approach in the Bill and considers that SEA will make a significant contribution to sustainable development.

5.2 One of the key benefits of SEA is that it provides information about the environmental effects of implementing a plan or programme. This is information that normally might not be available to many plan-makers, meaning that the environmental implications of a plan or programme are often less well understood. This contrasts with the social and economic implications which are often well understood and indeed often form the focus of the plan itself.

5.3 Accordingly SEPA, at the current time, supports the Executive’s position of focusing the Bill on SEA and not widening its scope to Sustainability Appraisal (SA), which takes into account social and economic issues. While SA is statutory south of the border, there has been a range of concerns expressed about its robustness, transparency and focus, with the concern that such appraisals maximise economic objectives and can marginalise the environmental and social part of the assessment. In the current absence of robust and transparent processes for SA, SEPA concurrs with this view and therefore supports the Scottish focus on SEA as set out in the Bill.

5.4 There is nothing in the Bill which precludes Responsible Authorities from undertaking SA. Indeed, where SA is undertaken robustly and transparently, SEPA would be comfortable with such an approach. Where SA is undertaken incorporating SEA, it will be imperative for Responsible Authorities to make the SEA component distinct and obvious in order to make it clear how they have met the requirements of the Bill. This will also help the Consultation Authorities in their assessment of Scoping Reports and Environmental Reports.

6. **Resources**

6.1 The Bill will have considerable resource implications for SEPA, both as a Consultation Authority and as a Responsible Authority. The effect of the Bill will be to significantly increase the number of plans, programmes and strategies on which SEPA will be statutorily consulted (the Financial Memorandum suggests up to some 350 per annum) and also increase the number of SEPA’s own plans, programmes and strategies that will be subject

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to SEA under the wider scope of the Bill. SEPA has allocated specific resources to SEA over the coming three years to meet these new duties.

6.2 There is considerable uncertainty about the true resource implications of the Bill and all of those involved will need to better understand the volume of plans subject to SEA, the statutory and non statutory tasks it generates, the efficiency savings that can be made through automated practices and ways in which resources can be used to best effect. Accordingly, we feel that it would be extremely useful for a review to take place in two or three years time to more accurately assess resource issues. SEPA has agreed to become part of the Scottish Executive/CoSLA “pathfinder” project which will, over the next three years, provide detailed information based on case study analysis. It is hoped that this project will help inform resource issues.

7. **Coverage of Schedule 3(6)(a) Issues**

7.1 In its response to the draft Bill, SEPA highlighted the fact that the Consultation Authorities do not, between them, necessarily hold information about, or have competence for, all of the issues requiring to be assessed in SEA as set out in Schedule 3(6)(a). These include: Population, human health and certain aspects of climatic factors. It will be necessary for guidance to assert the need for Responsible Authorities to ensure that they have sufficient information regarding these issues before completing an Environmental Report.

8. **Screening**

8.1 On a point of detail, there are two timescales proposed for Responsible Authorities to publish determinations under screening – 14 days to publish the determination in a local newspaper (Section 10(2)(c)) and 28 days to send a determination to the Consultation Authorities (Section 10(1)). For ease of understanding, these timescales could be synchronised.
The Convener (Sarah Boyack): I welcome committee members, members of the public, the press and our colleague Brian Monteith, who I understand wishes to discuss an issue with us later. I remind everybody to turn off their phones. We have received apologies from Karen Gillon, who will not be with us this morning.

Item 1 is our third evidence session for stage 1 of the Environmental Assessment (Scotland) Bill. Our panel consists of representatives from the consultation authorities that are identified in the bill. I welcome Amanda Chisholm, the strategic environmental assessment team leader with Historic Scotland; Dr Bill Band, a national strategy manager at Scottish Natural Heritage; and Neil Deasley, the principal policy officer of the Scottish Environment Protection Agency. Thank you all for your written evidence, which has been useful. We have been able to reflect on it and other submissions to our inquiry. We will move straight to questions.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): Good morning, everybody. I will start with Neil Deasley from SEPA. In your submission, you describe the functions that will be needed for a strategic environmental assessment gateway. What detail should be in the bill on an SEA gateway?

Neil Deasley (Scottish Environment Protection Agency): Not necessarily any. We comment in our evidence that there may be a case for a statutory gateway, but we also acknowledge that there may be difficulties with setting out the gateway and some of its activities in statute, because, for example, that might hinder the evolution of the gateway. We are very much at the early stages of understanding how SEA will work and the processes associated with it, so our thinking is likely to evolve and, indeed, the gateway may well need to evolve. There are pros and cons to writing the gateway into statute.

Mr Ruskell: What do you see as the minimum requirement for the bill? You are saying that legislation should not be inelegant or put too many conditions on a body that will change over time, but do you see any role for defining an SEA gateway in the bill?

Neil Deasley: We have identified a number of tasks that need to be undertaken in order to ensure that SEA in Scotland is successful and effective. We have identified that the gateway is an appropriate place for some of those tasks to rest. The merits and demerits of writing into the bill the gateway and some of its activities is a matter for discussion. The gateway is needed right now, but it might be less necessary in the long term, so perhaps at this stage it does not require to be legislated for in the bill.

Mr Ruskell: I want to follow up by asking Bill Band about community planning. We have had community planning legislation in recent years and a community planning gateway was set up as a result, although not by statute. What is your experience of that gateway?

Dr Bill Band (Scottish Natural Heritage): We do not have a great deal of experience of working with that gateway yet. We are comfortable that an SEA gateway will be a good co-ordinating influence. People will know exactly where to go in order to get advice and manage the process. The same things will apply to SEA as have applied to community planning.

Mr Ruskell: Do we need a statutory requirement for the gateway?

Dr Band: No. I endorse what Neil Deasley said: we do not see a need for the gateway to be enshrined in legislation. However, the gateway ought to fulfil several important functions. First, it should have the administrative function of keeping a register of the screening, scoping and environmental reports that go in and out. Secondly, it should be a centre for best-practice guidance, to provide help to all the responsible authorities that are carrying out SEA. Thirdly, it should provide a point of reference and give interpretation of the guidance when difficult issues emerge. Those core activities of the gateway will be essential in the early years.

Mr Ruskell: Are your organisations, as consultation bodies, concerned that if we do not establish an SEA gateway in statute, in a year or two we could have no co-ordinating body?

Dr Band: That is a concern, but the downside of putting the gateway in legislation would be that we would foreclose the possibility of review after several years. At present, we accept that the gateway has a valuable role and that it should persist, at least for the first three years. Beyond that, if responsible authorities become comfortable with the process of SEA, the need for the gateway may dissipate.
Neil Deasely: I broadly agree with that. SEPA suggests that the way in which the legislation as a whole is working should be reviewed two to three years into the process. One issue that could be factored into the review is the role of the gateway and the way in which it works.

The Convener: Monitoring is a major issue, given that we will move from the present situation to the situation under the bill. All the witnesses mentioned in their written submissions that they are not against pre-screening in principle, but that it should be properly recorded, monitored and carried out through the gateway. Is that a reasonable balance? Some of our witnesses have said that they do not agree with pre-screening; others have said that it is essential. If we have pre-screening, how will we guarantee that it is not used as a get-out clause by people who do not want to do the SEA?

Dr Band: We support pre-screening, which is an essential measure to avoid plans that do not need to undergo the SEA process becoming bogged down in bureaucracy. Pre-screening will be valuable in keeping the process manageable. We endorse the view of other respondents that it would be helpful if a register were kept of organisations and plans that have gone through pre-screening and been judged not to be appropriate for SEA. That would be helpful and would make the process more transparent, because the public would be aware of the plans that had missed out in that way.

Neil Deasely: Again, I agree. We support the principle of pre-screening. However, the issue for us is transparency, which is a key part of the bill. The SEA process will be transparent, but pre-screening will be less so, in that it will happen without the need for the decisions that are made to be captured in some form. We need a simple registration process. A record that states that responsible authority X has judged that plan Y will have no or minimal effect, along with a simple justification for the decision, should be sent to the gateway. That would allow periodic review of the pre-screening process and of consistency and robustness in decision making.

The Convener: The Historic Scotland submission mentions the experience in Canada, where pre-screening is carried out, but with registration. Will you say a bit more about that, Amanda?

Amanda Chisholm (Historic Scotland): The register in Canada is for environmental impact assessment projects, screenings and other kinds of environmental assessment. The principle is the same, however. When a federal agency has a project, it puts it through a screening process that is a bit more detailed than ours is. The details of the project are then put on to the public register, which can be interrogated on the website. The information is there for people to see. The website is fairly easy to use; I have used it from here.

Richard Lochhead (North East Scotland) (SNP): Just on that point, I think that transparency over pre-screening is a good idea, as I am sure many people will agree. However, what happens if other independent bodies look at the register and disagree about the projects that will not go through the process as a result of the screening? Should those bodies be allowed to challenge and question the decision, especially as that could hold up the process for another few weeks or months? In other words, what is the purpose of having a register in this country if people cannot challenge and question the decisions?

Amanda Chisholm: The bill provides powers for ministers to make determinations. We see those powers as the vehicle for challenging the decision-making process.

Neil Deasely: The plans are public; they will not be kept secret. At some point, people will know that a plan exists and that a pre-screening decision has been made. As Amanda Chisholm says, the bill makes provision for ministers to ensure, if the process has not been undertaken properly, that the plan is put forward for screening. I do not see that there is an issue in that respect.

The Convener: I was about to move on, but I see that Maureen Macmillan has a question.

Maureen Macmillan (Highlands and Islands) (Lab): Not on this subject, convener, but on a different issue. What are our witnesses’ views on how SEA relates to or measures up to our aspirations for sustainability and sustainable development? Some witnesses have said that they are worried that SEA will skew the delivery of sustainability. They feel that, by putting too much emphasis on the environmental side of the equation, it could have a detrimental effect on the socioeconomic arguments that are made in favour of a development or strategy. Does the SEA process give too much weight to the environment? Will it affect the aspirations of those in the socioeconomic field?

Dr Band: SNH’s standpoint on the issue is simple: we are highly supportive of sustainable development. We have nothing against sustainability appraisal—indeed, we support it. The three pillars of sustainable development are economic, social and environmental. It is rare for a plan, programme or project to fall into the category of win-win-win across all three—a balance often has to be found. There is always a danger that someone will draw a line under the headings too early in the process to tally the net balance and benefit. We see SEA as a means of ensuring that the environmental dimension is properly assessed.
and with due rigour. We would be happy for equal rigour to be applied to the social and economic benefits. We see SEA as a part of the sustainability appraisal process.

**Neil Deasley:** The environmental considerations of plans and programmes are perhaps often the least understood. SEA provides decision makers with the information that will help them with their plans and with the decision making once the plan has been prepared and is being implemented. SEA makes an important contribution to sustainable development in that respect. It provides information and ensures that decisions are made in an informed and—to pick up on a word that we have used already once or twice this morning—transparent way.

**Amanda Chisholm:** As Neil Deasley said, the purpose of SEA is to bring the environmental information in front of the decision makers. There is nothing in the SEA process or in the bill—or even in the regulations—that says, “You must give more weight to the environment.” The same process has occurred in the environmental impact assessment discipline. When environmental information on the impact of projects has been presented, decision makers have taken that information into account and perhaps some of their decisions were better for the environment even if, in some cases, those decisions resulted from the force of legal challenge.

People have made reference in previous evidence to more weight being given to environment—in the Scottish transport appraisal guidance, for example—but that is not the case. The guidance does not say how to apply weights to the five different factors, of which environment is only one. The question is about bringing environment into the equation. I am sure that other witnesses have already told you that, in the past, social and economic factors have been seen to outweigh environmental factors. We see the SEA process as a way of mainstreaming the environment. From Historic Scotland’s point of view, that means mainstreaming historic environment issues for public sector activities.

10:00

**Maureen Macmillan:** You are saying that the process does not pre-empt decisions but merely informs them.

**Amanda Chisholm:** It informs decisions. There is nothing that says to a decision maker, “You must make the decision that is best for the environment,” because that might not be best from an economic or social point of view. All those considerations have to be balanced.

**The Convener:** Let us move on to the implementation issue. Quite a few of the people who have given evidence to the committee over the past few weeks clearly have concerns about moving from the current regulations to the new legislation. Indeed, you all reflect on that issue in your written evidence and talk about the need for effective guidance. SEPA’s evidence mentions the Scottish Executive and Convention of Scottish Local Authorities pathfinder project. We got the strong impression from COSLA that there was very little joint working going on and that it was concerned about resources and about its ability to implement the proposals. Could you say more about the purpose of the pathfinder project and the extent to which, with guidance, it will help to gear people up and enable them to implement fairly effective training processes that will allow people to engage with the requirements of the bill?

**Neil Deasley:** SEPA, along with the rest of the consultation authorities, has been invited to become part of the pathfinder project. We welcome that and are committed to becoming part of the project. I understand that the project will examine various case studies involving responsible authorities, to assess the way in which SEA processes are working and to draw some conclusions from that. That will help us to learn. As I said, we are very much in the early stages of implementing SEA through the regulations at the moment, so we are down at the bottom of the learning curve and have lots of experience to gather. The project, which will involve responsible authorities in examining case studies and assessing the interaction with the consultation authorities, will be incredibly useful to everybody involved. We very much support that approach.

**The Convener:** I would like to ask Bill Band from SNH about that. Dr Band, you talk about the need for SEA to permeate working practices across organisations and to be embedded in them. At the start of your submission, you also talk about trying to achieve benefits with the minimum of bureaucracy and delay. Could you say a little about how we move to carrying out SEA in a way that does not add to delays or create bureaucracy?

**Dr Band:** SNH is implementing action on SEA in a fairly devolved manner. We are providing support for our area staff to work with those responsible authorities that are developing plans. That is an important part of the process and we are now in the capacity-building stage, which will last at least a year and probably two years into the whole SEA process. We hope that, at the end of that period, most responsible authorities will have a good understanding not only of the requirements of SEA, but of how best to go about the process. We are keen that the whole process should focus on significant environmental effects and should not get bogged down in looking at peripheral effects that, at the end of the day, are unimportant. We
want the process to be focused on those effects that are judged to be significant.

**The Convener:** You say that the process is internally devolved. Am I right in thinking, therefore, that you are doing that across the country with every local authority and that no part of Scotland will miss out on that joint-working and guidance approach?

**Dr Band:** That is correct.

**The Convener:** What is Historic Scotland’s perspective?

**Amanda Chisholm:** So far, we have done a lot of informal work with the responsible authorities on implementing the regulations. As Bill Band said, SEA needs to be integrated into working practices. In many instances, the planning side of the local authority already carries out environmental assessment of plans and programmes, but the people involved do not always understand the process. Sometimes our work with them involves simply explaining how they can formalise what they are, to an extent, already doing. For example, as well as consulting people on the plan, public consultations need to acknowledge that the plan includes an SEA.

As Neil Deasley said, SNH, Historic Scotland and SEPA have all been invited to join the pilot project, which I understand from our colleagues in the Scottish Executive SEA team is currently under discussion with COSLA. We have already worked with local authorities informally. For example, we worked with Highland Council on a retrospective SEA of the Wester Ross local plan so that the council could see what would be involved in its three forthcoming local plans, all of which will require SEA. It has been helpful to us to deal with some of the nuts and bolts and with the technical details that are part of the process but that one does not always anticipate. I hope that we will gain similarly useful experiences on the pilot projects.

**Alex Johnstone (North East Scotland) (Con):** Convener, I am very interested in what we have just heard. Can we receive more information on pilot projects that involve a retrospective assessment?

**The Convener:** That is partly why I asked what was meant by the pathfinder project, which has come up in evidence before. If possible, it would be useful for us to get more information on that kind of project so that we could work through it.

**Rob Gibson (Highlands and Islands) (SNP):** Continuing on the issue of resources, I want to ask whether, as previous evidence has suggested, a large amount of time, effort and money will be required to get the process running. What do the witnesses think about that? The bill’s financial memorandum suggests that, to start off with, about 350 SEAs will be carried out each year. Will there be a doorstep effect, in that people will find the process much easier once they get into it? Indeed, a few examples might go a long way towards easing people’s fears about the extra work that SEAs will involve. I would like to hear from each of the witnesses on that.

**Neil Deasley:** I will kick off. It is true to say that SEA will have resource implications, but it is difficult to assess at the moment how many plans will be required. That is why the figures in the financial memorandum carry a health warning, as it were, along with a reasonably healthy margin of error. We do not quite know what the resource implications will be. However, it is also fair to say that, after the transition period of the next three years or so, and as SEA becomes much more embedded into all the processes of responsible authorities and consultation authorities, the resource implications will diminish.

The overall objective must be to embed the principles and processes of SEA within normal plan making. The challenge in front of us is to make SEA just a normal part of what we do. Once we have made that move into that way of thinking, the resource implications will become much less daunting than they might look at the moment.

**Dr Band:** I endorse that view. We need only look back to see what has happened with environmental impact assessments, which are now such a standard part of the process that everyone expects that the environmental implications of any project must be set out and taken into account in the decision-making process. Indeed, one plan that I looked at yesterday was for a project that fell below EIA thresholds, yet, to all intents and purposes, the plan contained an EIA with a full statement of environmental implications. That shows how much part of the process EIA has become. Our aim is to make SEA part of the way in which people go about developing plans.

For many years now, many local authorities have ensured that development plans include a good analysis of the environmental impacts. SEA will simply formalise some of the process surrounding that. Ultimately, SEA need not be a hugely resource-intensive addition.

There is a resource requirement for SNH. We have been dealing with a large number of responsible authorities and commenting on environmental impacts for a number of years. The bill will change the process, but not necessarily expand hugely the resource that we require. We have estimated the implication of the bill to be of the order of four additional SNH staff posts, although that is uncertain.
Amanda Chisholm: All the consultation authorities mentioned resources in our responses to the consultations and in our evidence to you. It is worth noting that a lot of the comments that are being made and the concerns and worries that are being raised about SEA are similar to those that were made about environmental impact assessment in 1985. On the whole, those concerns have been dealt with. As Bill Band said, the process is rigorous and a lot of authorities are already following it.

Planning departments have been performing environmental assessment, but other council departments and other responsible authorities that are not used to doing it will face more of a challenge to start off with. For example, some transport professionals already perform environmental assessment when they do STAG appraisals, because environment is one of the Government’s five criteria. However, other parts of local authorities and responsible authorities will face challenges, although there will be guidance and training. As Neil Deasley said, there will be a steep learning curve for the first few years, but SEA can be integrated into people’s activities, so that the environment becomes just one of the factors that they consider, along with economic, social and various other issues.

The Convener: I want to ask about that in detail. Schedule 2 mentions specific issues such as population, human health and transboundary effects. Do you and the responsible authorities have the expertise to deal with those issues, which are a step up from what people are dealing with at the moment?

Amanda Chisholm: The consultation authorities all recognise that we do not have specific expertise in human health. Neil Deasley can provide further information, because he has a research project dealing with human health. There is an overlap between some of the factors in schedule 2, particularly population and human health, which go into the social side of assessment. Those factors are still being discussed. They were identified early on as needing clarification, because they derive directly from the directive. The aspects of human health and population that need to be addressed will have to be contained in guidance; if that does not happen, we could end up doing a full health impact assessment, which is not the intention of the bill.

The Convener: Do you have more information on that? We are interested to know more.

Neil Deasley: Health is the issue to focus on. SEPA considers health to some extent as part of its regulatory activities. For example, under the Pollution Prevention and Control (Scotland) Regulations 2000, we require to take account of health in our determination of applications for PPC licences, which we do by consulting health boards. We have limited competence in the field of health and our knowledge of it is not as all encompassing as SEA may require in certain instances.

There are two or three ways in which to take account of health. First, it will be incumbent on responsible authorities in performing SEA to ensure that they have appropriate information and advice on the issues in front of them, which might mean that they have to contact other bodies outwith the consultation authorities. There is nothing to prevent them from doing that. There is also plenty of room for guidance and advice. One of the projects that SEPA is trying to lead on concerns practical guidance for SEA practitioners on how to take account of human health in SEA decision making. That project is being run through SNIFFER—the Scotland and Northern Ireland Forum for Environmental Research. It is very much in its early stages, but we hope that it will provide guidance and information sources to the responsible authorities about where they can go for health advice. Clearly, several other bodies in the health sector may need to be brought into the process at certain stages.

10:15

The Convener: That sounds like a useful piece of work. Different witnesses have told us that there is no clarity about whom to approach, what is expected and into how much depth people should go when they are considering SEA, especially on health.

What happens when you carry out SEA on your own strategies? You take out a key player who has expertise in SEA. How does it work with the other two bodies when you are examining one another’s work? Do you have protocols? Have you thought about how that might work in practice? I am not asking you to evaluate one another at the moment, but how will you deal practically with that so that the process is still rigorous and transparent?

Dr Band: We are in the very early stages of that; indeed, we have not yet identified the plans that we may use in a pilot exercise, but we hope to do that during the summer and autumn and to get one or two pilot plans through. Our intention is to farm the plans out to the other consultation bodies in the expectation that they will receive the same degree of scrutiny as plans that are produced by any other responsible body. That seems to be fair and it seems to be how it should happen. We have not yet decided how we will handle natural heritage interests internally, but we hope that any plans that we produce will have natural heritage benefits and that they will state what those benefits will be. I do not think that there is any problem in that.
Neil Deasley: I agree. There is an established mechanism for consulting the consultation authorities. When we are a responsible authority—which we will be for a number of our plans—we will consult SNH and Historic Scotland through those channels. As Bill Band said, we will put into place our own mechanisms for ensuring that issues that we would normally deal with, such as water and air quality, are firmly built into the process of assessment of our plan. It should be fairly straightforward.

Amanda Chisholm: Historic Scotland, too, is still in the process of identifying which of our plans and programmes will come forward. That should happen, as Bill Band said, this summer. I foresee some kind of internal audit trail—checks and balances—to ensure that people within Historic Scotland who suggest plans and programmes and who carry out SEA will be subject to internal scrutiny and will be able to demonstrate that, as well as passing the information on to SEPA and SNH.

The Convener: So, you will have run through an effective pilot project between you by the end of the summer, when we will return at stage 2 of the bill. We are keen to see that people are testing out how SEA will work and to ensure that, when guidance is required, any practical feedback can be used at the guidance stage, so that teething problems and obvious lessons can be plugged in for other authorities that are not quite as far ahead as you are.

Dr Band: I cannot guarantee that SNH will have been right through that process and have reached a final plan by the end of the summer, but we will certainly have identified projects and have embarked on the process. We will have been through the scoping stage and the initial stages of plan assembly.

Mr Ruskell: Last week, we discussed the level at which SEA applies and the level at which EIA applies. We received interesting and contrasting views from Scottish Water and the energy companies. What are your views on that? Do you see SEA applying to Scottish Water, or at the more strategic level of the stakeholders? Likewise, do you see SEA applying to the private sector energy companies that deliver a public service, or does SEA apply to supply of energy at United Kingdom level?

Dr Band: There are provisions in the bill for ministers to identify any body that should undertake SEA. We would encourage that to happen in appropriate circumstances. Many private sector entities may well develop plans on a UK basis—or, at least, on a wider basis than a Scotland-wide basis—which would enable them to fall outwith the compass of the bill. However, if a plan was developed for Scotland, I would encourage use of that power.

As to the distinction between SEA and EIA, an important difference must be borne in mind. EIA is used in conjunction with a consent process, such that the EIA forms the material on which the decision maker makes a decision. With SEA, by contrast, the decision on what the final plan will be is made by the promoter of the plan. We must take care that we do not let the provisions under the EIA procedures—whereby it is a requirement that alternative options be considered as part of a project—slip into a process of SEA, which is then taken outwith the consent authority’s hands. That is my only concern; however, if that is made clear in guidance, it will not be a problem.

Neil Deasley: I do not know how much more I can add to that. It is the role of the responsible authorities to determine whether their plan or programme qualifies under the regulations or, in the future, under the bill as enacted. The role of the consultation authorities is to provide at various stages views on whether, for example, a plan or programme may have significant environmental effects. The decision as to whether a plan or programme would qualify is for the responsible authority to determine.

Bill Band outlined some quite detailed issues around the relationship between SEA and EIA. More generally, as we develop experience with SEA over the coming two years, we will learn how the interface between the strategic process and the more project-based process works. It is perhaps a wee bit early to judge how that might work; we will learn from experience.

Amanda Chisholm: The issue of hierarchy has been recognised. It is a matter of environmental assessment of the plans and programmes being applied at the appropriate levels, starting at the top and gradually filtering down. That is an issue that I raised in my written submission and which has been raised in discussions with us by some of the responsible authorities. In the planning process, for example, a structure plan will set the parameters for a local plan. Some of the responsible authorities that are implementing local plans are concerned that the structure plan within which they are working has not yet been subjected to SEA. Up a level, some of the responsible authorities that are working at structure-plan level are saying that the national planning guidance within which they work has not yet been subject to SEA.

One advantage of widening the scope of the bill is that the policies that set those frameworks from the top down will be subject to SEA, so that SEA will eventually filter down to EIA. Hopes have been expressed that there will be some efficiency in the environmental assessment process as it proceeds from SEA to EIA. We will have to wait and see whether that transpires. EIA depends very much
on specific detailed information about a site or the location of a project, whereas SEA is much more strategic and broad brush.

Mr Ruskell: Further to that tiering issue, there is the issue of there being regulations that are separate from those that apply to the UK being introduced for Scotland by the bill. Do you foresee any anomalies occurring because the Scottish parts of a UK-wide plan will be treated differently or because an independent plan arises from a UK plan that applies to Scotland? I am trying to imagine specific examples of problems or anomalies that we might encounter because of those differences.

Amanda Chisholm: We are gaining experience through our involvement with one UK-wide plan—the strategy for the Nuclear Decommissioning Agency. However, there may be challenges ahead, where plans have much wider coverage in Scotland.

Mr Ruskell: Are there any other views on that? The example of the NDA is interesting.

Dr Band: There may well be gaps. UK plans that have an environmental effect in Scotland but which do not come under the UK regulations might not fall under the bill, because they do not apply purely to Scotland. We cannot do anything about that, but I hope that the passage of the bill will show leadership and that the UK will eventually follow.

Mr Ruskell: Do you have any examples in mind?

Dr Band: One of our interests is energy. I know that, at the committee’s previous meeting, there was discussion of transmission infrastructure. The Department of Trade and Industry is the leader on transmission infrastructure. There is a danger that plans will evolve at UK level that will not be subject to SEA—because it is not mandatory under the UK regulations—and which do not apply wholly to Scotland, so they will not fall under the bill.

Mr Ruskell: I presume that such plans would not fall under the remit of a private body that undertakes public duties, such as Scottish and Southern Energy.

Dr Band: They might—it depends on the level of the plan. A national plan might be led by the DTI, or the National Grid Company might develop the overall plan for transmission.

The Convener: That takes us to the SEA-EIA split. At some point, plans will end up undergoing EIA, even if they have not undergone SEA. It would be useful to monitor the process to check that it works, but as I understand the system, there should be an assessment at some point. The issue comes back to Amanda Chisholm’s point that the assessment should be made at as high a level as possible so that everything that flows from the analysis takes on board the environmental impact.

What is your view of the exclusion of financial or budgetary plans? There are two arguments. One is that, if there is an amount of money to spend, the issue is whether we spend it as wisely as possible. The other view is that we might get different outcomes depending on where the money goes. Do the witnesses have a view on that? I know that the question is difficult.

Neil Deasley: The issue is when it is most meaningful to do the SEA. It may be extremely challenging to do an SEA of a single high-level budgetary figure or decision, whereas it is perhaps more meaningful and appropriate to assess the plan, programme or strategy that is put in place to action that financial decision or, if you like, the policies, proposals and actions that deliver the financial decision. We must consider the most meaningful point at which to conduct SEA if we are to provide information to the decision maker and influence the decision and the plan that flows from it. It may be challenging to carry out SEA of a financial decision or plan. However, once we are working with SEA, are comfortable with the practices and procedures and we have best practice, we might find that easier.

Amanda Chisholm: I agree with Neil Deasley. I have been thinking about the issue a lot since it was raised in previous evidence sessions. It depends on how we define the terms, which came to us from the SEA directive. So far, the guidance on what the terms mean has not been terrifically helpful, because they are designed for all the member states. How, practically, could we carry out an SEA of a purely financial plan to allocate £X million to an organisation? However, a more meaningful SEA could be carried out of a programme of allocating funds to particular projects. As Neil Deasley said, the issue is where the assessment will be most meaningful. The key question that has to be asked is whether it can be said that significant environmental effects will result from the plan or programme. The point of the process is to focus resources on the plans and programmes that will have the most significant environmental effects.

10:30

Dr Band: I endorse that. The ideal would be to have the plan or programme and the statement of aims and objectives as one document that is subject to SEA. If a financial plan that sets out how the plan or programme is to be implemented comes forward subsequently, I see no added value in conducting SEA of that document. In practice, many plans and programmes include a bit of both. In principle, if they cover the aims and
objectives, they should be subject to SEA. The last thing we want to see is a fully fledged plan or programme that purports to be a financial plan by dint of its having a table of financial figures at the back of the document.

**The Convener:** Right. So, the pre-screening process is important. We will return to that. As no member is desperate to ask another question, I thank our three witnesses for answering all our questions and for the submissions that we received in advance of the meeting. The panel can now stand down.

At our next meeting, we will take evidence from the Minister for Environment and Rural Development and from the Minister for Communities. I have discussed with the clerks whether it might be useful, before we hear from the ministers, to review the evidence that we have received so far. The reason for doing so is partly because of the pretty tight timetable that we have to get through before the summer. It is also because the issue of reflecting on evidence as opposed to simply putting it immediately into report format was covered in the questioning training that some members have undertaken. For those reasons, would members be prepared at our meeting next week to take a look in private at the evidence that we have received thus far?

**Members** indicated agreement.
SUPPLEMENTARY WRITTEN EVIDENCE FROM THE CONSULTATION AUTHORITIES

Purpose of Supplementary Evidence

1.1 In answering the Committee’s question on the SEA pilot exercise (to be undertaken through the Pathfinder Project), it was noted that the Consultation Authorities had already been involved in a similar exercise (on the Wester Ross Local Plan) and found it very useful. The Committee considered it would be helpful to have more information on the Consultation Authorities’ involvement with the Pathfinder Project and the Wester Ross SEA exercise, and this supplementary evidence has been prepared accordingly.

Pathfinder Project

2.1 The Consultation Authorities have been invited to participate in the Scottish Executive/CoSLA SEA Pathfinder Project. This project will assess SEA case studies and appraise aspects of the SEA process. It is anticipated that these will inform issues such as legal compliance, quality of process, quality of guidance, integration with other processes and to develop effective networking. The Consultation Authorities very much support the project and welcome the opportunity to participate. The Consultation Authorities believe it will provide clear insights and practical experience with implementation of SEA and look forward to its commencement.

Wester Ross Local Plan

3.1 The Wester Ross Deposit Draft Local Plan was placed on deposit for public consultation between 4 June and 16 July 2004. Following representations, a Public Local Inquiry was held in January 2005, and a report is anticipated from the Reporter in summer 2005.

3.2 The Highland Council will be starting work on three Local Plans in the near future: Sutherland; Skye and Lochalsh; and Lochaber. The Council consider it likely that the issues addressed in the Wester Ross Local Plan will be encountered in the next suite of Local Plans and that a similar policy framework will be put in place. In this context it was decided to carry out a retrospective SEA on the Wester Ross Local Plan, firstly to establish a methodology for SEA on the new Local Plans, and secondly to assess the robustness of the new policy approaches.

The SEA Exercise

4.1 All three Consultation Authorities (Historic Scotland, SNH and SEPA) agreed to participate in this exercise at a meeting in July 2004. The exercise was undertaken through the aforementioned meeting, email discussion, a workshop in October 2004 and a site visit in November 2004. I understand that the SEA is now at the draft report stage.

4.2 This exercise provided a useful opportunity for the Consultation Authorities to interact with a Responsible Authority as the SEA was undertaken, and to identify issues and/or problems at key points in the process for all the organisations involved. It also gave us insight into the “nuts and bolts” of the SEA process. It was particularly timely in that it commenced not long after the Regulations came into force.

4.3 Issues which may be of interest to the Committee included:

(i) whether The Highland Council should undertake a sustainability appraisal or SEA and, if the former, how this should be reported to comply with the SEA Regulations
(ii) identification of environmental baseline data e.g. what is required, what is available, is the available data appropriate for local level interpretation
(iii) the extent to which environmental appraisal is already undertaken as an integral part of the planning process
(iv) the identification of alternatives, at both strategic and locational levels (and the extent to which alternatives are limited by plans and policies higher up the planning hierarchy)
(v) identifying tensions between different objectives, e.g. between sustaining communities and protecting the environment

4.4 The Consultation Authorities envisage that our involvement in the Pathfinder Project will provide similar insights into and some practical experience with the implementation of the SEA process and its interaction with the plan-making process.

Wider Work

5.1 In addition to participation in the Pathfinder Project and the Wester Ross SEA exercise, the Consultation Authorities have worked closely with a range of Responsible Authorities to assist their SEA activities. This has been part of the Consultation Authorities’ commitment to assist capacity building within Responsible Authorities and other stakeholder organisations.

Consultation Authorities

6.1 This supplementary evidence has been submitted on behalf of all three Consultation Authorities.
Environmental Assessment (Scotland) Bill: Stage 1

11:39

The Convener: We move on swiftly to our next agenda item—I see the Minister for Communities is arriving quietly at the back. This is our last evidence-taking session at stage 1 of the Environmental Assessment (Scotland) Bill. I again welcome Ross Finnie, the Minister for Environment and Rural Development, and Malcolm Chisholm, the Minister for Communities. You have brought various officials with you, whose name plates are being set out. The officials have very big files, so they must be the bill team. I invite the ministers to introduce their officials and to give us brief opening statements.

Ross Finnie: I am accompanied by Elspeth MacDonald from the solicitors division and Jon Rathjen, who is the bill team leader.

The Minister for Communities (Malcolm Chisholm): I am accompanied by Cara Davidson and Michael Lowndes from the planning division.

Ross Finnie: Malcolm Chisholm and I are pleased to be present at the committee’s final evidence-taking session at stage 1 of the Environmental Assessment (Scotland) Bill. From reading the Official Reports of all the committee’s evidence sessions so far, I am struck by the broad and—if I might say so without any sense of bias—at times almost fervent support for the bill’s principles that has been enunciated by some witnesses. I believe that that is largely because there is widespread agreement that the bill will enhance protection of Scotland’s environment, encourage public participation—which I regard as being very important—and make a substantial contribution to plan making and policy making.

There has been support for the Executive’s having widened the scope of what was envisioned in the original European directive and for our strategic environmental assessment gateway, the templates and our pathfinder exercises, which have been developed in collaboration with the Convention of Scottish Local Authorities. All are designed to ensure that, if the bill is passed, it will result in satisfactory implementation and an effective and efficient regime.

I will address a few of the issues that were raised in evidence, because it might be helpful to members to hear our reflections on them. Concerns were expressed about the bill’s potential for increasing bureaucracy. We are clear that the bill’s provisions are designed to keep bureaucracy to a minimum. We believe that, by having pre-screening and screening, we will ensure that SEAs
will be targeted only at plans that could have significant environmental effects. Advice will be provided not only by consultation authorities, but by the gateway and through guidance.

The fact that we are building on existing good practice in the current regulatory regime means that the bill’s provisions do not constitute entirely new burdens. In a sense, the introduction of SEA has been measured, in that the bill has been preceded by the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004, which implemented the European directive last July. There are opportunities for SEA to offer savings because up-front identification of environmental problems will allow for earlier and less expensive preventive or remedial action.

I turn to issues that arise from pre-screening. I note the view that pre-screening might not be sufficiently transparent because there will be no public notification of cases that are screened out. The point of pre-screening is to reduce bureaucracy by empowering responsible authorities to screen out of the SEA process plans that have no, or minimal, environmental effect. I must stress that pre-screening is a limited provision—it applies only to additional plans to which section 5(4) relates which have no, or minimal, environmental effect, so it is not a get-out-of-SEA-free card, as some people have suggested. However, in the light of what was said in evidence, I will be glad to give further consideration to the operational aspects of pre-screening, including notification and registration of cases.

The committee’s witnesses expressed views on quality control and enforcement. I consider that the bill, along with administrative initiatives such as the gateway, the guidance and the templates, provides a robust framework for compliance and consistent high quality. The bill has a sharp set of enforcement teeth. The Scottish ministers can call for sight of any plan to direct that an SEA must be performed. In addition, no qualifying plan may be adopted unless it complies with the bill.

11:45

Some witnesses offered views on the need for case evaluation of strategic environmental assessment. That will be achieved by the pathfinder project that we are currently undertaking with the Convention of Scottish Local Authorities. My officials are working actively with COSLA to agree the project plan and I expect the project to begin this summer, which means that it will be dealing with actual cases—not theoretical cases—that come within the ambit of the statute and will provide ample evidence to test the process. That project will begin in the summer, so we will be able to get results from it soon.

Regarding civil emergencies, national defence, financial and budgetary plans, I stress that the bill does not exempt the Ministry of Defence per se but exempts some types of plans for which the MOD might be responsible. Indeed, for reasons of safety and national security, the bill will not apply to national defence or to civil emergency plans that any authority develops.

The bill will also not apply to financial plans. That exemption is for sound practical reasons, as there would be no practical or meaningful outcome from a strategic environmental assessment that examined the top line of a budget figure. Rather, we want to examine plans that have an impact on the ground. Proposed strategic actions that arise from financial plans could give rise to significant environmental effects; therefore, strategic environmental assessment is more meaningful at that point.

As has been discussed in the committee’s meetings, the bill excludes plans that relate to individual schools because the bill is targeted at strategic level. I am satisfied that plans that relate to individual schools do not constitute strategic matters but would be addressed by individual plans, which are under the control of planning legislation.

As has been pointed out, the bill does not provide for an independent strategic body. My view, which the majority of consultation respondents supported, is that the strategic environmental gateway offers by far the most cost-effective option for advice provision, quality support, liaison with consultation authorities and information management systems. Therefore, I consider the gateway to be a more than adequate method of supporting strategic environmental assessment.

Although some details of the bill will benefit from further consideration, the value, validity and good sense of the underpinning principles have been widely endorsed. The bill aims to protect the environment and improve public decision making with the absolute minimum of bureaucracy. The effect is to ensure that the environment is better protected and that Scotland will take the lead in embracing the principles of strategic environmental assessment more broadly. I am determined that Scotland should not repeat many of the environmental mistakes of the past, and I believe that the Environmental Assessment (Scotland) Bill is a good way of ensuring that.

I am happy to respond to questions, but Malcolm Chisholm might wish to say a few words first.

The Convener: Thank you. I invite Malcolm Chisholm to give the planning perspective.

Malcolm Chisholm: Like Ross Finnie, I enjoyed reading the evidence and noted the degree of
consensus on the principles of the bill. I share enthusiastically in that consensus generally and with particular reference to the planning system, which is what you wish me to discuss.

As members know, a white paper on planning reforms will be published soon. We have been open about the fact that we want to enhance the role of development plans and the national planning framework, so I will talk about those two in my opening remarks, because both will be subject to strategic environmental assessment. As Ross Finnie said, that will allow us to avoid the mistakes of the past and it will enhance the role of planning as a key part of environmental protection.

All levels of plan—local, city-region, which is what we propose for the future, and national—will require a strategic environmental assessment. The key stage, about which the committee knows but which is worth repeating briefly, is the publication of an environmental report alongside a consultative draft plan as the basis for public consultation. I regard public consultation as being a particularly important part of the wider planning agenda of improving public involvement. Alternative options must be assessed and a statement must be made about how environmental considerations have been taken into account, which is crucial.

The requirements will also apply to future versions of the national planning framework. Therefore, SEA will play an important part in the preparation of the second national planning framework by ensuring that environmental considerations are taken into account at the highest level in the planning system. The precise details of the process are yet to be finalised, but all the key stages in the SEA process, which I mentioned, will be involved. The method will build and draw on the experience of environmental appraisal that was gained during preparation of the first national planning framework, which of course happened prior to the introduction of the SEA regulations. The SEA process that will be adopted for the second national planning framework will be tailored specifically to the national spatial scale; it will address key strategic spatial choices and it will involve, again, full public consultation. NPF 2 will draw on and pull together other strategic policy statements and documents, for example national strategies on transport or waste, which will themselves be subject to the requirements of the bill. SEAs that have already been prepared for such strategies will contain a considerable amount of material on which the NPF assessment will be able to draw.

I acknowledge that a principal concern of the committee is to assess the effect of extending the SEA regime through the bill. First, we should acknowledge that consideration by planners of the likely environmental consequences of their development plans is not an entirely new concept. Such consideration was the normal practice in the planning system prior to implementation of the SEA directive. SEA formalised the process and gave it a clear structure by introducing into the planning system new requirements to undertake environmental assessment systematically and transparently. The introduction of the SEA regulations in July 2004 put planning authorities at the forefront of development of the techniques and methods that are required. Prior to July 2004, planning authorities could take highly varying approaches to assessing the environmental impact of development plan policies. The regulations introduced a common basis for such work.

Planning authorities are already applying the requirements of the regulations. Furthermore, more than half the SEA cases that are in progress concern development plans. The planning system is therefore something of a pioneer in Scotland in the implementation of SEA. To assist authorities, we issued guidance that relates specifically to the application of SEA to development plans. We do not therefore expect enactment of the bill to add significantly to the existing SEA requirements that apply to planning authorities.

I entirely welcome the new requirements that the SEA regime introduces. The requirements to carry out environmental assessment systematically and to engage in early and effective public consultation accord closely with the principles that underpin our proposals for modernisation and reform of the planning system.

The Convener: Thank you. Your opening remarks were helpful in setting the context and it is good to know that you have been reading the reports of our evidence sessions. I particularly welcome the hint that the Executive’s position on pre-screening is moving—we will follow that up and reflect on the matter.

Mr Ruskell: How do the ministers envisage the SEA process applying to decisions on whether to go ahead with new nuclear power stations in the UK or Scotland?

The Convener: Which minister wants the first stab at that question? There is nothing like a closed question, is there?

Ross Finnie: We should be clear about the fact that there is no proposal in the bill to repeal the provisions of the Electricity Act 1989 and I am not aware that my colleagues are contemplating any such proposal. Nuclear development will therefore continue to require planning permission, which means that it will come within the mischief of the bill. A strategic view can be taken, but plans would
still have to be adopted locally. The answer is simple; the bill’s provisions will apply.

Mr Ruskell: So the decision at UK level will be subject to SEA.

Elspeth MacDonald (Scottish Executive Legal and Parliamentary Services): It is not for us to presume on that matter, as the minister said, but I can confirm that there are UK-wide regulations that apply also to plans for England, Wales and Northern Ireland. We cannot prejudge assessment of the situation and it would be improper for us to do so, but legislation that is equivalent to our existing legislation is in place in the rest of the UK.

Mr Ruskell: I am just trying to get some clarity on the matter, because it is pretty important to understand where the bill stops and starts. The decision on different types of energy generation will clearly have an impact on Scotland, so it is important to understand at what level that decision will be made.

Ross Finnie: I think that we are aware of the level at which it takes place. It would be disingenuous not to acknowledge that the determination of energy policy is a reserved matter. The matters over which we have powers in Scotland are matters such as the promotion of alternative energy. The Scotland Act 1998 does not give us responsibility or powers over the determination of energy policy per se, so that is a reserved matter. If the question is how the reserved matter will be determined, the answer is that it will be determined by the Westminster Parliament. I can add only that the Westminster Parliament has passed the statutory instrument that brings into effect the European directive on strategic environmental assessment. As you are aware, the Environmental Assessment (Scotland) Bill goes beyond that and will apply only to matters that are within the purview of the Scottish Executive.

The Convener: Before I take an avalanche of questions on this issue, I ask you to reflect on whether you want to give us that information—on the limits of our bill and of the UK legislation—in writing. It is important for us to work out how widely the bill will have effect and there are clearly requirements on you, as the Minister for Environment and Rural Development, as to how the bill will actually kick in. I do not want the committee to spend all morning discussing the boundaries of the legislation.

Ross Finnie: I am happy to put that information in writing. I am quite clear about the distinction that I have drawn. Determining the shape of policy is a reserved matter for the Westminster Government. Will there be consideration of strategic environmental assessment? It is for the
Westminster Government to apply the provisions—

**The Convener:** May I interrupt you, minister? I do not want to spend all morning discussing this because your helpful clarification—

**Ross Finnie:** Okay. Well, neither do I, but I do not want there to be an impression that we are unclear about the matter.

**The Convener:** Yes, but equally I can sense the rest of the committee wanting to come back and explore the issue in more depth.

**Ross Finnie:** Okay. I am happy to produce that information in writing.

**Richard Lochhead (North East Scotland) (SNP):** It is a major issue.

**The Convener:** I am not disputing that it is a major issue. I am disputing whether we should spend the whole morning debating the limits of the legislation. If we can get straightforward evidence in writing from the minister, we can look at it before we return to the matter next week.

**Mr Morrison:** May I make a helpful suggestion in relation to the points that were raised by Mark Ruskell? First, I suggest that he writes to his local member of Parliament, who sits at Westminster. Secondly, I suggest that he writes to the UK Minister for Energy, Mr Malcolm Wicks MP. I understand what both ministers have said and, frankly, I do not see that there is a need for anything to be put in writing. What has been articulated here is perfectly clear from my perspective.

**The Convener:** The next person on my list is Alex Johnstone.

**Alex Johnstone:** Successive Governments have been accused of gold plating European directives—indeed, I have accused Ross Finnie of doing so many times. In his opening remarks, he referred to “widening the scope” of the directive. Is the minister confident that that is not simply gold plating? Further to that, will the minister comment on whether he believes that the bill will put further financial and administrative burdens in the way of achieving the aims that he has often set out to the committee? I give the specific example of the programmes that Scottish Water is conducting. Are the terms of the bill proofed against adding cost, administrative burden and delay to such programmes?

**Ross Finnie:** In answer to the first part of that question, I hope that members are well aware that the provisions of the European directive call for plans to come within the mischief of strategic environmental assessment only if they stem from a regulatory requirement. The Executive’s view is that there is no logic to that. A major plan or proposal may emanate from any source. What is the difference between a plan that comes from a regulatory requirement and a plan that comes from a policy requirement of a Government that is concerned about the environment? I see no logic in such a distinction, and it is to remove that illogical approach that we are widening the provision. That is why the bill says that plans do not have to emanate from a regulatory requirement to be subject to it; it applies to all public policies that are developed by all public agencies. That gives us a logical framework and not a situation in which a plan arising from a regulatory requirement comes within the mischief of the bill but any major policy that is developed by Government falls outwith it. That illogical situation is why we introduced the bill.

On the question about cost, I am bound to say that I note the language that Alex Johnstone uses, in which anything that seems to be of an environmental nature is just a burden. That approach is wholly wrong: we can all think of example after example of attempts to remedy major environmental damage long after it has happened. When we embark on major plans that are of strategic significance, our first thought when we put pen to paper should be, “What, if any, will be the strategic environmental impact of the policy that we are about to develop?” That is the mindset that we must create. Once we have that, we will remove great burdens of cost and inefficiency that are inherent in our policy development process.

**Alex Johnstone:** The Scottish Water programme is obviously designed to achieve aims that we have discussed many times. A further layer of administration, bureaucracy and regulation might slow that process. Is a balance sought?

**Ross Finnie:** As Scottish Water starts more often than not from the policy aim of delivering an environmental benefit and not causing a problem, it will be much better able to meet the pre-screening and screening tests. It will also be much better placed for an environmental assessment, if required, because a heavy environmental burden is placed on those who develop the policy by the legislation that governs and regulates Scottish Water.

**Rob Gibson (Highlands and Islands) (SNP):** I understand that some aspects of plans and programmes that relate solely to national defence and civil emergencies and financial and budgetary plans and programmes will be excluded from the bill’s scope. I am interested in the idea of high-level resource allocation as a starting point. When the Government decides on an allocation, it suggests that a policy is about to be applied. How does the Government machine take that allocation decision to the point at which we find out when strategic environmental assessment will kick in?
Ross Finnie: Are you talking solely about national defence issues?

Rob Gibson: No.

Ross Finnie: Are you talking about all financial plans?

Rob Gibson: Many matters are excluded, but we are talking about your powers over cash decisions in the Scottish budget—about items for which you as a minister have full responsibility.

Ross Finnie: That applies not just to me.

Rob Gibson: The question applies to both ministers.

Ross Finnie: The whole Executive is involved, because of collective responsibility. If a matter is described purely in budgetary terms, it does not fall within the mischief of the bill. If a financial allocation is first expressed purely as a reserve—an allocation of funding—nothing kicks in. The minute that preparation and proposal start of a plan that will use that resource and will have a strategic environmental impact, the plan will fall within the mischief of the bill. If a plan is made before finance is allocated, it is caught anyway. However, while a resource is simply a provision of finance for an undeveloped possibility, it is not subject to the bill. As soon as it gives rise to a practical proposition that is being developed as a policy instrument, it falls within the mischief of the bill.

Rob Gibson: If you decide to allocate cash to a plan, in which part of the Executive does the process to apply strategic environmental assessment start?

Ross Finnie: That happens in the part of the Executive that draws up the plan that will use the financial provision for practical implementation.

Rob Gibson: Scottish Enterprise gave evidence that the SEA process should be implemented in the context of the new planning legislation. Will the minister who is responsible for planning comment on how what I have asked about relates to the planning process?

Malcolm Chisholm: Certainly not. The reason that I so much welcome SEA is that it will be an enhancement. The whole point of SEA is to improve the environmental aspects of plans and to improve public consultation. SEA is therefore completely the opposite of what has been said in the spin that other groups have put on planning issues. The national planning framework will lead to more consultation and more environmental assessment. The status of the framework will be enhanced.

I therefore cannot see anything that would bear the interpretation that you are putting on it. What you are implying about the budgets is not clear to me. I do not follow your line of argument.

Rob Gibson: I wanted to understand the process if you have a budget and decide to spend money on a particular project. However, you have just confirmed that the national planning framework will be subject to SEA and I was very pleased to hear that. It is essential that the public are involved as early as possible. That was the point that I wanted to be clear on.

The Convener: I want to follow up on Rob Gibson’s other question on finance. From what the ministers have said, it sounds as if a spending review—which will allocate money for projects and particular budget lines—will be covered by SEA. Is my interpretation right?

Ross Finnie: If all we are doing—and I mean all—is allocating finance and making a financial provision, then that is not covered. Rob Gibson approached the question from the direction of allocating finance; he was concerned about what would happen when there was a simple allocation of finance. However, you could approach the question from the other direction. You could declare that X was a matter of policy and you could start to prepare a plan. In that situation, the first thing that you would be doing would not be sorting out the finance but committing yourself to a policy development. That development might be a Scottish Water plan, or a waste plan, or whatever. If you come at the question from that direction, you are within the mischief of the bill as soon as you start to develop a policy that will have a strategic environmental impact. You may not have made...
your financial provision and you may not have a budget line, and that is a matter that you would have to deal with. However, making the financial provision does not, of itself, come within the mischief of the bill. What comes within the mischief of the bill is the development of a policy—by any Government body or department—that could have a strategic environmental impact.

The Convener: So the SEA will have been done before you get to the spending review.

Ross Finnie: In many cases, yes. Rob Gibson envisaged the situation in which we might simply be making a financial provision. In that situation, we would not be within the mischief of the bill. However, as soon as we say that we will use the finance for a particular purpose, we are within the mischief of the bill if that purpose is being developed and will have a strategic environmental impact.

The Convener: Okay. I just wanted to tease that out from both angles.

12:15

Maureen Macmillan: Perhaps we could consider some details of the bill that have confused people who have given us evidence. For example, there seems to be a lack of clarity about the role of the responsible authorities. The main concern was whether private bodies that exercise public functions will be required to carry out SEAs on plans and programmes that qualify under section 5(4) of the bill, which is our gold-plated section. Private bodies are included in section 2(1), so why are they not included in section 5(4)?

Ross Finnie: Elspeth MacDonald will listen carefully to my response. The fundamental distinction is that, where a private company carries out what we might previously have regarded as a regulated public function, that function will come within the mischief of the bill. Any other function that that company takes upon itself to perform will not come under the bill; a similar function carried out by any other private company would not come under the bill either. I will use a utility as an example. If a private company conducts a regulated activity, matters that come under that activity will come within the mischief of the bill. Any other service that the company has developed and provides, and which comes within its private and unregulated activity, will not come within the mischief of the bill, as it would not for every other private company.

Maureen Macmillan: Will clear guidance be given with the bill about that? The public utilities did not seem to be aware of the distinction.

Ross Finnie: Yes.

The Convener: In your introductory comments, you talked about the overwhelming support that there has been for the bill, but there has also been a lot of nervousness about how it will be introduced and how people will implement it. I want to focus on two related things: the gateway and training. We have received a lot of evidence on the need for flexibility with the gateway and for it to monitor the impact of the application of strategic environmental assessment. Will you say a little more about the long-term need for a gateway? We have debated whether the gateway needs statutory effect in the bill and how it relates to the guidance that will be used to implement the bill, but almost everybody who has appeared before the committee has highlighted its importance and the need to see it as a long-term means of implementing the legislation, although its character may change over time. Will you comment on that?

Ross Finnie: A related issue to improving the understanding of those who must apply the legislation is that it has perhaps taken a little longer than we had hoped to get the pilot projects running—I think that COSLA’s evidence mentioned those—but, as I have said, we are much closer to that occurring. I suppose that there is a slight advantage in the delay, in that the exercise will not be theoretical but will deal with applications that have arisen from the introduction of the statutory instrument. There will be general piloting and an attempt to inform people who must apply the legislation this summer; I hope that that will benefit not only me, but everyone, including the committee and potential users and applicants.

With all due respect to Elspeth MacDonald, I am reluctant to have lawyers trying to define the exact nature of the gateway. If it has a dynamic and develops, it seems to me that it would be better to allow that to happen rather than putting it in the straitjacket of a legislative framework. I totally accept that we must change people’s thinking and I acknowledge that there is hesitation about how the bill will impact on people, which is why we have been at pains to develop the material that we have.

Members will have seen the guidance on the existing statutory instrument that we prepared jointly with DEFRA and other Administrations. We plan to produce a revised and updated version that will encompass all the provisions in the bill. We will address the issue through a combination of preparing further material, dealing with and informing the people who will have to apply SEA and ensuring that the gateway works. I am reasonably confident on the matter, although I in no way diminish the initial need for us to improve the level of education and understanding. I am confident that, once we have the tools in place, we will have an effective implementation.

The Convener: What role do you envisage for the gateway in training? It is fairly obvious from the
evidence that we have had that expertise exists in the planning community. Are there proposals to learn the lessons from the past year of implementation of SEA through the existing regulations? I have seen the guidance on those regulations—it is pretty extensive, but if I was a mainstream officer in an organisation, I am not sure that it would help me to apply the legislation, unless there was a coherent programme to take me through it. The issue is about changing the culture. Communities Scotland was up front about me through it. The issue is about changing the culture. Communities Scotland was up front about the need to change the culture and the need for a long-term programme for all staff. Do you have any comments on that?

Ross Finnie: We regard the gateway as embryonic, even in its present state, and we are committed to developing its role and to responding to the lessons that have been learned from the operation of SEA in practice. The Executive is committed to the bill’s implementation, because we regard the bill as an extremely important change in the way in which we approach such matters. Therefore, we cannot simply drop the issue after the bill has been passed and say that we have ticked that box; instead, we will have to ensure that the gateway continues to develop.

The guidance is comprehensive, although I accept that, for certain issues or policy development areas, authorities will want the guidance to be amended, developed or produced in various subsets. We envisage that there will be a dynamic, but all that we can claim at present is that we have set down a framework that should enable us to implement the bill. However, we are conscious that, as time moves on, we will have to be alert to any need to develop the material.

Mr Ruskell: You said that you did not want to define the exact nature of the gateway in the bill. I understand the reason for that—you want to build in flexibility for the future—but do you agree that we need to define the monitoring of the SEA gateway in the bill? There are concerns that the gateway’s role will change over time, which may disadvantage some responsible authorities. Surely a robust monitoring process might address some of those concerns.

Ross Finnie: Obviously, I am happy to reflect on that point. However, once we have the principles of a bill and some details of how it will be implemented, I am always slightly reluctant to commit to the bill every aspect of the matter. As the convener said, we are dealing with changes in behaviour and in the way in which those who are currently charged with the heavy responsibility of developing policies approach that task. I am not sure that human behaviour is always best addressed through legislative wording. We need to get the detail of the bill right for matters that will arise. However, although I am open to argument on the notion that we should include in the bill measures on how we provide material assistance for and develop the gateway, I am reluctant always to determine human behaviour through administrative burden.

Mr Ruskell: I understand that point, but my question was about how we monitor the cultural change and ensure that the gateway helps to develop it. It might be useful to include a provision in the bill to ensure that adequate monitoring takes place.

Ross Finnie: I take that point. We have expressed our views. We shall soon know whether we have major problems with attitudes not changing. That would make it difficult to process the applications, because it would become difficult to determine them if the mindset and approach are such that people do not provide adequate answers to the questions about environmental impacts. I hear what you are saying.

The Convener: I would like to raise one of the issues that the Finance Committee asked us to explore with you at this stage. It is a question for both ministers. The Finance Committee stated in its report that "there is an urgent need for work on this Bill and on planning reform to be co-ordinated in terms of assessing the overall implications for local authorities."

That committee was particularly keen to examine the changing relationship between local authorities, and it was looking for integration between planning reform and strategic environmental assessment. What has been done to date to help that integration and to ensure that it happens?

Malcolm Chisholm: SEA is certainly being taken fully into account in planning reform. We know what is already required by the regulations and we obviously know the contents of the bill as well. The Finance Committee was concerned that that was not happening, so all that I can do is assure the committee that it certainly is happening and that I very much welcome SEA. It enhances the planning system in the directions that I have suggested by placing more emphasis on the environment and on additional public consultation, and that is something that I welcome in the planning system. I do not think that there is any question of those of us who are involved in developing the planning reforms being unsighted of that or in any way ignoring it. In general terms, that is the answer, but I do not know whether people are seeking more specific reassurance.

The Convener: A specific issue that was raised with us directly was the shortage of qualified planners. Do you have a view on that?

Malcolm Chisholm: We put out some money recently for extra resources for planning. We have
also recently commissioned research to examine comprehensively the level of financial and staff resources that are devoted to the planning service, and we shall also examine training and supply issues. We shall use the evidence from that work to determine whether further resources are required. It is obviously an issue, and that is why I recently announced some funding for improving capacity in the planning system. That was a more general announcement, but it certainly covers the area of planning as well.

Rob Gibson: One of COSLA’s main concerns during the first evidence session was about the funding and resources that will be available to implement SEA. Given the role that local authorities are likely to play as responsible authorities, have disagreements over funding been clarified or resolved?

Ross Finnie: I am well aware of the evidence that COSLA gave to the committee. I am also well aware of the meetings that we had with COSLA in the preparation of the bill. I can understand that COSLA remains nervous that the bill will give rise to a huge burden of work, and we are sympathetic to that. We need to ensure at the outset that local authorities and other producers of planning at all levels understand the points that the convener articulated about needing to change mindsets and attitudes when beginning the process of producing a plan that has regard to the potential for strategic environmental impact.

We believe that if people address those issues at the outset, they will realise that the new process does not require them to do everything completely differently, but it does require them to start thinking, “Might this have been subject to an environmental impact assessment?”, rather than waiting until the end of the process when it is too late and they have to revisit the whole process. There are opportunities not only for doing a bit more at the outset but for relieving oneself at the end of the process of the need to go back to the very beginning to address issues that should have been considered at the start. The bill completely turns on its head the way in which people have to approach those issues.

We are not agreed, but we are not falling out either. I appreciate the evidence that you have taken. The Minister for Finance and Public Service Reform is well aware of the request. Malcolm Chisholm has, as he has just pointed out, commissioned work on planning and its impacts and he will obviously reflect on that work, which will also help to integrate the bill and the planning bill that he will introduce.

