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# Strategic Environmental Assessment

## 1. Summary

- Strategic Environmental Assessment (SEA) is a process for identifying and assessing the likely significant environmental effects of a plan or programme and its alternatives.
- SEA is a policy-aiding rather than a policy-making tool, and helps organisations, plan developers and authorities consider the effects of plans and programmes in a structured way and to demonstrate that environmental and other effects have been taken into account during their preparation.
- [EU Directive 2001/42/EC on the environmental assessment of certain plans and programmes](#) (the 'EU SEA Directive (2001/42/EC)') was adopted by the by the EU Parliament and EU Council in 2001.
- Member States were required to bring into force the laws, Regulations and administrative processes necessary to implement the EU SEA Directive (2001/42/EC) by July 2004.
- The EU SEA Directive (2001/42/EC) was transposed into UK legislation through the Environmental Assessment of Plans and Programmes Regulations 2004, including separate Regulations for England ([SI 2004/1633](#)), Northern Ireland ([SR 2004/280](#)), Scotland ([SSI 2004/258](#)) and Wales ([WSI 2004/1656 \(W170\)](#)). The Scottish Regulations have since been repealed by the [Environmental Assessment \(Scotland\) Act 2005](#). The Regulations for Northern Ireland and Wales are similar to the Regulations for England, whereas the approach taken to SEA in Scotland is slightly different to the rest of the UK and has a broader application, covering 'strategies' in addition to 'plans and programmes'.
- The EU SEA Directive (2001/42/EC) applies to a wide range of plans and programmes in the UK. For plans and programmes requiring SEA, the assessment must be carried out during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.
- Non-compliance with the EU SEA Directive (2001/42/EC) or implementing legislation in the UK can lead to legal challenge.

## 2. EU and International Legislative Framework

### Overview

The legislative framework for Strategic Environmental Assessment (SEA) is provided by the [EU Directive on the assessment of the effects of certain plans and programmes on the environment \(2001/42/EC\)](#) (the 'EU SEA Directive'). The [EU Directive on the conservation of natural habitats and of wild fauna and flora](#) (the 'EU Habitats Directive') and the United Nations Economic Commission for Europe (UNECE) [Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters](#) (the 'Aarhus Convention') are also relevant to the field of SEA.

### 2.1 [EU Strategic Environmental Assessment Directive \(2001/42/EC\)](#)

2.1.1 The EU Strategic Environmental Assessment Directive (2001/42/EC) (the 'EU SEA Directive') was adopted by the EU Parliament and EU Council in 2001.

2.1.2 Once formally adopted, Member States were required to bring into force the laws, Regulations and administrative processes necessary to implement the EU SEA Directive (2001/42/EC) by July 2004.

2.1.3 The objective of the EU SEA Directive (2001/42/EC) is to 'contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development' (Article 1). Therefore, the EU Directive is in line with Article 174 of the [Treaty of Amsterdam](#), which supports sustainable development.

2.1.4 The EU SEA Directive (2001/42/EC) applies to plans and programmes whose first formal preparatory act was on or after 21 July 2004, and to those whose formal preparation began before 21 July 2004 but which had not been either adopted or submitted to a legislative procedure leading to adoption by 21 July 2006 (Article 13 (3)).

2.1.5 As a result, a wide range of plans and programmes whose preparation begun after 21st July 2004 now require an environmental assessment (Article 13 (3)).

2.1.6 Plans and programmes begun before 21st July 2004 also need assessment if they were not adopted by 21st July 2006, unless the Member State in question decides this is not feasible and informs the public accordingly (Article 13 (3)).

2.1.7 The EU SEA Directive (2001/42/EC) covers plans and programmes which are:

- Subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government; and
- Required by legislative, regulatory or administrative provisions (Article 2 (a)).

2.1.8 SEA is mandatory for plans and programmes which set the framework for future development consent for projects listed in Annexes I and II to the [EU Environmental Impact Assessment Directive \(85/337/EC\)](#) (as amended) (Article 3(2(a))) or which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of the [EU Habitats Directive \(92/43/EC\)](#) (Article 3(2(b))). They are required for projects concerning:

- Agriculture;
- Forestry;
- Fisheries;
- Energy;
- Industry;
- Telecommunications;
- Tourism;
- Town and Country Planning;
- Transport;
- Waste Management; and
- Water Management.

2.1.9 The [EU SEA Directive 2001/42/EC](#) also applies to certain categories of plans and programmes where they are determined to be likely to have significant environmental effects. Plans and programmes in these categories include:

- Plans and programmes of the types listed in Article 3(2) which determine the use of small areas at local level, or which are minor modifications to plans and programmes (Article 3(3)); and
- Plans and programmes of types which are not listed in Article 3(2), which set the framework for future development consent of projects (not limited to projects listed in the Annexes to the EU Environmental Impact Assessment Directive 85/337/EC) (Article 3(4)).

2.1.10 The EU SEA Directive (2001/42/EC) does not apply to plans and programmes which deal solely with national defence or civil emergency, and does not apply to financial or budget plans and programmes (Article 3 (8)).

