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## Session 11.3: Challenges of Applying Policy SEA in Europe

### Effectiveness of National Assessments in the UK

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**Abstract:**

This paper explores the challenges and lessons from recent practice and experience of applying tools such as Strategic Environmental Assessment (SEA) and Sustainability Appraisal at the more strategic and national policy level in the UK. It investigates whether or not these tools have been effective and helped to deliver more sustainable development at the high level of national policy development. The analysis is illustrated by spatial planning and energy policy case examples from the UK. It concludes that the current performance in implementing the SEA Directive for national level strategic actions is far from exemplary. At the root of the problem is the poor consideration and evaluation of reasonable alternatives, the fundamentally weak conception of sustainability adopted and the apparent perception that having to undertake an assessment and comply with the SEA Directive is a hurdle, rather than a useful mechanism for helping to deliver better and more sustainable evidence-based policy making. Measures are proposed for tackling these deficiencies, which in this case is not related to failure to transpose the Directive for these classes of decisions, but poor application.

**Introduction and purpose of the paper**

The Strategic Environmental Assessment (SEA)<sup>1</sup> Directive which requires certain public strategic actions to undergo an environmental assessment before they are adopted, includes “promoting sustainable development” in its key objective:

*“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development...”* (SEA Directive, Article 1).

However, there has been considerable debate about how SEA has contributed to sustainability since it was implemented across the EU. This paper explores the challenges and lessons from recent practice and experience of applying environmental and sustainability assessment tools at the policy level in the UK. In particular, it consider whether SEA and sustainability appraisal have been ‘effective’ at delivering more sustainable development at the high level of national policy development. The paper starts by analysing the role of SEA in delivering more sustainable development. The paper then discusses the meaning of ‘effectiveness’ with respect to SEA and

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<sup>1</sup> Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (OJ, 2001)

Sustainability Appraisal. This is followed by discussion of experience and lessons from the UK in applying SEA, and other similar forms of strategic assessment, at the higher / national level. The paper concludes with a discussion of the particular challenges of strategic assessment at the national level and suggestions as to how practice could be improved.

Note that this paper is based on and provides a précis of a paper already published in the Journal of Environmental Assessment Policy and Management earlier in 2011<sup>2</sup>.

### **Strategic assessment and its potential role in delivering more sustainable development**

Common conceptions of sustainable development talk of balancing environmental, social and economic factors, accepting trade-offs between these factors in the process – this is often referred to as ‘weak’ sustainability. Other conceptions recognise that ultimately all economic and social activity is dependent on the natural environment, its resources and ecosystem services that it provides – sometimes referred to as ‘strong’ sustainability. The most commonly used definition of sustainable development is that from the Brundtland report (WCED, 1987), but usually only the first part of the definition is quoted, forgetting the important second part:

“Sustainable Development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- the concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given; and
- the idea of limitations imposed by the state of technology and social organisation on the environment’s ability to meet present and future needs.” (WCED,1987:43)

The Brundtland report therefore recognises the strong social and environmental imperatives underlying sustainable development (as does the SEA Directive in Article 1) and that this is not therefore simply a matter of balancing environmental, social and economic factors, which is otherwise effectively business-as-usual. That does not mean that economic factors are not important since they contribute to human wellbeing, and the SEA Directive, in requiring assessment of population, human health, material assets and cultural heritage for example (Annex I (f)), already defines the environment broadly. But the purpose of SEA is very much to ensure that environmental considerations are integrated into strategic decision-making, recognising that traditionally that has not been done sufficiently, and in so doing this will promote sustainable development (Sadler, 2005).

Many strategic actions will have a strong economic rationale to their promotion so, in the absence of SEA, that is likely to be the most determining factor. This dual purpose of SEA - having an ‘advocative’ role, where its primary purpose is to raise the profile of the environment, and an ‘integrative’ role where environment, social and economic considerations are combined in a more ‘objective’ way - is widely recognised (Kørnørv and Thissen, 2000). In an integrative role, SEA requires decision-making to recognise a strong conception of sustainability, since otherwise the economic benefits are likely to be double counted both in the rationale for the strategic action and in the SEA. This is particularly pertinent in the context of the application of Sustainability Appraisal of spatial

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<sup>2</sup> Eales R P and Sheate W R, 2011, Effectiveness of Policy Level Environmental and Sustainability Assessment: Challenges and Lessons from Recent Practice, Journal of Environmental Assessment Policy and Management, 2011, Vol:13, Pages:1-27

plans in the UK, as well as 'Appraisals of Sustainability' which is an alternative term used for a largely indistinguishable technique applied recently by the UK government to the assessments of National Policy Statements (NPS) and other strategic actions, which seek to assess environmental, social and economic factors together.

