Abstract: This report provides the suggested response of the Council to a Consultation Paper issued by the Scottish Executive on Strategic Environmental Assessment.

1 RECOMMENDATION

It is recommended that the Committee:-

1. note the content of the Consultation Paper on proposed Legislative Measures to Introduce Strategic Environmental Assessment in Scotland and the significant implications this is likely to have for the preparation of a wide range of future strategies, plans and programmes across the Council as a whole;

2. note and endorse the emerging view from COSLA, as outlined in Appendix 1 of this report, including concerns at the resource implications, burdens, and practicalities of extending Strategic Environmental Assessment in the form proposed to all new strategies, policies and programmes developed by the public sector; and

3. agree this report as the basis for the Council’s response to the Scottish Executive, including comments on specific questions detailed in Appendix 2.

2 INTRODUCTION

2.1 The EU Directive on the Assessment of Certain Plans and Programmes on the Environment (or Strategic Environmental Assessment (SEA) Directive as it is often referred to) was agreed in 2001. It must be implemented in EU Member States by 21 July 2004.

2.2 The Scottish Executive is currently seeking views on how this Directive will be implemented in Scotland and has published “Strategic Environmental Assessment, A Consultation on Proposed Legislative Measures to Introduce Strategic Environmental Assessment in Scotland, December 2003, Paper 2003/31”. A copy of the consultation document is available in the Members’ Lounge.

2.3 The consultation document invites comments by Thursday, 11 March 2004. In order to meet this timescale it is suggested that a copy of this report be forwarded to the Scottish Executive following consideration of this matter by the Infrastructure Services Committee on 4 March 2004 and subject to confirmation following the Strategic Policy Committee on 16 March 2004.

3 BACKGROUND
3.1 One of the core environmental commitments made by the Scottish Executive in the 2003 Partnership Agreement, *A Partnership for a Better Scotland* is the introduction of SEA across the range of all new strategies, plans and programmes developed by the public sector in Scotland. This goes beyond the basic requirement for SEA of “Certain Plans and Programmes” set out in the EU Directive.

3.2 In order to implement the Directive by July 2004 the Scottish Ministers have decided to adopt a two-stage approach to SEA legislation:-

(a) regulations to give effect to Directive 2001/42/EC on the Assessment of the Effects of Certain Plans and Programmes on the Environment, by 21 July 2004; followed by

(b) a Bill to be introduced into the Scottish Parliament in early course to go beyond the requirements of the Directive in order to give effect to the commitment in *A Partnership for a Better Scotland*.

3.3 This current consultation exercise seeks views on the:-

• proposed content of the Regulations;

• principles for the proposed Bill; and

• handling of practicalities arising from the Directive and from the Bill.

4 WHAT IS STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)?

4.1 For the purposes of this consultation SEA has been defined as:-

“... a process for the early identification and assessment of the likely significant environmental effects, positive and negative of certain programmes and plans developed by the public sector (public sector includes private companies which undertake functions of a public nature under the control or direction of Government).

In the context of the Partnership Agreement commitment, SEA has the same meaning but also applies at a broad level rather than to individual projects/development that might arise under any particular strategy, programme or plan. It complements and does not replace environmental impact assessments on individual projects. It allows the cumulative effects of potential developments to be taken into account at an early stage and for alternative approaches to be considered before any decisions are taken at a broad level. Transparency of decision making is key to the SEA process, including public consultation and publication of the assessment.”

5 THE PROPOSED REGULATIONS

5.1 The SEA Directive provides for the systematic environmental assessment of plans and programmes which are required by legislative, regulatory or administrative means. Areas to be covered include

• agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use.
It does not specify methodologies for the carrying out of SEAs. These are left for Member States to incorporate into their own legislative guidance.

5.2 The Scottish Executive consultation includes details of the scope of the Directive, exemptions and the screening process, to determine which plans and programmes will be subject to SEA. The Directive also requires the provision of an environmental report containing information on:-

“the identification, description and evaluation of the likely significant effects on the environment of implementing the plan or programme and reasonable alternatives.”

The likely significant effects on the environment should include:-

- secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects.

This includes effects on issues such as:-

- biodiversity, population, health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors.

5.3 Consultation on the environmental report is required by the Directive and along with monitoring is another issue on which the Scottish Executive is seeking views.

6 EXPERIENCE OF ENVIRONMENTAL ASSESSMENT

6.1 Environmental assessment of certain plans and programmes as specified in the Directive is not wholly new in the field of town and country planning. In Angus Sustainability Appraisals have been undertaken for Development Plans which assess the environmental impacts of a plan as well as social and economic impacts. The Dundee and Angus Structure Plan underwent a sustainability appraisal as has the Consultative Draft Angus Local Plan.

6.2 In terms of environmental assessment of Development Plans the Scottish Executive published Interim Planning Advice on the “Environmental Assessment of Development Plans” in August 2003. This provides advice on how the likely environmental effects of structure and local plans can be assessed. An environmental assessment will be required for all development plans begun after 21 July 2004, or started before then but not approved or adopted by July 2006.