2.1.11 The following elements are formally required by the EU SEA Directive (2001/42/EC):

- An Environmental Report identifying the likely significant effects of the plan or programme and its reasonable alternatives (Article 5) and providing the information stipulated by Annex I (detailed information on the Environmental Report);
- Consultation: The Environmental Report and draft plan or programme must be made available to the relevant authorities and the public (Article 6);
- Transboundary consultation: In cases where a plan or programme is likely to have significant effects on another Member State, the Member State has to be informed before the legislative adoption of the plan or programme and must be given the opportunity to take part in the consultation (Article 7);
- Decision-Making: The Environmental Report as well as the outcome of the consultation must be taken into account during preparation of the plan or programme (Article 8); and
- Monitoring: Significant environmental effects of the implementation of the plans and programmes must be monitored in order to identify unforeseen effects and to be able to take appropriate remedial action (Article 10).

2.1.12 For plans and programmes requiring Strategic Environmental Assessment (SEA), the assessment must be carried out during the preparation of a plan or programme and before its adoption of submission to the legislative procedure (Article 4 (1)).

## 2.2 [EU Habitats Directive \(92/43/EC\)](#)

2.2.1 The EU Habitats Directive (92/43/EC) was adopted by the EU Parliament in 1992. The EU Habitats Directive (92/43/EC) is part of the EU conservation policy, which also includes the EU Birds Directive ([79/409/EC](#)).

2.2.2. The main aim of EU Habitats Directive (92/43/EC) is to ‘contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora’; (Article 2(1)) and makes a ‘contribution to the general objective of sustainable development; whereas the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities’ (Preamble).

2.2.3 The key task of the EU Habitats Directive (92/43/EEC) is to develop an ecological network of special areas of conservation or Natura 2000 sites. Each Member State must provide a list of sites with a detailed description of priority natural habitat type or priority species (Article 5).

2.2.4 Article 3(2) of the [EU SEA Directive \(2001/42/EC\)](#) stipulates that if a plan is likely to impact a nature conservation site which is protected by the EU Habitats Directive 92/43/EC i.e. a Natura 2000 site, or if a Governmental ministry or the authority responsible for the development of the plan or programme considers that the plan is likely to have a serious environmental effect, then an SEA must be conducted.

## 2.3 [Aarhus Convention](#)

2.3.1 Another piece of EU legislation which has important links to the [EU Strategic Environmental Assessment Directive \(2001/42/EC\)](#) (the ‘EU SEA Directive’) relates to access to information, public participation and access to justice. The United Nations Economic Commission for Europe (UNECE) Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies was adopted on 25 June 1998. The aim was to strengthen the role of public information and participation in environmental decision-making.

2.3.2 The key pillars of the Aarhus Convention are:

- Access to environmental information;
- Public participation in environmental decision-making; and
- Access to justice.

Legislation relating to the first two pillars was adopted through [EU Directive 2003/4/EC of the European Parliament on public access to environmental information](#), and [EU Directive 2003/35/EC of the European Parliament providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment](#). As regards the third pillar, a [proposal \(COM \(2003/624\)\)](#) for a EU Directive on access to justice was made by the EU Commission in 2003 although negotiations on this text have been stalled since 2004.

2.3.3 [The EU SEA Directive \(2001/42/EC\)](#) was developed in accordance with the Aarhus Convention, and takes into account the requirements of the EU Directive on public access to environmental information (2003/4/EC) and the EU Directive on public participation (2003/35/EC).

## 3. UK Legislation

### 3.1 [Environmental Assessment of Plans and Programmes Regulations 2004 \(SI 2004/1633\)](#)

3.1.1 The [EU Strategic Environmental Assessment Directive \(2001/42/EC\)](#) (the 'EU SEA Directive') was transposed into law through the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633) (the 'SEA Regulations'). The SEA Regulations (SI 2004/1633) apply to a wide range of plans and programmes which relate either solely to England (including the Isles of Scilly) or to England and any other part of the UK.

3.1.2 The requirements of the SEA Regulations (SI 2004/1633) are similar to those stipulated by the EU SEA Directive (2001/42/EC).

3.1.3 Regulation 4 deals with Article 6.3 of the EU SEA Directive (SI 2004/1633) and stipulates that the consultation bodies in England are [English Heritage](#), Natural England (formally the Countryside Agency and English Nature) and the [Environment Agency](#). These bodies must be consulted by the responsible authority when deciding on the scope and appropriate level of detail of the SEA. Providing a response on the proposed scope of the SEA is voluntary, but where a consultation body wishes to comment, it must do so within 5 weeks of having received the invitation to engage in consultation (Regulation 12.6).

3.1.4 An Environmental Report must be made available for consultation alongside the draft plan or programme. The Environmental Report must identify, describe and evaluate the likely significant effects on the environment of:

- Implementing the plan or programme; and
- Reasonable alternatives, taking into account the objectives and the geographical scope of the plan or programme.

