

Coping with the European Union SEA Directive: UK Public Authorities and the New Environmental Governance

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Main themes

- meaning and role of strategic environmental assessment
- requirements of EU SEA Directive
- alternative methodologies for implementing SEA
- SEA practice in UK
- the Scottish Environmental Assessment Act
- using SEA to deliver environmental justice: aims and realities

What is SEA?

- definition: “a formalised, systematic and comprehensive process of evaluating the environmental impacts of a policy, plan or programme (PPP) and its alternatives, including the preparation of a written report on the findings of that evaluation, and using the findings in publicly accountable decision-making” (Thérivel *et al*, 1992: 19-20)

What does SEA add to EIA?

- requires public authorities to review and justify environmental effects of their policies, plans and programmes to public and independent bodies
- more anticipatory and pro-active than EIA because full range of alternative development options must be scoped and reviewed, not just specific projects
- allows overall cumulative effects of development process to be fully assessed
- requires full range of mitigation measures to be considered
- operates to wider timescale and collect broader-based data
- requires subsequent monitoring of effects

European Union SEA Directive 2001/42/EC

- intended to offer “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, by ensuring that...an environmental assessment is carried out on certain plans and programmes which are likely to have significant effects on the environment” (Article 1)

Requirements of EU SEA Directive

- screening to identify qualifying plans and programmes
- scoping to agree most significant likely environmental effects in consultation with statutory environmental consultees
- preparation of draft Environmental Report (ER)
- formal public consultation on draft ER and related plan or programme
- formal requirement to incorporate amendments after consultation, prior to adoption of plan or programme
- setting up and applying monitoring system for implementation phase

What must an Environmental Report contain?

- outline of purpose of plan and its relation to other relevant plans
- state of environment and likely evolution without plan
- existing environmental problems, especially in areas of high environmental significance
- relevant environmental protection objectives
- prediction of likely significant environmental effects including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects (to cover biodiversity, population, human health, flora & fauna, soil, water, air, climate, material assets, cultural heritage, landscape & inter-relationships)
- measures to prevent, reduce or offset significant adverse environmental effects
- outline of reasons for selecting chosen alternatives
- monitoring arrangements
- non-technical summary

Possible SEA methodologies

- technical-rational *baseline-led* approaches integrating socio-economic and environmental effects, claiming to identify and track all impacts
- policy-based *objectives-led* approaches, intended to 'operationalise' sustainable development
- *eclectic* approaches, using techniques suited to needs, but designed to 'mainstream' environmental considerations in public sector policy formulation and implementation

Baseline-led SEA

- attempts to assess impacts of plan on environment by measuring changes in state of environment
- stresses belief in technical-rational model of decision-making: assumes experts can assess all key determinants, allowing policy-makers choose from best technical alternatives
- evidence suggest that plan-making in reality is imbued with implicit value-judgements – claims of ‘expert’ judgement are often used to mask such influences
- integrated methodology also attempts to attribute socio-economic changes to adoption of plan: in practice transmission mechanisms for socio-economic effects of plan highly complex and difficult to track

Objectives-led SEA

- attempts to 'proof' individual plans or programmes for their conformity with official sustainable development frameworks
- value-judgements are explicit in chosen SD framework (often applying ecological modernisation model reliant on weak sustainability rationale), making SEA contingent on current interpretation of SD
- exercise heavily qualitative: difficult to quantify effects and to use targets to monitor outcomes
- UK interpretation of EU SEA Directive means that only limited range of plans and programmes subject to such assessment, frustrating justification of objectives-led SEA as a means to 'operationalise' SD

Eclectic approaches

- Royal Commission on Environmental Pollution regards SEA as integrating “environmental concerns into primary non-environmental areas of decision-making”
- to fulfil this function, SEA would need to focus primarily on environmental effects, offer comprehensive coverage of public sector policies, plans and programmes (PPPs), provide effective community engagement in the formulation of PPPs, and support a system that informs efforts to deliver environmental justice

UK SEA practice

- outside Scotland, SEA restricted to statutory plans and programmes that set the framework for future development consent, leaving large areas of public sector policy formulation exempt
- in England & Wales, planning authorities required to use 'sustainability appraisal' (a form of objectives-led assessment that covers socio-economic as well as environmental effects) to discharge EU SEA obligations
- in other sectors, guidance restricted to minimalist SEA Directive requirements

Scottish SEA

Environmental Assessment (Scotland) Act 2005 identifies three objectives:

1. to improve Scottish environment and make Scotland more sustainable
2. to improve policy making by ensuring that environmental effects are fully considered at an early stage in policy formulation and that the environmental effects of different options are assessed
3. to promote more open government by allowing the public and interested organisations to comment on environmental reports, and obliging public bodies to explain how they have taken such comments into account

Key features of Scottish SEA

- applies to all new Scottish PPPs likely to have significant environmental effects, voluntary as well as statutory: will more than double annual SEAs (see table)
- restricts assessment to environmental effects, allowing baseline-led techniques to be used for lower-level area-based development plans, and objectives-led techniques for higher-level strategies
- encourages a more discursive approach by public bodies in Scotland to the environmental aspects of policy formulation
- helps promote the aims of environmental justice

*additional costs of EASB not yet quantifiable	Estimated no. of Scottish SEAs and gross costs per year (based on three year plan cycle)					
	EU SEA Directive		Additional under EASB		Total	
	No.	£000	No.	£000	No.	£000
Responsible Authorities:						
Scottish Executive	10	253	4	141	14	394
Local Authorities	47	1,657	109	3,843	156	5,500
Others	87	3,067	99	3,490	186	6,557
Statutory Consultees		1,650		*		1,650*
Administrative costs:						
Scottish Executive Gateway Unit		95		*		95*
TOTAL	144	6,722	212	7,474	356	14,196