7 THE PROPOSED BILL

7.1 The proposed Bill will extend beyond the terms of the Directive because the Partnership Agreement envisages that public sector “strategies” should also be subject to environmental assessment. It also will remove the qualification in the Directive that: “plans and projects are to be subject to SEA only if they are required by legislative or other means and only if they set a framework for future development consent of projects. Strategies will also not be subject to those qualifications.” This wider SEA commitment will be introduced through a Bill into the Scottish Parliament although no timescale for this has as yet been set.

8 DISCUSSION

8.1 Environmental Assessment of certain types of major planning applications e.g. proposals for winning and working of minerals, waste water treatment plants, wind
farms and significant new roads etc. has been part of the land use planning process for several years. More recently interim guidance on Environmental Assessment of Development Plans (Structure Plan and Local Plan) has been published by the Scottish Executive (August 2003).

8.2 The current consultation document published by the Scottish Executive is very complex both in range of content and form of presentation and is further complicated by the two pronged approach Scottish Ministers have decided to adopt. Regulatory provisions are proposed alongside proposals for a Bill to extend the introduction of SEA beyond the scope of the Directive.

8.3 This latest consultation document is a very significant step which sees the concept of Strategic Environmental Assessment being extended to encompass a much wider range of public sector strategies, plans and programmes. It will apply across the Council as a whole and will introduce a raft of new requirements and consultation arrangements to be undertaken during the preparation of all future strategies, plans and programmes which have any effect or potential effect on the environment. In short this will place significant new burdens on the Council. (For example a recent audit identified 84 Strategies, Plans and Programmes prepared by Angus Council across a wide range of subjects, many of which could in the future fall within the scope of the proposed SEA requirements and procedures).

8.4 Emerging views from COSLA, which are set out in Appendix 1 to this report, also express concern over the scope of the proposals and resource implications. In addition to highlighting potential problems with the development of this Bill, COSLA raise major reservations about the practicality of the proposals as currently subject to consultation. These concerns highlighted by COSLA appear well founded.

8.5 The Scottish Executive has posed a series of questions as part of the consultation exercise. Appendix 1 to this report sets out the proposed response to these questions by Angus Council.

9 FINANCIAL IMPLICATIONS

9.1 There are no direct financial implications arising from this report. Future resource implications, which may be significant, will only become fully apparent depending on how proposals in the current consultation document are taken forward. This will be the subject of further reports in due course.

10 HUMAN RIGHTS IMPLICATIONS

10.1 There are no human rights implications arising directly from this report.

11 CONSULTATION

11.1 The Chief Executive, Director of Finance and Director of Law & Administration have been consulted in the preparation of this report. The broad terms of the consultation document have also been raised at the corporate Environment Strategy Group which includes representatives from all Departments of the Council.

12 CONCLUSION

12.1 Strategic Environmental Assessment (SEA) provides a systematic method of considering the likely effects on the environment of strategies, plans and programmes that set a broad – based context for future development activity.
12.2 The general content and legislation described in the consultation document on SEA is presented in a detailed and rather complex manner which does not facilitate a simple or straightforward response. This is particularly unfortunate as this is an important consultation document with potentially far reaching implications and requirements for the preparation of a broad range of future strategies, programmes and plans prepared by Angus Council and other public sector bodies.

NOTE

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

AA/PB/KW
23 February 2004

Alex Anderson
Director of Planning and Transport
APPENDIX 1

EMERGING COSLA VIEW

Strategic Environmental Assessment – Consultation by Scottish Executive

Purpose of the Report

1. To update Leaders on COSLA’s response to the consultation by the Scottish Executive on the introduction of Strategic Environmental Assessments (SEA).

Recommendations

2. Leaders are invited:

i to endorse COSLA’s position, as summarised in this report, in response to the Scottish Executive consultation paper, “Proposed Legislative Measures to Introduce Strategic Environmental Assessment to Scotland;

ii to agree that member councils be encouraged to respond in similar terms;

iii to note that a more detailed paper on this matter will be submitted to the COSLA Environment, Sustainability and Community Safety Executive Group for its consideration and approval of a final COSLA response; and

iv to note that the COSLA response will be submitted to the Scottish Executive prior to the deadline of 11 March 2004.

Background

3. The proposals within the consultation paper have two distinct objectives:

• to extend the requirement for Environmental Impact Assessment (EIA) from individual projects to plans and programmes; and
• to extend the application of EIAs into strategic policy development.

4. The first of these is an EU Directive, which must be incorporated into Scottish law by 21 July 2004.

5. The second arises from a commitment in the Executive’s Partnership Agreement following the last elections to “introduce strategic environmental assessment to ensure that the full environmental impacts of all new strategies, programmes and plans developed by the public sector are properly considered”. It is because of the potential impact across councils and the public sector that this matter has been submitted to Leaders.

