Front-loading SEA into statutory development plans: integrating the Environmental Assessment (Scotland) Act into the Planning etc (Scotland) Act

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Introduction

Almost a decade ago the Scottish Government, a coalition partnership between Labour and the Liberal Democrats, made a promise to create "a Scotland that delivers sustainable development; that puts environmental concerns at the heart of public policy and secures environmental justice for all of Scotland's communities" (SE, 2003: 5). A number of important pieces of legislation were subsequently enacted which built on this commitment, including the Environmental Assessment (Scotland) Act 2005 and the Planning etc Scotland Act 2006.

The Environmental Assessment (Scotland) Act 2005 (EASA 2005) extends the European Union Directive on the Assessment of the Effects of Certain Plans and Programmes on the Environment (CEC, 2001), otherwise known as the SEA Directive, to cover virtually all Scottish public sector plans, policies and strategies (PPSs). The Act was championed by Scottish Ministers as a flagship piece of legislation providing an opportunity for "Scotland to become a world leader in strategic environmental assessment" (SEEG, 2004: 1), so special consideration was given to measures to promote its efficient implementation. The Scottish Government established an electronic Scottish SEA Gateway to co-ordinate screening and scoping procedures between responsible authorities (RAs) and consulting authorities (CAs), to monitor responses, to provide a repository of environmental reports and to maintain a regularly updated Scottish SEA Toolkit.

In parallel to these developments, the Planning etc Scotland Act 2006 (PSA 2006) set out to modernise the planning system. According to the 2005 White Paper, the objective was to create a planning system that would be "fit for purpose, more efficient, play its part in securing sustainable development, and more inclusive" (SE, 2005). The system was to be designed "to ensure a transparent and fair planning system, that will give local people confidence that their views have been properly considered as part of the decision-making process." In practice this led to the introduction of a new approach to plan-making in Scotland with a hierarchy of plans (National Planning Framework; Strategic Development Plans; Local Development Plans) and an emphasis on greater public engagement and more opportunities to influence the direction of plan preparation early in the process.

Both these Acts contain a strong commitment to stakeholder engagement, enabling stakeholders to make a real contribution to policy making processes. Reviewing the Scottish approach to SEA in 2007, Jackson and Illsley considered the theoretical debate surrounding SEA methodology and concluded that "the Environmental Assessment (Scotland) Act 2005 preserves useful aspects of the rational decision-making model of environmental assessment, but also exploits the technique's potential for promoting discursive democratic decision-making on environmental policy. Assessment is confined to environmental effects, but applied across all levels of policy formulation, allowing greater public scrutiny of the value frames used to conceptualise sustainability". Such deliberative approaches to policy making can be seen as part of the move towards more reflexive forms of governance, a dynamic form of governance which is "open, experimental and learning orientated" and where reflexive practice takes place within overlapping and interconnected arenas of public debate (Hendricks and Grin, 2007).

The three Scottish statutory consultation authorities (CAs) under EASA (Scottish Environment Protection Agency, Scottish Natural Heritage and Historic Scotland) have undertaken a detailed review of the performance of Scottish SEA legislation over its first five years (Deasley *et al*, 2011). Their findings indicate a growing 'community of practice' in SEA amongst Scottish professional engaged in this technique. Thanks to the measures provided to implement the EASA 2005 legislation, Scottish SEA practitioners have not only gained experience in complying with legislative requirements. They have also developed networks which foster communities of interest and expertise in the practice of SEA amongst public sector bodies in Scotland.

Our paper is designed to explore one of the areas identified by the recent review of Scottish SEA practice as lagging behind: stakeholder engagement. Focusing on the experience of SEA as applied to PPSs prepared under the 2006 Planning etc Scotland Act, we explore various possible explanations of the low level of public participation in this technique, and consider whether this implies that one of the aims of the 2005 legislation (Jackson & Illsley, 2007), namely a more transparent system of decision-making that promotes the aims of the Aarhus Convention on environmental justice (UNECE, 1998), is not being adequately realised.

Competing models of decision-making

Two areas of research are prominent in evaluating the role of techniques such as SEA for decision-making. The first focuses on the role of appraisal techniques in determining public sector spending (Jackson, forthcoming 2011). The second considers how SEA may be incorporated into the spatial plans used in town and country planning legislation (Owens & Cowell, 2002). The Scottish Government is required to table annual reports for the Scottish Parliament on the application of the EASA 2005 legislation (Natural Scotland, 2011). The most recent of these indicates that 47% of SEA activities can be attributed to town and country planning legislation.

