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Environmental Protection:

Implementing the EIA Directive

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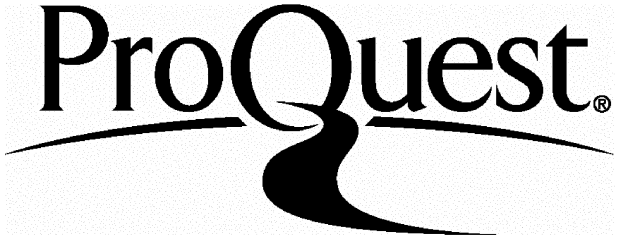

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Dated 1st June 1994

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Environmental Protection: Implementing the EIA Directive

INTRODUCTION

Environmental Assessment, EA, is the systemisation of procedures we have endeavoured to follow since the beginning of formal town planning in the UK. During the six turbulent years since the European Commission outlined the procedures its Member States should follow in Directive 85/337, the debate has continued as to the best way to interpret the spirit of the "official" guidelines (from tier to tier of implementation). The initial reaction of the Department of the Environment and subsequently the Planning Profession could be described as trepidation. Academics could not agree how to categorise this startlingly modern planning instrument and few could predict how it would affect either planners or the decisions they made.

This dissent and confusion still persists in some quarters because, although there has been a greater number of Environmental Statements (ESs) accompanying applications than the UK Government anticipated would be generated by their EA Regulations, the spread of authorities who have experienced EA has been very patchy indeed. The "shock of the new" was hardly lessened by the inadequacy of incisive advice on EA procedures and the persistent lack of an official library where existing Environmental Statements could be used for comparison and monitoring.

The UK is not the only European country to have experienced difficulties with the interpretation and implementation of the EA Directive. It is instructive to compare the experiences of the other member states to see where Britain might improve its practices. There was and still is a need to rationalise and synthesise these varied experiences, so that EA can be accepted everywhere, yet powerful procedure in development control.

Beyond the twin themes of interpretation and implementation is the debate about EA's place in the growing body of environmental legislation. When this research was in its

plan stage, this debate focused on whether the EA process could be judged as an environmental protection measure. Now time has moved on and sustainable development, a more pragmatic ideal than protection of the environment *per se* has become the benchmark by which the end result of EA and other planning environmental legislation could be measured. Whilst the original association with environmental problems still needs to be explored, the need to relate EA to the concept of sustainable development, and to the new legislation, is possibly more pressing. The impending Strategic Environmental Assessment Directive (the application of EA techniques to development plans and policies) and the four year old Environmental Protection Act could be said to provide respectively an opportunity and a threat to the continued effectiveness of EA in decision-making on applications.

EA may well be accepted as one of the key instruments in the Planner's armoury for sustainable development. The concept of sustainable development will have a more profound effect upon the policies and practices of local Government, the Planning Department and beyond, over the next ten years than any other reorganisation it now faces (*pace* Local Government Review). Planners are best placed to effect this new dimension of development and making the most out of EA will be the way of achieving this.

SUMMARY OF RESEARCH METHODOLOGY

This is an evaluative analysis of the aims and provisions of the Environmental Assessment Directive and its place amongst other environmental measures. It draws upon:

I Primary Sources

a) Policy Documents and Guidance

Chiefly:

- European Community Directive No.85/337 on the assessment of the effects of certain public and private projects on the Environment, Brussels 1988: referred to as "the Directive" or "the EA Directive".

- The Town and Country Planning (Assessment of Environmental Effects) Regulations, 1988 (SI 1988 No.1199): referred to as "the Regulations".

- Circular No 15/88 on the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, DoE: referred to as "the Circular".

- Report from the Commission on the Implementation of Directive 85/337/EEC (COM(93)28 Vol 12), Brussels, 2 April 1993: referred to as " the 5-year review".

b) Personal Communication and Interviews

- Interview with Glenys Parry, Senior Planning Officer, Environmental Planning, Department of Environment, Marsham Street, March 1993.

- Interview by telephone with Donald Harris, retired Assistant Chief Planning Inspector, now Senior Planning Inspector, Planning Inspectorate, Bristol, 28th October 1993.