6. The Executive proposes to implement its commitments in two related stages:

• a regulation to translate the EU Directive into Scottish law;
• followed by a new Bill to implement the Partnership Agreement commitment.

7. The new Bill will incorporate the regulation introduced at the first stage, which will be repealed once the Bill is enacted.
Current Position

8. Currently EIAs are required to be undertaken for a range of development projects (prescribed by EU directives). This process is governed through UK regulations in the context of the town and country planning system, with separate provisions for certain activities not covered by planning control.

The Future

9. Under the proposed regulation, SEAs will in addition be required for development plans that form the context in which development applications are determined. This will help to fill a recognised gap in the current regime – EIAs of individual developments cannot readily take account of the cumulative impact of a series of developments, both small and large.

10. However, the new Bill will extend the requirement for SEAs much further to “strategies, programmes and plans” which are unconnected with the planning system and thus to a wide range of operational policies that do not involve developments subject to planning control. It will fundamentally change the scope of environmental assessment which has hitherto been connected into the planning system and equivalent control processes. Examples of “strategies” prepared by local authorities that would be covered include:

- Schools estates strategy (impact on routes to school, modes of transport, energy conservation)
- Schools catchment area policies (as above)
- Care in the community (transport implications, energy conservation)
- Cultural facilitates strategies (transport, energy, conservation)
- Sports facilities strategies (transport, conservation)
- Housing strategy (transport, energy, conservation)
- Housing allocation strategy (transport)
- Asset management strategy (energy, transport, development)
- Local transport strategy (transport, pollution, energy)
- Waste management (energy, pollution, natural resources)
- Procurement strategies (energy, transport, re-cycling)

11. These are merely the obvious examples. The commitment is to extend this to “all new strategies, programmes and plans developed by the public sector”.

Proposed Response - Regulation

12. The new regulation must be introduced to implement the EU Directive. The procedures will be similar to those that apply to EIAs for development projects. SEAs may not in practice significantly affect the way in which development plans are drawn up since these have environmental considerations at their core and are subject to extensive public consultation. However, the level of detailed analysis required could be significantly greater and therefore compromise already stretched planning resources.

13. It is suggested therefore that COSLA endorses the principles underlying the proposed regulation but expresses concern at the resource implications of the process required to achieve it and demands assurances that this new burden will be fully funded by the Executive.
Proposed Response – Bill

14. There is no requirement to extend the effects of the EU Directive as proposed by the Executive, and there appears to be no equivalent proposal elsewhere in the UK. The proposals have major flaws as they stand. A number of fundamental points need to be clarified:

- The lack of adequate definitions, eg “strategies”. While the consultation paper does define the range of “strategies” to be subject to SEA, it does not define what a “strategy” is, other than it will include any “coherent collection of policies operating in conjunction with each other and presented as such”.

- Without an adequate definition of “strategies”, local authorities will be open to legitimate complaints or judicial review on a wide range of operational decisions on the grounds that they were taken in the context of strategies that should have been the subject to SEA but were not.

- In terms of the planning system, there is significant potential for conflict. SEAs undertaken for strategies which are not development plans must not prejudice SEAs or EIAs undertaken in the context of the planning system. This could be illegal. It would also prejudice the rights of the public to independent examination in public of features of a strategy that should properly be incorporated into development plans.

- The introduction of SEAs beyond the development planning system will require the disciplines of environmental assessment to be applied by officers and organisations to whom the concepts and analytical processes are entirely unfamiliar. This will have significant resource implications for capacity building within organisations, possibly buying in the skills required, and management arrangements beyond the direct cost of undertaking SEAs.

15. The potential problems associated with the development of this Bill prompt the question of whether the objective of extending the application of SEAs, as indicated in the Partnership Agreement, could be achieved more effectively by other means.

16. For example, regular environmental assessment of relevant policies could be closely integrated with the specific requirements relating to Best Value, Community Planning and development plans. The requirement could be reinforced through non-statutory guidance on the preparation of key strategies such as Local Transport Strategies, School Estates Strategies and Housing Plans.

17. For the reasons above COSLA intends responding in detail expressing major reservations about the practicality of the proposals as currently subject to consultation.

18. To inform the final response, the matter will be the subject of further detailed consideration at the COSLA Environment, Sustainability and Community Safety Executive Group on 5 March 2004. At this meeting, Councillor Hay, COSLA Spokesperson is minded to suggest that, as part of its response, COSLA ask to meet with the Scottish Executive to discuss further the potential resource implications of the regulation to be introduced in July 2004. COSLA will also seek to work together with the Executive to develop alternative, more effective, practical
and deliverable ways of implementing the principles set out in the Partnership Agreement.

19. Meantime, a copy of the draft COSLA response is available from James Fowlie (james@cosla.gov.uk).

20. In light of the implications of this consultation, COSLA has previously alerted both councils and key professional associations to it and encouraged them to respond in similar terms.

