



postnote

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STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)

SEA is the subject of new legislation¹ coming into force on 20 July 2004, implementing a European Directive². It requires environmental effects to be taken into account by authorities during the preparation of plans and programmes in the fields of land-use, transport, waste and water management, energy, and a range of other sectors. The Office of the Deputy Prime Minister (ODPM) laid UK Regulations before Parliament on 29 June. This briefing outlines the aims, scope and requirements of the legislation, and the implications for plan- and programme-makers and other parties.

Why SEA?

The Directive aims to 'provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development...'. A central purpose of SEA is to anticipate and improve the overall environmental effects of proposed patterns of spatial development, and of multiple individual projects. Individually the latter may require Environmental Impact Assessment (EIA) under the 1985 EIA Directive. EIA of projects, however, comes at a late stage in public decision-making. Important commitments will have already been made regarding work programmes, local or regional plans, and national policies.

SEA can be applied to all of these 'strategic' tiers of decision-making, but is restricted to certain programmes and plans ('plans' – box 1) in the Directive. It aims to anticipate the 'likely significant environmental effects' of implementing a plan and its 'reasonable alternatives', with a view to avoiding, reducing or offsetting any negative impacts. Its use can improve foresight regarding potential effects of future plans, for example on protected or environmentally sensitive sites. In the longer term, proponents of SEA argue that it will promote a more open, transparent and evidence-based planning culture.

Box 1 Plans requiring SEA³

The Regulations apply to mainland and offshore plans for which preparation started after 20 July 2004 (or if started earlier, where the plan will be adopted after 21 July 2006). Both (a) and (b) must always apply. Plan preparation is:

- (a) by (or for) an authority, or a utility acting as an authority;
- (b) a 'legislative, regulatory or administrative' requirement. This effectively excludes national policies and laws, plans that are not strictly 'required', and most private sector plans. SEA is mandatory for plans falling under (c) and (d):
- (c) The plan is for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning, or land use; and it 'sets the framework' for future development consents listed in the 1985 EIA Directive (85/337/EEC).
- (d) It is likely to significantly affect a nature conservation site protected under the Habitats Directive (92/43/EEC). SEA is also required for a plan under (e) where it is determined by the authority or a government Ministry to be 'likely to have significant environmental effects':
- (e) Any other plan that sets the framework for future development consents, or any plan under (c) or (d) that determines 'the use of small areas at local level' or is a 'minor modification' of a plan.

Exceptions apply to plans under (f)

- (f) Plans solely serving national defence or civil emergencies, or that are solely budgetary/ financial in nature; plans under EC Structural Funds, including agriculture, to 2006/7; plans initiated before 21 July 2004 (and not adopted by 21 July 2006) where the plan-maker considers SEA unfeasible.

Many plans likely to be subject to SEA will be for land-use, including the new Regional Spatial Strategies and Local Development Documents (box 4). Others include offshore energy licensing rounds (box 3), Waste Local Plans, Catchment Flood Management Plans, Water Company Resource Strategies, and Local Transport Plans (box 4).

What is SEA?

As defined in the Directive, SEA is a set of procedures relating to the provision of information, consultation, preparation of an environmental report and taking findings into account in planning. Tools for impact

Box 2 SEA in the devolved administrations

Where plans relate to England (or England plus any other part of the UK) the UK regulations will apply. Where they relate to Scotland, Wales or Northern Ireland only, under devolved powers, SEA legislation adopted by the devolved administrations will apply. All of the regulations are closely modelled on the European SEA Directive, and are therefore largely similar to those for the UK. The Scottish Ministers, however, have decided to apply SEA beyond the Directive's requirements. In a forthcoming bill, SEA will apply to a wider range of plans and programmes and also to policies, regardless of whether their preparation is 'required' or sets the framework for future development consents of projects.

In the UK and Welsh Regulations ministers may choose to direct that SEA is required at any point. In Scotland, however, a decision from the Scottish Ministers is automatically triggered where plan-makers and the environmental authorities cannot agree. In Northern Ireland the final decision rests with the environmental authority.

The designated environmental authorities are listed below. They also act in relation to cross-border and UK-wide plans, in so far as the plan relates to the relevant country.

- UK/ England – EN, EH, CA and EA (see text page 3)
- Scotland – Historic Scotland, Scottish Natural Heritage, Scottish Environmental Protection Agency.
- Wales – Welsh Assembly Government, Countryside Council for Wales, Cadw.
- Northern Ireland – Environment and Heritage Service.

prediction are available or under development, but are not mandated, nor the main focus of this note. Some official guidance has been produced or is forthcoming⁴, and SEA expertise and experience are available⁵.