3.1.5 Both consultation bodies and persons affected or likely to be affected by the plan, or who have an interest in the SEA and plan or programme, must be consulted on the Environmental Report (Regulation 13.2). The SEA Regulations (SI 2004/1633) do not specify how long the consultation period on the Environmental Report should be, stipulating only that it 'must be of such a length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion' (Regulation 13.3).

3.1.6 When the plan or programme is adopted, the responsible authority must issue a statement. This 'SEA Statement' must report on:

- How environmental considerations have been integrated into the plan or programme;
- How the environmental report has been taken into account;
- How opinions expressed in response to consultation on the Environmental Report;
- How the results of any transboundary consultations have been taken into account;
- The reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with; and
- The measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme.

## 3.2 Devolved Administrations

Separate Regulations transposing the EU Strategic Environmental Assessment (SEA) Directive (2001/42/EC) (the 'SEA Regulations') apply to plans and programmes that relate solely to (the whole or parts of) Northern Ireland, Scotland or Wales. In addition, Scotland has adopted the Environmental Assessment Act (Scotland) 2005 relating to SEA, which revokes the SEA Regulations for Scotland (SSI 2004/258). The SEA Regulations for Northern Ireland and Wales are similar to the Regulations for England, whereas the approach taken to SEA in Scotland is slightly different to the rest of the UK.

### 3.2.1 Scotland

#### [Environmental Assessment of Plans and Programmes Regulations \(Scotland\) 2004 \(SSI 2004/258\) \(revoked\)](#)

The designated consultation authorities for Scotland are the [Scottish Ministers](#), the [Scottish Environment Protection Agency](#) and [Scottish Natural Heritage](#). As in the rest of the UK, the consultation authorities must be consulted on the proposed scope of the SEA. However, in Scotland it is statutory for consultation bodies to respond at the scoping stage, whereas in the rest of the UK it is voluntary. The SEA Regulations for Scotland (SSI 2004/258) are also more prescriptive regarding the requirements for scoping than the other Regulations in the UK.

According to the SEA Regulations (SSI 2004/258) there is a statutory duty for:

- Responsible authorities in Scotland to consult the consultation authorities on the proposed consultation period for the Environmental Report and draft plan or programme, in addition to consulting on the proposed scope and level of detail of the SEA (Regulation 17.1, SEA Regulations SSI 2004/258).
- Scottish consultation authorities to comment on the proposed scope of an SEA. The consultation authorities in Scotland must provide a response within 5 weeks of receiving the relevant information from responsible authorities (Regulation 17.2, SEA Regulations SSI 2004/258).

When providing views on the proposed scope, consultation authorities in Scotland are also required to copy their response to the other consultation bodies.

The SEA Regulations (SSI 2004/258) stipulate that a draft plan or programme and accompanying Environmental Report must be made available for consultation within 14 days of these documents being prepared (Regulations 18.2 and 18.3 SEA Regulations SSI 2004/258).

The Regulations were revoked by the Environmental Assessment (Scotland) Act 2005 except in relation to those plans and programmes in Scotland whose first formal preparatory act was on or before 19 February 2006 (see the [Environmental Assessment \(Scotland\) Act 2005 \(Commencement and Savings\) Order 2006 \(SSI 2006/19\)](#)).

#### [Environmental Assessment \(Scotland\) Act 2005](#)

The Environmental Assessment (Scotland) Act 2005 came into force in February 2006. It repealed the SEA Regulations for Scotland (SSI 2004/258), except in relation to those plans

and programmes in Scotland whose first formal preparatory act was on or before 19 February 2006.

The key functions of the Environmental Assessment (Scotland) Act 2005 are to:

- Extend the types of plans and programmes requiring SEA to all public sector strategies, which in practice incorporates policies, thus making SEA statutory for e.g. Scottish Planning Policy; and
- Introduce a 'pre-screening' stage where responsible authorities can be exempted from screening for the need for SEA if they are of the opinion that their plan or programme will have 'no effect' or 'minimal effect' according to the criteria in Schedule 2 of the Act. Thus only plans and programmes that are likely to have significant effects require screening.

SEA legislation thus goes beyond the requirements of the [EU Strategic Environmental Assessment Directive \(2001/42/EC\)](#) (the 'EU SEA Directive') in two key respects:

- By requiring that public sector 'strategies' should also be subject to SEA; and
- By applying SEA to all public sector strategies, plans and programmes likely to have significant environmental effects, regardless of whether they are required by legislative, regulatory or administrative means or of whether they set a framework for future development consents ([Scottish Planning Series Circular 2 2004](#)).

### 3.2.2 Wales

#### [Environmental Assessment of Plans and Programmes Regulations \(Wales\) 2004 \(WSI 2004/1656 \(W 170\)\)](#)

The SEA Regulations for Wales (WSI 2004/1656) are very similar to those in England, but stipulate that the period of consultation on the Environmental Report and draft plan or programme must be a minimum of 28 days, in addition to providing an 'effective opportunity for consultation bodies and the public to express their opinion' (Regulation 13.3, SEA Regulations (WSI 2004/1656)).

The consultation bodies in Wales are the [Countryside Council for Wales](#), the [Environment Agency](#) and [Cadw](#).