James Fowlie, Policy Manager
Tel: 0131 474 9263; e-mail: james@cosla.gov.uk
18 February 2004
Strategic Environmental Assessment
A Consultation on Proposed Legislative Measures to Introduce Strategic Environmental Assessment in Scotland

SPECIFIC ISSUES AND QUESTIONS ON WHICH THE SCOTTISH EXECUTIVE INVITES VIEWS

The Scottish Executive is seeking comments and views on any aspect of the proposals in this consultation document but particularly on the following aspects of both the draft Regulations at Annex A and the principles of the proposed Bill.

The questions posed by the Scottish Executive have been included here together with a brief preamble where necessary. Angus Council comments follow the questions.

The Proposed Regulations
Scope

a) The definition of "authority" and the inclusion of private companies

The Scottish Executive view is that “authority” could include private companies providing a public service under the control of the State as well as the likes of central government (the Scottish Executive & UK Government), local authorities, non-departmental public bodies (such as Scottish Natural Heritage and the Scottish Environment Protection Agency), the National Health Service Scotland, and Scottish Water (a publicly-owned company).

In connection with this “a private company would be subject to the draft Regulations only in respect of plans or programmes that relate, in whole or in part, to the company’s public functions — plans and programmes wholly relevant to private business would not be subject to the draft Regulations.”

Q1 To what extent do private companies, carrying out public functions under the control or direction of the Government, develop plans or programmes as defined in the Directive (ie required by legislative, regulatory or administrative means and setting a framework for future development consents)?

Angus Council comment
Agree with the Scottish Executive on the definition of “authority” and the inclusion of private companies. Whilst private companies do not generally have a large input into plans and programmes in terms of the draft Regulations this might change and they should be subject to the same requirements.

b) The definition of plans and programmes

The Executive states that the terms "plan" and "programme" may be interchangeable. Different Member States use the words in different ways. The draft Regulations use the Directive’s definition of plans and programmes which the Scottish Executive regards as sufficiently robust for the Regulations, given that the definition is qualified by the need for such plans or programmes to be both (a) required by legislative, regulatory or administrative means and (b) to set a framework for future development consents of projects.
Q2 Are you content with our proposed definition of plan or programme and our view that it is sufficiently robust to close a potential loophole in the Regulations, that might otherwise allow authorities to bypass SEA for certain activities they do not regard as either a plan or a programme even if that activity is required by legislative, regulatory or administrative means and sets a framework for future development consents?

Q3 Is the definition clear enough to ensure the screening process is not overwhelmed with submissions from responsible authorities anxious to ensure that they do not fall foul of the Regulations?

Angus Council comment
Suggest that it might be useful to have more examples of the types of plans or programmes covered. This need not necessarily be exhaustive but would help clarify the situation especially in cases that may not have been subject to any similar assessments in the past. This would help to make the screening process easier for responsible authorities to implement the Regulations.

c) Handling plans and programmes prepared by groups of authorities

The Scottish Executive state that certain plans or programmes required by legislative provisions are developed by groupings of responsible authorities in which no single authority has sole "ownership" (for example, structure plans are commonly prepared by groups of neighbouring local authorities). The Regulations allow such grouping of authorities to determine among themselves a lead authority responsible for compliance with the Regulations and for the Scottish Ministers to make a determination in cases where there is disagreement among the authorities concerned.

Q4 What are your views on the assumption that the likely number of groupings of responsible authorities which would be developing plans or programmes within the scope of the Directive is small?

Q5 What views do you have on the proposed mechanism for identifying a lead authority in such cases and what proposals do you have for alternative mechanisms?

Angus Council comment
Agree that groupings of responsible authorities involved in plans or programmes required by legislative provisions is generally small but this is likely to increase, for example as a result of the Scottish Executive’s Review of Strategic Planning. There is generally a move to more partnership working.
With regard to any disagreements as to who would be the lead authority Angus Council would agree that the Scottish Executive should have the final say. There should also be additional resources available to take on this role as there could be resource implications.

The Screening Process
The Process
a) The proposed process and possible alternatives

Draft Regulation 11 provides for a screening process that would be largely driven by the body responsible for the plan or programme (the "responsible authority") through the use of criteria used to determine the likely significant environmental effects. On the basis of a short report against those criteria, the responsible authority would consult the consultation authorities and if they agree that there are no significant environmental effects, that would be the end of the process, except for the publication of the decision and the reasons for it. If all agree that there are likely significant environmental effects, a full SEA would be required involving the preparation of an environmental report. If there is disagreement, the matter would be referred to the Scottish Ministers for a determination.

The Scottish Executive favour this approach but have suggested three alternatives:

- the responsible authority would submit its outline plan or programme to the Scottish Executive as secretariat which would then arrange circulation to and consultation with the consultation authorities. The decision would remain a joint one for the consultation authorities (with disputes settled by the Scottish Ministers); or

- the Scottish Ministers alone could reach a decision following consultation with the consultation authorities, as the UK Government intends to adopt for plans and programmes relevant solely to England or to England and any other part of the UK; or

- a separate screening authority/agency could be established with a duty to reach decisions on whether SEA is required, taking into account consultation with the consultation authorities. The Scottish Ministers could be the appellate authority in cases where the decisions of the screening authority were challenged.