Key stages in SEA

Screening - the relevant ministry may require SEA to be undertaken, but routinely the decision rests with the plan-maker, in consultation with the environmental authorities. Some differences exist between the devolved administrations (see box 2). Within 28 days of making a screening decision the plan-maker must publicise it. If it decides against an SEA, it must give reasons for this. The screening rules (box 1) are complex and challenging to interpret. This has led to uncertainty among plan-makers and environmental authorities as to which plans will require SEA and the impact on future workloads.

Scoping and preparing an environmental report – an annex to the Directive sets out the assessment requirements. Plan-makers must interpret these in consultation with the environmental authorities, whose advice must be provided within 5 weeks, but need not be followed. The report sets out the plan's objectives and its relationship to relevant environmental policies and problems. A baseline environmental study is required, plus an assessment of likely significant environmental effects of implementing the plan and its reasonable alternatives, and how these are to be addressed. Thirteen categories of effect, such as flora, water, cultural heritage and landscape, are identified in the Directive.

Consultations - The plan-maker is required to send the draft plan and environmental report to the environmental

Box 3 DTI Offshore Energy SEAs

The Department of Trade and Industry voluntarily initiated a series of SEAs in 1999, addressing the environmental implications of further licensing for oil and gas production on the UK continental shelf (UKCS). Assessments for eight sectors of the UKCS will be undertaken by 2008, with 4 completed and two more underway in 2004. An initial SEA for offshore wind energy licensing has also been completed. Offshore Energy SEAs presented particular challenges with regard to baseline environmental studies, and the survey work has contributed valuable data that are freely available.

While data collection has proven technically challenging, developing procedures for engaging and communicating with stakeholders has been equally important. Innovations have included the introduction of steering groups, formal Stakeholder Dialogue sessions, and creation of dedicated websites with email news alerts (www.offshore-sea.org.uk). Onshore SEAs are unlikely to require such intensive collection of new site-specific environmental data. However others can be expected to benefit from similar learning processes regarding stakeholder participation, as experience grows and SEAs are repeated over the planning cycle.

authorities, and to announce their availability to 'public consultees' (NGOs and others identified by the plan-maker as affected or interested parties). Comments must be invited for a time period that allows for effective expression of the environmental authorities' and the public consultees' opinions. The documents must also be available for inspection by any member of the wider public, but this need not be publicised. If a plan is likely to affect the environment significantly in another Member State (MS), the documents must be forwarded to that state, to allow for similar consultations there before adoption of the plan. International consultations will be conducted by the UK government rather than the devolved administrations, except in the case of Northern Ireland. Cross-border consultations within the UK are not required but would be expected as good practice.

Information as to adoption - opinions expressed during the consultation period, and the findings of the report, must be taken into account before finalising the plan. Once it has been adopted, the plan-maker must publicise the availability of the final plan and its report. They must also state how environmental considerations, the report and opinions have been taken into account, why the plan was chosen over alternatives, and arrangements for monitoring the environmental effects of implementation.

Practical implications

- for plan makers

The majority of UK SEAs are likely to be for spatial development plans prepared by local and regional authorities. Planning procedures are undergoing major changes under the Planning and Compulsory Purchase Act 2004. SEA will be integrated into these new procedures, as part of a wider 'Sustainability Appraisal' process (box 4). Most other SEAs are likely to be for transport (box 4), minerals, waste or water management plans. Undertaking an SEA might require 50 to 100 person-days of work, but could vary widely depending on data requirements and the level of proactive consultation.

Box 4 SEA for transport and land-use plans

Transport: revisions to the New Approach to Appraisal

The Department for Transport (DfT) has issued guidance on integrating the requirements of the SEA Directive into its 'new approach to appraisal' (NATA). The existing approach appraises plans against 5 sets of objectives: environment, safety, economy, accessibility and integration. Objectives-based appraisals are widely used in many sectors (see below), and the revisions to NATA illustrate SEA's stronger focus on baseline data and the consideration of alternatives.