### 3.2.3 Northern Ireland

#### [Environmental Assessment of Plans and Programmes Regulations \(Northern Ireland\) 2004 \(SR 2004/280\)](#)

Similar to the SEA Regulations for Scotland (SSI 2004/258), the SEA Regulations for Northern Ireland (SR 2004/280) stipulate a requirement to make the draft plan or programme and accompanying environmental report available for consultation within 14 days of these documents being prepared (Regulation 12(3(a), SEA Regulations (SR 2004/280)).

The SEA Regulations for Northern Ireland (SR 2004/280) furthermore stipulate that draft plan or programme and accompanying Environmental Report must be published on the responsible authority's website (Regulation 12(3(c) SEA Regulations (SR 2004/280)), whereas publishing these documents on a website is voluntary in the rest of the UK.

The consultation body designated for Northern Ireland is the [Department of the Environment](#).

## 4. ENDS ANALYSIS: Future Policy Developments

### 4.1 Emerging SEA Case Law

There is as yet relatively little case law on strategic environmental assessment (SEA) in the UK. The legal interpretation of the requirements of Regulations transposing the [EU Strategic Environmental Assessment Directive \(2001/42/EC\)](#) (the 'EU SEA Directive (2001/42/EC)') in the UK is therefore likely to evolve through SEAs being tested through the courts.

4.1.1. One of the first Judicial Review (JR) cases<sup>1</sup> in the UK on Regulations implementing the EU SEA Directive 2001/42/EC concerned a challenge by Seaport Investments against the SEA of the [Draft Northern Area Plan](#). This JR case was later joined by a similar case in relation to the Draft Magherafelt Area Plan.

The judgement delivered on 7 September 2007 included declarations to the effect that the SEA Regulations for Northern Ireland ([SR 2004/280](#)) do not properly transpose the EU SEA Directive (2001/42/EC) ([ENDS Report 393, October 2007, pp 57-58](#)) on the grounds that they:

- enable, in certain circumstances, one body to be responsible both for preparing the plan and to be the consultation body; and
- fail to specify a timeframe for the consultation period of the environmental reports and draft plans.

In May 2008, the former Environment Minister, Arlene Foster, rejected calls for an independent environment agency in Northern Ireland, as recommended in the Burke Commission [final report](#). The Northern Ireland Environment Agency (NEIA) has replaced the Environmental Heritage Service (EHS) as an executive agency of the Department of the Environment in Northern Ireland (DOENI) ([ENDS Report 401, June 2008, pp 38-42](#)).

For Agencies in England, Wales and Scotland (such as the Environment Agency and the Scottish Environmental Protection Agency), the problem might not arise because of the legal separation of the Agencies from Government departments.

In this case, the Court also ruled that the contents and sequencing of environmental reports were not in substantial compliance with the [EU Strategic Environmental Assessment Directive \(2001/42/EC\)](#) (the 'EU SEA Directive'). The Court underlined that the environmental reports and draft plans must be prepared in parallel to allow the environmental report to impact on the plan before, during and after public consultation ([ENDS 393, October 2007, pp 57-58](#)).

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<sup>1</sup>[Re Application for Judicial Review by Seaport Investments \(High Court of Justice, Northern Ireland \[2007\] NIQB 62, 7 September 2007\)](#)

4.1.2. The first judicial review of a Local Development Document in England under the EU SEA Directive 2001/42/EC was recently publicised in the January 2008 edition of *Planning* ([Planning 25<sup>th</sup> of January 2008](#)). *R (Howsmoor Developments and Others) v South Gloucestershire Council*<sup>2</sup> concerned a strategic mixed-use development at Emersons Green East. The applicants, a consortium of five developers who all own part of the Emersons Green East site, were calling for South Gloucestershire Council's supplementary planning document (SPD) to be quashed. They claimed the development brief was too prescriptive and included site allocation policies that were not permitted in SPDs. They also claimed that the Environmental Report was not sufficiently robust. The judgement delivered by the High Court rejected the arguments of the applicants and dismissed the application, ruling that the Council had complied with the EU SEA Directive 2001/42/EC. However, this ruling has been criticised for raising more questions than it answers in terms of the application of SEA to SPDs ([Planning 20<sup>th</sup> of June 2008](#))

## 4.2 EC Review of the Application and Effectiveness of the SEA Directive

A First Report on the application and effectiveness of the [EU SEA Directive \(2001/42/EC\)](#) was due to be carried out by the EU Commission in 2006, five years after the Directive 2001/42/EC entered into force. A similar review will be undertaken at seven-year intervals thereafter (source: Article 12 of the EU SEA Directive 2001/42/EC)

The Report was commissioned last year and the final outcome is expected in November 2008 (source: informal correspondence with the EU Commission's Environment Directorate-General (DG Environment))

With a view to further integrating environmental protection requirements and taking into account the experience acquired, the EU Commissions' First Report may be accompanied by proposals for amending the EU SEA Directive 2001/42/EC as appropriate, including the possibility of extending its scope to other areas, sectors and other types of plans and programmes (Article 12 of the EU SEA Directive 2001/42/EC).