12:30

Rob Gibson: I have a supplementary question for the Minister for Communities on his responsibilities. The current responsibilities for administrating and monitoring EIA lie within your department. What actions have you taken to ensure that SEA and EIA complement each other successfully?

Malcolm Chisholm: The dividing line between the two is fairly clear. EIA has been going for several years now and questions have been raised about the quality of some of that work. However, the research on that was Europe-wide rather than focused specifically on Scotland, so we have commissioned our own research to examine the implementation of the EIA regulations in Scotland, how they are working in practice and the extent to which they deliver on environmental issues. We are not complacent about EIA—we want to ensure that the regulations are operating effectively and we want to enhance the quality of environmental statements—but we do not think that the dividing lines between EIA and SEA are unclear.

Rob Gibson: It is just a general question. Because of your department’s competence, it is your responsibility to ensure that those strategic and tactical approaches mesh and complement each other. If you do not think that there is an issue, that is fair enough, but we shall see when we monitor it ourselves.

The Convener: That is a notice of intent for the committee’s future work programme.

Maureen Macmillan: There seems to be confusion about the relationship between SEA and EIA. We took evidence on that. Scottish Water was worried about duplication of effort and Historic Scotland did not think that there would be any efficiencies from SEA being the first line of defence for the environment, although other witnesses thought that the introduction of SEA would mean that there would be no need to have such wide-ranging work done for EIAs. What guidance will accompany the bill to clarify those matters?

Ross Finnie: Some guidance might be required, but the discussion is starting to go round in a circle, as we are now focusing on the need for the individual parties that will find their plans subject to SEA to think slightly out of the box about what they do. When it comes to individual planning applications or individual plans and processes that are part of them, I find it difficult to believe that it will not become immediately apparent to a body—it does not matter whether it is Scottish Water or another body—that addresses properly the bill’s provisions and meets its requirements in producing plans, as it will have to do, that having gone through the overarching process of fulfilling the bill’s requirements will have significantly improved its ability to meet the requirements of an environmental impact assessment. We might have
to produce some guidance, and I would be happy
to do so, but I would be very disappointed if it was
not easier for a body that had gone through SEA
to fulfil some of the detailed requirements of an
EIA.

Mr Ruskell: If SEA was applied to a strategy for
transport infrastructure development and it was
found that the developments led to conflict with a
national target on, for example, traffic stabilisation,
would you expect the responsible authority to
amend the strategy in light of the conflict?

The Convener: You need not respond by
making reference to any particular project,
minister.

Ross Finnie: So, just to clarify, the question is
what would happen if a responsible authority came
forward with a transport plan that was in conflict with—

Mr Ruskell: A national target.

Ross Finnie: It seems to me that your question
is not a trick question, but gets to the heart of the
matter. In the past, the various proposals,
including transport proposals, were not integrated.
Under the bill, if a responsible authority is
promoting a plan and has set some other strategic
objective, which might also have been subject to
SEA, it seems to me that SEA will highlight
matters in a way that might not have been done
properly under the previous process and
procedures. I think that the result will be that the
conflict has to be resolved in the strategic
environmental assessment.

Mr Ruskell: So, SEA could be a way of ironing
out potential conflicts.

Ross Finnie: Yes, I think that it could be—I
certainly hope that that is the case.

The Convener: One of our previous witnesses
said that, although SEA would neither provide
solutions nor give the environment more weight
than other considerations such as economic and
social factors, it would ensure that environmental
considerations were heard and taken account of in
the decision-making process. Do you agree with
that interpretation?

Ross Finnie: SEA will give a far greater focus
on the sustainable development agenda in all our
policy and planning processes. It will ensure that
environmental impact is given the equal weight
that it ought to be given. If the bill is approved, we
will have a statutory basis on which to ensure that
that is the case.

The Convener: I thank both ministers for
coming before the committee and for being
prepared to be grilled by us this morning.

I seek members’ agreement to take our
discussions on the committee report on the bill in
private until such time as we are ready to publish
the report. Is that agreed?

Members indicated agreement.

The Convener: Thank you, colleagues. Our
next meeting is at 9.45 am next Wednesday.

Meeting closed at 12:37.
ANNEX E: OTHER WRITTEN EVIDENCE

SUBMISSION FROM THE BIG LOTTERY FUND

1. INTRODUCTION

The Big Lottery Fund is the joint operating name of the New Opportunities Fund and the National Lottery Charities Board (which made grants under the name of the Community Fund). The New Opportunities Fund (NOF) and the Community Fund (CF) were merged administratively in June 2004.

The Big Lottery Fund (the Fund) will continue to make grants to projects in health, education and the environment, and to charitable organisations to meet the needs of the communities they serve. It has also taken on the Millennium Commission’s responsibilities for funding large-scale regeneration projects (Policy Directions for this programme are currently being consulted on by the UK Department for Culture, Media and Sport, see Annex 1 for a link to this).

The Fund’s mission is to “enable others to make real improvements to the lives of disadvantaged people and the well being of communities through fair and open funding of people, projects and programmes”. We also have six values that will underpin our work. Of particular relevance to this consultation are the following:

- Accessibility - making it easier to access our funding and providing help to grant applicants and recipients (There may be an impact on this if we require applicants to demonstrate compliance with this legislation)
- Strategic focus – working in partnership and joining up with existing strategies (e.g. there will be links between our capital funding and Development Plans), developing programmes that are focussed on the outcomes they achieve and the difference they make for communities
- Involving people – involving local communities in our work and making sure the public know and care about our work (requirements in the draft Bill to consult others and make decisions and reports publicly available sit well here)

The Fund has already made significant commitments to incorporating sustainable development principles into its work. In 2003, NOF published a policy statement on sustainable development (see Annex 1) and we are currently working with the Sustainable Development Commission to deliver on the commitments set out in this statement. This work will consider how our funding application, assessment and evaluation processes could be improved in terms of their potential to deliver sustainable development. We have also requested support from the Commission in developing our new funding priorities and forthcoming grant programme for large regeneration projects.

The Fund independently evaluates all of its grant programmes. A number of our programmes to date have sought to support the delivery of sustainable development, and our respective evaluations have incorporated an assessment of their impact in this regard (see Annex 1 for further details). In addition, in 2002, the CF commissioned a study from Groundwork UK to find out whether considering a project’s impact on natural resources and the environment would present barriers for voluntary sector groups in helping the most disadvantaged people in society (see Annex 1). This study found that although 95% of respondents felt it would be right for the Fund to encourage grant applicants to reduce their harmful effects on the environment, the majority preferred this to be done through the provision of advice on good practice, rather than a change to our application and assessment process.
2 BIG LOTTERY FUND CONSULTATION

On 15 February 2005 The Fund launched the second phase of an extensive consultation on what our future grant programmes in Scotland might be, and how they might be delivered. The consultation exercise is being conducted within a framework that will direct our future funding (in Scotland, this is likely to be between £60 and £70 million per year). This framework comprises a set of broad themes identified by the UK Government, and proposed outcomes and priorities for funding that have been derived from the first phase of consultation (undertaken last year) and from views expressed by Scottish Ministers.

One of the four proposed outcomes within the framework – “People have access to better and more sustainable services and environments” – includes a suggested priority of ‘Promoting environmental awareness and good practice’. Findings from our first phase of consultation were that programmes that ‘raise awareness of environmental issues and change behaviour’ were the top priority in relation to any funding for environmental activity. In addition, many respondents felt that the Fund should adopt a key role with regard to promoting environmental awareness throughout all of our grant programmes, and not just those with a specific environmental purpose. In doing this, they felt that the Fund could encourage good environmental practice both by grant-funded organisations as a whole and in terms of the design of the projects those organisations are funded to deliver. The present Bill could assist the Fund in achieving this, but there are a number of factors that will impact on this, as outlined below.

3 THE EFFECT OF EXTENDING THE IMPLEMENTATION OF STRATEGIC ENVIRONMENTAL ASSESSMENT TO COVER A BROADER RANGE OF PLANS AND PROGRAMMES THAN IS APPLICABLE TO THE REST OF THE UK

The Big Lottery Fund is a UK public sector organisation operating in Scotland. A number of the Fund’s future grant programmes in Scotland are likely to be shaped by policy directions issued by Scottish Ministers. These directions will provide guidance on how funds will be spent, including the broad aims of each programme. Nevertheless, some of our future grant programmes are still likely to be shaped by policy directions issued from time to time by the UK Government, with the consent of the devolved administrations. An example of this is our grant programme for large-scale regeneration projects that will deliver a large proportion of our capital funding. This UK-wide programme is therefore outwith the scope of this Bill, though it is obviously subject to SEA legislation at a UK level.

The Fund will develop Strategic Plans for the period 2006-2009, setting out objectives and Key Performance Targets for each of the countries. It would seem that the Bill does not cover this type of high-level strategic plan, and indeed that it is not possible to carry out any kind of meaningful SEA on such a plan.

The Fund will also develop and deliver grant programmes that relate entirely to the whole of Scotland or to part of Scotland. The Summary of Consultation Comments and Scottish Executive Response for the Executive’s second stage of consultation on the Bill state that “financial and budget plans are not considered to be a practical subject for SEA. Such plans may be helpful in considering scale of effects and so be useful supporting evidence in the SEA process. However, it is the strategy, plan or programme leading to or resulting from the allocation of funds in a financial or budget plan that contains the detail on which a SEA can be carried out”. As regards the Fund’s liabilities under this Act, we will indeed be providing funds for the implementation of more detailed plans or programmes. While we can impose conditions into the grant contract we have with those who are awarded a grant as to the standards to which they must undertake their plan if SEA applies, we do not see that the Fund should be liable by default for obligations under any Act simply because we provided the money which enables the plan or programme to be carried out.
The Fund is likely to deliver around a third of its funding through demand-led, light-touch (DeLi) programmes. These may be similar in many ways to the ‘open’ grant programmes run previously by the Community Fund, and, rightly, will be designed to enable communities to identify and meet their own specific needs. The remaining two-thirds of our funding is likely to be delivered through more strategic grant programmes that seek to make a contribution in a specific sector or address a specific need identified at a national level.

However, neither type of grant programmes will specify the exact location or nature of the projects that will eventually be funded, nor can they hope to do so as a) the Fund cannot predict the exact nature of the applications it will receive and b) in most cases the Fund does not wish to prescribe the exact type or location of project that it will fund. We consider it more appropriate to allow those applying for a grant to identify exactly what type of project is most needed, and they are required to demonstrate this need and that their proposals are the most appropriate way of delivering outcomes for beneficiaries. This issue also relates to our duty to fund in a fair and open way, and to our value of accessibility (see above).

A key factor, therefore, in determining whether the Big Lottery Fund’s grant programmes will be subject to an environmental assessment under the forthcoming legislation, lies in the fact that although we facilitate the development and delivery of projects, we are not ourselves a delivery organisation nor are we able to identify the exact nature and location of the projects that we will fund. In particular, the low amount of control that we will have over the type of project proposals that come forward under DeLi programmes will make it impossible to carry out a SEA for such programmes prior to their opening for applications.

With regard to our strategic programmes we may have a larger amount of control over the types of project we fund and the nature of their delivery. However, it is too early to tell what level of detail such programmes can or should prescribe, and therefore whether screening for significant environmental impact at the programme design stage may be possible. Moreover, it is not possible at this stage to confidently predict the type of facilities that will eventually be funded, nor in what location, even where there is an anticipated element of capital funding.

We do have a larger amount of control over the types of project we fund and the nature of their delivery when assessing and making decisions on individual project proposals. However, where the organisation proposing the project is a statutory body, it would seem that liabilities under the forthcoming legislation would fall to them. It may be that the Fund will ask for evidence that statutory sector applicants have complied with this legislation, although this may increase the burden on many applicants in applying for our funding or complying with our grant monitoring requirements – something that goes against the Fund’s values (see above). In cases where the applicant is a voluntary sector organisation, we understand that these organisations are outside the scope of the legislation.

Under various programmes, we may wish to provide funding to implement some of the types of projects listed in Schedule 1, for example projects for the restructuring of rural land holdings, afforestation and deforestation for the purposes of conversion to another type of land use, wind farms, urban development projects, inland waterway construction, works capable of altering the coasts, and installations for the disposal of waste (or those that require a waste management license such as recycling or composting facilities). However, the Fund will not have any responsibility in relation to development consent for these types of projects - they will be subject to the control of the planning authorities and to their SEA processes. It is not clear from the draft Bill whether the Fund will therefore have any duties in relation to SEA for such projects that we provide funding for, and it would seem inappropriate for us to have so.

As both NOF and CF did in the past, the Fund may decide to deliver all or part of its grant programmes through award partners or service providers. In such cases, we will
usually delegate the detail of programme design to these partners, with the Fund only setting the high-level framework including overall outcomes. In these circumstances, if our programmes do fall within the scope of the Act, it seems from draft Regulation 2(2) that the Fund could be responsible for compliance. However, the point is not clear from the limited provision in, and accompanying guidance with, the Bill. The Bill itself seems to recognise such potential uncertainties by providing at Regulation 2(3) for the Scottish Ministers to determine who is responsible for a plan or programme where more than one authority appears to have responsibility.

A further issue here is the concept of a ‘public character’. Some award partners may be not-for-profit organisations limited by guarantee that deliver public services. These could potentially be covered by the definition in the Explanatory Notes accompanying the Bill, given its intended wider application. Again, the point is not altogether clear from the Bill. However, this consideration will be immaterial if it is indeed the Big Lottery Fund that would retain responsibility.

Given the above points, particularly those under paragraphs 3.3-3.9, we would suggest that distributors of National Lottery grants and the recipients of such grants are excluded from the definition of "responsible authority" except where the recipient (and only the recipient) would otherwise be subject to the Act, for example a Local Authority that has received a grant from us for a project that may require an environmental assessment.

Nonetheless, the Fund does take its commitment to sustainable development seriously and it may be the case that we can identify and mitigate or avoid the significant environmental impact of our funding in a far more appropriate and efficient way than by carrying out SEAs. A number of alternative methods are outlined below. These options are already being explored by the Fund (see NOF’s policy statement on sustainable development).

- For all grant programmes, encouraging applicants to consider the potential impacts of their proposals on the environment and mitigating or avoiding negative impacts (and where possible maximise positive impacts) through the provision of guidance at application stage;
- Ensuring that applicants mitigate or avoid any negative impacts that their proposals may have on the environment (and where possible maximise positive impacts) through the use of relevant assessment criteria for applications and, where appropriate, relevant terms and conditions of grant (for public sector organisations, these might include evidence that the Act has been adhered to);
- Monitoring projects’ performance against environmental criteria or indicators post-award, incorporating this into our standard grant monitoring procedures;
- Incorporating an assessment of the environmental impacts of our programmes into our programme evaluations.

Links to all of the documents referred to above are provided in Annex 1 attached.

ANNEX 1

Links to Relevant Documents

Big Lottery Fund’s Transformational Grants Programme - DCMS consultation on Policy Directions
Big Lottery Fund Corporate Plan 2004-05
http://www.biglotteryfund.org.uk/assets/corporate_plan.pdf

SUBMISSION FROM BRITISH AGGREGATES ASSOCIATION

On behalf of the British Aggregates Association I welcome the opportunity to comment on the Bill.

We are a trade association that represents the interests of the independent quarrying sector throughout the whole of Scotland from The Borders to Shetland. Our business is to produce construction aggregates along with added value products such as concrete and asphalt for roads. As such we are very familiar with all current and proposed environmental legislation.

Having read through this Bill along with the Guide to the Bill I can only conclude that this another piece of the mountain of legislation that is gradually strangling SME’s throughout the land and one of the causes why Scotland is now lagging behind the rest of the UK in terms of growth. The idea that environmental assessments should be extended to such places as motorway service stations and golf courses is a total nonsense and sums up just how ridiculous matters concerning the environment and other buzzwords such as “sustainable development” have become.

The costs of implementing bills like this are completely over the top. Who is going to oversee all of this? No doubt SEPA will be. At the end of the year they will be looking for a severe hike in their charges to industry to cover their costs. Who pays? Industry and the taxpayer. It simply cannot go on we will drive all industry out of the country if we continue to subject them to this burden of cost and red tape.

My own industry is familiar with environmental impact assessments. We have to carry them out when we apply for planning permission to open a new or extend an existing quarry operation. We have to deal with bats, crested newts and badgers. Not that they are problem, they are a protected species. Even though we may have never seen a crested newt, it still costs money to get in the “expert” to confirm to the planners that there are none. As for badgers, if we have any, we have to work around them, no problem, even though it may cause a delay to planning. Now the environmental agencies are talking about culling badgers! I hope this serves to illustrate the nonsense of it all.

Added to this there is archaeology. Archaeological explorations are now costing developers tens of thousands of pounds before they are granted planning consents. This is despite the guidelines to planning authorities (which are not being adhered to in many cases) by central government.

I do not want to dwell on all of these problems; I just want to highlight to you the effects that even more dubious legislation will have on industry, on jobs and Scotland as a whole.
The danger of too much environmental legislation is that it tends to be counter productive. For example the aggregate levy was supposed to be an environmental tax to reduce the amount of primary aggregate excavated. Central Government have now realised that this has caused more waste heaps around the country because they cannot sell the primary by products. Illegal quarrying by farmers digging sand on their land under the guise of agricultural restitution and heavy lorries on the road travelling vast distances to sell cheap untaxed secondary aggregates. Then there is the Waste Incineration Directive which when implemented in December this year will effectively kill the market for recovered fuel oil and will lead to hundreds of thousands of tonnes of waste oil being dumped throughout the land. (Our European partners would appear to interpret the law in a different manner to SEPA and the EA) (See BAA press release on this subject).

At the moment, Scotland, like the rest of the UK, is suffering from a lack of investment in its transport system. This Environmental Assessment Bill will bring even more delays when we finally try to improve the road and links of Scotland. Remember, we do not have a rail link to the airports of Edinburgh and Glasgow. The M74 is not motorway linked to the M6. The A1 is not a dual carriageway all the way between Edinburgh and Newcastle. The A9 is not a dual carriageway all the way to Inverness. Will this Bill help the transport situation of Scotland? I think not.

Finally let me move on the planning system for Scotland. It is well known that we are short of qualified planners. This Bill will create even more work for the planning authorities. The system is stretched to breaking point. This will lead to more even delays to development. Look at the disgraceful situation concerning the recent case of the Lingerbay quarry fiasco. It took over ten years for a decision by the authorities and finally, when it came; it came not from the system, but from a judge in a court of law.

To sum up, the costs of implementing this bill will be far too great a burden for industry, developers and taxpayer. We have already gone over the top with enough environmental legislation. Any more will be counter productive. The system that has to police this kind of bill does not have the resources to be either effective or fair. Here I am talking about SEPA and the planning system throughout the country.

I see this Bill as a bit like the “Third Party Rights of Appeal legislation”. It is well meaning but not practical and will certainly not enhance Scotland’s growth prospects for the future and that has to be the priority at the moment.

Thank you for giving me the opportunity to comment on this consultation and whilst I note that I have not been too complimentary about the Bill, I trust you will accept the comments as a piece of constructive criticism.

BRITISH AGGREGATES ASSOCIATION – PRESS RELEASE
Wednesday 30 March 2005

WASTE NOT, WANT NOT – Environment Agencies declare recovered fuel oils to be waste!

The British Aggregates Association (BAA) has lobbied the Scottish Minister for the Environment over the dangers of the dumping of waste oil caused by a misinterpretation of the European Waste Framework Directive by the British Environment Agencies.

Both the Environment Agency (EA) in England and SEPA in Scotland have decided that recovered fuel oil (RFO) comes within the Waste Framework Directive and as a result it will no longer be practical to use it as an alternative fuel in asphalt plants and various heating plants from 28 December this year.

Currently, specialist licensed oil companies throughout the country collect some 400,000 tonnes of waste oil from garages and industrial outlets each year, mostly free of charge. This waste oil is filtered, treated and blended into a fully acceptable fuel oil - an alternative to using virgin gas oil. This industrial process has grown up over the last 40 years and the UK is one of the leaders in this field. As a result there is a sensible use of this material, less call on natural resources – and little incidence of waste oil being dumped illegally in the UK.
All this is about to change warn the British Aggregates Association. Both the Environmental Agency in England and SEPA in Scotland have decided that RFO is still a waste, and if it is burnt as a fuel, then it comes under another piece of EU legislation known as the Waste Framework Directive (WID). The regulations surrounding the WID make it prohibitive for RFO to be used as an alternative fuel in most installations. This begs the question of just what is going to happen to all that waste oil if it cannot be disposed of in a controlled manner. Fridge mountains and tyre mountains are one thing, but waste oil stored in drums up and down the country is a ticking environmental time bomb.

To date the UK environment agencies have adopted an ostrich like approach by saying that they have to carry out the rule of Brussels. They imply that there is not a problem because the waste oil can be used in steel works where it is burnt as part of steel processing rather than as a fuel, and as such does not come under the WID!

The BAA has recently received written confirmation that the environment agencies of several other EU states do not regard RFO as a waste. They say that once the waste oil has been treated appropriately and is available to be used as an alternative fuel then it is no longer a waste and does not come with the WID.

Richard Bird, BAA Executive Officer said, “We have passed this information on to the Scottish Executive and hope that finally they will see reason and change their mind on the interpretation of RFO before a major pollution incident hits our salmon rivers.”

For further information please contact: Richard Bird
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Notes to editors:
1. The British Aggregates Association is the representative trade body for independent quarry operators www.british-aggregates.co.uk
2. The Association represents some 70 members across the UK producing around 10% of national output from over 100 individual sites
3. The Association was formed to campaign for the interests of SME quarry operators, to protect the independent quarry sector from the increasing dominance of the major operators, and to oppose the ill-conceived Aggregates Levy.
4. The Association participates fully with all EU and UK consultations on environmental, economic, and health and safety legislation; and is an active member of the Confederation of British Industry (CBI) Minerals Committee, and the Construction Products Association (CPA). It operates its own mutual restoration fund for quarry restoration.

SUBMISSION FROM CBI SCOTLAND

We are very disappointed that the Scottish Executive has felt it necessary to extend the scope of strategic environmental assessments wider than the rest of the UK. The original EU Directive was already comprehensive in its scope and adequately balanced the needs of the environment and the economy. We believe that the additions made by the Scottish Executive are at odds with its public statements that the economy is its number one priority. It is also counter to the commitments made to the business community by the UK Government that there would be no further ‘goldplating’ of EU legislation.

Scotland’s long-term economic growth rate has lagged behind the rest of the UK for many years now. Goldplating EU legislation will do nothing to reverse this trend. In fact, it may even make the situation worse. Creating the ‘Smart Successful Scotland’ that we all want requires more world class companies to choose to locate in Scotland, both inward investors and the indigenous Scottish companies that have the ambition and the capacity to grow.

These companies are not short of options when it comes to choosing the best business location. There are, of course, many factors considered by companies when choosing where they should be based and Scotland has numerous positive strengths. But it also has many weaknesses (e.g.
distance from market, a declining population that may adversely affect recruitment, higher business rates than England) and goldplating EU legislation is yet another one.

The Bill seems to be so widely drafted that almost every activity undertaken within or involving the public sector could potentially be subject to an environmental impact assessment. In a country like Scotland, where such a large part of the economy is accounted for by the public sector, subjecting so many public sector activities and decisions to this burden could have damaging implications for the wealth creating private sector. It is difficult to see how it will not add costs to many projects or slow decision making.

We are pleased that the Scottish Executive plans to use a pre-screening procedure to effectively exempt any plans, programmes or strategies that are out with the scope of the original Directive and that have no environmental impact or only a minimal environmental impact. But it will take some time before we are clear about what this actually means in practice. In the meantime, there will be uncertainty and that might adversely impact on private sector investment (crucial for PPP projects for example).

In summary, we believe that the Scottish Executive should not have ‘goldplated’ this legislation. It will undermine its claim to be committed to growing the economy and appears to send out a signal that the environment is a greater priority. Whatever impact it has in practice (which will take some time to become clear), it runs the risk of creating a perception that Scotland is not a good place to do business.

SUBMISSION FROM ENERGY ACTION SCOTLAND

Background

Energy Action Scotland (EAS) is the Scottish charity with the remit of ending fuel poverty. EAS has been working with this remit since its inception in 1983 and has campaigned on the issue of fuel poverty and delivered many practical and research projects to tackle the problems of cold, damp homes. EAS has worked with both the Scottish Executive and the UK Government on energy efficiency programme design and implementation. EAS is a member of the Scottish Executive’s Fuel Poverty Forum and was previously on the Scottish Executive’s Central Heating Advisory Group.

EAS’s primary focus is the eradication of fuel poverty through the availability of warm, dry and affordable to heat homes. To achieve this EAS campaigns on issues relating to the three main causes of fuel poverty: the energy efficiency of the dwelling, the cost of domestic fuel and the disposable income of the household.

Comments

These three particular areas have little impact on the proposals of the Environmental Assessment Bill, except in one important area. This area is demand side management and EAS would comment that there is no mention or proposals for this contained within this Bill.

Where there is the need for an environmental assessment of any aspect of the energy industry, EAS proposes that the assessment should contain an assessment of need. In particular for industrial installations for the production of electricity, steam and hot water, industrial installations for—

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Charity No. SCO 09280

(a) carrying gas, steam and hot water; or (b) transmission of electrical energy by overhead cables, installations for hydroelectric energy production, installations for the harnessing of wind power for
energy production (that is to say, wind farms) or where the building of new generating capacity is being considered. EAS’s proposal would question whether the proposed measure could be replaced by putting other energy saving measures in place for the community that would receive the end product.

For example, the upgrading of a power supply to a rural village may be required as the demand from the village will grow due to an increase of planned installations of electric central heating systems. The additional demand may not be needed if energy efficiency measures were applied instead e.g. the installation in every home of low energy light bulbs and high efficiency white goods. Alternative technologies substituted for the planned electric central heating systems, e.g. the use of solar water heating and photovoltaic roofs, would reduce the demand for energy in the home.

It may be that by giving each home these energy saving measures, perhaps at a nominal cost to the householder, the energy demand for the village would be reduced or held to a level within the scope of the existing transmission system. Therefore the cost of the new energy efficiency measures would offset the need to upgrade the system, which in turn would mean that the environmental impact would be nil as no works would be carried out which would have an environmental impact.

**Points that require further clarification**

EAS would suggest that there are three points that require further clarification and these relate to Schedule 1, Part 1, (25) Energy Industry.

Point one: would a company installing surface or buried tanks for the storage of liquefied gas fuels, with the intention of renting these vessels for the supply of fuels to domestic or community building be exempt from the need to provide an environmental assessment?

EAS would suggest that this type of installation should be exempt under a size (yet to be determined) that clearly showed it was for domestic use.

Point two: would an individual installing a fuel oil storage vessel for the purpose of providing fuel for a domestic or community building be exempt from the need to provide an environmental assessment?

EAS would suggest that these installations also be exempt from the need to provide an environmental assessment. There should also be a requirement to set maximum sizes of such tanks to avoid industrial applications claiming exemption.

Point three: would an individual community group be exempt from providing an environmental assessment for a proposed micro-hydro or micro-wind generating plant?

Again EAS would suggest that these installations, if they were under a clearly defined generating capacity (as yet to be determined), be exempt from the need to provide an environmental assessment.

All of these suggestions are set out so as not to disadvantage domestic or community users where little or no environmental impact would be made by these specific actions. All three examples would be subject to local planning regulations.

**Recommendation**

EAS is, therefore, proposing that any new carbon generating capacity would have to demonstrate that a need exists for energy production that cannot be met by improvements in efficiencies and the application of embedded generation. Reporting under this would be relevant under Schedule 3 sections (7) & (8).
Introduction

The Highlands and Islands Enterprise (HIE) Network, comprising the core based in Inverness and Lionicleit, ten Local Enterprise Companies (LECs) and the Careers Scotland locality offices, is the Scottish Executive's economic and social development agency for the north and west of Scotland. The HIE area covers just over half of the landmass of Scotland, yet includes only 9% of the national population.

HIE welcomes the opportunity to submit evidence on the general principles of the Environmental Assessment (Scotland) Bill to the Environment and Rural Development Committee as part of the Committee's Stage 1 scrutiny of the Bill. The outstanding natural environment of the Highlands and Islands is a key asset for the future of the area and HIE is fully committed to continuing to sustain that environment.

HIE is committed to delivering sustainable development in the Highlands and Islands and sees this legislation as a key means in assisting in this work. To this end HIE aspires to be an exemplar public body in the delivery of this approach.

HIE submitted detailed comments to the Scottish Executive on the Draft Bill in October 2004 and we note that the Committee has access to all material gathered by the Scottish Executive in previous consultations and is looking only for additional submissions relating to the Bill as introduced. The comments below outline our concerns on certain key issues and seek to address the questions set out in the Committee's call for evidence.

Clarification of when a Strategic Environmental Assessment (SEA) is required

We wish clarification on how this Legislation will directly impact upon our work, as we are unclear about how the Bill can be interpreted within our development role for the Highlands and Islands. HIE has sought clarification on what areas of our work will be subject to SEA and accept that, as the legislation is drafted, the view is that it is for us to determine this.

This presents several difficulties for HIE. The first is that all of our activities ultimately stem from the Framework for Economic Development for Scotland and from Smart Successful Scotland with our own Highlands and Islands Dimension focussing our specific activities. None of these documents will be subject to SEA in their current form and some will remain extant for several years. We find it difficult to see how we can deliver SEA for activities that are set in the context of Executive-led strategies that have not been through the assessment process.

Our initial assessment of the legislation leads us to conclude that our Operating Plan is the principle strategy that obviously delivers on this legislation. The legislation is unclear as to what other elements of our work would be required to deliver on this if we are indeed to be an exemplar.

Additionally, HIE delivers much of its work through third parties, many of which are in the private sector and we are unclear about how this type of work is covered, if the projects themselves are not covered by the EU Directive.

Clarification of what is in a SEA

The actual detail of content and scale of the environmental report is unclear and will inevitably lead to uncertainty between the agencies and the consultees about what constitutes an acceptable report. Further clarification is required on this matter to avoid confusion, and there has been a suggestion that the Executive will provide guidance on this matter with the supply of templates. We would strongly urge that this guidance is provided before the legislation is brought into effect.

Resources and skills

The list of contents provided within Schedule 3 is comprehensive and would result in a daunting burden on responsible agencies where the necessary skills may not be readily to hand. Where
these skills do not exist they would require to be bought in. HIE questions whether the skills exist at an adequate level within Scotland to meet the aspirations of the Legislation. We consider that clearer guidance is required to indicate the level of detail that should be provided for the range of plans, programmes and strategies to be covered by the Bill. Without this there will be inevitable uncertainty between agencies and consultees which would further exacerbate any resource shortages.

HIE recognises that the Executive expect that the additional resources will be found from existing budgets. This will inevitably result in other activities being constrained until the necessary skills and expertise can be built up into mainstream activity. We would predict that this will take from 3-5 years and this will inevitably impact upon the delivery of HIE’s outputs. HIE seeks some recognition of this impact in the resourcing of the agency in this interim period.

Three specific, additional questions in the call for evidence – HIE’s Views

What the effect will be of extending the implementation of strategic environmental assessment to cover a broader range of plans and programmes than is applicable to the rest of the UK?

The Bill in theory outlines a realistic process for meeting the needs of the Directive, but also meeting the Executive’s aspirations to make Scotland a world leader in SEA. HIE recognises the drive towards a sustainable development agenda that is coming from the Executive and that this has come from a clear Manifesto commitment. We do have concerns that stem from this innovative approach and these were raised in the initial consultation. Our main concerns relate to issues of the scope and content of the SEA process and the essential resources and skills that will be necessary to deliver the spirit of the Legislation. These concerns are expanded further above.

What the effect will be of the proposed system of administrative arrangements chosen to implement this obligation e.g. pre-screening and screening?

The Pre-screening and screening arrangements seem appropriate, but will only be reasonably tested when the Legislation is implemented. HIE hopes that the Executive will take a measured view of the early years of this requirement as agencies develop the necessary skills and expertise that will be needed.

The timescale that has been proposed again seems reasonable but this assumes that there is adequate resourcing of consultees to ensure that deadlines can be met.

The requirements to monitor the environmental performance of the plans and programmes requires further clarification. Again there are resource implications and clear guidance would be welcomed by all responsible agencies on this matter.

Is the provision of a SEA Gateway within the Executive a sufficient method of managing the SEA process?

HIE accepts the establishment of a central gateway unit within the Executive. Our preferred option would have been a specialist team, providing the range of skills necessary to deal adequately with issues relating to SEA. It will be essential that the gateway unit has access to the full range of skills necessary for this complex area of work.

Conclusion

HIE is fully committed to continuing to sustain the outstanding natural environment of the Highlands and Islands which is a key asset for the future of this area. HIE recognises the Executive’s aspirations to make Scotland a world leader on SEA, and see ourselves as a key agency for achieving this. However, the legislation as currently drafted requires to be further clarified in a number of areas and adequate resources and skills need to be available to responsible agencies to achieve that aspiration.

SUBMISSION FROM THE HIGHLAND COUNCIL

OVERVIEW OF THE PROPOSED BILL

The introduction of this new legislation represents both a threat and an opportunity. There will be additional administrative costs in the management of the SEA process, additional consultation and
the production of environmental reports. On the other hand, this work will facilitate the identification of new opportunities through holistic planning and the examination of alternatives early in the economic, spatial, social and environmental planning processes.

RESPONSE TO THE ISSUES RAISED IN THE CALL FOR EVIDENCE

1. What will be the effect of extending the implementation of Strategic Environmental Assessment to cover a broader range of plans and programmes than is applicable to the rest of the UK?

Whilst The Highland Council recognises the outstanding significance of Scotland’s natural heritage and shares the Scottish Executive’s commitment to safeguarding and improving the quality of our environment, we are extremely concerned that the Bill will place a financial and bureaucratic burden on public sector organisations that is disproportionate to its contribution to the public good.

We consider that there is a pressing need for the Scottish Executive to delay this piece of legislation until more information becomes available on the impact of the introduction of the EC Directive on SEA to Scotland. In the Council’s view, the Scottish Executive has not made the case for new primary legislation at this time, coming so soon after the July 2004 implementation of the EC Directive, the effects of which have yet to be assessed.

In the event of the Bill proceeding, the legislation must ensure that:

- Assessment is targeted to those plans and programmes where value will be added to the work of the public sector.

- Resources are used wisely to achieve environmental benefits and not simply increase paperwork for the sake of it. This includes taking all necessary steps to identify what plans and programmes the Bill will apply to and ensuring that effective use is made of pre-screening and screening.

Financial and bureaucratic burden

There is a significant threat that budget constraints will force Local Authorities to choose between delivering frontline services and meeting their statutory duty to SEA. We hope that the Scottish Executive will recognise that the central objective of the legislation – to improve protection of the environment through better public decision making – will only be met if Local Authorities are adequately resourced to undertake this statutory responsibility.

Whereas we welcome the acknowledgement in the Bill’s Financial Memorandum that Local Authorities (along with the Scottish Executive) are likely to carry the highest financial burden because they are likely to perform the highest number of SEAs, we are concerned that the Memorandum presents no explanation as to where this money will come from. Nor does it acknowledge or forecast the following overheads, which we anticipate, will increase that burden:

- The cost of gathering baseline data to monitor and evaluate environmental impact. There is an existing shortfall in baseline environmental data for the Highland Area. If monitoring and evaluation requires the collection of missing baseline data, the cost to The Highland Council is likely to be significantly higher than for most other Scottish local authorities.

- The initial cost of capacity building within Local Authorities. This of course will diminish over time but to begin with, all Officers involved in the preparation of plans and programmes will be on a steep learning curve to rise to the SEA challenge. Many Officers in this role are as yet unfamiliar with the concept of environmental impact and will have to devote considerable time and effort to developing expertise. The legislation is unlikely to meet its policy objectives, however, if Local Authorities fail to mainstream SEA through capacity building and culture change.
The cost of pre-screening and screening, particularly in the high number of cases where this work is unlikely to lead to environmental assessment (refer to Item 2 below).

The number of SEAs that Local Authorities will be obliged to carry out, which we anticipate will be significantly greater than the total figure of 3-5 per Local Authority per year identified in Table 1 of the Financial Memorandum. As an indicator, The Highland Council’s Planning and Development Service, one of five Strategic Services, will be commencing a minimum of three SEAs in the forthcoming financial year.

The ongoing cost of monitoring the environmental impact of all strategic actions. Local Authorities are not currently resourced to monitor environmental impact of plans and programmes to the extent that is required in Section 19 of the Bill.

2. What will be the effect of the proposed system of administrative arrangements chosen to implement this obligation, eg pre-screening and screening?

Pre-screening and screening: The Bill’s exceptionally low threshold of exemption from screening is onerous and should be revised upward. The proposed arrangements are likely to create unnecessary work for Local Authorities because screening will be necessary in all but the handful of cases where environmental impact is de minimis. In reality, many strategic actions undertaken by Local Authorities will have an environmental impact, although in most circumstances that impact will not be significant. Under the proposed Bill, all strategic actions whose impacts are either doubtful or fall between “minimal” and “significant” will have to undergo screening, irrespective of the exemption from environmental assessment that, subsequently, the Consultations Authorities are likely to award.

The Bill’s bureaucratic burden could be further reduced if it defined what strategic actions this legislation will affect, following the precedent set by the EC Directive on SEA. Local Authorities urgently require to identify with the Scottish Executive a comprehensive list of plans, programmes and strategies where SEA will add genuine value. We also consider that there is a pressing need for the Scottish Executive to issue more comprehensive guidance on:

(i) what constitutes a “significant environmental impact”
(ii) the Pre-Screening process
(iii) an appropriate SEA methodology.

Environmental Reports: The Council wishes to draw the Committee’s attention to opportunities missed by the Bill’s failure to take account of socio-economic factors into Environmental Reports. Sustainable development is rapidly becoming a cornerstone of policies and planning in the public sector. We believe clauses in the Bill should permit secondary legislation to widen the scope of Environmental Reports because this would present a valuable opportunity for the public sector to embed sustainable development in the preparation of key plans and programmes. We anticipate that by addressing both socio-economic and environmental factors, Responsible Authorities will be encouraged to take a balanced view as to the total effects of the strategic action. This could go a long way to deliver the culture change that is needed to realise the Scottish Executive’s objective of “making Scotland more sustainable”. In promoting the integration of socio-economic factors into SEA, we are in favour of the approach taken by the Office of the Deputy Prime Minister in its guidance for English Planning Authorities “The Strategic Environmental Assessment Directive: Guidance for Planning Authorities” (2003).

3. Is the provision of a Strategic Environmental Gateway within the Scottish Executive a sufficient method of managing the SEA process?

The Council welcomes the Scottish Executive’s commitment in Item 56 of the Explanatory Notes to underpin the SEA Gateway with the principles of sound communications with the Consultation Authorities and effective utilisation of expertise. Whilst acknowledging the benefits of the Gateway in streamlining the administrative process, we consider it extremely important that Responsible Authorities should also be able to liaise with the Consultation
Authorities at the local/regional level in relation to the scoping of the Environmental Report. Regional and local offices of Scottish Environmental Protection Agency and Scottish Natural Heritage are most familiar with local circumstances and could play a vital role in minimising bureaucracy by agreeing approaches that are appropriate to relevant plans and programmes in different parts of Scotland.

SUBMISSION FROM THE INSTITUTE OF ENVIRONMENTAL MANAGEMENT AND ASSESSMENT

Introduction

The Institute of Environmental Management and Assessment (IEMA) welcomes the opportunity to participate in the consultation on the Environmental Assessment (Scotland) Bill.

Strategic Environmental Assessment is an important tool for identifying and addressing environmental effects and improving the sustainability of strategic decision making. The IEMA welcomes the extension of the use of this tool beyond the limitations set out in Directive 2001/42/EC.

This response to the consultation is made up of two sections: the first, an introduction, sets out to answer the three general questions that respondents were asked to consider. The second focuses on specific issues arising from the Bill itself which may be useful to take into consideration when redrafting the Bill.

Questions set out by the Scottish Environment and Rural Development Committee

1. **What the effect will be of extending the implementation of Strategic Environmental Assessment (SEA) to cover a broader range of plans and programmes than is applicable to the rest of the UK?**

The IEMA supports this extension as a means of promoting the goal of sustainable development. Environmental protection measures have in the past been hampered by other plans and programmes that are acting contrary to their objectives. The Bill provides an opportunity to deliver plans and programmes that are adapted to avoid or minimise adverse environmental effects that result as a consequence of the actions they initiate. The broadening of the range of policies and plans to which SEA will be applied is positive step to contributing to the objective of sustainable development. An additional administrative burden on public authorities is inevitable, but over time can be minimised by the incorporation of the SEA requirements into the planning / programmed development process.

2. **What the effect will be of the proposed system of administrative arrangements chosen to implement this obligation e.g. pre-screening and screening?**

It is the IEMA’s opinion that the proposed system might hinder the policy objective of broadening the range of plans and programmes for which an SEA will be necessary (see section 3, page 1 of Policy Memorandum). With particular reference to pre-screening, there could be a more explicit policing role to ensure that authorities do not use pre-screening to ‘side step’ the SEA requirements and to enable the Scottish Ministers to use their powers to veto a pre-screening decision.

3. **Is the provision of a Strategic Environmental Assessment (SEA) Gateway within the Executive a sufficient method of managing the SEA process?**

The proposed SEA Gateway appears to be a promising idea for the administration of SEA within Scotland. It should provide a an efficient means of maintaining an overview of SEA activity and, over time, depending on the terms of reference will provide a central source of expertise within the Executive. However it would be appropriate for the Gateway to have a more explicit policing role identified within the Bill to ensure that it is effective in policing SEA to facilitate the Scottish Ministers to use their powers (refer to the answer above for a specific example).
Specific issues

Screening

The Bill provides responsible authorities with the power to publish why a plan or programme does not require an SEA (Part 1, section 9 (7), page 5). A similar provision to require the publication of the reasons why an SEA is required would also be appropriate. This would help to raise awareness of the potential environmental effects associated with particular plans and programmes as well as focusing the scope of the SEA.

Consultation and Scoping

Consultation authorities are identified as Scottish Natural Heritage, Scottish Environmental Protection Agency and the Scottish Ministers. The Bill should also identify relevant local authorities as consultation authorities since they are likely to be either indirectly or directly affected by a plan or programme.

The Bill recognises the need for public consultation to be early and effective (Part 2, section 15 (4), page 8) and the Bill specifies the minimum requirement for consultation to take place during the preparation of the environmental report (Part 2, section 16 (1), page 8). The IEMA appreciates that consulting at the scoping stage may not always be appropriate. The Aarhus Convention states that:

*Each Party shall provide for early public participation, when all options are open and effective public participation can take place,* (Paragraph 4 of Article 6)

The compliance of the Bill in relation to this criterion could be questioned as at the environmental report stage for some planning processes, the preferred options may have already been chosen, and hence this limits the possibility of consulting when all options are open. A potential solution is for the Bill to incorporate a requirement for the Responsible Authority to advise on the timing of consultation in relation to the process, and not just the time period associated with the consultation procedure. This would enable Ministers to be assured that the consultation meets all of the requirements of the Aarhus Convention.

The IEMA welcomes the provision of sending a copy of ‘those views [reached by the consultation authorities] to the other consultation authorities’ (Part 2, section 15 (2) (b)) as this will enable them to be aware of issues on which they are in agreement or disagreement.

The Bill refers to the Responsible Authority publishing the plan or programme as soon as ‘reasonably practicable’ (Part 3, section 18(1), page 9). Given that ‘reasonably practicable’ is not defined, it might be more appropriate to set a maximum time frame within the Bill. Thus Responsible Authorities would be required to publish as soon as reasonably practicable, but no longer than the specified time frame.

The IEMA considers the process of the Responsible Authority sending a copy of the adopted plan and statement to consultation bodies (see Part 3, section 18 (2) (a) and (b) page 10)) as an unnecessary administrative burden that would probably have little benefit for the consultation authorities. It would be more appropriate for the Responsible Authority to inform the consultation authorities (via e-mail for example) of the publication of the adopted plan.

The Bill does not make any provisions for addressing transboundary impacts within the SEA process. Thus the compliance of the Bill with Article 7 of the SEA Directive 2001/42/EC could be questioned.

It would be helpful for the Bill to include a provision that identifies the extent to which its requirements apply to plans and programmes already in preparation. Particularly those for which the first preparatory act was after the 21st July 2004 (see Article 13 of Directive 2001/42/EC).
Cost

The Bill states that ‘Nothing in subsection (2)(c)(iv) shall require the responsible authority to provide a copy of any document free of charge; but where a charge is made, it shall be of a reasonable amount’. We believe that further clarification of what this reasonable amount is could be given e.g. a maximum charge for example.

Document location (website)

The Bill states that ‘The responsible authority shall also – a) within 14 days of the preparation of the environmental report, secure the publication of a notice ii) stating the address (which may include a website) at which a copy of the relevant documents may be inspected or from which a copy may be obtained’ and then states in sub paragraph c) ‘display a copy of the relevant documents on the authority’s website’. It appears to be inconsistent to require the Responsible Authority to display a copy of the relevant documents on the web site, but to give them an option as to whether they provide the website address. This is important as the provision of the environmental report online would reach a wider audience.

Scope of plans and programmes

The Bill does not apply to ‘plans and programmes the sole purpose of which is to serve national defence or civil emergency and financial or budgetary plans and programmes’ (Part 1, section 4 (3), (a), (b)). The IEMA feels that this is inconsistent with the original goal of introducing ‘Strategic Environmental Assessment (SEA) across the range of all new strategies, plans and programmes [...]’ (section 3 of policy objective, page 1). The difficulties of including these to the same assessment requirement of other plans is understood, it is nevertheless possible for financial plans to result in significant environmental effects. Whilst the inclusion of such plans in this Bill might be inappropriate, it would be consistent with the spirit of the Bill if they could be subject to an alternative, but similar assessment process.

Executive Plans and Programmes

A more explicit policing role for the SEA Gateway would ensure that those plans and programmes that are the responsibility of the Executive are subject to the same checks and balances of those produced by other authorities.

Quality Assurance

The Directive includes an obligation on Member States to ‘ensure that environmental reports are of a sufficient quality to meet the requirements of this Directive and shall communicate to the commission any measures they take concerning the quality of these reports’ (Article 12 (2)). With the exception of the consultation provisions, the Bill does not indicate that there will be any other form of quality control. Experience with EIA demonstrates that reliance on the statutory consultation arrangements alone is not a reliable means of assuring quality. It is recommended that the Bill incorporates a provision for all environmental reports to be reviewed by an organisation external to the Responsible Authority and not associated with the preparation of the plan, the undertaking of the SEA or the preparation of the environmental report. The review should be undertaken simultaneously to the public consultation and the results of the review incorporated into the decision-making process.

Such a provision would have the benefit of:

- Helping to provide assurance that the implementation of the Regulations is contributing to the original objectives of the Directive
- Strengthening the quality of SEA work and allowing best-practice to continually improve as more experience with implementation is gained

References

The SEA Directive

The Aarhus Convention

SUBMISSION FROM THE NATIONAL BIODIVERSITY NETWORK TRUST

1. The proposals for Strategic Environmental Assessments are to be welcomed; however for these assessments to be meaningful they must be underpinned by reliable data. This has proved to be a problem in the past as access to helpful species and habitat records has not always been easy, and the collection of new records can be expensive and with the added inconvenience of seasonality. The National Biodiversity Network Trust is capable of supplying essential biodiversity information for all wildlife in the UK and should be accessible to whatever organization is set up by this Bill.

2. Fortunately, the UK is amongst the most studied areas of the globe (if not the most studied) from the perspective of its fauna and flora. Distribution data for some groups go back to Victorian times and beyond. The quality of these data are variable, but some very high quality data sets do exist and give a continuous record dating back in some cases for 150 years.

3. It was known (Biological Recording in the UK: present practice and future development, 1995, CCBR\(^{14}\), published DoE) that many millions of records existed of species distribution, largely collected by 60,000+ volunteers for their own interest and recorded in a variety of formats, mostly on paper. They were held at 2,000+ locations, for which no directory existed, and that access to them was uncertain save for a relatively small percentage held by government agencies. The relatively small amount of information gathered largely by professional recorders and concerned with habitat data was mostly in the public domain, but widely dispersed in the literature or held by government conservation agencies of all kinds.

4. The CCBR report advocated the establishment of a national scheme for biological recording based on electronically captured and transmitted data and set out a possible blueprint of how this might be achieved.

5. A network of Local Record Centres has been working for some time to make these records more accessible at the local level, but the network is incomplete.

6. National Societies, Recording schemes and local naturalist groups have for many years published atlases of species distribution, this process at the national level being facilitated by the Centre for Ecology and Hydrology. The advent of the Internet has also increased the attraction of biological recording to the general public at least for easily recognised species such as birds.

7. The National Biodiversity Network Trust (www.nbn.org.uk) was established in 2000 as a company limited by guarantee and a registered charity. The Trust is a UK organisation but with very strong links to Scotland. The full members of the Trust are drawn from non-governmental organizations and government agencies, namely:

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<tr>
<th>Scottish Natural Heritage</th>
<th>Scottish Environment Protection Agency</th>
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<tr>
<td>English Nature</td>
<td>Environment Agency</td>
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<td>Countryside Council for Wales</td>
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<td>Joint Nature Conservation Committee</td>
<td>Natural Environment Research Council/ Centre for Ecology and Hydrology</td>
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<td>Marine Biological Association</td>
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<td>The Wildlife Trusts</td>
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<td>National Federation for Biological Recording</td>
<td>British Ecological Society</td>
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</table>

In addition some 20 volunteer recording organizations or schemes throughout the UK, including Scotland, are associate members.

\(^{14}\) Co-ordinating Commission for Biological Recording
8. The Board of the Trust is drawn from nominees appointed by these full members and presided over by an independent chairman, Sir John Burnett.

9. The Trust is a non-advocacy organization whose principal objects are:
   - to improve and ensure the accuracy and verifiability of collected biodiversity data and to promote its effective collation and interpretation;
   - to develop an electronic network connecting all known data holders through the Internet, and to promote public access to the network, with appropriate safeguards for sensitive and personal data.

10. To this end the Trust operates an Internet ‘Gateway’ (www.searchnbn.net) which presently gives rapid access to \( 18,622,716 \) species distribution records from \( 136 \) different datasets, many of which are available at a resolution of 100 metres square. Many of these records relate to Scotland; for example \( 2,711,532 \) of the records are for terrestrial species with many others for marine species. Interpretation of these data is aided by a mapping interface which also allows access to geographical boundary datasets including SSSI, SPA, SAC, National Nature Reserve and Watsonian Vice-county Boundaries. Annex 1 show some of the data available for grid square NR74 in the Inverness area. This example is typical of the kind of information available through the NBN Gateway. Note that the spatial level at which the data is displayed is determined by the providers but in the vast majority of cases permission is granted for \textit{bona fide} environmental enquirers to access the finest scale available, often 100m discrimination.

11. The NBN Gateway is also the UK node of GBIF, the Global Biodiversity Information Facility through which it is possible to access species data sets from around the world.
Annex 1 Data available on the NBN Gateway for Grid Square NH74 Inverness/Culloden

Species groups occurring in the 10km Grid Square NH74

This 10km square report shows a map of the square NH74 and lists the species groups recorded in it. To customise the report to your needs, use the dataset selection table at the bottom of the page and the "Refine..." filter options.

Clicking on a species group name will generate a list of species.

### Species groups for species recorded in NH74:

- **algae**
- **amphibian**
- **annelid**
- **bony fish (Actinopterygii)**
- **conifer**
- **crustacean**
- **flowering plant (Anthophyta)**
- **insect - ant**
- **insect - beetle**
- **insect - butterfly**
- **insect - dragonfly**
- **insect - true bug (Hemiptera)**
- **insect - true fly**
- **mammal**
- **mollusc**
- **moss (Bryophyta)**

### Download species data for all groups

- Species list
- Species records

### Map of NH74

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Summary of datasets which have species records for NH74

You have access to the following datasets:

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<tr>
<th>Use</th>
<th>Dataset (Click the title for more information)</th>
<th>Provider (Click the name for contact details)</th>
<th>Dataset Resolution</th>
<th>Your Resolution</th>
<th>Sensitive access</th>
<th>Download raw data</th>
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The following datasets have species records for NH74, but you do not have access to use them.

- Butterfly distributions for Great Britain and Ireland for the period 1690-1994 from Butterfly Conservation and BRC
- Water Beetle Surveys
- Scarce Macro Moth Review Data (draft being validated)
Introduction
Scottish badger is an umbrella organisation representing the views of badger groups/networks and other individuals working to protect the welfare of Scotland’s badgers, their setts and habitat.

Background to response
The Eurasian badger Meles meles is present throughout Scotland in varying densities and occurs in many types of habitat from montane to urban and even industrial sites.

Response
We have opted to make comment rather than detailed statements on the Bill.

The Bill in general appears to be a very useful piece of legislation although it is somewhat top heavy with legal jargon and difficult to follow at times given the number of cross references to other legislation. However what is clear is the intention to be much more open and transparent about environmental assessment and documents relating to the decision making process all of which are to be available to interested parties. From our point of view all the projects which normally cause problems, road building and developments, will require environmental assessments. This should clarify the position and clear up anomalies where one developer is required to carry out an assessment and the developer next door is not. It further attacks the long term process by ensuring that any plan or programme that sets the framework for future development consent on projects are looked at in detail.

Scottish badgers therefore supports this Bill as it will improve the flow of information, clarify the position on when environmental assessments are required and thus lead to better protection of the environment and in particular improve the case for badgers.

SUBMISSION FROM SCOTTISH ENVIRONMENT LINK
Scottish Environment LINK is the forum for Scotland’s voluntary environment organisations comprised of 36 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

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

Ensuring an effective and efficient SEA process
The success or failure of the SEA process in Scotland will be highly dependent on the system which underpins it. Experience from Environmental Impact Assessment (EIA) procedures has shown that EIAs are highly variable in quality and reliability. Inevitably, individual EIAs, produced primarily by private developers result in significant duplication of effort, limited data sharing and poor post-construction verification or monitoring.

The SEA bill applies to the public sector where such a failure to adopt best value approaches which are cost effective and consistent across all sectors will not be acceptable.

An independent body to oversee SEA
Scottish Environment LINK has commissioned a report form the University of Strathclyde to consider the issues surrounding the creation of an independent body to co-ordinate work on SEA. This report has been previously circulated to the committee and is also available from the LINK website (www.scotlink.org).
This research concludes that if Scottish Ministers are to achieve their stated goal of making Scotland a world leader in SEA, and if the system is to operate as effectively as possible there are four key functions which must be considered, namely:

- The creation and management of a publicly available internet-based SEA register which is capable of being searched, which provides copies of relevant reports, scoping and screening decisions, public notices and the results of any monitoring work.
- A central access point to co-ordinate activity, and provide guidance and advice in order to ensure consistency and avoid duplication.
- A body to act as an arbiter in case of dispute
- A body to audit the quality of environmental reporting and implementation of SEA

The SEA Gateway, as currently proposed, will receive screening and scoping opinions, environmental reports and the plans, programmes and strategies to which they relate. This does not appear to apply to public notices, ministerial directions or any monitoring work, nor is there an obvious requirement to make these documents publicly available via a searchable, web-based register. The obligation to place these documents on the various websites operated by responsible authorities is a welcome first step but will not encourage cross-sector co-operation, data-sharing or aid the identification of cumulative impacts.

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

The Gateway will have no arbitration role in the event of disputes nor will it undertake any monitoring or quality control. It would appear that the Gateway will be responsible for recording plans submitted but not necessarily in a format or location which can be accessed by the public. In terms of advice and guidance we understand that each of the Responsible Authorities are currently undertaking their own individual training and development work for SEA which is not necessarily being co-ordinated or run in conjunction with the SEA Gateway. We believe this represents a duplication of effort and not the most effective use of public money. An independent SEA body need not duplicate the expertise of consultation authorities but instead more effectively co-ordinate and support the work they will continue to undertake.

Recommendations:

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

PART 1 – ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

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

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

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

Recommendations

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

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

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

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

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

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

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

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

We welcome the fact that further exclusions can only be made if they have no or minimal effects in relation to the environment, however, we believe that Ministers should be required to apply the criteria listed in Schedule 2 before reaching this decision (s.6).
Pre-screening s.7
We are disappointed that the bill introduces pre-screening for ‘non-mandatory’ plans, programmes and strategies. There is no requirement to publicise pre-screening decisions, nor is there an opportunity to challenge these decisions.

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

We are not convinced that all public bodies will have the capacity to make sound pre-screening decisions. We welcome the fact that this legislation seeks to bring an understanding of the environmental consequences of policy making to those areas of the Scottish Administration, which may not previously have appreciated the environmental impact they may have. Consequently they may not be in a position to adequately assess whether their plan, programme or strategy is of no or minimal significance to the environment.

We do not support the introduction of pre-screening but if it is to remain part of the administrative process, it must be done in an open and accountable manner and be subject to challenge.

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

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

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

Relationship with Community law requirements s.13
The requirements in the regulations for transboundary effects to be considered in the SEA process is critical to the delivery of environmental justice. We would therefore wish to see an opportunity for additional consultation bodies and indeed the public, outwith those in Scotland, to be consulted on the environmental impacts of plans, programmes and strategies which are likely to have an environmental impact beyond Scotland.

PART 2 – ENVIRONMENTAL REPORTS AND CONSULTATION

Scoping s.15
We note that s.15(2)(b) requires consultation authorities to send copies of scoping responses to the other consultation authorities, no similar requirement appears to exist for screening, making coordination of responses more complicated.
Responsible authorities are able to determine an appropriate consultation period for the environmental report (specified under 16(1)(b)) which Scottish Ministers may then alter should it be deemed inadequate. However, there appears to be no mechanism to modify consultation periods for Environmental Reports from Scottish Ministers.

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

Consultation s.16
We welcome the fact that responsible authorities are required to place a copy of the relevant documents on their own websites but believe that such information should also be stored and available from a central point.

See recommendation relating to SEA Gateway functions.

Account to be taken of environmental report etc. s. 17
We welcome the fact that in the preparation of a qualifying plan or programme the responsible authority shall ‘take account of’ the environmental report and the opinions expressed during the consultation period. However, we are concerned that the duty to ‘take account of’ does little to advise responsible authorities of the level of consideration they are required to give to the environmental report or consultation responses.

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

PART 3 – POST ADOPTION PROCEDURES

Monitoring s.19
Effective monitoring will be a critical quality control mechanism for all plans, programmes and strategies. The draft bill requires it to be carried out and for responsible authorities to take remedial action.

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

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

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

Local Information Schedules 2 & 3: Criteria and Information for Environmental Reports
We appreciate that the listed schedules have been taken from European Directives but believe they could be improved by some minor modifications. In particular, by extending the scope of the criteria and information required for environmental reports to include locally protected sites and local plans, in order to ensure that environmental reports take account of locally developed environmental objectives.

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

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

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

**Recommendation**

19. That the SEA Gateway or an independent SEA body be tasked with evaluating and identifying any obvious data gaps, enabling data sharing and advising responsible authorities when additional data collection or monitoring is required.

20. That the Executive issue guidance on appropriate sources and use of data.

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**SUBMISSION FROM SCOTTISH WILDLIFE TRUST**

**Introduction**

Scottish Wildlife Trust (SWT) strongly believes that the proposed Environmental Assessment (Scotland) Bill has the potential to improve decision making in the public sector by ensuring that all plans, programmes and strategies take account of environmental impacts, early in their development, from the outset of the decision making process. Public authorities should therefore be encouraged to embrace Strategic Environmental Assessment (SEA) as a means of reducing the risk of potential disputes and subsequent delays. Such an approach will ensure that time and money is not wasted taking forward projects where there is limited scope to address environmental impacts or where the cost of doing so is high.

The strategic approach promoted by the legislation addresses the limitations of traditional environmental impact assessments in relation to the mismatch between the boundaries of single projects and ecological boundaries. SEA represents a more effective and proactive approach to minimising cumulative impact, which is often problematic when approving individual projects. The Bill therefore provides a valuable tool for realising environmental policy goals such as the protection of biodiversity and the sustainable use of resources.