- Interview with Dr Elizabeth Street, Principal Planning Officer, Kent County Council (the LPA which has received the highest number - over 70 - of ESs in the UK) December 1992.

c) Questionnaire

- Sent to 58 LPAs in the South East Region in March 1993.

II Secondary Sources

- Key texts on European Environmental Law which provided a background to policy formation (Krämer, Sallar and Johnson and Corcelle were particularly useful).

- Notes from presentations on EA to Conferences and Seminars, notably those by Thompson, Thérivel and Minter.

- Journals. These were particularly useful for gathering information on the experiences of other member states in implementing EA.

- Other survey results, notably the work of Wood and Jones, Fuller *et al* and Coles & Tarling.

Acronyms Used in the Document

CEP	Community Environmental Policy
CPOS	County Planning Officers' Society
DC	Development Control
DoE	Department of the Environment
EA	Environmental Assessment
EAP	Environmental Action Policy
EAU	Environmental Audit(ing)
EC	European Community (now European Union)
EIA	Environmental Impact Assessment (interchangeable in meaning with EA (above). Found in European policy documents and some older UK literature.
ES	Environmental Statement
LA	Local Authority
LPA	Local Planning Authority
Sc	Schedule (Directive)
SEA	Strategic Environmental Assessment

CHAPTER ONE
THE ORIGINS & EVOLUTION OF THE DIRECTIVE

1.1. Formal environmental impact assessment (EIA) as we know it originates from the USA, where an increase in public awareness of the harmful economic and social effects of development in the 1960s prompted the passing of the United States National Environmental Protection Act 1970. "NEPA" required the proponents of a development to submit an environmental impact statement (EIS), describing in detail the environmental impacts arising from a development, and where possible exploring the alternatives available.

1.2. NEPA's stated purpose was the promotion of

> *"productive and enjoyable harmony between man and his environment through an understanding of the ecological systems and natural resources important to the Nation"*

This increased concern for the environment was not confined to the US but occurred independently in most industrialised countries. In Canada, for example, there were serious reservations about the exploitation of the wilderness areas of the northern Territories, leading to public demonstrations. In Australia, "green bans" on environmentally damaging projects were imposed by trade unions (Clark *et al* 1980). In the UK concern was expressed over the proposal for a third London Airport and, later, the Windscale Inquiry. The fierce controversy over the analysis of alternative sites for the airport, which relied heavily on cost benefit analysis, may have helped prepare the way for a new type of assessment. As Hall (1978) said, there were *"grave doubts about the wisdom of trying to reduce every kind of impact to pounds and pence"*.

1.3. These pressing environmental issues received more and more attention in the 1970s and were affecting more and more countries, including those in Europe. The European Community (EC) resolved to formulate an environmental policy, which would

before long be the basis for the adoption of an EIA framework along the lines of the much-admired American NEPA model.

1.4. There were several reasons, in addition to this new environmental awareness of the potential for development to cause environmental damage, why the EC decided to act. There was the problem of trans-border pollution: one member state's pollution could affect another country yet both were supposed to have equal rights to protection under the Treaty of Rome. It was thought that in many cases environmental pollution could be best tackled through community-wide mechanisms or at least the co-ordination of member states' environmental legislation. Ways were sought to maintain, protect and improve the environment in the whole community - the "EEC ecosystem" as Krämer (1990) called it.

1.5. A further impetus to harmonise environmental protection measures was the fear of competitive disadvantage for countries within the "Common Market" who had higher environmental standards (through their own self-regulation) compared with those neighbours whose attitude was more *laissez-faire*.

Protecting the Community's Environment: Early Initiatives

1.6. Prior to 1987, moves to incorporate environmental protection into the EC's policies were hampered by the lack of a legal basis for actions. This was because the founding document of the community, the Treaty of Rome, made no mention of the concept of the "environment" or the need to protect it (Krämer, 1990). This was in keeping with the *raison d'être* of the Community: as an economic alliance. Consequently, environmental policy had to be introduced under the guise of either Article 235 which was a "catch-all" (Briggs, 1991) covering various areas of which had been agreed by Commission members, or Article 110, which was concerned with the elimination of barriers to internal trade. Early policy initiatives on the environment: vehicle-emissions, noise pollution from industrial and domestic appliances (both 1970) and the labelling of chemicals (1967), were confined to those that harmonised community trade and products.

