



Environment and Rural Development Committee

12th Meeting, 2005

Wednesday 27 April 2005

The Committee will meet at 9.45 am in Committee Room 1

1. **Subordinate legislation:** Lewis Macdonald MSP (Deputy Minister for Environment and Rural Development) to move motion S2M-2684— That the Environment and Rural Development Committee recommends that the draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2005 be approved.

2. **Environmental Assessment (Scotland) Bill:** The Committee will take 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.

3. **Subordinate legislation:** The Committee will consider the following negative instrument—

The TSE (Scotland) Amendment Regulations 2005, (SSI 2005/173).

4. **Inquiry into climate change (in private):** The Committee will consider a further draft report.

Mark Brough
Clerk to the Committee
Direct Tel: 0131-348-5240

The following papers are attached:

<u>Agenda Item 1</u>	
The Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2005 (draft)	ERD/S2/05/12/1a
<u>Agenda Item 2</u>	
Briefing paper (<i>for members only</i>)	ERD/S2/05/12/2a
Submission from RSPB Scotland	ERD/S2/05/12/2b
Submission from FoE scotland	ERD/S2/05/12/2c
Submission from Scottish Water	ERD/S2/05/12/2d
Submission from Communities Scotland	ERD/S2/05/12/2e
Submission from Scottish and Southern Energy	ERD/S2/05/12/2f
Submission from Scottish Enterprise	ERD/S2/05/12/2g
Submission from Dr John Hartley	ERD/S2/05/12/2h
<u>Agenda Item 3</u>	
The TSE (Scotland) Amendment Regulations 2005, (SSI 2005/173)	ERD/S2/05/12/3a
<u>Agenda Item 4</u>	
Draft report (<i>for members only</i>)	ERD/S2/05/12/4a

SSI Title and No:	The Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2005, (draft)						
Laid Date:	21 st March 2005	Responsible Minister:	Ross Finnie, Minister for Environment and Rural Development				
SE Contact:	John Convey, SEERAD, ext 40100						
Standing Order:	10.6.1(b) subject to approval by resolution before coming into force						
RECOMMENDATION							
Lead Committee:	Environment & Rural Development	Other Committees:					
Clerk Contact Room & No:	Mark Brough 85240	Clerk Contact No:					
Reason:	These regulations amend the Producer Responsibility Obligations (Packaging Waste) Regulations 1997, which impose obligations on producers to recover and recycle packaging waste, and related obligations to assist the UK in attaining the targets set out in Article 6(1) of Directive 94/62/EC on packaging and packaging waste.						
Time Limit for Parliament to Deal with Instrument	16 th May 2005	1st SLC Meeting	12 th April 2005				
		SLC reporting deadline	27 th April 2005				
Lead Committee To Report By:	9 th May 2005	*Other Committees To Report to the Lead Committee:					
SSI Attached	X	Draft Motion Attached if Required		Date Motion and Designation Form E-Mailed to the Bureau		Laying Clerk Advised of Designated Lead Committee	

* 10 days before the lead committee reporting date. "Other" committees may wish to negotiate timing of their report with the lead committee.



RSPB Scotland Stage 1 Evidence to Environment and Rural Development Committee on the Environmental Assessment (Scotland) Bill, April, 2005

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 their 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 from 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)	<u>£41,647,200</u>
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.

Friends of the Earth Scotland

The Environmental Assessment (Scotland) Bill 2005

**Evidence to the Environment and Rural Development committee
April 2005**

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 retrospective basis.

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 elsewhere¹ suggest that 'independent checks and verification' are a pre-requisite of a good quality SEA system and an independent review body has been critical to the success of SEA².

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.

¹ Verheem, 2002. Strategic Environment Assessment: Performance Criteria. Developed for the International Association of Impact Assessment (IAIA)

² Sheate, W.R, Dagg, S., Richardson, J. Aschemann, R. Palerm, J and Steen, U. (2001). Integration of the Environment into Strategic Decision Making Final Report to the European Commission, DGXI.

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 LINK³ 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

³ McLauchlan, A and Joao, E, (2005) An independent body to oversee strategic environment assessment in Scotland: bureaucratic burden or efficient accountable administration. University of Strathclyde.

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.

Dr Dan Barlow, Head of Research, Friends of the Earth
Scotland
Lamb's House, Burgess Street, Edinburgh. EH6 6RD
0131 554 9977
dbarlow@foe-scotland.org.uk

**Scottish Parliament's Environment and Rural Development Committee consideration of
the Environmental Assessment (Scotland) Bill**

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.

Scottish Parliament's Environment and Rural Development Committee consideration of the Environmental Assessment (Scotland) Bill

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.

SUBMISSION FROM COMMUNITIES SCOTLAND

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.

Craig McLaren and Gordon Wilson
Communities Scotland - 20 April 2005

THE ENVIRONMENTAL ASSESSMENT (SCOTLAND) BILL

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.

Please do not hesitate to contact me if you would like further information on this.

Dr Keith MacLean
Head of Sustainable Development

SUBMISSION FROM THE SCOTTISH ENTERPRISE NETWORK

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 SEA₁ 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.

SSI Title and No:	The TSE (Scotland) Amendment Regulations 2005, (SSI 2005/173)						
Laid Date:	22 nd March 2005	Responsible Minister:	Rhona Brankin, Deputy Minister for Health and Community Care				
SE Contact:	Carolyn Ferguson, FSA, tel. 01224 285145						
Standing Order:	10.4 Subject to negative procedure within 40 days						
RECOMMENDATION							
Lead Committee:	Environment and Rural Development	Other Committees:					
Clerk Contact Room & No:	Mark Brough 85240	Clerk Contact No:					
Reason:	These Regulations update the definition of "the Community Transitional Measures" in regulation 3(1) of the TSE (Scotland) Regulations 2002 to include the amendments of Regulation EC/999/2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies.						
Time Limit for Parliament to Deal with Instrument	17 th May 2005		1st SLC Meeting	12 th April 2005			
			SLC reporting deadline	28 th April 2005			
Lead Committee To Report By:	9 th May 2005		*Other Committees To Report to the Lead Committee:				
SSI Attached	X	Draft Motion Attached if Required		Date Motion and Designation Form E-Mailed to the Bureau		Laying Clerk Advised of Designated Lead Committee	

* 10 days before the lead committee reporting date. "Other" committees may wish to negotiate timing of their report with the lead committee.

SUBMISSION FROM DR JOHN HARTLEY

**Scottish Parliament – Environment & Rural Affairs Committee
Stage 1 consideration of the Environmental Assessment (Scotland) Bill**

Comments from JP Hartley, Hartley Anderson Ltd

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 & 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