Even where plans are approved that do have negative environmental impacts, SEA ensures that this is done in a transparent way, allowing decision makers to be held to account; a situation that will obviously improve the governance and administration of public services in Scotland.

SWT is a member of Scottish Environment LINK and endorses its submission, which covers the central areas of concern for the wider environment movement. We also offer the following evidence in relation to specific areas where SWT believes the Environmental and Rural Affairs Committee must give priority to strengthening the Bill. In summary, SWT recommends:

1. Subjecting all financial and budgetary plans to Environmental Assessment Bill’s screening requirements and removal of the proposed blanket exclusion covering such plans.

2. Clarification on whether planning guidance will be screened in relation for the requirement to carry out an environmental assessment.

3. Clarification of the environmental thresholds used to identify the need for full assessment at the screening stage.

4. Scrutiny of whether the post assessment monitoring requirements specified in the Bill, are adequate and enforceable.

5. Screening for environmental impacts must take account of national targets and legislation.
6. Ensuring that the impacts on locally designated sites of importance are specifically considered during the screening process.

7. Making sure that environmental reports make reference to locally developed environmental objectives and targets as well as international, EU and national objectives.

Part 1 Financial or budgetary plans
Section 4, paragraph 3 (b)

SWT is extremely concerned that the Scottish Executive has so far failed to set out an adequate justification for excluding financial and budgetary plans and programmes from the provisions set out in the SEA Bill. Financial plans represent the ultimate level of strategic decision making by allocating budgets, which direct organisations’ operations. The best example is the Scottish Executive’s own spending plans which are the critical factor in decision making at a strategic level, through allocation funding for environmentally critical functions, such as transport investment and rural development. For instance, the Bill as drafted would allow a future government to slash the budget allocations for SEPA, SNH or the strategic waste fund without assessing the environmental implications. In contrast the availability of an environmental assessment would be a valuable resource for the Scottish Parliament’s committees during the budgetary process. At a more localised level financial and budgetary plans also dictate procurement patterns which can deliver significant environmental benefits, yet these documents are also excluded from scrutiny through pre-screening.

There is a very little justification for automatically excluding financial plans given that the Bill already contains provisions both for pre-screening and screening. The proposed screening provisions for deciding when an SEA is unnecessary could simply be applied to financial or budgetary plans. In fact the Executive states in the Bill’s Explanatory Notes (p.6, 25) that the pre-screening provisions are necessary for this very purpose. Many corporate level plans focus on financial issues and some cases defining whether a plan is purely budgetary could be problematic. Pre-screening would address this problem and prevent duplicate assessments; for example, where a financial plan is closely linked to a previously assessed corporate strategy document or other lower tiers of strategy.

In addition to the Bill’s screening provisions, Ministers also have powers to exclude such plans using the provisions set out in Part 1, section 6, of the Bill. This section allows Ministers to specify types of plans where it is clear that there will be no effect or no significant effect on the environment and therefore screening is unnecessary. These powers could be employed in the very unlikely scenario that screening determined that all financial and budgetary plans had no environmental implications. The summary of Consultation Comments and the Scottish Executives Response (p.11, para. 5) states:

This approach will help to ensure that we avoid creating loopholes and that we do not make any premature or ill-informed decisions as to which plans should be subject to screening”.

This is clearly a more measured and effective approach than a simple blanket exclusion from the outset, and more in keeping with the Bills overall purpose and the spirit of the environmental assessment process.

Through excluding financial plans from screening the Scottish Executive is failing to realise the objectives for strategic environmental assessment as set out in the Partnership Agreement to:

“Legislate to introduce strategic environmental assessment to ensure that the full environmental impacts of all new strategies, programmes and plans developed by the public sector are properly considered.”

Ross Finnie restated this commitment in the news release on the 3rd of March announcing the Bill, when he stated:

“It gives people a say in the preparation of all major plans that affect our lives.................
Environmental Assessment underpins our commitment to put sustainable development at the heart of public policy.”
Clearly finance and budgets are at the heart of public policy and their sustainability must be considered through environmental assessment for this Bill to meet its overall objectives.

**SWT recommendations (Section 4, paragraph 3 (b))**

1. (a) Financial plans should not be given a blanket exemption and should instead be subject to the Bill’s pre-screening and screening provisions given their potential environmental impacts.

1. (b) The Committee should ask the Scottish Executive for the justification behind its intention to exclude financial and budgetary plans and why these plans will not be subject to screening or pre-screening.

**Part 1, Section 5, qualify plans and programmes**

Planning policy statements play an important strategic role in directing development such as renewable energy, retailing, industry, housing etc. all of which have significant environmental implications. Each policy statement sets out the Executive’s strategic intentions for the development of different land use sectors throughout Scotland. It can be argued that this function means these documents are therefore strategies or plans. However, the treatment of strategic guidance is not clear within the Bill, although Section 5 paragraph 3 (c) covers frameworks for future development consents. If the definitions in the legislation do not cover planning guidance, then this is a substantial weakness, which must be addressed at stage 2 of the parliamentary process.

**SWT recommendation (Part 1, section 5)**

2. The committee should clarify that planning guidance will be subject to screening in relation to the need to carry out an environmental assessment.

**Plans with no effects, minimal effects or significant effects**

Section 6, section 7 and section 8 make reference to consideration as to whether a plan has no effects, minimal effects or significant effects. This acts as the basis for determining whether a plan will be subject to assessment and is possibly the most critical section of the bill. SWT remains concerned that such concepts are poorly defined and are open to subjective judgement.

It would be advantageous for section 6 (3) to refer to the criteria for determining the likely significance of effects on the environment” specified in Schedule 2. The use of such criteria by the Executive when excluding types of plans from assessment would be consistent with the use of Schedule 2 by responsible authorities when undertaking the Bill’s screening requirements.

**SWT recommendation (Part 1, sections 6, 7 & 8)**

3. (a) It would be prudent for the committee to seek further clarification and details of any additional guidance the Scottish Executive intends to issue regarding the thresholds and definitions relating to minimal effects and significant effects.

3. (b) The committee should consider the merits requiring ministers to apply the Schedule 2 criteria when determining whether an order should be issued to extend or modify the list of programmes where screening is not required.

**Part 3, Section 19 monitoring**

Monitoring is the critical factor in the evolution and improvement of environmental assessments as the evidence gathered allows a determination of whether the predictive elements of the report have been accurate. Environmental assessment is also a continuous process, which is devalued by failing either to carry out appropriate monitoring or carrying out monitoring that is inadequate.

The evidence gained from the use of environmental impact assessments at the single project level suggests that a failure either to undertake monitoring or enforce monitoring requirements is common place. SWT is therefore very disappointed and concerned with the lack of prescription and the minimalist approach taken in the Bill. Whilst the Bill does place a monitoring duty on the responsible authorities, it offers no mechanism for ensuring that monitoring actually takes place, because no reporting mechanism is specified. Ongoing monitoring is especially important in relation to biodiversity and
ecology where the assessment of trends may need to be continuous to determine the nature of any change.

SWT favours a further duty on the responsible authorities to publish details of the monitoring that has taken place and issue at least one monitoring report to the consultation authorities during the lifetime of the plan. Assuming that the monitoring is actually taking place, documentation would place a minimal burden on the responsible authority. In fact taking such a step could be cost effective given that this information would have to be made available under the Environmental Information Regulations.

**SWT recommendation (Part 3, section 19 monitoring)**

4. (a) The Committee should consider the experiences of environmental assessment at the individual project level with regard to effectiveness of monitoring and determine whether the monitoring provisions in the Bill are adequate.

4. (b) The Committee should consider whether it is appropriate to require responsible authorities to produce monitoring statements and reports during the lifetime of the plan.

**Schedule 2: Screening Criteria for Environmental Assessments**

**List 1, lines 1 - 22**

SWT notes some significant omissions from the Schedule 2: Criteria for determining the likely significance of effects on the environment. Firstly, no reference is made to the implications for national environmental goals and targets in list 1. Relevant examples of national environmental objectives include: any national sustainable development strategy, targets for fuel poverty, traffic reduction, and possibly future greenhouse gas emissions targets. This means that screening and assessments need not consider recently adopted targets such as those contained in the Scottish Biodiversity Strategy 2004, designated under the Nature Conservation Act 2004. It seems logical that such high level targets should be referred to within the environmental assessment process; indeed this might be critical to their realisation.

In the second instance List 1 (e) only specifies that the determination of a plans impact should take account of European legislation on the environment. SWT strongly believes this list should also make reference to Scottish environmental legislation. A good example is the Nature Conservation (Scotland) Act 2004 which contains provisions relating to the conservation of biodiversity (Appendix 1).

This would be more consistent with item 5 of Schedule 3: Information for Environmental Reports, which makes reference to “the environmental projection objectives, established at international, Community or Member state level”.

**SWT recommendation (Schedule 2, list 1, lines 1 – 22)**

5. The committee should consider and seek views on adding national legislation and national targets to Schedule 2 so these factors are fully taken into account when a plan is screened.

**List 2 (g), line 35**

Line 35 (g) makes reference to the “effects of on areas or landscapes which have a recognised national, Community or international protection status”. This omits all important locally recognised sites, such as Local Nature Reserves (LNRs), Wildlife Sites (WS), Areas of Great Landscape Value (AGLVs) or Regionally Important Geological/Geomorphological Sites (RIGS). In the view of the Scottish Wildlife Trust this is currently a serious and very damaging omission that can not be justified.

It should be noted that many locally designated sites are of comparable value or equivalent to national sites, because SSSIs in fact only account for a representative sample of rare or important sites across the whole of Scotland (See Appendix 2). SSSI designations identify a high proportion of Scotland’s most important natural features; however this does not equate to comprehensive coverage of all areas of value, nor do Special Areas of Conservation (SACs) or Special Protection Areas (SPAs). By ignoring locally designated sites the Bill leaves many areas of recognised environmental value, especially those of local community importance without recognition in the screening process. The primary purpose of designating sites at a local level is to aid decision making and contribute to process such as environmental assessment, therefore this omission is puzzling. SWT believes that this was not intended by the Scottish Executive and must now be rectified as the Bill passes through the Scottish Parliament.
Non-statutory designations are well established and widely employed by local authorities and have a vital role to play in complimenting national designations. All such sites have to pass through the planning process where each individual designation is subject to scrutiny and public consultation. Following a commitment made by the Minister for the Environment at stage 1 and 2 of the of the Nature Conservation (Scotland) Bill (See Appendix 3), the wildlife sites system is the subject of a national review and will soon have enhanced standards and status. The review, led by SNH and COSLA, is expected to give local a greater role in conservation policy and the preservation of biodiversity. As drafted the Bill fails to anticipate this fact, running counter to the Ministers intention for such sites, based on his commitment to the Environment and Rural Development Committee last year.

To continue omit such a wide range of sites, despite their evident importance, from a flagship piece of legislation such as the Environmental Assessment Bill, is clearly be short sighted and infers that the Scottish Executive does not value or recognise the status or role of local designations. This point was made to the Executive at the consultation stage on the draft bill and was not suitably addressed. SWT sincerely hopes this omission was simply an oversight at the drafting stage and will now be addressed.

**SWT Recommendation (Schedule 2, list 2, (g) line 35)**

6. The committee is strongly encouraged to consider the case for adding the word “local” to schedule 2 (g) line 35 to ensure that plans and strategies are screened for their impact on environmentally important sites such as Local Nature Reserves (LNRs) and Wildlife Sites (WS) etc.

**Schedule 3: Information for Environmental Reports**

Item 5 in schedule notes that assessments should make reference to relevant environmental protection objectives, established at an international, Community, or Member State level, but fails to make reference to the local authority level, despite the fact that Local authorities have a range of their own objectives for their areas. Examples of this type of objectives are contained in, Local Area Waste Plans, Local Biodiversity Action Plans (LBAPs), Local Transport Plans, Community Plans, Local Open Space Strategies and Local Agenda 21 strategies. SWT believes that locally developed environmental objectives are especially important and relevant to communities and therefore deserve to be given specific recognition during the drafting of environmental reports.

**SWT Recommendation (Schedule 3, item 5, line 16)**

7. The committee is encouraged to consider the case for adding the word “local authority” to schedule 5 item line 16 to ensure that environmental reports take account of locally developed environmental objectives.

**Summary & Conclusions**

SWT is supportive of the Bill as whole and believes that it is generally well drafted and sound. We however believe that it could be further enhanced by considering the points made by Scottish Environment LINK and the additional areas listed in this submission. It is hoped that the committee will seek further evidence on the points raised to inform its position and particular gather additional evidence from Ministers and officials on the technical merits of the points we have put forward.

**Appendices**

**Appendix 1**

*Duty to further the conservation of biodiversity as stated in the Nature Conservation (Scotland Act 2004)*

1. It is the duty of every public body and office-holder, in exercising functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.

2. In complying with the duty imposed by subsection (1) a body or office-holder must have regard to—

(a) any strategy designated under section 2(1), and (b) the United Nations Environmental Programme Convention on Biological Diversity of 5 June 1992 as amended from time to time (or any United Nations Convention replacing that Convention).
**Appendix 2**

Definition of an SSSI as Stated in the Nature Conservation (Scotland) Act 2004

**Duty to give notification of sites of special scientific interest**

Scottish Natural Heritage ("SNH") must, where it considers that any land is of special interest by reason of any of its natural features, notify that fact to the persons mentioned in section 48(2) ("the interested parties").

2) References in this Act to a "natural feature" of land are references to any of its flora or fauna or geological or geomorphological features.

(3) In determining for the purposes of subsection (1) whether any land is of special interest SNH must have regard to

a) the extent to which giving notification under that subsection in relation to the land would contribute towards the development of a series of sites of special scientific interest in Scotland representative of the diversity and geographic range of:

   (i) Scotland's natural features,
   (ii) the natural features of Great Britain
   (iii) the natural features of the member States, and

**Appendix 3**

Ross Finnie Statement on the importance of locally designated sites

"I wholeheartedly agree with the committee’s view that SNH and Local Authorities should be encouraged to work together in order to review and improve the current system of local wildlife sites. Indeed I want SNH to take the lead in initiating that process of review."

"It is clear that the new biodiversity duty will give local sites a new importance as a mechanism to assist in the identification and labelling of areas of relatively high biodiversity significance (at a level below the SSSI and Natura systems) and that local sites can therefore play a valuable role in supporting the effective incorporation of biodiversity considerations within, for example, strategic planning activity, including the role of local sites, is emphasised in the biodiversity strategy.


**SUBMISSION FROM SHETLAND ISLANDS COUNCIL**

Members considered the proposed Environmental Assessment (Scotland) Bill at a special meeting of the Council held on 3 May.

I should stress at the outset – as our Members did in the course of debate - that we regard protection of the environment as a core part of our responsibilities and I believe we can point to a good track record in such matters. However, In response to the first question posed in the consultation, the Authority considered that it would be more appropriate to allow time to gain experience and learn lessons from preparing SEAs for those Plans and Programmes for which such assessments are required by the Regulations before broadening the scope of Plans, Programmes and Strategies to be covered.

I have also been asked to express the Council’s concern about the cost in staff time and resources of carrying out this and the various other regulations and requirements that are being imposed on Scottish Local Authorities. There was a strong feeling among Members that the extent of these cost and resource implications is simply not appreciated by the Executive. In this case, the implications are very substantial, not least because the necessary expertise is thin on the ground. I therefore believe that our suggested approach, which would allow experience and skills to be developed, is the sensible one.
SUBMISSION FROM THE STRATEGIC RAIL AUTHORITY

You recently consulted the SRA in respect of the Environmental Assessment (Scotland) Bill. We act on behalf of the SRA and would be pleased if you would accept this email as the SRA's formal response.

The SRA has no Scottish devolved function. We therefore understand that they will not fall within the category of "responsible authorities" defined under section 2(4)(e). In view of this, any plans/programmes produced by the SRA would, we understand, come within the provisions of The Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633).

However, the extension of the implementation of strategic environmental assessment to cover a broader range of plans and programmes is welcomed since it provides the SRA with additional opportunities to be involved in the Strategic Environmental Assessments (SEA) that come forward as a result. The SEAs will be required to review the potential implications of the plans/programmes produced in the context of transport issues. Where these are relevant to the SRA, they welcome the opportunity to be involved.

SUBMISSION FROM TRANSFORM SCOTLAND

1. General comments

1.1 TRANSform Scotland welcomes the Environmental Assessment (Scotland) Bill and the opportunity to submit evidence to inform this consultation. Extending the Strategic Environmental Assessment (SEA) legislation to fulfil the commitment in the Partnership Agreement could make a significant contribution towards better-informed public sector decision-making and consequently progress towards delivering sustainable development.

1.2 The transport sector is a significant contributor to climate change emissions: emissions from this sector have risen by 8% since 1990, the sector accounts for 14% of Scotland’s greenhouse gas emissions and 23% of CO2 emissions. Emissions from the transport sector are set to rise unless action is taken to control the increasing use and distance travelled by road vehicles and airplanes. SEA should enable better coordination within and between responsible authorities to assist in rational strategic decision-making in the face of climate change.

1.3 We disagree that “financial or budgetary plans and programmes” [Part 1, 4(3)(b)] “are not to be considered to be a practical subject for SEA”. Some strategic spending plans should be open to SEA to ensure spending reflects the Executive’s desire for “a Scotland that delivers sustainable development”.

1.4 Many large-scale transport projects have appeared in plans since the 1960s or earlier, for example the M74 Northern Extension. We are concerned that there will limited opportunity to properly appraise alternatives to strategic projects because they will be supported by strategic transport strategies, plans or programmes that will have gone through their “first formal preparatory act” [Part 1, 5 (1) (a)] prior to the SEA Bill coming into force. Alternatives to projects supported by high-level strategies, plans or programmes cannot then be re-appraised within SEAs at lower strategic levels. Appropriate consideration of alternatives is critical to the delivery of sustainable development and we are concerned SEA will have limited effect unless many major transport projects, that have been included in existing planning, are open to strategic appraisal.

1.5 It is also critical to understand where Schedule 1 applies: this may change depending on whether SEA is required as a result of “a legislative, regulatory or administrative provision” [5 (3)]. In the light of EU and UK Draft Guidance, we consider that Local Transport Strategies, Regional Transport Strategies, the forthcoming National Transport Strategy and the forthcoming Strategic Transport Projects Review are all required as a result of “administrative provision” and therefore should be open to SEA.
Additionally, we assume that strategies, plans and programmes which have gone through their "first formal preparatory act" should be open to SEA where they set "the framework for future development consent" [5 (3) (a) (ii)] and where there has been "[a]ny change to or extension to" transport projects which "(a) have already been authorised or executed; or (b) that are in the process of being executed, and which may have significant impacts on the environment" [Schedule 1 43 (1)].

It is currently the case that all transport projects for which the Scottish Executive provides support or approval must be appraised in accordance with the objective-led Scottish Transport Appraisal Guidance (STAG)iii. We understand that research is currently being conducted by the Scottish Executive to determine how STAG can be integrated with SEA. By way of example, the M74 corridor was assessed using STAG although alternatives to a motorway were not considered: therefore the sustainability of the decision to proceed with the M74 Northern Extension and other large-scale transport projects has not been assessed. Additionally, there was no formal consultation or assessment conducted on recent influential transport policy statements such as Scotland’s transport future: The transport white paper - June 2004iv or the earlier Scotland’s Transport: Delivering Improvements: Transport Delivery Reportv which included many large-scale projects.

Due to the long-term influence of transport planning it is suggested that for Scotland to become a sustainable nation many of these strategies must be re-assessed in the light of SEA. Hence, the forthcoming Strategic Transport Projects Review must be open to SEA with a full evaluation of alternatives considered (including e.g. opportunities for road traffic demand management through measures such as road pricing), as should other strategies, plans or programmes taken forward by the forthcoming National Transport Agency most notably the forthcoming National Transport Strategy.

We recommend that an assessment be made to establish whether existing guidance and appraisal methods that will steer planning decision-making (or be done in tandem with SEA) should be subject to SEA. Although STAG is objective-led, the economic appraisals are based in cost benefit analysis (in parallel with all transport assessment) and continue to place a high value on time savings. Other issues inform the assessments done using STAG; however, further research into the simplified assumptions contained in STAG and other assessment mechanisms is appropriate.

SEA provides an opportunity to better integrate indicators into strategic decision-making to ensure traffic reduction and other targets such as reducing climate change emissions can be met. The inter-relationship between existing transport indicators and how related targets are implemented by transport policy should be clarified. General guidance should be provided as to how indicators can be used within SEA.

There is also some disconnection between national policy statements and transport indicators (and transport indicators within the indicators for sustainable development literaturevii). The coherent use of indicators across all sectors undertaking SEA requires analysis of how they can be applied at different scales (i.e. whether the strategy, plan or programme to which SEA is being applied is on a local, regional or national level). This topic requires further analysis and subsequent guidance.

2. Responses to specific questions raised in the consultation paper

- What the effect will be of extending the implementation of strategic environmental assessment to cover a broader range of plans and programmes than is applicable to the UK?

Extending the legislation should have a positive impact on the potential for including the environment in transport decision-making in Scotland. However, for the Bill to contribute to the achievement of sustainable development, alternatives to many major transport projects already included in existing planning, must be assessed. We would also support
clarification of the meaning and implications of terminology used in the bill such as “the first formal preparatory act”, “minimal effect” etc.

2.2 We recommend that the strategies, plans and programmes that become subject to assessment as a result of the SEA Directive, and additional strategies, plans and programmes which should be open to SEA as a result of the Environmental Assessment Bill (as introduced), include those set out in Table 1, below.

Table 1. Transport-related strategies, plans and programmes to be covered by the European SEA Directive and those that should be covered by the Environmental Assessment Bill (as introduced). This table is not intended to be comprehensive.

<table>
<thead>
<tr>
<th>Statutory Plans and Programmes (covered by the SEA Directive)</th>
<th>Responsible authority</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road Traffic Reduction Reports</td>
<td>Local authorities</td>
<td>Statutory requirement, bundled into non-statutory Local Transport Strategies taken forward by local authorities (see below)</td>
</tr>
<tr>
<td>Air Quality Management Plans</td>
<td>Local authorities</td>
<td>Local authorities have to make an assessment as to local air quality and take action (e.g. set up Air Quality Management Areas) as required.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-statutory Strategies, Plans and Programmes (open to SEA as a result of the Bill)</th>
<th>Responsible authority</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Transport Strategies</td>
<td>Local authorities</td>
<td>All local authorities have produced these voluntary strategies. The English equivalent (Local Transport Plans) are statutory.</td>
</tr>
<tr>
<td>Regional Transport Strategies</td>
<td>Regional Transport Partnerships (RTPs)</td>
<td>These strategies result from RTPs that presently exist in a voluntary form. The new Transport Bill will make RTPs, and the strategies they produce, statutory.</td>
</tr>
<tr>
<td>National Transport Strategy</td>
<td>National Transport Agency of the Scottish Executive</td>
<td>The National Transport Strategy “will cover all modes in a balanced way” Section 5.6 – Scotland’s Transport Future.</td>
</tr>
<tr>
<td>Strategic Transport Projects Review</td>
<td>Scottish Executive and/or National Transport Agency</td>
<td>“By 2007 we will begin a strategic projects review for all transport modes which will give us the opportunity to consider, plan and prioritise Scotland's transport infrastructure investment requirements far beyond 2012” - Nicol Stephen, Transport Minister.</td>
</tr>
</tbody>
</table>

2.3 The Bill (as introduced) supports pre-screening of certain strategies, plans and programmes out of the requirement to conduct an SEA without a need for publicising or opportunity to challenge such decisions. The Bill opens up SEA to sectors unfamiliar with the concept of an environmental assessment. As such, pre-screening should either be
removed or some formal mechanism should be provided to record that a strategy, plan or programme has been pre-screened out of the requirement to be open to SEA. Although Table 1, above, is not comprehensive it demonstrates the volume of influential strategies, plans and programmes in the transport sector open to assessment as a result of the SEA Bill and therefore why, if retained, pre-screening should be monitored.

- Is the provision of a strategic environmental assessment (SEA) Gateway within the Executive a sufficient method of managing the SEA process?

2.4 Creating an independent review body to oversee aspects of the SEA process and/or extending the remit of the Strategic Environmental Assessment (SEA) Gateway is recommended to provide further guidance and management. A preliminary review compiled for Scottish Environment LINK\textsuperscript{v} outlined the progress being made in other countries to support environmental assessment (including SEA). In line with this report it is recommended that some provisions be made for independent review where the Scottish Ministers are the responsible authority and they are in disagreement with the consultation authorities about whether to apply SEA.

2.5 An independent review body could additionally provide independent audits of the quality of environmental reporting. The Centre for Environmental Assessment and Management (CEAM)\textsuperscript{vi} has recently produced review criteria to provide an independent opinion on the quality of completed, or draft, environmental reports produced as part of an SEA\textsuperscript{vii}. However these reviews have no measurable bearing on the activities of the responsible authority.

2.6 The SEA Gateway (or similar but independent organisation) should be extended to provide access to a chronological list of all screening, scoping and final environmental reports (with links to further documentation) that have passed through the Gateway to be held on the Gateway website. If pre-screening is retained a list of pre-screened strategies, plans and programmes should also be available from this location. Over time this register could develop into a searchable database (i.e. searchable by geographic area, type of strategy, plan or programme, sector or organisation taking forward particular strategy, plans or programmes, date, etc.).

\begin{itemize}
  \item A Partnership for a Better Scotland. p.5.
  \item http://www.scotland.gov.uk/library5/transport/stfwp-00.asp
  \item http://www.scotland.gov.uk/library3/transport/stdi-00.asp
  \item \textit{Scotland’s Transport: Delivering Improvements: Transport Indicators for Scotland} http://www.scotland.gov.uk/library5/transport/stdi-00.asp
  \item As a result of: \textit{Road Traffic Reduction Act 1997} http://www.hmso.gov.uk/acts/acts1997/1997054.htm
  \item Four voluntary RTPs (SESTRAN, WESTRANS, NESTRANS and HIGHTRANS) have been set up since 1998.
  \item http://www.scotland.gov.uk/library5/transport/stfwp-06.asp
  \item Written answer to parliamentary questions, Tuesday 1 February 2005 (S2W-13215)
\end{itemize}
http://www.scottish.parliament.uk/business/pqa/wa-05/wa0201.htm
That is, strategies, plans and programmes not mandatory under the SEA Directive that are
considered to have "no effect" or "minimal effect".
http://www.scotlink.org/pdf/LINK%20SEA%20report%20mar05.pdf
http://www.iema.net/htmlpage.php?pname=CEAM
http://www.iema.net/download.php/SEA-review-criteria.pdf
Present:

Ms Wendy Alexander  Mr Andrew Arbuckle
Mr Ted Brocklebank  Mr Frank McAveety
Des McNulty (Convener)  John Swinburne

Apologies were received from Jim Mather, Alasdair Morgan (Deputy Convener) and Dr Elaine Murray.

Environmental Assessment (Scotland) Bill: The Committee took evidence on the Financial Memorandum from –

Sandy Cameron, Deputy Director, Sustainable Development Directorate, Environment Group, Scottish Executive;

Jon Rathjen, Environmental Assessment (Scotland) Bill, Team Leader, Scottish Executive; and

Janet Brunton, Environmental Assessment (Scotland) Bill, Deputy Team Leader, Scottish Executive.
On resuming—

Environmental Assessment (Scotland) Bill: Financial Memorandum

The Convener: We resume to deal with the second item on our agenda, which is scrutiny of the financial memorandum to the Environmental Assessment (Scotland) Bill. The bill was introduced on 2 March by Ross Finnie, the Minister for Environment and Rural Development. The committee agreed that it would undertake level 2 scrutiny of the bill, which involves taking written evidence from organisations on which costs could fall and oral evidence from Executive officials.

From the Executive we welcome Sandy Cameron, deputy director of sustainable development directorate, environment group; Jon Rathjen, bill team leader; and Janet Brunton, deputy bill team leader. We have submissions from Scottish Natural Heritage and the Scottish Environment Protection Agency. We also received submissions from the Convention of Scottish Local Authorities and Historic Scotland, which arrived late and were circulated to members on Friday.

As is our normal practice, I ask the witnesses whether they want to make a brief opening statement, after which we will proceed to questions.

Sandy Cameron (Scottish Executive Environment and Rural Affairs Department): Thank you for inviting us to give evidence today. The Scottish Executive believes that the bill, if enacted by the Scottish Parliament, will have three major benefits: it will improve the protection of Scotland’s environment; improve the quality of public policy making; and create more open government in Scotland by giving the public rights to comment on the environmental effects of policies, plans and programmes.

Those benefits will have resource implications. All Scottish public bodies preparing policies, plans and programmes will need to comply with this good-practice legislation. We have worked hard to assess the costs as accurately as possible. We have identified the main areas of uncertainty, such as the number of plans that are likely to be produced each year and the likely average cost of preparing an environmental assessment. We have used a consultancy report to help us and supplemented that work with internal surveys in the Executive and discussions with key officials in the Executive and other public bodies. We continue to work on those matters with
stakeholders such as COSLA. That work has resulted in a set of soundly based and robust costings. However, we have been cautious, and our calculations are in the upper range. The total additional costs should not be as high as stated. For example, environmental assessment work is already carried out. Indeed, some councils now carry out full strategic environmental assessments. Undoubtedly, costs will fall as public bodies gain expertise in the preparation of reports and the use of environmental data.

We will deliver a number of important supporting initiatives. We will provide comprehensive guidance, encourage the use of standard templates for environmental assessment, capacity build and undertake a case-tracking project to reduce costs without reducing quality in order to achieve the benefits of the bill with best efficiency. Crucially, we note the downstream benefits in avoiding environmental damage. Investing in careful consideration of environmental issues now should save costs in sorting out environmental damage in the future.

**Mr Brocklebank:** Thank you. A cursory look through the submissions, particularly those from SEPA, SNH and Historic Scotland, reveals that the one thing that they all have in common is the fact that, far from thinking that you have been over-generous with your allocation, they suggest that the funds have not been allocated as generously as they might have hoped. That theme runs through the various submissions that we have received.

My questions relate to the SEPA submission. I understand that SEPA commissioned its research from the Babtie Group, as did the Executive. SEPA argues with your figures. In its submission, it claims that although the financial memorandum says that the total cost to SEPA and SNH will be £1.35 million, of which £675,000 is attributable to SEPA, in its view £900,000 is a more realistic figure. Why do you think that there is such a disparity between the Executive’s figures and SEPA’s figures, given that they are based on the same research?

**Sandy Cameron:** The Babtie research was carried out some time ago and a lot of work has been done since then. The figure of £1.65 million, which is for the costs of the consultation bodies’ work, in essence combines the figures with which the three consultation bodies provided us—£300,000 for Historic Scotland and £1.35 million for SEPA and SNH. I am not aware of a contradiction there.

**Mr Brocklebank:** You disagree with SEPA’s figures; SEPA stated that its costs are more likely to be just under £1 million at £900,000.

**Jon Rathjen (Scottish Executive Environment and Rural Affairs Department):** The figure that we have quoted in the financial memorandum is £1.35 million for SNH and SEPA, with which I think they agree. If I read SEPA’s evidence correctly, the disagreement relates to the fact that it says that the funding allocation that it has received in the three-year settlement ahead is lower than it had expected. That is perhaps where it is saying that the funding shortfall lies. The Executive allocates a gross budget, so it allocated £35.5 million this year. It is for SEPA to decide what it gives to each priority in its work. It is a little difficult for us to talk about exactly how much money has been given to the priority of SEA in SEPA’s work, because the Executive gives SEPA a bulk figure for all its priorities.

**Mr Brocklebank:** SEPA also argues that it will have to provide much wider support for responsible authorities beyond the statutory SEA stages. What is included in the quoted figures? Do they anticipate the cost of providing the wider support that SEPA is talking about?

**Jon Rathjen:** Yes. We expect SEPA to do a range of things. We expect it to manage the statutory elements of responding to the screening stage and the scoping stage. Beyond that, it has work to do in the provision of data and in the explanation of the data that it holds. However, it does that work already; it is a current obligation. There might be a more intense demand for the data, but it is used to handling that work.

The other work that SEPA is talking about is in areas such as responding to consultations, which is not a statutory SEA obligation. SEPA has to go through a scoping stage, but when it comes to the public consultation it is just another consultee like everybody else. It has a choice. It already has a good go at the material at the scoping stage and a lot of input, which we expect will reduce the amount of work that it has to do at the later consultation stage—work that it already does. It might do other informal work, such as dealing with people who call to ask its advice about the process. That will be additional work, but it is part of the relationship that it has with the stakeholders. We are not building new relationships; we are just talking about another aspect of existing relationships.

11:15

**Mr Brocklebank:** So you are saying that the miscellaneous costs for consultation authorities have been taken into account in the figures that you have provided.

**Jon Rathjen:** Indeed.

**The Convener:** I want to focus on the position of responsible authorities, particularly local...
authorities. Fairly strong language is used in the COSLA submission that we received. It states:

“We also believe that the Scottish Executive itself is hugely underestimating the scale of SEA ... COSLA does not believe that the assumptions made accurately reflect the cost to responsible authorities, specifically local authorities.”

How do you respond to that?

Sandy Cameron: In the financial memorandum we have tried to consider the gross costs. We have shown the maximum possible—in a number of cases we have shown it with a plus or minus 25 per cent margin of error. We have assumed that environmental assessments will be carried out by consultants. The estimated cost of those consultants is higher than that in the equivalent legislation in England. In practice, we would expect most public bodies, certainly those of a significant size, to develop expertise to do the work in house, which would be cheaper than consultancy rates. Our view is that COSLA’s concerns are not justified. We think that what we show in the financial memorandum—with a maximum figure of something around £14 million for the whole public sector—is right at the top end. We do not share COSLA’s concerns that we are underestimating costs.

The Convener: COSLA chooses to unpack issues such as the costs associated with creating the skills set required to do the work, perhaps across more than one council department, which is an interesting issue that needs to be addressed. It also questions your estimate of the number of SEAs that might have to be undertaken in a single year and says that, in a sense, the bill creates an interesting issue that needs to be addressed. The estimated cost of those consultants is higher than that in the equivalent legislation in England. In practice, we would expect most public bodies, certainly those of a significant size, to develop expertise to do the work in house, which would be cheaper than consultancy rates. Our view is that COSLA’s concerns are not justified. We think that what we show in the financial memorandum—with a maximum figure of something around £14 million for the whole public sector—is right at the top end. We do not share COSLA’s concerns that we are underestimating costs.

Sandy Cameron: On expertise, COSLA is right to some extent. Clearly there is a need to build up expertise in this area. We are working closely with COSLA on an initiative in which we will be taking some of the cases that are already being processed under the current regulations and considering some of the issues that arise in terms of workload and skills.

We have considered carefully the issue of the public’s ability to ask for cases to be considered. Clearly the cases that are covered by the European regulations, which are already in force, are strictly controlled. There is little that we can do to affect that. We have transposed the European regulations.

The bill will cover a wider range of cases—the partnership agreement made a commitment to introduce SEA for all policies, plans and programmes. We are proposing that with those policies, plans and programmes that are likely to have no—or minimal—environmental effect, the responsible authority, which would be the local authority, would be able to say, “We don’t need to proceed to the next stage.” Plans for schools have been given a specific exemption. That means that we will consider taking on to the next stage only those cases in which there is a reasonable argument that there will be significant environmental effects. That will involve significant work for local authorities.

It is clear to us—although we cannot quantify the extent of the trend—that progressive local authorities are already doing a significant amount of work in this area, even though it may not be formalised in quite the way that is required under SEA. Indeed, we have already come across cases in which local authorities have done full SEAs when they were not statutorily required to do them.

The Convener: I will pursue that shortly, after I have asked a related question. As the minister has just told us, we anticipate that a planning bill will be introduced later on in the year. There is every chance that it will have a significant effect on the planning process, if the consultation and the outcomes from it are anything to go by.

In the Environmental Assessment (Scotland) Bill, you propose a change that will be implemented in advance of the introduction of the planning legislation. There is no reason to suppose that that change will be co-ordinated effectively with the outcome of the planning reform process. Is now the right time to be introducing such a significant change for local government, when the whole system to which it relates is likely to be thrown up in the air and to have a different shape when it lands?

Sandy Cameron: Of course, that change has already taken place. Many of the local authority plans that would be affected by a planning bill are covered by last year’s transposition of the European regulations.

On your wider point, if SEA is to work as efficiently as possible, it is vital that it routinely forms a part of any public planning process. That applies not just to local authority plans, but to steps that the Executive takes on matters such as economic development. The assumption is that environmental consequences should be considered when alternatives are weighed up. In our view, the nature of planning is not sufficiently different that a special problem arises. It is simply that consideration of environmental consequences will be a fundamental part of the policy-making process.
The Convener: But from a statutory point of view, planning is separate. Anyone who has local authority experience knows that the obligations on elected members and officials in the context of planning are guided by a legal framework that is different from that which applies in most other local authority contexts. Again, I put it to you that the planning process is likely to be disturbed significantly when the legal elements of the application of SEA come through. Is work on the bill and on planning reform being properly co-ordinated with regard to the overall implications for local government in particular? COSLA has made it clear that it would have preferred a different mechanism, whereby SEA was trialled and implemented over a longer timescale.

Jon Rathjen: Throughout the process, we have been working extremely closely with planning colleagues. There is no doubt that the full consequences of SEA will be taken into account in the planning bill. There is no gap in that regard.

The financial memorandum is useful in that it shows how we have looked ahead at the cycle of plans, which last for three, four or five years; indeed, many plans have an even longer cycle. You suggest that we are imposing a duty on local authorities in the short term, but the reality is that new plans trickle in in quite small numbers. That has proved to be our experience under the regulations and I am sure that it will continue to be the case under the bill. Let us say that the bill is enacted in early 2006—that is a reasonable estimate. It would affect new plans—some of which have a five-year cycle—that are produced after that date. We are talking about a slow build-up over quite a number of years. If we were to delay the bill for another year or two, that would not have a significant effect. Since the regulations came into force in July, we have had about 12 or 14 plans to deal with. Our desks were not suddenly covered with huge piles of cases on day one. There will be a gradual build-up over time.

I do not think that delaying the bill by a year would make much difference. The SEA directive was introduced back in 2001, so the concept of environmental assessment has not bounced on to the scene in a matter of hours. Slow progress has been made over a number of years and SEA will continue to be incorporated into the system gradually. The process is about more than planning; it is about changing the way in which we develop plans, programmes and strategies across a range of subject matters. Environmental assessment does not have implications just for planning; its implications are broader than that.

The Convener: I do not take that as a comfort; indeed, that makes matters more complicated. My point is that planning is the area that is most likely to be directly affected by the bill. It is almost inevitable that planning will face significant legislative change in the next 12 months. The fact that the bill’s impact will extend beyond planning means that some co-ordination between planning departments and other local authority departments will be necessary. As that requirement has not explicitly been taken account of, COSLA feels that its members will be presented with significant problems. The breadth of the impact of SEA is a compounding rather than an alleviating factor.

Mr Arbuckle: It is easy to identify which members are former councillors from their concerns about the planning system. I concur with the comments that have been made. Planning officers are already overburdened with work, but that is not an issue for the Finance Committee.

It has been pointed out on several occasions that the Executive’s financial estimates are at the top end. Does the Executive have any plans to review the costs of implementing the bill after a year, or at some other point down the line?

Sandy Cameron: We will certainly review the costs, but it is important to emphasise Jon Rathjen’s point, which was that we are talking about the costs that will be incurred once the full system is up and running and we are processing the plans that will come in at the top of the cycle. We mentioned the costs on the consultation bodies such as SEPA and SNH. Those costs will start to kick in only once the regulations are in place and the bill’s provisions have been commenced and in operation for more than two years, which is when the larger number of cases that it covers will start to come in. We will monitor such matters, on which we are regularly in close contact with bodies such as SEPA.

Mr Arbuckle: I do not want to labour the point, but there is a divergence of views on how much it will cost to implement the bill. Your views on that are different from those of SEPA, for example. How would the Executive respond if SEPA thought that more money was necessary to ensure that the bill worked?

Sandy Cameron: I am sure that SEPA would make well known its views to the SEPA-sponsoring division and the minister and that its representations would be taken into account when its annual allocations were made.

The Convener: What is your response to COSLA, which feels that extending SEA beyond the regulations will strain the responsible authorities too much and that going about the process in a more measured way would deliver better outcomes in the longer term?

Sandy Cameron: Arguably, we have gone about our work on SEA in a measured way. Last year, we introduced regulations that cover half the cases that will be covered by the bill. The fact that...
the number of cases will build up relatively slowly means that we will be on a learning curve. We are already considering the lessons that can be learned from the first cases. We do not see that as an insuperable management problem. The legislation is a priority for Scottish Executive ministers and, when they appear before the relevant committees of the Parliament, they will, no doubt, stress that.

**The Convener:** We are interested in the financial aspects rather than the policy aspects.

11:30

**John Swinburne (Central Scotland) (SSCUP):** COSLA alleges that, at a meeting with ministers, it "voluntarily offered to trial SEA across council services in two or three local authorities", which it believes "would help quantify the resource implications of the Bill."

However, it adds:

"Regrettably, we still await the start of this pilot."

**Why not take advantage of that offer?**

**Jon Rathjen:** The simple answer is that we have taken advantage of that. We have worked with COSLA and have met it to discuss suitable cases to track forward. We have put a project plan together, which is currently with COSLA to consider, and we have taken active steps. It is important that we consider some of the early cases and the implications for resources and cost, and we are doing that. Perhaps there is a timing issue to do with evidence and the process, but that work is happening.

**The Convener:** The focus of the bill is obviously on the assessments that are to be made. One of the points that COSLA might have made but which it did not make strongly in its submission is to do with the monitoring of the specific recommendations that are made. Do you see that purely as something that local authorities should subsume under their existing responsibilities, or do you recognise that additional burdens will fall on responsible authorities, especially local government, as a result of the outcomes of SEAs, which have not been quantified in the financial memorandum?

**Jon Rathjen:** That is a very difficult area to quantify for the simple reason that the provisions of the bill ask local authorities to describe how they will monitor. Until we have hard evidence of how they will do that work, it will be extremely difficult to put costs to it. A lot of monitoring activity is already under way, much of which is being undertaken by responsible authorities and by a number of environmental agencies; however, it is not yet clear whether there will be additional needs. It is quite likely that there will be some additional data and monitoring needs, but we do not know what those will be.

In part, it is in the hands of the responsible authorities to set out how they intend to deal with monitoring, so it is quite difficult for us to comment. We are not imposing a monitoring regime; we have left it as a fairly light provision in the bill. We have said that authorities must look out for and take account of unforeseen effects. I know that it is quite an odd thing to try to monitor for an unforeseen effect, but the whole process of SEA is designed to reduce damage to the environment—to reduce the risk of things happening. The fact that there should be less environmental damage and the fact that it will be more predictable—because the authorities will have done more analysis beforehand—mean that the monitoring job should be easier at the end of the process. Monitoring should be a more predictable job.

**The Convener:** I can see how one might think that when approaching SEA as a theoretical model. However, in practice, it is likely that the developments that are subjected to those monitoring processes will be contested and that a local authority will be tied into either doing the monitoring itself or supervising the monitoring process. It is almost inevitable that there will be additional burdens for local government arising from SEAs. The Executive cannot say that SEAs are a good idea and that it will—however adequately or inadequately—deal with the start-up costs that are associated with them, but that, because we do not know what the outcome will be, significant financial implications are unlikely. I suspect that the monitoring will have significant financial implications.

**Jon Rathjen:** In the financial memorandum, we state that we understand that monitoring is an obligation and that we know that it will have implications, although we do not know what they are at this stage. Some of the work that we are doing on case tracking may help us to find some answers to that. Indeed, as is normal practice, we will review the bill after a number of years to see what its impact has been and how it has operated in the field. Such a review may shed a bit more light on the area.

**The Convener:** We have talked about SEAs in the context of local plans across local authority areas or parts of local authority areas. The bill will allow, and perhaps encourage, people to request SEAs for specific, significant projects that developers or other public agencies put forward.

I was involved with a huge reservoir and water treatment plant project in East Dunbartonshire. The fact that the project was to be in that local authority area imposed a significant burden on the local authority, not just in the planning process but,
I understand that. However, Jon Rathjen may have developers will propose projects that will have a sense that, under such circumstances, there will be a burden on the developer to pay at least part of the cost of carrying out the SEA that is necessitated by a project? In the example that I have cited, the developer was Scottish Water, but I presume that housing developers and other developers will propose projects that will have a significant environmental impact, which will require SEAs.

Sandy Cameron: The difference is that the bill is not about individual building projects, which would be covered by environmental impact assessments; it is about public sector-generated policies, plans and programmes that in a sense set a framework for individual development projects that developers come along with. It would cover a Scottish Executive economic development plan, and it would probably cover the industrial regeneration plan that is proposed for the Borders. However, it would not cover a company’s individual application, under the planning system, to build a factory.

The Convener: I understand that. However, when Scottish Water, which is a public agency, produces a strategic plan for its water infrastructure investment, that plan impacts on a variety of local authorities. In the example that I cited, it impacted in a specific way on East Dunbartonshire Council, because of the topography of the area. Scottish Borders Council might provide another case in point. There might be a development plan for the Borders, which would be a public agency plan, but I suspect that private sector developers would have an interest in aspects of that plan. Should all the burden fall on the local authority to deal with what are, in effect, planning applications or strategic development plans that are put forward either by other public agencies or by a combination of public and private sector agencies, which will feed into the broader plan as well as being specific planning applications?

Sandy Cameron: Jon Rathjen may have something to say on that. I understand the point that you are making. The difficulty is that, in the vast majority of the plans that are produced, it is not possible to identify a specific individual private sector developer who would create a development under a particular project, whether it is an industrial development policy, a health service plan or whatever. The issue is problematic.

Jon Rathjen: The bill is quite simple in that it says that there must be one identified responsible authority for each plan. However, it is entirely possible that people will work in collaboration. Through community planning partnerships and linkages with private organisations, it is entirely possible that people will come together to develop SEAs. From a legislative point of view, and because of the timing issue to which Sandy Cameron has alluded, we need to have one responsible authority for each plan to ensure that the assessment happens; however, it is quite likely that people will work together on such things. We have seen examples of that happening elsewhere in the UK, but more informally.

The Convener: The poor old local authority, with responsibility for its own territory, has to pick up the financial burden. Although the authority may be involved in them, the plans may belong to someone else and may involve others as well. Despite that, it is the authority alone that picks up the environmental financial burden.

Sandy Cameron: That is absolutely true. However, although there are costs, we are working with all public bodies to try to make the system as cost effective as possible.

If new plans cause damage, public bodies—particularly local authorities—have to pick up the cost of environmental remediation. However, the priority is to make local environments better and to avoid environmental damage.

The Convener: If the legislation goes through, the measures will be implemented around 2007-08.

Jon Rathjen: Perhaps earlier than that, in 2006.

The Convener: But full implementation will be around 2007-08, which, according to the minister, will be the most difficult year for local authorities.

My question is for Sandy Cameron. How will we factor this new burden into the general local authority settlement? It may have been unfair to ask you that question, but how does the mechanism work in general? We know the broad figures, but how can the resource requirements that you have identified in relation to the bill be incorporated into the local authority settlement in a way that is transparent and is not seen as a simple juggling of figures by the Executive?

Sandy Cameron: Scottish Executive support to local authorities is assessed regularly in the spending rounds. As you can imagine, local authorities have to carry out a huge number of new obligations—although, to be fair, there are sometimes reductions in obligations too. Those changes are taken into account in the way in which the gross figure is assessed. Our colleagues in the Scottish Executive Finance and
Central Services Department are aware of the figures in the financial memorandum; the figures will be considered appropriately along with all other issues.

Ministers are saying that, in public sector decision making, we have not previously taken sufficient account of the environment. That applies across the board—not only in central Government but in all public bodies. We are paying the cost of that and ministers are saying that we need to change. A new standard is being established. That standard is already being implemented voluntarily by some local authorities, but it must become the standard for all local authorities.

Mr Brocklebank: I agree with Des McNulty's point. I want to be sure that the witnesses are fully aware of the depth of COSLA's reservations about the proposals. Have you had a chance to look at COSLA's submission?

Sandy Cameron: Yes, we have.

Mr Brocklebank: You will have noticed that COSLA feels that
"the margins of uncertainty offer little or no comfort especially since there can have been no anticipation on the part of local authorities, in the recent spending round, as to the need to allocate significant resources to the SEA process."

COSLA also believes
"that the Scottish Executive itself is hugely underestimating the scale of SEA."

That is fairly serious criticism.

Sandy Cameron: It is a strong statement. In response, we would say that, in preparing the financial memorandum, we have sought to follow guidance from this committee. We have been extremely careful and cautious in our estimates, and the figures given are at the upper end of those estimates. In a number of areas, we think that costs will be lower because of existing expertise and other considerations.

We believe that Scottish local authorities and other public bodies will become pretty good at producing policies, plans and programmes that take account of the environment as part of the process. That will result in greatly increased efficiency; lower figures than those in the financial memorandum; much better decision making; and a better environment for Scotland.

We understand COSLA's concerns but think that they are misplaced in this case.

The Convener: I thank the witnesses for their advice. The issues raised by COSLA have been the key elements of our questions. Our report will take account of those issues and of the responses that we have heard.
STRATEGIC ENVIRONMENTAL ASSESSMENT (SCOTLAND) BILL: RESPONSE TO ERDC STAGE 1 REPORT

1. I am grateful to the Committee for their Stage 1 Report. I totally agree with the overall tenor of the Report in that this Bill represents a real challenge to existing practice and that authorities will need to be supported in managing the positive culture change that is required. I trust that the following response will provide the clarification and re-assurance that the Committee seeks regarding the provisions, procedures and support mechanisms that are being put in place to assist the necessary culture change.

Meaning of the term “significance” (ERDC Report, paragraph 68)

2. To help clarify the term “significance”, I have attached the relevant part of draft Scottish Guidance at Annex 1. This draft work on significance will be developed further and integrated into comprehensive Scottish guidance to ensure that it is as practical and useful as possible.

Responsible Authorities (ERDC Report, paragraph 22 & 23)

3. The ERDC Report sets out very clearly the facts regarding who is and who is not a responsible authority. It is indeed the case that private firms exercising functions of a public character are included, but only in respect of those aspects of their plans and programmes which fall under section 5(3) and relate to matters of a public character. Their plans and programmes and those parts of their plans and programmes which do not relate to matters of a public character do not come within the ambit of the Bill. This is important to ensure that the private sector in Scotland will remain on a level playing field with the rest of the UK. Therefore, in seeking to extend the scope of SEA, I have sought to do so only in respect of Scottish public bodies.

4. I do not consider that any gap exists that would result in any failure to perform an environmental assessment of public sector strategies, plans and programmes. In areas where private firms are contracted to carry out work by a Scottish public body, the public body would remain the plan owner and also remain responsible for the SEA. Should a dispute arise over the responsibility for SEA of a plan, a power is included in the Bill, as currently drafted, to allow Scottish Ministers to determine responsibility.

Examples of how SEA will work in practice (ERDC Stage 1 Report para 34)

5. I note that the Committee has asked for concrete examples of how SEA will work in practice. To date, fewer than 20 SEAs have been initiated in Scotland and only one of these has reached the environmental reporting stage. However, it is possible to provide Scottish examples that illustrate some aspects of the SEA
process and a link to one such example is below. In this example, it can be seen how the authority has set out the scope of its plan, engaged with the consultation authorities and developed and consulted on an environmental report. The process is illustrative rather than held out as good practice but the authority has demonstrated real commitment to the concept of SEA and has delivered a comprehensive and clear statement of environmental effects which is reflected by real enhancements to the proposed local plan.

Example of Environmental Report: Argyll and Bute Council - Strategic Environmental Assessment

For other examples of how SEA will work in practice, we can look to other countries. However, it should be remembered that exact comparisons cannot be drawn because SEA regimes vary. One helpful example is the Canadian regime which has been in place for a number of years. A description of the benefits of SEA and how it works in practice in Canada is summarised overleaf (ref: Canadian Environmental Assessment Agency guidance. http://www.ceaacee.gc.ca/index_e.htm.)
What are the benefits of environmental assessment?

By considering environmental effects and mitigation early in the project planning cycle, environmental assessment can have many benefits, such as:

- an opportunity for public participation
- increased protection of human health
- the sustainable use of natural resources
- reduced project costs and delays
- minimized risks of environmental disasters
- increased government accountability

What are the main steps?

Many important steps help to identify possible environmental effects and mitigative measures.

Figure 1 - Environmental assessment process
6. The relationship between SEA and EIA is hierarchical. The diagram below illustrates the relationship between different tiers of assessment in Scotland with higher levels of assessment informing subsequent ones.

7. In the vast majority of cases the relationship between SEA and EIA will be straightforward and hierarchical with data and conclusions from one level informing subsequent levels, thereby avoiding unnecessary duplication of effort. Given this, I anticipate that not only will SEA work in harmony with EIA, it will also inform and improve the EIA process. In a very small number of cases, the relationship between SEA and EIA may be more complex. For example, it is possible that a major project may require modification of a Local Plan. If such a modification is likely to have significant environmental effects, an SEA of the modification will be required because the Local Plan is strategic and subject to SEA. Such an SEA would be performed before the EIA. This, in my view, can only be beneficial in that it will ensure that environmental assessment is carried out at the appropriate level and in the appropriate context. Moreover, any such SEA can only improve the subsequent EIA.
Training, guidance and support for SEA practitioners (ERDC Report, paragraphs 44, 45, 94, 95-101, 114)

8. I note that the Committee, at various points, raises issues relating to training, guidance and support for SEA practitioners and responsible authorities. I agree that a significant culture change is required and note that the Committee welcomes the Executive’s extensive and robust framework of SEA support initiatives which will help to bring about that culture change in as effective a way as possible. A summary of the Executive’s SEA initiatives is set out below outlining, in more detail, exactly how these projects will equip individuals and organisations to implement SEA. These are pioneering initiatives and Templates, the Pathfinder Project and the Gateway are all unique in the UK. Scotland is in the vanguard in terms of providing innovative support mechanisms to SEA practitioners.

Training and awareness activities

9. There is already a wide range of courses available from academic institutions and from other organisations. These courses provide training at all levels and they can be customised to suit clients' requirements as the ERDC Report requests. Many of these courses provide packages including practical “how to advice”. Given the proliferation of expert and recognised courses, the Executive considers it more appropriate to avoid duplication of effort and to support these initiatives rather than attempting what would be a costly exercise of developing and delivering courses directly.

10. I should emphasise that the Executive has a great deal of direct involvement in SEA training events. It has already delivered directly or supported a large number of seminars, awareness presentations, conferences and academic SEA courses. The Executive intends to continue supporting these activities and will further develop them by extending their range and incorporating packages of basic training materials as the ERDC suggests. The core of this package is the guidance and SEA templates outlined below.

Guidance

11. UK wide guidance is already available with an updated version due to be published shortly. It can be found via the link below.


12. Comprehensive Scottish Bill Guidance will be produced in time for Royal Assent of the Bill.

SEA templates

13. These templates will perform several valuable functions such as providing a how to step by step guide to the process and setting out pro-formas for key SEA stages. They will assist with consistency, accuracy and save time and resources for responsible authorities. Templates will become a key part of the overall SEA support package, the importance of which the ERDC has emphasised. The templates are currently under development with the next key stages including technical revision;
legal scrutiny; design; field tests and publication. It is intended that the templates will be published in time for Royal Assent.

**Pathfinder Project (ERDC report, paragraph 115)**

14. In addition, I have initiated the SEA Pathfinder Project which will assess current SEA practice in order to identify where practical improvements can be made. The project has already begun and the intention is to track live SEA cases in Scotland as the progress. In designing the project the ERDC comments have been taken into account - for instance it will look specifically at how health issues are best addressed in the context of SEA, how the templates & guidance function and where greater clarification and support is needed. Stakeholders including Cosla, Local Authorities and the Consultation Authorities are directly involved in the project at every level.

15. The Pathfinder Project could not have begun sooner because there were insufficient live cases available until now. The project is due to report after sufficient data has been collected from available live cases, good practice lessons will emerge throughout with the final report expected to be in about 2 1/2 years time. Given the project timetable it will not be possible for Pathfinder to inform on cost implications during the summer of 2005 as may have been anticipated by ERDC.

**Gateway (ERDC Report, paragraphs 95-101)**

16. The SEA Gateway role includes advice provision, so this unique team will also play a key role in clarifying processes and supporting the implementation of SEA in practice. In parallel with the development of the Bill, my officials are working to take forward all of these initiatives. I can therefore assure the Committee that, in line with their recommendation, we will continue to consider carefully how to address the practical concerns raised. In particular, I can guarantee that in developing and formalising the Gateway core responsibilities, stakeholders will be directly involved and a framework of those responsibilities will be made public. However, as I stated in my evidence to ERDC, it is not my intention to straight-jacket the Gateway’s natural evolution by providing for it on the face of the Bill.

**Linkages between SEA and SA**

17. The Committee was interested to see further analysis of the linkages between Sustainability Appraisal (SA), SEA and Sustainable Development (SD). SEA is focused primarily on environmental effects. While the Bill defines the environment broadly, including population, human health, cultural heritage and material assets as well as biodiversity, air, water and soil, SA goes further by examining all the sustainability-related effects of plans, whether they are social, environmental or economic. It has always been the case that in furthering any policy or drafting any plan the wider SD implications need to be considered, SEA is integrated into that process to allow for a fuller examination of environmental consequences than previously was the case.
18. The formalisation of the environmental appraisal ensures that it does not get overlooked or outweighed by the economic or social aspects, but neither should it lead to an exaggeration of its importance in decision making alongside the social and economic factors. SEA can take a policy that is essentially about making a social change and add value to it by ensuring the avoidance of negative environmental impact or maximising environmental improvement without altering the focus of the policy. The critical point throughout is that SEA allows for the environmental consequences to be set out in clear and unequivocal terms. Moving directly to SA can obscure the environmental consequences or lead to the netting off of environmental/economic/social goods and bads. This is a reasonable approach for decision making but one that does not allow proper scrutiny of gross effects or in other words real environmental impacts as they will be experienced on the ground.

19. The linkage between Sustainable Development and SEA is therefore a simple one in that when pursuing policies that for example have a social objective SEA provides a sound analysis of environmental impacts and measures for avoidance and mitigation that might otherwise have been overlooked in the pursuit of the plans core objectives. A further point that emerged during the Committee evidence sessions was of responsible authorities need to justify or explain their decisions. For example if they select an environmentally more damaging option they will need to make clear measures to avoid or minimise the environmental consequences but also they will be motivated to set out the social or economic benefits that justify the decision. Making clear the environmental consequences can therefore act as a catalyst for greater social and economic analysis further supporting policy development with a SD framework.

Financial and Budgetary strategies, plans and programmes (ERDC Report, paragraphs 46-51)

20. Financial and budgetary plans and programmes are exempt under the current Regulations and there are no documented examples of actual cases where a judgement has had to be made as to whether a plan of this description should be subject to SEA or not. The examples given here are however illustrative of the argument that this is not in any way a loophole. The argument for exempting financial and budget plans is one of both principle and practicality. It is the plans and programmes with actions and policies in them that are the useful object of assessment, those papers that simply give budget allocation or set out an expenditure profile are not. It may be the case that a qualifying plan has cost or expenditure information contained in it and this may be helpful in quantifying the significance of environmental effects, but the financial information alone or even when associated with general headings or priorities is insufficient as a subject of assessment. It is for Responsible Authorities to determine whether their own plans or programmes are qualifying ones under the legislation; however the Bill includes powers for Scottish Ministers to call in a plan or programme and to subsequently demand that it be subject to further action under the legislation. Examples of excluded plans would be annual budgets at national or local level, grant and award distributions or Project finance plans.
Pre-screening register (ERDC Report paragraphs 59-66)

21. The ERDC states that a published pre-screening register would be valuable. I agree and the Executive now intend to bring forward an appropriate amendment at Stage 2.