1.7. The fact that these initiatives were achieved without the benefit of central legislation, policies, and a regular forum for discussion is tribute to the pioneering efforts of some of its constituent members. For example, Kirkwood (1992) notes that Germany's advanced programme of promoting lead-free petrol prompted the EC to introduce a directive. Moreover, France, Belgium and Greece had passed national EIA legislation prior to Directive 85/337 on EIA (See Chapter 3 on European Implementation).

1.8. It was the lobbying efforts of two particularly environmentally progressive member states at a 1972 United Nations meeting that was responsible for the setting up of a much-needed community-wide action-programme on the environment. That was the beginning of the commission's efforts to join the world stage as environmental policy maker - a stage which had been completely dominated by America. Community Environmental policy thus began slowly to take shape.

1.9. If Community Environmental Policy (CEP) was the vehicle for change, then the Community Environmental Action Programme (EAP) was the driving force behind it. The EAP is an important forum at which initiatives or research into environmental protection or amelioration can be discussed, and perhaps compared with existing legislation of member states. The way in which this "Charter of Reference", as Johnson and Corcelle (1989) describe the EAP, actually translates decisions into actions is complex, employing a "*kaleidoscope pattern of agreements, alliances and compromises*" involving a number of policy instruments: regulations, Notes, Directives (Kirkwood, 1992). Directives have been used most frequently for translating EC policy into member state legislation because of their flexibility (however some critics argue that this flexibility dilutes the power of the directive and makes it too easy to avoid implementing (Briggs, 1991, Kirkwood, 1992).

1.10. The EAP was the birthplace of the EIA Directive, and to understand the latter in its proper context, (i.e. as a framework on which to hang national legislation for implementing environmental impact assessment), it is necessary to examine the origin and progression of EAP's up to the approval of the Directive in 1985. Further

environmental management protection measures related to EIA which have been initiated by successive programmes (the IVth and Vth EAPs) will be brought into the discussion at a later stage.

The Environmental Action Programmes I - III

1.11. The Seminal UN Stockholm Meeting of 1972 was witness to the first real call for urgent co-operation on conservation and development across all member states. The two countries who whipped up the debate as well as pollution fears, were Germany and the Netherlands. Unlike self-contained Britain (soon to join the EC), these two countries were acutely aware of the problems of cross-boundary pollution because of the great river that they shared, which conveyed pollution from Germany's industrial heartland through heavily populated settlements. This call for action gave rise to "*vigorous debate*" over the question of whether environmental matters were most effectively managed using community-level inter-governmental agreements or through co-ordination of national environmental policies (Krämer, 1990). Political co-operation triumphed and at the EC Heads of State and Government Summit in Paris in 1972 plumped for a Community Environmental Policy. They issued a Declaration that,

> "*the Heads of State and Government stressed the value of a Community Environment Policy. They are therefore requesting the Community Institutions to draw up an Action Programme with a precise schedule before 31st July 1973*"
> The 1st Summit Conference of the Enlarged Community
> Bull.EC, No 10, 1972

1.12. Ahead of schedule, the commission responded with proposals for a Community Environmental Plan and 8 months after this, in November 1973, it formally adopted the 1st Environmental Action Programme (EAP).

The Legal Basis of EAPs

1.13. EAPs do not constitute a legal basis for community environmental measures; they are political declarations of intent which take measures planned for a certain period, and

place them in an overall context. When new approaches to environmental management come to light, and a new point of reference is established, a new programme is launched. Each is therefore a policy framework.

