

Strategic environmental assessment: implementation within the United Kingdom

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The Environmental Assessment of Plans and Programmes Regulations¹ (the Regulations) were introduced into the UK in July 2004. The Regulations implement European Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (the so-called SEA Directive) in the UK. The directive was viewed as an important step in European environmental law as, although major projects likely to have an impact on the environment must be assessed under the Environmental Impact Directive, this assessment takes place at a stage when plans are actually being developed and in due course adopted. Its purpose is to ensure that the environmental consequences are identified early and to help produce decisions that are better informed. It complements and does not replace environmental assessment of individual projects.

Although the term is not used in the directive, it has become known as the Strategic Environmental Assessment (SEA) Directive. Separate regulations are being introduced by Scotland, Wales and Northern Ireland. However, a joint draft Practical Guide (the Guide)² has been issued with the Office of the Deputy Prime Minister (ODPM) having overall responsibility for implementing the SEA Directive throughout the UK.

Plans and programmes

The scope of the SEA Directive applies to plans and programmes that have been prepared on or after 21 July 2004 and to those which have been prepared but will not have been adopted or submitted to the legislative procedure by July 2006. The classes of plans and programmes that require assessment are defined.

Two classes of plans and programmes are defined as likely to have significant environmental effects. SEA is mandatory for these plans/programmes.

For a plan or programme to fall within this scope, both conditions described must have been fulfilled, namely, the plan or programme must have been prepared for one or more of the sectors (agricultural, forestry, fisheries, energy, transport, waste management, water management, telecommunications, tourism, town and country planning and land use) or, in view of the likely effect on sites, require assessment pursuant to the Habitats Directive. The SEA Directive and the regulations do not apply to plans and programmes whose sole purpose is to serve national defence or civil emergency or to financial or budget plans and programmes. Nor do they apply to a plan or programme co-financed by the European Community.

The definition of plans and programmes includes modification for the plans, but no actual definition of plans and programmes is given. The fact that the SEA Directive applies to administrative as well as legislative and regulatory provisions suggests that it may apply to a wide range of non-statutory plans and programmes.

The European Guide on the implementation of the directive³ specifies that the name alone (Plan, Programme, Strategy, Guidelines etc) will not be a sufficiently reliable guide. The European Guide states that some Member States regard a plan as a document that sets out how it is proposed to carry out or implement a scheme or a policy. For example, this could include land use plans, setting out how land is to be developed, or laying down rules or guidance as to the kind of development which may be appropriate in particular areas. A programme is usually thought of as the plan covering a set of projects in a given area, for example, a scheme for regeneration of an urban area.

The reasoning for including modifications into the definition is that many plans, especially land use plans, are modified when they eventually become outdated rather than being prepared afresh.

1 The Environmental Assessment of Plans and Programmes Regulations 2004, SI 1633/2004.

2 ODPM 'A Draft Practical Guide to the Strategic Environmental Assessment Directive' available at odpm@twoten.press.net.

3 Available on the EU website <http://europa.eu.int.comm./environment/eia/030923-sea-guidance.pdf>.

The Environmental Report

Key to the SEA process is transparency of decision-making, including public consultation and publication of the assessment. Essentially, the environmental assessment process will include preparing an environmental report on the likely significant effects of the draft plans or programme, carrying out consultations, taking into account the Environmental Report (defined term) and providing information when the plan is adopted. The draft Guide emphasizes that good practice in SEA requires that the assessment should be well integrated with the plan or programme making process. In England and Wales it is the 'responsible authority' who determines whether or not a plan, programme or modification is likely to have significant effects. The term is defined as the authority which prepares a plan/programme. A 'screening' process will determine how likely the effects of plans/programmes will be and thereby establish whether an SEA will be required. Consultation will be required both on the scope of the SEA and on the Environmental Report prepared for the assessment of each plan.

The Environmental Report is considered central to the assessment. It forms the main basis for monitoring the significant effects of the implementation plan or programme. The report is an important tool for integrating environmental considerations into the preparation and adoption of plans and programmes, since it ensures that the likely significant effects in the environment are identified, described and assessed. Article 12 of the Regulations sets out the basic requirements for the Environmental Report, namely: the Report shall identify, describe and evaluate the likely significant effects on the environment of (a) implementing the plan and programme and (b) its reasonable alternatives. Schedule 2 gives further provisions on which information must be provided concerning these effects.

In relation to the obligation to identify alternatives, no distinction is made between the assessment requirements for the drafted plan or programme and for the alternatives. The essential thing is that the likely significant effects of the plan or programme and the alternatives are identified, described and evaluated in a comparable way. No interpretation is given on what is meant by a reasonable alternative to a plan or programme, but it must take into account the objectives and geographical scope of the plan or programme. The European Guide⁴ emphasizes that alternatives should be realistic and that a deliberate selection of alternatives in order to promote the draft plan or programme should be made.