Statutory Consultation Authorities (ERDC Report paragraphs 71-79)

22. The Committee has requested further information on how the linkages between statutory Consultation Authorities are expected to develop.

23. The statutory Consultation Authorities have expertise to cover the bulk of environmental receptors with the exception of some health issues. It was not possible to identify a single relevant health Consultation Authority given the NHS structure in Scotland. Instead, it is expected that responsible authorities will consult relevant health bodies on a case by case basis depending on the nature of their plan. It is expected that linkages between the Gateway, the Consultation Authorities and other bodies will develop through daily contact on practical issues. The Gateway and the Bill Guidance will give co-ordination and direction on communication issues. In this way, I have sought a balance between detailing a small number of authorities to be statutory consultation authorities for every plan and laying a very clear duty on responsible authorities to provide comprehensive information on the full impacts of their plan. It will therefore be for responsible authorities to engage with data holders in areas relevant to their plan. It may be anticipated that other local councils, health authorities and specialist data holders may all be involved to cover the full range of environmental receptors.

Timescale for Ministerial Directions (ERDC Report, paragraph 70)

24. The Committee requests clarification on the timescale for Ministerial determinations regarding whether a strategy, plan or programme has likely significant environmental effects. I consider it wise for any such timescale to be flexible, because cases will vary greatly in their complexity and we cannot predict exactly how long such determinations will take. Scottish Ministers will ensure that all such determinations are made as promptly as possible and the notification provisions as currently drafted will ensure that the process is transparent.

Equality Issues (ERDC report, paragraph 108)

25. In line with Executive policy and the Scottish Parliament’s approach to mainstreaming equality in legislation, the “6 questions equalities checklist approach” was applied, as endorsed in the Equal Opportunities Committee Report of March 2003. I concluded that the impact of the Bill on equalities groups will be very positive given that its provisions will greatly improve participation in public policy decision making. I will also ensure that the Bill Guidance specifically addresses equality issues by:

- giving prominence to an overarching equality statement;
- reminding Responsible Authorities of relevant equality legislation;
• encouraging Responsible Authorities to include equality groups in their SEA consultations in a manner which lowers any barriers to their effective participation;

• assisting Responsible Authorities in their consideration of equality issues by including links to useful publications such as “Equality in Scotland – Guide to Data Sources”. [http://www.scotland.gov.uk/stats/gtds-00.asp](http://www.scotland.gov.uk/stats/gtds-00.asp);

• encouraging Responsible Authorities to provide documents in diverse formats and languages, at no extra cost and in such a way as to ensure that the consultation period is not cut short.

26. In line with the 6 questions checklist, I have proposed that SEA procedures will be reviewed through the Pathfinder Project, the aim of which is to improve SEA practice including awareness of equality issues.

**Links with proposed Planning Bill (ERDC Stage 1 Report para 118)**

27. The Committee wish to be informed in due course on the ongoing relationship between the forthcoming Planning Bill and the SEA Bill. The publication of the Planning White Paper will, I hope, have demonstrated the linkages very clearly, and as both Bills move forward, the co-ordinated approach will be clear.

Ross Finnie MSP
Minister for Environment & Rural Development
August 2005
Annex 1

Significance

A judgment about the significance of effects is needed at two stages of SEA:

1. In screening: whether a plan or programme is “likely to have significant environmental effects” is a factor in whether it requires SEA or not.

2. In impact prediction and evaluation: the environmental report must identify, describe and evaluate the “likely significant effects on the environment” of the plan or programme and reasonable alternatives.

In both cases, the term ‘significance’ is linked to the concept of ‘likelihood’. ‘Likely’ effects are those which can be expected with a reasonable degree of probability (EC, 2003).

Significance at the screening stage

At the screening stage, a plan/programme’s effects may not yet be clear, so a judgement about the likely significance of these effects will need to be made based on broad information about the type of plan/programme, its policy context, and the area likely to be affected.

A clear process for determining significance during the screening process is set out in the Bill. The responsible authority must apply the criteria at Schedule 2 to the plan or programme under consideration; prepare a report on whether or not it considers the plan or programme is likely to have significant environmental effects; send the report to the consultation authorities; and either agree a determination with the consultation authorities or, where agreement cannot be reached, have the Scottish Ministers make a determination. The table below hows the criteria specified in Schedule 2 of the Bill.

Guidance from the European Commission issued in 2003 suggests that the greater the degree to which a plan/programme meets the criteria in Schedule 2, the more likely its environmental effects are to be significant. In some cases the effects related to a single criterion may be so important as to trigger the need for an SEA. The guidance gives more detail about what is meant by each criterion.
Criteria for determining the likely significance of effects on the environment (Schedule 2)

1. The characteristics of plans and programmes, having regard, in particular, to-
   (a) 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;
   (b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy;
   (c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development;
   (d) environmental problems relevant to the plan or programme; and
   (e) the relevance of the plan or programme for the implementation of Community legislation on the environment (for example, plans and programmes linked to waste management or water protection).

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to-
   (a) the probability, duration, frequency and reversibility of the effects;
   (b) the cumulative nature of the effects;
   (c) the transboundary nature of the effects;
   (d) the risks to human health or the environment (for example, due to accidents);
   (e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);
   (f) the value and vulnerability of the area likely to be affected due to-
      (i) special natural characteristics or cultural heritage;
      (ii) exceeded environmental quality standards or limit values; or
      (iii) intensive land-use; and
   (g) the effects on areas or landscapes which have a recognised national, Community or international protection status.
Significance in impact prediction and evaluation

At the impact prediction and evaluation stage, more detailed data should be available about the plan, its links to other plans/programmes, and the area likely to be affected. However there may be gaps, conflicting data, and different ways of interpreting the same information.

The UK-wide guidance (ODPM, Welsh Assembly Government, Scottish Executive, Department of the Environment Northern Ireland, 2004) distinguishes between impact prediction and impact evaluation:

- **Prediction** involves identifying the changes to the environmental baseline which will arise from the plan/programme, and describing these changes in terms of their magnitude, geographical scale, time period over which they occur, whether they are permanent or temporary, positive or negative, probable or improbable, frequent or rare, and whether or not there are secondary, cumulative and/or synergistic effects.

- **Evaluation** involves forming a judgment on whether or not a predicted effect will be significant. This judgment typically takes into account the value and sensitivity of the receiving environment, and relevant environmental targets and thresholds.

At this later, more detailed, stage of significance evaluation, the more generic criteria related to the type of plan may be less important than the characteristics of its effects and the receiving environment, see the diagram below.

**Figure 5.1** Significance in prediction, evaluation and mitigation (adapted from Therivel, 2004)
It is not the purpose of this guidance to establish a single method for determining significance because this might limit creativity. Instead, the following principles are intended to offer direction to those attempting to define significance in the context of their own plan:

- Impact evaluation must involve a systematic and transparent approach covering all SEA issues\(^1\), and both positive and negative effects;
- It is not appropriate to offset negative and positive effects in order to reach a decision on “significance”;
- Where significance is uncertain, more rather than less significance should be assumed for negative impacts, and less rather than more significance should be assumed for positive impacts, in accordance with the precautionary principle;
- Expert judgement is acceptable, and often inevitable, given the challenge in finding appropriate methods and measurements plus the fact that data may not always be available. Where expert judgement is key to a determination of “significance” the source and nature of that expert judgement must be made clear;
- If established criteria or quantitative standards are in place then they should be used if they can be properly applied in the context of the plan. Often, however, a qualitative statement will be needed. It should always be clear exactly what expert judgment was used to set the qualitative standard and the method used for measuring it.
- Responsible authorities should use what is currently available to best advantage. “Best advantage” would include seeking advice on interpretation of data from all available sources. At a minimum, data gaps should be commented on, and if possible they should be addressed.

Figure 5.2 shows how impact magnitude and environmental sensitivity come together to form significance. A given plan will clearly have a more significant impact if it affects a highly vulnerable area, or one that is closer to its environmental threshold/capacity, than one that is less so. Value and sensitivity can be determined from, for instance:

- Designations (e.g. National Park);
- Other measures of value, e.g. areas that are heavily used by people, habitats that support rare species, buildings that are particularly sensitive to disturbance (e.g. hospitals)
- Environmental standards and thresholds (e.g. air or water quality standards, information about water supply v. demand). The closer that an environmental component is to its threshold, the more significant an impact on it will be;
- Public, stakeholder, and/or expert views on environmental aspects that they consider to be important or vulnerable.

\(^1\) biodiversity; flora, fauna, soil, air, water, climatic factors, population, human health; material assets; cultural heritage, including architectural and archaeological heritage; landscape; the inter-relationship between the issues referred to in heads (i) to (xii)
Figure 5.2 Identifying impact significance (based on Therivel, 2004)

Minimal Effect: The very wide gap between minimal and significant is covered by the screening process; minimal should be seen as a difficult test to meet and is always assessed in the context of each individual plan. Any doubt at all that a plan may be likely to have significant effects and the screening process should be used. Scottish Ministers retain the power to consider any plan at any stage of its development and may direct that SEA is applied or that a screening assessment is carried out. Pre-screening is important to focus resources and to keep SEA functioning effectively on strategic level plans with likely significant environmental effects. See significant for further context.
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 3, No. 12    Session 2

Meeting of the Parliament

Thursday 16 June 2005

Note: (DT) signifies a decision taken at Decision Time.

Environmental Assessment (Scotland) Bill: The Minister for Environment and Rural Development (Ross Finnie) moved S2M-2774—That the Parliament agrees to the general principles of the Environmental Assessment (Scotland) Bill.

After debate, the motion was agreed to ((DT) by division: For 93, Against 0, Abstentions 15).


The motion was agreed to ((DT) by division: For 93, Against 0, Abstentions 16).
Environmental Assessment (Scotland) Bill: Stage 1

The Presiding Officer (Mr George Reid): The next item of business is a debate on motion S2M-2774, in the name of Ross Finnie, on the general principles of the Environmental Assessment (Scotland) Bill.

14:57

The Minister for Environment and Rural Development (Ross Finnie): The bill, the principles of which we are debating, is a vital part of our modernising government agenda and it delivers a commitment in our partnership agreement. More than that, it puts Scotland in the vanguard of the fight to ensure that the environmental protection that is championed by the strategic environmental assessment principles is at the heart of public policy making.

The widespread consensus that has emerged in support of the bill is encouraging, and the recommendation by the Environment and Rural Development Committee that the general principles of the bill should be agreed to is heartening. The committee has produced a comprehensive and thoughtful report and I thank its members and its convener for their work. I also thank the many individuals and organisations that engaged whole-heartedly in our consultation exercises and the projects that have been associated with the bill; among them are the Convention of Scottish Local Authorities, the Scottish Environment Protection Agency, Scottish Natural Heritage and Historic Scotland.

In essence, the bill’s principles are that there should be early consideration of the environmental effects of public sector strategies, plans and programmes and effective early public consultation. I make it clear that environmental assessment informs decision making, but does not dictate to it. Moreover, environmental assessment will mesh with current and future planning legislation and be integral to our sustainable development agenda.

The bill proposes to encompass—and to make a logical extension to—the current regulatory provisions. If our environmental protection approach is to be systematic, sensible and sustainable, it follows that it must be logical to go beyond the limited current provisions and to address all public sector strategies, plans and programmes that are likely to have significant environmental effects.

Phil Gallie (South of Scotland) (Con): Is it not the case that, as the minister suggests, we already have legislation in place that covers the environmental aspects at which the bill is aimed? His party and other parties in the chamber constantly carp about additional regulation and red tape, particularly that which emanates from European legislation. Is this not a case of gold plating European regulations? Is the bill not simply putting an added cost on the environment?

Ross Finnie: No. Mr Gallie has misunderstood the principles of the bill. It is wholly illogical to say that the only plans and projects that should be subject to such scrutiny are those that derive from a regulatory framework. Later in my speech I will address the second issue that Mr Gallie raises, which is that of bureaucracy. We have set out plans and proposals to address that issue.

Previously, plans were not considered until it was too late—all plans with significant effects across all subjects. Strategic environmental assessment puts a focus on protecting and enhancing the environment and reducing the risk of unforeseen damage; it therefore allows us to anticipate the problems and to avoid the unnecessary public expenditure of having to remedy them at a later date.

I make no apology for being passionately committed to driving forward the principles in this legislative vehicle. Equally, my commitment to the values of the bill makes me aware—if I can address Mr Gallie—of how crucial it is to ensure that bureaucracy is kept to a minimum and that maximum support is provided to practitioners. I note that the committee shares my view and that it has raised concerns relating to those matters. I assure members that I am doing everything that I can and I hope in these few moments to be able to persuade them of that. To minimise bureaucracy, for example, and to avoid wasting time and resources on plans that have no or minimal environmental effects, the bill proposes a filter mechanism called pre-screening. I note that the committee believes that a published register of pre-screened cases would be valuable and I confirm my commitment to considering how best to give effect to that suggestion. On support, I have committed to producing comprehensive guidance and I note that the committee report welcomes that.

I note that the committee considers training to be vital. The Executive has already supported a number of training events, and has provided awareness seminars. In addition, we have commissioned unique environmental assessment templates, which will give practitioners practical guidance through the process. I share the view that the bill represents a major change in culture and practice and I will continue to support the change process as we go forward.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): Will the minister acknowledge the crucial
role of the gateway in co-ordination and in ensuring that that culture shift can happen? How will he ensure that the gateway is reflected fully in the bill?

Ross Finnie: I am grateful to Mark Ruskell for taking me on to the very subject at the top of my next page, which reads:

“Yet another unique support initiative—the SEA Gateway”.

The SEA gateway will provide general advice and a liaison point for the responsible authorities and the consultation authorities. In addition, although still at an embryonic stage, it already provides a degree of quality control through its monitoring of statutory timescales. Those measures are all administrative, and I concede that they are not provided for in the bill. Because of the concerns raised I want to make the reasons for that clear. If such initiatives are to provide the high quality of support desired by the Executive and, I might say, by the committee and others, it is important to set them up so that they can respond flexibly to emerging needs and develop in an appropriate and useful way. I have no wish to straightjacket those potentially powerful initiatives within a statutory framework; rather, I propose to allow them to evolve naturally over time.

The bill requires SEPA, SNH and Historic Scotland to be consulted at points on the environmental assessment process. Those bodies are referred to as the consultation authorities. Importantly, that ensures that there is a statutory advice framework for the responsible authorities that are carrying out assessments. It also functions as a quality control mechanism and allows those key environmental bodies an early opportunity to engage in the process. The consultation authorities clearly have the expertise to cover the bulk of the environmental issues to be considered. However, concern has been raised about how they would consider other issues, for example health or population. The responsible authorities have a duty under the bill to report across the full range of environmental receptors. If, in certain cases, the consultation authorities cannot cover all the issues adequately, it will be for the responsible authorities to engage with other data holders to address the full range. Obviously, such data holders will be approached only as necessary and it would be neither practical nor proportionate to try to legislate for every possible body that might be involved. Moreover, such a provision would make nonsense of the general desire for a bureaucratically light SEA regime.

Having said that, I acknowledge that it is important to have a robust framework for environmental data gathering. Therefore, I will ensure that guidance includes advice on assessing health issues in an environmental context and that a list of recognised Scottish data sources across all issues is produced.

The bill does not apply to budgetary plans or to plans the sole purpose of which is to serve national defence or civil emergency. With regard to budgetary plans, it makes no sense to me to attempt to perform an SEA on a plan that sets out only expenditure headings. It would be far better to apply strategic environmental assessment to the strategic actions arising from budgetary plans when there are actual environmental effects that can be usefully assessed and from which assessments practical benefits can arise.

The SEA provisions will not apply to national defence plans or civil emergency plans. Of course, that does not mean that any particular authority is exempt—it applies just to those narrow categories of plans. The bill provides for public sector plans to be delivered by private sector companies. I will use a utility as an example. The plans, programmes and strategies arising from a regulatory, legislative or administrative requirement that are produced by a private utility company will come within the mischief of the bill. Any private, unregulated activity does not come within the mischief of the bill. In that way, we have ensured that such public plans do not escape the SEA provisions.

Finally, I know that there have been concerns about how compliance and environmental assessment practice will be monitored. Key measures include the provision that a plan qualifying for SEA shall not be adopted unless the SEA provisions have been applied. Moreover, Scottish ministers may direct that an SEA be performed, if appropriate. Those powers, backed by administrative measures such as the gateway and a long-term project assessing the operational aspects of strategic environmental assessment that is about to get underway will provide a robust quality assurance framework.

This bill is about three matters that are at the heart of the partnership agreement and our modernising government agenda: environmental protection; public participation; and, crucially, sustainable development. I urge Parliament to support the principles of the bill.

I move,

That the Parliament agrees to the general principles of the Environmental Assessment (Scotland) Bill.

15:08

Rob Gibson (Highlands and Islands) (SNP): The Scottish National Party welcomes the opportunity to put environmental considerations at the heart of government thinking but, like many others, we think that the bill is a first step and that it will inevitably be firmed up in the light of
experience. We want that first step to be a sure one and it is therefore essential that we arrive at a critical analysis of where we have now reached. At this first stage, we have an opportunity to see amendments coming forward. The committee has asked a near record number of questions of the ministers about the detail of how it is intended that the provisions of the bill will be carried out and we look forward to hearing further answers in the final speech this afternoon and, in due course, by letter.

We are in a position to speculate about some of the answers, and we must do that. At last, we are doing something that is ahead of the European Union directive and United Kingdom law, because we are looking at plans and strategies. That is what we would expect of a forward-looking country. It has to be said that, if an independent country in the EU were doing what we are doing, it would have to aim for the highest possible standard, which is the benchmark against which we would measure the activities that are going on at present.

Ross Finnie: I am grateful that the member has elevated the Executive’s policy to such a high plane. However, perhaps he would explain why such thinking was not contained in any thoughts or speeches by members of his party.

Rob Gibson: The minister ought to recognise that when we scrutinise such matters in committee they include fairly dry matters of administration. If he would like me to raise the constitutional question at every meeting, I would be happy to do so. I doubt whether my committee colleagues would seek to raise it at any time. I will deal with the question of why we should look at the matter in that way later in my speech.

It is important for the Executive to be clear about where strategic environmental assessment will kick in. A question has been raised about the possible building of new nuclear power stations. Because that would be a United Kingdom initiative, it would fall not under the process of SEA in Scotland but under the UK process, which is not as detailed as ours—at least, that is what we are led to believe. We need clarity about where SEA will kick in in relation to such programmes, which are important to people.

Earlier environmental impact assessment practice has been built on, but the Executive must give a whole-hearted lead on the process that it is setting up. We are looking for answers on how the structures will be explained to people. We asked for a flow chart showing the relationship between SEA, sustainable development and sustainable appraisal, because that would allow us to see which part of the Executive will draw together the structures and disseminate information on them. Previous debates have shown that the Executive’s fledgling sustainability initiatives do not yet have the political weight that they require.

Phil Gallie: Is it not the case that many of the issues that are addressed by the bill are currently dealt with at council level? Does the member agree that, in many ways, the bill removes powers from local authorities and gives an extra voice to quangos?

Rob Gibson: I do not think that the member has read the bill. He should ask Alex Johnstone to explain it to him in a darkened room.

Alex Johnstone (North East Scotland) (Con): I might agree with Phil Gallie.

Rob Gibson: We will wait and see.

We raised the issue of pre-screening. If the Executive is to exempt items from assessment, it must define "minimal effect". If a register is to be kept of the items that arise, we will need a clear definition. We await the minister’s answer on that.

I turn to the gateway. Information and best practice must be co-ordinated—thankfully, the minister recognised that in his speech—and data deficiencies in the early stages should not prevent the carrying out of strategic environmental assessment. Information should be disseminated as widely as possible, but the minister should make the point that SEA can go ahead even before data is available because it seeks to influence the overall principles of projects rather than the detail of their implementation. The training and funding regime that the minister has adopted is to be welcomed—it is one of the strengths of the proposals.

The committee has had lengthy discussions about private companies that do public work. That is important to many people. Scottish and Southern Energy’s proposed Beauity to Denny power line project is an example of the public work that will have to be dealt with under the processes. We believe that such projects will be included, and we welcome that. We also note that the Executive will have to do SEA on projects before it instructs Scottish Water to work on them.

I turn to the bill’s weaknesses. There are questions about how the gateway will be run. We know that it will be monitored, but we should bear it in mind that within a year of community planning being set up the Executive removed the website and the task force. It is important for us to know what resources will be provided to the gateway in future, given that its role will change from initiation to monitoring. We would like some answers on that.

We face major challenges. In particular, I have mentioned details that concern the Ministry of Defence and nuclear decisions that are taken outside Scotland and over which we can exercise only planning controls and not SEA.

Environmental justice involves the question of the consultative bodies’ expertise not only on
health and impacts on population, but on transboundary effects. What if acid rain was created and fell on Norway? Will Norway be allowed to have any say in our SEA processes? As an international partner and nation, Scotland would wish to try to involve other countries that our activities might affect. It is also interesting to note that the Nordic countries have a network of SEA bodies that compares and builds up information to help better decisions to be made for SEA.

The SNP agrees with Elsa João, who has supported the bill and done much work to help us to understand it. She said that the bill “could make a significant contribution towards better-informed public sector decision-making and consequently progress towards delivering sustainable development.”

The SNP wants the Scottish Executive to provide the clearest detail on how to move towards sustainable development. We consider strategic environmental assessment to be very much part of the process. We demand that yearly reports should be made by the gateway or the part of the Executive that processes SEA, so that the Environment and Rural Development Committee can scrutinise the work and so that Parliament can debate the post-adoption strategy. We should look for more answers to the questions now, at this early stage in the new measure’s development.

15:16

Alex Johnstone (North East Scotland) (Con):
The bill has been introduced with the best intentions. Much legislation is proposed with extremely good intentions, but we can find difficulties in the detail that must be sorted out. Much in the bill is welcome, but in the time that is available to me, I will express some of my reservations.

The bill will revoke and replace the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258), which Parliament approved and which came into force on 20 July last year. The regulations gave effect to the European Parliament and Council directive on strategic environmental assessment and, as such, they fulfilled the Executive’s requirement to conform to the directive. The process that the bill has undergone shows that several measures have been added but, first, I will go through the Environment and Rural Development Committee’s stage 1 report.

On part 1 of the bill, considerable confusion was shown in the evidence about the extension of the definition of a responsible authority. The extension goes beyond the EU directive’s requirements. The main concern was whether private bodies that exercise public functions would be required to undertake a strategic environmental assessment. Some evidence suggested that the SEA process would be too costly for small and medium-sized businesses and would in effect discriminate against them. I support the committee’s recommendation that the minister should clarify before stage 2 the expected SEA responsibilities of private bodies that perform public functions.

To an extent, there is confusion about which plans and programmes will be subject to SEA. Scottish Water highlighted the fact that undertaking environmental assessment at a strategic level would not relieve it of the obligation to conduct environmental impact assessments of some projects, which would result in great “duplication of effort and greater expenditure than is necessary.”—[Official Report, Environment and Rural Development Committee, 27 April 2005; c 1824.]

I support the committee’s request that the minister provide concrete illustrations of how SEA will work in practice and its recommendation that the minister should carefully produce guidance on the bill.

On the resource implications of extending the scope of SEAs beyond the current regulations, the bill’s explanatory notes refer to research by the Babtie Group, which estimates that the annual cost of SEAs to the responsible authorities is likely to be between £7 million and £12.5 million per annum. I will give another example. In its evidence, the Confederation of British Industry Scotland stated to the committee that it was “very disappointed” that the EU directive would be extended. It thought that that was “at odds” with the Executive’s “public statements that the economy is its number one priority” and stated:

“It is also counter to the commitments made to the business community by the UK Government that there would be no further ‘goldplating’ of EU legislation.”

Ross Finnie: By way of illustration, will the member imagine that such legislation existed and that proper environmental assessment had been required when two of Scotland’s central airports were built? Rather than the proposition that he has just made, does he accept that the inevitable conclusion would have been that proper access and a proper public transport system would be an integral part of the system, which would have been a great boost to the economy?

Alex Johnstone: In some respects, the minister illustrates the problem. Facilities that have evolved over time have done so as budgets permit. The minister is now suggesting that if they were to be dealt with under the provisions of the bill that we are considering, there would be a significant cost impact at the outset in order to ensure that
address problems when they arise, but legislation should not be inflicted on public bodies that are carrying out their work effectively.

We are discussing the bill’s general principles. The Conservatives believe that it is possible to argue that those general principles are being fulfilled by the action that was taken last year. Consequently, we believe that the provisions are worthy in principle, but that they are already covered by legislation and that the bill is unnecessary.

15:25

Sarah Boyack (Edinburgh Central) (Lab): Labour members warmly welcome the bill and the objective of having the public sector take proper account of the full environmental impact of all new strategies, programmes or plans when it is preparing them. We do so because at the moment we do not have an explicit, rigorous approach. It is not good enough to assert that policies are good for the environment, without evidence or proper consideration. It is not good enough to assume that policies are good for the environment. We need to be able to demonstrate the impact that they will have, to know how to deal with any negative impact and how to maximise positive benefits, and to think through the trade-offs that can be made.

We do not live in a world where we can happily box up different issues. The big issues that we consider will impact on one another. We must see strategic environmental assessment in the context of our overall objectives on sustainable development. If we are to deliver economic prosperity as our top priority, at the same time as delivering social justice and ensuring that our environment is protected, we must ensure that we join up thinking across government. That means that we must be much more coherent and systematic.

The bill was welcomed by the vast majority of people who gave evidence to the Environment and Rural Development Committee. The objections of those who were less keen on or not convinced by the bill were based partly on the belief that strategic environmental assessment is about giving primacy to the environment, which is not the case. It is about ensuring that we consider the environment and that it is at the top table with other issues and is part of the decision-making process. At times, it may be inconvenient if a policy is identified as having a detrimental impact on the environment, but surely it is far better for us to know that up front and to begin to deal with the problems than to brush them under the carpet and leave them until later, when repairing the damage will be much more difficult.
Strategic environmental assessment is also about transparency. People should be confident that decisions that are taken have been thought through and are rigorous. Hopefully, the bill will increase accountability. That is why Labour members really welcome it. If local authorities are to be allowed to screen out particular issues, plans, policies or strategies that they do not believe will have a major impact on the environment, it is entirely appropriate that those decisions should be registered up front. I welcome the comments that the minister made to the committee on that issue. The information should be publicly accessible, so that we can have the accountability and transparency that the bill potentially provides. We do not want to create a loophole that would allow responsible authorities to avoid SEA when it should be carried out. However, we must also ensure that the impact of SEA is not disproportionate. We should not insist that absolutely every project is considered, regardless of its impact.

If the bill is to be a success, the biggest issue will be to ensure that the people involved in implementing it take real ownership of the process and embrace it, rather than see it as a threat. For that reason, I was disappointed with some of Alex Fergusson’s comments.

Alex Johnstone: He has not made them yet.

Sarah Boyack: I am sorry—I meant Alex Johnstone. I will have to grovel for that later. Both members are sitting at the top table.

Phil Gallie’s comments suggested to me that he has not read the bill. All public authorities, rather than just local authorities, will be responsible for environmental assessment. That includes the Executive and quangos. The issue must be central to all public policy.

I disagree strongly with the comments that Alex Johnstone made about gold plating. The term is usually employed as a way of objecting to high environmental standards, but let us be clear about the aim of the bill: it is about taking better-quality decisions. The CBI sees it as detracting from attempts to make the economy our number 1 priority, but that is to consider the economy in isolation from its wider impact and without thinking about the global challenges that we face. How will we deliver economic prosperity in this country if we ignore the impact of climate change? We must think through decisions in the round. In particular, we must think through the opportunities that may arise. Assessing environmental impact will not be all about identifying problems. There will be some big opportunities for us to grasp.

Alex Johnstone’s comments on the brilliant environment that we have in this country and the few environmental problems that we face betrayed a very complacent attitude. There was much in his speech with which Labour members would take issue.

I will concentrate on how we make the legislation work. The SEA gateway is crucial. It is important because it will provide guidance on best practice, it will enable capacity building and it will be a source of monitoring to ensure that the bill is implemented effectively. The gateway will change over time, but committee members were convinced that we will need it for the long term. It must be flexible, but it will not enable the Scottish Executive to adopt a hands-off approach. The Executive will still need to be involved and it will still have to take an overview.

One of the most striking aspects of the evidence to the committee was the nervousness—a lack of confidence—about the ability of local authorities to cope with the bill. That was the message that we received from the Convention of Scottish Local Authorities, which was worried about timescales and resources. That contrasted with the evidence from academics and practitioners who, having considered the evidence and examined best practice from other countries, were confident that if there is effective management and ownership of the legislation, it could be highly successful. Committee members believe that the lessons learned after the introduction last year of the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 give us a good platform for the future and enable us to move forward.

I hope that the Scottish Executive will take the lead in providing training to ensure that people take ownership of the issue. The minister’s speech acknowledged the fact that training is required and some has already been carried out. Having heard the tone of the evidence that was given to the committee, I was struck by how far away the practitioners are from the aspirations of the bill. Much work requires to be done.

A combination of guidance and an initial top-down approach to let practitioners know what is in the bill and what it means for them is required. Engagement in a discussion about how resources can be directed effectively will go a long way towards making the bill effective. The Scottish Executive has a particular duty to lead by example and help people through the culture change.

I make a plea to the minister to continue to use scrutiny of the bill at stages 2 and 3 to focus on what the bill means in practice. My colleague Maureen Macmillan will pick up on points of confusion that have been raised with the committee about who does what at what level, particularly in relation to public sector projects, as more clarity is required. One issue is the interface between strategic environmental assessment and
innovative and necessary piece of legislation that European Union bureaucracy rather than an bill's name makes it sound like a turgid piece of not know whether the minister is to blame, but the environmental assessment are their names. I do

Many concerns exist. I hope that we can use parliamentary scrutiny positively and that the Executive will provide leadership to enable the bill to live up to its promise, which is to secure a better environmental outcome and a better quality of life for us all and to ensure that better decisions are made.

I will finish on a slightly controversial note. I suspect that we all agree that the bill should be passed, although we might debate some of the detail. However, I wonder how equipped the Parliament will be to monitor the implementation of the bill. I hope that members will not see it as being only the Environment and Rural Development Committee’s job to ensure that the bill is being implemented. That view is shared by my colleagues. The whole of the Parliament, as well as the whole of the Executive, must take ownership of implementation of the bill. I note that there are not as many members in the chamber as there would be for debates on other issues.

I am not saying that the Deputy Minister for Environment and Rural Development will be able to solve the problem in his summing-up. There are questions not only for the Executive and responsible authorities but for politicians in the chamber about the extent to which we think the bill will make a big impact. That is a challenge across the political parties. I notice that there are many empty rows of seats in the chamber, although not on Labour’s part as there are one or two Labour members here. There is an issue about the importance that members place on the implementation of the legislation. I hope that we get political action from all parties in the chamber and that, by the time that we get to stage 3, the Conservatives, in particular, will be a little bit more enthusiastic about the bill and the opportunities that it may bring.

15:34

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): The worst parts of the Environmental Assessment (Scotland) Bill and strategic environmental assessment are their names. I do not know whether the minister is to blame, but the bill’s name makes it sound like a turgid piece of European Union bureaucracy rather than an innovative and necessary piece of legislation that has emerged from the coalition.

I am pleased that the bill will place Scotland ahead of the game in looking after its environment. My local town of Newburgh, in Fife, recently completed the regeneration of a former factory site. The project cost lots of money, as there were clear-up costs involved in bringing the brownfield site back into public use. As the minister pointed out to Mr Gallie, if environmental assessments had been around when the factory was built, although those remedial costs would not have been eliminated, they would have been greatly reduced. The message is that a small bit of planning ahead can avoid costly and unnecessary clearing up.

In farming, there is a saying that one should live for today but farm for tomorrow. That basically means that, during our tenure of life, we should try not to degrade the environment but to cherish and enhance it—that message was meant to be directed towards the rural reactionaries on the Tory benches, but they have now vanished from the chamber. The rationale behind the environmental assessment requirement in the bill is the same. Through it, we will be doing our bit to ensure that future generations do not have to clean up after us. I hope that where we go with our legislation other countries may be encouraged to follow.

If that is the area of benefit, where are the downsides to bringing the bill into law? The Tories have highlighted in emotive and unfortunate terms the costs and how SEA will fit into the existing planning framework. Local authorities are concerned that the arrival of SEA will place another burden on their planning departments. The planning process will have another cog placed into its machinery, and local authorities will have to include SEA in the assessment of a strategy or plan as well as monitor any environmental impact that occurs during the development of the strategy or plan. The preparation of environmental reports is likely to be a significant undertaking for the planning departments of local authorities and other public bodies.

Currently, the bill calls for several public agencies to be consulted on environmental assessments. I would also like local knowledge to be brought into the process. Agencies such as SEPA, Historic Scotland and Scottish Natural Heritage may have the professional expertise and technical knowledge that will be required to comment on an SEA, but they do not have at their fingertips the local information that may influence an environmental assessment. It might be sensible to add community councils to the list of statutory consultees.

Alex Johnstone: Is that not an extension of the provisions in the bill that have caused so much fear and concern among those who have given evidence on the bill?
Mr Arbuckle: I agree with the minister that the consultation should not be widened out unnecessarily; however, I make a plea for local information and knowledge to be included in an environmental assessment to improve the quality of the assessment.

The arrival of strategic environmental assessments will bring complications and extra work for local authorities, so it is essential that the time limits for dealing with any plan or strategy do not stretch beyond the current limits. There is a particular issue concerning consistency in dealing with SEA applications, both within an individual responsible authority area and across normal barriers. It will have to be possible to move information from one area to another to achieve the goal of fairness and equality. In that context, I welcome the work of the gateway and believe that it is essential.

Mr Ruskell: Does the member agree that, as well as the need for a flexible gateway, there is a need for a gateway in the long term? There are concerns that, because the bill does not mention the gateway, we could be left with a similar situation to that which exists in community planning, whereby assistance is given for two years but then disappears.

Mr Arbuckle: Mr Ruskell is in danger of jumping ahead and presuming that the process will not work. I believe that there is sufficient guarantee in the system.

I also welcome pre-screening, which I believe is essential. If a strategy or plan has no knock-on effects on the environment, there will be no need for an environmental assessment.

I support the bill and look forward to its progress.

15:39

Mr Mark Ruskell (Mid Scotland and Fife) (Green): The Scottish Green Party warmly welcomes and supports the general principles of the Environmental Assessment (Scotland) Bill. Overall it will improve the status of environmental issues and decision making so that the eyes of policy makers become trained on the environment as well as on economic growth and social justice.

If we are to deliver real progress in Scotland, it is vital to have regard to the impacts that the economists often drily dismiss as externalities. As we all know, those externalities will be paid off the hard way, by future generations who will pay through the nose for our legacy of bad decisions, including degraded environments, congested and unhealthy streets and a chaotic global climate.

I say to Mr Gallie—who has not even had the good grace to stay for the debate—that that is where the real economic burden lies and where we will reduce our economic competitiveness. It seems as if the Tories want us to engage in a race to the bottom in environmental standards, which is fundamentalist and anti-progress.

We welcome the bill and the fact that it goes further than the European directive. Indeed, it has the potential to lead the way in Europe. I say the word “potential” because although the bill has good intentions of being an exemplar in Europe, there are key issues that the minister must consider at stage 2 and that the committee must resolve if the bill is to help us to make real progress in Scotland and Europe. The word “clarification” appears in almost every conclusion of the committee’s report and it is often next to the word “guidance”. I say to the minister that the bill is not yet clear.

For example, I thought that a potential plan for new nuclear power stations would be an obvious example of where SEA would pick up the need for scrutiny. However, I did not get a clear answer to the very simple question that I asked the minister in committee. Now, after several rounds of research, legal advice, written questions and answers, it appears that the UK white paper on energy, which spells out a free-market approach to the development of new nuclear power stations, would not be covered by UK or Scottish SEA legislation. One of the most fundamental decisions of our time is set to slip under the wire.

Sarah Boyack: Does the member not agree that when the committee got the answer to Richard Lochhead’s written question, it was extensive and absolutely clear about where the different environmental impact assessments would be carried out, and that it helped all of us in the chamber regardless of our view on the border?

Mr Ruskell: Indeed, but research further to that showed that the UK energy white paper would not be scrutinised under SEA, although it is what would ensure that nuclear power stations would be built, if there was going to be such a programme. The position is not yet clear. I thought that the issue would be an easy one to deal with, but apparently it is not.

Ross Finnie: Will the member give way?

Mr Ruskell: I need to move on.

There was even more confusion from private sector bodies regarding where strategic environmental assessment ends and environmental impact assessment begins. There was a lot of wriggling from energy companies and Scottish Water over whether they or some higher body would do the work of proofing the overall policy. It is vital that greater clarity is worked into the bill at stage 2.

We have also heard about the importance of an SEA gateway to co-ordinate the activities, to
provide advice and training, to act as an arbiter in the case of a dispute, and to monitor the overall quality of the assessment work. Other countries that have successfully implemented SEA have independent gateways, but there is no reference to any form of gateway in the bill. It is important that a gateway is defined in the bill. I agree that it must be flexible so that its role can develop over time, but it must also offer long-term stability to the roll-out of SEA. The balance is a difficult one to strike, but we must do so at stage 2.

Clarity is also required on pre-screening. I still fail to grasp the need for yet another level of consideration. However, if the minister is intent on keeping that provision, he should make it transparent, require a register of decisions, and give us firm definitions of terms such as “minimal” and “significant” effects. The last thing we want is for such definitions to be turned into weasel words by irresponsible authorities.

Another matter on which we need clarity is the exemptions under the bill. I agree with the minister that the bill should cover financial plans that come before a programme but not those that arise as a result of a plan or programme. However, the point is far from clear in the current drafting. Once again, more clarity is needed.

To be honest, the exemption for the Ministry of Defence generated more heat than light in the committee’s discussions. Having considered the issue in some depth, I am clear that plans for national defence could be included in the scope of the bill. It is even likely that such a move would be welcomed by the MOD, given that it routinely applies strategic environmental assessment beyond the minimum requirements under the existing UK regulations. In fact, last month the Secretary of State for Defence, Dr John Reid, issued a new policy statement on environmental protection, in which he stated:

“I will invoke any powers given to me to disapply legislation only on grounds of national security and only when such action is essential to maintain operational capability.”

That definition of what is in and what is out in relation to national defence seems to me to be a world away from the blanket exemption to scrutiny of defence activities that the bill gives.

**Ross Finnie:** Will the member give way?

**Mr Ruskell:** Hang on a minute.

Instead of the bill’s approach, which seems to be based on the assumption that the MOD is too big and scary to deal with, we need a considered approach that recognises the MOD’s own best practice.

**Ross Finnie:** I am rather surprised that one who has studied the bill with such great care has not understood that the MOD as a body is not exempt under the bill. The only exemptions under the bill are for plans and programmes in relation to national defence or civil emergencies. The MOD as a body is not exempt from the bill. Therefore, if the Secretary of State for Defence chooses to apply SEA legislation to national defence plans, he may do so, but that would not mean that all other activities of the MOD would not be within the mischief of the bill.

**Mr Ruskell:** However, the bill will restrict those activities. For discussion at stage 2, we need a clearer definition from the minister about where national security will be of paramount interest such that the exemption will need to be applied. The matter is a drafting issue to which we can return, but we need a sensible debate on it.

I conclude on a note of caution. SEA reveals to us what the damage could be but, as Sarah Boyack and others have pointed out, politics determines what decisions are actually made. The M74 inquiry revealed what damage would be done but, so far, political road building has prevailed. SEA is a valuable tool in understanding what we plan to do in our world, but the responsibility still lies with politicians to make decisions that recognise that the health of people and the health of the environment are inseparable and inviolable.

15:48

**Maureen Macmillan (Highlands and Islands) (Lab):** The Environmental Assessment (Scotland) Bill is one of a series of bills that have come before Parliament that put environmental considerations at the heart of government. I endorse all that my colleague Sarah Boyack has said in praise of the bill.

Like other bills that we have passed, the Environmental Assessment (Scotland) Bill goes beyond the bare bones of what is required by a European directive. I commend the Executive for that decision, but the fact that the bill goes beyond the directive seems to have created some confusion in the minds of the public and private bodies that might be expected to deliver strategic environmental assessment. I think that the minister acknowledged that in his speech. Therefore, I will play bad cop to Sarah Boyack’s good cop. Forgive me if I niggle and carp; I am not simply looking for difficulties where none exists, as members from other parties have done.

Some of my points have been raised by other members, but my first point is about the need for clarity, as it is not clear precisely what is meant in certain sections of the bill. Section 2(1) gives a definition of “responsible authority” that applies as long as the plan that the authority is preparing falls within section 5(3) and is a plan that is covered by...
the European directive. However, section 2(4) defines a smaller group of bodies that will be required to provide strategic environmental assessment for all their plans and programmes. I listened carefully to what the minister had to say, but what has not been explained properly yet is whether the provision includes private bodies that carry out public functions.

Highlands and Islands Enterprise, which is a public body that delivers much of its programmes through private companies, said in its evidence:

“we are unclear about how this type of work is covered, if the projects themselves are not covered by the EU directive.”

Scottish and Southern Energy plc posed the question of who would have responsibility for strategic environmental assessment of its transmission network and whether it would be the company or the Executive. Will the company fall within section 2(1) or section 5(4)?

In his evidence, the minister drew the distinction between a private company that conducts a regulated activity and a private company that pursues private and unregulated business. What about a private body that carries out a public function that is not a regulated public function? It is extremely important that the question is clarified, and I hope that that can be done well before stage 2.

There is uncertainty about whether and when a body will be a responsible body and which plans and programmes will be subject to strategic environmental assessment. Indeed, there is also uncertainty about whether the allocation of funds for a future programme will constitute a trigger for strategic environmental assessment. Will a distinction be made between allocating funding to a project, as the National Lottery does, and designing a project? Will it be possible for a body to avoid strategic environmental assessment by claiming that a strategy is nothing more than a budget line? The committee is concerned that the Executive’s intention in excluding financial plans is not clear. We ask the minister to provide examples of financial plans that would require a strategic environmental assessment and those that would not.

Another area that requires the Executive to give detailed guidance and examples for the sake of clarity is the relationship between strategic environmental assessment and environmental impact assessment. There is much confusion about where one stops and the other begins. For example, Scottish Water said that it did not believe that it would be solely responsible for strategic environmental assessment; it believes that it will share that responsibility with the Executive and the regulator. It expressed concern about the relationship between strategic environmental assessment and environmental impact assessment and, in particular, about the possible duplication of effort and, therefore, of cost. If Scottish Water is unsure about that, what is other public bodies’ perception of the relationship between SEA and EIA?

That also raises the question of how prepared authorities will be for this major culture shift. Never before have local authorities had to environment-proof their plans at inception. The decision whether an SEA is required will need to be made at the very birth of a strategy—no matter the department from which it emanates—yet the necessary expertise to make that decision does not permeate all local authority departments. Although the assurances that the minister has given on resources are welcome, who will do the training? Sarah Boyack outlined the excellent suggestion that the committee made in that regard in our report. I, too, recommend it.

As Mark Ruskell said, it is inevitable that some concerns boil down to pure semantics. In the pre-screening process, judgments will have to be made about whether a strategy will have a “minimal” or “significant” effect on the environment. Again, we need definitions of those terms. More important, we need concrete examples of what those effects might be.

In considering part 2 of the bill, the committee considered the relationship between SEA and sustainability. Some concerns were expressed that SEA would give undue weight to the environmental impact of a plan to the detriment of socioeconomic needs. However, the policy memorandum makes it clear that that is not the Executive’s intention and the committee wholeheartedly accepts that. Indeed, most of the evidence that we took supported that conclusion, with some witnesses suggesting that strategic environmental assessment would encourage better socioeconomic assessment. If I may, I will paraphrase something that the First Minister said in another context: environmental justice is very strongly linked to social justice.

As Alex Johnstone on the Conservative benches mentioned, the perception out there is that SEA might somehow be bad for business. The evidence from the Confederation of British Industry—and, to a lesser extent, from Scottish Enterprise—supported that perception. Members on the Labour benches do not agree with that interpretation, and I am sure that the minister does not agree with it either. We must get the message out to the wider community that sustainability makes good business sense, just as effecting a reduction in a business’s energy needs to combat global warming does.

Although I heartily welcome the principles of the bill, I have left the minister a considerable list of
things to do before stage 2. I trust that he will oblige.

15:55

John Scott (Ayr) (Con): I welcome this stage 1 debate and the comprehensive report of the Environment and Rural Development Committee that informs it. By and large, I support the sentiments that are driving the bill on to the statute book, but I will add what I hope will be received as constructive criticism.

Everyone agrees that environmental impact assessment is a necessary part of the creation or development of any major project and a sensible part of the planning procedure. However, it appears that delivery of strategic environmental assessment is giving many people cause for concern. In particular, as paragraph 120 of the report notes, there is

"a significant degree of nervousness amongst responsible authorities about what it will actually mean for them, in terms of financial resources and … staff capacity."

The committee’s concerns appear to be shared by no less august bodies than Scottish Water and Scottish Enterprise. In evidence to the committee, Scottish Water pointed out that carrying out an SEA at strategic level would not relieve it of its obligation to carry out an environmental impact assessment on certain projects, which will result in great

"duplication of effort and greater expenditure than is necessary."—[Official Report, Environment and Rural Development Committee, 27 April 2005; c 1824.]

Mr Ruskell: Does the member accept that conducting SEA at the more strategic level will make it a lot easier to conduct individual project-based EAs and will therefore save time for organisations?

John Scott: No. Scottish Water has probably got it right; it will mean twice the work and twice the expense. On the other hand, Scottish Enterprise stated in written evidence that the bill should not undermine economic growth, and in oral evidence that its concerns are based on the need to

"avoid adding to the process delays or excess bureaucracy that might slow down decision making."—[Official Report, Environment and Rural Development Committee, 27 April 2005; c 1833.]

In addition, Babtie Group Ltd has estimated that the annual cost to responsible authorities is likely to be between £7 million and £12.5 million per annum. The Finance Committee has also raised the likelihood of the bill’s having a financial impact on provisions under the forthcoming planning bill and existing planning systems.

Notwithstanding the enthusiastic promotion of the bill by those who will not have to pay for it—namely, the Lib-Lab Executive—it appears that the bill has not exactly been met with universal proposal.

Ross Finnie: Never mind the Executive—all members and businesses pay tax, some of which is devoted to dealing with contaminated land. We cannot consider the issue in a one-sided way. Surely the member accepts that if we have decent environmental assessment and reduce the need for us to pay hand over fist in taxation to deal with contaminated land, for example, that will benefit business.

John Scott: I take the point, but businesses already pay enough taxes, and enough environmental checks are in place. No more checks are needed, because they will add to the cost.

The proposals go way beyond what is required to carry out the bill’s not-unreasonable objectives. As Rob Gibson pointed out, the bill goes way beyond the requirements of the European Union directive. In short, gold plating is the order of the day. As Alex Johnstone said, we are using a sledgehammer to crack a nut and, in so doing, we will burden responsible authorities—many of which are strapped for cash—with an additional tier of cost that they can ill afford.

Rob Gibson: Will the member give way?

John Scott: No. I must make progress.

Perhaps the minister should consider COSLA’s suggestion that, rather than adopt the measures wholesale, a pilot scheme could and should be tried to allow an evaluation of the likely impact on staff and budgets. COSLA’s caution on the subject is entirely reasonable, as Sarah Boyack pointed out, given that local authorities and council tax payers will have to foot the bill. Indeed, there is little point in passing cumbersome legislation if a sufficient number of planners are not available to carry out the assessments that will be required.

There is little point in imposing regulatory burdens on local authorities if those burdens mean that the authorities will have to cut other front-line services, such as those that relate to free personal care, which are already a casualty of budget shortfalls in South Ayrshire Council and elsewhere. Necessary legislation is one thing, but gratuitously burdensome, overzealous regulation and red tape are another. I note that other members have already expressed that view. Even Mark Ruskell is not entirely convinced of the merits of the bill.

Mr Ruskell rose—

John Scott: We will, of course, seek to amend the bill at stages 2 and 3, and Alex Johnstone will lodge amendments in due course. We do not
accept that the bill will save money in the long term by strategic consideration of environmental impacts, because that work is already being done perfectly well under the existing framework. We do not see a need to give the SEA gateway further powers and responsibilities in addition to the powers that have already been given to local authorities, SNH and SEPA, because that can only be a further brake on economic growth and development.

If the economy is, in fact, its much-stated number 1 priority for taking Scotland forward in this new century, I urge the Executive to consider carefully the negative impact that the bill will have on jobs in Scotland. As it is, jobs are being lost because of high business rates, excessive water charges and poor infrastructure. Today, I urge the Executive to take a step back before it inflicts another burden on businesses and business development in Scotland.

16:01

Mr Alasdair Morrison (Western Isles) (Lab):
Before I turn to the substantive issues in the bill, I would like to make an observation. At decision time yesterday, Donald Gorrie made a valid observation when he commented on the little time that is given to some stage 3 debates but not to all. Today's business is a valid illustration of his point. Although I do not want to devalue any of the speeches that have been made across the parties in the chamber this afternoon, I am certain that the debate could have been conducted perfectly adequately in 60 minutes. However, decisions regarding time that is allocated to debates and the progress of legislation are not, thankfully, matters for members today, so the minister's assurance that bureaucracy will be kept to a minimum is certainly important.

Sarah Boyack was right to state the importance of proving the environmental impact of our policies. She was absolutely right to maintain that there is no room for assumptions and that we must have a robust and properly accredited system to make those decisions and to define categorically the impact of potential policies.

Other members mentioned concerns that have been expressed by local authorities through COSLA during our evidence-taking sessions. There is no doubt that there is a need for clarity, but there is also a need for flexibility in approach and attitude, which will require support from the Executive during the process of change. Again, that will be provided by the gateway, where general advice will be available. The gateway will also be a liaison point for the responsible consultation authorities.

Maureen Macmillan raised an important point about issues of clarity in certain sections of the bill. I have every confidence that, during the legislative journey that the bill has now embarked on, those sections will be made clearer; it will become clearer to everyone exactly what they mean. I can cite the example of the Ministry of Defence in relation to the bill, which was clearly explained. A question was lodged by Richard Lochhead and the answer was understood by everyone, with the exception of the Green party and Mr Mark Ruskell, the committee's eminent deputy convener.

Other issues relating to resourcing and training have been mentioned by many members. Those issues were also raised in committee meetings as areas of concern. Maureen Macmillan said that she had left the minister with a list of things to do. As she said, I am sure that he will oblige. The bill is eminently sensible and worthy of our support.

16:05

Rosie Kane (Glasgow) (SSP): If we have learned anything during recent decades, it is that our environment is precious and fragile. There can no longer be excuses for allowing our environment or ecosystem to take a battering. We should all remember that we are part of the environment and ecosystem. Human beings are not separate from the environment; we are one with it. However, our footprint on the planet is often the darkest and most abusive and that is to our detriment, our shame and our danger.
Several years ago, the First Minister was photographed in his wellies and hard hat, standing in a landfill dump. He promised that the Scottish Parliament would deliver environmental justice, and so it should. The Scottish Parliament has the power to make the world that we live in safer, and to ensure that we, as custodians of the planet, leave it in a better state than it was in when we found it. Sadly, however, we have not done that and our environment is under attack. Often, we have not had the tools at our disposal to resist attacks on our environment, and the fall-out from that means that the people are excluded, local expertise is missing, and we pay the price by living with poison.

We must welcome a bill that will ensure that environmental assessment takes place and we should support any measure that backs up the First Minister’s promise to deliver environmental justice. However, if there are holes in the bill, it might not be worth the recycled paper on which it is written. Concerns about the pre-screening provisions in section 7 have been well rehearsed, but I will highlight some of them. I am intrigued by section 7 and suspect that some of its provisions will allow people who want to cop out of their responsibilities to the community and the environment to do just that.

Everything that we do has an impact on the environment: in this chamber the paper that we use, the water that we drink and the light and sound system that we use all impact on the environment, as do the Holyrood building and the traffic that it attracts and displaces. When we work out what that impact is, we will be able to make sensible decisions about what is best for the environment, our health and the safety of our children in the long term. Any plan or proposal should be subject to environmental assessment. It is not rocket science and the more we do it the better we will get at it. Environmental assessment should be the norm; it should never be the exception to the rule.

However, I fear that private companies that throw up housing and other developments in and around our communities might use section 7 to find a way out of having to carry out environmental assessment. Let us face it: private companies are in business for long-term profit, so they generally put profits before people and the planet, and are more likely to seek short cuts and turn their backs on the environmental impact of their projects. Private companies build homes in the community in which I live that often have two car-parking spaces in bays below or near the building. Residents’ cars soon fill up the bays and the streets soon fill up with cars. There are often three cars per family.

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): Does Ms Kane accept that under existing legislation such housing developments are required to undergo environmental impact assessment?

Rosie Kane: We want to ensure that that is and continues to be the case, but it has not always been the case. In Govanhill, the people were not heard and a development took place next to the McDonald’s drive-through that had a detrimental impact on the community. When we legislate, we must ensure that the bill is clear and that people have access to it and can shape it. That is why the bill must ensure that planners must plan in favour of the environment. However, ambiguity around pre-screening could create loopholes, which must be avoided.

The bill does not mention private companies. We need to hear more about private finance initiative, public-private partnership and design, build, finance and operate projects. If a private company receives the gift of the opportunity to build a school or hospital, will the project be subject to environmental assessment across the board? Members should not forget that such companies are in business for long-term profit, so the environment is usually the last thing on their minds. Where in the bill is that matter addressed? Will the relationships between business, councils and the Executive give chancers the opportunity to smash and grab without being accountable to local people or the global environment? The devil is in the detail, but the bill has a shortage of detail on such concerns. I say to the minister that we cannot simply hope for a good deal here; we must have an absolute guarantee.

The members on the Tory benches who were griping about the cost of assessing environmental impacts should concern themselves with the cost of projects such as the M74 northern extension, which will have a negative impact on the environment and will cost well over £500 million.

We cannot allow the opportunities of the Environmental Assessment (Scotland) Bill to be lost because of a lack of clarity. I will welcome the bill as long as it has teeth—teeth that can protect our communities and teeth to bite those who would damage our communities. The Scottish Socialist Party broadly supports the bill, but only if we can be given three guarantees today. First, will the minister guarantee that private companies, private enterprise and private money will never be exempt from the environmental assessment process? Secondly, will the minister guarantee that pre-screening will happen in the full light of public accountability and be carried out by an independent and publicly accountable arbiter? Lastly, will the minister guarantee the removal of the nonsense of the Executive playing both poacher and gamekeeper in disputes? All disputes should be dealt with by an independent and publicly accountable arbiter. The minister should
put those teeth in the bill and show the communities of Scotland that he is truly committed to environmental protection.

Karen Gillon (Clydesdale) (Lab): This is not a bill that filled me with tremendous excitement at the beginning of the process, and I have to confess that I did not spend my time off sick watching the committee's deliberations. It is nonetheless an important bill.

I begin by thanking the committee's clerking team and the bill team, which have provided us with some very useful information. I especially thank the staff of the Scottish Parliament information centre, who have provided helpful briefings that have helped us all to understand the bill better.

I agree with my colleague Maureen Macmillan: a number of questions remain unanswered, so we will need clarification before stage 2.

Scotland is at an environmental crossroads; we have identified what we need to do, so all that is left for us is to get on with doing it. Recently, the Environment and Rural Development Committee published its report on its inquiry into climate change. Among the many recommendations in the report was one that identified the need for the Executive to champion a change in business culture so that Scotland can take advantage of huge opportunities to meet environmental targets. It is therefore somewhat disappointing that the Conservatives and their friends in big business have continued to bury their heads in the sand, rather than consider the opportunities that the bill might present.

John Scott: Will the member take an intervention?

Karen Gillon: Hang on—I will take an intervention in a minute.

For too long, communities such as the one that I represent have paid the price of businesses not being asked to address environmental concerns adequately, and the price of the impacts of work that those businesses undertake. It is no accident that there are a number of coal bings in my constituency. No one wants to take responsibility for them, and no one wants to take responsibility for removing them. Under the proposals in the bill, I hope that such situations will not be allowed to happen in any future industrial developments in constituencies such as mine.

John Scott: Does Karen Gillon consider that Scottish Water and Scottish Enterprise—which have also expressed concerns about the bill—fall into the category of private businesses?

Karen Gillon: What we need is a change of attitude. People have to begin to take such issues seriously, rather than continuing to pretend that they are not happening and that somebody else will pay for them somewhere along the line. It is about time businesses started to pick up the tab for the environmental damage that they have caused to far too many communities for the sake of profit. I seldom agree with Rosie Kane, but on this occasion I probably do.

There is no doubt that strategic environmental assessment is a forward-looking process that has been designed to guarantee that before certain strategic decisions are made, their environmental implications are taken into account. It will allow us to identify, predict and weigh up the environmental impacts of proposals and to find feasible alternatives to existing plans. We will be able to compare proposals to find out which are the most sympathetic to the environment.

That said, I have some concerns about the implementation of SEA. For example, I am worried that COSLA is not fully prepared for its introduction. As members would expect, the Environment and Rural Development Committee has discussed the bill and it was during those discussions that implementation and pilots came up. I was uneasy about the lack of work that local authorities had done to prepare their staff for the bill's introduction. Although we are in the middle of one of the biggest school-building programmes the country has seen, the evidence that the committee received suggests that local authority education departments, in particular, have done little to use the process to carry out any strategic environmental assessment of that major development programme.

In a local authority context, the bill is not just about planning departments, which are already engaged in the process. It is about staff throughout authorities taking responsibility for strategic environmental assessment. In that regard, I ask the minister what plans the Executive has to provide training to key staff in local authorities and other agencies so that they can go back and train their colleagues.

I welcome the pathfinder initiative, which is a step in the right direction, but I have a final question about consultees' ability to comment on human health and population issues, on which there could be a gap. More needs to be done in determining how best plan owners will be able to assess the impact of their plans in respect of human health and population matters.

I welcome the bill and hope that members will support it at stage 1. Although there will be room for significant amendment at stage 2 to provide further clarification, I think that, all in all, we are going in the right direction.
The Deputy Presiding Officer (Murray Tosh): We come to the closing speeches. At this stage, we are 13 minutes ahead of the clock.

16:17

Nora Radcliffe (Gordon) (LD): I say at the outset that the Liberal Democrats support the bill, which seeks to put environmental awareness at the heart of decision making. If I were to sum up the bill at this stage, I would say that it is trying to do the right thing in the right way and that it has wide support in principle.

No organisation that was planning any action would dream of doing so without examining the financial options and implications of that action. Organisations automatically review the personnel and social implications of any proposed action; if the bill succeeds, it will become just as automatic for them to give proper consideration to the environmental implications of a proposed course of action. Not evaluating the environmental cost of a proposal will become as unthinkable as not evaluating its monetary cost.

That SEA is the right way to go is sharply underlined by the mess that we make when we do not count the environmental costs of what we do. However, if we do not do the right thing in an inclusive and transparent way, the system will not work. The strong emphasis on consultation and involvement in the process is what will make SEA effective.

What came through in the evidence that the committee took was support for the principle of SEA, awareness of the need for buy-in and concerns about clarity, capacity and resources. Unlike John Scott, I consider that to be healthy. Respondents understand that the process will involve effort and they want to get the system right by recognising the long-term benefit that will be delivered. John Scott appeared to miss the underlying support that exists for the proposed measures.

Organisations were unclear about which bodies would be required to undertake SEA, which of their activities would be included, how their staff would cope and whether the estimates on the financial implications were accurate.

John Scott: If there is such huge underlying support for the bill, why is it that the parts of the report that are highlighted are those that emphasise the caution and apprehension that bodies such as Scottish Water and Scottish Enterprise have expressed?

Nora Radcliffe: The reason is that those parts of the report relate to bits of the bill that we need to fix. The underlying support exists and we do not need to worry about that, but we have to get the bill right to deliver what people want. That explains the concentration on those elements.

The committee felt that it might be helpful to have what one might describe as worked examples to clarify who needs to assess what and especially, as a number of people have said about the public-private interface, to clarify the interrelationships between strategic environmental assessment and environmental impact assessment, and to give clearer understanding of what the words “minimal” and “significant” will mean in practice.