Both these areas of research share competing discourses on how techniques such as SEA should be used in decision-making. One discourse supports a technical-rationalist methodology, in which appraisers apply the objective techniques of instrumental rationality to determine the most efficient way of delivering objectives determined by policy-makers exercising substantive rationality in making value judgements (Weber, 1947). The classic example of the practical application of this distinction can be found in cost-benefit analysis (CBA). Its techniques rely on instrumental rationality to establish which alternatives would generate efficient outcomes: aggregate improvements in social welfare. Policy-makers then make the final decision by using a social welfare function that applies their substantively-rational preferences to the instrumentally-rational alternatives identified.

A considerable body of research has questioned whether the techniques applied in practice by appraisers and assessors enable them to make a meaningful distinction between instrumental and substantive rationality. When examining decision-making within a Danish planning authority, Flyvbjerg (1998) uncovered complex patterns of power relationships that did not conform to rationalist Weberian modes of behaviour. Researchers who examined the application of official guidance on policy-level assessment in the European Union identified "competing realities and blurred boundaries between science and policy, facts and norms", providing "evidence on the gap between the 'rational' conceptualisation of assessment and the 'messy reality' of everyday policy making" (Hertin *et al.*, 209: 1198). Owens *et al.* (2004: 1946) found that appraisal techniques used in the UK's planning system often amounted to little more than "post-demonstration of pre-conceived judgements", with "ethical and political choices masquerading as technical judgements reinforcing prevailing norms and existing structures of power".

Proponents of a technical-rational methodology for assessors must also recognise the risks of client capture. Florio's (2007) survey of the use of CBA in the appraisal of projects presented for part-funding by the European Union's Structural Fund area-based programmes draws attention to the existence of a principal-agent problem. Arguing that "evaluation can be seen as a contract between a principal, the decision-maker, and an agent, the evaluation team" (2007: 31), Florio identifies the presence of moral hazard in projects that involve substantial levels of public funding, part of which is provided by super-national sources at little cost to the public sector budgets of recipients. There is a genuine risk that the appraiser will be captured by the project proponent, and attempt to use technical choices to justify a decision already predicated by political preferences.

Flyvbjerg (2008) identifies ongoing failures in the appraisal of major transport infrastructure attributable in part to client capture. He argues that there is ample evidence of deliberate prevarication by decision-makers and planners, referring to "the dark side of project development", where "planners are part of the problem, not the solution" (Flyvbjerg, 2008: 136). In resolving these types of problems "better forecasting techniques and appeals to ethics won't do:

institutional change with a focus on accountability and good governance is necessary" (Flyvbjerg, 2008: 138).

The alternative 'post-modernist' discourse addresses these problems by favouring explicit recognition of the role of value judgements in the assessment of PPPs, subject to the proviso that the decision-making process must be made transparent and subject to full public scrutiny (Richardson, 2005: Connelly & Richardson, 2005). In addition to supporting Flyvbjerg's arguments for greater public accountability, a further element of the rationale behind such an approach is that the development process could benefit from reflexive learning, in which public participation offers policy-makers new insights into the choices available and identifies different options which provide preferred outcomes (Healey, 1997; Voss *et al*, 2006). Both the EASA 2005 and the PSA 2006 legislation seek to combine efficiency and equity considerations by promoting early public engagement with the formulation of plans and their environmental assessment as a means of stimulating enhanced environmental governance. For these reasons, evidence from the Scottish SEA Review that stakeholder participation in the application of this new legislation has been disappointing warrants careful examination.

The Scottish context

Following the establishment of the devolved Scottish parliament and government in the late 1990s, stakeholder engagement emerged as a central tenet of public policy making. According to the Scottish Executive (2000), "Civic participation is an essential tool of modern government….Inclusiveness in policy making process is a key principle at the core of the modernising government agenda". National Standards for Community Engagement were adopted in 2005, covering ten key requirements and providing illustrations of good practice (Communities Scotland, 2005). The commitment to enhance stakeholder engagement also permeated the new planning legislation. Front-loading of stakeholder involvement in the preparation of plans was introduced recognising that engagement should not be undertaken when crucial decisions have already been taken or in cases where there is not a possibility that the engagement process will influence the decision (Warburton, 2008). If engagement methods are used in a context where the community has limited power or influence over the final outcome they will perceive the process to be unfair causing them to become sceptical and disillusioned (Illsley, 2003).