Q6 What are your views on the proposed screening process described in paragraphs 4.11 to 4.13?

Q7 What are your views on the alternative approaches described in paragraph 4.14?

Q8 What other alternatives do you suggest for a screening process?

Q9 Will each consultation authority need to establish a specialised unit to respond to SEA demands?

Angus Council comment

It makes sense for the body responsible for the plan or programme to liaise directly with the consultation Authorities to determine whether an SEA is required. Together they should have the most knowledge of the contents of any plan or programme and its potential implications. However, it is important that consistency is ensured across the country. There could possibly be some kind of monitoring role for the Scottish Executive to ensure this.

Angus Council would agree that the least bureaucratic and most expeditious route to screening would be preferable but recognise that this could still place an extra burden on the responsible authority causing increased workload and costs. There could therefore also be an argument for the Scottish Executive to provide a fall back
position if the plan or programme authority thought that it was borderline that an SEA was required.

Judging by the complexity of the SEA process and potential number and range of plans and programmes involved it will be necessary for a consultation authority to ensure a sufficient number and range of staff have special expertise in SEA procedure.

**Types of plans and programmes to be subject to screening**

The Scottish Executive’s Regulations state that the screening process is to be applied on a case-by-case basis. The Directive also allows for specification of the types of plans and programmes to be subject to screening or by a combination of both approaches. The Scottish Executive has a preference for the case by case approach because it avoids potential loopholes being inadvertently created by a deficient pre-determined list although this may place more of a burden on the responsible authorities and on the consultation authorities

Q10 Does the case-by-case approach to screening offer the most practical method of screening or would listing the types of plans and programmes to be screened be more effective?

Q11 What is the likely impact of the case-by-case approach to screening on the responsible authorities and on the consultation authorities?

**Angus Council comment**

It would be useful to have more guidance as to the types of plan and programme and a list would be helpful. This would not necessarily have to be exhaustive and if in doubt there should be the opportunity to ask the Executive for guidance. The list would also have to be kept updated.

A case by case approach would put more pressure on the responsible authorities and would be less easy to maintain consistency of decision.

**Engaging with the Process**

The Directive requires environmental assessment to be carried out during the preparatory stage of a plan or programme. The responsible authority should therefore seek the views of the consultation authorities at an early stage so that the need for SEA is determined as early as possible. There should therefore be early and frequent discussion between the responsible authority and the consultation authorities, seeking to achieve consensus. The Executive feel that this should reduce delay and mean that any subsequent environmental impact assessment at project level would be more efficient and less likely to produce unexpected results.

Q12 What are your views on the approach described in paragraphs 4.18 and 4.19 for the responsible authorities to engage with the screening process?

**Angus Council comment**

Angus Council would agree that early consultation is essential. Ongoing dialogue through the process is also necessary.
**Timescales for screening**

Q13 Is 28 days a suitable time period for the consultation authorities to process an SEA screening report?

Q14 Should the responsible authority have to resubmit to screening if it does not pursue a plan within a certain time period and/or if external factors affecting the plan change significantly?

**Angus Council comment**

28 days is a reasonable time period for consultation authorities to carry out screening if unnecessary delays to the plan preparation process are to be avoided.

Agree that if the plan or programme undergoes significant change or major delay it would make sense to resubmit it for screening.

b) **The role of the Scottish Ministers**

The draft Regulations provide for the Scottish Ministers to make a determination about the need, or otherwise, for an SEA in circumstances where the consultation authorities and the responsible authority cannot agree. In reality such determination by the Scottish executive is expected to be rare.

Q15 Are the processes described sufficient to allow Scottish Ministers to deal with disagreements about the need for SEA in respect of plans or programmes prepared by the Scottish Executive or its agencies on behalf of the Scottish Ministers themselves?

**Angus Council comment**

This is a question for the Scottish Executive. However it is not clear how the Scottish Executive would resolve disagreements about their own plans or programmes or if their decision on the need for an SEA is disputed.

**Environmental Assessment**

a) **The form and contents of the environmental report**

The draft Regulations allow for some discretion as to the contents of the environmental report. A more complex plan or programme will require more detailed information than a “broad-brush plan or programme”. Annex I to the Directive specifies the information to be provided in the report.

The consultation authorities must be consulted on the scope and level of detail of the environmental report. The Scottish Executive regard that requirement as a sufficient check on the content of the environmental report and it is not the intention to provide further elaboration of the content of the environmental report in the Regulations. The Scottish Executive also regard the consultation mechanisms to be put in place in respect of the Directive as sufficient to ensure quality of environmental reports without any need for additional legislative measures. The Executive would welcome views on:

Q16 Is any additional guidance necessary on any aspect of Annex I to the Directive?
Q17 Are the measures described in paragraph 4.27 sufficient to ensure the quality of environmental reports?

Q18 What remedial measures should be taken if an environmental report is considered not to be of sufficient quality?