A number of people pointed out that what will make the bill effective is a culture change that will need strong leadership from the Executive. One of the ways in which the committee envisaged that culture change being delivered was for the Executive to take responsibility for developing training packages that could be adapted to the requirements of other organisations. Although I welcome the provision of training and training materials referred to in the minister’s speech, I agree with Sarah Boyack’s comments, which were underlined by Karen Gillon and Maureen Macmillan, about the support that will be needed to implement the bill as we would like.

Rosie Kane passionately advocated across-the-board application of environmental impact assessment. However, if one tries to crack every nut, one is in danger of missing the real target. Many strategies, plans and programmes will have little or no impact on the environment so it is important that we target those that will have significant environmental impacts. The pre-screening and screening processes will be important in prioritising the plans, programmes and strategies that are to be assessed.

A register of any plans, policies and strategies that are screened out would serve three purposes. First, it would head off any attempts to evade strategic environmental assessment where it should be applied. The second purpose concerns transparency and the third is that such a register would give examples for comparison—a way of benchmarking that could be shared with and used by all bodies in the process.

A number of people have mentioned the gateway team that is to be based in the Scottish Executive, and how that team will be key to smooth operation of the whole process. I accept the minister’s arguments about the need for flexibility and the capacity for evolution of that administrative team, but there is still a discussion to be had about whether it should be protected in the long term by being included in the bill. There will be a lot of discussion about that.

On resources, the pathfinder projects’ progress over the summer should help our assessment of
the likely accuracy of the current cost estimates of strategic environmental assessments. Those should be used to revise estimates, if necessary, and it should be remembered that very often, one may spend to save and that getting environmental assessment right at strategic level will be to the benefit of everything that happens thereafter.

I totally agree with Sarah Boyack that this is all about better-quality decisions. That was underlined by Karen Gillon’s example of some of the missed opportunities in the current school-building programme.

We talk about sustainable development that balances economic, social and environmental issues. Strategic environmental assessment will ensure that the third leg of that sustainable development stool is the same length as the other two. That can only be a good thing. The bill will be a good one. A lot of work is yet to be done on it, but I commend the principles of the bill to the Scottish Parliament.

16:24

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I do not think that I will be able to take up the 20 minutes that might be available to me, but I will try to speak a little more slowly than usual in an effort to help out the Presiding Officer.

I am sorry to say to Sarah Boyack—and I got her name right—that if she was as disappointed as she said she was by Alex Johnstone’s speech, I fear that I will be taken off her Christmas card list, if indeed I am on it. It is the duty of Opposition to hold Government to account. I am disappointed in members who have belittled our contributions when they said, as Mark Ruskell did, that we seek to drag down standards. I do not accept that. It is absolutely legitimate for us to draw attention to concerns that have been put to the committee and are still felt. Sarah Boyack herself mentioned the distance between the concerns of practitioners and the aspirations of those who are guiding the legislation. All that we seek to do is to highlight the perfectly legitimate concerns that have been raised not by big business, as Karen Gillon suggested, but by government agencies and bodies. I cannot accept that it is wrong of us to do so.

I have always been a firm believer in the motto, “If it ain’t broke, don’t fix it.” It seems to me that we are in severe danger of trying to fix something that works reasonably well at the moment. My suspicions are heightened by an apparently throwaway line in the conclusion of the committee’s report. Paragraph 119 says that the committee was struck by the fact that there was substantial support for the bill from witnesses “with the exception of one or two witnesses raising concerns about the possible effect of additional, unnecessary regulation”.

I find that rather worrying. In this day and age, surely we should take concerns about unnecessary regulation extremely seriously. However, the committee seems to have rather brushed aside those concerns.

Christine May (Central Fife) (Lab): Does the member recognise that another committee of this Parliament has been examining the issue of regulation—the need for it, the adequacy of it and some of the arguments about gold plating that relate to it? Does he accept that the fact that the Subordinate Legislation Committee is conscious of the matter that he raises demonstrates that the issue is being addressed?

Alex Fergusson: I hear what the member says and I recognise the work of the Subordinate Legislation Committee. However, I will explain why I have little faith in that work bearing fruit. The bill that we are discussing is being furthered by the department that despite, in the early days of the Scottish Parliament, establishing a committee to cut out unnecessary red tape and bureaucracy in the agriculture industry has presided over an inexorable rise in those same burdens to unprecedented levels. The Scottish Executive is not an Administration that is well known for minimising regulation. We should take extremely seriously any evidence from those who seek to warn us about even more of it.

To be fair, the committee’s report notes that the bill has caused

“a significant degree of nervousness amongst responsible authorities about what it will actually mean for them, in terms of financial resources and other factors such as staff capacity.”

In other words, the legislation will cost the responsible authorities a great deal of money—up to £12.5 million—that they do not have and will require work to be done by staff who currently do not exist.

No wonder that, as Alex Johnstone pointed out, CBI Scotland said that it was very disappointed that the EU directive was to be extended. It also said that it considered that the legislation was

“at odds with public statements that the economy is the Executive’s number 1 priority” and that it ran counter to commitments made by the UK Government to the business community that there would be no further gold plating of EU legislation. Despite the minister’s reassurances in that regard, it is clear that the UK Government chose to ignore the Scottish Executive when it made that statement because, as all of Scotland is beginning to realise, this Labour-Liberal Democrat Administration is proving to be the master of all
gold plating, the champion of overregulation and the instigator of levels of state interference that threaten to control almost every facet of our daily lives.

No one disputes the principle of environmental protection or environmental assessment. However, when the delivery of that noble objective is turned into a charter for consultants, which is what this legislation is in danger of becoming, the proposals should be thoroughly overhauled and amended, which is what we will seek to do at stage 2.

The legislation starts, wrongly, with the assumption that almost all plans and programmes are inherently bad for and damaging to the environment. That is not the case and, rather than subjecting every responsible authority to this cumbersome and expensive procedure, we should be seeking to ensure environmental protection with the absolute minimum of Government interference.

As Maureen Macmillan pointed out, Scottish Water talked of duplication. Further, Scottish Enterprise warned of increasing process delays and a slow-down in decision making. Rosie Kane’s speech showed accurately why such concerns are fully justified. COSLA recommended that there should be a pilot scheme to enable all the implications to be assessed. For once—uniquely, I think—I am in complete agreement with all those bodies at one and the same time. I am also in agreement with Highland Council.

Ross Finnie: Will the member take an intervention?

Mr Ruskell: Will the member take an intervention?

Alex Fergusson: I give way to the minister.

Ross Finnie: In my speech, I conceded the member’s valid point that the issues of implementation must be rehearsed. However, does he accept that not one of the litany of persons who came before the committee was able to point to any positive framework that required them to consider the environmental impact of the plans and policies that they currently produce?

The Deputy Presiding Officer: There is time to take Mr Ruskell’s intervention later if you wish, Mr Fergusson.

Alex Fergusson: Minister, I am sorry. Could I ask you to repeat your question? We have plenty of time.

Ross Finnie: I will try not to ask another question, Presiding Officer. We are craving your indulgence.

The member mentioned the litany of persons who gave evidence to the committee and he pointed out, properly, that there may be difficulties and that explanation may be required in relation to implementation; I accepted that in my opening speech. However, can he name a single witness who pointed to any requirement for them to consider the strategic environmental impact of their current plans and policies?

Alex Fergusson: I entirely accept the minister’s point, but it does not in any way remove the real concerns of not just big businesses but government agencies and small businesses about the impact of the legislation.

Mr Ruskell: I did a while ago, but I will try to remember what I was going to say.

The member mentioned the lack of any pilot studies, but he should reflect on what Karen Gillon said. The pathfinder project, which involves local authorities and will run during the summer, will inform the development of SEA. That process is on-going, but people are implementing SEA and we have the experience from other countries. We know that the process is successful and that it saves businesses money. That must be a good thing.

Alex Fergusson: I hear what the member says, but it is COSLA, rather than me, that he needs to convince.

I mentioned Highland Council—that was so long ago that I have almost forgotten where I was. I agree with Highland Council’s blunt statement that “budget constraints will force Local Authorities to choose between delivering frontline services and meeting their statutory duty to SEA.”

However, I do not think that that is a choice. A loaded gun is being pointed by the Executive at every responsible authority on which the legislation will impact. At stage 2, we must take the finger off the trigger.

I am afraid that I have come to the end, Presiding Officer.

Richard Lochhead (North East Scotland) (SNP): I sense the trepidation in the chamber, Presiding Officer.

For perhaps the first time in my political career, I agree with Alasdair Morrison. We must do something about the way in which we manage debating time in the chamber. I recall that, last month, two committee debates were squeezed
into two and a half hours. The debate on promoting Scotland worldwide, which was sponsored by the European and External Relations Committee, was given one hour and five minutes even though the report took a year and half to compile, the subject was quite controversial and there was high demand for speaking time. I ask the Presiding Officer and the business managers to take that comment back to the Parliamentary Bureau. Two hours is perhaps a little too long for a debate such as this, despite the excellent speeches that have been made.

We can all take pride in the fact that, during the first six years of the Parliament, we have discussed, debated and legislated on environmental matters many times. Many of those who fought for a long time for the Scottish Parliament did so because they believed that the best way of looking after Scotland’s environment was to have our own Parliament here in Scotland. We argued that that would enable us to make decisions that were tailored to our needs and to look after our precious environment. In the past few years, we have made stringent attempts to mainstream environmental thinking and policy throughout all Government departments. In essence, that is what today’s debate is about.

The European Union gets a lot of bad press, most of which is perfectly justified. One area in which the EU is successful, however, is in spurring nation states and countries such as Scotland into producing environmental legislation. The reality is that EU legislation led to the bill that we are discussing today. The EU has a bad image, but we must remind people in Scotland time and again that it has been in the driving seat of environmental legislation, which we generally support.

Alex Johnstone made a bizarre speech in which he appeared to say that the bill was unnecessary and damaging but that he would vote for it.

**Alex Johnstone** indicated disagreement.

**Richard Lochhead:** I think that that is what he said; he certainly voted for the committee’s stage 1 report. If he is to vote on the bill, I suggest that he should show his true colours and vote against it. His position in the debate was pretty unclear. Some of his statements were bizarre. The bill is not about gold plating; if anything, it is about green plating—that is green with a small “g”, in case Mark Ruskell becomes excited. The bill will mainstream environmental thinking.

**Alex Johnstone:** Gold plating occurs when, after European regulation has been agreed by all member states, one member state or part thereof chooses to implement that regulation in a way that adds additional costs to its economy and its people. The bill will do that. It will make elements of our economy uncompetitive and will consequently cause difficulties for the country’s economy. That is gold plating.

**Richard Lochhead:** The member’s comments are unjustified. We are discussing environmental considerations being taken into account at the earliest possible stage of policy development.

During the committee’s inquiry into climate change, we invited several ministers to give evidence at once on how they were climate change proofing Scottish Government policies. The ministers dissembled; they could not explain how they climate change proofed their policies. That concerns me, because climate change is a huge threat to Scotland and the planet. It is clear that ministers in the Scottish Government do not really take that into account when they decide policies on a range of issues.

**Lewis Macdonald:** Does the member accept, as an example, that the flood prevention schemes that local authorities propose are specifically and precisely required to take into account the impacts, and likely impacts, of climate change?

**Richard Lochhead:** I am glad that that is happening on some matters, but it is not happening on all matters. Housing policy provides a perfect example of an area in which no account is being taken in policy development of the impact on climate change.

We must remember that the public sector accounts for more than 50 per cent of gross domestic product in Scotland. That is why it is important for the Government and public bodies to lead on environmental policy. They have a huge influence on how we treat our environment, because their expenditure is enormous. Many members referred to culture change. The culture change must happen at the root of government, so that it can spread throughout Scotland.

As many members have said, the committee’s stage 1 report describes many concerns, a lack of clarity and confusion about the bill and what it will mean when it is put into practice. As many members from different parties have said, it is important for the minister to produce as soon as possible clear illustrations of how the bill will be put into practice and what it will mean. For instance, when and how will strategic environmental assessment kick in? The confusion must be cleared up, not least for the many public bodies at the front line that will have to implement the bill.

The committee heard from Scottish Water, which said—as other members have mentioned—that it is not responsible for strategies or policies, but that it simply delivers strategies and policies that have been decided by the Scottish Government in Edinburgh. Scottish Water’s role must be clarified.
Several members referred to the resource implications for public bodies. We on the committee—I speak as a committee member as well as for the SNP—heard about concern over likely costs for local government, demands on staff time and resources and lack of training. We welcome the minister’s comment that training packages will be produced to help front-line staff to deal with assessments.

As other members and the stage 1 report said, we do not want the gateway to be short lived. We hope that it will be established more permanently, because we must ensure that the application of strategic environmental assessment is consistent. Best practice must be followed and different public bodies must not implement SEA in different ways. We must have a cast-iron result on the implications for the environment.

Several members referred to transparency. We must ensure that pre-screening reports, screening reports and all the other aspects are put into the public domain and that people can ask questions and find out information on every environmental assessment that public bodies have carried out.

Public participation is important with regard to the impact of strategies, plans and programmes on the environment. That is why it is good that the report states that the public’s response to consultations on assessments must be taken into account by public bodies that are putting together strategies.

Finally—after seven and a half minutes—I want to refer to the issue of Scotland and the rest of the UK.

Alex Johnstone: Sarah Boyack referred to the written answer to Richard Lochhead’s parliamentary question S2W-16669, and described it as a clarification of the minister’s position on nuclear power stations. Does the member accept that the answer was a clarification, or is he still confused about what the minister meant?

Richard Lochhead: I am glad that the member raised that issue, as I was just coming to it. When the committee received the answer to the parliamentary question on the implications of strategic environmental assessment for the potential to build nuclear power stations in Scotland, I thought that it clarified matters. However, the Scottish Parliament information centre has confirmed that if the UK Government issued a white paper on energy policy that included proposals to build nuclear power stations in Scotland, the strategic environmental assessment would not apply. The people of Scotland would expect an assessment to be carried out of the environmental implications of any proposal to build a nuclear power station in Scotland, as most people in Scotland would see the potential for nuclear power stations to be built here and the nuclear waste that would result from them to be a major threat to Scotland’s environment. That is why clarity is needed.

That issue goes to the heart of the matter. UK plans, programmes and policies do not have to go through the process—only Scottish plans, programmes and policies do. We cannot even get a Scottish energy policy because we do not have a Scottish strategy, and only strategies can be subjected to assessments. Despite calls from parties, non-governmental organisations in Scotland and others, we do not yet have a Scottish energy strategy, so we cannot even put such a strategy through a strategic environmental assessment.

The bottom line is that all powers over Scotland’s environment should lie with the Scottish Parliament, which could then conduct strategic environmental assessments on any issue—nuclear waste, nuclear power or whatever—that members think will impact on Scotland’s environment, even the marine environment strategy that the minister is about to bring forward. Some 80 acts—many of which are reserved to London—cover Scotland’s seas. How on earth can we propose a strategy in Scotland to protect Scotland’s seas when powers over those seas are reserved to London? All those powers should be brought to Scotland. We could then properly pass laws such as the one that is proposed and assess the impact on the environment of all kinds of policies.

That said, we support the general principles of the bill at stage 1, as we must use the Parliament’s limited powers to the best of our abilities. Once we obtain more powers, we can really protect Scotland’s environment.

The Deputy Presiding Officer: I call Lewis Macdonald to wind up the debate. In theory, he has 16 minutes, but he does not have to use them all, as the bureau has agreed that a motion without notice can be accepted to advance decision time if necessary. However, he may use the full 16 minutes if he wishes to.

16:43

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): I am as pleased as my colleagues are that I do not need to take all the time that is available. The evidence from this afternoon’s debate suggests that I will not require to use up all the time.

The bill has attracted widespread support because it will assist in protecting Scotland’s environment and will encourage public participation in doing so. [Interruption.]
The Deputy Presiding Officer: I must interrupt you, minister, because there is a lot of conversation in the chamber. I appreciate that members have arrived early for decision time, but they should listen to the conclusion of the debate.

Lewis Macdonald: The bill has attracted widespread support because it strikes the right balance between providing a robust framework for protecting the environment and keeping bureaucracy to a minimum and because of the range of support mechanisms that will be put in place to ensure effective delivery of its provisions.

There is broad support for the bill’s general principles and its overall approach, but there are issues that members have asked us to respond to. Before I deal with those matters, I want to take issue with Alex Fergusson’s claim that, like others, the Conservatives have simply raised particular concerns. In my view, there is a clear difference between the Tory approach to the bill and the constructive concerns that other members have expressed.

That takes me back to Alex Johnstone’s opening speech. I thought that Richard Lochhead did not fully understand the import of that speech, which I interpreted in a much more negative way than even he did. Mr Johnstone argued that it was a good thing that development in the past just happened, without any strategic assessment of impacts on the environment having been made—not that he mentioned the environment much. It was put to Mr Johnstone that it might be better for us to put in place public transport access to airports before they were developed, instead of having to spend the money that is required to do so afterwards. Sadly, the Conservatives were not convinced of the wisdom and prudence of that approach.

Alex Johnstone: Does the minister accept that I was trying to argue that, when resources are finite, the additional costs of strategic environmental assessment could effectively prevent development from taking place? That is my concern about the bill. [Interruption.]

The Deputy Presiding Officer: Before the minister answers, I must again call for a reasonable level of concentration and attention.

Lewis Macdonald: Mr Johnstone’s intervention further demonstrates that he is missing the point. The issue is the costs and benefits over the piece. If strategic environmental assessment is carried out first and properly, vastly more will be saved than the process of carrying out the assessment could possibly cost.

John Scott: I intervene in defence of my colleague’s comments on airports, in particular. Glasgow airport, Edinburgh airport and Prestwick airport evolved in the 1930s, usually because of the enthusiasm of people such as Lord James Douglas-Hamilton’s predecessors and Group Captain McIntyre, and they were used during wartime. At the time, those airports were never likely to be subject to strategic assessment. The minister is speaking with the benefit of hindsight.

Lewis Macdonald: I am saying that we should subject all strategic plans and programmes to environmental assessment, precisely in order that we may have the benefit of foresight, may see what will happen and may take into account environmental impacts before we begin.

I thought that Alex Johnstone provided the best example of a laissez-faire, let-it-happen attitude until I heard Mr Scott’s speech. John Scott appeared to take the view that our policy on environmental assessment should not be decided either in the Scottish Parliament or at Westminster, but should be driven only by European Union directives, and that we should do on the environment only what the European Union tells us to do. Richard Lochhead suggested that Europe has led on environmental matters and, although I do not want to detract from the contribution that it has made, I will say that Labour and Liberal Democrat members believe that we should build on what comes from Europe in order to address specific Scottish needs.

John Scott: I make it clear, for the avoidance of doubt, that I said that we should include in the bill the minimum amount of European legislation that is necessary, instead of gold plating it, which appears to be the minister’s intention.

Lewis Macdonald: However, John Scott said in his speech that we needed to pilot what we are doing in order to assess the impact of strategic environmental assessment. He missed the point that the European Union directive that was put into regulations last summer requires strategic environmental assessment to be carried out of all plans that have come forward since then. The pathfinder project that has been described allows us to make an assessment now of what the bill’s impact will be when its provisions are implemented.

Fourteen plans, programmes and strategies are subject to strategic environmental assessment at the moment. Ten are from local authorities, one is from the structure plan committee in the Clyde valley, one is from a national park authority, one is from Highlands and Islands Airports Ltd and one is from the Deer Commission for Scotland. All the assessments that are being carried out currently will precisely inform strategic environmental assessment in the future.

Alex Johnstone: So what is the bill for?

Lewis Macdonald: The point of the bill is that it extends the requirements to every plan,
programme and strategy that comes forward in the public sector. If Mr Johnstone pays more attention at future meetings of the Environment and Rural Development Committee, he will find a fuller answer to the question that he has just put to me.

Maureen Macmillan and others asked about the difference between strategic environmental assessment and environmental impact assessment. That is an important point. Strategic environmental assessment applies to strategies, plans and programmes. As I pointed out to Rosie Kane, environmental impact assessment applies to individual projects and schemes.

A number of members have referred to Scottish Water. Scottish Water exercises functions of a public character, so strategies, plans and programmes that it brings forward will be caught by the bill in the same way as those that are brought forward by other public bodies will be. That does not mean that every local scheme will be caught by the bill—those will be covered by EIAs, which already exist.

We have set out clear definitions of how the provisions will apply but, as has been said, we will ensure that greater clarification is provided where matters are still not clear to committee members. We will consider what further refinement of the provisions in the bill might be required and we will consider administrative support mechanisms. We will seek to respond to the committee’s recommendations on a number of matters, in particular the need to enable responsible authorities and their staff to adopt the change of culture that is required in how they examine issues in order to implement the bill successfully.

We want to minimise bureaucracy and ensure that there is as light a touch as possible. Because of that, we have put in place pre-screening procedures, which will be carried out by the plan owner and will determine whether a plan or programme might have a significant environmental effect. We will not require strategic assessment of schemes that will not have a major environmental effect.

Mr Ruskell: Does the minister acknowledge that, to make pre-screening robust, it is necessary to define the terms “minimal” and “significant”? Otherwise, they will become weasel words.

Lewis Macdonald: I understand the point that the member makes. I think that most people would understand fairly clearly what “minimal” means and what “significant” means, but we will use the guidance to spell that out if that is required. For example, an effect on land that is of no particular environmental value is clearly different from an effect on land that has an identified and understood environmental value. In order to improve the transparency of the process, we will consider the creation of a register of decisions that are made at the pre-screening stage, to make it clear when a project does not have to undergo strategic assessment. We will look to move to the scoping stage as quickly as possible when it is clear that an assessment will be required.

We want to use the gateway to help us to minimise bureaucracy and to implement SEA in a way that is helpful to those who are responsible for implementation. We want that to happen without the imposition of statutory or bureaucratic burdens. We want the gateway, as a body that is already working on the existing statutory SEA proposals, to be able to carry out that function.

Alex Johnstone: Mr Arbuckle suggested that we should increase the number of statutory consultees and Rosie Kane suggested that, in the longer term, we should extend the provisions of the bill to the private sector. Does the minister feel that the bill is robust enough to prevent such progressive movement? Alternatively, does he take the view that the legislation ought to be adjusted over time to include such provisions?

Lewis Macdonald: The bill makes it clear that the consultation authorities are the Scottish ministers, SEPA and SNH. That is because those authorities—in the case of the Scottish ministers, through Historic Scotland—bring to the table the expertise on environmental matters that we believe is required. It is our intention to go forward on that basis.

As I have said, we are clear about what will be covered and what will require assessment. We are also clear about who will be involved in the assessment. We want to ensure that the bureaucratic burden on those involved is kept to a minimum, but we also want to ensure that practitioners are fully aware of the requirements that are placed on them.

The UK regulations on transboundary effects, which Rob Gibson and one or two other members mentioned, provide for consultation on such effects. The results of that consultation will be taken into account in the SEA of any Scottish plan that has transboundary effects. The same will apply at UK level.

Richard Lochhead: If the UK Government were to issue a white paper proposing to build a nuclear power station in Scotland, at what stage would the bill’s provisions kick in?

Lewis Macdonald: If the UK Government produces a plan, programme or strategy that applies across the United Kingdom, the UK legislation will apply. If a plan, programme or strategy is produced that has effect only in Scotland, the Scottish legislation will apply. I hope that that important distinction was made clear earlier.
The bill will be good for the environment by providing environmental protection and helping us to tackle climate change. It will also strengthen public participation in public policy decision making. It will do all that on the basis of an effective balance between a light-touch regulatory regime and a robust enforcement and quality assurance framework. The bill is backed up by a dynamic package of support mechanisms that are designed to husband resources and to provide as much assistance as possible to all those people who are involved with the new requirements.

The principles of the bill are a key component in supporting our wider strategy of sustainable developments taking on board social, economic and environmental benefits along with greater public participation. I commend them to the Parliament.

Environmental Assessment (Scotland) Bill: Financial Resolution

16:56

The Presiding Officer (Mr George Reid): The next item of business is consideration of a financial resolution. I ask Lewis Macdonald to move motion S2M-2894, on the financial resolution in respect of the Environmental Assessment (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Environmental Assessment (Scotland) Bill, agrees to any increase in expenditure of a kind referred to in Rule 9.12.3(b)(iii) of the Parliament’s Standing Orders arising in consequence of the Act.—[Lewis Macdonald.]

The Presiding Officer: The question on the motion will be put at decision time.
The Presiding Officer: The third question is, that motion S2M-2774, in the name of Ross Finnie, on the general principles of the Environmental Assessment (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Baliance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eddie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Graham, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kane, Rosie (Glasgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Leckie, Carolyn (Central Scotland) (SSP)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
The result of the division is: For 93, Against 0, Abstentions 15.

Motion agreed to.

That the Parliament agrees to the general principles of the Environmental Assessment (Scotland) Bill.

The Presiding Officer: The fourth and final question tonight is, that motion S2M-2894, in the name of Tom McCabe, on the financial resolution in respect of the Environmental Assessment (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)

Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kane, Rosie (Glasgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Leckie, Carolyn (Central Scotland) (SSP)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothian) (Ind)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulgillan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)

Against
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabian, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Ingram, Mr Adam (South of Scotland) (SNP)
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Lamont, Johann (Glasgow Pollok) (Lab)
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Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Margo (Lothian) (Ind)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulgillan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
The result of the division is: For 93, Against 0, Abstentions 16.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Environmental Assessment (Scotland) Bill, agrees to any increase in expenditure of a kind referred to in Rule 9.12.3(b)(iii) of the Parliament’s Standing Orders arising in consequence of the Act.
Environmental Assessment (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 5 Schedule 1
Section 6 and 7 Schedule 2
Sections 8 to 14 Schedule 3
Sections 15 to 25 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Maureen Macmillan

12 In section 2, page 2, line 3, leave out subsection (4)

Rosie Kane

3 In section 2, page 2, line 9, at end insert—

<( ) any private body exercising functions of a public character;>

Alex Johnstone

21 In section 2, page 2, leave out lines 10 and 11

Section 3

Rosie Kane

4 In section 3, page 2, line 16, at end insert <; and

( ) Scottish Environment Link>

Rosie Kane

5 In section 3, page 2, line 16, at end insert <; and

( ) Health Scotland>

Rob Gibson

14 In section 3, page 2, line 16, at end insert <; and

( ) where the environmental effects of a plan or programme are likely to include transboundary effects, any other person, body or office-holder with expertise on such transboundary effects as may be specified by the Scottish Ministers by order>
Mr Mark Ruskell
15 In section 3, page 2, line 16, at end insert ‘; and
( ) any other person, body or office-holder as may be specified by the Scottish
Ministers by order>

Section 4

Mr Mark Ruskell
10 In section 4, page 2, line 32, leave out ‘national defence or’

Mr Mark Ruskell
11 In section 4, page 2, line 32, after ‘defence’ insert ‘(but only where the plan or programme is
essential to national security and the maintenance of operational capability)’

Rosie Kane
6 In section 4, page 2, leave out line 34

Section 5

Mr Mark Ruskell
16 In section 5, page 3, line 7, leave out ‘7(1) or’

Maureen Macmillan
13 In section 5, page 3, line 26, leave out from ‘as’ to ‘2(4)’ in line 27

Section 7

Rosie Kane
7 In section 7, page 4, line 9, leave out from ‘or’ to end of line 10

Rhona Brankin
1 In section 7, page 4, line 11, at end insert—
<( ) If a responsible authority is of the opinion described in subsection (1), it shall notify the
consultation authorities of that fact as soon as practicable.>

Mr Mark Ruskell
17 In section 7, page 4, line 13, at end insert—
<( ) If a responsible authority is of the opinion described in subsection (1), it shall publish a
statement of how the criteria specified in schedule 2 were applied in reaching that
opinion.>
Mr Mark Ruskell
18 Leave out section 7

Schedule 2

Rosie Kane
8 In schedule 2, page 20, line 22, at end insert <; and
   ( ) national environmental targets on emissions and recycling>

Mr Mark Ruskell
22 In schedule 2, page 20, line 22, at end insert <; and
   ( ) national environmental targets>

Nora Radcliffe
23 In schedule 2, page 20, line 35, after <recognised> insert <local,>

Section 8

Mr Mark Ruskell
19 In section 8, page 4, line 22, leave out from <which> to end of line 23

Mr Mark Ruskell
20 In section 8, page 4, line 32, at end insert—
   <( ) The Scottish Ministers may by order modify schedule 2.>

Section 9

Rosie Kane
9 In section 9, page 5, line 11, leave out <the Scottish Ministers> and insert <an independent body>

Section 14

Rhona Brankin
2 In section 14, page 7, line 9, leave out <any>

After section 19

Mr Mark Ruskell
24 After section 19, insert—
PART
STRATEGIC ENVIRONMENTAL ASSESSMENT GATEWAY

Strategic Environmental Assessment Gateway

(1) The Scottish Ministers shall designate a person or persons to operate an office (to be known as the “Strategic Environmental Assessment Gateway”) to act as a central access point to co-ordinate environmental assessment activities and to carry out the functions specified in subsection (2).

(2) Those functions are—

(a) to prepare and maintain a public, internet-based register of environmental assessments;

(b) to provide advice and guidance on matters relating to environmental assessment;

(c) to act as an arbiter in disputes relating to environmental assessment;

(d) to audit the quality of—

   (i) environmental reports prepared under section 14; and

   (ii) the monitoring referred to in section 19(1);

(e) to co-ordinate the monitoring of activities relating to environmental assessments and the monitoring of activities referred to in section 17; and

(f) to make recommendations to the Scottish Ministers as to additional persons, bodies or office holders who should be specified as consultation authorities under section 3.

Before section 20

Nora Radcliffe

Before section 20, insert—

<Annual report on implementation of the Act

The Scottish Ministers must, as soon as practicable after the end of each calendar year, lay before the Parliament a report summarising action taken during the year by the Scottish Ministers, the consultation authorities and the responsible authorities for securing compliance with the requirements of this Act.>
Environmental Assessment (Scotland) Bill

Groupings of Amendments for Stage 2

Responsible authorities to which section 5(4) applies
12, 3, 21, 13

Consultation authorities
4, 5, 14, 15

Plans and programmes to which the Bill applies - defence
10, 11

Plans and programmes to which the Bill applies – financial or budgetary plans and programmes
6

Pre-screening
16, 7, 18, 19, 20

Pre-screening - procedure
1, 17

Criteria determining likely significant effects
8, 22, 23

Screening – settlement of disputes
9

Preparation of environmental reports
2

SEA Gateway
24

Annual report
25
Environmental Assessment (Scotland) Bill: The Committee considered the Bill at Stage 2.

Amendment 2 was agreed to (without division).

The following amendments were disagreed to by division:

Amendment 3  (For 3, Against 6, Abstentions 0)
Amendment 21 (For 1, Against 8, Abstentions 0)
Amendment 5  (For 3, Against 6, Abstentions 0)
Amendment 14 (For 3, Against 6, Abstentions 0)
Amendment 15 (For 3, Against 6, Abstentions 0)
Amendment 10 (For 2, Against 6, Abstentions 1)
Amendment 11 (For 3, Against 6, Abstentions 0)
Amendment 6  (For 3, Against 6, Abstentions 0)
Amendment 16 (For 2, Against 7, Abstentions 0)
Amendment 7  (For 4, Against 5, Abstentions 0)
Amendment 18 (For 2, Against 7, Abstentions 0)
Amendment 8  (For 1, Against 6, Abstentions 2)
Amendment 9  (For 3, Against 6, Abstentions 0)
Amendment 24 (For 3, Against 5, Abstentions 1)

The following amendments were moved and, with the agreement of the Committee, withdrawn: 12, 4, 1 and 25.

The following amendments were not moved: 13, 17, 22, 23, 19 and 20.

Sections 1, 2, 3, 4, 5, schedule 1, sections 6, 7, schedule 2, sections 8, 9, 10, 11, 12, 13, schedule 3, sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and the long title were agreed to without amendment.
Section 14 was agreed to as amended.

The Committee completed Stage 2 consideration of the Bill.
Environmental Assessment (Scotland) Bill: Stage 2

10:31

The Convener: Item 2 is the substantive issue for today’s meeting—stage 2 of the Environmental Assessment (Scotland) Bill. I welcome Rhona Brankin, the Deputy Minister for Environment and Rural Development, to her first committee meeting as minister. We also have with us Scottish Executive officials. It is a while since we have dealt with a bill at stage 2 and, given that the committee has also been reshuffled, I will just remind people of what we have in front of us and how I intend to take us through the bill.

Members should have in front of them a copy of the bill as introduced and the marshalled list of amendments, which was published on Tuesday. They should also have the procedural supplement to the marshalled list, which gives the groupings of the amendments. The clerks have spare copies of all those papers.

The amendments have been grouped on my authority to try to facilitate intelligent debate, but the running order is set by the rules of precedence according to the marshalled list. Members will have to juggle between the two papers. The procedural supplement sets out the amendments in the order in which we will debate them today, but all the amendments will be called in strict order from the marshalled list; we cannot go backwards and forwards through the list.

I have set the target of completing stage 2 consideration of the bill today. On the strength of the number of amendments that have been submitted, I believe that that is entirely possible, but we will see how we get on.

There will be one debate on each group of amendments. I will call the member who has lodged the first amendment in each group to move the amendment and to speak to the other amendments in the group. Members who are not proposers of amendments in a group will get to speak if they indicate their wish to do so and catch my attention. I will then ask the person who moved the first amendment in each group to wind up. If the deputy minister is not that person and she has something to say that would help the debate, I will hear from her before the final person sums up. Only committee members are entitled to vote.

Before we started this morning, someone asked me about the status of Rosie Kane’s amendments. Rosie Kane submitted her amendments before she was suspended from the Parliament for September. The amendments are therefore on the marshalled list, they are competent and any
member is entitled to move them. I have heard that Tommy Sheridan is here to move them. The amendments do not all have to be moved; if they are not, we can just proceed to the next amendment.

After we have debated the amendments, we have to decide whether to agree to each section of the bill. If someone wants to raise an issue of principle, we can have a short debate on each section.

As there are no questions and no clarification seems to be required, we will move on.

Section 1 agreed to.

Section 2—Responsible authorities

The Convener: The first group of amendments deals with the responsible authorities to which section 5(4) applies. Amendment 12, in the name of Maureen Macmillan, is grouped with amendments 3, 21 and 13. If amendment 12 is agreed to, amendments 3 and 21 are pre-empted.

Maureen Macmillan (Highlands and Islands) (Lab): Amendment 12 has been lodged to clear up confusion, although it might be only in my mind that there is any confusion. It seems that the intention that public functions being carried out by private bodies are covered by the bill is dealt with in part of the bill but not in other parts. Having said that public, sorry, that private—

Sorry, can I start again? You can see how confused I am.

Section 2(1) gives a definition of a responsible authority, which applies as long as a plan that the authority is preparing falls within section 5(3) of the bill and is covered by European directive 2001/42/EC. However, section 2(4) defines a smaller group of bodies that will be required to provide strategic environmental assessment for all their plans and programmes. We asked the minister about that point during the stage 1 debate and when he gave evidence to the committee. He seemed to give the impression that the bill would cover the private sector when organisations were developing plans as part of regulated activity.

I am not exactly sure what is meant by “regulated activity” and private and public bodies are still not sure what to expect from the bill. For example, Highlands and Islands Enterprise noted that a lot of its work is delivered through private bodies and wondered whether the SEA provisions would apply to those bodies if they were not delivering programmes under the European directive. Similarly, Scottish and Southern Energy plc wondered whether an SEA would have been required for the Beauly to Denny line. We still seem not to be terribly clear about what the bill will cover.

Amendment 13, which is a consequential amendment, has been lodged because section 2(4) seems to exclude private bodies entirely and I think that they should not be excluded. I am looking for the minister to give us some criteria for situations in which a private body is undertaking public works. What, exactly, are regulated public works and how can we know when to expect an SEA from a private body?

I move amendment 12.

The Convener: Does any member want to speak to amendment 3 in place of Rosie Kane?

Tommy Sheridan (Glasgow) (SSP): If I start talking about council tax abolition, just shut me up. Given the past few weeks, I might get confused.

The point that Maureen Macmillan has made has illustrated the fact that there is confusion over what initially started out as a broad definition of who would come under the proposals in the bill and would, therefore, be required to make a strategic environmental assessment. It appears that the bill starts out broad but ends up narrow, effectively excluding private companies from the requirement. Amendment 3, in the name of Rosie Kane, tries to clarify the situation and ensure that the bill will apply to any private body that is exercising functions of a public character. I think that runs with the general thrust of the bill and I therefore hope that the amendment is accepted.

Alex Johnstone (North East Scotland) (Con): In the stage 1 debate before the recess, I made it clear that I would attempt at stage 2 to move against any measure that sought to extend the powers already conferred under the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258), which came into force in July last year. In trying to find a place to insert such a change, I had to explore one or two possibilities. My first inclination was, on advice, to seek to remove section 5(4)(a). I understand that the decision of the convener on removing that paragraph was—if it was reported accurately—that such a move would take out more than 50 per cent of the effect of the bill. I accept and respect that decision, but it indicates the extent to which the bill seeks to extend the powers in the initial regulations. It is therefore my concern to ensure that we try to prevent further gold plating or extension of the regulations beyond what was required originally when they were passed last year.

My amendment 21 seeks to remove section 2(4)(f). The reasoning behind it is to seek to prevent the further extension of the bill beyond what it will already cover. That is a reasonable thing to attempt, given that the paragraph gives ministers the power to extend the scope of the bill to
Paragraph (f) is therefore extremely open ended and will have the effect of allowing the minister to do anything that he or she sees fit. Although I have complete trust in the existing ministers not to abuse such a power, the nature of the Parliament is such that, at any time in the future, the provision could simply be a loaded weapon for others to use. I seek to amend the bill by removing section 2(4)(f).

Mr Mark Ruskell (Mid Scotland and Fife) (Green): I support amendments 12 and 13 in the name of Maureen Macmillan and amendment 3 in the name of Rosie Kane, which try to do broadly similar things. It is important that where private bodies are undertaking the functions of a public character they are covered by the bill and that the bill should not be constrained to a narrow definition of regulatory activity. I think that it is the minister’s intention to capture the public actions that private bodies are undertaking, but we need clarity from her on that.

On amendment 21, I believe that we will need flexibility under section 5(4). Ministers will need to clarify in the future exactly what a responsible authority is and they may well seek to extend the list of the responsible authorities that they specify. I will not support amendment 21, but I will support amendments 3, 12 and 13.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): I will speak to amendments 12, 3, 21 and 13. The consequences of the amendments are complex, but I will attempt to highlight the most important effects and respond to some of the questions that members asked.

I will focus initially on amendments 12 and 13. I saw no representations during the consultations or committee evidence sessions seeking the removal of section 2(4) and therefore judge that there is no indication of general support for the amendments. The committee stage 1 report picks up the issue of responsible authorities more generally. The response was clear then, as it has been throughout the life of the bill. The bill has always been intended only to lay its additional provisions on the Scottish public sector and it has always been the intention to retain flexibility to extend coverage in the light of experience.

To remove all section 2(4) at a stroke would mean that the extended provisions that are set out in section 5(4) would apply to all United Kingdom public authorities and private companies that exercise functions of a public character; the provisions would apply when those authorities and companies developed plans, programmes or strategies solely for Scotland that were not required by legislative, regulatory or administrative provision.

Concerns have been expressed about the national grid, for example. The bill covers a wide range of plans that are the responsibility of private bodies that exercise functions of a public character where they relate solely to Scotland. Important strategic-level plans will therefore not avoid due scrutiny through SEA.

10:45

The amendments would place additional SEA responsibilities on private companies with functions of a public character that are more extensive than SEA provisions elsewhere in the UK, which would mean that private companies that operate in Scotland would not be on a level playing field regarding SEA provisions with others that operate elsewhere in the UK.

I want to make it absolutely clear that, in opposing amendments 12 and 13, I do not entirely dismiss the notion that the list of responsible authorities at section 2(4) may be extended. That is important. Indeed, the Executive has already opened the way for due consideration of an extension of section 2(4) by including order-making powers at section 2(4)(f) for Scottish ministers to extend the list of responsible authorities at section 2(4). The policy intention is not to make any hasty extension but to propose extension to the list in the light of the early years of operation of the new SEA provisions. Such an approach would require consultation and negotiation with public bodies for any additional inclusions and would be subject to consideration by the Parliament.

The provisions have been laid out in public for some months and extending the list at this time to bodies that have not been consulted about the additional functions would be highly problematic. The power to extend in a measured way the bodies that are covered is in place and I hope that that more measured approach, which will avoid unfortunate impacts on private companies, will be recognised as the wisest route forward. I seek to reassure Maureen Macmillan on that matter.

I turn to amendment 3. The bill provides that, for their private business, all private companies’ strategies, plans and programmes are excluded from SEA. The only instance in which a private company may be subject to SEA is where it is exercising functions of a public character—that is made clear in section 2(1). As a result, the provisions of the bill will apply only when a private company is preparing a plan or programme that is required by legislative, regulatory or administrative provision and is doing so in exercise of a function of a public character.
The effect of amendment 3 would be to apply the provisions of the bill to any plans that are brought forward by private bodies exercising functions of a public character that did not arise as a result of a legislative, regulatory or administrative requirement. In itself, that is a highly unlikely scenario. The amendment would, in the unlikely event of its ever applying, place an additional burden on private sector firms that operate in Scotland. I consider that the bill’s scope of application is sufficient and that the attempt to burden the private sector by the back door is unhelpful and should be resisted.

It is clear to me that amendment 21 does not reflect the majority view within or outwith the Parliament, because it seeks to restrict the application of section 5(4) of the bill to the bodies that are already listed. The power at section 2(4)(f) allows for additions to the list of responsible authorities at section 2(4). The power is included as a practical provision that may be used if it becomes clear through experience, consultation and negotiation that additions to the list at section 2(4) would be useful, logical and appropriate. Additions to section 2(4) cannot reasonably be made until after the emergence of evidence from the operation of the environmental assessment regime and the power will provide an opportunity to respond appropriately to any need for additions that emerge over time.

I ask the committee to resist the amendments.

The Convener: As no other member wishes to speak, I ask Maureen Macmillan to wind up.

Maureen Macmillan: I am somewhat reassured by what the minister has said. The Executive’s intention that private bodies will be involved in SEA is now clearer. I do not want to overburden the private sector, but we need a steer on the extent to which private sector companies will be drawn into SEA. I note that the minister said that experience will show which private bodies the regime might apply to. I still have some questions about the issue in my mind, but I am prepared to study in the Official Report what the minister said. If I still feel that there is a problem, I will wait to pursue it at stage 3, rather than continuing with my amendment today.

Amendment 12, by agreement, withdrawn.

Amendment 3 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST
Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 3 disagreed to.

Amendment 21 moved—[Alex Johnstone].

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)

AGAINST
Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Rob (Highlands and Islands) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 21 disagreed to.

Section 2 agreed to.

Section 3—Consultation authorities

The Convener: Amendment 4, in the name of Rosie Kane, is grouped with amendments 5, 14 and 15.

Tommy Sheridan: I will stand corrected if I am wrong, but I believe that the idea of who should be the consultation authorities was not one of the questions in the original consultation document. Although I do not wish to question the bodies that are already named in the bill, I question their ability to represent all views about human health, local community complaints and other issues that will inevitably arise in the course of disputes.

Amendments 4 and 5 therefore seek to strengthen the list of consultation bodies to provide wider representation of the various issues that will inevitably arise. The credibility of Scottish Environment LINK and NHS Health Scotland speaks for itself as regards the ability of those organisations to articulate wide-ranging community and health-based concerns. I do not think that that question was part of the consultation, but I might be wrong. If it was not, it
should have been because it would have allowed a wider level of support to broaden the list of statutory consultees.

I move amendment 4.

The Convener: I call Rob Gibson.

Rob Gibson (Highlands and Islands) (SNP): I am sorry—I wanted to speak to amendment 14, which I will do in due course, unless you are to deal with that amendment next.

The Convener: I was inviting you to speak to amendment 14.

Rob Gibson: Pardon me—I will do that.

The Convener: You were next on my list, so you can take the floor. You may also speak to other amendments in the group.

Rob Gibson: I will speak only to amendment 14. As I said in my speech in the debate on 16 June, environmental justice involves questions about consultation and subjects other than those that are listed in the bill. We are about to debate health and the impacts on the population, but transboundary effects are also important.

As the bill concerns strategic environmental assessment, we hope that the Scottish Government will approach amendment 14 sympathetically. The amendment would give ministers the power to specify by order other bodies that might be consulted under section 3, with a view to remembering that what we do to the environment here can have effects in other countries. The example that I gave in the debate was of acid rain that fell on Norway. The Norwegians might want to have a say about that.

I expect us to be a much cleaner country in future, but we should nevertheless take account of transboundary effects of how we act. I hope that the amendment can write that into the bill, because the issue would allow the Executive to consult outwith the country’s boundaries. Consultation could be with England and Wales or with Northern Ireland.

It is also useful to note that strategic environmental assessment in the Nordic countries is dealt with through a network that compares information. Those countries have different standards from us, but England will have different standards from us, too, so it is important to open that route and seek the Executive’s support for such consultation as a possible means to include people from beyond Scotland’s boundaries. I will be happy to move amendment 14 later.

Mr Ruskell: We need some flexibility in the bill. The amendments raise some similarities with the discussion that we have just had about responsible authorities. Ministers need to have the discretionary power to appoint additional consultation authorities as and when needed. We received strong evidence about that at stage 1, not least from the Scottish Environment Protection Agency, which will be a consultation authority and will have to bear the brunt of much of the consultation in the bill’s initial years.

In the initial stage of rolling out SEA in Scotland, it will be important to have flexibility, because the consultation authorities that are designated in the bill might not have experience of health and population issues. As Rob Gibson said, transboundary effects are important. We need to understand the concerns of people and organisations in areas that adjoin Scotland. It is important to have the discretionary power that amendment 15 would introduce.

I appreciate the intention behind amendment 4, but I think that Scottish Environment LINK might have an issue with becoming a statutory body. Amendment 5 is helpful, as it names a health body that could be consulted. Amendment 14 is sensible because it teases out transboundary effects. However, we also need the discretionary power for ministers to appoint consultation authorities as and when necessary.

Richard Lochhead (North East Scotland) (SNP): I urge Tommy Sheridan to withdraw amendment 4, simply because Scottish Environment LINK has briefed the committee that it does not want to be consulted. I do not think that Rosie Kane has spoken to it about her amendment.

We should support amendment 14 because, of all issues, the environment is the one that clearly has impacts outwith Scotland’s boundaries, so it must be dealt with internationally. The amendment is outward looking. If we want other countries to examine the impact of their policies on Scotland’s environment, we must lead by example and ensure that we evaluate the impact that our policies have beyond Scotland’s borders.

I think that we should support amendment 15, because flexibility is a good thing and because the amendment would allow other people to be consulted.

11:00

Nora Radcliffe (Gordon) (LD): I endorse what Richard Lochhead said about putting Scottish Environment LINK in an inappropriate place; I think that that is accepted.

The consultation authorities that are listed are not restricted to their own expertise. It seems to me that they could act as channels for wider consultation. I am not sure whether we want to have a great list of consultation authorities, when a smaller list of consultation authorities could act as
a gateway for consultation as wide as they care to go. I have reservations about putting a great long list in the bill when that may not be necessary.

The Convener: Following on from Nora Radcliffe’s point, I would like to ask the minister whether the consultation authorities are required to seek information. The two issues that were raised at stage 1 were health and population matters. Two organisations are mentioned, but they might not cover all the issues. What are consultation authorities meant to do when they feel unable to answer such questions? As no other members have questions, I invite the deputy minister to respond to the debate.

Rhona Brankin: I shall deal with amendments 4, 5, 14 and 15 together. First, in response to Mr Sheridan’s question, I can confirm that there was consultation in December 2003 on consultation bodies.

If I understand it correctly, the concern behind the amendments is that there may be gaps in the knowledge and data of the consultation authorities listed and that the best way to close those gaps is to add further statutory consultation authorities. Amendments 4, 5 and 14 suggest specific bodies, or bodies that cover specific areas of expertise, that might be suitable additions either now or by order; amendment 15 suggests a more general order-making power to add additional bodies.

I should say right away that this is an area that has been given a great deal of consideration and I believe that a clear and effective way forward has been set out. I do not think that the appropriate way to fill any gaps is to make Scottish Environment LINK or NHS Health Scotland statutory consultation authorities. Neither those bodies nor the many other bodies that could be suggested to cover specialist knowledge gaps require statutory status to play a role as data providers and consultees.

Transboundary effects between the UK and other European Union countries are likely to be rare, so it would be disproportionate to add consultation bodies for that circumstance. However, it is important to note that, in any case, section 17(c) already obliges responsible authorities to take account of transboundary consultations, which are carried out under regulation 14 of the UK SEA regulations. In fact, Scottish consultation authorities are named in UK regulations, to ensure that Scotland has a voice in UK-wide plans. It is important to point that out. The three nominated consultation authorities can provide advice and data across a wide spectrum of environmental matters, and it is important to note that too.

There are clear logistical and bureaucratic overheads to extending the list of statutory consultation authorities, so extension is not the best method of closing any possible data and knowledge gaps. Rather, to address the data needs that may arise, the most effective option is to list data sources in guidance, to assist responsible authorities in seeking additional advice where there is a gap in the consultation authorities’ knowledge or data.

It is important to remember that the bill already places a duty on responsible authorities to gather data and that that is not limited to the consultation authorities. The convener asked whether they were required to seek wider information and data: yes, they are obliged to do so. I urge the committee to reject amendments 4, 5, 14 and 15.

Tommy Sheridan: I will make a very short wind-up speech, convener. I would appreciate it if the minister would send me a reference to the questions relating to consultees on the bill. I am not aware that there was a question on who should be a consultation body.

Given some of the comments, it is clear that although Scottish Environment LINK supports the thrust of amendments 4 and 5, it does not wish to be one of the statutory consultee bodies. I remind members who used Scottish Environment LINK’s position that it strongly supports NHS Health Scotland being one of the consultee bodies.

Although I withdraw amendment 4, I will strongly move amendment 5.

Amendment 4, by agreement, withdrawn.

Amendment 5 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

Against
Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 5 disagreed to.

Amendment 14 moved—[Rob Gibson].

The Convener: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.
The Convener: There will be a division.

FOR
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST
Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 14 disagreed to.

Amendment 15 moved—[Mr Mark Ruskell].

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST
Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 15 disagreed to.

Section 3 agreed to.

Section 4—Plans and programmes

The Convener: Group 3 is on the plans and programmes to which the bill applies in relation to defence. Amendment 10, in the name of Mark Ruskell, is grouped with amendment 11. If amendment 10 is agreed to, I will not be able to call amendment 11 because of a pre-emption.

Mr Ruskell: I wish to say at the outset that the actions of the Ministry of Defence have an effect on Scotland's environment. Depleted uranium weapons testing at Dundrennan and low-flying jets are examples of the negative environmental effect in Scotland.

That said, the MOD can sometimes have a positive environmental effect. A recent example is the torpedo testing area off the west coast of Scotland that showed a lot of marine bed ecological regeneration. However, the central point at the heart of amendment 10 is that we should know and understand the environmental impact of the MOD in Scotland. At present, we do not know what it is. If we seek to incorporate the MOD under the mischief of this bill we will start to understand whether the MOD's environmental impact is negative or positive.

Amendment 10 seeks to remove from the bill the exemption on national defence. That does not mean that it would capture all MOD plans and programmes, but it would capture more MOD plans and programmes. At the outset there is a technical drafting question for the minister: she needs to clarify whether the MOD is a responsible authority as defined by the bill.

If the MOD is not a responsible authority it is automatically exempt anyway, in which case we should not have an exemption under this section and we can all vote for amendment 10 regardless of our political position on it. I need clarification on whether the MOD is a responsible authority. If it is, it is important that we vote on amendment 10. It is important that the MOD itself knows what the environmental impact will be of its plans and programmes before it makes a decision on them.

We heard in evidence at stage 1 that the MOD voluntarily carries out SEA on a number of its plans and programmes, so in many ways this is about enshrining some of that best practice into legislation. The other point to make is that SEA does not make the decision for the MOD; it merely reveals what the impact will be of a particular decision on a plan and programme, be that positive or negative.

Amendment 11 offers a choice to committee members. It attempts to narrow down the criteria for when we would not want to consider what the environmental impacts are. When drawing up the amendment, I found it useful to consider the Secretary of State for Defence’s policy document “Safety, health and environment protection in the Ministry of Defence”, which came out in June, paragraph 2.4 of which defines when the MOD thinks it is appropriate to disapply legislation. It says:

"I will invoke any powers given to me to disapply legislation only on the grounds of national security and only when such action is essential to maintain operational capability."

That is the key test that Westminster applies, and the form of words I have sought to put into amendment 11 is intended to narrow the criteria that define when it would be inappropriate to consider the environmental impact of a plan or programme: when it is essential to national security and there is a threat to the maintenance of operational capability. The ideal is amendment 10: there is no problem in our considering the environmental impacts of the MOD, whether they are positive or negative. But amendment 11 offers
committee members an option that is based on Labour Party policy at Westminster.

I move amendment 10.

Rob Gibson: I put it to the minister that how we are able to view the impact of the MOD is quite important. I thank her for her answer, which I received last night, to my question about Loch Eriboll in north-west Sutherland: the Admiralty chart shows a firing practice area where there are mussel farms, oyster farms and fish farms. The MOD’s view is that while it is unlikely that there will be firing practice in the area, it has the right to make that kind of statement on its charts without consultation. The minister thinks that there is no need for consultation. Do we not need to consider the potential environmental impacts of such actions? That is a prime example of why defence and the way in which it is carried out ought to come within the bill’s remit.

Tommy Sheridan: I want to speak to amendment 6.

The Convener: Hang on. We are not on amendment 6; we are debating amendments 10 and 11. Amendment 6 is in the next group.

Tommy Sheridan: Sorry, it is in my marshalled list.

The Convener: You might have a quick word with the clerks to check that you have the right papers. We are still on section 4, group 3, amendments 10 and 11. Amendment 6 is in the next group.

Tommy Sheridan: Sorry, it is in my marshalled list.

The Convener: You might have a quick word with the clerks to check that you have the right papers. We are still on section 4, group 3, amendments 10 and 11. One or two points were made to the deputy minister. Would you like an opportunity to deal with some of the questions and to address some of the issues that Mark Ruskell raised, particularly on the where the bill applies, where UK regulations apply and what the crossovers are?

11:15

Rhona Brankin: First, I can make it clear that the Ministry of Defence is a responsible authority.

The exemptions in the bill are few in number and we have sought to ensure the widest possible coverage of SEA and the greatest possible transparency. I emphasise that the sole purpose of exempting plans is to serve national defence and civil emergency, which we recognise are exceptional areas of public policy. In those cases, expediency of implementation is often critical and it is simply not safe or reasonable to compromise either area of operation by imposing a blanket requirement to carry out SEA.

Mark Ruskell seeks to challenge exemptions that are patently—we think—in the best interests of Scotland and that are in operation elsewhere in the UK. As he says, there are good examples of authorities that are engaged in national defence—the MOD, for example—carrying out environmental assessment of plans where it proves possible and safe to do so. We very much welcome that and I see no reason to doubt that it will continue. I cannot emphasise strongly enough that amendments 10 and 11 should be resisted.

Richard Lochhead: The minister said that she opposes the removal of the exemption because that would result in the blanket application of SEA. If that did not happen, when would there be any application of SEA in relation to national defence installations?

Rhona Brankin: There are examples of the MOD carrying out strategic environmental assessments at the moment. The exemption is only for plans and programmes the sole purpose of which is to serve national defence and civil emergency.

The Convener: So the bill covers the MOD except when a plan or programme concerns what the MOD says is national defence or civil emergency. The bill would not prevent the MOD from carrying out an SEA on a plan or programme; it would just not require it to do so.

Rhona Brankin: Absolutely. There are examples of that kind of work already.

Nora Radcliffe: If the MOD argued that a plan or programme was exempt, would it still have to be registered or pre-screened so that it could be challenged if people felt that inappropriate use was being made of the exemption?

The Convener: The issue is who decides what constitutes national defence and whether a plan or programme is reported to ministers—whether it is registered so that you can take a view on the matter and perhaps disagree. We presume that that is what would happen—are we right?

Rhona Brankin: Ministers would then take a view on it.

On the broader issue, the MOD is currently carrying out SEA of land use plans. That is an example of good practice that we would encourage. That sort of work is already going on.

The Convener: I will allow a couple more questions on this issue for clarification, as it is important that we understand how the bill is intended to work and what the potential impacts of amendments are.

Nora Radcliffe: I am trying to think that last point through. The MOD is a responsible authority, so all its plans, proposals, strategies and so on have to be screened—they would all come within the ambit of the bill. As I understand it, the MOD could exercise the power of exemption, but there would be an opportunity for ministers to challenge that.
Mr Brocklebank: Perhaps the minister can clarify something for me, as I am relatively new to the bill. She says that, in the event of a challenge, ministers would decide, but defence is a reserved matter. Which ministers would make the decision—UK ministers or the Scottish ministers?

The Convener: I believe that Mark Ruskell has another point of clarification.

Mr Ruskell: Does not the minister acknowledge that the MOD would not wish to carry out an SEA in circumstances in which “national security and the maintenance of operational capability” were under threat? If the key question is how we define when the SEA legislation should be disapplied, does not she agree that amendment 11 provides a good definition in that respect? If not, is there another reason why we would seek to disapply it?

The Convener: We have probably had enough points of clarification for now.

Rhona Brankin: On the question whether UK or Scottish ministers would be involved in decisions on challenges, that would depend on a plan’s geographical aspects.

Mr Brocklebank: So would the case of Loch Eriboll be decided by Scottish ministers or at Westminster?

Rhona Brankin: Scottish ministers would be involved in that decision.

The Convener: Is that because it would be subject to an environmental assessment under Scottish legislation?

Rhona Brankin: Absolutely. It all depends on geographical location.

As far as amendment 11 is concerned, the courts would recognise “national defence” as a sound definition. [Interuption.]

The Convener: This is all going on the record.

Rhona Brankin: I have emphasised that the sole purpose of exempting plans and programmes is to serve national defence and civil emergency. The courts would consider that to be a sound definition.

Mr Ruskell: Very briefly, on that point—

The Convener: Are you seeking a point of clarification or winding up on amendment 10?

Mr Ruskell: I want to wind up.

The Convener: Great. I want to check first that members have no further points of clarification. I know that the process seems slightly hesitant, but I would rather that everything was on the record. Members will be able to reflect on the matter as we go into the vote and at stage 3, but we should use this opportunity to explore the issue.

Are members happy to move on? Does anyone have another point of clarification?

Maureen Macmillan: Is the minister saying that “national security and the maintenance of operational capability” are not legal terms, but that national defence and civil emergency would be understood in a certain way at a court of tribunal?

Rhona Brankin: Yes.

Maureen Macmillan: So the terms of amendment 11 are much woolier and no one can be absolutely sure of what they mean. [Interuption.]

The Convener: Can everyone calm down? Did the minister say yes or no to Maureen Macmillan’s direct question?

Rhona Brankin: I simply repeat what I have already said: national defence and civil emergency are clear and sound definitions in court.

The Convener: I call Mark Ruskell to sum up the debate and to indicate whether he wishes to press amendment 10.

Mr Ruskell: Can I speak to amendment 11 after I have dealt with amendment 10?

The Convener: No.

Mr Ruskell: Do you want me to sum up the whole group?

The Convener: I would like you to sum up the whole debate.

Mr Ruskell: I am not going to say anything more about amendment 10.

The definition in amendment 11 is not woolly at all. It is a policy statement by the Secretary of State for Defence that sets out how the MOD operates in the UK. We will probably need to revisit the issue at stage 3 once we have investigated how the terms “national security” and “operational capability” are legally defined. That said, I intend to press amendment 10 and to move amendment 11.