This Report could therefore lead to changes to the SEA Regulations in the UK (see Section 3) as well as providing lessons learned from the practice and experience of SEA in other EU Member States.

## 5. Policy and Compliance Date Tracker

27 June 2001	<a href="#">EU Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment</a> (the 'EU SEA Directive') entered into force.
29 June 2004	The Environmental Assessment of Plans and Programmes Regulations 2004 ( <a href="#">SI 2004/1633</a> ), which apply to England, came into force.
12 July 2004	The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 ( <a href="#">WSI 2004/1656 (W.170)</a> ) came into force.

<sup>2</sup> [Howsmoor Developments Ltd & Ors. R \(on the application of\) v South Gloucestershire Council \[2008\] EWHC 262 \(Admin\) \(19 February 2008\)](#)

20 July 2004	The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258) came into force. These Regulations were revoked subject to savings (see Section 3.2.1)
21 July 2004	<a href="#">EU Strategic Environmental Assessment Directive (2001/42/EC)</a> (the 'EU SEA Directive') was effective from this date. The date by which Member States were required to bring into force the laws, Regulations and administrative provisions necessary to comply with EU Directive 2004/42/EC.
22 July 2004	The Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004 ( <a href="#">SR 2004/280</a> ) came into force.
20 Feb 2006	<a href="#">Environmental Assessment (Scotland) Act 2005</a> came into force, repealing the SEA Regulations for Scotland except in relation to those plans and programmes in Scotland whose first formal preparatory act was on or before 19 February 2006.
Each year 2006-2010	As soon as practicable after the end of each calendar year, Scottish Ministers need to prepare and publish a report on their exercise and functions under the Environmental Assessment (Scotland) Act 2005.
November 2008 (tbc)	A First Report on the application and effectiveness of the <a href="#">EU SEA Directive (2001/42/EC)</a> is expected

## 6. Historical Background

### 6.1 The need for SEA

The US National Environmental Policy Act (NEPA) of 1969 was the genesis of what became known as SEA. In fact, the action-forcing mechanism, shaped as a requirement and subsequently nominated EIA, to bring about substantive environmental reform through the US federal bureaucracy, imposed upon federal agencies to prepare an environmental impact statement for 'legislation and other major federal actions significantly affecting the quality of the human environment' (Section 102(2)(c), National Environmental Policy Act of 1969<sup>3</sup>).

The benefits of applying EIA to plans and programmes were recognised long before the adoption of EU Directive 2001/42/EC (for example, the EU's Fourth Action Programme on the Environment, Wood 1988), and the main driving forces behind extending environmental assessment to the strategic level have been to counteract the limitations of project level EIA (Thérivel et al 1992, Thérivel and Partidário 1996).

SEA has thus developed partly in response to project EIA occurring too late in the planning process to ensure that all the alternatives and impacts that are relevant to the overarching

<sup>3</sup> [US National Environmental Policy Act of 1969, as amended](#)

goals of sustainable development are adequately considered (Lee and Walsh 1992, Wood and Djeddour 1992).

## 6.2 The development of an EU Directive on SEA

It took more than ten years for the [EU Directive on the assessment of the effects of certain plans and programmes on the environment \(2001/42/EC\)](#) (the 'EU SEA Directive') to be adopted by the EU Parliament and EU Council.

The idea to assess the environmental effects of plans and programmes was discussed during the development of the EU EIA Directive ([85/337/EEC](#)), but was not politically accepted at the time. After some years of practical experience with the EIA, it was recognised that major decisions are already in place when EIA is carried out.

The EU SEA Directive (2001/42/EC) was originally intended to apply to policies in addition to plans and programmes. However, political discrepancies during the process of developing the Directive resulted in policies not being included in the EU SEA Directive (2001/42/EC).

The EU Commission adopted a EU Proposal for a EU Directive on Environmental Assessment of certain plans and programmes in 1996. This EU Proposal was amended by the EU Commission in 1999. The amended text formed the basis for negotiations at EU Council level with the 15 Member States during the course of 1999. In December 1999 the Environment Ministers reached a political agreement on a common text for the future EU Directive (the 'Common Position'). The common position was formally adopted on 30 March 2000. The EU Parliament as co-legislator approved the Common Position on 6 September 2000 subject to the amendments voted at its plenary session (Second Reading). The EU Commission formulated on 16 October 2000 its opinion on the amendments to the Common Position voted by the EU Parliament. The EU SEA Directive 2001/42/EC was finally adopted by the EU Parliament on the 31 May 2001 and by the EU Council on 5 June 2001.

## 6.3 Environmental assessment of plans and programmes in the UK

The requirements of the [EU SEA Directive \(2001/42/EC\)](#) were introduced at the same time as the [Planning and Compulsory Purchase Act 2004](#), which set out to achieve a more flexible and responsive planning system for England and Wales.

Under the [Planning and Compulsory Purchase Act 2004](#), non-statutory regional planning guidance was replaced by statutory Regional Spatial Strategies, and English Local Planning Authorities were required to prepare Local Development Documents to replace local plans, unitary development plans and structure plans.

