

**Strategic Environmental Assessment
Consultation on Proposed Legislative Measures to Introduce
Strategic Environmental Assessment in Scotland**



**Friends of
the Earth
Scotland**

Response from Friends of the Earth Scotland

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Friends of the Earth Scotland fully supports the implementation of Strategic Environmental Assessment in Scotland and welcomes this opportunity to respond to the consultation. We are delighted that the Scottish Executive have committed to extending SEA beyond the limited requirements of the European Directive. We are also fully supportive of the decision to introduce SEA using primary legislation.

Robust implementation of SEA can play a critical role in the delivery of sustainable development and environmental justice in Scotland. Central to this implementation must be the following:

- Effective mechanisms for public involvement in the scrutiny and analysis of plans, programmes and strategies.
- Full consideration given to human health and distributive effects, i.e. as within the Annex II listing as ‘the risks to human health or the environment’ ‘exceeded environmental quality standards or limit values’.
- Practical application of the precautionary principle within, and as a result of SEA.
- Thorough post implementation monitoring, data accumulation and validation.

Our priority recommendations can be summarised as:

- 1) A dedicated SEA unit should be established to act as a central co-ordinating body to ensure transparency, public confidence and independent audit quality of SEA reports.
- 2) The proposal that ‘pre-screening’ could enable responsible authorities to decide not to proceed with an SEA for plans, programmes and strategies and the absence of adequate opportunities to challenge or amend this is incompatible with the commitment within the Partnership Agreement. Making public why a decision was made is insufficient if the opportunity to challenge this is limited to a judicial review.
- 3) Given the inclusion of ‘risks to human health’ within Annex II it is essential that an appropriate health body be consulted during the screening and SEA development process.
- 4) Spending decisions should also be subject to SEA.

Q1 To what extent do private companies, carrying out public functions under the control or direction of the Government, develop plans or programmes as defined in the Directive (ie required by legislative, regulatory or administrative means and setting a framework for future development consents)?

We support an approach which captures such plans and programmes and presume that the Bill will also embrace this. The range of private companies who develop such plans and programmes is extensive, spanning energy, waste, transport, water etc.

Definition of Plans and Programmes

Q2 Are you content with our proposed definition of plan or programme and our view that it is sufficiently robust to close a potential loophole in the Regulations, that might otherwise allow authorities to bypass SEA for certain activities they do not regard as either a plan or a programme even if that activity is required by legislative, regulatory or administrative means and sets a framework for future development consents?

Q3 Is the definition clear enough to ensure the screening process is not overwhelmed with submissions from responsible authorities anxious to ensure that they do not fall foul of the Regulations?

There will clearly be a critical role for the provision of information and guidance during the implementation of the Regulations and commencement of the Bill to ensure that Responsible authorities fully understand the Regulations and Bill. Sufficient resources will also need to be provided to ensure that the process is not overwhelmed.

Handling plans and programmes prepared by groups of authorities

Q4 What are your views on the assumption that the likely number of groupings of responsible authorities which would be developing plans or programmes within the scope of the Directive is small?

We agree that the likely number of groupings of authorities which would be developing plans or programmes within the scope of the Directive is small.

Q5 What views do you have on the proposed mechanism for identifying a lead authority in such cases and what proposals do you have for alternative mechanisms?

The proposed mechanism for identifying a lead responsible authority should be adequate but may be better dealt with if an independent SEA unit were to be responsible for this decision.

The screening process

Q6 What are your views on the proposed screening process described in paragraphs 4.11 to 4.13 above?

We are concerned with the lack of transparency and public involvement with this process and fear that it would lack independence and public confidence. The public should have an opportunity to contribute or challenge screening decisions and the reasoning given rather than simply be advised of this. The regulations should be

amended to ensure public involvement in the screening process and opportunity to challenge screening decisions.

Q7 What are your views on the alternative approaches described in paragraph 4.14 above?

Q8 What other alternatives do you suggest for a screening process?

Of the options proposed within section 4.14 the first two do not provide sufficient opportunities to ensure independence, quality assurance and public confidence. A separate or arms length body which had responsibility for screening, quality control and production of advice and guidance is preferable.

Such a body could still have an appeal procedure to Scottish Ministers with consultation opportunities designed around specific plans, programmes and strategies.

Q9 Will each consultation authority need to establish a specialised unit to respond to SEA demands?

It is likely that each consultation authority would at least need dedicated staff/lead person allocated to ensuring SEA demands are fulfilled.