According to the DfT, *"enhancing NATA to fulfil the requirements of the SEA Directive requires additional work on: collecting baseline environmental information and identifying environmental problems; predicting the significant environmental impacts of the plan; identifying mitigation; identifying alternatives and their effects; consulting the public and authorities with environmental responsibilities; reporting how the results of the SEA and consultation responses have been taken into account; providing a non-technical summary of the SEA; and monitoring the actual environmental effects of the plan during its implementation."*⁶

Public consultation on a draft Local Transport Plan is a new requirement. This illustrates the fact that fulfilling SEA requirements cannot be a 'bolt-on exercise', and is integral to the way plans are made. Where plans for road or rail must decide on routing, there is a risk that SEA may be initiated at a late stage in planning. SEA of Regional Spatial Strategies (see below), which incorporate Regional Transport Strategies, may help in avoiding this problem.

Land use-plans: SEA and Sustainability Appraisal

SEA will apply to local authority development plans and Regional Planning Guidance, and to their successors - Local Development Documents and Regional Spatial Strategies. The Planning and Compulsory Purchase Act 2004 (PCPA) requires the sustainability of draft proposals to be appraised and reported. A form of 'sustainability appraisal' (SA), guided by national sustainability objectives, has been used in spatial planning since the late 1990s as good practice. SA simultaneously considers economic, social and environmental impacts, seeking to strike a balance or make trade-offs between them. SEA differs from SA in that it is solely concerned with environmental impacts, and seeks to strengthen their consideration in decision making.

Compared with SEAs, existing SAs have typically focused more on objectives than on baseline data. SAs have relied more on qualitative expert judgements, rather than scientifically-informed predictions and transparent consultation procedures. In view of these differences environmental NGOs would prefer that SEA stood alone, while economic development bodies such as Regional Development Agencies and many planning authorities are more in favour of integrating SEA into the SA framework. ODPM is preparing guidance on SA incorporating SEA for the new land-use planning system. As SEA introduces more evidence-based reasoning in the environmental aspects of SA, the new guidance seeks to introduce similar rigour in assessing economic and social impacts. The new planning system is expected to complement aspects of SEA such as consideration of alternatives and auditing of the influence of the assessments on plans. There may be less compatibility regarding the PCPA's aim to speed up planning.

SEA is intended to be integrated with good planning practice and as such may sometimes add little to existing workloads. Consultancy firms may be used, but plan-makers will be responsible for legal compliance.

- for the environmental authorities

The Environment Agency (EA), English Nature (EN), The Countryside Agency (CA) and English Heritage (EH) welcome the legislation, as it provides opportunities to promote compatibility with their policy aims and targets. EN has been concerned that biodiversity issues should be addressed effectively in SEAs, and has worked with others to produce guidance on this. The EA will itself produce about 80 plans each year that will be subject to SEA, largely for water management. It estimates that over 100 plans prepared by other bodies will also require attention annually (for screening/scoping advice and data, and to review draft plans and environmental reports). Some environmental authorities have been concerned that their resources and capacities will be stretched.

- for NGOs, developers and the public

The public are given access to information, and an opportunity to comment on draft plans and reports. Environmental NGOs have strongly welcomed the legislation. It gives them an opportunity to scrutinise screening decisions, and to respond to consultations. NGOs, or any other party such as a developer, could launch a legal challenge where an SEA has not been carried out or they consider the process deficient.

Issues

Access to information

UK plan-makers are not required to post information or documents on their websites. Arguments were made for minimum publicity requirements of this sort during the ODPM's consultation on draft Regulations. Arrangements have been left to the plan-maker's discretion, because minimum requirements can become the norm, which in some cases would be too limited. A minimum time period for consultation on the draft plan and report, suggested in the draft Regulations, was rejected on the same grounds. NGOs (and the wider public) may have to travel to a plan-maker's principal office to view documents, and are concerned to ensure that the time-scales allow this. They have argued that a central website tracking all SEAs should be created to facilitate participation. Without such a register, NGOs and/or sections of the public that are not identified as 'public consultees' by the plan-maker could remain unaware that documents are available for inspection.

SEA at higher levels of decision making

Plans and programmes subject to SEA typically implement national policy decisions that are not themselves subject to SEA. Thus a Local Transport Plan will have to take into account policy in the Aviation and Transport White Papers, and Regional Spatial Strategies mesh with the Sustainable Communities Plan and Planning Policy Statements. A central argument for SEA was that EIA takes place too late in the planning hierarchy; on this basis some argue that national policies should also be subject to SEA. In defence of excluding policies, it is argued that making robust screening decisions (i.e. on which policy decisions to assess) would be even more difficult than for plans and programmes. Future experience in Scotland with policy-SEA (box 2) may illuminate this debate.