Prior to the EU SEA Directive entering into force in July 2004, there had been considerable practice of environmental assessment of plans and programmes in the UK. This had generally been undertaken in the form of environmental and sustainability appraisal for local and regional land use plans, including regional planning guidance, local plans, unitary development plans and structure plans. There was also some experience of assessing transport plans in line with the [New Approach to Appraisal](#) and [Methodology for Multi-Modal Studies](#) transport plans.

The Office of the Deputy Prime Minister (ODPM) (now the Department for Communities and Local Government (DCLG)) chose to implement the requirements of the EU SEA Directive

(2001/42/EC) through adapting existing appraisal processes, with the result that the SEA requirements for certain English and Welsh plans and programmes are integrated into [Sustainability Appraisal Guidance](#).

Sustainability Appraisal fully incorporating the requirements of the EU SEA Directive (2001/42/EC) is required for Local Development Documents and Regional Spatial Strategies in England and Local Development Plans in Wales under the Planning and Compulsory Purchase Act 2004.

Similarly, the SEA requirements for English transport plans and programmes have been integrated into [transport appraisal Guidance](#).

## 7. Business Implications

The implementation of the [EU Directive on the assessment of the effects of certain plans and programmes on the environment \(2001/42/EC\)](#) (the 'EU SEA Directive') has major implications for those involved in plan-making in the UK, particularly within the public sector. This includes Local Authorities, regional planning bodies, Government Departments and Government Agencies.

The only [private sector plans and programmes](#) subject to the EU SEA Directive (2001/42/EC) are those of some former public utilities or services that are now privately owned but which are subject to regulation and approval by Government.

Plans and programmes subject to the EU SEA Directive (2001/42/EC) must undergo an SEA in line with the requirements of the Regulations before it can be adopted. Failure to meet the SEA requirements for a plan or programme can result in legal challenge.

An indicative list of the types of plans and programmes in the UK which are subject to the EU SEA Directive (2001/42/EC) was issued in the [A Practical Guide to the Strategic Environmental Assessment Directive](#). The greatest number of assessments will be required for land use and spatial planning, where the EU SEA Directive (2001/42/EC) applies to plans and programmes in the following categories: This indicative list is reproduced below.

- Structure Plans
- Local Plans
- Unitary Development Plans
- The Wales Spatial Plan
- Minerals Local Plans
- Waste Local Plans
- Combined Minerals and Waste Local Plans
- The Mayor of London's Spatial Development Strategy (London)
- Area Waste Plans (Scotland)
- Subject Local Plans (Scotland)
- The National Planning Framework (Scotland)
- National Park Plans (Scotland)
- Minerals Plans (Scotland)
- Area Plans (Northern Ireland)

Under the [Planning and Compulsory Purchase Act 2004](#) , the following plans in England and Wales are subject to Sustainability Appraisals which fully incorporate the requirements of the EU SEA Directive (2001/42/EC):

- Local Development Documents, comprising Development Plan Documents and Supplementary Planning Documents
- Local Development Plans (Wales)
- Regional Spatial Strategies (incorporating Regional Transport Strategies)

Other Regional and Local Authority plans and programmes requiring SEA:

- Local Air Quality Action Plans
- Local Housing Strategies
- Local Transport Plans
- Municipal Waste Management Strategies
- Regional Economic Strategies (prepared by Regional Development Agencies)
- Regional Development Strategy for Northern Ireland (and associated reviews)
- Review of Regional Transportation Strategy (Northern Ireland)

Environmental protection and management plans and programmes requiring SEA:

- Areas of Outstanding Natural Beauty Management Plans
- National Park Management Plans
- National policy statements on planning for waste management (currently [PPS 10 "Planning for Sustainable Waste Management"](#) in England and [TAN21 "Waste"](#) in Wales)
- Waste Management Plans in Northern Ireland
- River Basin Management Plans and Programmes of Measures
- Salmon Action Plans
- [National Waste Plan \(Scotland\)](#)

Other plans and programmes requiring SEA:

- Oil and Gas Licensing Rounds
- Offshore Windfarm Site Licensing Rounds
- Nuclear Decommissioning Strategies
- Water Service Capital Works Programme (Northern Ireland)

The indicative list contains specific mention of Community Strategies, for which Local Planning Authorities need to consider whether the [EU Directive on the assessment of the effects of certain plans and programmes on the environment \(2001/42/EC\)](#) (the 'EU SEA Directive') applies on an individual basis.

The above list is not definitive due to the number of plans and programmes in existence and the varying extent to which the EU SEA Directive's criteria apply, both to types of plan or programme and to individual plans or programmes within a type. Further advice on screening a plan or programme to determine whether SEA is required is provided in [A Practical Guide to the Strategic Environmental Assessment Directive](#).