Angus Council comment

Annex I lists the broad type of information to be provided as part of the environmental report. It is very wide ranging and further guidance and advice on the amount, type, detail, and source of information required would be helpful distinguishing among different levels of plans and programmes.

b) The point by which assessment should be carried out

Article 4.1 of the Directive states that:-

‘The environmental assessment…shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure’.

This raises some questions about when a plan or programme can be said to have been adopted/submitted and therefore by which point SEA should be complete.

Q19 Is it necessary to define "adoption" and/or "submission to the legislative procedure" in the draft Regulations? If so, how those terms might best be defined?

Q20 Should the Regulations specify that the consideration of plans and programmes, and the opinions expressed on them, during the legislative process are not subject to Article 8 of the Directive?

Angus Council comment

For clarity it would be helpful to define the terms “adoption” and “submission”. In relation to Local Plans adoption is clear cut. In the terms of a Structure Plan “approval” carries the same status. Development Plans could be subject to more than one environmental report at different stages in the process. Only the end of the process culminates in adoption or approval. It’s not clear how such consultation stages will be dealt with and whether an “adoption” stage is reached after each SEA.

For clarity it would be helpful for the Regulations to specify that the consideration of plans and programmes, and the opinions expressed on them, during the legislative process are not subject to Article 8 of the Directive.

c) Avoiding duplication of assessment

The Directive states that plans and programmes that form part of a hierarchy should avoid duplication of assessment and that information gathered for one environmental report, should, if appropriate be included in another environmental report. However there could be a problem as information can go out of date quickly.
Q21 To what degree might a less detailed SEA be carried out on a plan or programme because the same subject matter is already subject to SEA at another level?

Q22 Should any time limit be set for the use of information procured as part of an earlier SEA?

Q23 Should provisions be introduced to provide a check on the value of information procured as part of an earlier SEA, or do the consultation mechanisms in place already provide a sufficient control mechanism?

Angus Council comment
If work is done at a high level plan or programme (e.g. a Structure Plan) the next level of plan or programme (e.g. a Local Plan) could incorporate similar environmental information but probably augment it to provide more detailed local information where appropriate. There might be some duplication but information will need to be reviewed for each report and will need to be updated as appropriate. Different timescales apply to different information and there is an onus to use the most up-to-date information available at the time. It would be difficult to put a time limit on when information derived from an earlier SEA should be used by as this will vary.

It is felt that the consultation mechanisms should provide sufficient control for the consultation authorities to review the appropriate information.

Consultations and Decision Making

a) The list of consultation authorities

The Directive specifies at which stages the consultation authorities are to be consulted and also the range of issues that must be addressed: i.e. ‘the likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between those factors’.

The consultation authorities need to be capable between them of judging and advising on all these issues. Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA) have environmental responsibilities and Historic Scotland primarily advise on the ‘cultural heritage including architectural and archaeological heritage’. As an agency of the Scottish Executive rather than an independent body, but as its function is so distinct, it would be possible to designate it in its own right. However, a general designation of Scottish Ministers/the Scottish Executive is regarded as essential, so specific designation of Historic Scotland might not be necessary.

Q24 Who should the consultation authorities be for the purposes of the draft Regulations?

Q25 Should the Regulations specifically list the consultation authorities or simply provide that the Scottish Ministers determine the relevant consultation authorities on a case-by-case basis?

Q26 Should all those on any list be involved in every case, or should the Regulations provide for relevant consultation authorities to be consulted — if the latter, how
should relevant consultation authorities be selected; should there be a requirement to consult the Scottish Ministers and SEPA in all cases?

Angus Council comment
The list of consultation authorities should be limited to those with clearly identifiable expertise and responsibilities for environmental matters. It is felt that the consultation authorities should be listed to avoid confusion. It would be most straightforward to consult all those on the list and let them decide whether their input would be required on a case by case basis.

b) The definition of the "public"

In the Directive there are two levels of 'public'. The Scottish Executive feel that the Directive makes it possible to exclude some members of the public from making comments as part of an SEA and that this would go against Scottish Executive policy on consultation. It is therefore anticipated that all comments on environmental reports and accompanying documents will be able to be taken into account.

Detailed arrangements regarding how consultation is to be carried out are not specified in the Directive but may be made by the Member State.

Q27 What views do you have on the proposal to define "public" in the Regulations in broad terms?

Q28 What mechanisms do you suggest for making plans and programmes and environmental reports available to the public?

Q29 Should any mechanisms for making plans and programmes available to the public be specified in the Regulations; should the Regulations leave this to the responsible authorities; or should the Regulations include a menu from which the responsible authorities must select the most appropriate mechanism?

Angus Council comment
There are practical difficulties in informing the public who may not be directly affected by a plan or programme and methods of consultation will vary among different plans and programmes. There should be scope for discretion as to the type and level of consultation undertaken. Angus Council would agree that anyone who made comments, whether directly or indirectly affected, should have their comments taken into consideration.