Adopting an inclusive approach to planning assumes that the views of a wide range of stakeholders are taken into account but 'whose views, and whose choices' (Cornwall, 2008). An important development within the Scottish planning system has been the identification of a set of stakeholders or 'key agencies' with a statutory duty to co-operate in with planning authorities in preparing main issues reports, proposed plans and associated action programmes. This new requirement to co-operate is an attempt to overcome some of the problems of the disjointed institutional landscape that inhibited planning in the past, as well as recognition of the importance of these bodies to the delivery of the Scottish Government's goals.

Several features of the new plan-making process have also been designed to facilitate wider engagement. Plan-making authorities, including the Scottish Government, are required to prepare participation statements setting out the opportunities for people to get involved and the timescales for doing so before work begins and there is an expectation that these statements will "contain a range of innovative techniques and activities for consulting stakeholders tailored to local circumstances and the issues being dealt with in the plan" (SG, 2009, para 8). A new type of document, the main issues report, has been introduced for both strategic and local development plans, which is designed to set out the key challenges facing the plan area together with several possible development options. It is expected that the public as well as other relevant bodies will get involved at this point. It would appear that stakeholders, including the public, are being given the chance to shape plans from the start of the process and this represents a marked shift from past practice (Tewdwr-Jones and Thomas 1998).

While new legal procedures are now in place under the 2006 Planning etc Scotland Act, the process of plan-making is also subject to the requirements of the EA(S) Act 2005. Planning Advice Note (PAN) 1/2010: SEA and Development Plans (SG, 2010), which sets out the relationship between the two processes, makes it clear that SEA should provide information to support the development of plans and can contribute to the plan preparation process by ensuring that the environmental effects of development strategies and proposals are fully understood (Figure 1). The advice stresses the importance of linking SEA into the development plan process, highlights the role of SEA in contributing to the assessment of plan options and proposals and, given a common commitment to early stakeholder involvement, suggests combining consultation arrangements as long as the legal requirements of each process are met.

Consulting at the same time on the main issues report and the associated environmental report containing the assessment of reasonable alternatives is recommended in PAN 1/2010 as a way of allowing stakeholders to understand the environmental effects of development options and to question and challenge the choices being proposed. The use of non-technical summaries in different formats is suggested as a way of making the reports user-friendly. The public can become disillusioned with participation and think it is a waste of time if they feel they do not have a voice and their views have not been listened to (Innes and Booher, 2004, Cornwall, 2008). Demonstrating that stakeholder views have been heard and taken into account in modifications to the plan is vital and the SEA post-adoption report provides a vehicle for doing so.

Insights from practice

Testing the possible reasons for low public engagement in SEA in Scotland involved a series of interviews with SEA practitioners and community-based stakeholders. Approximately half the SEA activities reported to the Scottish SEA Gateway are attributable to Town and Country Planning legislation. Our fieldwork sought to explore what factors in the application of these two pieces

of legislation affecting the preparation and approval of statutory development plans are shaping non-statutory stakeholder involvement in their consultation arrangements.

We focused our interviews on the three levels of planning in one specific part of Scotland, covering the National Planning Framework, the strategic or city-region development plan, and one of the local development plans within this city-region, in order to explore the interfaces at work at all these levels, and the extent to which the system as a whole has been able to encourage non-statutory stakeholder involvement. This required interviews with planning officers at each of these levels, and with a sample of stakeholders who were under no statutory obligation to participate in the consultation processes legally demanded both for the plans themselves and also for the SEAs they required. In identifying planning officers for interview, the sample chosen included those with direct involvement in producing SEAs together with others with responsibility for formulating plans subject to SEA. In interviewing a sample of non-statutory stakeholders, we focused on contacting organisations that undertook active community roles with regard to planning and environmental issues in the area covered. These included some with national remits and others with purely local ones.

Constraints

The Scottish SEA Review (Deasley *et al*, 2011) identified a number of constraints affecting the consultation process and these were explored with interviewees.