It is worth noting that when the indicative list of plans and programmes requiring SEA was first issued in draft guidance on SEA ([ENDS Report 355, August 2004, pp 45-46](#)), this included *inter alia* water company resource plans and the national waste strategy. Although it was decided to omit these plans from the indicative list in 'A Practical Guide', there is a possibility that they may be added to the list at a later date ([ENDS Report 369, October 2005, p 33](#)).

## 8. ENDS ANALYSIS: Talking Points

When draft Guidance on integrating SEA into the process of Sustainability Appraisal was initially issued, questions were raised regarding the suitability of this approach ([ENDS Report 346, pp 47-48](#)).

The effectiveness of transposing SEA requirements through existing assessment and appraisal mechanisms in the UK is yet unknown. However, one of the results of this decision is that SEAs for Local Development Documents and Regional Spatial Strategies in England and Local Development Plans in Wales are currently undertaken as a Sustainability Appraisal.

Initially introduced to ensure that regional planning guidance delivered economic, social and environmental benefits ([ENDS Report 295, August 1999, p 43](#)), Sustainability Appraisal covers wider (social and economic) issues than required by the EU SEA Directive 2001/42/EC. Whereas integrating the SEA requirements into the Sustainability Appraisal process may bring added benefits of promoting sustainable development, it might also result in less focus on environmental considerations in the plan making process ([ENDS Report 334, November 2002, p 46](#)).

## 9. Links to Legislation, Guidance and Other Information

### International Legislation

1998

- [Aarhus Convention \(Convention on access to information, public participation in decision-making and access to justice in environmental matters\)](#) (the 'Aarhus Convention')  
*Grants the public rights and imposes on parties and public authorities obligations regarding access to information and public participation and access to justice.*

### EU Legislation

2003

- [Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC](#)  
*Implements the second key pillar of the Aarhus Convention on public participation.*

- [Directive 2003/4 of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC](#)  
*Implements the first key pillar of the Aarhus Convention on public participation.*
  - [Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters \(COM\(2003\) 624 final\)](#)  
*Proposes to implement the third key pillar of the Aarhus Convention on access to environmental justice.*
- 2001
- [Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment](#)  
*Set the legislative framework for Strategic Environmental Assessment (SEA).*
- 1999
- [The Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts](#)
- 1997
- [Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment](#)
- 1992
- [Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora](#) (the 'EU Habitats Directive')  
*Part of the EU conservation policy.*
- 1985
- [Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment](#)  
*Now amended by EU Directive 97/11/EC.*
- 1979
- [Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds](#) (the 'EU Birds Directive')  
*Part of EU conservation policy along with the EU Habitats Directive.*

## **EU Strategy**

- Commission of the European Communities - CEC (1987) Fourth Action Programme on the Environment, COM(86)485 final, Brussels

## **EU Guidance**

- [Commission's Guidance on the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment](#)
- [Manual on Strategic Environmental Assessment of Transport Infrastructure Plans](#)

## **UK Legislation**

2004

- [Planning and Compulsory Purchase Act 2004](#)

- [The Environmental Assessment of Plans and Programmes Regulations 2004 \(SI 2004/1633\)](#)  
*Implementing legislation for the EU SEA Directive (2001/42/EC) in the UK. Applies to England only.*

## **Scotland**

2005

- [Environmental Assessment \(Scotland\) Act 2005](#)  
*Repealed the SEA Regulation for Scotland (SSI 2004/258).*

2004

- [The Environmental Assessment of Plans and Programmes \(Scotland\) Regulations 2004 \(SSI 2004/258\)](#)  
*Implementing legislation for the EU SEA Directive (2001/42/EC) in Scotland, repealed by the Environmental Assessment (Scotland) Act 2005.*

## **Wales**

2004

- [The Environmental Assessment of Plans and Programmes \(Wales\) Regulations 2004 \(WSI 2004/1656 \(W 170\)\)](#)  
*Implementing legislation for the EU SEA Directive (2001/42/EC) in Wales.*

## **Northern Ireland**

2004

- [The Environmental Assessment of Plans and Programmes Regulations \(Northern Ireland\) 2004 \(SR 2004/280\)](#)  
*Implementing legislation for the EU SEA Directive (2001/42/EC) in Northern Ireland.*

## **UK Strategy**

- [National Waste Strategy for Scotland](#)
- [Scottish National Waste Plan 2003](#)

## **UK Guidance**

- [Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents](#)  
*Guidance on how to carry out a Sustainability Appraisal for Regional Spatial Strategy revisions and Local Development Documents.*
- [A Practical Guide to the Strategic Environmental Assessment Directive](#)  
*Generic Guidance on applying EU SEA Directive 2001/42/EC.*
- [Strategic Environmental Assessment for Transport Plans and Programmes](#)
- [Strategic Environmental Assessment and Biodiversity: Guidance for Practitioners](#)
- [Strategic Environmental Assessment and Climate Change: Guidance for Practitioners](#)