### **Defining 'Effectiveness' with Respect to Environmental and Sustainability Assessment**

Evaluating effectiveness is difficult given the problems in determining the role SEA might have played among multiple factors influencing decision-making. Therefore context is recognised as important. A simple understanding of effectiveness may be that for a tool to be effective it needs to be able at least to achieve its own purposes. In the case of SEA this will be to ensure that environmental considerations influence the decision-making process and, given the underlying 'sustainable development spirit' of the SEA Directive, this may entail a change in the mindset of the actors involved (Fischer, 2005). This influence may occur at various stages throughout the planning process: early on in influencing the options considered, and at later stages to inform mitigation and monitoring.

Arguably it is at the earliest stages where SEA can be most effective in influencing the overall direction and objectives of the strategic action under consideration, including a strategic consideration of alternatives. The SEA Directive requires the evaluation of 'reasonable alternatives' (Article 5 (1)), which includes (through the reference in Article 5 (1) to Annex I), the "measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme" (para (g), Annex I) and reasons for selecting the alternatives dealt with (para (h), Annex I). That sequence of prevent, reduce or offset, reflects an important principle of the SEA Directive, that it seeks to avoid impacts from occurring rather than merely their mitigation. This is reflected in the preamble to the Directive (Recital 1, invoking the precautionary principle, and Recital 5 that SEA procedures "should contribute to more sustainable and effective solutions"). This creates an important lever in ensuring that alternatives are properly considered and a potential focus for legal challenge if they are not.

Three critical issues for sustainable development, are also recognised in the SEA Directive:

- climate change (included as 'climatic factors' in para (f) Annex I of the SEA Directive);
- biodiversity loss (also reflected in para (f) of Annex 1, and para (d) in relation to Natura 2000 sites, and reference to the Habitats Directive 92/43/EC in Article 3. Recital 3 of the preamble to the Directive further emphasises the requirement of the Convention on Biological Diversity for Parties to integrate "the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans and programmes"; and
- public participation, which should be 'early and effective' (Article 6 (2) of the SEA Directive) and in accordance with the Aarhus Convention 1998 (UNECE, 1998).

Given their spatial and temporal scales, these issues assume a particular importance at the very strategic policy level (João 2007). SEA, if it is to be effective, therefore needs to ensure that these critical issues, among others, are properly considered in the assessment process alongside the primary purposes of the Directive.

## Current Challenges in the UK - Lessons from Strategic Case Examples

Several case examples within the UK, in the energy and spatial planning arenas in particular, were evaluated with regards to the effectiveness of the assessments of strategic actions at the national level, including:

- The 2008 Eco-towns Planning Policy Statement and Programme;
- The 2009 Energy and Ports National Policy Statements (NPS); and
- The 2008 Scottish National Planning Framework (NPF2).

The findings of these evaluations are drawn on in this paper.

In the UK, national strategic actions, such as planning processes in England and Wales (National Policy Statements, NPSs) and in Scotland (National Planning Framework, NPF2), present new challenges for SEA/Sustainability Appraisal. The UK Government has generally accepted that the SEA Directive applies in these cases, i.e. that they are 'plans or programmes' for the purposes of applying the SEA Directive and therefore that they set the framework for projects likely to be subject to EIA. Therefore these case studies were selected because they were:

- National in geographical coverage;
- High level 'policy'-like strategic actions;
- Prepared by national governments; and
- Required to comply with the SEA Directive (including those where SEA is incorporated into Sustainability Appraisals or Appraisals of Sustainability).

Consequently they represented relatively new levels of decision-making for SEA application in the UK and therefore opportunities to learn from these initial experiences.