The Convener: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Gibson, Rob (Highlands and Islands) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST
Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
Godman, Trish (West Renfrewshire) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Morrison, Mr Alasdair (Western Isles) (Lab)  
Radcliffe, Nora (Gordon) (LD)  

ABSTENTIONS  
Lochhead, Richard (North East Scotland) (SNP)  

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 10 disagreed to.

The Convener: As amendment 10 has been disagreed to, amendment 11 is not pre-empted.

Amendment 11 moved—[Mr Mark Ruskell].

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR  
Gibson, Rob (Highlands and Islands) (SNP)  
Lochhead, Richard (North East Scotland) (SNP)  
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)  

AGAINST  
Boyack, Sarah (Edinburgh Central) (Lab)  
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)  
Godman, Trish (West Renfrewshire) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Morrison, Mr Alasdair (Western Isles) (Lab)  
Radcliffe, Nora (Gordon) (LD)  

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 11 disagreed to.

The Convener: Group 4 is on financial or budgetary plans and programmes to which the bill applies. Amendment 6, in the name of Rosie Kane, is in a group on its own.

Tommy Sheridan: I apologise for pre-empting this discussion; I thought that we were going to deal with amendment 6 along with the previous group.

Any cut in or reallocation of resources in the Scottish Executive’s budget can have quite significant environmental impacts. If the Executive were to announce an increase or a decrease in, for example, the warm homes investment, that would have an environmental impact that should be assessed accordingly. Amendment 6 attempts to ensure that there is improved scrutiny, accountability and transparency in relation to spending allocations and programmes and that they are all pre-screened to ensure that an environmental assessment will be undertaken. The situation would be similar to that which exists with regard to human rights compliance. Why do we not have the same attitude in relation to environmental assessments and spending programmes? I seek the committee’s support to ensure that budget allocations and spending plans are not excluded from the bill.

I move amendment 6.

Mr Ruskell: I support amendment 6. I do not think that financial and budgetary plans and programmes should be automatically exempted. Tommy Sheridan gave a good example of a spending programme that would have an environmental impact, but there are others. For example, money that was allocated for rail freight activities could have a positive environmental impact. Similarly, the route development fund is a financial plan that amounts to £12.4 million. We need to understand what the environmental impact, positive or negative, of that fund might be.

Rhona Brankin: The bill is targeted at plans and programmes with significant environmental effects. That helps not only to ensure environmental protection, but to husband the resources that are required for the assessments. I know that that has been a concern of this committee and others.

Amendment 6 would direct those precious resources towards SEAs for financial plans and programmes. That would be futile, because such plans are not a practical or meaningful subject for an SEA. Rather, the plans and programmes leading to and arising from the allocation of funds in financial and budgetary plans contain the proposals on which an SEA can be meaningfully carried out.

The amendment is misguided, because it seeks to plug a gap that does not exist. It could direct time and money towards the consideration of plans and programmes that, by their very nature, will not give rise to significant environmental effects. I urge the committee to resist amendment 6.

Tommy Sheridan: It is presumptuous of the minister to talk about plans that do, or do not, have significant environmental impact or effect. If the programmes have not been pre-screened, how are we to know whether they will have such an impact? The purpose of amendment 6 is to ensure that all spending plans are subject to such an assessment. Obviously, there would be cost implications in doing that but, if we treasure the environment, we have to invest money to protect it. However, once the system had been set up, the costs of the worthwhile practice would diminish.

11:30

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.
The Convener: There will be a division.

For
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

Against
Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 6 disagreed to.

Section 4 agreed to.

Section 5—Qualifying plans and programmes

The Convener: Group 5 is on pre-screening. Amendment 16, in the name of Mark Ruskell, is grouped with amendments 7 and 18 to 20.

Mr Ruskell: Amendment 18 seeks to drop section 7 on pre-screening. Amendments 16 and 19 are consequential. Amendment 20 would move the useful power that ministers have to modify schedule 2 to another part of the bill, so that we do not lose it.

I am having trouble understanding why we need a two-stage screening process. Why do we need pre-screening? We seem to be trying to coax the responsible authorities out of their shells to engage with the SEA process, but I do not think that that is needed. If it is done properly, screening will do what it says on the tin: it will screen out those plans and programmes that have an environmental impact and those that do not. If screening is done openly and accountably, it will be effective.

In the stage 1 debate, I mentioned that “minimal effect” could turn into a weasel phrase. The minister’s response to the committee to clarify the phrase “minimal effect” demonstrates that:

“The very wide gap between minimal and significant is covered by the screening process; minimal should be seen as a difficult test to meet and is always assessed in the context of each individual plan.”

That is not clear, minister. To use your argument on national defence, I do not think that there is an accepted definition of the phrase “minimal effect”, so it should not be in the bill. I support amendment 7 in Rosie Kane’s name.

I move amendment 16.

Tommy Sheridan: As far as I am concerned—and as far as environmental organisations are concerned—there is no legal definition of the phrase “minimal effect”. Mark Ruskell illustrated that. The opening of an opencast mine in one part of a community may have a minimal effect on someone who lives a couple of miles away but not on someone who lives a couple of hundred yards away. Therefore it is ridiculous to use the term “minimal effect” in legislation that is supposed to be robust. The phrase “significant effect” is recognised and legally robust; it should be retained. I appeal to the committee to support the removal of the term “minimal effect”.

Nora Radcliffe: The difficulty with pre-screening is whether we have any control over how people decide what falls under pre-screening and what does not. The fact that we have established recording of anything that is pre-screened means that it is subject to scrutiny, so the phrase will define itself in time through case law. The weakness was in having pre-screening that was not scrutinised. The minute that scrutiny is brought to bear, it is just a matter of semantics whether there is a single screening process or a process that is divided into pre-screening and screening. The critical issues are having the opportunity to scrutinise the decision and the end of the spectrum at which it belongs.

Mr Brocklebank: To help me in my ignorance—I was not here when the process was debated—will the minister explain why two screening processes are necessary? We are trying to cut bureaucracy and red tape. If we are talking about a reasonable screening process, does that not preclude the need for a pre-screening process?

The Convener: I seek reassurance on the extent to which the Executive intends to use guidance in this area. At stage 1, we discussed the extent to which local authorities would engage with the process in a meaningful way. Those of us who were persuaded by the principle of pre-screening were persuaded on the basis that it would take out issues in which there were no significant environmental impacts. The caveat was that we wanted there to be a way of registering what had been screened out, so that members of the public could see that and could complain if they believed that there had been a ludicrous use of the pre-screening process.

I agree with Nora Radcliffe that there is an issue of public transparency. Local authorities will need guidance on your interpretation of the terms “significant” and “minimal effect” as they are used in the bill. The interpretation of those terms is critical. To what extent do you intend to use guidance or to provide written examples that people can see? What issues do you wish to raise on the record, before the committee, to help in that process?

Rhona Brankin: Amendment 18 seeks to remove the pre-screening provisions from the bill. Amendment 7 seeks to modify the pre-screening
provisions so that they apply only to plans and programmes that have no effect on the environment. If the committee resists amendment 18, as I suggest that it should, amendments 16, 19 and 20 should also be rejected, because they are consequential to amendment 18.

As members are aware, pre-screening—self-exemption by responsible authorities for plans and programmes with no or minimal environmental effects—is intended to reduce any unnecessary burden on responsible authorities. Pre-screening will avoid public funds being wasted by targeting resources effectively at plans and programmes with significant environmental effects. I have been asked about the definition of “minimal effect”. That is a hard test to meet and we believe that any likely significant effects will be caught by the legal definition in the bill. If there is any doubt about a plan, it will be subject to assessment.

The convener asked about guidance, which is an important point. Guidance in this area will need to be issued and we will ensure that it comes forward. There should be as much clarity as possible in the area. Basically, the intention is to reduce any unnecessary burden on responsible authorities.

The concerns that underpin the amendments to modify or remove pre-screening are misplaced. The pre-screening exemption simply exempts plans where SEA would serve no useful purpose. Moreover, it is carefully restricted to apply only to those plans and programmes that are described at section 5(4). The majority of respondents to the public consultation—especially local authorities—agreed that pre-screening is an entirely appropriate administrative tool.

Amendment 18, which seeks to remove pre-screening entirely, is inappropriate and would remove a valuable mechanism for ensuring the proper use of time and resources. In the unlikely event of pre-screening being applied inappropriately, the provisions in section 11 empower the Scottish ministers to direct that an SEA be carried out.

Amendment 7 seeks to remove from the pre-screening provision those plans and programmes that have minimal environmental effects. Again, the amendment would direct resources at plans and programmes with minimal environmental effects, when the purpose of the bill is to target resources at plans and programmes with significant environmental effects. Therefore, I ask members of the committee who are concerned about husbanding SEA resources to disagree to amendment 7.

To summarise, pre-screening is a valuable and sensible resource-saving provision that has been widely welcomed, and Scottish ministers’ powers to direct that an SEA is prepared provide a safety net. Modification or removal of the valuable pre-screening provisions—as proposed by the group of amendments—is therefore unnecessary and would serve only to increase the resources that are required for SEA. I strongly urge the committee to disagree to the amendments in the group. However, if amendment 18 is agreed to—I strongly urge members not to agree to it—I agree that amendments 16, 19 and 20 should be agreed to as consequential to it.

Mr Ruskell: I was interested in what the minister said about ministers’ powers under the bill to direct an SEA to be carried out. The proof of those powers will be when the act comes into force and SEA starts to roll out across Scotland. The committee will have to scrutinise in great detail what happens when the bill becomes law.

I am still not entirely convinced that pre-screening is a useful addition that will meaningfully lighten the burden of responsible authorities. Therefore, I want to press amendment 16.

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
AGAINST
Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Rob (Highlands and Islands) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 16 disagreed to.
Amendment 13 not moved.
Section 5 agreed to.
Schedule 1 agreed to.
Section 6 agreed to.

Section 7—Exemptions: pre-screening
Amendment 7 moved—[Tommy Sheridan].

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Rhona Brankin: Amendment 17 would direct resources more appropriately at plans and programmes with significant environmental effects. Amendment 17 would undermine the achievement of a light-touch approach and would render pre-screening more bureaucratic than is necessary. The key purpose of pre-screening is to target resources at plans and programmes with significant environmental effects. Amendment 17 would direct resources inappropriately at plans and programmes that have no or minimal environmental effects and would place an unnecessary burden on responsible authorities.

I emphasise to the committee that pre-screening is an important measure that is designed to ensure that authorities focus their resources on plans that will have significant effects. Amendment 1 is a positive response to the concern about transparency and, if it were agreed to, would mean that the benefits of section 7 would not be lost.

I am grateful to the committee for highlighting the issue and I ask it to agree to amendment 1 and to reject amendment 17. However, I have made it clear that I am prepared to listen carefully to the arguments that the committee makes on amendment 1.

I move amendment 1.

11:45

Mr Ruskell: I would rather that we did not have pre-screening but, if we are to have it, it needs to be conducted in an open and accountable way. At stage 1, the committee heard strong evidence about the need to publish a register. The intention of amendment 17 is to meet that need. It appears that the Minister for Environment and Rural Development shares that intention, given that in response to our committee report, he said:

"The ERDC states that a published pre-screening register would be valuable. I agree and the Executive now intend to bring forward an appropriate amendment at Stage 2."

We are now at stage 2 and, although I welcome the intention behind amendment 1, the register that it would result in is not the same as a published register of pre-screening decisions.

I welcome the fact that the minister has said that she is prepared to withdraw amendment 1 and to revisit the issue at stage 3. I make a commitment not to move amendment 17 if the feeling among committee members is that we want to revisit the matter through an Executive amendment at stage 3.

Nora Radcliffe: What bothers me about amendment 17 is that it would perhaps ask too much of responsible authorities in relation to plans, programmes and so on that would be pre-screened. The whole point is that too much time and energy should not be spent on that process. The protection against pre-screening being misused makes it clear which plans, programmes and so on will be treated in that way. Although amendment 1 goes part of the way towards addressing the weakness of there being no public record that would enable such decisions to be challenged, I do not think that it goes far enough. I would welcome amendment 1 being withdrawn and amendment 17 not being moved. We need an amendment that both fulfils the light-touch criterion and provides an accessible, public source of information for people who wish to challenge any decision to use the pre-screening process.

Richard Lochhead: I support the sentiments that have been expressed by Nora Radcliffe, Mark Ruskell and, indeed, the minister. Transparency is important and, if any kind of register is to be published, the consultation authorities should be notified. However, in addition, a list should be...
published on the Executive’s website for anyone to look at. In seeking a response to that idea, I am planting a seed in the Executive’s mind about any amendment that it brings back at stage 3. The public and others, not just the consultation authorities, should have simple, easy access to any register.

Maureen Macmillan: My point is on the same issue. We would want a provision added to amendment 1 to say that the register will be placed on public record. That would make it clear that people would be able to access pre-screening decisions.

The Convener: I agree with all my colleagues. At stage 1, we were really looking for transparency. All of us, including researchers and representatives of the community, go to the internet to find out what is happening about anything. A clearly defined and easy-to-reach page on the web that gave a historical record of who decided what would help those who were monitoring the effects of the act. It would help to ensure that the right balance of judgments was being made.

Fewer people have spoken on Mark Ruskell’s amendment 17. It could go too far, but I have been thinking about the process. An authority decides to pre-screen something, which is recorded on a register, and then a member of the public disputes it. I want to test how the process would work from there on in. I guess that the person or organisation that is doing the disputing would then make representations to the authority and, if they did not like the answer that they got back, would then make representations to the minister to say that something has been pre-screened inappropriately and they believe that there would be a significant environmental impact. Am I right in thinking that, at that point, the minister would decide whether to pursue the matter further and would ask the responsible authority for further information, or would direct that a full screening process should be carried out on that particular issue? I want to have that on the record because it is important that we understand how the bill is intended to work, and members of the public and interest groups need to see how all the provisions will work together. I welcome the suggestion that we think about the matter and come back to it at stage 3.

Rhona Brankin: I would be more than happy to come back at stage 3 with clarifications on the register.

The convener is correct in her interpretation that ministers can require an authority to carry out a screening if they think that the responsible authority has acted inappropriately.

I re-emphasise that there is a major difference between what I am trying to achieve by way of a register and what Mark Ruskell is trying to achieve. Amendment 17 would almost mean another screening process. As the convener suggested, the register would contain basic information on the decisions that have been taken and who has taken them. It is important that that information is available. I am happy to consider the register again and to return to the subject at stage 3 if that is what the committee wants. Therefore, I am prepared to withdraw amendment 1.

The Convener: The minister has offered to withdraw amendment 1. On the basis of the commitment that we will return to the issue at stage 3, are members happy to let the amendment be withdrawn?

Amendment 1, by agreement, withdrawn.
Amendment 17 not moved.
Amendment 18 moved—[Mr Mark Ruskell].

The Convener: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST
Boyack, Sarah (Edinburgh Central) (Lab)
Gibson, Rob (Highlands and Islands) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 18 disagreed to.

Section 7 agreed to.

Schedule 2

CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

The Convener: Group 7 is on the criteria determining significant effects. Amendment 8, in the name of Rosie Kane, is grouped with amendments 22 and 23.

Tommy Sheridan: The Executive does not yet have national targets on emissions or recycling, despite the consistent calls from the environmental movement for it to do so. Amendment 8 would force the Executive to include such targets, which would be widely welcomed. I invite the committee to support the amendment.

I move amendment 8.
Mr Ruskell: I will press amendment 22. There are probably differing opinions among committee members about targets; some like them and some do not. I like targets, because I think they are important in ironing out contradictions that can occur in Government policy. As we move into an era in which we are tackling climate change, we need desperately to join up policy and to get targets followed through into all plans and programmes. I appreciate the intention behind amendment 8, but I believe that there are other national environmental targets that we might want to include. I offer amendment 22 as an alternative to amendment 8.

Amendment 23 is a sensible amendment. We understood from our evidence taking on the Nature Conservation (Scotland) Bill that local sites are often the jewels in the crown of our biodiversity, so it is important that we protect them. There is also an issue about wind farm planning and local landscape designations. It is important that we recognise local designations within the SEA process. I will support Nora Radcliffe's amendment 23.

Nora Radcliffe: I am tempted to say ditto. Mark Ruskell said it all. It is important that we recognise the value of wildlife sites, local nature reserves and areas of landscape value. Including the word "local" would ensure that such sites are encompassed by the bill.

Richard Lochhead: I support Nora Radcliffe's amendment 23, which I think makes perfect sense. I have questions about amendments 8 and 22. My reading of schedule 2, line 22, is that Community legislation is relevant—I presume that that means legislation of the European Union. The two amendments talk about national targets. This is just a technical point, but perhaps schedule 2 is the wrong place for the amendments.

The Convener: Clarity on whether we are talking about Scottish targets or EU targets and on the application of any targets in the bill would be helpful. I invite the minister to comment on the application of any targets in the bill.

It would be inappropriate to make the suggested amendments to paragraph 1 of schedule 2, and paragraph 2 would be the best place for any requirement to consider environmental targets. However, paragraph 2(f) already requires that particular regard should be given to "the value and vulnerability of the area likely to be affected due to ... exceeded environmental quality standards or limit values".

Therefore, the bill makes provision, albeit in different language, to achieve the intention behind the amendments. Amendments 8 and 22 are unnecessary and inappropriately placed, so I ask the committee to resist them.

Amendment 23 also relates to schedule 2. When the likely significance of effects on the environment is considered, particular regard is to be paid to "the effects on areas or landscapes which have a recognised national, Community or international protection status."

Amendment 23 would add areas or landscapes with recognised "local" status to that list. The committee should resist the amendment not because what it suggests is not valuable or valid, but because the concerns of the member who lodged the amendment—if I understand them—are already addressed by schedule 2. The term "national ... protection status" derives from the SEA directive and encompasses all domestic legislation. Therefore, protection areas that are provided for in domestic legislation, such as sites of special scientific interest, conservation areas and protected trees, are encompassed by schedule 2. That means that amendment 23 would have no clear legislative effect beyond the current provision.

Paragraph 2 of schedule 2 requires responsible authorities to have regard to "the value and vulnerability of the area likely to be affected due to ... exceeded environmental quality standards or limit values".

That means that the standards and limits relate to the area that is likely to be affected. Those standards and limits may apply locally, regionally, nationally or internationally.

I hope that that reassures the committee and I ask it to resist amendment 23. The position will be made clear in guidance.

The Convener: That was helpful. The points are relevant to our climate change report. Should the Executive set emissions targets, would paragraph 2(f)(ii) of schedule 2 cover them, because they would be limit values or environmental quality standards? Would something such as a local nature reserve be swept up because it had a recognised protection status?
Rhona Brankin indicated agreement.

The Convener: I just wanted to clarify that for the record.

Does Tommy Sheridan want to press or withdraw amendment 8?

Tommy Sheridan: I will press amendment 8. Some six years into the Government, we still do not have the targets that many of us thought we would have after a couple of years. I take some of the points that the minister made with a large pinch of salt. The amendment is placed appropriately and I will press it.

The Convener: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST
Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

ABSTENTIONS
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)

The Convener: The result of the division is: For 1, Against 6, Abstentions 2.

Amendment 8 disagreed to.

The Convener: Does Mark Ruskell want to move amendment 22?

Mr Ruskell: Given what the minister said about the definition in paragraph 2(f)(ii), I will not move amendment 22.

Amendment 22 not moved.

The Convener: Does Nora Radcliffe want to move amendment 23?

Nora Radcliffe: In view of the clarification that the term “national … protection status” encompasses all domestic designations and the assurance that that will be made clear in guidance—because it is not clear on a first reading—I am happy not to move amendment 23.

Amendment 23 not moved.

Schedule 2 agreed to.

Section 8—Exemptions: screening

Amendments 19 and 20 not moved.

Section 8 agreed to.

Section 9—Screening: procedure

The Convener: Group 8 is about screening and the settlement of disputes. Amendment 9, in the name of Rosie Kane, is in a group on its own. Would any member like to speak to and move the amendment?

Tommy Sheridan: I will, convener.

As far as we can tell, the bill requires Scottish ministers to act as arbiters in the event of a dispute between consultation authorities and responsible authorities even if the ministers are the responsible authority. If that is true, it clearly represents a conflict of interests. We think that an independent body would be required to act as arbiter on that and other occasions. It is reasonable to propose that an independent body be established to act as arbiter in any such disputes.

I move amendment 9.

Mr Ruskell: I accept the point that Tommy Sheridan makes. There is a need for an independent arbitration process. The ideal would have been for the bill to establish an independent body, as there is a need for co-ordination and monitoring of not just SEA, but project-level environmental impact assessment as well. I support the intention behind amendment 9.

Nora Radcliffe: I have qualms about creating yet another quango. We keep saying, “Let’s have another body.” The protection is that Scottish ministers are answerable to the Parliament and to the committees. The system has checks and balances that would prevent a conflict of interests from arising.

Richard Lochhead: I have mixed views about amendment 9. I support the principle of having an independent overseer, but I wonder whether a new body should be created or whether an existing independent body could be appointed. If the latter, who should that be? I feel that there is a lack of information.

Mark Ruskell’s amendment 24 concerns the establishment of the gateway within the Government. However, according to Scottish Environment LINK, the creation of a new, independent body could bring many roles together in a new commission. I am not sure where we are going with the issue. A new gateway is proposed within the Government; Scottish Environment LINK proposes the creation of a new commission with a number of roles; and amendment 9 talks about the creation of a new independent body. There may be a case for an independent overseer but, in time for the stage 3 debate, we need more information from those who have lodged the amendments about the nature of any body—whether new or existing—and what other roles it
would have, so that we would not just be creating another quango, although that might be a good idea in terms of the rationalisation of existing quangos. I think that the issue needs more debate.

Rob Gibson: Can the minister clarify whether any of the actions would be subject to judicial review in the courts?

The Convener: That is a good question.

In respect of amendment 1, I was keen for there to be proper registers and transparency so that, when there is a dispute, the matter goes before the minister. More thought could be given to what advice the minister gets at that point, but I see the decision as ultimately a ministerial one. As ministers can be held to account, I am quite happy with what the bill proposes. However, there are wider issues about the involvement of the gateway that we should perhaps think about.

Minister, you have been asked a couple of direct questions and you have been asked to give clarification. Would you like to respond?

Rhona Brankin: Amendment 9 would require that determinations on disagreements should be made by an independent body instead of by Scottish ministers. In answer to one of the direct questions, of course decisions by Scottish ministers would be subject to judicial review. Amendment 9 does not identify which body would have that duty. Therefore it would be necessary to identify an existing body or to create a new body. Either option would require new statutory provisions and would be a significant and unnecessary drain on resources.

More important, the amendment represents a disproportionate and potentially costly response to what is generally considered to be a remote risk of conflict. Most respondents in the consultation supported that view. They agreed that Scottish ministers should make the determination in cases of disagreement, as that was the least bureaucratic option. It is important that we take that approach, so I ask the committee to resist amendment 9.

Tommy Sheridan: I ask those members who suggested that the amendment and the matter that it raises are worthy of further consideration to support amendment 9, as that will ensure that there is more debate at stage 3. There is a need to distinguish between a quango, which is a quasi-governmental body, and an independent body— they are not one and the same. We are talking about a body independent of Government, not an arm, long though it may be, of Government. It will not be acceptable to communities at large if the Scottish Executive is the arbiter in disputes between the various authorities, as the Executive itself may be involved in the dispute. I believe that there is a need for an independent body, so I will press amendment 9.

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Gibson, Rob (Highlands and Islands) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST
Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 9 disagreed to.

Section 9 agreed to.

Sections 10 to 13 agreed to.

Section 14—Preparation of environmental report

The Convener: Group 9 is on the preparation of environmental reports. Amendment 2, in the name of the minister, is in a group on its own.

Rhona Brankin: Amendment 2 is, I hope, straightforward and non-contentious. It is a small technical adjustment that is intended to ensure that responsible authorities are clear that the environmental consequences of reasonable alternatives in the plan in question are to be considered and included in the environmental report.

The inclusion of the word “any” in section 14(2)(b) was intended to exhort the responsible authority to consider any reasonable alternatives, whatever they might be. However, there is a concern that it might have the opposite effect; it could be understood to allow the responsible authority to assert that there were no reasonable alternatives and therefore not include any information on reasonable alternatives in the environmental report.

The inclusion of the word “any” in section 14(2)(b) was intended to exhort the responsible authority to consider any reasonable alternatives, whatever they might be. However, there is a concern that it might have the opposite effect; it could be understood to allow the responsible authority to assert that there were no reasonable alternatives and therefore not include any information on reasonable alternatives in the environmental report.

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Our intention is to require plan makers to identify, describe and evaluate reasonable alternatives. The amendment would put that beyond doubt. I hope that members will agree to this minor adjustment to the bill.

I move amendment 2.

Amendment 2 agreed to.

Section 14, as amended, agreed to.
Schedule 3 agreed to.
Sections 15 to 19 agreed to.

After section 19

The Convener: Group 10 deals with the SEA gateway. Amendment 24, in the name of Mark Ruskell, is in a group on its own.

12:15

Mr Ruskell: At stage 1, the evidence that we received on the need for an SEA gateway was perhaps stronger than the evidence that we received on the need for an independent body. I believe that we need to ensure that the future, long-term existence of the SEA gateway is safeguarded in the bill. That does not mean that the bill should provide a straitjacket for the gateway's future role, but it should provide a light framework that allows the gateway to evolve. That is what amendment 24 tries to do.

Let me just go through some of the elements of the amendment, which is quite detailed. First, the amendment provides flexibility by allowing for the gateway to be managed either by a single person or by a team. Essentially, the gateway would co-ordinate environmental assessment activities and act as a central point for them. In an important sense, it would maximise efficiency by offering support and advice—advice that would change over time—on best practice for rolling out SEA.

In addition to hosting the pre-screening register, one of the gateway’s functions could be to co-ordinate training. The Executive’s proposals on training would fit nicely into my suggested framework for the SEA gateway, so the gateway could ensure that those proposals were implemented well. Given the importance of ensuring that training does not continually reinvent the wheel, the gateway could ensure not only that people are up to speed with current training, but that training reflects best practice.

The gateway could also assist in ensuring consistency of reporting and in monitoring. At stage 1, we received some strong evidence on the need for monitoring, especially from Dr Elsa João. She said:

“we should check that the mitigation and enhancement measures are working and see whether we are getting better plans, whether human health and biodiversity are improving and whether air pollution is decreasing. We want to achieve those things, but if we are just producing reports and not checking them out, what is the point?”—[Official Report, Environment and Rural Development Committee, 20 April 2005; c 1774-5.]

It is important that we have monitoring, so we need to establish the gateway to provide that role.

The SEA gateway could provide a useful overview for ministers, especially in debates such as the one that we have just had over consultation authorities. For example, the gateway could recommend additional consultation authorities for SEAs. If the gateway had an overview for such issues, that would be useful for ministers when they use their powers under the bill.

The risk is that SEA ends up being rolled out inconsistently, as the bill currently provides no mechanism to ensure effective co-ordination. I therefore recommend that the proposed light framework should be introduced through the bill.

If members need an example of the damage that is done by the failure to provide a co-ordination mechanism, they need only look at the way in which community planning was rolled out under the Local Government in Scotland Act 2003. At first, a community planning task force was set up to ensure co-ordination in the community planning process. When the task force folded, it was turned into a community planning implementation group. When that folded, the Executive set up a website to provide advice notes, but the website has not been updated since 2004.

When the Local Government in Scotland Act 2003 was going through the Parliament, ministers made the following commitment at stage 2:

“We have not altered our view that the key focus for community planning is at the local level, but the success of the community planning process will also be dependent on strong links between national, regional and neighbourhood levels of governance.”—[Official Report, Local Government Committee, 12 November 2002; c 3449.]

That commitment was on a co-ordination issue regarding community planning, but it is similar to the issue of SEA and the need for a gateway. There is a precedent and we should not make the mistake that was made in the 2003 act. We should ensure that there is a light framework that does not constrict the role of the gateway but safeguards its long-term sustainability.

I move amendment 24.

Maureen Macmillan: The committee wants a gateway. I ask the minister how we will get a gateway and ensure that it is maintained if that is not specified in the bill.

Nora Radcliffe: I endorse that. We all regard the gateway as a critical part of the mechanism to ensure that SEA rolls out in a coherent, standardised way and that good practice is shared so that support is given to people who do SEA for the first time. SEA is not a new concept, but a lot of the people who will apply it are not used to the process. There are strong arguments for a single point of contact for information, guidance and help.
The committee regards that as an important part of the whole set-up and I am keen for it to be protected. It seems to me that including it in the bill is one way of protecting it, but I am prepared to listen to what the minister has to say. If we can achieve the same result without including it in the bill, that is fine, but I think that including it is the best way of ensuring that the set-up exists and continues to exist.

Mr Brodie: I was not a member of the committee at the time, so I am not au fait with all the arguments or with why it was felt that a gateway was necessary. I listened with some interest to Mark Ruskell’s arguments, but I have to say that I remain unconvinced. To me, the proposal sounds like further bureaucracy in relation to a bill that many people see in any case as gold plating legislation that is already in place at the European level. Unless there are convincing arguments for it, I will oppose the gateway.

The Convener: Like colleagues, I was very much in favour of the gateway when we discussed the matter at stage 1 and it was set out in the consultation. We have a difficulty. I cannot support amendment 24, because it suggests that the gateway would act as an arbiter in disputes and I have already voted against that idea this morning, but I take the point that during the passage of the Local Government in Scotland Bill there was an expectation that the task force would exist for some time. It is partly about managing expectations.

I say to Ted Brodie that, at stage 1, we discussed the fact that the bill represents a big shift in culture and in the way in which authorities organise themselves and carry out strategic environmental assessment. The Executive has initiated a series of pilots in various organisations, so we regard the matter as work in progress. There is a question over how long we expect the gateway to exist. Will it be there for ever? I certainly think that it will exist for more than three years. It will probably exist for five years, but will it be longer than that? There is a range of views out there, but we are stuck. Because the gateway is not mentioned in the bill, it does not feel like a permanent commitment. Perhaps we need to debate whether it should be a permanent commitment, or whether we would be happy if the gateway were in place for a set period of time and then disappeared.

In Mark Ruskell’s remarks, and in the lobbying that we have had from certain organisations, there is a fear that the gateway could wither on the vine within a year, a year and a half or two years. I cannot support amendment 24, not least because of the technical issue. It may be that I will not want the gateway to be mentioned in the bill, but nothing has come from the minister to provide reassurance over the concerns that we raised in our stage 1 report. I would like the minister to suggest how she thinks we might deal with the issue. It is a live issue for us to reflect on in advance of stage 3. There must be a way to think about the purpose of the gateway—to provide advice and guidance to ministers and, crucially, to those who implement SEA. It is a step up from where we are now, so I will be interested in the minister’s reflections on all our thoughts.

Richard Lochhead: I will vote for the amendment on the understanding that there is a likely case for lodging related amendments at stage 3. I understand from previous deliberations in committee that there is a lot of sympathy for the gateway. We see a need for it and our tactic should be to support the amendment.

I have a couple of concerns that have been expressed by others about the role and lifespan of the gateway. Paragraph (c) of subsection (2) in amendment 24 provides that one of the gateway’s proposed functions is as an arbiter in disputes. That is not appropriate. However, if we vote against the amendment, it will disappear, so the best way forward for us is to vote for it and then look for amendments at stage 3 to fix those bits that we do not like.

The Convener: Minister, you have a range of thoughts in front of you.

Rhona Brankin: Absolutely.

I note that the committee’s stage 1 report recommended that we give further consideration to having a light framework for the role of the SEA gateway. It is important to say at the outset that the role of the gateway is important. I need to reassure everyone that we will continue to review and develop the gateway role. It is an innovative concept. The idea was well received throughout consultation on the bill and in the early months of its operation. However, providing for the gateway in the bill is not the right way forward. It needs to be free to develop—as indeed it has done already—and to be flexible and responsive to need.

Behind amendment 24 is a concern about the quality and monitoring of SEA. We have already seen around 20 cases begin under existing regulations and the gateway plays a valuable role in the good administration of those cases.

The bill has many quality safeguards in place and we believe that it is a model of transparency. Detailed criteria are set out to ensure that the content of the environmental report covers all the appropriate aspects of the environment. The scoping stage and consultation, both with the public and the statutory consultation authorities, will ensure scrutiny of detail. The responsible authorities must set out their proposals for
monitoring in a way that enables them to take any appropriate remedial action if unforeseen adverse effects are identified. Amendment 24 would create an overly rigid bureaucracy and put at risk the very benefits that we all believe are so important.

I reassure members that the Executive has a clear intention to continue with the gateway. That is evidenced by the fact that the Executive has already assigned to the gateway a number of long-term functions, such as the management of the pathfinder project—in effect a review of SEA practice. Other functions include the on-going development of guidance and templates, the gathering of SEA statistics, advice provision and liaison with the consultation authorities. It is important that gateway functions can develop in response to need and in the light of experience. The gateway is here to stay, but I give the committee an assurance that if we were to seek to change that position, we would come back to the committee before doing so.

12:30

Mr Ruskell: I sense that the mood of the committee is that we want the gateway to be enshrined in the bill. There are debates about the timescale—about how long an SEA gateway should remain in existence. I appreciate the point about framing the amendment in such a way as to allow the gateway’s functions to develop over time. I have tried to do that. I also take on board the issues regarding paragraph (c) of subsection (2), which does not sit comfortably with some members. On Richard Lochhead’s point, I do not want this issue just to be dropped at stage 3, so I will press amendment 24 at this stage. However, I would welcome further amendments at stage 3 to take out non-passable sections of the amendment.

Nora Radcliffe: Can I get a quick clarification of the process?

The Convener: No. The process is that I will invite you to vote for or against amendment 24. The chance for clarification—

Nora Radcliffe: The clarification I seek is whether, if amendment 24 falls now, that precludes its being lodged at stage 3.

The Convener: No. That becomes a judgment call for the Presiding Officer. Members must decide now how they want to vote on amendment 24.

The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Gibson, Rob (Highlands and Islands) (SNP)

Lochhead, Richard (North East Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

Against
Boyack, Sarah (Edinburgh Central) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

Abstentions
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 24 disagreed to.

Before section 20

The Convener: Amendment 25, in the name of Nora Radcliffe, is in a group on its own.

Nora Radcliffe: An annual report on how the implementation of the act was progressing would be a useful mechanism for keeping tabs on what is a wide-ranging piece of legislation. The bill in itself is not groundbreaking as it deals with something that already happens in other places. However, if it were passed, many people would have to implement provisions with which they had previously never dealt. Therefore, an annual report would be a useful mechanism for checking that the act was being implemented correctly and that how it was working out in practice reflected what we had hoped for.

I lodged a similar amendment in connection with the water framework directive. The purpose on that occasion was slightly different because we were implementing something over a long timescale and I thought that it was important to show that we had passed milestones on the way to the end of the implementation, so that we did not end up with everything being back-loaded. On this occasion, I am trying to find a way of focusing on how the legislation develops and providing an early warning if it does not develop as we want it to. An annual report would be a useful mechanism for keeping an eye on an important piece of legislation that could have far-reaching, beneficial consequences. I want to ensure that the legislation is as beneficial as it can be.

I move amendment 25.

Mr Ruskell: We are in new territory with the bill. There are a number of unknowns and the committee has sought clarification on many areas during stage 2. All of that points to the need for Parliament to monitor carefully the roll-out of the legislation. I believe that an annual report would be an important part of doing that, so I support amendment 25.

Rhona Brankin: I am grateful for amendment 25’s helpful suggestion. However, I ask members
to resist the amendment because I think that setting in legislation a requirement for an annual report that is ring fenced to the issues in the amendment would in time make such a report less helpful. Rather, I propose that a report be produced in early 2007 that presents a wide-ranging review of the early operation of SEA. That will give us time to see enough cases and comment more usefully on the operation of SEA. The experience of using SEA templates and of the on-going pathfinder project will add further value to any report. At that time, the need for a further report could be considered and agreed on.

Every screening, scoping and environmental report will be publicly available. Consultations and the report on how views were taken into account will also be in the public domain. SEA is a new and important part of how we better protect Scotland’s environment, and it is right that Parliament wants to be fully informed of how it is working in practice.

Although I ask the committee to resist the amendment, I welcome the thinking behind it and guarantee to report in early 2007 on the operation of SEA. Many quality safeguards are already included in the bill, and I believe that it is a model of transparency. Detailed criteria are set out that ensure that the content of the environmental report covers all the appropriate aspects of the environment. The scoping stage and consultation, both public and with the statutory consultation authorities, will ensure scrutiny of detail. Responsible authorities must set out their proposals for monitoring in a way that enables them to take any appropriate remedial action if unforeseen adverse effects are identified.

We are strongly in favour of an annual report for years to come. I have suggested a report in early 2007, which is the right time for a first report. If members prefer to set a further reporting requirement for a few more years, I would be happy to discuss further before stage 3 whether that can be agreed administratively, or whether an amendment is more appropriate. I hesitate about an amendment only because specifying the contents of any report might constrain it unhelpfully in scope.

I ask for amendment 25 to be withdrawn, on the basis that I am happy to discuss further before stage 3 whether we can reach an agreement on the matter.

Nora Radcliffe: I seek leave to withdraw the amendment, because that will allow us to come back at stage 3 with something that meets the requirements of both the committee and the minister. Having an annual report is a useful mechanism for allowing the committee and the Parliament to review what is happening. If the Executive is not happy with the wording of amendment 25, I would like to come back at stage 3 with acceptable wording.

Amendment 25, by agreement, withdrawn.

Sections 20 to 25 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister and her officials for their work with us this morning. We will now reprint the bill, as amended, which will be available from tomorrow in the document supply centre. If members are keen to lodge amendments for stage 3, the clerks’ doors are now open. That will be announced in the Business Bulletin tomorrow. The deadline for lodging amendments will be announced as soon as we know the exact time of stage 3, which is expected to be after the October recess. There is some time for reflection and interpretation of the Official Report.
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Environmental Assessment (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision for the assessment of the environmental effects of certain plans and programmes, including plans and programmes to which Directive 2001/42/EC of the European Parliament and of the Council relates; and for connected purposes.

PART 1
ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

1 Requirement for environmental assessment
(1) The responsible authority shall—
(a) during the preparation of a qualifying plan or programme, secure the carrying out of an environmental assessment in relation to the plan or programme; and
(b) do so—
(i) where the plan or programme is to be submitted to a legislative procedure for the purposes of its adoption, before its submission; or
(ii) in any other case, before its adoption.
(2) In this Act, an environmental assessment is—
(a) the preparation of an environmental report;
(b) the carrying out of consultations; and
(c) the taking into account of the environmental report and the result of the consultations in decision-making,
in accordance with Part 2 of this Act.

2 Responsible authorities
(1) In this Act, a responsible authority is any person, body or office-holder exercising functions of a public character.
(2) The responsible authority in relation to a particular plan or programme is the authority by whom, or on whose behalf, the plan or programme is prepared.
(3) Where more than one authority is responsible for a plan or programme (or part of it) the responsible authority shall be—
(a) the authority determined by agreement between those authorities; or
(b) if there is no such agreement, the authority determined by the Scottish Ministers.

(4) But for the purposes of section 5(4)(a) the responsible authorities are—
   (a) the Scottish Ministers;
   (b) any holder of an office in the Scottish Administration which is not a ministerial office;
   (c) the Scottish Parliament;
   (d) the Scottish Parliamentary Corporate Body;
   (e) a Scottish public authority with mixed functions or no reserved functions;
   (f) any other person, body or office-holder of a description (and to such extent) as may be specified by the Scottish Ministers by order.

3 Consultation authorities

(1) In this Act, the consultation authorities are—
   (a) the Scottish Ministers;
   (b) the Scottish Environment Protection Agency; and
   (c) Scottish Natural Heritage.

(2) Where an authority mentioned in subsection (1) is the responsible authority as regards a plan or programme, the authority shall not be a consultation authority in relation to that plan or programme.

4 Plans and programmes

(1) This Act applies to plans and programmes (including those co-financed by the European Community) which—
   (a) are—
      (i) subject to preparation or adoption (or both) by a responsible authority at national, regional or local level; or
      (ii) without prejudice to the generality of sub-paragraph (i), prepared by a responsible authority for adoption through a legislative procedure; and
   (b) relate solely to the whole or any part of Scotland.

(2) In this Act, any reference to plans or programmes includes reference to modification of plans or programmes.

(3) This Act does not apply to—
   (a) plans and programmes the sole purpose of which is to serve national defence or civil emergency;
   (b) financial or budgetary plans and programmes;
Environmental Assessment (Scotland) Bill
Part I—Environmental assessment for plans and programmes

(4) In this Act, any reference to plans or programmes includes strategies.

5 Qualifying plans and programmes

(1) In this Act, qualifying plans and programmes are plans and programmes of a description set out in subsection (3) or (4)—

(a) in respect of which the first formal preparatory act is on or after the coming into force of this section; and

(b) which are not exempt by virtue of section 7(1) or 8(2).

(2) But a plan or programme is a qualifying plan or programme only to the extent that it relates to matters of a public character.

(3) The description set out in this subsection is a plan or programme (to which this Act applies) which is required by a legislative, regulatory or administrative provision and—

(a) which—

(i) is prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use; and

(ii) sets the framework for future development consent of projects listed in schedule 1;

(b) which, in view of the likely effect on sites, has been determined to require an assessment pursuant to Article 6 or 7 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (as last amended by Council Directive 97/62/EC); or

(c) which does not fall within paragraph (a) or (b) but sets the framework for future development consent of projects.

(4) The description set out in this subsection is a plan or programme (to which this Act applies)—

(a) which is prepared by a responsible authority as specified in, or by virtue of, section 2(4); and

(b) which—

(i) is not a plan or programme of a description set out in subsection (3); and

(ii) is not of a type specified in, or by virtue of, section 6(1).

(5) The Scottish Ministers may by order modify schedule 1.

6 Types of excluded plans and programmes

(1) The types of plan or programme referred to in section 5(4)(b)(ii) are those which—

(a) consist of plans or programmes each of which relates to an individual school; or

(b) may be specified by order made by the Scottish Ministers.

(2) The Scottish Ministers may by order modify subsection (1)(a).

(3) If specifying a type of plan or programme by virtue of subsection (1)(b) or (2), the Scottish Ministers must be of the opinion that the type of plan or programme is likely to have—
(a) no effect; or
(b) minimal effect,
in relation to the environment.

(4) In this section, “school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980 (c.44).

7 Exemptions: pre-screening

(1) A plan or programme of a description set out in section 5(4) is exempt if the responsible authority is of the opinion that the plan or programme will have—
(a) no effect; or
(b) minimal effect,
in relation to the environment.

(2) In considering whether or not it is of the opinion described in subsection (1), the responsible authority shall apply the criteria specified in schedule 2.

(3) The Scottish Ministers may by order modify schedule 2.

8 Exemptions: screening

(1) The responsible authority shall determine whether or not—
(a) a plan or programme of a description set out in section 5(3) which determines the use of small areas at local levels;
(b) a minor modification to a plan or programme of a description set out in section 5(3);
(c) a plan or programme of the description set out in section 5(3)(c);
(d) a plan or programme of the description set out in section 5(4) which is not exempt by virtue of section 7(1),
is likely to have significant environmental effects.

(2) Where the responsible authority determines under subsection (1) that a plan or programme is unlikely to have significant environmental effects—
(a) that plan or programme is exempt; and
(b) the authority shall prepare a statement of its reasons for the determination.

(3) In making a determination under subsection (1), the responsible authority shall apply the criteria specified in schedule 2.

(4) The statement of reasons under subsection (2)(b) shall, in particular, state how the criteria mentioned in subsection (3) were applied when making the determination.

9 Screening: procedure

(1) Before making a determination under section 8(1), the responsible authority shall prepare a summary of its views as to whether or not the plan or programme is likely to have significant environmental effects.

(2) The responsible authority shall send that summary to each consultation authority for its consideration.
Part 1—Environmental assessment for plans and programmes

(3) Each consultation authority shall, within 28 days of receipt of that summary, respond to the responsible authority with the consultation authority’s views on it.

(4) If the responsible authority and the consultation authorities agree that the plan or programme is unlikely to have significant environmental effects, the responsible authority shall make a determination to that effect under section 8(1).

(5) If the responsible authority and the consultation authorities agree that the plan or programme is likely to have significant environmental effects then the responsible authority shall make a determination to that effect under section 8(1).

(6) If the responsible authority and the consultation authorities do not reach agreement as to whether or not the plan or programme is likely to have significant environmental effects, the responsible authority shall refer the matter to the Scottish Ministers for their determination.

(7) A determination of the Scottish Ministers under subsection (6) shall have effect as if made by the responsible authority under section 8(1); and, where the determination is that the plan or programme is unlikely to have significant environmental effects, section 8(2)(b) shall apply to the Scottish Ministers as it would to the responsible authority.

Screening: publicity for determinations

(1) Within 28 days of a determination having been made under section 8(1), the responsible authority shall send to the consultation authorities—

(a) a copy of the determination; and

(b) any related statement of reasons prepared in accordance with section 8(2)(b).

(2) The responsible authority shall—

(a) keep a copy of the determination, and any related statement of reasons, available at its principal office for inspection by the public at all reasonable times and free of charge;

(b) display a copy of the determination and any related statement of reasons on the authority’s website; and

(c) within 14 days of the making of the determination, secure the taking of such steps as it considers appropriate (including publication in at least one newspaper circulating in the area to which the plan or programme relates) to bring to the attention of the public—

(i) the title of the plan or programme to which the determination relates;

(ii) that a determination has been made under section 8(1);

(iii) whether or not an environmental assessment is required in respect of the plan or programme; and

(iv) the address (which may include a website) at which a copy of the determination and any related statement of reasons may be inspected or from which a copy may be obtained.

(3) Nothing in subsection (2)(c)(iv) shall require the responsible authority to provide a copy of any document free of charge; but where a charge is made, it shall be of a reasonable amount.
Directions as regards plans and programmes

(1) The Scottish Ministers may at any time direct a responsible authority to send to them a copy of any plan or programme which—
   (a) is being prepared;
   (b) has been adopted; or
   (c) has been submitted to a legislative procedure for the purposes of its adoption, by that responsible authority.

(2) The Scottish Ministers shall consider any plan or programme sent to them under subsection (1), together with such information relating to it as they may reasonably require the responsible authority to provide.

(3) Where the Scottish Ministers consider that the plan or programme falls within—
   (a) section 5(3)(a) or (b), they may direct the responsible authority to carry out an environmental assessment in accordance with this Act;
   (b) paragraphs (a) to (d) of subsection (1) of section 8, they may direct the responsible authority to carry out a determination in accordance with that subsection.

(4) Where subsection (3) applies, the Scottish Ministers shall send to the responsible authority a summary of the reasons as to why a direction was, or (as the case may be) was not, made.

(5) A responsible authority shall comply with any direction given to it under subsection (1) or (3).

Restriction on adoption or submission

(1) A qualifying plan or programme shall not be—
   (a) adopted; or
   (b) submitted to a legislative procedure for the purposes of its adoption,
   before the requirements of such provisions of Part 2 of this Act as apply in relation to that plan or programme have been met.

(2) A plan or programme in respect of which a determination is required under section 8(1) shall not be adopted, or submitted to a legislative procedure for the purpose of its adoption, unless either—
   (a) the requirements of subsection (1) have been met; or
   (b) the determination under section 8(1) is that the plan or programme is unlikely to have significant environmental effects.

Relationship with Community law requirements

(1) An environmental assessment carried out under this Act shall be without prejudice to any requirement under Community law.

(2) Where a qualifying plan or programme is co-financed by the European Community, the responsible authority, in carrying out the environmental assessment required by this Act, shall do so in conformity with any relevant provision of Community law that is applicable by reason of that co-financing.
14 **Preparation of environmental report**

(1) In relation to any qualifying plan or programme, the responsible authority shall secure the preparation of an environmental report.

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of implementing—

(a) the plan or programme; and

(b) reasonable alternatives to the plan or programme,

taking into account the objectives and the geographical scope of the plan or programme.

(3) The report shall include such of the information specified in schedule 3 as may reasonably be required, taking account of—

(a) current knowledge and methods of assessment of environmental matters;

(b) the contents of, and level of detail in, the plan or programme;

(c) the stage of the plan or programme in the decision-making process; and

(d) the extent to which any matters to which the report relates would be more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

(4) Information referred to in schedule 3 may be included in the report by reference to relevant information obtained at other levels of decision-making or through Community legislation.

(5) The Scottish Ministers may by order modify schedule 3.

15 **Scoping**

(1) Before deciding on—

(a) the scope and level of detail of the information to be included in the environmental report to be prepared in accordance with section 14; and

(b) the consultation period it intends to—

(i) specify under section 16(1)(b); and

(ii) notify under section 16(2)(a)(iv),

the responsible authority shall send to each consultation authority such sufficient details of the qualifying plan or programme as will enable the consultation authority to form a view on those matters.

(2) Each consultation authority shall—

(a) send to the responsible authority its views on the matters referred to in subsection (1) within the period of 5 weeks beginning with the date on which the details referred to in that subsection are received by the consultation authority; and

(b) send a copy of those views to the other consultation authorities.

(3) The responsible authority shall—
(a) take account of the views expressed by the consultation authorities under subsection (2)(a); and

(b) advise the Scottish Ministers of the period it intends to specify under section 16(1)(b) and notify under section 16(2)(a)(iv).

4 If the Scottish Ministers consider that a period referred to in subsection (3)(b) is not likely to give (as the case may be)—

(a) the consultation authorities; or

(b) the public—

(i) affected or likely to be affected by; or

(ii) having an interest in,

the plan or programme,

an early and effective opportunity to express their opinion on the plan or programme and the accompanying environmental report, the Scottish Ministers shall, within 7 days of receipt of the advice under subsection (3)(b), specify such other period as the Scottish Ministers consider will give the consultation authorities, or (as the case may be) the public, such an early and effective opportunity.

5 Where the Scottish Ministers have specified a period under subsection (4), the responsible authority shall specify under section 16(1)(b), or (as the case may be) notify under section 16(2)(a)(iv), that period.

6 Where the Scottish Ministers are the responsible authority in relation to a qualifying plan or programme, subsections (3)(b), (4) and (5) do not apply.

16 Consultation procedures

1 As soon as reasonably practicable, and in any event within 14 days of the preparation of the environmental report, the responsible authority shall—

(a) send a copy of the report and the qualifying plan or programme to which it relates ("the relevant documents") to the consultation authorities; and

(b) invite each consultation authority to express its opinion on the relevant documents within such period as the responsible authority may specify.

2 The responsible authority shall also—

(a) within 14 days of the preparation of the environmental report, secure the publication of a notice—

(i) stating the title of the plan or programme to which it relates;

(ii) stating the address (which may include a website) at which a copy of the relevant documents may be inspected or from which a copy may be obtained;

(iii) inviting expressions of opinion on the relevant documents; and

(iv) stating the address to which, and the period within which, opinions must be sent;

(b) keep a copy of the relevant documents available at the authority’s principal office for inspection by the public at all reasonable times and free of charge; and

(c) display a copy of the relevant documents on the authority’s website.
(3) The periods referred to in subsections (1)(b) and (2)(a)(iv) must be of such length as will ensure that those to whom the invitation is extended are given an early and effective opportunity to express their opinion on the relevant documents.

(4) Publication of a notice under subsection (2)(a) shall be by such means (including publication in at least one newspaper circulating in the area to which the plan or programme relates) as will ensure that the contents of the notice are likely to come to the attention of the public—

(a) affected by or likely to be affected by; or

(b) having an interest in,

the plan or programme.

(5) Nothing in subsection (2)(a)(ii) shall require the responsible authority to provide a copy of any document free of charge; but where a charge is made, it shall be of a reasonable amount.

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

In the preparation of a qualifying plan or programme, the responsible authority shall take account of—

(a) the environmental report for that plan or programme;

(b) every opinion expressed in response to the invitations referred to in section 16(1) and (2)(a)(iii); and

(c) the outcome of any relevant consultation under regulation 14 of the Environmental Assessment of Plans and Programmes Regulations 2004 (S.I. 2004/1633).

**PART 3**

**POST-ADOPTION PROCEDURES**

18 **Information as to adoption of a qualifying plan or programme**

(1) As soon as reasonably practicable after the adoption of a qualifying plan or programme, the responsible authority shall—

(a) make available a copy of—

(i) the plan or programme;

(ii) the environmental report relating to it; and

(iii) a statement containing the particulars specified in subsection (3), at the authority’s principal office for inspection by the public at all reasonable times and free of charge;

(b) secure the taking of such steps as it considers appropriate (including publication in at least one newspaper circulating in the area to which the plan or programme relates) to bring to the attention of the public—

(i) the title of the plan or programme;

(ii) the date on which it was adopted;
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Part 3—Post-adoption procedures

(iii) the address (which may include a website) at which a copy of the plan or programme and its accompanying environmental report, and of the statement containing the particulars specified in subsection (3), may be inspected or from which a copy may be obtained;

(iv) the times at which inspection may be made; and

(v) that inspection may be made free of charge; and

(c) display a copy of—

(i) the documents referred to in paragraph (a); and

(ii) the information referred to in paragraph (b),

on the authority’s website.

(2) As soon as reasonably practicable after the adoption of a qualifying plan or programme, the responsible authority shall inform the consultation authorities of the adoption of the plan or programme and shall send them a copy of—

(a) the plan or programme as adopted; and

(b) the statement containing the particulars specified in subsection (3).

(3) The particulars referred to in subsections (1)(a)(iii) and (b)(iii) and (2)(b) are—

(a) how environmental considerations have been integrated into the plan or programme;

(b) how the environmental report has been taken into account;

(c) how the opinions expressed in response to the invitations mentioned in section 16 have been taken into account;

(d) how the results of any relevant consultation under regulation 14 of the Environmental Assessment of Plans and Programmes Regulations 2004 (S.I. 2004/1633) have been taken into account;

(e) the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives considered; and

(f) the measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme.

(4) Nothing in subsection (1)(b)(iii) shall require the responsible authority to provide a copy of any document free of charge; but where a charge is made, it shall be of a reasonable amount.

19 Monitoring of implementation of qualifying plans and programmes

(1) The responsible authority shall monitor the significant environmental effects of the implementation of every qualifying plan or programme for which it has carried out an environmental assessment.

(2) The responsible authority shall do so in a manner (which may comprise or include arrangements established otherwise than for the express purpose of compliance with subsection (1)) which enables the authority to—

(a) identify any unforeseen adverse effects at an early stage; and

(b) undertake appropriate remedial action.
PART 4
GENERAL

20 Crown application
This Act binds the Crown.

21 Orders
(1) Any power of the Scottish Ministers to make orders under this Act is exercisable by statutory instrument.
(2) Any such power includes power to make—
   (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient; and
   (b) different provision for different purposes.
(3) A statutory instrument containing an order under this Act except—
   (a) where subsection (4) applies, an order under section 22; or
   (b) an order under section 25,
   is subject to annulment in pursuance of a resolution of the Parliament.
(4) No order under section 22 which amends an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Parliament.

22 Ancillary provision
The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes or in consequence of this Act.

23 Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004
The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (S.S.I. 2004/258) are revoked.

24 Interpretation
(1) In this Act—
   “the public” includes any legal person and any body of persons (whether incorporated or not).
(2) Unless the context otherwise requires, expressions used in both this Act and in the Directive shall be construed in accordance with the Directive.
25 Commencement and short title

(1) The provisions of this Act, except this section and sections 20, 21, 22 and 24, come into force on such day as the Scottish Ministers may by order appoint.

(2) Different days may be so appointed for different provisions and different purposes.

(3) This Act may be cited as the Environmental Assessment (Scotland) Act 2005.
SCHEDULE 1
(introduced by section 5(3)(a))

PROJECTS

PART 1

Particular projects

1 (1) Crude oil refineries except undertakings whose sole function is the manufacture of lubricants from crude oil.

(2) Installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2 (1) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more.

(2) Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kilowatt continuous thermal load).

3 (1) Installations for the reprocessing of irradiated nuclear fuel.

(2) Installations designed—
   (a) for the production or enrichment of nuclear fuel;
   (b) for the processing of irradiated nuclear fuel or high-level radioactive waste;
   (c) for the final disposal of irradiated nuclear fuel;
   (d) solely for the final disposal of radioactive waste; or
   (e) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site other than the production site.

4 (1) Integrated works for the initial smelting of cast-iron and steel.

(2) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

5 Installations for—
   (a) the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos;
   (b) asbestos-cement products with an annual production of more than 20,000 tonnes of finished products;
   (c) friction material with an annual production of more than 50 tonnes of finished products; or
   (d) other uses of asbestos having utilisation of more than 200 tonnes per year.

6 Integrated chemical installations, that is to say, installations—
   (a) for the manufacture on an industrial scale of substances using chemical conversion processes; and
   (b) in which several units are juxtaposed and are functionally linked to one another and which are for the production of—
(i) basic organic chemicals;
(ii) basic inorganic chemicals;
(iii) phosphorus-based, nitrogen-based or potassium-based fertilisers (that is, simple or compound fertilisers);
(iv) basic plant health products and of biocides;
(v) basic pharmaceutical products using a chemical or biological process; or
(vi) explosives.

7 (1) Construction of—
(a) lines for long-distance railway traffic; or
(b) airports with a basic runway length of 2100 metres or more.

(2) Construction of motorways and express roads.

(3) The—
(a) construction of a new road of four or more lanes; or
(b) realignment or widening (or both) of an existing road of two lanes or less so as to provide four or more lanes,

where such new road, or realigned or widened section of the road, would be 10 kilometres or more in a continuous length.

8 (1) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.

(2) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.

9 Waste disposal installations for—
(a) the incineration;
(b) chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9; or
(c) landfill,

of hazardous waste (that is to say, waste to which Directive 91/689/EEC applies).

10 Waste disposal installations for—
(a) the incineration; or
(b) chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9,

of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11 Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

12 (1) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year.
(2) Works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5 per cent of this flow.

(3) In sub-paragraphs (1) and (2), transfers of piped drinking water are excluded.

Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2.6 of Directive 91/271/EEC.

Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.

Dams and other installations designed for the holding back or permanent storage of water where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 millimetres and a length of more than 40 kilometres.

Installations for the intensive rearing of poultry or pigs with more than—
   (a) 85,000 places for broilers, 60,000 places for hens;
   (b) 3,000 places for production pigs (that is, pigs weighing over 30 kilograms); or
   (c) 900 places for sows.

Industrial plants for the—
   (a) production of pulp from timber or similar fibrous materials; or
   (b) production of paper and board with a production capacity exceeding 200 tonnes per day.

Quarries and open-cast mining where the surface of the site exceeds 25 hectares.

Peat extraction where the surface of the site exceeds 150 hectares.

Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.

Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200,000 tonnes or more.

General

Any change to or extension of projects listed in this Part of this schedule where the change or extension in itself meets the thresholds (if any) set out in this Part of this schedule.

PART 2

Agriculture, silviculture and aquaculture

Projects for the restructuring of rural land holdings.

Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes.

Water management projects for agriculture, including irrigation and land drainage projects.
(4) Initial afforestation and deforestation for the purposes of conversion to another type of land use.
(5) Intensive livestock installations.
(6) Intensive fish farming.
(7) Reclamation of land from the sea.

Extractive industry

24 (1) Quarries, open-cast mining and peat extraction.
(2) Underground mining.
(3) Extraction of minerals by marine or fluvial dredging.
(4) Deep drillings, in particular—
   (a) geothermal drilling;
   (b) drilling for the storage of nuclear waste material;
   (c) drilling for water supplies,
   except drillings for investigating the stability of the soil.
(5) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores (including bituminous shale).

Energy industry

25 (1) Industrial installations for the production of electricity, steam and hot water.
(2) Industrial installations for—
   (a) carrying gas, steam and hot water; or
   (b) transmission of electrical energy by overhead cables.
(3) Surface storage of natural gas.
(4) Underground storage of combustible gases.
(5) Surface storage of fossil fuels.
(6) Industrial briquetting of coal and lignite.
(7) Installations for the processing and storage of radioactive waste.
(8) Installations for hydroelectric energy production.
(9) Installations for the harnessing of wind power for energy production (that is to say, wind farms).