Clarity of purpose: The planning officers unanimously accepted the need for effective consultation with non-statutory stakeholders and recognised the importance of early engagement in the process of formulating plans and identifying alternatives to which SEA scoping processes could be applied. However, the non-statutory stakeholders themselves offered a range of opinions on how well they were able to cope with the parallel processes of consultation currently required in the system for adopting a Scottish development plan. This required them to absorb major changes to the traditional processes of consultation over the preparation of Scottish spatial plans, while at the same time becoming familiar with consultation for a wholly new technical process which Scottish legislators foresaw, *inter alia*, as "promoting more open government by allowing the public and interested organisations to comment on environmental reports, and obliging public bodies to explain how they have taken such comments into account" (SEEG, 2004, Section 1.3).

One of the planners interviewed was in no doubt as to the added value provided by public consultations on SEA, but recognised that traditional approaches to community engagement had limitations including a lack of transparency in releasing detailed information to the public. A change in culture is needed if these problems are to be overcome. Another planner, experienced in applying SEA to plan preparation, suggested that the new arrangements for plan-making had complicated consultation processes

causing confusion amongst the public. This view was supported by comments from a community interviewee who explained that the group had not made comments on the Environmental Report as they wanted to put all their effort into responding to the plan itself.

Scale: What is often overlooked in recounting the way in which the Scottish planning system has changed since the 1970s is the impact such reforms have had on the capacity of non-statutory stakeholders to engage with the various elements of the system. The average size of a Scottish planning authority has grown substantially, which as Morton (2011) observes, leaves Scottish planning with a far more challenging task in delivering effective public participation than some of its continental counterparts. Although the UK's adoption of larger units may favour a more rational approach to the use of planning resources, it militates against local engagement and demands a more explicit set of arrangements to address the issue of scale. For some of the community-based stakeholders this physical distance between the public and planners was seen as a problem

User-friendliness: As Figure 1 indicates, the current arrangements for a parallel process of consultation on new Scottish development plans and their associated SEAs envisage potentially four stages that involving non-statutory stakeholders, with opportunities to do so at the main issues stage, the full consultation stage, any subsequent amendments stage, and following any final modifications. As Figure 2 demonstrates, this is considerably more complex than the Scottish Government guidance offered to those applying SEA to other Scottish SPPs, which envisages only one stage of consultation with non-statutory stakeholders, namely at the full consultation stage. For these SPPs outwith Scottish planning legislation, such arrangements are seen as sufficient to meet the requirements of the EU SEA Directive.

The SEA arrangements for the Scottish planning system are designed to dovetail with the consultation arrangements over statutory development plans. This is a process with a long pedigree, which PAS aimed to make more efficient and responsive to community views by front-loading public participation. Although it is too early on the learning curve to determine whether such objectives will be realised, the non-statutory stakeholder interviewees were not encouraged by their recent experiences of these reforms. The demands the new system made on them seemed unrealistic, especially for small groups of local activists with limited time and resources. They were also frustrated by the technological hurdles encountered in responding to consultations on-line. These problems are not confined to the Scottish planning system. A report on the application of sustainability appraisal (SA) to plan-making in England identified similar issues: "Some interviewees argued that the complexity of SA/SEA outputs is off-putting to stakeholders: *I would say many SA/SEA reports are pretty inaccessible to many stakeholder groups and quite inaccessible to people other than those who wrote them*" (Smith *et al*, 2010, para.5.6.5).

Although some community-based organisations have the capacity to respond to the new demands for consultation, others are stretched to do so. Whether

or not there is adequate capacity, justifying the investment of time and effort can be difficult if the results are hard to discern.

Solutions

Better methods of front-loading consultations: Amongst the planners interviewed, front-loading the consultation processes was regarded as the key to delivering effective development plans under the new Scottish legislation. However, current guidance on the need for front-loading is vague with regard to the involvement of non-statutory stakeholders, whose primary involvement is expected at the Main Issues Report stage when some strategic choices might already have been made. Not all the planners were convinced that this was a problem, but some acknowledged a need to engage ordinary members of the community at the outset of the plan-making process. It was suggested that SEA would be of most value in helping people identify as early as possible what options would be environmentally sustainable, and that this would help them assume ownership of the process. The use of workshops to allow participants to identify options using maps was being tested.