It is considered that the regulations should suggest a minimum requirement for consultation.

c) Timescales for consultation

The Directive requires the consultation authorities and the public to have the opportunity "within appropriate time frames" to express opinions on draft plans and programmes and on environmental reports before adoption of plans or programmes. The Scottish Executive would prefer not to set a blanket consultation period but instead to provide for a minimum period of 28 days and of sufficient length to allow consultees to express their opinions.
Q30 What are your views on the proposal for a period of a minimum of 28 days and of sufficient length to allow consultees to express their opinions?

**Angus Council comment**
It is reasonable to suggest a minimum period of 28 days as the scale of plans and programmes will vary.

**Monitoring**

a) **Responsibility for monitoring**

The draft Regulations specifies the monitoring methods to be used for each plan or programme.

Q31 Do the proposals for monitoring fully meet the Directive’s requirements?

Q32 Should the Regulations provide for the Scottish Ministers to determine the monitoring methods to be used in specific cases, if they do not consider the measures proposed by the responsible authority to be sufficiently robust?

**Angus Council comment**
Monitoring arrangements should be left to the discretion of the responsible authority. The Scottish Ministers should only determine the monitoring methods for specific cases if those proposed by the responsible authority are not considered to be sufficiently robust.

**Implementation and Entry into Force**

a) **The definition of "first formal preparatory act"**

The Directive applies to plans and programmes from the point of their "first formal preparatory act".

Q33 Is it necessary to define "first formal preparatory act"?

**Angus Council comment**
It is felt that a definition of "first formal preparatory act" would be helpful, for example would this apply to the Notice of Intention to prepare a Structure Plan or Local Plan.

**The Proposed Bill**

In addition to the considerations for the proposed Regulations (which will in due course be incorporated into the Bill) the Scottish Executive would welcome comments and views on the various aspects of the proposed Bill.

a) **The definition of "strategies"**

‘Strategies’ are not altogether separate from ‘policies’: the terms are often used interchangeably. The Scottish Executive propose that the Bill should adopt a fairly broad definition of strategies as those which are:
subject to preparation 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.

This follows the pattern of the draft Regulation’s definition of plan or programme for the purposes of the Directive, but removes the qualification about being required by legislative, regulatory or administrative means. It also excluded any requirement that such voluntary strategies should set a framework for future development consent of projects. As with the draft Regulations giving effect to the Directive, "authority" would include private companies carrying out public functions under the control or direction of the Government.

The application of the screening process would also be broadened out as it will go beyond the assessment of plans and programmes required by legislative, regulatory or administrative means and which set the framework for future development consent or projects. This requirement will be removed under the proposed Bill.

The Scottish Executive would welcome comments on:

Q34 What is your view of the proposed definition?

Q35 What will be the likely extent of the Bill if that definition of strategies were to stand (eg how many voluntary strategies, plans and programmes might fall within its scope?)

Q36 Are any modifications required to the criteria in Annex II to the Directive?

Angus Council comment

The definition of strategies is very wide ranging and further guidance may be required to ensure consistency of approach across the country. A diverse range of voluntary strategies, plans and programmes could also be involved with significant resource implications for all public authorities although it is impossible to quantify this at this stage.

b) The application of the screening process: pre-screening

Although the Scottish Executive do not intend to alter the regulations to take account of the wider range of strategies, plans and programmes to be covered in the Bill these could be supplemented by a prior stage allowing those strategies, plans and programmes with no possible significant environmental effects to be exempted even from the screening process. To ensure that this is done with due process the Scottish Executive proposes that the Bill should provide for a pre-screening mechanism to require the responsible authority to take the decision having regard to the factors in Annex II to the Directive (as it would do in the full screening process). The responsible authority would be required to disclose its assessment against Annex II factors. This may create difficulties insofar as it would establish a separate regime for plans and programmes within the scope of the Directive (to which pre-screening could not apply) and for strategies, plans and programmes within the scope of the wider provisions of the Bill.

Q37 Do you agree that the screening process described in paragraphs 4.11 to 4.13 is generally applicable to strategies, plans and programmes outwith the scope of the Directive?
Q38 What are your views on whether a pre-screening process as described in paragraphs 4.59 and 4.60 is desirable?

Q39 What are the potential implications of separate regimes for plans and programmes within the scope of the Directive and wider strategies, plans and programmes within the context of the Partnership Agreement?

**Angus Council comment**

It makes sense for strategies, plans and programmes with no possible significant environmental effects to be exempted from SEA at the outset. If pre-screening is to be required clarification is needed on how to disclose the assessment by the responsible authority.

c) The impact on private companies carrying out public functions

The Bill would apply to voluntary and obligatory strategies, plans and programmes prepared by private companies that refer in whole or in part to the carrying out of their public functions. Voluntary and obligatory strategies, plans and programmes relating wholly to private business would not be subject to the Bill.

Q40 Should such companies be subject to the provisions of the Bill?

Q41 What is the likely number of strategies, plans and programmes to which the Bill might apply if its provisions extent to such companies?