The review of the case examples draws on work undertaken by Collingwood Environmental Planning Ltd (CEP) as part of a study commissioned by the Royal Society for the Protection of Birds (RSPB) and World Wildlife Fund (WWF), as well as other studies undertaken by CEP. All the cases were reviewed against a broad set of review criteria which drew on those developed by the Institute of Environmental Management and Assessment (IEMA, 2004), but particularly focusing on those aspects required by the SEA Directive. In addition, to consider effectiveness and not just the quality of the reports, additional criteria were applied, seeking to ask whether:

- A strong or weak approach to sustainability was adopted;
- An advocative or integrative approach to SEA was used;
- The assessment sought to further the primary purpose of the SEA Directive (Article 1);
- The attitude to reasonable alternatives – proactive or reluctant; and
- The assessment sought to further the principles of early and effective participation of Art. 6 (2) of the SEA Directive, and the Aarhus Convention.

While much of the experience of SEA and Sustainability Appraisal in the UK has been through local authority spatial planning, experience of applying SEA/Sustainability Appraisal at national and/or high-level strategy level is more limited, although it is increasing. In Scotland, SEA is now being applied to high-level strategies developed by Government authorities and agencies and the Scottish

Government itself (e.g. the Scottish Forestry Strategy, Deer Commission Strategy for Wild Deer, National Planning Framework 2). The devolved administrations also undertook SEA of their respective Rural Development Plans/Programmes under the European Commission's Rural Development Council Regulation No. 1698/2005 in 2006-8, which were very strategic documents relating to funding programmes, e.g. for agri-environment schemes. In England, Regional Spatial Strategies have been undergoing Sustainability Appraisal for several years since they were introduced under the Planning and Compulsory Purchase Act 2004<sup>3</sup>. Case law in the UK, such as *Seaport in Northern Ireland* (Weatherup, 2007), has raised the bar in terms of the need for substantial compliance with the requirements of Article 5 and Annex 1 of the Directive relating to the contents of the environmental report.

Table 1 summarises the key problems identified across the cases examined, suggesting that these experiences have not delivered effective SEA, either in terms of influencing the strategic action or in terms of changing the mindset of the actors involved, which is likely to take a longer period of time to achieve. That is not a criticism of SEA itself, more of its application and the way it is perceived by the authorities responsible.

**Table 1: Key problems in the implementation of high-level SEA cases in the UK**

SEA area	Summary of problem
<b>Screening</b>	Many organisations lack the skills and capacity to screen strategically across the whole organisation for which strategic actions might require SEA and what the relationship to each other should be. Consequently what might be better as separate plan and programme assessments can end up being undertaken as one assessment, even though that creates problems regarding scale, detail, participation and accountability.
<b>Scoping</b>	Inappropriate scoping-out of key environmental topics can be a problem as responsible authorities try to minimise the workload of the SEA process. The rationale for scoping out is often unjustified or simply not provided.
<b>Consideration of alternatives</b>	Very limited consideration of alternatives (e.g. 'strategic action' or 'no strategic action', and the latter, which is effectively evolution of the environment without the plan, is a separate requirement of the SEA Directive anyway). The consideration of reasonable alternatives is the strongest lever for influencing the strategic action making process.
<b>Integration of SEA with strategic action-making processes</b>	Often poor integration is observed, e.g. alternatives considered as part of the strategic action process often are not returned to or used in the SEA.
<b>Assessment of significant effects</b>	Often inconsistent approaches to the assessment of significance, and particularly a danger that assessors take an overly positive view of how and whether strategic actions will be implemented, often without justification.
<b>Assessment of cumulative effects</b>	Often poor attempts at cumulative effects assessment can be observed, which take a rather one dimension view of cumulative effects. Exacerbated by an unjustified belief in mitigation and a general failure to see alternatives as part of the 'avoid, reduce or remedy' hierarchy of the SEA Directive.
<b>Mitigation and monitoring</b>	Often there is little evidence provided as to how mitigation measures will be delivered. At the strategic level there is no means of guaranteeing or securing a) that mitigation measures will be delivered and b) that they will be successful. A large amount of blind faith in mitigation pervades the assessment reports. There is a distinct lack of recognition of the precautionary principle being applied in such

<sup>3</sup> A number of Regional Spatial Strategies have been faced with re-visiting issues around the consideration of reasonable alternatives following the judicial review of the *East of England Plan* (Mitting, 2009), which found the last minute addition of extra housing figures without proper evaluation of alternatives was not in compliance with the SEA Directive (note that the coalition government in the UK is proposing to abolish this regional level of spatial planning).