Production and processing of metals

26 (1) Installations for the production of pig iron or steel (that is, primary or secondary fusion) including continuous casting.
(2) Installations for the processing of ferrous metals, that is to say—
   (a) hot-rolling mills;
   (b) smitheries with hammers;
(c) application of protective fused metal coats.

(3) Ferrous metal foundries.

(4) Installations for the smelting of (including the alloyage of) non-ferrous metals except precious metals (including recovered products, for example, by refining or foundry casting).

(5) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process.

(6) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines.

(7) Shipyards.

(8) Installations for the construction and repair of aircraft.

(9) Manufacture of railway equipment.

(10) Swaging by explosives.

(11) Installations for the roasting and sintering of metallic ores.

Mineral industry

27 (1) Coke ovens (that is to say, dry coal distillation).

(2) Installations for the manufacture of cement.

(3) Installations for the production of asbestos and the manufacture of asbestos products.

(4) Installations for the manufacture of glass including glass fibre.

(5) Installations for smelting mineral substances including the production of mineral fibres.

(6) Manufacture of ceramic products by burning, in particular—
   (a) roofing tiles, bricks, refractory bricks and tiles; and
   (b) stoneware or porcelain.

Chemical industry

28 (1) Treatment of intermediate chemical products.

(2) Production of chemicals.

(3) Production of—
   (a) pesticides;
   (b) pharmaceutical products;
   (c) paint and varnishes;
   (d) elastomers; and
   (e) peroxides.

(4) Storage facilities for petroleum, petrochemical and chemical products.

Food industry

29 (1) Manufacture of vegetable and animal oils and fats.
(2) Packing and canning of animal and vegetable products.
(3) Manufacture of dairy products.
(4) Brewing and malting.
(5) Confectionery and syrup manufacture.
(6) Installations for the slaughter of animals.
(7) Industrial starch manufacturing installations.
(8) Fish-meal and fish-oil factories.
(9) Sugar factories.

Textile, leather, wood and paper industries

10 (1) Industrial plants for the production of paper and board.
(2) Plants for the—
   (a) pre-treatment (including operations such as washing, bleaching and mercerization); or
   (b) dyeing,
   of fibres or textiles.
(3) Plants for the tanning of hides and skins.
(4) Cellulose-processing and production installations.

Rubber industry

31 Manufacture and treatment of elastomer-based products.

Infrastructure projects

20 (1) Industrial estate development projects.
(2) Urban development projects, including the construction of shopping centres and car parks.
(3) Construction of railways and intermodal transshipment facilities, and of intermodal terminals.
(4) Construction of airfields.
(5) Construction of roads, harbours and port installations (including fishing harbours).
(6) Inland-waterway construction, canalization and flood-relief works.
(7) Dams and other installations designed to hold water or store it on a long-term basis.
(8) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport.
(9) Oil and gas pipeline installations.
(10) Installations of long-distance aqueducts.
(11) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works.

(12) Groundwater abstraction and artificial groundwater recharge schemes.

(13) Works for the transfer of water resources between river basins.

(14) Motorway service areas.

**Tourism and leisure**

33 (1) Ski-runs, ski-lifts and cable-cars and associated developments.

(2) Marinas.

35 (3) Holiday villages and hotel complexes outside urban areas and associated developments.

(4) Permanent camp sites and caravan sites.

(5) Theme parks.

(6) Golf courses and associated developments.

**Miscellaneous projects**

34 (4) Permanent racing and test tracks for motorized vehicles.

35 Installations for the disposal of waste.

36 Waste-water treatment plants.

37 Sludge-deposition sites.

38 Storage of scrap iron, including scrap vehicles.

39 Test benches for engines, turbines or reactors.

40 Installations for the manufacture of artificial mineral fibres.

41 Installations for the recovery or destruction of explosive substances.

42 Knackers’ yards.

**General**

43 (1) Any change to or extension of projects listed in Part 1 or this Part of this schedule which—

   (a) have already been authorised or executed; or
   
   (b) are in the process of being executed,

and which may have significant adverse effects on the environment.

44 (2) Projects listed in Part 1 of this schedule which are undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.
Interpretation


(2) References in this Part of this schedule to a project are references to the project in so far as it is not included in Part 1 of this schedule.

SCHEDULE 2
(introduced by section 7(2))

CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

1 The characteristics of plans and programmes, having regard, in particular to—
   (a) 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;
   (b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy;
   (c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development;
   (d) environmental problems relevant to the plan or programme; and
   (e) the relevance of the plan or programme for the implementation of Community legislation on the environment (for example, plans and programmes linked to waste management or water protection).

2 Characteristics of the effects and of the area likely to be affected, having regard, in particular, to—
   (a) the probability, duration, frequency and reversibility of the effects;
   (b) the cumulative nature of the effects;
   (c) the transboundary nature of the effects;
   (d) the risks to human health or the environment (for example, due to accidents);
   (e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);
   (f) the value and vulnerability of the area likely to be affected due to—
      (i) special natural characteristics or cultural heritage;
      (ii) exceeded environmental quality standards or limit values; or
      (iii) intensive land-use; and
   (g) the effects on areas or landscapes which have a recognised national, Community or international protection status.
SCHEDULE 3  
(introduced by section 14)  

INFORMATION FOR ENVIRONMENTAL REPORTS

1 An outline of the contents and main objectives of the plan or programme, and of its relationship (if any) with other qualifying plans and programmes.

2 The relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme.

3 The environmental characteristics of areas likely to be significantly affected.

4 Any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Council Directive 79/409/EEC on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (as last amended by Council Directive 97/62/EC).

5 The environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation.

6 The likely significant effects on the environment, including—

(a) on issues such as—
   (i) biodiversity;
   (ii) population;
   (iii) human health;
   (iv) fauna;
   (v) flora;
   (vi) soil;
   (vii) water;
   (viii) air;
   (ix) climatic factors;
   (x) material assets;
   (xi) cultural heritage, including architectural and archaeological heritage;
   (xii) landscape; and
   (xiii) the inter-relationship between the issues referred to in heads (i) to (xii);

(b) short, medium and long-term effects;

(c) permanent and temporary effects;

(d) positive and negative effects; and

(e) secondary, cumulative and synergistic effects.

7 The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.
8 An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of expertise) encountered in compiling the required information.

9 A description of the measures envisaged concerning monitoring in accordance with section 19.

10 A non-technical summary of the information provided under paragraphs 1 to 9.
Environmental Assessment (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision for the assessment of the environmental effects of certain plans and programmes, including plans and programmes to which Directive 2001/42/EC of the European Parliament and of the Council relates; and for connected purposes.

Introduced by: Ross Finnie
On: 2 March 2005
Bill type: Executive Bill
Marshalled List of Amendments lodged for Stage 3

The Bill will be considered in the following order—

Sections 1 to 25
Long Title
Schedules 1 to 3

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 2

Rosie Kane
3 In section 2, page 2, line 9, at end insert—
<( ) any private body exercising functions of a public character;>

Section 3

Rosie Kane
4 In section 3, page 2, line 16, at end insert <; and

( ) Health Scotland;

Section 4

Rob Gibson
Supported by: Richard Lochhead
12 In section 4, page 2, leave out lines 31 to 33 and insert—
<(< ) The Scottish Ministers must, by order, provide for this Act to apply in the case of plans or programmes the sole purpose of which is to serve national defence or civil emergency with such modifications with regard to consultation, notification and publication as are necessary to ensure that operations in these areas are not unreasonably compromised.

( ) This Act does not apply to—>

Mr Mark Ruskell
9 In section 4, page 2, line 32, after <defence> insert <(but only where the plan or programme is essential to national security and the maintenance of operational capability)>
Section 7

Rosie Kane

6 In section 7, page 4, line 9, leave out from <or> to end of line 10

Rhona Brankin

7 In section 7, page 4, line 13, at end insert—

<(2A) If a responsible authority is of the opinion described in subsection (1), it shall notify the consultation authorities of that fact as soon as practicable.

(2B) A notification under subsection (2A) shall also include the following information—

(a) the title of the plan or programme;
(b) the date of the opinion; and
(c) a brief description of the plan or programme, including the area or location to which the plan or programme relates.

(2C) The Scottish Ministers shall arrange for a register to be kept of any notifications under subsection (2A).

(2D) The register kept under subsection (2C)—

(a) shall be available for public inspection—

(i) at any reasonable time; and

(ii) at such place as the Scottish Ministers may direct;

(b) may include such other information in relation to a plan or programme as the Scottish Ministers consider appropriate.

(2E) The information contained in the register may also be made available, for the purpose of facilitating public access to that information, by such means (including by means of display on a website) as the Scottish Ministers think fit.>

Rob Gibson

1 In section 7, page 4, line 13, at end insert—

<(2A) If a responsible authority is of the opinion described in subsection (1), it shall notify the consultation authorities of that fact as soon as practicable.

(2B) The consultation authorities shall jointly make such arrangements as are necessary to establish and maintain a register of all notifications received under subsection (2A).

(2C) The arrangements made under subsection (2B) shall include provision for the register to be made publicly available (including on the internet).>

Section 9

Rosie Kane

13 In section 9, page 5, line 11, leave out from <to> to end of line 12 and insert <for determination by a person or body appointed by agreement between the responsible authority and the consultation authorities>
Rosie Kane
14 In section 9, page 5, line 13, leave out <of the Scottish Ministers>

Rosie Kane
15 In section 9, page 5, line 16, leave out <Scottish Ministers> and insert <person or body appointed under subsection (6)>

After section 19

Rhona Brankin
8 After section 19, insert—

<PART
MISCELLANEOUS

Annual reports

5 (1) The Scottish Ministers must, as soon practicable after the end of each calendar year referred to in subsection (2)—

(a) prepare and publish a report on—

(i) the exercise of the functions of the Scottish Ministers under this Act; and

(ii) such other activities carried out in relation to environmental assessments as the Scottish Ministers consider appropriate,

during that year;

(b) lay a copy of the report before the Scottish Parliament.

(2) The calendar years are 2006 to 2010.

(3) After publishing the report relating to 2010, the Scottish Ministers must consult with such persons as they consider appropriate as to what arrangements, if any, are to be made for reporting on any of the matters referred to in subsection (1)(a)(i) and (ii).>

Mr Mark Ruskell
8A As an amendment to amendment 8, line 8, after <Act;> insert—

<( ) co-ordination of environmental assessment activities carried out;

( ) support, advice and guidance provided or made available for responsible authorities undertaking environmental assessment activities;>

Rob Gibson
2 After section 19, insert—
PART

STRATEGIC ENVIRONMENTAL ASSESSMENT GATEWAY

Strategic Environmental Assessment Gateway

(1) The Scottish Ministers shall designate a person or persons to operate an office (to be known as the “Strategic Environmental Assessment Gateway”) to act as a central access point to co-ordinate environmental assessment activities and to carry out the functions specified in subsection (3).

(2) The Strategic Environmental Assessment Gateway shall operate for such period (being not less than five years) as the Scottish Ministers may determine.

(3) The functions are—
   (a) to prepare and maintain a public, internet-based register of environmental assessments;
   (b) to provide advice and guidance on matters relating to environmental assessment;
   (c) to audit the quality of—
      (i) environmental reports prepared under section 14; and
      (ii) the monitoring referred to in section 19(1);
   (d) to co-ordinate the monitoring of activities relating to environmental assessments and the monitoring of activities referred to in section 17; and
   (e) to make recommendations to the Scottish Ministers as to additional persons, bodies or office holders who should be specified as consultation authorities under section 3.

Before section 20

Nora Radcliffe

Before section 20, insert—

Annual report on implementation of the Act

(1) The Scottish Ministers must, as soon as practicable after the end of each calendar year, lay before the Parliament a report summarising action taken during that year by the Scottish Ministers, the consultation authorities and the responsible authorities for securing compliance with the requirements of this Act.

(2) The Scottish Ministers may by order—
   (a) modify subsection (1) so as to provide for the report to be provided other than annually;
   (b) repeal subsection (1)

(3) The power in subsection (2) may not be exercised until at least 5 reports have been made under subsection (1).
Mr Mark Ruskell

10A As an amendment to amendment 10, line 6, at end insert <; and

( ) providing details of—

(i) co-ordination of environmental assessment activities carried out;
(ii) support, advice and guidance provided or made available for responsible
    authorities undertaking environmental assessment activities; and
(iii) such other activities carried out in relation to environmental assessments as
    the Scottish Ministers consider appropriate,

during that year.>

Schedule 2

Rosie Kane

11 In schedule 2, page 20, line 36, at end insert <; and

( ) national environmental targets on emissions and recycling>
Environmental Assessment (Scotland) Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. In this case the information provided consists solely of the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are also noted. The text of the amendments set out in the order in which they will be debated is not attached on this occasion as the debating order is very close to the order in which the amendments appear on the Marshalled List.

The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Responsible authorities to which section 5(4) applies
3

Group 2: Consultation authorities
4

Debate to end no later than 20 minutes after proceedings begin

Group 3: Plans and programmes to which the Bill applies – defence and civil emergency
12, 9

Notes on amendments in this group
Amendment 12 pre-empts amendment 9

Group 4: Plans and programmes to which the Bill applies – financial or budgetary plans and programmes
5

Debate to end no later than 50 minutes after proceedings begin

Group 5: Pre-screening
6

Group 6: Pre-screening – register
7, 1

Group 7: Screening – settlement of disputes
13, 14, 15

Debate to end no later than 1 hour 15 minutes after proceedings begin
Group 8: Annual report
8, 8A, 10, 10A

Group 9: SEA Gateway
2

Group 10: Criteria determining likely significant effects
11

Debate to end no later than 1 hour 40 minutes after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Environmental Assessment (Scotland) Bill:** Ms Margaret Curran, on behalf of the Parliamentary Bureau, moved S2M-3536—That the Parliament agrees that, during Stage 3 of the Environmental Assessment (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated (each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress):

- Groups 1 and 2 – 20 minutes
- Groups 3 and 4 – 50 minutes
- Groups 5 to 7 – 1 hour and 15 minutes
- Groups 8 to 10 – 1 hour and 40 minutes.

The motion was agreed to.

**Environmental Assessment (Scotland) Bill - Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to without division: 7 and 8

The following amendments were disagreed to (by division)—

- 3 (For 30, Against 73, Abstentions 0)
- 4 (For 30, Against 72, Abstentions 0)
- 12 (For 28, Against 72, Abstentions 6)
- 9 (For 34, Against 72, Abstentions 0)
- 5 (For 34, Against 70, Abstentions 0)
- 6 (For 34, Against 71, Abstentions 0)
- 13 (For 33, Against 73, Abstentions 1)
- 14 (For 34, Against 70, Abstentions 1)
- 15 (For 32, Against 71, Abstentions 2)
- 8A (For 31, Against 73, Abstentions 0)
- 2 (For 32, Against 69, Abstentions 1)
- 11 (For 5, Against 94, Abstentions 8)

The following amendments were not moved: 1 and 10.
Environmental Assessment (Scotland) Bill: The Minister for Environment and Rural Development (Ross Finnie) moved S2M-3435—That the Parliament agrees that the Environmental Assessment (Scotland) Bill be passed.

After debate, the motion was agreed to ((DT) by division: For 98, Against 12, Abstentions 0).
The Deputy Presiding Officer (Trish Godman): The next item of business is consideration of business motion S2M-3536, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Environmental Assessment (Scotland) Bill.

Motion moved, That the Parliament agrees that, during Stage 3 of the Environmental Assessment (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated (each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress):

Groups 1 and 2 – 20 minutes
Groups 3 and 4 – 50 minutes
Groups 5 to 7 – 1 hour and 15 minutes
Groups 8 to 10 – 1 hour and 40 minutes.—[Ms Margaret Curran.]

Motion agreed to.

Environmental Assessment (Scotland) Bill: Stage 3

The Deputy Presiding Officer (Trish Godman): I will make the usual announcements about the procedures that will follow. First, we will deal with amendments to the bill, after which we will move to the debate on the motion to pass the bill.

For the amendments, members should have in front of them SP bill 38A—the bill as amended at stage 2—the marshalled list and the groupings, which I have agreed. During consideration of the amendments, the division bell will sound and proceedings will be suspended for five minutes for the first division. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after the debate. All other divisions will be 30 seconds. The use of the division bell in stage 3 proceedings was agreed by the Parliamentary Bureau as part of the protocol on the use of the division bell.

Section 2—Responsible authorities

The Deputy Presiding Officer: Group 1 is on responsible authorities to which section 5(4) applies. Amendment 3, in the name of Rosie Kane, is in a group on its own.

Rosie Kane (Glasgow) (SSP): Section 2(1) sets out a broad definition of responsible authorities, but that definition is significantly narrowed in section 2(4). Section 5(4) uses the narrower definition to exclude private companies that produce strategies that are not covered by the mandatory requirements of the European strategic environmental assessment directive.

Although that is open to interpretation, there is doubt about the extent to which companies will produce documents that set a framework for development consents, thereby making strategic environmental assessments a mandatory requirement. Amendment 3 would mean that all companies that carry out public work would have to undertake an environmental assessment of that work. If the amendment is not passed, a double standard will apply. Private companies such as Scottish Power or one that was building a private finance initiative school would be exempt from assessing the environmental effects of their work, whereas public companies such as Scottish Water would not be.

Big business’s agenda is to put profit before people. We welcome the fact that public companies will be subject to SEA, but it is crucial
that private companies undergo the same scrutiny, given that they are motivated by profit.

I move amendment 3.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): It is right that when a private body exercises functions with a public character, it should be captured by the provisions of the bill. I do not believe that it is right to leave that to ministers’ discretion.

Let us take the example of a utility company such as Scottish and Southern Energy plc, which is developing the Beauly to Denny power line across Scotland. Under the bill, we would have an environmental assessment in relation to which side of Stirling the line might pass, but there would be no statutory requirement for SSE to produce a strategic environmental assessment. That is important, because it is about addressing why we need an overhead power transmission line in the first place. Whatever position a person might take in that debate, it is important that the reasoning for such a project be laid out explicitly at the outset.

I am disappointed that the Tories are going to vote against amendment 3. They are quite happy to parade around Perthshire telling people that there is no point in having pylons or transmission power lines, but they should stick to those principles in the chamber and support an amendment that would ensure that the fundamental reasoning behind the Beauly to Denny transmission line would be laid bare.

The Deputy Minister for Environment and Rural Development (Rhona Brankin): An amendment with a purpose similar to that of amendment 3 was rejected by the Environment and Rural Development Committee at stage 2. I remind members that private bodies exercising functions of a public character are already responsible authorities under the bill. The nature of such bodies is that they are responsible authorities under the bill only because they are given public functions by legislative, regulatory or administrative provisions. Such bodies are already caught by the bill, so they will be required to carry out SEAs for those plans and programmes that are required to deliver public functions. Therefore, we can see no purpose in extending the provisions in the way that amendment 3 suggests.

Furthermore, the bill already provides a power to ensure that, if it should ever be necessary, any other body or any of its functions can be required to meet SEA obligations. We believe that our approach, which is more targeted than the one that is proposed in amendment 3, will be more effective. That position was supported by the Environment and Rural Development Committee at stage 2. I ask members to resist amendment 3.

The Deputy Presiding Officer: In winding up, Rosie Kane should state whether she wishes to press or withdraw the amendment.

Rosie Kane: I will press amendment 3, in the hope that MSPs will support it. The current definition is far too broad. It needs to be much clearer than it is in the current draft of the bill.

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. In line with the new protocol, I suspend the meeting for five minutes.

14:41

Meeting suspended.

14:46

On resuming—

The Deputy Presiding Officer: We will now proceed with the division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Fabian, Linda (Central Scotland) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Margo (Lothians) (Ind)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craige, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Finnie, Ross (West of Scotland) (LD)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAteer, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghamhame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Fairfax East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Ross and Cromarty) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 30, Against 73, Abstentions 0.
bodies other than the three consultation authorities.

We believe that that flexible approach is much more practical than prescribing the sources of advice. We want to assist the responsible authorities to identify the appropriate additional source of advice in each case. We consider it to be more effective and more appropriate to make practical and administrative provisions than to make statutory provisions. We believe that that solution has two benefits. First, it highlights the many additional sources of advice that cover all the issues that might arise, not just those on health. Secondly, it avoids placing an inappropriate burden on a single body by requiring it to scrutinise every strategic environmental assessment, regardless of whether that is relevant to its field of expertise.

I assure the Parliament that comprehensive guidance will be produced. We are already developing a list of data and advice sources and we are collaborating with NHS Health Scotland on health matters to produce comprehensive guidance on strategic environmental assessment health issues. I believe that the bill as drafted provides a practical solution that will facilitate the assessment of environmental issues, including those that relate to health. Accordingly, I ask the Parliament to resist the amendment.

The Deputy Presiding Officer: I ask Rosie Kane to wind up and to press or seek to withdraw her amendment.

Rosie Kane: We want the amendment to pass, because then we would get a full range of expertise on environmental effects and so ensure the protection of the environment. If the amendment falls, health experts will not give their advice on the health aspects of development. For example, experts could expose the dangers to children with asthma of increased levels of benzene or particulates from toxic waste dumps that could result from the construction of the M74 northern extension. Health is an enormous issue in relation to the environment; it can often be a litmus test of where failings exist. Given that the minister admits that there are gaps, members should support the amendment and fill in those gaps.

The Deputy Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)

Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Finnie, Ross (West of Scotland) (LD)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Smith, Margaret (Central Scotland) (Con)
Smith, Iain (North East Fife) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 30, Against 72, Abstentions 0.

Amendment 4 disagreed to.

Section 4—Plans and programmes

The Deputy Presiding Officer: Group 3 is on the application of the bill to defence and civil emergency plans and programmes. Amendment 12, in the name of Rob Gibson, is grouped with amendment 9. If amendment 12 is agreed to, amendment 9 will be pre-empted.

Rob Gibson (Highlands and Islands) (SNP): Amendment 12 would create a new subsection under which Scottish ministers would have the power to allow, by order, the Ministry of Defence not to publish a strategic environmental assessment of those plans and programmes that may be of national security importance. Therefore, our intention is to ensure that the MOD, when its activities take place in Scotland, meets the requirements of the bill.

Why would we want to do that? Scotland is not unique in having to deal with the MOD’s plans and programmes, but some aspects of what is happening here are unique. At the top end, for example, the Government in London could well decide in the next few years to order a replacement for Trident nuclear missiles. In the case of an SEA on the impact in Scotland of the deployment of such a replacement, it would be important for us to have a handle on the matter, for our ministers to be involved with it and for the relevant structure to be within the powers of this Parliament.

It is also important that we recognise the MOD’s impact on our environment at various other levels. An example that I raised at stage 2 is when the MOD marks on navigation charts, without any consultation, remarks such as “firing practice area” for lochs that contain, for example, oyster farms and fish farms. In a broad range of areas, the MOD is not making itself open to the kind of scrutiny that would require our Government to be involved behind the scenes. Currently, daily activities are impeded by decisions that are not up for consultation. We believe that it is essential to ensure that the MOD’s activities in Scotland are subject to the letter of the bill and are not excluded from strategic environmental assessment. We ask the Parliament to agree to amendment 12 to ensure that that happens.

I move amendment 12.

The Deputy Presiding Officer: Amendment 9 is in the name of Mark Ruskell.

Mr Ruskell: As Rob Gibson pointed out, the MOD has an impact on the environment. For example, radioactivity has recently been found at Forthside in Stirling and at Dalgety Bay. That has arisen because of mistakes that were made in the past, when we did not have SEAs. We must ensure that we do not make such mistakes in the future.

I am not saying that the MOD will always have a negative impact on the environment. It has made positive impacts, as I said at stage 2. For example, it was found that there was a lot of ecological regeneration of the sea-bed in a torpedo testing area on the west coast of Scotland. I am not here to judge the MOD, but it is extremely important that we see the potential impacts, whether positive or negative, of its activities. An SEA is not an alien concept to the MOD; it already carries out SEAs on some of its plans and programmes. Amendment 9 is about enshrining that best practice in legislation.

There is a debate about when we would not want to bother considering the environmental impacts of the MOD’s activities. Such instances are outlined in the Westminster Government’s definition of when it is not sensible to consider environmental impact, as I mentioned at stages 1 and 2. Before the summer, John Reid said in a policy statement:

“I will invoke any powers given to me to disapply legislation only on the grounds of national security when such action is absolutely essential to maintain operational capability.”

That is a robust definition of when we would not want to consider environmental impact, although at stage 2 Maureen Macmillan described it as
woolly. Well, that was the first time that I had heard John Reid being called “woolly”. At stage 2, the minister said that there was no legal basis for such an approach, despite the fact that there is a director of operational capability in the MOD.

An SEA does not make a decision; if there is an overriding interest, a decision can be made. However, it is important that we should look, in as many instances as is sensible, at the environmental impact of the MOD. I appreciate what Rob Gibson is proposing in his amendment 12, which I believe reflects the Canadian experience and the words in Canadian legislation. What I am saying is, “Let’s stick to Labour Party policy at Westminster. Let’s enshrine those words within our Scottish legislation.”

15:00

Rhona Brankin: The exemptions in the bill are few in number and we have sought to ensure the widest possible coverage for SEA and the greatest possible transparency. In exempting plans and programmes the sole purpose of which—I emphasise “sole”—is to serve national defence and civil emergency, we are recognising that those are two exceptional areas of public policy. Expediency of implementation is often critical and it is simply not safe or reasonable to compromise either area of operation to any degree. Amendment 12 runs the risk of doing that.

I make it clear that the bill does not exempt the MOD; it exempts only certain clearly defined plans or programmes. We are talking about civil emergency, not long-term civil contingency plans. We are talking about, for example, urgent reactive plans to deal with genuine emergency situations such as natural disasters.

The policy statement by the Secretary of State for Defence, from which Mr Ruskell has taken the definition that he uses in amendment 9, helpfully sets out the policy on circumstances in which the secretary of state would seek to exercise his powers under the many exemptions in law that apply to the MOD. In addition, a published protocol between the MOD and Scottish ministers ensures that information is exchanged and that proper working arrangements are in place, including arrangements for plans and programmes such as the ones that we are discussing. Both those documents should reassure everyone that the exemption will be applied only when absolutely necessary. There are good examples of authorities that are engaged in national defence— for example, the MOD—carrying out environmental assessment of plans when it has proved possible and safe to do so. I see no reason to doubt that the MOD will continue to do that.

Dennis Canavan (Falkirk West) (Ind): The long title of the bill refers to directive 2001/42/EC of the European Parliament and the European Council. Does the directive apply to the plans and programmes that the Executive proposes to exclude under section 3 of the bill?

Rhona Brankin: Any plans that the MOD has in place are covered by the bill. In the exceptional areas of public policy, we are talking about civil emergency and not about long-term civil contingency plans. We are talking about reactive, urgent plans to deal with genuine emergency situations such as natural disasters. Of course, MOD plans would be covered. Both the documents that I referred to should reassure everyone that the exemption will be applied only when absolutely necessary. There are good examples, as I said, of authorities that are engaged in national defence carrying out environmental assessment of plans. Those authorities will continue to do so. Amendments 12 and 9 are not in the best interests of Scotland. The national defence and civil emergency exemptions are entirely necessary. The two amendments should be decisively resisted.

Rob Gibson: I intend to press amendment 12 because I have not heard a satisfactory answer from the minister about how the bill will deal with MOD plans. She has tried to apply a narrow definition, referring only to civil emergencies and things that have to happen in a hurry. However, as Mark Ruskell said, the arrangements in Canada are slightly different. The Department of National Defence and the Canadian Forces has a commitment to “meet or exceed the letter and spirit of all federal environmental laws and, where appropriate, be compatible with municipal, provincial, territorial, and international standards.”

Amendment 12 would allow the Scottish Government to set standards in such a spirit, rather than allow the MOD to continue to have its activities environmentally assessed under lesser rules.

The Deputy Presiding Officer: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
I think that the minister—

Mr Ruskell: 

The Deputy Presiding Officer: 

Mr Ruskell: I would like to move amendment 9. I think that the minister—

The Deputy Presiding Officer: I think that you should sit down, Mr Ruskell. You have moved the amendment.

The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There was definitely a no, albeit that it was slow in coming. There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Graham, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenney (Lothians) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGilligan, Mrs Mary (Linlithgow) (Lab)
McIntosh, Mr Kenneth (Eastwood) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunningham South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatlee, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Putnis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeen and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Eliza (Cochrane and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Tosh, Murray (West of Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunningham North) (Lab)

ABSTENTIONS

Curran, Frances (West of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
MacDonald, Margo (Lothians) (Ind)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Deputy Presiding Officer: The result of the division is: For 28, Against 72, Abstentions 6.

Amendment 12 disagreed to.

The Deputy Presiding Officer: Mr Ruskell, do you want to move amendment 9?

Mr Ruskell: I would like to move amendment 9.

The Deputy Presiding Officer: I think that you should sit down, Mr Ruskell. You have moved the amendment.

The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There was definitely a no, albeit that it was slow in coming. There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Graham, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
The Deputy Presiding Officer: The result of the division is: For 34, Against 72, Abstentions 0.

Amendment 9 disagreed to.

The Deputy Presiding Officer: Group 4 is on the application of the bill to financial or budgetary plans and programmes. Amendment 5, in the name of Rosie Kane, is in a group on its own.

Rosie Kane: We are extremely concerned about the exclusion of financial or budgetary plans and programmes from SEA under section 4(3)(b). Given that the Executive has clearly decided to extend the scope of the bill beyond the requirements of the directive, it is unclear why financial or budgetary plans, programmes and strategies should remain excluded from the SEA process.

The allocation of resources between sectors can have critical environmental implications and be subject to the same screening provisions as other plans, programmes and strategies. Strategic environmental assessment would make the budgetary process more transparent to the Parliament and the public, thereby improving scrutiny and accountability. Use of the widely accepted and recognised SEA approach could ensure that the Executive’s commitment to incorporate sustainable development principles into its budgetary process is delivered in practice.

I move amendment 5.

Mr Rusell: We had a lengthy discussion in committee at stage 2 about what comes first: the financial budget, or the plan or programme. I accept that if a plan or programme were to accompany a budget, we would not want to see that budget analysed as part of that process, as it would already have gone through screening.
However, there are situations in which we want to analyse financial budgets. Two examples of budgets for which we need to understand the environmental impacts are the £1.65 million that is spent on rail freight facilities and the £12.4 million that is to be spent under the route development fund. We could have a hell of a debate in the chamber as to whether positive or negative environmental benefits result from the fund. The important thing to remember is that we need to know the impacts of the financial plans and programmes. I support amendment 5.

Ross Finnie: The Executive’s view remains as it was when the subject was debated at some considerable length at stage 2. In general terms, budgetary numbers are not practical items on which strategic environmental assessment can be carried out. It remains our view that it is much more appropriate to carry out strategic environmental assessment on the plans or programmes that lead to the provision of a financial amount or that arise from an allocation of funds.

On the examples that Mark Ruskell gave, there will be a policy statement on what a plan or programme seeks to achieve—that, rather than the money, is the issue. Of course, funding levels and budget provisions change over time and when such a change calls for the modification of a plan and that modification will have a significant environmental effect, a strategic environmental assessment will be required.

Strategic environmental assessment is targeted at plans and programmes that have significant environmental effects. I believe that targeting it in that way helps us to deal with the real issue and to target our resources on the import of the bill. If all the budget lines and financial provisions are included, as amendment 5 seeks to do, resources will be redirected in a way that will not achieve the bill’s aims. Therefore, I urge Parliament to resist amendment 5.

The Deputy Presiding Officer: Although she pressed her button late, I call Sarah Boyack.

Sarah Boyack (Edinburgh Central) (Lab): I want only to make a brief point. We discussed the issue at great length at the Environment and Rural Development Committee, principally to air the discussion that has been put in front of the chamber today about when it is appropriate to carry out environmental assessment. Committee members wanted to reassure themselves that before something goes into a budget or when it is being considered as a project, there will be an SEA process. The majority of us thought that the applicability of the bill to plans, programmes and strategies adequately covered that point. The bill’s measures did not slide through without scrutiny at stage 2 but were debated extensively.

The examples that Mark Ruskell gave, such as the rail freight grant, should be picked up through the development of the rail strategy for Scotland and the national transport strategy. We expect such things to be properly analysed under strategic environmental assessment. In addition, we expect the planning system to pick up individual projects and perform detailed environmental impact assessments on them. It is all about ensuring that the hierarchy works. For those reasons, the majority of us were persuaded that amendment 5 is not required.

Rosie Kane: When budgetary decisions are made, they are not always attached to a plan. Mark Ruskell made a couple of points about that. If amendment 5 falls, a spending announcement about a reduction in funding for an energy-efficiency initiative or for organic farming, for example, that was not attached to a plan would not be scrutinised, despite the fact that there would obviously be environmental implications. When the bill was drafted, we asked that a safety net be put in place. We are taking a second opportunity to get the Parliament to support the amendment to ensure that everything is in place for the protection of the environment when we need it most, which is when budgetary and financial changes take place.

The Deputy Presiding Officer: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
The result of

Smith, Elaine (Coatbridge and Chryston) (Lab)
Scott, John (Ayr) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Radcliffe, Nora (Gordon) (LD)
Pringle, Mike (Edinburgh South) (LD)
Peattie, Cathy (Falkirk East) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Allan (Cunninghame North) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brooke, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Earle, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Gloucester) (LD)
Ferguson, Alex (Galloway and Upper Nithsdale) (Con)
Finnie, Ross (West of Scotland) (LD)
Gillan, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamiesson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyson, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springfield) (Lab)
May, Christine (Central Fife) (Lab)
McAteer, Mr Frank (Glasgow Shettleston) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Mr Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Tosh, Murray (West of Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

Section 7—Exemptions: pre-screening

15:15

Mr Ruscell: At stage 1, I said that there is a danger that the phrase “minimal effect” would turn into weasel words. I still think that that is the case. No accepted legal definition of the term exists. The minister attempted to clarify the issue during the bill process, when he stated:

“The very wide gap between minimal and significant is covered by the screening process; minimal should be seen as a difficult test to meet and is always assessed in the context of each individual plan.”

That is not clear.

The minister has just rejected an amendment relating to the Ministry of Defence on the basis that the term “operational capability” does not have a legal definition. Now, with a different amendment, we are arguing that we should get rid of a term because it does not have a proper accepted legal definition. I believe that the term “minimal effect” is a hostage to fortune and that it will certainly delight lawyers, who will no doubt try to test the issue in the courts.
Rhona Brankin: As drafted, the bill provides for pre-screening exemptions for plans and programmes that have no, or minimal, environmental effects. Amendment 6 seeks to limit pre-screening to plans and programmes that have no environmental effect, which is an almost impossible standard to meet. During stage 2, the Environment and Rural Development Committee gave due consideration to a similar amendment, which was rightly disagreed to. Amendment 6 would undermine the positive benefits that the pre-screening provisions as drafted will provide, such as the reduction of administration and the targeting of resources at plans that have significant effects. Those benefits were welcomed by respondents to our public consultation, particularly local authorities.

I reiterate the commitment that I gave at stage 2 that guidance will be produced to provide as much clarity as possible. Achievement of clarity on the meaning of the term “minimal effect” is at the heart of the issue, as that will help us to retain the full benefits of pre-screening while giving reassurance that pre-screening decisions will involve a tough and clearly understood test. Therefore, clear guidance, rather than amendment 6, is the way forward. Members should be further reassured by our commitment to establish a pre-screening register, which will render the whole pre-screening process more transparent. Also, the Scottish ministers will have powers to direct an SEA to be carried out, which provides a suitable safety net.

I ask members to resist amendment 6.

Rosie Kane: The Parliament has promised on many occasions to ensure environmental justice. Mark Ruskell made the point that lawyers will have a field day with the wording “minimal effect”. If amendment 6 is not agreed to, a consultation authority may exempt a plan that it believes will have a minimal effect when the community that is affected by the plan may believe the effects to be more than minimal. The wording is crucial. I ask members to support amendment 6 to ensure, once again, that a safety net is in place.

The Deputy Presiding Officer (Murray Tosh):

The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Tricia (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Russek, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Cragie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Finnie, Ross (West of Scotland) (LD)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Abderdeen Central) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAteet, Mr Frank (Glasgow Shettleston) (Lab)
Mr Ruskell: Amendment 7 does the job—it is a thorough amendment and I welcome it. I still believe that the whole process of pre-screening is a bit of an irrelevance but, if we are going to have it, it needs to be done in an open and accountable way. The details of the provisions in amendment 7 are entirely acceptable to me and, I hope, to the rest of Parliament, so I am happy not to move amendment 1.

Sarah Boyack: I welcome amendment 7, which is in Rhona Brankin’s name. Other members of the committee have referred to the fact that there was extensive and detailed debate about the subject and the committee split between those of us who did not agree with pre-screening and those of us who felt that the idea was important, as part of a proportionate act that will cover every issue under the sun, and that the responsible authorities have to be prepared to be accountable. For those reasons, I am glad that we are now much clearer about what to expect. If an authority decides that it is going to pre-screen something, it has to come out and say what its decision is and make that

The Deputy Presiding Officer: for the purpose of the debate, amendment 7 in the name of the minister, is grouped with amendment 1.

Rhona Brankin: I promised the committee at stage 2 that I would lodge a further amendment requiring a pre-screening register, and I have done so. I thank Rob Gibson for lodging amendment 1, which clearly demonstrates that we share the same concerns regarding the transparency of pre-screening decisions. However, I believe that amendment 1 does not address the concerns of the committee quite as thoroughly as amendment 7 does. In particular, amendment 7 asks responsible authorities to provide some details of the plan or programme, which improves transparency and enables a greater degree of public scrutiny. Amendments 7 and 1 have a similar purpose but, because I consider amendment 7 to be rather more effective, I ask Rob Gibson not to move his amendment.

Pre-screening is an immensely useful administrative tool, which has been welcomed by the vast majority of practitioners, because it avoids wasting valuable time and resources. Pre-screening achieves that by empowering responsible authorities to exempt from SEA plans and programmes that have no or only minimal environmental effects.

Having said that, I fully acknowledge the concern that the Environment and Rural Development Committee and others expressed that pre-screening as originally proposed might not be sufficiently transparent. Amendment 7 addresses such concerns by, first, requiring responsible authorities to notify pre-screening decisions to the consultation authorities, along with a brief description of the plan or programme; secondly, by requiring Scottish ministers to make arrangements for a register to be kept of all such notification; and thirdly, by empowering the Scottish ministers to make that register publicly available.

A publicly available register, as proposed in amendment 7, must reassure anyone who had concerns over transparency. The fact that the register is to include a description of the plan must reassure anyone who had concerns about the level of scrutiny that the register will enable. I urge colleagues to accept amendment 7 and to resist amendment 1.

I move amendment 7.

Rob Gibson: As members will see from the number of my amendment, I ensured that a debate would take place on pre-screening activity. I am glad to say that, following the committee’s scrutiny of the bill at stage 2, the minister has come back with a much more detailed approach, so that both screening and pre-screening can be done and so that pre-screening is done in an open and accountable way. The details of the provisions in amendment 7 are entirely acceptable to me and, I hope, to the rest of Parliament, so I am happy not to move amendment 1.

Mr Ruskell: I will take a slightly more positive tone now. I withdrew an amendment at stage 2, on the publication of a pre-screening register, on the understanding that the minister would introduce an amendment on the matter at stage 3. Amendment 7 does the job— it is a thorough amendment and I welcome it. I still believe that the whole process of pre-screening is a bit of an irrelevance but, if we are going to have it, it needs to be done in an open and accountable way, and amendment 7 will achieve that. I support amendment 7.

Sarah Boyack: Amendment 6 disagreed to.

The Deputy Presiding Officer: The result of the division is: For 34, Against 71, Abstentions 0.

Amendment 6 disagreed to.

The Deputy Presiding Officer: Group 6 is on a pre-screening register. Amendment 7, in the name of the minister, is grouped with amendment 1.

Rhona Brankin: I promised the committee at stage 2 that I would lodge a further amendment requiring a pre-screening register, and I have done so. I thank Rob Gibson for lodging amendment 1, which clearly demonstrates that we share the same concerns regarding the transparency of pre-screening decisions. However, I believe that amendment 1 does not address the concerns of the committee quite as thoroughly as amendment 7 does. In particular, amendment 7 asks responsible authorities to provide some details of the plan or programme, which improves transparency and enables a greater degree of public scrutiny. Amendments 7 and 1 have a similar purpose but, because I consider amendment 7 to be rather more effective, I ask Rob Gibson not to move his amendment.

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Rob Gibson: As members will see from the number of my amendment, I ensured that a debate would take place on pre-screening activity. I am glad to say that, following the committee’s scrutiny of the bill at stage 2, the minister has come back with a much more detailed approach, so that both screening and pre-screening can be done and so that pre-screening is done in an open and accountable way. The details of the provisions in amendment 7 are entirely acceptable to me and, I hope, to the rest of Parliament, so I am happy not to move amendment 1.

Mr Ruskell: I will take a slightly more positive tone now. I withdrew an amendment at stage 2, on the publication of a pre-screening register, on the understanding that the minister would introduce an amendment on the matter at stage 3. Amendment 7 does the job—it is a thorough amendment and I welcome it. I still believe that the whole process of pre-screening is a bit of an irrelevance but, if we are going to have it, it needs to be done in an open and accountable way, and amendment 7 will achieve that. I support amendment 7.

Sarah Boyack: Amendment 7, which is in Rhona Brankin’s name. Other members of the committee have referred to the fact that there was extensive and detailed debate about the subject and the committee split between those of us who did not agree with pre-screening and those of us who felt that the idea was important, as part of a proportionate act that will cover every issue under the sun, and that the responsible authorities have to be prepared to be accountable. For those reasons, I am glad that we are now much clearer about what to expect. If an authority decides that it is going to pre-screen something, it has to come out and say what its decision is and make that...
There will be an Executive is one of the bodies in a dispute. To be the arbiter in a dispute in which the Scottish ministers could be asked not to pass, the Scottish ministers could be asked the obvious conflict of interest. If the amendments act as an arbiter. The amendments will address that an independent body must be established to a conflict of interests would arise, which means authority, even if the Scottish Executive is the consultation authorities and the responsible authority. Clearly, in such a situation, a conflict of interests would arise, which means that an independent body must be established to act as an arbiter. The amendments will address the obvious conflict of interest. If the amendments do not pass, the Scottish ministers could be asked to be the arbiter in a dispute in which the Scottish Executive is one of the bodies in the dispute.

Amendment 7 agreed to.

Amendment 1 not moved.

Section 9—Screening: procedure

The Deputy Presiding Officer: Group 6 is on the settlement of disputes to do with screening. Amendment 13, in the name of Rosie Kane, is grouped with amendments 14 and 15.

Rosie Kane: The bill requires Scottish ministers to act as arbiters in the event of a dispute between the consultation authorities and the responsible authority, even if the Scottish Executive is the responsible authority. Clearly, in such a situation, a conflict of interests would arise, which means that an independent body must be established to act as an arbiter. The amendments will address the obvious conflict of interest. If the amendments do not pass, the Scottish ministers could be asked to be the arbiter in a dispute in which the Scottish Executive is one of the bodies in the dispute.

I move amendment 13.

Ross Finnie: Rosie Kane is right. Section 9(7) attempts to provide a procedure for resolving disputes. The difficulty that we have with the amendments is that they require that an unspecified person or body would be appointed by agreement between the responsible authority and the consultation authorities. They make no provision as to how that person or body would be identified or, indeed, what duty might be placed on that person or body. I think that an interesting and difficult interpretation would be placed on the precise role of that unnamed person or body.

Although I understand where Rosie Kane is coming from, the amendments lack clarity and appear to be a heavy-handed approach to a situation in which the risks of conflict were generally regarded as being remote. That was not only my view but the view of the overwhelming majority of respondents to the consultation on the bill. It was broadly felt that Scottish ministers ought to determine cases of disagreement, which is what appears in the bill.

I ask members to resist amendments 13, 14 and 15.

Rosie Kane: I am shocked and flattered that the minister has twice today said that I am right. I am left, but I thank him anyway.

In the drafting of the bill, there have been many opportunities to discuss a specific body that could fill the position that the minister talks about. It is clear that we need such a body and it is a pity that, after all this time, there have been no moves to put one in place. The Scottish Executive would do well to support the amendment, as it would put it above suspicion and criticism if it were to find itself being one of the bodies in a dispute.

I will press amendment 13 and hope that Mr Finnie will once again tell his colleagues that I am right.

15:30

The Deputy Presiding Officer: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Graham, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Russell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
The result of

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<th>Stone, Mr Jamie (Caithness, Sutherland and Easter Ross)</th>
<th>Smith, Margaret (Edinburgh West) (LD)</th>
<th>Smith, Iain (North East Fife) (LD)</th>
<th>Smith, Elaine (Coatbridge and Chryston) (Lab)</th>
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Amendment 14 moved—[Rosie Kane].

The Deputy Presiding Officer: The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

FOR

| Adam, Brian (Aberdeen North) (SNP) | Baird, Shiona (North East Scotland) (Green) | Ballance, Chris (South of Scotland) (Green) | Ballard, Mark (Lothians) (Green) | Canavan, Dennis (Falkirk West) (Ind) | Crawford, Bruce (Mid Scotland and Fife) (SNP) | Cunningham, Roseanna (Perth) (SNP) | Curran, Frances (West of Scotland) (SSP) | Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP) | Ewing, Mrs Margaret (Moray) (SNP) | Fabiani, Linda (Central Scotland) (SNP) | Fox, Colin (Lothians) (SSP) | Gibson, Rob (Highlands and Islands) (SNP) | Grahame, Christine (South of Scotland) (SNP) | Harper, Robin (Lothians) (Green) | Harvie, Patrick (Glasgow) (Green) | Hyslop, Fiona (Lothians) (SNP) | Ingram, Mr Adam (South of Scotland) (SNP) | Kane, Rosie (Glasgow) (SSP) | Leckie, Carolyn (Central Scotland) (SSP) | Lochhead, Richard (North East Scotland) (SNP) | MacAskill, Mr Kenny (Lothians) (SNP) | Marwick, Tricia (Mid Scotland and Fife) (SNP) | Mather, Jim (Highlands and Islands) (SNP) | Matheson, Michael (Central Scotland) (SNP) | McFee, Mr Bruce (West of Scotland) (SNP) | Morgan, Alasdair (South of Scotland) (SNP) | Robson, Shona (Dundee East) (SNP) | Ruskell, Mr Mark (Mid Scotland and Fife) (Green) | Scott, Eleanor (Highlands and Islands) (Green) | Stevenson, Stewart (Banff and Buchan) (SNP) | Swinburne, John (Central Scotland) (SSCUP) | Swinney, Mr John (North Tayside) (SNP) | Welsh, Mr Andrew (Angus) (SNP) |

AGAINST

| Aitken, Bill (Glasgow) (Con) | Alexander, Ms Wendy (Paisley North) (Lab) | Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD) | Bailie, Jackie (Dumbarton) (Lab) | Baker, Richard (North East Scotland) (Lab) | Barrie, Scott (Dunfermline West) (Lab) | Boyack, Sarah (Edinburgh Central) (Lab) | Brankin, Rhona (Midlothian) (Lab) | Brocklebank, Mr Ted (Mid Scotland and Fife) (Con) | Brown, Robert (Glassow) (LD) | Brownlee, Derek (South of Scotland) (Con) | Chisholm, Malcolm (Edinburgh North and Leith) (Lab) | Craigie, Cathie (Cumbernauld and Kilsyth) (Lab) | Curran, Ms Margaret (Glasgow Baillieston) (Lab) | Deacon, Susan (Edinburgh East and Musselburgh) (Lab) | Douglas-Hamilton, Lord James (Lothians) (Con) | Eadie, Helen (Dunfermline East) (Lab) | Ferguson, Patricia (Glasgow Maryhill) (Lab) | Ferguson, Alex (Galloway and Upper Nithsdale) (Con) | Finnie, Ross (West of Scotland) (LD) | Glen, Marlyn (North East Scotland) (Lab) |

ABSTENTIONS

Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
The result of the division is: For 34, Against 70, Abstentions 1.

Amendment 14 disagreed to.

Amendment 15 moved—[Rosie Kane].

The Deputy Presiding Officer: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
commitment to a sound basis of annual reporting. And I believe that amendment 8 demonstrates our commitment to that. We have given the matter due consideration at stage 3 and we have done exactly what I said we would—consult the committee further before returning to the division is: For 32, Against 71, Abstentions 2.

Amendment 15 disagreed to.

After section 19

The Deputy Presiding Officer: The result of the division is: For 32, Against 71, Abstentions 2.

Amendment 15 disagreed to.

“co-ordination of environmental assessment activities” and the “support, advice and guidance” that are provided to responsible authorities. To an extent, I understand where the amendments come from. That is what I said about Rosie Kane’s amendments, but that does not necessarily mean that I agree with them—I merely understand perfectly why they have been lodged.

Amendments 8A and 10A would not be entirely workable, because the meaning of terms such as “co-ordination” and “advice”, as expressed in the amendments, is unclear. Amendment 8 will provide the necessary clarity and flexibility without the additional amendment. We ask members to resist amendments 8A and 10A and we hope that we can persuade Nora Radcliffe not to move amendment 10.

I move amendment 8.
Mr Ruskell: The bill is innovative. As a result, scrutiny of its effectiveness will be needed in parliamentary session 3. I am pleased that the Executive has responded to the committee’s concerns and proposed an annual reporting structure that is quite robust. However, the committee is still concerned about the core functions of a gateway—especially the co-ordination of environmental assessments and the provision of the support, advice and guidance that need to follow the bill’s implementation. We have debated whether those functions should be delivered by a gateway, an independent body or another organisation, but the important point is that they should be performed and we should not be in the same situation that arose after the Local Government in Scotland Act 2003, when bodies that were established to support community planning withered away.

That is why I lodged amendment 8A. I acknowledge what the minister said about the gateway, but if the functions are to be performed and implementation of the bill is to be successful, it is important for the committee to be able in session 3 to scrutinise how the functions have been delivered, regardless of whether that happens through a gateway or another structure. I appeal again to the minister to take amendment 8A in the spirit of amendment 8. We need such a measure in order to scrutinise the effectiveness of this innovative bill. I ask the minister to accept amendment 8A, please.

I move amendment 8A.

Nora Radcliffe (Gordon) (LD): I thank the minister for his kind remarks and welcome the Executive’s acceptance that annual reporting is a good idea, at least for the first five years while everyone gets to grips with implementing the bill. There are slight differences between what the Executive and I propose. I will compare and contrast.

My aim was that a brief summary report that focuses on compliance should be laid before the Parliament once a year. That would enable parliamentary scrutiny and enable us to check implementation. It would also be an opportunity to follow up any concerns that had emerged. My amendment 10 includes Scottish ministers, the consultation authorities and responsible authorities, whereas the Scottish Executive’s amendment 8 specifies Scottish ministers and undefined “other activities”. We agree that there should be flexibility and a sunset clause, but my amendment would allow ministers to come back to the Parliament after five years and either to modify or repeal by way of order the requirement for annual reporting. I thought that that proposal would fulfil the twin objectives of flexibility and guaranteed scrutiny by the Scottish Parliament.

If I have a criticism of the Executive’s amendment, it is that it is a bit woollier than mine because it states that “the Scottish Ministers must consult with such persons as they consider appropriate” on the reporting arrangements that should be continued after the five-year cut-off point. That proposal could be taken to slightly absurd extremes—Scottish ministers could, in effect, consult themselves and then decide to proceed. However, I am happy to accept that that is highly unlikely to happen.

In some ways, I prefer my amendment 10, but the Executive’s amendment 8 meets—and in some respects exceeds—what I wanted. Therefore, I will be happy not to move amendment 10.

The Deputy Presiding Officer: There will be two winding-up processes. First, members may wind up on amendment 8A, which is an amendment to amendment 8. I will allow the minister to make a few final comments strictly and solely on amendment 8A before I invite Mr Ruskell to say whether he will press that amendment.

Ross Finnie: I will be brief.

I have made my view clear. The way in which we have expressed the broad remit that we have incorporated in subparagraphs (i) and (ii) of paragraph (a) of subsection (1) in amendment 8 will extend the scope of the report much wider than the scope that was originally discussed in the committee. The amendment incorporates and encapsulates what Mark Ruskell has proposed. We do not necessarily agree about that, but I am sticking to the proposal and ask members to resist amendment 8A.

Mr Ruskell: I am disappointed that the Executive has not entered into the spirit of my amendment 8A. The minister has not yet given me a form of words that has been recorded in the Official Report and which says that the annual reports that will be produced in the years between 2006 and 2010 will deal with the co-ordination of environmental assessment activities and how support, advice and guidance are being provided by the responsible authorities. If I had been given that commitment, I would have been prepared to seek to withdraw amendment 8A, but that has not happened. As a result, I will press amendment 8A.

The Deputy Presiding Officer: The question is, that amendment 8A be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
For
Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
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Gibson, Rob (Highlands and Islands) (SNP)
Graham, Christine (South of Scotland) (SNP)
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Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Green) (SNP)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mathers, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Ruskeil, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Welsh, Mr Andrew (Angus) (SNP)

Against
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craige, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Ferguson, Alex (Galloway and Upper Nithsdale) (Con)
Finnie, Ross (West of Scotland) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundece West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy ( Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Alan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 31, Against 73, Abstentions 0.

Amendment 8A disagreed to.

15:45

The Deputy Presiding Officer: Minister, you have the right to wind up on amendment 8 if there is anything further to be said.

Ross Finnie: I wish briefly to reiterate the assurance that I gave to Nora Radcliffe, who raised the possibility that ministers might simply consult themselves. For the avoidance of doubt—for the second time, but to be absolutely clear—I state for the Official Report that the Scottish Executive would include the Environment and Rural Development Committee in any such consultation.

Amendment 8 agreed to.

The Deputy Presiding Officer: Group 9 is on the SEA gateway. Amendment 2, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: At an earlier stage, in the committee debates, we heard strong arguments for setting up a body that would act as the gateway for people to use to expedite the process. Safeguarding the gateway for up to five years
would send out the signal that the Government wants to make it possible to get quality environmental assessments undertaken and to create consistency in a way that helps people to see a transparent means whereby the Executive is welcoming people to undertake best practice.

We have removed from the amendment that was discussed at stage 2 any suggestion that that body ought to be an arbiter. We think that the gateway is a suitable place to provide support and advice on best practice and to host the pre-screening register, which was discussed earlier. Co-ordination, support, advice and monitoring through the gateway will ensure that the standard of reporting and environmental assessment activities is consistent.

It was suggested, in early evidence to the committee, that monitoring the assessments that are being done just now is an important function in getting much better work done. We have argued, earlier in the debate, about the way in which bodies over which we have no control might impact on the environment. There are many bodies that are within our control and we want to ensure that they follow best practice.

The Executive will have an overview and will be well placed to make recommendations to ministers through the gateway. That would be an obvious way of saying that the Executive considers this process to be up front and out there—a statement that strategic environmental assessment is something that it takes seriously and which will kick in before many of the decisions that will be taken in future policy directions.

It is, therefore, the Scottish National Party’s belief that a gateway of the sort that I propose in amendment 2 should be included in the bill. We look to the Executive to accept the amendment in the spirit in which we accepted its earlier arguments about pre-screening and the need to have quality and consistency.

I move amendment 2.

Mr Ruskell: I thank Rob Gibson for enthusiastically resurrecting at stage 3 one of my amendments from stage 2. It is important that we get some security for the key functions of the gateway, especially in the early years after implementation of the act. If we are to ensure that our implementation of the directive is successful—if we are to show best practice across Europe—it is important that we have strong functions of co-ordination, support, advice and guidance.

As I said in the debate on the previous group of amendments, it is important that we learn the lessons of the Local Government in Scotland Act 2003 and ensure that the sort of support, advice and co-ordination that were required in that act for community planning but which did not materialise after a couple of years are secured in this case for the SEA process. We have an innovative bill, but we must ensure that those key functions are preserved to enable the bill to be a success. I support amendment 2.

Rhona Brankin: Amendment 2 is very similar to one that was disagreed to following a considered debate by the Environment and Rural Development Committee at stage 2. At stage 2, we clearly stated our commitment to the gateway, saying that it is here to stay. Furthermore, we committed ourselves to go back to the committee if we were considering changing the arrangements. I am sure that amendment 8 on SEA reporting underlines our on-going commitment to SEA.

To operate effectively, the gateway must be dynamic in nature and it must be enabled to respond to needs that are, as yet, unknown. That will be done best and most flexibly through administrative provisions. Statutory provisions, on the other hand, might risk constraining the development of the gateway and prevent it from operating as effectively as it might.

Our commitment to the gateway is further demonstrated by the fact that it is already operational. A team of Scottish Executive civil servants is dedicated to SEA duties in support of Scottish ministers. That team is unique in the United Kingdom and it performs valuable functions such as the provision of advice; the development of SEA guidance, including user templates; the gathering of statistics; liaison with consultation authorities; and management of the review of SEA practices to develop good practice.

In suggesting an audit and monitoring role, amendment 2 seems partly to reflect concerns over quality control. I offer reassurance on that point, because quality control is already addressed in several ways. There are statutory provisions to ensure the publication of SEA documents and for consultation to allow for public and expert consultation authority scrutiny.

Statutory provisions will allow ministers to direct that an SEA be carried out, even after the plan has been adopted. There are also statutory provisions for monitoring the significant environmental effects of plans and programmes after adoption to enable responsible authorities to take remedial action should there be any unforeseen adverse effects. The gateway can assist quality control and the smooth operation of SEA by acting as the administrative hub for SEA.

We are whole-heartedly committed to effective administration, provision of support and quality control. We believe that those are best served by robust, practical and flexible administrative provisions that can respond and develop to meet
emerging needs. I therefore urge members to resist amendment 2.

Rob Gibson: The inclusion of a strategic environmental assessment gateway on the face of the bill, with the functions that I propose in amendment 2, would give a guarantee that the Executive was up front. I hear what the minister says about needing to be flexible, but amendment 2 would not inhibit flexibility. Instead, it would send a clear signal that the Scottish Government and Parliament believe that a gateway is essential to act as the main means of showing people that the way in which we operate is absolutely transparent, open and welcoming. Agreeing to amendment 2 would help that process and I hope that members will support it.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Baird, Shona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mathers, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Russek, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brooklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Finnie, Ross (West of Scotland) (LD)
Gillan, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatlie, Cathy (Falkirk East) (LD)
Pringle, Mike (Edinburgh South) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeen and Kincardine) (LD)
Scallon, Mary (Highlands and Islands) (Con)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Wallace, Mr Jim (Orkney) (LD)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Swinburne, John (Central Scotland) (SSCUP)

The Deputy Presiding Officer: The result of the division is: For 32, Against 69, Abstentions 1.

Amendment 2 disagreed to.
Before section 20
Amendment 10 not moved.

Schedule 2
CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

The Deputy Presiding Officer: That brings us, finally, to group 10, on the criteria for determining effects likely to be significant. Amendment 11, in the name of Rosie Kane, is in a group on its own.

Rosie Kane: Schedule 2 provides no reference to the implications that a plan, programme or strategy might have for national environmental goals and targets—[Interruption.]

The Deputy Presiding Officer: Order.

Rosie Kane: I refer to targets such as renewable energy targets, emissions targets or even targets for noise levels in the chamber.

The Executive has no national targets on emissions or recycling, despite calls from the environmental movement for such targets to be adopted and despite the Executive’s constant claim that it has a green agenda. The inclusion of such targets is key to the bill. A result on the amendment would force the Executive to adopt such targets, which would be to the benefit both of the environment and of the communities that have to live with, for example, the blight of high levels of air pollution or a landfill site on their doorstep.

I move amendment 11.

Mr Ruskell: Targets are of course extremely important, but I will be interested to hear what the minister says about schedule 2. If he can give us a commitment on the record that paragraph 2(f)(ii) relates specifically to targets such as those for emissions and recycling, we might have to think twice about supporting amendment 11. However, we need a commitment from the minister that paragraph 2(f)(ii) relates to those very important national targets.

Ross Finnie: Amendment 11, in the name of Rosie Kane, would add the words “national environmental targets on emissions and recycling” to paragraph 2 of schedule 2.