Q10 Does the case-by-case approach to screening offer the most practical method of screening or would listing the types of plans and programmes to be screened be more effective?

The case by case approach is likely to be necessary, at least at first, it may be possible with time to identify lists of plans programmes and then strategies which are likely to require to be screened.

Q11 What is the likely impact of the case-by-case approach to screening on the responsible authorities and on the consultation authorities?

Q12 What are your views on the approach described in paragraphs 4.18 and 4.19 above for the responsible authorities to engage with the screening process?

As suggested in the consultation SEA should be undertaken as part of development of plans, programme or strategy.

Q13 Is 28 days a suitable time period for the consultation authorities to process an SEA screening report?

The issue of timing is also related to resource level, 28 days should be sufficient time so long as the consultation authorities have sufficient staffing resources to process an SEA screening report.

Q14 Should the responsible authority have to resubmit to screening if it does not pursue a plan within a certain time period and/or if external factors affecting the plan change significantly?

The relevant authority should certainly have to resubmit to screening if a decision not to require screening was made and the authority did then not pursue a plan within a certain time period or if external factors affecting the plan changed significantly.

The role of the Scottish Ministers

Q15 Are the processes described sufficient to allow Scottish Ministers to deal with disagreements about the need for SEA in respect of plans or programmes prepared by the Scottish Executive or its agencies on behalf of the Scottish Ministers themselves?

Disagreements about the need for SEA in respect of plans or programmes prepared by the Scottish Executive should be dealt with through a separate body rather than Scottish Ministers. This would assist in avoiding the risk of allegations that Scottish Ministers were making decisions on plans, programmes and strategies that they themselves had produced

Environmental assessment

Q16 Is any additional guidance necessary on any aspect of Annex I to the Directive?

Q17 Are the measures described in paragraph 4.27 sufficient to ensure the quality of environmental reports?

The quality of reports could be assisted through production of draft scoping reports which facilitated input at an early stage. Third parties should have an opportunity to challenge the content of reports.

An independent audit of a sample of reports should also be undertaken and

Q18 What remedial measures should be taken if an environmental report is considered not to be of sufficient quality?

There should be a facility to enable poor quality Environmental Reports to be amended, i.e. to secure additional information if the report is inadequate.

The establishment of a separate body who could monitor quality of reporting could both assist in co-ordinating the advice and guidance provided and also highlight particularly poor bodies.

The point by which assessment should be carried out

Q19 Is it necessary to define “adoption” and/or “submission to the legislative procedure” in the draft Regulations? If so, how those terms might best be defined?

Q20 Should the Regulations specify that the consideration of plans and programmes, and the opinions expressed on them, during the legislative process are not subject to Article 8 of the Directive?

Avoiding duplication of assessment

Q21 To what degree might a less detailed SEA be carried out on a plan or programme because the same subject matter is already subject to SEA at another level?

Q22 Should any time limit be set for the use of information procured as part of an earlier SEA?

Q23 Should provisions be introduced to provide a check on the value of information procured as part of an earlier SEA, or do the consultation mechanisms in place already provide a sufficient control mechanism?

Third party involvement opportunities in screening and scoping would assist in ensuring that all relevant information had been considered. Post implementation monitoring evidence of schemes should also be cross referenced with information procured as part of the SEA.

The list of consultation authorities

Q24 Who should the consultation authorities be for the purposes of the draft Regulations?

Q25 Should the Regulations specifically list the consultation authorities or simply provide that the Scottish Ministers determine the relevant consultation authorities on a case-by-case basis?

Q26 Should all those on any list be involved in every case, or should the Regulations provide for relevant consultation authorities to be consulted – if the latter, how should relevant consultation authorities be selected; should there be a requirement to consult the Scottish Ministers and SEPA in all cases?

We are concerned at the very limited range of consultees, especially the absences of any stated one with a specifically public health remit. The SEA process should encourage further public involvement. A specific co-ordinating body would assist in facilitating public consultation.

The definition of the “public”

Q27 What views do you have on the proposal to define “public” in the Regulations in broad terms?

We support the broad definition of “public” in the Regulations.

Q28 What mechanisms do you suggest for making plans and programmes and environmental reports available to the public?

Q29 Should any mechanisms for making plans and programmes available to the public be specified in the Regulations; should the Regulations leave this to the responsible authorities; or should the Regulations include a menu from which the responsible authorities must select the most appropriate mechanism?

Both paper copies and electronic copies which can be downloaded from a web site available to the public should be made available along with public access to monitoring reports undertaken after scheme implementation.