SEA area	Summary of problem
	cases, which would be more consistent with the aim to avoid damaging impacts rather than mitigating them.
<b>Presentation and public participation</b>	Presentation of SEA environmental reports and sustainability appraisal reports often do little to promote engagement and participation in the assessment process. These reports, and the non-technical summaries in particular, often offer little to anyone without some knowledge or understanding of the issues. Considerably more effort is needed on non-technical summaries to focus on the issues that matter and properly convey a summary of the environmental report in a non-technical manner. This issue has been raised in the courts (e.g. in Seaport, and another hearing in Northern Ireland (Sheate, 2009)), where the opposite problem was observed – a one-page non-technical summary that was neither non-technical nor a summary.

From the authors' own experience of undertaking SEA at the strategic level, one of the key challenges to delivering effective SEA is the limitation of time and resources. Where sufficient time is available, and SEA is considered from the outset, the SEA team and process have the opportunity to engage more fully with the plan making team and stakeholders, and SEA and sustainability appraisal can be used to help structure the strategic action itself and properly consider alternatives.

In the authors' view the cases described in this paper showed considerable variation in quality of the assessment, including the quality of baseline data descriptions and evaluations undertaken. This stems partly from variability in the objectives set for the strategic actions themselves which had consequences for the nature of the alternatives considered. Almost across the board the issue of alternatives has been a problem and it is highly questionable whether the alternatives in many cases can be considered to have been 'reasonable' as required by the SEA Directive. The constraint on alternatives seems to have been imposed partly because of the political nature of the strategic actions at this national level.

It is difficult to conclude whether the assessment processes have influenced the strategic actions and their planning processes. Only if real alternatives (e.g. technology mixes in the case of the energy NPSs or sector specific programmes for NPF2) had been considered, might the assessment processes have been able to influence the direction of the strategic action. An assessment of such alternatives could valuably create an opportunity to further specify government policy. This would help provide a strategic policy framework for lower level strategic actions while ensuring sufficient accountability and legitimacy of strategic decisions.

What does this say about the application of the SEA Directive in the UK to national level planning processes? The strategic case examples discussed in this paper suggest that either the approach to the assessments has been poorly conceived by Government in terms of applying the SEA Directive, or that it has been well conceived in order to circumvent (or at best barely meet) the purposes of the Directive. Either way the application of strategic environmental and sustainability assessment by the UK Government appears disingenuous since there seems to be little real intention that the assessments should influence the planning process. Why might this be? There may be a strong degree of institutional inertia at very strategic levels, where strategic actions are seen to be the preserve of political considerations. Such actions may also be hampered by an 'administrative rationalism' (Dryzek, 2005) among civil servants with little practical or 'expert' knowledge of assessment, unconvinced from a bureaucratic perspective that SEA/Sustainability Appraisal is worth the cost and administrative effort involved.

The very purpose of speeding up the planning process goes against effective environmental assessment since the assessment process needs to influence the planning process from the earliest possible opportunity and should seek to ensure public participation during that process.

Is this a peculiar feature of Appraisals of Sustainability and/or Sustainability Appraisals (given the experience with Energy and Ports NPSs and Eco-towns Planning Policy Statement at the national planning level and concerns over Sustainability Appraisals of Regional Spatial Strategies) rather than SEA, or a wider pattern of the approach by Government in the UK to the implementation of the SEA Directive? There are a number of important considerations to take into account in seeking to answer these questions. The Sustainability Appraisal/Appraisal of Sustainability approach is one rather peculiar to England and Wales, and has not been pursued in Scotland (where SEA has been further enshrined in primary legislation) or elsewhere in Europe. The principle of assessing all aspects of sustainability together is an attractive one, but depends very much upon the perspective of sustainability being adopted by policy makers. An approach that adopted the full Brundtland definition would include a clear recognition in decision-making of the environmental and social imperatives that underpin the whole concept. That would also be consistent with seeing SEA as a means of ensuring the environment (and many social aspects such as populations and human health) are fully integrated into decision-making. However, this paper argues that the view is a more equivocal one, which sees sustainability as a simple balance between economic, social and environmental factors, and therefore trade-offs between those factors become more acceptable and a high level of protection for the environment is not necessarily guaranteed (Sadler, 2005). In practice, Sustainability Appraisal and Appraisals of Sustainability can appear to reinforce that claiming sustainability while accepting loss in one or more factors is acceptable, even though there could be alternative ways of enhancing economic growth that would also enhance other factors.