Baseline data and studies

Baseline data strengthen the evidence base for decisions, and allow more transparent and rigorous assessment than approaches based on expert judgement alone. SEA is demanding in terms of data on the state of the environment and how it is changing. Authorities such as the EA will respond to requests for data where they can readily be made available, but may not be able to deal with all requests. Given its resource limitations, the EA intends to prioritise the waste, minerals, spatial planning and water supply sectors. For SEAs relating to offshore developments, considerable effort to collect new data will be required (see box 3). Onshore, this may not be so necessary - Local Record Centres and Regional Observatories could play a useful role in supporting SEAs through improved management of existing data.

Monitoring and quality control

The SEA Directive requires member states to monitor the environmental effects of implementing a plan, to enable any remedial action needed. No new environmental protection obligations are created. The UK Regulations give the plan-making authority responsibility for meeting the monitoring requirement, details of which will be clarified in forthcoming ODPM guidance. Member States are also required to ensure that environmental reports are of adequate quality. Experience with implementing the 1985 EIA Directive suggests that they may be of very variable quality, with some inadequate for their intended purpose. There have been calls for all environmental reports to be subject to independent scrutiny by a single body, to facilitate quality control at the national and European levels. The government has no plans to set up such a body. Many reports will be scrutinised during routine oversight of spatial planning, and organisations can be employed by plan-makers or others to check reports for quality and legal compliance.

Links to other forms of assessment

Assessment is an increasingly popular mechanism for shaping and/or vetting proposals for compliance with a range of policy goals. There may be multiple assessment requirements at a single stage of decision-making, and a hierarchy of assessments from projects to programmes, plans and policies. Because of concerns to avoid duplication of effort, SEA allows for joint procedures with other assessments, and for data collected for other purposes to be used. In land-use planning and transport, SEA requirements in the UK are to be integrated into other appraisal systems (box 4). Questions then arise about the appropriate scope and detail to be considered at each level of a hierarchy, the kinds of alternatives to be considered, and the locus of responsibility. There are also concerns that integrating assessments into one another might limit their effectiveness, or create problems where conflicting aims are promoted by different requirements. For example, Sustainability Appraisal (SA – box 4) for land-use plans will incorporate SEA and possibly assessment requirements under the Habitats Directive. The latter strictly limits the use of economic or social arguments to over-ride environmental protection objectives for certain sites. SA is designed to identify such trade-offs.

Implementation issues

Various phrases in the Directive are discussed in European Commission (EC) guidance⁷ but will need further refinement, such as, '*reasonable alternatives*', '*small area*', '*minor modification*' and '*sets the framework for development consents*'. Plan-makers are concerned that they could face legal action if they decide SEA is not required, while environmental groups are worried that few SEAs may be undertaken, given the scope for exemptions. The screening rules governing plans initiated before 21 July 2004, have raised the most concern. Where such a plan has not been adopted by 21 July 2006, the Directive's requirements apply but not where the plan-maker decides that carrying out an SEA is '*not feasible*'. Interpretation of the phrases quoted here is difficult, and the ruling regarding feasibility is seen as a potential loophole. As mentioned, EC guidance covers some of these issues. The EC expects that the UK will be one of only nine member states to have transposed the Directive in full by the due date of 21 July 2004.

ODPM guidance to assist planning authorities in complying with the Directive was issued in 2003.⁸ This is to be replaced by guidance on Sustainability Appraisal incorporating Directive-compliant SEA. Consultations on this, and on general SEA guidance for all responsible authorities, are expected to begin in July 2004. Transport, waste, biodiversity and climate change SEA guidance documents have been produced by others. SEA Good Practice Guidelines from the EA, and results of research in the minerals sector are forthcoming.

Endnotes

- 1 The Environmental Assessment of Plans and Programmes Regulations 2004. SI 2004 No. 1633 Environmental Protection.
- 2 Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment. OJ 21.7.2001 L197/30 or <http://europa.eu.int/comm/environment/eia/home.htm>
- 3 This is a summary only. See the legislation for full details.
- 4 All guidance documents can be accessed via www.sea-info.net
- 5 SEA pilot studies are available at www.planning.odpm.gov. For international experience see www.iaia.org and www.iied.org
- 6 Strategic Environmental Assessment Guidance for Transport Plans and Programmes. www.webtag.org.uk/sitepages/consult.htm
- 7 Implementation of Directive 2001/42 (2003) www.europa.eu.int/comm/environment/eia/home.htm
- 8 The Strategic Environmental Assessment Directive: Guidance for Planning Authorities, ODPM, October 2003, www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_026670.pdf

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