- [Strategic Environmental Assessment \(SEA\) of Unitary Development Plans - Interim Good Practice Guide \(Amendment to SEA elements of Sustainability Appraisal of Unitary Development Plans, 2002\)](#)
- [Strategic Environmental Assessment Tool Kit](#)  
*Offers guidance for the Environmental Assessment (Scotland) Act 2005.*
- [SEA Good Practice Guidelines](#)
- [Environmental Assessment of Plans and Programmes \(Scotland\) Regulations 2004: SEA Templates \(trial version with integrated guidance notes\)](#)
- [Environmental Assessment of Plans and Programmes \(Scotland\) Regulations 2004: SEA Templates \(trial version without integrated guidance notes\)](#)
- [Technical Advice Note \(Wales\) 21: Waste](#)
- [Planning Policy Statement 10: Planning for Sustainable Waste Management](#)
- [Scottish Planning Series Planning Circular 2/2004: Strategic Environmental Assessment for Development Planning](#)
- [Guidance on the New Approach to Appraisal](#)  
Department of the Environment, Transport and the Regions, London (1998)
- [DETR \(2000\) Guidance on the Methodology for Multi-Modal Studies, Volumes 1 & 2,](#)  
Department of the Environment, Transport and the Regions, London
- Lee, N. and Walsh, F. (1992) Strategic environmental assessment: an overview.  
Project Appraisal 7 pp 126-136
- [Full Regulatory Impact Assessment on SEA Regulations](#)  
Office of the Deputy Prime Minister, 2004
- [Environmental Assessment of Plans and Programmes \(Scotland\) Regulations 2004: Scottish Planning Policy \(SPP\) 6: Renewable Energy - Post-Adoption SEA Statement May 2007](#)
- [Planning Circular 2/2004: Strategic environmental assessment for development planning: The Environmental Assessment of Plans and Programmes \(Scotland\) Regulations 2004](#)

## Reports

- Thérivel, R. & Partidário, M. (1996) The Practice of Strategic Environmental Assessment. Earthscan, London
- Thérivel, R., Wilson, E., Thompson, S., Heaney, D. and Pritchard, D. (1992) Strategic Environmental Assessment. Earthscan, London

- Wood, C. (1988) EIA in plan making, In P. Wathern (ed) Environmental Impact Assessment Theory and Practice pp 98- 114. Routledge, London
- Wood, C. M. and Djeddour, M. (1992) Strategic environmental assessment: EA of policies, plans and programmes. Impact Assessment Bulletin 10 pp 3-22
- [Foundations for the Future: The Review of Environmental Governance](#)

## 10. Key Organisations

### [Department of Communities and Local Government \(DCLG\)](#)

Information on SEA consultation and training opportunities, and links to legislation and guidance.

### [European Commission](#)

Legal context, guidance, research, press releases and useful links for SEA.

### [English Heritage](#)

Conserves and enhances the historic environment of England.

### [Environment Agency](#)

Information on SEA in England and Wales.

### [Environment and Heritage Service of Northern Ireland \(DOENI\)](#)

Information on SEA in Northern Ireland and links to relevant legislation and guidance.

### [Natural England](#)

One of the statutory consultees for SEA in England.

### [Scottish Environment Protection Agency](#)

One of the statutory consultees for SEA in Scotland.

### [Scottish Executive](#)

Information on SEA in Scotland, and links to relevant legislation and guidance including the SEA Gateway. Also one of the statutory consultees for SEA in Scotland.

### [Scottish Natural Heritage](#)

One of the statutory consultees for SEA in Scotland.

### [Welsh Assembly Government](#)

Information on SEA in Wales and links to relevant legislation and guidance.

### [Strategic Environmental Assessment Information Service](#)

An extensive list of legislation, guidance and current practice reports for SEA

## 11. Definitions

**Consultation Authority:** The term used for consultation body in Scotland.

**Consultation Body:** Authorities which because of their environmental responsibilities are likely to be concerned by the effects of implementing plans and programmes and must be consulted at specified stages of the SEA.

**Environmental Impact Assessment (EIA):** Term used to describe environmental assessment of projects. Commonly used to refer to the type of assessment required under EU Directive 337/85/EEC.

**Environmental Report:** The report required by SEA Directive 2001/42/EC as part of an environmental assessment, which identifies, describes and evaluates the likely significant effects on the environment of implementing a plan or programme.

**Pre-screening:** A term used in the Scottish SEA Act to describe the process of exempting a plan or programme from SEA where the plan or programme is considered to have no or minimal effect on the environment.

**Responsible Authority:** The organisation which is responsible for preparing and/or adopting a plan or programme which is subject to the requirements of the SEA Directive, and who is responsible for the SEA.

**Scoping:** The process of deciding the scope and level of detail to be included in the environmental report.

**Screening:** The process of deciding whether a plan or programme requires SEA.  
**Significant environmental effects:** Effects on the environment which are significant in the context of a plan or programme. Criteria for assessing significance are set out in Annex II of SEA Directive 2001/42/EC.

**Strategic Environmental Assessment (SEA):** Term used to describe environmental assessment of policies, plans and programmes. Commonly used to refer to the type of environmental assessment required under the SEA Directive 2001/42/EC.

**Sustainability Appraisal:** A process that has been used in the UK since the 1990s for considering social, economic and environmental effects and appraises them in relation to the aims of sustainable development.

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