Timescale for consultation

Q30 What are your views on the proposal for a period of a minimum of 28 days and of sufficient length to allow consultees to express their opinions?

We would prefer to see a longer window of opportunity for consultees to express their opinions, where input from active interested community groups is required 28 days would be insufficient.

Monitoring

Q31 Do the proposals for monitoring fully meet the Directive's requirements?

The monitoring proposals should also consider the quality of reports and whether predicted effects actually occur.

With responsible authorities having the monitoring obligations and the absence of a requirement for monitoring results or remedial action to be reported the Executive will not be well placed to monitor the effects of plans and programmes developed outwith Scottish Ministers.

Q32 Should the Regulations provide for the Scottish Ministers to determine the monitoring methods to be used in specific cases, if they do not consider the measures proposed by the responsible authority to be sufficiently robust?

Implementation and entry into force

Q33 Is it necessary to define "first formal preparatory act"?

b) The Proposed Bill

The definition of "strategies"

Q34 What is your view of the proposed definition?

We are fully supportive of the intention to extend SEA to strategies and are happy with the broad definition.

Q35 What will be the likely extent of the Bill if that definition of strategies were to stand (eg how many voluntary strategies, plans and programmes might fall within its scope?)

Q36 Are any modifications required to the criteria in Annex II to the Directive?

The application of the screening process

Q37 Do you agree that the screening process described in paragraphs 4.11 to 4.13 above is generally applicable to strategies, plans and programmes outwith the scope of the Directive?

As noted above we believe that a co-ordinating, arms-length body should be established to oversee this. Unless this happens the process lacks sufficient independence, quality assurance and public confidence. Such a body could still have an appeal procedure to Scottish Ministers with consultation opportunities designed around specific plans, programmes and strategies

Q38 What are your views on whether a pre-screening process as described in paragraphs 4.59 and 4.60 above is desirable?

We are concerned that responsible authorities may favour pre-screening as a means to reduce the administrative workload. The potential to opt out of undertaking SEA for strategies would thus weaken the commitment given to extending SEA to strategies in the Partnership Agreement.

Q39 What are the potential implications of separate regimes for plans and programmes within the scope of the Directive and wider strategies, plans and programmes within the context of the Partnership Agreement?

Friends of the Earth are opposed to the establishment of separate regimes, this weakens the commitment within the Partnership Agreement.

The impact on private companies carrying out public functions under the control or direction of the Government

Q40 Should such companies be subject to the provisions of the Bill?

Private companies who carry out public functions should be subject to the provisions of the Bill.

Q41 What is the likely number of strategies, plans and programmes to which the Bill might apply if its provisions extend to such companies?

Whether to modify Annex I and II to the Directive

Q42 What are your views on whether modifications are necessary, and on the proposal to create an enabling provision in the Bill for future modifications?

Whether socio-economic factors should be taken into account in the preparation of environmental reports

Q 43 Do you agree with the approach set out in Paragraph 4.66 that notwithstanding the importance of socio-economic factors in reaching final implementation decisions, the SEA report should only contain environmental factors?

We are satisfied that the SEA report should focus on environmental factors, however within these adequate attention must be given to public health. It is also essential for the achievement of environmental justice that reports address fully distribution of environmental impacts with respect both to cumulative effects and sensitivity of affected environments/populations.

Possible additional exemptions

Q44 Should the Bill enable the Scottish Ministers to make additional exemptions?

Q45 Should the Bill should go further than enabling provisions and list those organizations whose strategies, plans and programmes are exempt from the wider SEA requirement (but not from the requirements of the Directive)?

Q46 Which organisations might sensibly be exempted from the wider provisions of the Bill?

An inclusive approach should be adopted, rather than identifying a list of those that may be exempted this should be done on a case by case basis.

Likely numbers of strategies, plans and programmes to be subject to SEA and the likely costs

Q47 What are your views the Scottish Executive's estimate of resource impact based on the likely annual numbers of plans and programmes within the scope of the Directive that might require SEA, and the associated costs to the responsible authorities (including private companies carrying out public functions) of preparing such SEAs?

Q48 What are the likely additional annual numbers of strategies, plans and programmes within the scope of the Bill that might require SEA, and the associated costs to the responsible authorities (including private companies carrying out public functions) of preparing such SEAs?

Q49 What are the likely costs, for each consultation authority, of the screening and other consultation processes under the provisions of the Directive and the Bill?

Q50 What are the likely costs, for each non-governmental organisation with a particular interest in environmental protection, of the public consultation process under the provisions of the Directive and the Bill?

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