Addressing alternatives through public participation: In reviewing the application of sustainability appraisal to the English planning system, Smith *et al* (2010) stressed the importance of early consultation on strategic alternatives and went on to observe that recent changes to the English planning system made this more of a challenge. The same source refers to research suggesting that 'traditional' methods of consultation should be supplemented by 'deliberative' methods, involving workshops and focus groups. It reports responses suggesting that English practice be extended to include non-statutory consultees at the scoping stage.

Our interviews with Scottish planning officers recorded a range of views. Some welcomed non-statutory stakeholder participation at an earlier stage than either of the standard templates in the guidance for applying SEA to development plans or to other SPPs envisages, namely at the scoping stage when realistic alternatives are identified and scoped for their potential environmental effects, and before preferred options are identified. This, they felt, would help convince such groups that their input was having an impact. Others had focused on consulting with statutory CAs at the scoping stage, mainly because of pressures of time in setting up a new type of plan.

Some modification of guidance issued by the Scottish Government is required to open such opportunities up to non-statutory consultees. The template in this respect has already been created by the Scottish Government itself, when it applied SEA consultation processes to the scoping stage that identified and evaluated the strategic options for National Planning Framework 2 (NPF2) (SG, 2008). Listening sessions early in the plan-making process led to a set of scenarios considered strategic options, which were subjected to an early SEA that invited responses from all stakeholders rather than confining consultation to statutory CAs. This approach also meant that the SEA was able to inform the way that the strategy for the NPF2 evolved, exercising an influence on the draft plan in a way that planners and CAs involved in city-

region and local plan-making felt was lacking at these levels. The NPF2 team and its SEA members were then able to use this framework to take the discussion draft at this level and its associated environmental report on the road, again with useful consultation feedback and engagement which helped shape the exercise. The experience gained by this exercise suggests that this approach should be extended more widely on future consultations on any form of Scottish SEA.

Others saw the NPF approach to SEA as something the rest of the Scottish planning system could emulate. Regardless of its desirability at this early stage, simply adding another element of consultation without seeking to winnow out some of the later stages would seem impractical. However, substituting an early form of informal engagement for some of the later stages of formal engagement might help address the disillusionment felt by those who saw the new consultation processes as simply allowing the planning system to continue frustrating local wishes.

Making SEA methodology more accessible: The non-statutory stakeholders found some of the methodology currently employed in SEA, particularly the use of matrices with tick boxes, off-putting and a barrier to consultations. In Scotland, there is no requirement to adopt a specified methodological approach on such matters, and this eclectic approach is fully in accord with the findings research on the use of sustainability appraisal in England that questions efforts to apply a standard format. The Scottish planners we interviewed were keen to explore such options.

Integrating consultation processes: Responses from the interviews with non-statutory consultees indicated confusion over the different processes of consultation required for the plan itself and its associated SEA. This parallel process of consultation appears an unnecessary impediment to public engagement since it is not supported by the planners we interviewed. The explanation for this parallel process is purely historical: the EASA was drafted to comply with the EU SEA Directive and to this end included a statutory requirement for consultation. When the PAS was drafted with the intention of front-loading consultation processes, the guidance on integrating SEA into this new system simply applied the two processes in parallel. There is no requirement in law to keep them distinct. As long as those applying SEA can demonstrate that the issues have been open to public consultation, our interviewees all recognised the benefits of using SEA to inform consultations over plan-making rather than keeping the two processes distinct. However, the interviewees also thought that in order to make such a process effective, the main focus of SEA should not be on the proposed development plan, but on the earlier stages of plan-making, when its findings can be brought to bear on strategic decisions affecting the environment. It was acknowledged that while the SEA process had improved liaison between planners and statutory consultees, more consideration needed to be given to other stakeholders.

Benefits already realised

A community of practice: Comments on the benefits brought by SEA were understandably largely confined to the planners we interviewed. They confirmed that the process has strong support in Scotland, something that was less apparent in the English review (Smith *et al*, 2010). Enhanced public accountability offered to planners by the presence of an environmental report was highlighted. A slightly more unexpected benefit noted was that SEA had helped make other local government services in the same local authority, such as education and social work, more aware of the role of their own planners.

Selling the product: The NPF2 exercise was launched with a website that offered an introduction to SEA. It emphasised the importance of public participation in driving the exercise and attempted to promote a sense of community ownership in the process from the outset. As already noted, the NPF2 team were not constrained by the legal framework governing the statutory planning system in Scotland, and could experiment with different ways of encouraging community engagement in the process. The way in which SEA had been applied, promoting public participation at the outset and encouraging continuing public engagement throughout the process, was seen to have produced significant benefits for the overall plan-making process. The way the plan-making team had utilised SEA had also encouraged others to see the benefits of the technique.