1.14. The dates of the five programmes are listed below.

Number	Period Covered	Date Approved	Journal Reference
1st	1973 - 76	22/11/73	C112 20.12.73
2nd	1977 - 81	17/05/77	C139 13.06.77
3rd	1982 - 86	07/02/83	C46 17.02.83
4th	1987 - 92	19/10/87	C328 7.12.87
5th	1993 - 2000		

EAPs have been a prolific source of environmental measures. Since the launch of the 1st EAP, the Community has adopted about 180 Directives, Regulations, Resolutions and Decisions, according to the latest estimate by Kirkwood (1992).

The First and Second EAPs. A "Cure for Pollution"

1.15. The First EAP introduced its objectives with 11 principles for a community environmental policy. Those still underpin the objectives of CEP today. Two principles refer directly to planning, i.e.:

- ensuring that more account is taken of environments aspects in town planning and land use.

- that environmental effects should be taken into account and the earliest possible stage of technical planning and decision making.

1.16. Significantly, the First EAP introduced the tenets of "polluter pays" and "subsidiarity". The latter was a deliberately vaguely-worded attempt to address the still "thorny" subject of the appropriate level for environmental policy. It was stated that

> "*.... action must be taken at the appropriate level, whether national, community or international. Actions more likely to be effective at Community level should be so concentrated*"
>
> C112 20.12.73

1.17. The approach of the 1st EAP (and the 2nd EAP too) was to "cure" existing pollution, or the causes of it. The programme vowed:

a. To reduce pollution and nuisances.
b. To ameliorate the natural and built environment.
c. To promote awareness of environmental problems caused by depletion of natural resources.

It was during the 2nd EAP period that environmental impact assessment for projects was first drafted.

1.18. The third EAP marked a turning point of CEP with a shift of emphasis towards a preventative approach to pollution. The period it covered (1982-86) witnessed an acceleration in the adoption of measures, including the Directive for EIA 85/337. (Though as already noted it was drafted during the 2nd EAP period for the most part). This Directive was revolutionary in its breadth and potential impact on the decision making process of land use planners across the EC. That was the most prominent of a new breed of general legal instruments applicable to all environmental media and sectors.

The 1987 Single European Act & its Significance to Environmental Policy

1.19. Also, EIA was one of the first measures to benefit from a firm legal footing following the passing of the 1987 Single European Act, which came into force right at the end of the 3rd EAP. The 11 principles set out in the 1st EAP were incorporated in the EEC Treaty, and given legal significance. The Community now had placed upon it the obligation to base its action on these 11 principles and plan its measures accordingly. The Single European Act gave the preventative action principle "*overriding importance*

in every effective environmental policy since it allows action to be taken to protect the environment at an earlier stage ... clearly the past action by the commission in many fields failed to take account of the preventative approach. Indeed, at times it even ran counter to this principle" (Krämer, 1990)

1.20. Article 130R set out a further two objectives beyond the protection, preservation and improvement of the environment. It said that environmental measures should "*contribute towards protecting human health, and ensure a prudent and rational utilisation of natural resources*".

1.21. It is clear the EIA Directive was intended as a "showcase of the preventative approach", since its remit covers all these principles. Its purpose as an environmental protection measure is also underlined. It remains one of the most important of the environmental Directives, although it is likely to be partially superseded in the near future by an extension of impact assessment to cover programmes, policies and policy statements. This is termed "strategic environmental assessment" or "SEA" (in the UK). This was first proposed in the 4th EAP paragraph 2.3.4. If scepticism on the part of Great Britain and some other member states can be overcome (as well as the remaining problems besetting EIA ironed out), an SEA Directive will be implemented this year, 1994. The implications of this new Directive for both the protection of the environment, and the operation of 85/337 will be discussed in a later chapter.

CHAPTER TWO

THE TERMS OF THE 1985 EIA DIRECTIVE & ITS TRANSLATION INTO UK LEGISLATION

2.1. Directive 85/337/EEC is designed to ensure that environmental impact assessment is undertaken of certain development projects - mostly large scale industrial or infrastructure projects - and that this assessment is taken into account before those projects are approved and implemented. Haigh (1990) summarises this as being the embodiment of the preventative approach to environmental protection.