The experience to date before the UK courts (e.g. Weatherup, 2007; Mitting, 2009) supports the perception that the Government is somewhat ambivalent about the purpose of the SEA Directive. This also suggests a misunderstanding of the fundamental purposes of SEA with which the case study assessments purport to comply. Spatially-relevant NPSs and assessments, for example, would have allowed a much better assessment of the strategic and cumulative effects of different levels of strategic actions at different broad locations and so enable an approach that might actually help to maximise environmental benefits and avoid adverse environmental and social impacts as much as possible. By the time projects come forward there is far less scope for avoidance, and mitigation becomes the main focus of EIA. There is also a possible pattern emerging from these examples as the inadequate consideration of alternatives and the over reliance on mitigation were seen as raising serious issues of potential non-compliance with the SEA Directive.

## **Conclusions**

The analysis presented in this paper suggests that the current performance by the UK Government in implementing the SEA Directive for national level strategic actions is far from exemplary. In this case it is not failure to transpose the Directive for these classes of decisions, but poor application.

Undertaking SEA at this level that delivers the objectives of the SEA Directive requires certain characteristics:

- time and resources invested early in the strategic decision-making process

- a receptive process to avoid the unnecessary expenditure and delay later on.
- an investment in appropriate engagement and consultation with stakeholders - it is inevitable that the more consultation and assessment is squeezed, the more recourse will be sought through the courts in the form of judicial review.

Regarding engagement, The Aarhus Convention is clear in promoting access to information, public participation and access to justice that if the first two are not forthcoming the last has to be available as a measure of last resort. Where time is curtailed, options severely constrained or strategic assessment is only introduced late in the process, the SEA inevitably becomes a bolt-on exercise with little real influence on the policy- or decision-making process. The ability of SEA to influence the strategic action process or the mindset of those responsible for the strategic action or stakeholders is severely limited in such circumstances, and there is little real opportunity for exchange of knowledge or understanding. The core objective of the SEA Directive, contained in Article 1 (see Introduction section), clearly is not achievable under these circumstances.

Despite considerable time and effort in undertaking the strategic assessments described in this paper, if there is little integration with the actual planning process then it is hard to see how these assessments are significantly influencing decision-making. This is particularly true if reasonable alternatives are not being properly addressed, since this is the main way changes to a strategic action might actually be brought about to avoid adverse environmental impact, enhance environmental benefits and deliver more sustainable solutions.

There is a risk that where environmental or sustainability benefits are identified as part of the objectives of the strategic action, then it is automatically seen as somehow a 'sustainable plan'. What is revealed very clearly by the evidence of the draft NPS Appraisals of Sustainability, for example, is the yawning gap at the policy level above the NPSs where there is no formal SEA undertaken. The problems surrounding the alternatives at the Overarching Energy NPS level stem directly from the lack of any meaningful environmental assessment of options and mix of options of energy technologies at the policy level.

There has always been a need for policy level SEA (Sheate et al, 2003), but as SEA is applied at higher strategic levels it will continue to expose the lack of SEA at the highest government policy level. Without a proper assessment of alternative options at the highest level, options at lower levels will continue to be constrained, as will SEA's role in promoting more sustainable development and improving public participation, scrutiny and accountability of high level decision-making. At the root of the problems with the application of Sustainability Appraisal and Appraisals of Sustainability in the UK is the apparently weak conception of sustainability adopted by the UK Government and the perception that having to undertake an assessment and comply with the SEA Directive is a hurdle rather than a useful mechanism for helping to deliver better and more sustainable evidence-based policy making. SEA, in these cases, is therefore being allowed to perform neither an effective advocative nor an integrative role.



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