We found similar upbeat stories at the strategic and local development plan levels. A representative of a local rural conservation group which had been specifically formed to respond to some of the proposals in the city-region plan in our area of interest reported that the group were satisfied with their involvement since they felt they had been able to draw on the information in the SEA to influence the outcome of the overall development strategy, which had as one of the original options some significant development proposals for their own conservation area. The consultation processes for both the strategic and the subsequent local development plan gave them a means of engagement in the issues, and the associated environmental reports offered a platform for challenging some of the factors supporting any significant development in their area. The city-region planner confirmed the role the SEA and the submissions which drew on it during consultations at the main issues report stage had made when it came to determining the preferred strategic development axis in the plan. Although the outcome was worthwhile, the process was challenging for the conservation group. If they had not had these specific concerns, our interviewee doubted whether it would have made any submissions. Although a practising professional in another field, our interviewee found the process rather intimidating. Despite this demanding first exposure, the group felt confident enough to make a further submission on the proposed city-region plan, supporting its preferred strategy since this met their original concerns, and backing this up by making similar representations on the new local development plan.

Conclusion

Our intention in this paper was to explore evidence on SEA stakeholder engagement in the statutory plan-making process in light of recent SEA Review which found limited engagement in SEA across sectors and consider possible explanations of the low level of public participation in this technique. Two competing interpretations could be advanced. Stakeholder engagement may simply be an ephemeral ambition, condemned to be frustrated by the technical-rational demands of a complex process of assessment. Alternatively, Scottish SEA practitioners may have been so focused on establishing an effective community of practice amongst themselves that they have unintentionally neglected the need to engage with stakeholders and promote greater public participation, in the process losing the opportunity to benefit from reflexive learning.

At this stage our findings do not confirm either of these interpretations. Although some non-statutory stakeholders were inhibited by a lack of understanding of the SEA process, its relationship to the plan-making process and the extent and nature of the SEA documentation, these are barriers that have been identified and can be overcome. A great deal of progress has been made in Scotland in forging a strong community of practice in SEA with good interagency linkages but our research found that those involved were also committed to ensuring the effective engagement of the wider public.

(Words: 4893)

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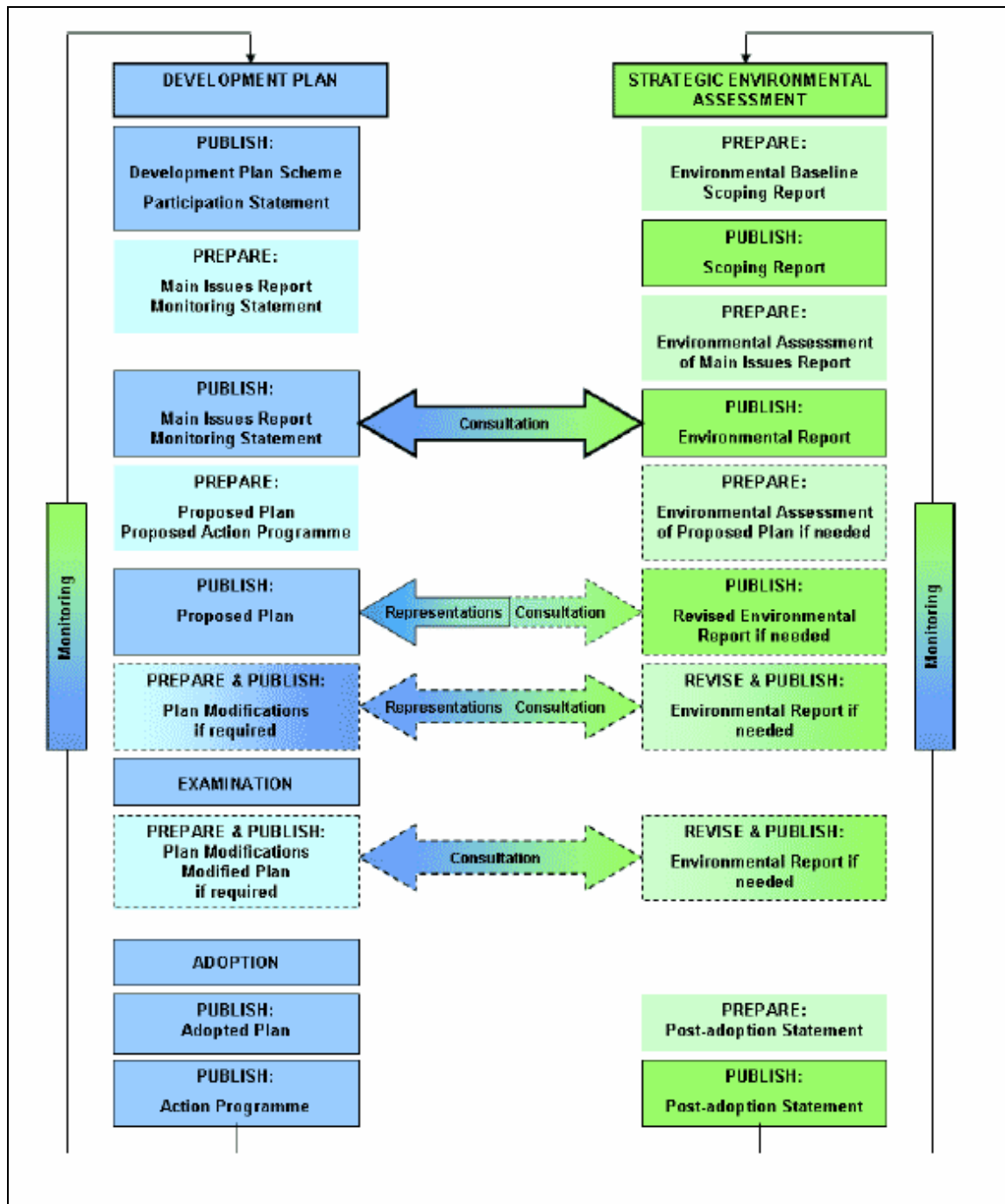
Figure 1: The Relationship between SEA and Development Plans