Scottish Executive SEA Gateway

- centralised unit created to supervise the operation of SEA: SEA Gateway
- based in Scottish Executive, with subsidiaries in each of the three Scottish statutory environmental consultees (SEPA, SNH & Historic Scotland)
- offers means of ensuring uniform application of SEA processes across Scotland (nothing similar exists in rest of UK)
- serves as repository of SEA output across Scotland

Benefits of SEA Gateway

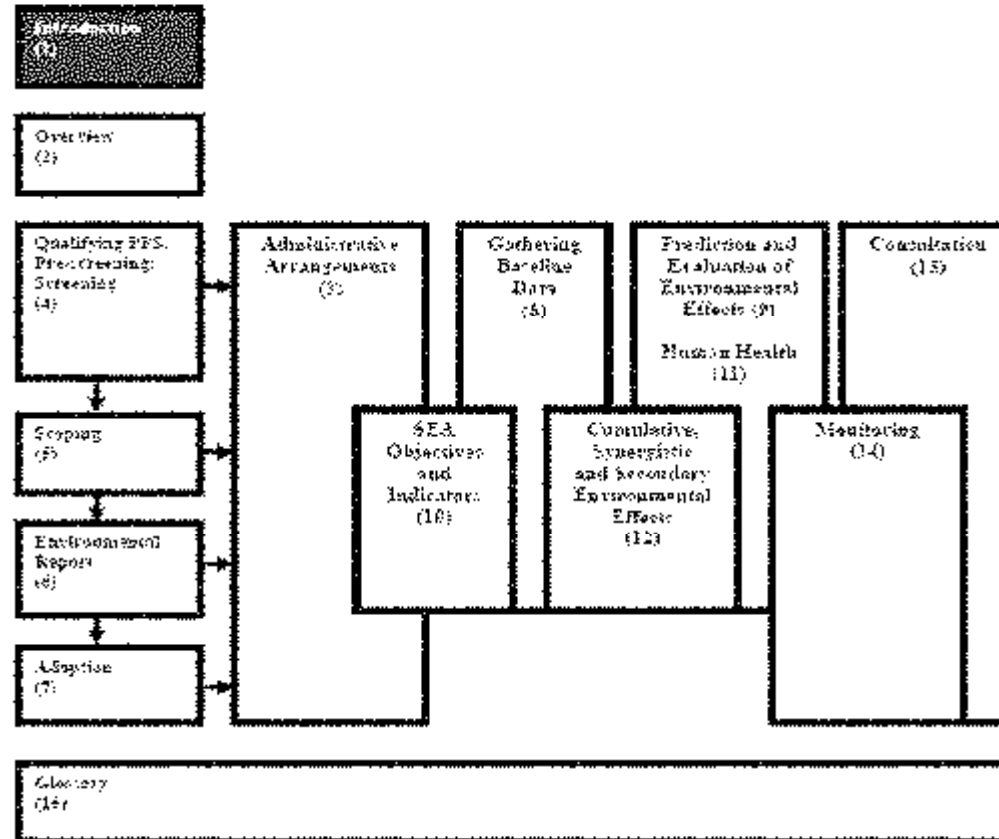
- serves as a clearing house for scoping opinions from statutory environmental consultees and ensures that all RAs take these on board
- provides a check that RAs submit draft ERs on time and offer adequate period of consultation
- provides repository for all finalised SEAs, allowing Scotland to be 'mapped' for environmental effects across different levels, areas and sectors

Benefits of SEA Gateway (cont.)

- focus of Scottish SEA expertise, eg:
- Scottish Executive is sponsoring a series of 'Pathfinder' SEAs, in which RAs from different policy areas submit their ERs to common scrutiny with a view to offering a 'standard' of performance to others in same area
- new Scottish SEA guidance offers templates for standardising submission of data, allowing better subsequent collation and post-auditing analysis: 'SEA toolkit'

**SCOTTISH EXECUTIVE
SEA TOOL KIT
Chapter 1 - Introduction to the SEA Toolkit**

This flow chart sets out the key reports covered by this Tool Kit. The chapter you are now reading is highlighted.



Requirements for Environmental Justice

- *equity of exposure*, which requires the presence of a level playing field to allow groups an equal chance of being targeted for significant environmental change
- *equity of impact*, in which groups should experience a proportionate share of the costs and benefits of such change after it occurs
- *equity of procedure*, which should ensure fair treatment of stakeholders affected by significant environmental change
- *equity of change*, which requires the application of the precautionary principle to prevent any group, whether defined spatially, social or over time (ie a specific generation), from assuming an unfair and unnecessary burden of environmental change.
(Maschewsky, 2005)

Promoting environmental justice

- Scottish SEA arrangements for widespread public consultation together with full mapping of environmental implications of Scottish PPPs should promote Scottish Executive commit to environmental justice (EJ)
- two aspects of EJ – procedural and substantive
- procedural EJ offers public greater opportunities for information and participation on environmental policy formulation
- substantive EJ considers the actual distribution of environmental goods and bads in society

Conclusions

- Scottish Executive extension of SEA through Environmental Assessment Act exemplifies the ‘new environmental governance’ which UK public authorities must accommodate
- this demands more ‘reflexive’ form of governance, with greater public participation and willingness by public bodies to incorporate learning from practice
- however, although “Scotland’s new strategy for sustainable development is based on the principles of environmental justice” (SEEG, 2005c, p.2), effective use of SEA Gateway to this end still awaits an explicit ‘rights’ policy to mediate environmental options