I am grateful to Mark Ruskell for drawing the member’s attention to the provisions that are already contained in paragraph 2(f)(ii) of schedule 2. I ask her to look carefully at that paragraph, which gives the following criteria for determining the likely significance of effects on the environment:

“Characteristics of the effects and of the area likely to be affected, having regard, in particular, to … the value and vulnerability of the area likely to be affected due to … exceeded environmental quality standards or limit values”.

For the benefit of Rosie Kane and Mark Ruskell, I state that I am absolutely clear that the broad definition in paragraph 2(f)(ii) refers to matters on which the Executive has set an environmental quality standard or a limit value. I believe that paragraph 2(f)(ii) not only answers the point that is raised in Rosie Kane’s amendment but, in so far as it is not specific, it goes further than it. Any environmental quality standard or limit value that the Executive sets will be caught by the mischief of paragraph 2.

Given that the matter is well provided for, I hope that Rosie Kane will not press amendment 11.

Rosie Kane: Targets, goals and aims are essential and they should be enshrined clearly in the bill. Targets are essential so that we know where we are going, as well as how and when we will get there. Surely all members can get behind amendment 11. The inclusion of targets is crucial to aiming for and achieving a better, safer environment and to showing whether we have done so. I press amendment 11.

The Deputy Presiding Officer: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR
Curran, Frances (West of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Murray, Dr Elaine (Dumfries) (Lab)

AGAINST
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Brownlee, Derek (South of Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Finnie, Ross (West of Scotland) (LD)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Rothesay and Bute) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Swinburne, John (Central Scotland) (SSCUP)

The Deputy Presiding Officer: The result of the division is: For 5, Against 94, Abstentions 8.

Amendment 11 disagreed to.
Environmental Assessment (Scotland) Bill

The Deputy Presiding Officer (Murray Tosh): The next item of business is a debate on motion S2M-3435, in the name of Ross Finnie, that the Environmental Assessment (Scotland) Bill be passed.

16:01

The Minister for Environment and Rural Development (Ross Finnie): Every bill requires a great deal of collective effort, work and engagement, and this bill is no exception. I thank the Finance Committee, the Subordinate Legislation Committee and, in particular, the members and convener of the Environment and Rural Development Committee for their constructive engagement and positive contribution to the development of the bill.

There was wide consultation, and external bodies spent much time contributing to the positive debate. I thank organisations such as the Convention of Scottish Local Authorities, the Scottish Environment Protection Agency, Scottish Natural Heritage, Historic Scotland, Scottish Environment LINK and all those who offered evidence to the Environment and Rural Development Committee and responded to our several consultations.

In environmental terms, this is without any shadow of doubt a landmark bill, which will place on the statute book a wide-ranging approach to strategic environmental assessment. It will ensure that all public sector strategies, plans and programmes with significant environmental effects are assessed and monitored; that awareness is raised of environmental effects and how they may be avoided or mitigated; that there is proper democratic opportunity for people to influence assessment and the resultant decisions; and that the statutory provisions are supported by a robust and flexible administrative framework, ensuring transparency of process. By extending the scope of strategic environmental assessment to cover all public sector strategies, plans and programmes, Scotland is leading the way in Europe in the fight to protect our environmental future. Therefore, the Parliament can be proud of the bill.

The administrative arrangements in Scotland will be unique in the United Kingdom and in Europe. I refer mainly to the SEA gateway—a dedicated team that will not only provide SEA templates, guidance and advice, but will review and develop strategic environmental assessment practices to ensure that they are effective. The Executive is committed whole-heartedly to the strategic environmental assessment gateway and sees it as having a central role in SEA implementation.

In introducing strategic environmental assessment, I am mindful of the fact that there may be challenges ahead for those involved in carrying out assessments, but we have sought to minimise the resource impact and to provide for robust but light administrative requirements. Strategic environmental assessment has been designed to work with existing processes, will help to speed implementation and will minimise the impact on resources.

Furthermore, I anticipate savings both in monetary and, more important, environmental terms. For example, strategic environmental assessment will help to avoid the costly remedial action that can result from environmental harm being discovered far too late in the production and implementation of plans. I hope that strategic environmental assessment will make a tremendous contribution to the concept of sustainable development. In my view, resources that are employed in strategic environmental assessment will and must be seen as a positive investment in the future. We are determined to make that investment so that the next generation does not have to pay for mistakes, as it does now; we can no longer live now and pay later.

Strategic environmental assessment ensures assessment and positive action across a broad range of issues: protecting the natural environment; enhancing the built environment; tackling climate change; and respecting our cultural heritage. SEA has the potential to build on and improve our performance in all those areas. There is a great deal to cherish in Scotland’s environment and the bill will help to ensure that it stays that way in years to come.

Strategic environmental assessment will further enhance public participation in decision making. The bill will do that by extending public consultation and by requiring that consultees’ comments must be taken into account. Therefore, strategic environmental assessment has the potential to render public decision making more inclusive and accessible. That puts SEA right at the heart of our drive for environmental justice.

Strategic environmental assessment is designed to improve public decision making by ensuring that decisions are taken within the context of improved understanding of the environmental effects. The bill covers plans in a wide range of areas, from transport and industry through forestry and land use to tourism and telecommunications. Therefore, SEA has the potential to improve public decision making across all sectors, wherever the environment might be affected. Crucially, that means that, in the Executive’s current legislative programme, strategic environmental assessment...
will underpin the proposed reform of our planning legislation.

The bill is strategic, sustainable and supportable.

I move,

That the Parliament agrees that the Environmental Assessment (Scotland) Bill be passed.

16:07

Rob Gibson (Highlands and Islands) (SNP): The debate about environmental assessment represents a step change: we are not at sea on the matter, but SEA will guide us in a direction that will allow this Parliament and our Government to be ahead.

We agree that we want the bill to be carried out to the letter. The reporting process will allow us to review the situation regularly to see how well we are doing. In the debates in the Environment and Rural Development Committee, in which I took considerable part, we gave the bill detailed scrutiny. I thank the minister for his remarks about the committee’s scrutiny of the bill.

One of the points that I made early in the debate in the committee was that we need to ensure that what we do in Scotland about things that may damage the environment does not damage the environment in other countries. I am glad to say that one of the criteria for determining the likely significance of the effects on the environment will be their transboundary nature. That provision puts Scotland in a position to consider how our activities affect other people as well as how they affect our lives here.

The bill should deliver consistent and quality assessment. We look forward to seeing how that comes about. The Executive has responded favourably to the debates that we have had about reporting, but to meet the aims of the sustainable development directorate and the imperatives of climate change we will have to be on our guard in ensuring that the framework established by the bill does all that it has been lauded by the minister for doing.

Annual reporting will be of great benefit to us, but it is important that the public are involved in the process. Only a few members will speak in the debate, but I hope that people out there can thank us for creating a framework in which their lives and their environment will be looked after. The Scottish National Party has tried to stiffen the bill in certain areas, although we recognise that the majority of members have not gone along with us on some aspects. We are particularly concerned that the activities of the Ministry of Defence in Scotland could have an adverse effect. We will see whether the provisions of the bill as passed will deal with the issues that we have raised in that respect.

On behalf of the Scottish National Party, I have pleasure in supporting the passage of the bill. We welcome the powers in it in the interests of the people of Scotland and of our environment.

16:10

Alex Johnstone (North East Scotland) (Con): The Environmental Assessment (Scotland) Bill will revoke and replace the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258), which came into effect on 20 July 2004 and which implemented the European directive that has been mentioned many times this afternoon. As well as replacing the regulations, the bill will extend the assessment regime to cover a wider range of plans and programmes than the European directive requires.

The Environment and Rural Development Committee approved the bill at stage 1, but it also highlighted a number of reservations. There is significant concern about the likely resource implications of extending the scope of strategic environmental assessment. The bill’s explanatory notes refer to research that the Babtie Group carried out that estimates that the annual cost of SEA to the responsible authorities is likely to be between £7 million and £12.5 million per annum.

In written evidence to the committee, the Confederation of British Industry Scotland stated that it was “very disappointed” that the Executive would extend the European directive; it considered that that was “at odds with public statements that the economy is its number one priority,”

and

“counter to the commitments made to the business community by the UK Government that there would be no further ‘goldplating’ of EU legislation.”

Even Scottish Enterprise stated in its written evidence that the bill should not undermine economic growth; it stated in oral evidence that its concern was based on the need to “avoid adding to the process delays or excess bureaucracy that might slow down decision making.”—[Official Report, Environment and Rural Development Committee Committee, 27 April 2005; c 1833.]

In addition, there are serious concerns about the availability in the public sector of the skills that will be needed to implement the bill and about the likelihood of increased costs as external consultants are employed to take up the slack. COSLA, no less, suggested that, before proceeding with the bill, there should be a series of pilot projects to assess all the implications.
In considering the financial memorandum, the Finance Committee raised concerns about the high burden of costs that local authorities will carry as a result of the bill. In written evidence to the committee, Highland Council stated:

“budget constraints will force Local Authorities to choose between delivering frontline services and meeting their statutory duty to SEA.”

The Finance Committee also raised the likelihood of a knock-on effect on forthcoming planning regulation changes and the planning system as a whole.

The Conservatives accept the need for a reasonable and unobtrusive amount of environmental assessment, but we believe that the provision under the existing 2004 regulations is adequate. We have grave reservations about the implications of the bill. We believe that the Executive is following the now familiar route of gold plating European Union regulation. The bill’s provisions will impose another layer of unnecessary bureaucracy and will have enormous resource implications for costs and skills. Also, local authorities will be presented with another raft of regulation for which they will be expected to find up to £12 million a year.

The bill’s supporters argue that money will be saved and, in the long run, the prevention of damage to the environment will have a cash value. However, Scotland is not experiencing widespread environmental damage from our public bodies—the bill is the wrong approach. By all means, we should put in a safety net to address problems when they arise, but we should not inflict the bill on public bodies that are carrying out their work efficiently and responsibly.

I said in the stage 1 debate that I would attempt at stage 2 to amend out any provision in the bill that was not present in the 2004 regulations. Unfortunately, most of my amendments to that end were rejected on the ground that they would reduce the scope of the bill by 50 per cent or more and so were wrecking amendments and inadmissible. I accept that ruling, but it was an extraordinary admission of the extent to which the scope of the bill has been increased.

We on the Conservative benches will be voting against the bill at decision time.

16:15

Sarah Boyack (Edinburgh Central) (Lab): All of us on the Labour benches are keen to support the bill. It will help us to deliver joined-up thinking and will put our aspirations for sustainable development into practice. The legislation is important. It will mean that all decisions made by Government in Scotland will have to include a more robust consideration of the potential environmental impacts. Such consideration will have to be integrated; it will not be an add-on at the end. Labour members are especially keen that cumulative impact and environmental justice should be considered properly. Decisions have to be shaped and mitigation has to be planned in right at the start.

The bill is about good practice. We have the techniques, but we must ensure that they are applied thoroughly and throughout the decision-making process. The process must be carried out with transparency and openness—key principles of this Parliament.

Large parts of the debates in the Environment and Rural Development Committee at stage 1 and stage 2 were about how we could develop an open and transparent system. I welcome the minister’s amendments on pre-screening and on ensuring that the bill does not create loopholes. Labour members agree that the measures in the bill have to be proportionate. The responsible authorities will have to have a degree of flexibility, but they will have to be accountable for their judgments.

The Scottish Parliament should be in no doubt that the bill will require a major culture shift from all our public authorities. Regulations have been in place since July 2004, and experience is being gained from the analysis of pilots that are under way. That experience will have to be built on and developed.

The bill goes beyond the European directive that Alex Johnstone mentioned. The bill deals with plans, programmes and strategies. It would not be appropriate to exclude those from consideration. The bill requires explicit analysis and new expertise; we think that it will lead to a higher quality of decisions. That does not mean that environmental considerations will override our objectives for economic development or social justice, but those considerations will become part of the process of decision making. That will lead to better understanding. We already have such a process in the land-use planning system. Again, we have better-quality decision making.

The Tories have said consistently that they do not want us to go beyond the regulations, and Alex Johnstone has made the arguments again today. At stage 1, John Scott argued that the bill would lead to double the work and double the expense. I believe that that was an exaggeration. There has been no such doubling in the land-use planning system. Mid-career professional training for land-use planners has been required, and that is the kind of training that we will need for people throughout the public sector. However, that will not mean double the effort or double the cost; it will mean a culture shift and it will mean improving on what is happening.
The gateway will be vital in spreading best practice and helping to provide an efficient way of delivering training throughout the responsible authorities. It is important that the consultation authorities have been part of the pilots. That has helped to ensure that the system will work in practice. I am confident that it will.

A key issue will be the level at which SEA takes place. Monitoring of decisions will be important. I very much welcome the minister’s commitment in the amendment that responded to the committee’s opinion that, in order that we could learn lessons, some form of annual review of the process would be required in the first few years.

The bill strikes the right balance. The important thing is that—through parliamentary scrutiny, through support from ministers, and through the gateway—it is implemented successfully. Annual reporting will help the Scottish Parliament to take ownership of the issue and not see it as being owned by somebody else. Post-legislative scrutiny of bills passed by the Parliament is a vital part of the process.

Alex Johnstone talked about gold plating. I refute what he said. The bill is not about gold plating; it is about best practice, and I warmly welcome the minister’s decision to go beyond the regulations. The regulations have been in place for a year and a half and soon the bill will be enacted. We should be absolutely clear that if we do not go for the bill, a number of Government strategies will not be covered by SEA. It would be a great pity if that were to happen. If a member is against the bill, they must be able to argue successfully that environmental assessment should not be built into the national waste strategy, the architecture policy, the harbour plans on the management of recreation and the use of boats in our harbours, the strategy for Scottish tourism and the transport delivery report. It would be ludicrous if such Government policies did not have proper strategic environmental assessment built into them right from the start.

If policies and strategies such as the social justice strategy and Scotland’s health strategy are reviewed, they will now be subject to strategic environmental assessment. That can only be good for government in Scotland. If we agree to pass the bill, the prospect is one of joined-up thinking, better decision making and, at the end of the day, better government for Scotland. If a member is against the bill, they will have to be able to justify why such strategies and policies should not be subject to strategic environmental assessment. The argument is a difficult one to make.

The Executive has got it right. The bill is a good example of committee discussion being used to improve the bill. We have had lots of discussion on the detail of the bill and lots of amendments, and the bill is all the better for that. A debate on the regulations would not have let us flag up the issues. Crucially, it would not have let us flag up the concerns of businesses. I hope that we have been able to reassure them on their concerns. If a business or a company is carrying out work on behalf of the Executive, it should be subject to strategic environmental assessment through the policy process—that is the right thing to do. At the end of the day, the bill is not about creating greater costs for business but about getting better value for money.

That is why we on the Labour benches strongly support the bill. We are delighted to see it reach stage 3 today. We will all be voting for it.

The Deputy Presiding Officer (Trish Godman): We move to the open debate. I call Rosie Kane.

16:21

Rosie Kane (Glasgow) (SSP): First, if I may, I take the opportunity to mention Colin MacLeod, who died suddenly last week at the age of 37. Colin was a close friend and a champion of the community and the environment. I met him on the M77 motorway protest; Mr Gordon and other members may be aware of him.

Colin MacLeod understood that human beings are not separate from the environment but are part of it. He worked hard all his life to keep alive that belief. Had he not left us last week, Colin would have been in the public gallery today, watching us as we steer the bill to its destination. As I said, Colin rightly said that people are not separate from the environment. During our lifetime, we have a duty to protect the planet. We should do so not only for our sake but for the sake of future generations. In our lifetime, we are mere custodians of the planet.

Members of the Scottish Socialist Party will vote for the bill at decision time today. That said, we feel that the bill has not gone far enough. The Executive is always saying that things should be made more transparent and accountable, so why has it made exemptions for financial plans and private companies? The Executive has also told us that it supports fairness, so why has it allowed a system in which it will act as the arbiter in disputes in which it is involved?

The Executive says that it cares about the environment but has failed to include in the bill targets on emissions and recycling, thereby condemning future generations of communities to even more misery. It talks about environmental gold plating, but it does not want to seek the advice of NHS Health Scotland on the environmental effects on children who have to breathe the fumes from developments such as the
M74 northern extension. That issue needs to be seen alongside the lack of a third-party right of appeal in the forthcoming planning reforms.

What could have been an excellent bill to provide environmental protection for communities has turned into a business-as-usual-for-developers bill—a big business charter. Members are in the chamber today to debate, amend and vote on the Environmental Assessment (Scotland) Bill, but if we do not get it right, in the future we will be debating the bill on flooding, the bill on poison and the bill on ill effects on health, all of which will be hefty.

The critical issue will be the interpretation of the drafting in the bill. Today, we attempted—unsuccessfully—to make the wording clearer. I hope that people will be careful about how they interpret the bill. I also hope that we get a cleaner, greener Scotland.

16:24

Mr Mark Ruskell (Mid Scotland and Fife) (Green): My colleagues and I are looking forward to voting for the Environmental Assessment (Scotland) Bill, which goes further than the progressive European directive. I hope that the bill will lead Europe as a good example of how the concept of SEA can be extended.

I thank the official report, the committee clerks and the Scottish Parliament information centre for their help and analysis of the issues and their tolerance of some of the to-ings and fro-ings of amendment drafting at stages 2 and 3.

SEA is a new tool in the box to help us to fashion a sustainable Scotland and ensure that the environment, as well as economic growth and social justice, is understood in decision making. Those three elements of sustainability need to be understood together if we are to deliver real progress in Scotland. I hope that the focus on the environmental component will help us to fight the war against climate change, which threatens the economy as well as social justice throughout the world.

The next session of the Scottish Parliament will be the testing ground for the legislation. There is still considerable uncertainty about many aspects; that uncertainty could have been avoided if the Executive had accepted a number of the amendments that were lodged at stages 2 and 3. There will be a need for detailed scrutiny by the Environment and Rural Development Committee in session 3.

The commitments that have been made at stage 2 and today, as reported in the Official Report, will be as important as the words in the bill. I hope that the commitment given by ministers to annual reporting, and the commitment given to a more open pre-screening process, will allow that robust scrutiny to take place. However, I am slightly disappointed that the groundbreaking potential of the bill was not met by a more secure commitment to a gateway body, which would have acted as a hub for best practice. Two types of flexible but statutory gateway, with no straitjackets attached, were presented but flung out at stage 2. The important functions of co-ordination and support will be vital if the new thinking on SEA is to be mainstreamed across the public and private sectors. I fear that we will have a huge way to go after the bill is enacted to achieve that shift, which is why such gateway functions are vital.

On exemptions and where the bill will not apply, it became clear at stage 2 that the nuclear power policies of Mr Blair at Westminster will never come under the ambit of the legislation. That is not the fault of the Executive, but it is a weakness of the devolution settlement. It seems likely that Ministry of Defence plans to build new Navy, Army and Air Force Institutes—NAAFI—stores in Scotland will come under intense SEA scrutiny, but plans to bomb our coasts will be considered at the discretion of the MOD.

We will wait to see which private companies the minister chooses to bring in under the mischief of the bill. However, I am surprised that the Tories are against a bill that could force private utilities to reveal strategies behind new power lines. People in Perthshire will find that particularly interesting. Perhaps the Tories do not want to face up to the facts behind the need for transmission.

The weasel words “minimal effect” are still in the bill, which no doubt will trouble some legal minds and delight others as a potential loophole. I am sure that that will lead to the creation of legal precedent before long.

In conclusion, the bill might be imperfect, but it is still a useful tool. I hope that ministers and decision makers will use it wisely. However, just as the M74 public inquiry showed clear evidence of environmental impact and was ignored, so an SEA can be ignored if ministers choose to ignore it.

The SEA process can never make the decisions—nor should it. Responsibility still lies with politicians to deliver progress that allows the future aspirations of the people of Scotland to be met in a healthy and sustaining environment.

16:29

Nora Radcliffe (Gordon) (LD): People throughout Scotland will be cursing us because of the bill’s implications for them. However, I confidently believe that once they have got to grips with them they will see and appreciate, and even
enjoy and take satisfaction from, the benefits of better, more balanced decision making, and the downstream benefits of thorough work done at strategic level.

A great many people who are employed in the public sector will have to take on board the bill’s requirements and develop new skills and expertise—and they will do so. If the legislation works as it should, the practices must become embedded in-house; they cannot be delivered by routinely bringing in consultants. That is why I welcome the Executive’s work in the past few months to develop templates, advice and guidance to encourage and support in-house delivery. I also welcome the commitment to continue the SEA gateway as a source of advice and guidance and as a clearing house for sharing best practice. The gateway will also enable better sharing of basic data so that bodies do not duplicate effort in collecting and collating relevant and useful facts and figures.

The register of plans and programmes that have been screened out of the necessity to undergo an SEA will allow scrutiny that will promote consistency and eliminate cheating. On whether budgets should be included, I agree with the conclusion that plans drive budgets, not the other way round, and that any budget will be captured within the assessment of the plan, programme or strategy with which it is associated. I am comfortable with the Executive’s view on where the MOD fits into the bill. I am pleased that there will be annual reporting for at least the first five years after the legislation is implemented, which will be a safeguard to ensure on-going parliamentary scrutiny of how the legislation is working and which will throw up any difficulties or issues that need to be dealt with along the way.

The bill will have a significant impact on public policy and public services. To be effective, the bill must effect a huge culture change. While local authorities and other public bodies are nervous about the financial and staffing implications, the bill is not about increasing the cost of strategic-level decision making, but about changing mindsets. It is seen as completely normal and necessary to evaluate the financial and social impacts of different options in the preparation of any plan, programme or strategy. The bill will merely add to those aspects the thorough evaluation of environmental options, which will lead to more balanced decisions that are likely to ensure more sustainable action.

If the strategic environmental assessment of plans, programmes and strategies works properly, it will deliver wider consideration of environmental impacts and of the impacts of alternative courses of action; proactive assessment of environmental impacts; the strengthening of environmental impact assessments of individual projects; systematic and effective consideration of the environment at higher tiers of decision making; public consultation and participation on environmental issues; and a high degree of transparency. If we pass the bill, Scotland will lead the way on strategic environmental assessment in the United Kingdom and the European Union. We are going further than the European legislation requires, but that is good environmental practice, not gold plating.

The bill will weave a green thread through government at all levels. I am proud to be a member of the Liberal Democrats—the realistic green party of Scottish politics—and of the Parliament, which is about to pass a bill that will result in Scotland putting the environment at the core of the delivery of public services. The bill will be good for Scotland, the environment, sustainable development and everyone who lives and works here. I commend it to the Parliament.

16:33

Alex Johnstone: In my opening remarks, I made clear the Conservative party’s view on the bill. In closing, I will make one or two remarks about the way in which the Executive has handled the bill. Given the Executive’s stated policy objectives, the bill serves the purpose that the Executive set out. I commend the work of the Environment and Rural Development Committee. In the stage 1 inquiry—my experience of which was unfortunately cut short, as I moved to another committee—an awful lot of issues arose, but the Executive gave strong responses to them.

In members’ speeches, we have heard the repeated theme that the bill exceeds the demands that were placed on us by the European directive. Regulations can be interpreted in different ways by different people, but I have seen too many examples of Governments in this country, especially in recent years, seeking to endorse European regulations, going further than was demanded of them and, as a result, imposing expenses on various industries and private companies. The danger with the bill is that we will exert further financial pressure on public organisations that are trying to carry out serious and important public works.

I made it clear that I did not think that there was a crisis that we need to address through the bill. If it is passed, which I strongly suspect it will be, I will be one of the ones sitting back, watching its progress and trying to ensure that it does not have the ill effects that I fear it might deliver.

16:35

Richard Lochhead (North East Scotland) (SNP): I sat on the Environment and Rural
Development Committee through stage 1, I spoke in the stage 1 debate, I sat through stage 2 and I am now the second-last speaker in this debate, so I am not sure that I can add a whole lot to what has been said.

I was going to say that the bill is full of a lot of technical issues and is non-controversial but, in their usual open and constructive manner, the ministers rejected every single amendment that was lodged by Opposition members during the process. However, ministers lodged amendments of their own, which I welcome—perhaps that shows that the committee exercised power in persuading them to do so.

The SNP welcomes the bill and will vote for it, unlike the Tories. I am always taken aback—although perhaps I should not be too surprised—by how the Tories always try to block progress in the Scottish Parliament, which they opposed in the first place. Only last week, their leadership contender David Cameron said that the environment was going to be one of his big priorities. He said that he was going to pay visits, that he was going to change the Tory party and that the party was in the future going to win votes by caring for the environment. No wonder he has cancelled his visit to Scotland—he must havesecond-guessed the position that the Tory party in Scotland would take on this progressive bill, which will work in favour of Scotland’s environment. Once again, the Scottish Tories have let down the public.

I add the SNP’s thanks to everyone who has helped the committee—researchers in the Parliament, the clerks to the committee and the outside organisations who passed to members their advice and information. It is encouraging to see the environment back on the agenda, with more legislation that is going to help Scotland’s environment before us today. The bill is significant, for the reasons that many people have given already. It makes perfect sense to incorporate environmental considerations in the decision-making process as early as possible to avoid problems occurring at a later stage.

It is also encouraging that we will pass the bill today. The public sector will have to carry out environmental assessments of its strategies, plans and policies. Let us not forget that the public sector in Scotland accounts for 50 per cent of gross domestic product. In a couple of years the Government’s budget will be up to £30 billion. Considerable expenditure will take place in Scotland, and, of course, that expenditure will impact on the environment. That is why it is encouraging that all the decisions and strategies behind that huge expenditure will have to take into account the impact on the environment.

Mr Ruskell: Does the member agree that one of the things that drive up public sector spending is continual public inquiries for developments such as power lines, because no SEA was conducted early on? Is that not a clear example of how SEA can save public sector spending?

Richard Lochhead: Yes. I have a lot of sympathy with the point that the member makes. We have to have more joined-up policy in the Scottish Parliament. Tomorrow morning the SNP will be bringing a debate on energy, one of the themes of which will be the need for joined-up thinking on such big strategic issues.

Many members made the good point that the bill will mean that there has to be a culture change in public organisations. We have to ensure that we do not walk away from the people who have to implement the bill after today’s debate. We have had encouraging words from the ministers. There is going to be support and training for staff in the public sector; work will be done to identify the data that are required so that staff can carry out the assessments properly, particularly in relation to health; and guidance on a range of subjects will be provided. It is important to provide such support.

It is a pity that we did not secure the gateway in the bill. Members tried to do so, but failed without the support of the Government. The theme that has run through the debate is the need for transparency and openness, particularly in the pre-screening procedure. We all welcome the fact that the Government has accepted the need to publish an annual report.

Finally, to help Scotland’s environment, it is one thing to have the public authorities on board but we also have to give attention to ensuring that the public get on board as well in the next few years. The public, not just public authorities, have to play a part. We have to encourage a change of behaviour on the part of the public to ensure that, when people make decisions in their everyday lives, they also think about the environmental consequences. When we reach that point, there will be a sea change in the way in which the people of Scotland treat our environment.

The Scottish Parliament has been good for the environment, and this is another bill that is worthy of support. It again vindicates those parties—all parties bar the Tories—that campaigned for the advent of this institution. The Parliament needs more powers but at least it is making progress in some areas in which it has some powers. That is a good thing for Scotland. I urge Parliament to support this legislation.

16:41

The Deputy Minister for Environment and Rural Development (Rhona Brankin): It is a pleasure to close this debate on a bill that we
consider to be an important one that will be of real benefit to the environment and the democratic process in Scotland.

Scotland must continue to develop and grow and, as it does, we have an ever greater need to understand the impact of that development on the environment. Wherever possible, we must reduce or, better still, avoid negative environmental impacts. SEA will play a significant part in that.

Under SEA, every public sector plan across every aspect of government should have its environmental impacts clearly assessed. That applies not only to plans with an environmental or land-use focus but to all plans that could have a significant impact on the environment. SEA provides for greater public involvement in decision making. It demands that ways to avoid or mitigate environmental impact are set out and that the on-going impact of plans be monitored.

With any new measure, it is important that the implementation is well planned and that support is in place. Comprehensive guidance for the bill will be produced and SEA templates to support practitioners are already available. Experience is being gained by public officials working under the current regulations and I believe that we are well prepared for successful implementation.

The SEA gateway has been established to act as the focal point for administration and policy advice. The gateway is, along with the consultation authorities, part of a light administrative model to support SEA. I believe that we have got the balance right between keeping bureaucracy to a minimum and offering support to public authorities that must carry out SEAs. In that regard, I am particularly disappointed that the Conservatives are going to oppose the bill.

I, too, want to offer my thanks to the scrutinising committees, especially the Environment and Rural Development Committee, for their valuable input to the bill. By adding reporting and pre-screening registration, even greater transparency in public policy making will be achieved.

The bill places the environment at the heart of the decision-making process, further supporting sustainable development and environmental justice. I commend it to Parliament.

The Deputy Presiding Officer: Since we are ahead of schedule, I suspend the meeting until 4.59.

16:43

Meeting suspended.
Decision Time

17:01

The Deputy Presiding Officer (Trish Godman): There are three questions to be put as a result of today’s business. The first question is, that motion S2M-3436, in the name of Ross Finnie, that the Parliament agrees that the Environmental Assessment (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Bailie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Gordon, Mr Charlie (Glasgow Cathcart) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Graham, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kane, Rosie (Glasgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Leckie, Carolyn (Central Scotland) (SSP)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenney (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Campbell (West of Scotland) (Ind)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAteer, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (SNP)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskel, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinson, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

Against

Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Johnstone, Alex (North East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)

The Deputy Presiding Officer: The result of the division is: For 98, Against 12, Abstentions 0.

Motion agreed to.

That the Parliament agrees that the Environmental Assessment (Scotland) Bill be passed.
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Schedule 2—Criteria for determining the likely significance of effects on the environment
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Amendments to the Bill since the previous version are indicated by sideling in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Environmental Assessment (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision for the assessment of the environmental effects of certain plans and programmes, including plans and programmes to which Directive 2001/42/EC of the European Parliament and of the Council relates; and for connected purposes.[LongTitle.doc]

PART 1
ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

1 Requirement for environmental assessment
(1) The responsible authority shall—
(a) during the preparation of a qualifying plan or programme, secure the carrying out of an environmental assessment in relation to the plan or programme; and
(b) do so—
(i) where the plan or programme is to be submitted to a legislative procedure for the purposes of its adoption, before its submission; or
(ii) in any other case, before its adoption.

(2) In this Act, an environmental assessment is—
(a) the preparation of an environmental report;
(b) the carrying out of consultations; and
(c) the taking into account of the environmental report and the result of the consultations in decision-making,
in accordance with Part 2 of this Act.

2 Responsible authorities
(1) In this Act, a responsible authority is any person, body or office-holder exercising functions of a public character.

(2) The responsible authority in relation to a particular plan or programme is the authority by whom, or on whose behalf, the plan or programme is prepared.

(3) Where more than one authority is responsible for a plan or programme (or part of it) the responsible authority shall be—
(a) the authority determined by agreement between those authorities; or
(b) if there is no such agreement, the authority determined by the Scottish Ministers.

(4) But for the purposes of section 5(4)(a) the responsible authorities are—
(a) the Scottish Ministers;
(b) any holder of an office in the Scottish Administration which is not a ministerial office;
(c) the Scottish Parliament;
(d) the Scottish Parliamentary Corporate Body;
(e) a Scottish public authority with mixed functions or no reserved functions;
(f) any other person, body or office-holder of a description (and to such extent) as may be specified by the Scottish Ministers by order.

3 Consultation authorities
(1) In this Act, the consultation authorities are—
(a) the Scottish Ministers;
(b) the Scottish Environment Protection Agency; and
(c) Scottish Natural Heritage.

(2) Where an authority mentioned in subsection (1) is the responsible authority as regards a plan or programme, the authority shall not be a consultation authority in relation to that plan or programme.

4 Plans and programmes
(1) This Act applies to plans and programmes (including those co-financed by the European Community) which—
(a) are—
   (i) subject to preparation or adoption (or both) by a responsible authority at national, regional or local level; or
   (ii) without prejudice to the generality of sub-paragraph (i), prepared by a responsible authority for adoption through a legislative procedure; and
(b) relate solely to the whole or any part of Scotland.

(2) In this Act, any reference to plans or programmes includes reference to modification of plans or programmes.

(3) This Act does not apply to—
(a) plans and programmes the sole purpose of which is to serve national defence or civil emergency;
(b) financial or budgetary plans and programmes;
(4) In this Act, any reference to plans or programmes includes strategies.

5 Qualifying plans and programmes

(1) In this Act, qualifying plans and programmes are plans and programmes of a description set out in subsection (3) or (4)—

(a) in respect of which the first formal preparatory act is on or after the coming into force of this section; and

(b) which are not exempt by virtue of section 7(1) or 8(2).

(2) But a plan or programme is a qualifying plan or programme only to the extent that it relates to matters of a public character.

(3) The description set out in this subsection is a plan or programme (to which this Act applies) which is required by a legislative, regulatory or administrative provision and—

(a) which—

(i) is prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use; and

(ii) sets the framework for future development consent of projects listed in schedule 1;

(b) which, in view of the likely effect on sites, has been determined to require an assessment pursuant to Article 6 or 7 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (as last amended by Council Directive 97/62/EC); or

(c) which does not fall within paragraph (a) or (b) but sets the framework for future development consent of projects.

(4) The description set out in this subsection is a plan or programme (to which this Act applies)—

(a) which is prepared by a responsible authority as specified in, or by virtue of, section 2(4); and

(b) which—

(i) is not a plan or programme of a description set out in subsection (3); and

(ii) is not of a type specified in, or by virtue of, section 6(1).

(5) The Scottish Ministers may by order modify schedule 1.

6 Types of excluded plans and programmes

(1) The types of plan or programme referred to in section 5(4)(b)(ii) are those which—

(a) consist of plans or programmes each of which relates to an individual school; or

(b) may be specified by order made by the Scottish Ministers.

(2) The Scottish Ministers may by order modify subsection (1)(a).

(3) If specifying a type of plan or programme by virtue of subsection (1)(b) or (2), the Scottish Ministers must be of the opinion that the type of plan or programme is likely to have—
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(a) no effect; or
(b) minimal effect,
in relation to the environment.

(4) In this section, “school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980 (c.44).

7 Exemptions: pre-screening

(1) A plan or programme of a description set out in section 5(4) is exempt if the responsible authority is of the opinion that the plan or programme will have—
(a) no effect; or
(b) minimal effect,
in relation to the environment.

(2) In considering whether or not it is of the opinion described in subsection (1), the responsible authority shall apply the criteria specified in schedule 2.

(2A) If a responsible authority is of the opinion described in subsection (1), it shall notify the consultation authorities of that fact as soon as practicable.

(2B) A notification under subsection (2A) shall also include the following information—
(a) the title of the plan or programme;
(b) the date of the opinion; and
(c) a brief description of the plan or programme, including the area or location to which the plan or programme relates.

(2C) The Scottish Ministers shall arrange for a register to be kept of any notifications under subsection (2A).

(2D) The register kept under subsection (2C)—
(a) shall be available for public inspection—
(i) at any reasonable time; and
(ii) at such place as the Scottish Ministers may direct;
(b) may include such other information in relation to a plan or programme as the Scottish Ministers consider appropriate.

(2E) The information contained in the register may also be made available, for the purpose of facilitating public access to that information, by such means (including by means of display on a website) as the Scottish Ministers think fit.

(3) The Scottish Ministers may by order modify schedule 2.

8 Exemptions: screening

(1) The responsible authority shall determine whether or not—
(a) a plan or programme of a description set out in section 5(3) which determines the use of small areas at local levels;
(b) a minor modification to a plan or programme of a description set out in section 5(3);
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(c) a plan or programme of the description set out in section 5(3)(c);
(d) a plan or programme of the description set out in section 5(4) which is not exempt by virtue of section 7(1),
is likely to have significant environmental effects.

(2) Where the responsible authority determines under subsection (1) that a plan or programme is unlikely to have significant environmental effects—
(a) that plan or programme is exempt; and
(b) the authority shall prepare a statement of its reasons for the determination.

(3) In making a determination under subsection (1), the responsible authority shall apply the criteria specified in schedule 2.

(4) The statement of reasons under subsection (2)(b) shall, in particular, state how the criteria mentioned in subsection (3) were applied when making the determination.

9 Screening: procedure

(1) Before making a determination under section 8(1), the responsible authority shall prepare a summary of its views as to whether or not the plan or programme is likely to have significant environmental effects.

(2) The responsible authority shall send that summary to each consultation authority for its consideration.

(3) Each consultation authority shall, within 28 days of receipt of that summary, respond to the responsible authority with the consultation authority’s views on it.

(4) If the responsible authority and the consultation authorities agree that the plan or programme is unlikely to have significant environmental effects, the responsible authority shall make a determination to that effect under section 8(1).

(5) If the responsible authority and the consultation authorities agree that the plan or programme is likely to have significant environmental effects then the responsible authority shall make a determination to that effect under section 8(1).

(6) If the responsible authority and the consultation authorities do not reach agreement as to whether or not the plan or programme is likely to have significant environmental effects, the responsible authority shall refer the matter to the Scottish Ministers for their determination.

(7) A determination of the Scottish Ministers under subsection (6) shall have effect as if made by the responsible authority under section 8(1); and, where the determination is that the plan or programme is unlikely to have significant environmental effects, section 8(2)(b) shall apply to the Scottish Ministers as it would to the responsible authority.

10 Screening: publicity for determinations

(1) Within 28 days of a determination having been made under section 8(1), the responsible authority shall send to the consultation authorities—
(a) a copy of the determination; and
(b) any related statement of reasons prepared in accordance with section 8(2)(b).

(2) The responsible authority shall—
6

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(a) keep a copy of the determination, and any related statement of reasons, available at its principal office for inspection by the public at all reasonable times and free of charge;

(b) display a copy of the determination and any related statement of reasons on the authority’s website; and

(c) within 14 days of the making of the determination, secure the taking of such steps as it considers appropriate (including publication in at least one newspaper circulating in the area to which the plan or programme relates) to bring to the attention of the public—

(i) the title of the plan or programme to which the determination relates;

(ii) that a determination has been made under section 8(1);

(iii) whether or not an environmental assessment is required in respect of the plan or programme; and

(iv) the address (which may include a website) at which a copy of the determination and any related statement of reasons may be inspected or from which a copy may be obtained.

(3) Nothing in subsection (2)(c)(iv) shall require the responsible authority to provide a copy of any document free of charge; but where a charge is made, it shall be of a reasonable amount.

11 Directions as regards plans and programmes

(1) The Scottish Ministers may at any time direct a responsible authority to send to them a copy of any plan or programme which—

(a) is being prepared;

(b) has been adopted; or

(c) has been submitted to a legislative procedure for the purposes of its adoption, by that responsible authority.

(2) The Scottish Ministers shall consider any plan or programme sent to them under subsection (1), together with such information relating to it as they may reasonably require the responsible authority to provide.

(3) Where the Scottish Ministers consider that the plan or programme falls within—

(a) section 5(3)(a) or (b), they may direct the responsible authority to carry out an environmental assessment in accordance with this Act;

(b) paragraphs (a) to (d) of subsection (1) of section 8, they may direct the responsible authority to carry out a determination in accordance with that subsection.

(4) Where subsection (3) applies, the Scottish Ministers shall send to the responsible authority a summary of the reasons as to why a direction was, or (as the case may be) was not, made.

(5) A responsible authority shall comply with any direction given to it under subsection (1) or (3).
Restriction on adoption or submission

(1) A qualifying plan or programme shall not be—
   (a) adopted; or
   (b) submitted to a legislative procedure for the purposes of its adoption,
before the requirements of such provisions of Part 2 of this Act as apply in relation to
that plan or programme have been met.

(2) A plan or programme in respect of which a determination is required under section 8(1)
shall not be adopted, or submitted to a legislative procedure for the purpose of its
adoption, unless either—
   (a) the requirements of subsection (1) have been met; or
   (b) the determination under section 8(1) is that the plan or programme is unlikely to
have significant environmental effects.

Relationship with Community law requirements

(1) An environmental assessment carried out under this Act shall be without prejudice to
any requirement under Community law.

(2) Where a qualifying plan or programme is co-financed by the European Community, the
responsible authority, in carrying out the environmental assessment required by this Act,
shall do so in conformity with any relevant provision of Community law that is
applicable by reason of that co-financing.

PART 2
ENVIRONMENTAL REPORTS AND CONSULTATION

Preparation of environmental report

(1) In relation to any qualifying plan or programme, the responsible authority shall secure
the preparation of an environmental report.

(2) The report shall identify, describe and evaluate the likely significant effects on the
environment of implementing—
   (a) the plan or programme; and
   (b) reasonable alternatives to the plan or programme,
taking into account the objectives and the geographical scope of the plan or programme.

(3) The report shall include such of the information specified in schedule 3 as may
reasonably be required, taking account of—
   (a) current knowledge and methods of assessment of environmental matters;
   (b) the contents of, and level of detail in, the plan or programme;
   (c) the stage of the plan or programme in the decision-making process; and
   (d) the extent to which any matters to which the report relates would be more
appropriately assessed at different levels in that process in order to avoid
duplication of the assessment.
Information referred to in schedule 3 may be included in the report by reference to relevant information obtained at other levels of decision-making or through Community legislation.

The Scottish Ministers may by order modify schedule 3.

### Scoping

Before deciding on—

- the scope and level of detail of the information to be included in the environmental report to be prepared in accordance with section 14; and
- the consultation period it intends to—
  - specify under section 16(1)(b); and
  - notify under section 16(2)(a)(iv),

the responsible authority shall send to each consultation authority such sufficient details of the qualifying plan or programme as will enable the consultation authority to form a view on those matters.

Each consultation authority shall—

- send to the responsible authority its views on the matters referred to in subsection (1) within the period of 5 weeks beginning with the date on which the details referred to in that subsection are received by the consultation authority; and
- send a copy of those views to the other consultation authorities.

The responsible authority shall—

- take account of the views expressed by the consultation authorities under subsection (2)(a); and
- advise the Scottish Ministers of the period it intends to specify under section 16(1)(b) and notify under section 16(2)(a)(iv).

If the Scottish Ministers consider that a period referred to in subsection (3)(b) is not likely to give (as the case may be)—

- the consultation authorities; or
- the public—
  - affected or likely to be affected by; or
  - having an interest in,

an early and effective opportunity to express their opinion on the plan or programme and the accompanying environmental report, the Scottish Ministers shall, within 7 days of receipt of the advice under subsection (3)(b), specify such other period as the Scottish Ministers consider will give the consultation authorities, or (as the case may be) the public, such an early and effective opportunity.

Where the Scottish Ministers have specified a period under subsection (4), the responsible authority shall specify under section 16(1)(b), or (as the case may be) notify under section 16(2)(a)(iv), that period.

Where the Scottish Ministers are the responsible authority in relation to a qualifying plan or programme, subsections (3)(b), (4) and (5) do not apply.
16  Consultation procedures

(1) As soon as reasonably practicable, and in any event within 14 days of the preparation of the environmental report, the responsible authority shall—

(a) send a copy of the report and the qualifying plan or programme to which it relates (“the relevant documents”) to the consultation authorities; and

(b) invite each consultation authority to express its opinion on the relevant documents within such period as the responsible authority may specify.

(2) The responsible authority shall also—

(a) within 14 days of the preparation of the environmental report, secure the publication of a notice—

(i) stating the title of the plan or programme to which it relates;

(ii) stating the address (which may include a website) at which a copy of the relevant documents may be inspected or from which a copy may be obtained;

(iii) inviting expressions of opinion on the relevant documents; and

(iv) stating the address to which, and the period within which, opinions must be sent;

(b) keep a copy of the relevant documents available at the authority’s principal office for inspection by the public at all reasonable times and free of charge; and

(c) display a copy of the relevant documents on the authority’s website.

(3) The periods referred to in subsections (1)(b) and (2)(a)(iv) must be of such length as will ensure that those to whom the invitation is extended are given an early and effective opportunity to express their opinion on the relevant documents.

(4) Publication of a notice under subsection (2)(a) shall be by such means (including publication in at least one newspaper circulating in the area to which the plan or programme relates) as will ensure that the contents of the notice are likely to come to the attention of the public—

(a) affected by or likely to be affected by; or

(b) having an interest in,

the plan or programme.

(5) Nothing in subsection (2)(a)(ii) shall require the responsible authority to provide a copy of any document free of charge; but where a charge is made, it shall be of a reasonable amount.

17  Account to be taken of environmental report etc.

In the preparation of a qualifying plan or programme, the responsible authority shall take account of—

(a) the environmental report for that plan or programme;

(b) every opinion expressed in response to the invitations referred to in section 16(1) and (2)(a)(iii); and
(c) the outcome of any relevant consultation under regulation 14 of the Environmental Assessment of Plans and Programmes Regulations 2004 (S.I. 2004/1633).

**PART 3**

**POST-ADOPTION PROCEDURES**

**18 Information as to adoption of a qualifying plan or programme**

(1) As soon as reasonably practicable after the adoption of a qualifying plan or programme, the responsible authority shall—

(a) make available a copy of—

(i) the plan or programme;

(ii) the environmental report relating to it; and

(iii) a statement containing the particulars specified in subsection (3),

at the authority’s principal office for inspection by the public at all reasonable times and free of charge;

(b) secure the taking of such steps as it considers appropriate (including publication in at least one newspaper circulating in the area to which the plan or programme relates) to bring to the attention of the public—

(i) the title of the plan or programme;

(ii) the date on which it was adopted;

(iii) the address (which may include a website) at which a copy of the plan or programme and its accompanying environmental report, and of the statement containing the particulars specified in subsection (3), may be inspected or from which a copy may be obtained;

(iv) the times at which inspection may be made; and

(v) that inspection may be made free of charge; and

(c) display a copy of—

(i) the documents referred to in paragraph (a); and

(ii) the information referred to in paragraph (b),

on the authority’s website.

(2) As soon as reasonably practicable after the adoption of a qualifying plan or programme, the responsible authority shall inform the consultation authorities of the adoption of the plan or programme and shall send them a copy of—

(a) the plan or programme as adopted; and

(b) the statement containing the particulars specified in subsection (3).

(3) The particulars referred to in subsections (1)(a)(iii) and (b)(iii) and (2)(b) are—

(a) how environmental considerations have been integrated into the plan or programme;

(b) how the environmental report has been taken into account;
(c) how the opinions expressed in response to the invitations mentioned in section 16 have been taken into account;

(d) how the results of any relevant consultation under regulation 14 of the Environmental Assessment of Plans and Programmes Regulations 2004 (S.I. 2004/1633) have been taken into account;

(e) the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives considered; and

(f) the measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme.

(4) Nothing in subsection (1)(b)(iii) shall require the responsible authority to provide a copy of any document free of charge; but where a charge is made, it shall be of a reasonable amount.

19 Monitoring of implementation of qualifying plans and programmes

(1) The responsible authority shall monitor the significant environmental effects of the implementation of every qualifying plan or programme for which it has carried out an environmental assessment.

(2) The responsible authority shall do so in a manner (which may comprise or include arrangements established otherwise than for the express purpose of compliance with subsection (1)) which enables the authority to—

(a) identify any unforeseen adverse effects at an early stage; and

(b) undertake appropriate remedial action.

PART 3A
MISCELLANEOUS

19A Annual reports

(1) The Scottish Ministers must, as soon practicable after the end of each calendar year referred to in subsection (2)—

(a) prepare and publish a report on—

(i) the exercise of the functions of the Scottish Ministers under this Act; and

(ii) such other activities carried out in relation to environmental assessments as the Scottish Ministers consider appropriate,

during that year;

(b) lay a copy of the report before the Scottish Parliament.

(2) The calendar years are 2006 to 2010.

(3) After publishing the report relating to 2010, the Scottish Ministers must consult with such persons as they consider appropriate as to what arrangements, if any, are to be made for reporting on any of the matters referred to in subsection (1)(a)(i) and (ii).
PART 4

GENERAL

20 Crown application

This Act binds the Crown.

Orders

(1) Any power of the Scottish Ministers to make orders under this Act is exercisable by statutory instrument.

(2) Any such power includes power to make—

(a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient; and

(b) different provision for different purposes.

(3) A statutory instrument containing an order under this Act except—

(a) where subsection (4) applies, an order under section 22; or

(b) an order under section 25,

is subject to annulment in pursuance of a resolution of the Parliament.

(4) No order under section 22 which amends an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Parliament.

Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes or in consequence of this Act.

Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004

The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (S.S.I. 2004/258) are revoked.

Interpretation

(1) In this Act—


“the public” includes any legal person and any body of persons (whether incorporated or not).

(2) Unless the context otherwise requires, expressions used in both this Act and in the Directive shall be construed in accordance with the Directive.
25 Commencement and short title

(1) The provisions of this Act, except this section and sections 20, 21, 22 and 24, come into force on such day as the Scottish Ministers may by order appoint.

(2) Different days may be so appointed for different provisions and different purposes.

(3) This Act may be cited as the Environmental Assessment (Scotland) Act 2005.
SCHEDULE 1
(introduced by section 5(3)(a))

PROJECTS

PART 1

Particular projects

1 (1) Crude oil refineries except undertakings whose sole function is the manufacture of lubricants from crude oil.

(2) Installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2 (1) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more.

(2) Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kilowatt continuous thermal load).

3 (1) Installations for the reprocessing of irradiated nuclear fuel.

(2) Installations designed—

(a) for the production or enrichment of nuclear fuel;

(b) for the processing of irradiated nuclear fuel or high-level radioactive waste;

(c) for the final disposal of irradiated nuclear fuel;

(d) solely for the final disposal of radioactive waste; or

(e) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site other than the production site.

4 (1) Integrated works for the initial smelting of cast-iron and steel.

(2) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

5 Installations for—

(a) the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos;

(b) asbestos–cement products with an annual production of more than 20,000 tonnes of finished products;

(c) friction material with an annual production of more than 50 tonnes of finished products; or

(d) other uses of asbestos having utilisation of more than 200 tonnes per year.

6 Integrated chemical installations, that is to say, installations—

(a) for the manufacture on an industrial scale of substances using chemical conversion processes; and

(b) in which several units are juxtaposed and are functionally linked to one another and which are for the production of—
Schedule 1—Projects

(i) basic organic chemicals;
(ii) basic inorganic chemicals;
(iii) phosphorus-based, nitrogen-based or potassium-based fertilisers (that is, simple or compound fertilisers);
(iv) basic plant health products and of biocides;
(v) basic pharmaceutical products using a chemical or biological process; or
(vi) explosives.

7 (1) Construction of—
(a) lines for long-distance railway traffic; or
(b) airports with a basic runway length of 2100 metres or more.

(2) Construction of motorways and express roads.

(3) The—
(a) construction of a new road of four or more lanes; or
(b) realignment or widening (or both) of an existing road of two lanes or less so as to provide four or more lanes,

where such new road, or realigned or widened section of the road, would be 10 kilometres or more in a continuous length.

8 (1) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.

(2) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.

9 Waste disposal installations for—
(a) the incineration;
(b) chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9; or
(c) landfill,

of hazardous waste (that is to say, waste to which Directive 91/689/EEC applies).

10 Waste disposal installations for—
(a) the incineration; or
(b) chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9,

of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11 Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

12 (1) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year.
(2) Works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5 per cent of this flow.

(3) In sub-paragraphs (1) and (2), transfers of piped drinking water are excluded.

5 Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2.6 of Directive 91/271/EEC.

14 Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.

10 Dams and other installations designed for the holding back or permanent storage of water where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

16 Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 millimetres and a length of more than 40 kilometres.

15 Installations for the intensive rearing of poultry or pigs with more than—

   (a) 85,000 places for broilers, 60,000 places for hens;

   (b) 3,000 places for production pigs (that is, pigs weighing over 30 kilograms); or

   (c) 900 places for sows.

18 Industrial plants for the—

   (a) production of pulp from timber or similar fibrous materials; or

   (b) production of paper and board with a production capacity exceeding 200 tonnes per day.

19 (1) Quarries and open-cast mining where the surface of the site exceeds 25 hectares.

   (2) Peat extraction where the surface of the site exceeds 150 hectares.

20 Construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres.

21 Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200,000 tonnes or more.

General

22 Any change to or extension of projects listed in this Part of this schedule where the change or extension in itself meets the thresholds (if any) set out in this Part of this schedule.

PART 2

Agriculture, silviculture and aquaculture

23 (1) Projects for the restructuring of rural land holdings.

   (2) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes.

   (3) Water management projects for agriculture, including irrigation and land drainage projects.
(4) Initial afforestation and deforestation for the purposes of conversion to another type of land use.

(5) Intensive livestock installations.

(6) Intensive fish farming.

(7) Reclamation of land from the sea.

**Extractive industry**

24 (1) Quarries, open-cast mining and peat extraction.

(2) Underground mining.

(3) Extraction of minerals by marine or fluvial dredging.

(4) Deep drillings, in particular—

   (a) geothermal drilling;

   (b) drilling for the storage of nuclear waste material;

   (c) drilling for water supplies,

except drillings for investigating the stability of the soil.

(5) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores (including bituminous shale).

**Energy industry**

25 (1) Industrial installations for the production of electricity, steam and hot water.

(2) Industrial installations for—

   (a) carrying gas, steam and hot water; or

   (b) transmission of electrical energy by overhead cables.

(3) Surface storage of natural gas.

(4) Underground storage of combustible gases.

(5) Surface storage of fossil fuels.

(6) Industrial briquetting of coal and lignite.

(7) Installations for the processing and storage of radioactive waste.

(8) Installations for hydroelectric energy production.

(9) Installations for the harnessing of wind power for energy production (that is to say, wind farms).

**Production and processing of metals**

26 (1) Installations for the production of pig iron or steel (that is, primary or secondary fusion) including continuous casting.

(2) Installations for the processing of ferrous metals, that is to say—

   (a) hot-rolling mills;

   (b) smitheries with hammers;
(c) application of protective fused metal coats.

(3) Ferrous metal foundries.

(4) Installations for the smelting of (including the alloyage of) non-ferrous metals except precious metals (including recovered products, for example, by refining or foundry casting).

(5) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process.

(6) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines.

(7) Shipyards.

(8) Installations for the construction and repair of aircraft.

(9) Manufacture of railway equipment.

(10) Swaging by explosives.

(11) Installations for the roasting and sintering of metallic ores.

Mineral industry

27 (1) Coke ovens (that is to say, dry coal distillation).

(2) Installations for the manufacture of cement.

(3) Installations for the production of asbestos and the manufacture of asbestos products.

(4) Installations for the manufacture of glass including glass fibre.

(5) Installations for smelting mineral substances including the production of mineral fibres.

(6) Manufacture of ceramic products by burning, in particular—

(a) roofing tiles, bricks, refractory bricks and tiles; and

(b) stoneware or porcelain.

Chemical industry

28 (1) Treatment of intermediate chemical products.

(2) Production of chemicals.

(3) Production of—

(a) pesticides;

(b) pharmaceutical products;

(c) paint and varnishes;

(d) elastomers; and

(e) peroxides.

(4) Storage facilities for petroleum, petrochemical and chemical products.

Food industry

29 (1) Manufacture of vegetable and animal oils and fats.
(2) Packing and canning of animal and vegetable products.
(3) Manufacture of dairy products.
(4) Brewing and malting.
(5) Confectionery and syrup manufacture.
(6) Installations for the slaughter of animals.
(7) Industrial starch manufacturing installations.
(8) Fish-meal and fish-oil factories.
(9) Sugar factories.

Textile, leather, wood and paper industries

(1) Industrial plants for the production of paper and board.
(2) Plants for the—
   (a) pre-treatment (including operations such as washing, bleaching and
       mercerization); or
   (b) dyeing,

   of fibres or textiles.
(3) Plants for the tanning of hides and skins.
(4) Cellulose-processing and production installations.

Rubber industry

(1) Manufacture and treatment of elastomer-based products.

Infrastructure projects

(1) Industrial estate development projects.
(2) Urban development projects, including the construction of shopping centres and car
   parks.
(3) Construction of railways and intermodal transshipment facilities, and of intermodal
   terminals.
(4) Construction of airfields.
(5) Construction of roads, harbours and port installations (including fishing harbours).
(6) Inland-waterway construction, canalization and flood-relief works.
(7) Dams and other installations designed to hold water or store it on a long-term basis.
(8) Tramways, elevated and underground railways, suspended lines or similar lines of a
    particular type, used exclusively or mainly for passenger transport.
(9) Oil and gas pipeline installations.
(10) Installations of long-distance aqueducts.
(11) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works.

(12) Groundwater abstraction and artificial groundwater recharge schemes.

(13) Works for the transfer of water resources between river basins.

(14) Motorway service areas.

Tourism and leisure

33 (1) Ski-runs, ski-lifts and cable-cars and associated developments.

(2) Marinas.

34 (3) Holiday villages and hotel complexes outside urban areas and associated developments.

(4) Permanent camp sites and caravan sites.

(5) Theme parks.

(6) Golf courses and associated developments.

Miscellaneous projects

35  Permanent racing and test tracks for motorized vehicles.

36  Installations for the disposal of waste.

37  Waste-water treatment plants.

38  Sludge-deposition sites.

39  Storage of scrap iron, including scrap vehicles.

40  Test benches for engines, turbines or reactors.

41  Installations for the manufacture of artificial mineral fibres.

42  Installations for the recovery or destruction of explosive substances.

43  Knackers’ yards.

General

43 (1) Any change to or extension of projects listed in Part 1 or this Part of this schedule which—

(a) have already been authorised or executed; or

(b) are in the process of being executed,

and which may have significant adverse effects on the environment.

44 (2) Projects listed in Part 1 of this schedule which are undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.
Interpretation


(2) References in this Part of this schedule to a project are references to the project in so far as it is not included in Part 1 of this schedule.

SCHEDULE 2
(introduced by section 7(2))

CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

1 The characteristics of plans and programmes, having regard, in particular to—
   (a) 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;

   (b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy;

   (c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development;

   (d) environmental problems relevant to the plan or programme; and

   (e) the relevance of the plan or programme for the implementation of Community legislation on the environment (for example, plans and programmes linked to waste management or water protection).

2 Characteristics of the effects and of the area likely to be affected, having regard, in particular, to—

   (a) the probability, duration, frequency and reversibility of the effects;

   (b) the cumulative nature of the effects;

   (c) the transboundary nature of the effects;

   (d) the risks to human health or the environment (for example, due to accidents);

   (e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);

   (f) the value and vulnerability of the area likely to be affected due to—

      (i) special natural characteristics or cultural heritage;

      (ii) exceeded environmental quality standards or limit values; or

      (iii) intensive land-use; and

   (g) the effects on areas or landscapes which have a recognised national, Community or international protection status.
SCHEDULE 3
(introduced by section 14)

INFORMATION FOR ENVIRONMENTAL REPORTS

1. An outline of the contents and main objectives of the plan or programme, and of its relationship (if any) with other qualifying plans and programmes.

2. The relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme.

3. The environmental characteristics of areas likely to be significantly affected.


5. The environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation.

6. The likely significant effects on the environment, including—
   (a) on issues such as—
      (i) biodiversity;
      (ii) population;
      (iii) human health;
      (iv) fauna;
      (v) flora;
      (vi) soil;
      (vii) water;
      (viii) air;
      (ix) climatic factors;
      (x) material assets;
      (xi) cultural heritage, including architectural and archaeological heritage;
      (xii) landscape; and
      (xiii) the inter-relationship between the issues referred to in heads (i) to (xii);
   (b) short, medium and long-term effects;
   (c) permanent and temporary effects;
   (d) positive and negative effects; and
   (e) secondary, cumulative and synergistic effects.

7. The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.
8 An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of expertise) encountered in compiling the required information.

9 A description of the measures envisaged concerning monitoring in accordance with section 19.

10 A non-technical summary of the information provided under paragraphs 1 to 9.
Environmental Assessment (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision for the assessment of the environmental effects of certain plans and programmes, including plans and programmes to which Directive 2001/42/EC of the European Parliament and of the Council relates; and for connected purposes.

Introduced by: Ross Finnie
On: 2 March 2005
Bill type: Executive Bill