Source: SG (2010) *Strategic Environmental Assessment of Development Plans: Planning Advice Note 1/2010*, Edinburgh, Scottish Government Directorate of the Built Environment
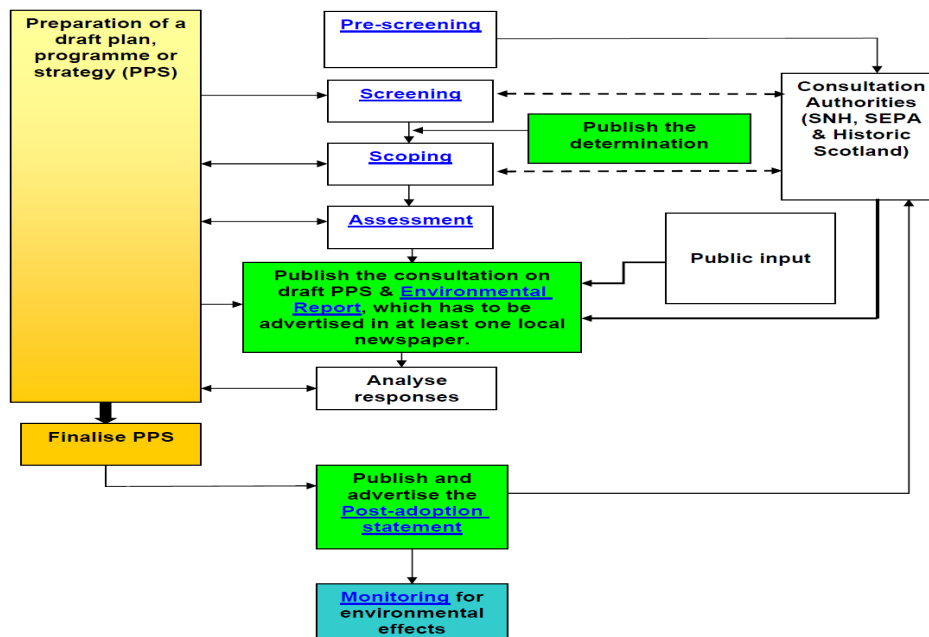
Main stages of an SEA (SG, 2009)

Figure 2: Main Stages of an SEA

Source: SG (2009b) *A Basic Introduction to Strategic Environmental Assessment, Edinburgh*, Scottish Government Environmental Assessment Team