2.2. The Directive comprises 14 Articles and 3 Annexes - a relatively short legal instrument. It does not have the status of EC legislation but is more akin to a framework law. It established basic assessment principles and procedural requirements and then allows member states discretion over how they transport them into national legislation, provided these basics are respected (COM (93) 281 Vol 12). Flexibility of application across national legislation and planning regimes is a special characteristic of Directives which makes them, according to Haigh, the instrument most commonly used to pass environmental measures.

2.3. The following is a summary of the main provisions of the Articles based upon the original 1985 text of the Directive, and sub-section 2.2 of Com (93) 28 Volume 12, which is the delayed 5-year report by the Commission on "The Implementation of the Directive". Examples of areas or points of implementation where the Directive gives interpretive discretion to member states are pin-pointed, for such areas of ambiguity are the root cause of some of the difficulties in interpretation, and the variety of complex legislative arrangements adopted.

2.4. The Directive obliges member states to adopt all measures necessary to ensure that projects "*likely to have significant effects on the environment by virtue* **inter alia**, *of their nature, size or location, are made subject to an assessment*" (Article 2(2)). There is no further guidance as to what a "significant effect" is, but the likelihood of significant

The EC allowed a 3-year 'transitional period' following the approval of the Directive in 1985. This was to give member states time to transpose its contents into national legislation. Britain managed to comply within a few days of the 3rd July 1988 deadline, with the passing of the 'Town and Country Planning' (Assessment of Environmental Effects) Regulations, in 1988.

impact remains the fundamental test of the need for EIA to be applied in each case. Existing procedures may be employed for the EIA's; failing this new procedures may be established in order to comply with the Directive (2(2)). Member states may, in exceptional cases, exempt a specific project from the Directive's provisions but only with prior notification to the public and the Commission of its reasons (2(b) and (c)). National defence projects (1(4)) and those adopted through a specific act of national legislation are also exempt (1(5)).

Factors

2.5. Article 3 states that the EIA "*Will identify, prescribe and assess ... the direct and indirect effects of a project on the following factors:*

a. human beings, fauna and flora
b. soil, water, air, climate and the landscape
c. the interaction between a. and b. above
d. material assets and the cultural heritage."

Thresholds

2.6. All projects listed in Annex I are subject to assessment, and those listed in Annex II are subject "*where member states consider that this characteristics so require*" (Article 4); to this end member states may specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which Annex II projects should be subject to EIA (4(3)). These thresholds may be legally binding (an option chosen by the majority of member states) or they may be advisory (as in the UK[1] and Wallonia, Belgium).

2.7. The number of ESs generated in a country is linked to the level at which Annex II thresholds are set, for if the thresholds are generally low (as in France) there will be

[1] Dept of Environment Circular 15/88.

more, smaller projects which have to be assessed. On the other hand, where a member state has restricted the number of Annex II categories to be subject to EIA, and yet set the threshold relatively high (e.g. the Netherlands) then the number of Annex II projects requiring an assessment will be smaller than the EC average. Though the question of thresholds, and their effects on the number of ESs generated, across different member states will be discussed at greater length later, it is interesting to note that Britain's unique approach - relatively high thresholds but a wide coverage of projects - has had the consequence of producing the average total amount of ESs within the Community. The level at which a member state fixes its thresholds, and the categories it chooses to subject to impact assessment by virtue of the number of assessments generated, may well have had some influence on the ability of development control systems to implement Directives effectively: an excessive load to applications with an ES attached and it becomes difficult to determine applications within the set time limit.

Scoping

2.8. It is left to member states to determine the scope of each assessment, because the Directive recognises that each case, or project, is different and therefore the actual coverage (or scope) of impacts will have to be assessed individually.

Provision of Information

2.9. Information to be included in an assessment is specified in Annex III. The form in which it is to be supplied is not clear in the Directive, but in practice it accompanies the information normally required by the member state development control (DC) regulations. The document containing the EIA information has become known as the "environmental statement" (ES) in the UK. The ES should include a description of the project and the environment likely to be affected, alternatives to the project, significant effects, mitigation measures and, crucially, a non-technical summary.