The ODPM Guide sets out a guideline on the possible structure and content of the Environmental Report. It states specifically that, as it is likely to be of interest to a wide variety of readers including decision makers, statutory consultees, NGOs and members of the public, it should be written and prepared with this range of users in mind and should include a non-technical summary. The Guide provides a quality assurance checklist to help responsible authorities ensure the quality of the Environmental Report.

Consultation

One of the main reasons for including consultation provisions is stated in the EU Guide, as obliging Member States to grant an opportunity to certain authorities and members of the public to express their opinion on the report and the draft plan or programme. Not only will consultation contribute to the quality of information available to those responsible for decisions, it may also reveal new information which leads to substantial changes to the plan.

Article 13 of the Regulations outlines the consultation procedures which are to include taking such steps as the relevant authority considers appropriate to bring the preparation of relevant documents to the attention of those persons likely to be affected by the consultation. The EU Guide suggests that reading the provision of information requirements in the SEA Directive in conjunction with the Aarhus Convention would suggest effective dissemination either by public notice or individually as appropriate.

The designated Consultation Bodies in England are the Countryside Agency, English Heritage, English Nature and the Environment Agency. These four Agencies are developing a common set of service standards as part of the formal consultations. The Guide advises that timing of consultation should be built into the preparation for the plan/programme and the Environmental Report from the start. As the level of participation will vary depending on the nature and scale of the plan or programme, it is important to ensure that participants are involved at an appropriate level. The public will also play a consultative role. Where a plan or programme could have significant effects upon the environment in another EU state, the SEA Directive provides for transboundary consultation. A minimum public consultation period of 28 days is set out in the directive.

Other guidance has been produced for specific types of plans and programmes including:

- (i) land use and spatial plans in England – the SEA Directive – guidance for planning authorities
- (ii) transport plans in England – SEA – core guidance for transport plans

⁴ *ibid.*

- (iii) Environment Agency Guidelines 2004 – SEA Good Guidance Guidelines.

Monitoring

The Regulations extend the responsible authorities' duties beyond the planning phase and lay down the obligation to monitor the significant environmental effects of the implementation of plans and programmes. The means for monitoring are not prescribed, neither is the time and frequency of monitoring set out.

Implications of the SEA

Varied responses to the implications of the SEA have been received. Certainly, as the Regulations are implemented the differences between the four SEA regimes will become more marked and which regime works better will become clearer. Scotland's SEA regime is the most distinctive, requiring greater involvement from the ministers in the Executive. For example, as Scottish ministers are among the statutory consultees, they will be alerted early to problematic decisions. In Scotland, any disagreements as to whether assessment is required between a responsible authority and statutory consultees must be referred automatically to ministers for their decision. In England, the Regulations leave it entirely to the responsible authority to determine whether an SEA of its own plan or programme would be feasible. This may be unrealistic.

The fact that the SEA will be providing more information to the public on the potential significant effects that plans and programmes will have on the environment enhances the greater emphasis on access to information and achieving sustainable development. By 'front loading' the decision making process on developments, the effect should be greater protection of the environment. However, it is not necessarily only the 'front loading' that may have an effect on the environment. The environmental information received through monitoring could be useful when considering appropriate remedial action in the framework of national legislation.

The SEA applies at a broad level rather than to individual projects and, as such, it complements and does not replace environmental assessments for specific developments. Effectively, this should ensure assessing the environmental impact of developments both at the strategic and the actual development phase. Reviewing the information at both levels should require local authorities to develop proper communication systems between the parties involved at each stage.

A key issue confronting the SEA process will be that of data. The emphasis on collection and presentation of baseline information will necessitate better collection of information and monitoring systems etc by the responsible authorities. Certainly, availability of information may also pose a challenge to SEA teams.

It is estimated that the cost of assessments across the public sector as a whole would be some £10-£30 million per year.⁵ How already overburdened local authorities will manage this additional financial burden remains to be seen.

There are likely to be issues within certain sectors (such as the energy sector), where, potentially, SEA requirements will differ throughout the UK, because of different approaches to implementation in Scotland. This could lead to judicial challenges on fairness issues. It is also thought that the SEA will impinge upon a wide range of plans and programmes within the water sector, which in the UK historically has a tradition of strategic planning through integrated river basin management.⁶

In respect of land use and planning sector, the key issues appear to include the relationship between SEA and sustainability appraisal (SA), and the implications of this relationship for environmental protection and sustainable development.⁷

Conclusions

There is still a degree of uncertainty as to how the SEA will be implemented, particularly where different requirements may arise for different parts of the UK. Certainly, it would seem that the SEA's biggest challenge will be overcoming resource issues, as 'responsible authorities' have to grapple with the new demands including training staff, particularly in relation to baseline information, considering alternatives and cumulative effects and public participation at strategic levels. The preparation of plans and programmes will inevitably be slowed down by the SEA. What impact this will have on the economy will have to be assessed in due course.

⁵ ENDS Report, 3SU, July 2004 pp 49–50.

⁶ WR Sheate and others 'European Environment Eur Env' 73–93 (2004).

⁷ *ibid* p 87.