**Angus Council comment**

Private companies should be subject to the same provisions as the public sector in respect of strategies, plans and programmes relating to public functions. This is likely to apply to a significant number of strategies, plans and programmes where consultancy services are provided by private companies.

d) Whether to modify Annex I and II to the Directive

The Scottish Executive does not propose to modify Annex I (information required for inclusion in the environmental report) or Annex II (screening criteria) when they are subsumed into the Bill, other than to broaden their scope to apply to strategies. However, it is intended for the Bill to contain an enabling provision giving the Scottish Ministers the ability to add to the information required by Annex I if they determine that this is necessary in specific circumstances.

Q42 What are your views on whether modifications are necessary, and on the proposal to create an enabling provision in the Bill for future modifications?

**Angus Council comment**

Agree that there should be scope to make modifications if these are found to be necessary in specific circumstances, but that there is a need to balance the amount and detail of information required alongside the need to ensure the timeous preparation of relevant reports.

e) Whether socio-economic factors should be taken into account in the preparation of environmental reports
Q 43 Do you agree with the approach set out in Paragraph 4.66 that notwithstanding the importance of socio-economic factors in reaching final implementation decisions, the SEA report should only contain environmental factors?

The Scottish Executive intends for the Bill to have a clear environmental focus and do not propose to include a provision in the Bill to allow for socio-economic factors to be included in the environmental report as part of the SEA process.

**Angus Council comment**

Would agree that it is important for the Bill to have a clear environmental focus and that the Executive should concentrate on this. However it should be recognised that Scottish Planning Policy 1 (SPP1) identifies sustainable development as a key priority of the planning system. Scottish Executive Interim Planning Guidance on the Environmental Assessment of Development Plans recognises that some Planning Authorities may wish to extend the environmental assessment of the Development Plan so that it also covers socio-economic issues. The Interim Guidance also recognises that the inclusion of socio-economic factors will complicate and extend the assessment process. Where sustainability appraisals are undertaken there is a need to recognise that a SEA will be incorporated within the sustainability appraisal. Many authorities including Angus Council already have some experience of sustainability appraisals as part of the preparation of Development Plans.

f) **Possible additional exemptions**

In addition to exemptions allowed in the Directive the Scottish Executive would be able to include further exemptions, if appropriate, from the additional requirements of the Bill.

Q44 Should the Bill enable the Scottish Ministers to make additional exemptions?

Q45 Should the Bill should go further than enabling provisions and list those organisations whose strategies, plans and programmes are exempt from the wider SEA requirement (but not from the requirements of the Directive)?

Q46 Which organisations might sensibly be exempted from the wider provisions of the Bill?

**Angus Council comment**

Agree that the Scottish Executive should be able to make additional exemptions. It would also be helpful if those organisations were listed. This would require monitoring and the Scottish Executive should be able to add to and remove organisations if it was felt to be appropriate.

**Likely numbers of strategies, plans and programmes to be subject to SEA and the likely costs**

The Scottish Executive recognise that the provisions of the Directive and the Bill will result in additional costs primarily to the Scottish Executive, local authorities and the consultation authorities. The additional demands as a result of the Directive will increase in numbers terms under the wider scope of the Bill, but by the time the Bill’s provisions come into effect
there should be a good deal of experience of the process established by the Directive which might help to limit the additional impact.

The Executive's current estimate is that an annual impact on the Scottish Executive could be in the order of £2.6 million to £5.5 million, depending on the methods adopted to carry out assessment (e.g. in-house or contracted out). We estimate that the cost including the rest of the public sector could be at least double that, although we accept that much more detailed work is required in order to establish a more precise figure. A full Regulatory Impact Assessment will be produced by the Scottish Executive once some of these issues are clearer following responses to this consultation document, and following more detailed discussions with public sector bodies.

Q47 What are your views the Scottish Executive’s estimate of resource impact based on the likely annual numbers of plans and programmes within the scope of the Directive that might require SEA, and the associated costs to the responsible authorities (including private companies carrying out public functions) of preparing such SEAs?

Q48 What are the likely additional annual numbers of strategies, plans and programmes within the scope of the Bill that might require SEA, and the associated costs to the responsible authorities (including private companies carrying out public functions) of preparing such SEAs?

Q49 What are the likely costs, for each consultation authority, of the screening and other consultation processes under the provisions of the Directive and the Bill?

Q50 What are the likely costs, for each non-governmental organisation with a particular interest in environmental protection, of the public consultation process under the provisions of the Directive and the Bill?

Angus Council comment
It is very difficult to estimate costs involved without a full assessment of what plans, programmes and strategies would be involved. As an example the Sustainability Appraisal of the Draft Angus Local Plan 2003 cost £10,000. There will be significant financial implications for all Council strategies, plans and programmes qualifying for assessment under the new provisions. This is a matter of considerable concern in terms of significant financial and staff resources which will be required to meet the numerous and detailed requirements under the provisions of the Directive and which are further extended by the Bill.