2.10. The Directive specifies certain information which must always be provided. Some of this may come from Local Authorities and other public bodies, who may often have

data which is pertinent to the application site or type of development. They must supply the developer with all his or her information needs. The developer may supply more than the minimum information if he believes it to help his case, or if the Local Authority requests it.

2.11. It should be noted that information on matters other than environmental are normally supplied as part of the requirements of the existing DC regimes of individual member states; as Clark (1988) notes, "the EA is not necessarily the only, or determining factor, in reading a decision". This fact is important for it puts EA firmly in the role of additional, rather than replacement information to that information which is already required. Put another way, the ES is one of a variety of material considerations which must be taken account of when determining planning applications - in the UK at least.

2.12. In the final (implemented) draft of the Directive, the responsibility for preparing each ES rests with the project proponent, in conformity with the "polluter pays" principle. This is a less unwieldy arrangement than that envisaged in the 1980 draft which would effectively have required 2 assessments per project: the first forming part of the information provided and published by the developer, and a second prepared and made public by the competent authority (Haigh, 1990). The "belt and braces" approach to the presentation of likely impacts to the public might have the advantage of a more balanced presentation of the facts - or predicted impacts. However, to produce two assessments would probably have taken twice the effort, and cost, and delayed the decision making process unacceptably. Also, in Hall's (1978) argument, it would still leave the problem of "deciding whether consideration "a" is worth more than consideration "b"".

2.13. The Directive provides for the EIS to be made available to designated environmental authorities, the public and (in specified circumstances) other member states as a basis for consultation (6(1)). Article 6(2) confirms that "*the public concerned* [should be] *given the opportunity to express an opinion before the project is initiated*" (author's emphasis). Monitoring of the progress of the projects and the subsequent environmental impacts is left to member states to organise. There is therefore no

provision in the Directive to assess whether any environmental impacts predicted occur to the magnitude predicted, whether mitigation strategies worked, whether unforeseen impacts occur.

Annex I and Annex II : Project Types Subject to Assessment

2.14. Projects which must be made subject to EIA, unless exempted, fall under nine headings in Annex I. In summary they are:

oil refineries
large thermal power stations and nuclear power stations and reactors
installations for storage or disposal of radioactive waste
iron and steel works
installations for extracting and processing asbestos
integrated chemical installations
construction of motorways, express roads, railway lines and airports
trading ports and inland waterways
installations for incineration, treatment and landfill of hazardous waste

This list of Projects has been incorporated almost verbatim into the Schedule I Regulations which implement the Directive in the UK. The main difference is that the latter omitted nuclear power stations because their provision is covered by other, non-planning procedures.

2.15. Annex II is a rather more lengthy and varied list which is too unwieldy to reproduce here. Readers should refer to the Directory itself. Member states are given discretion to choose from the Annex II list those project types which they consider have characteristics which require assessment. A fuller comparison of the interpretation of Annex II by the UK and other member states, drawing on the EC Review of the Implementation of the Directive ("the 5-year Review") will be included as part of the chapter on "Implementation of EA in the European Community" (para 3.5).

2.16. However, an analysis of this interpretation, and also the actual implementation of the Directive cannot be undertaken without prior reference to the way the UK Government viewed the Directive, and influenced its redrafting from the end of the 1970s up to the twenty-first draft, and the subsequently adopted version.

Background to British Objections to the Proposed EIA Directive

2.17. The UK Government has not in the past been at all positive towards Community Environment Policy (CEP), especially when it is translated into Directives which impinge upon UK legislation. The UK joined the European Economic Community in 1973 and straight away felt at odds with the nascent CEP and the interference it threatened to long-established planning and pollution control legislation in the UK. There was a feeling that the British tradition of discretionary local decision making and a DC system based on pragmatism set it apart from continental Europe (Davis, 1992). The geographical advantages of being an island with ample coastline (better for absorbing pollutants), no frontiers, a rainy climate and so on reinforced the UK government's view that it would manage its own environmental affairs without having to subscribe to the same rules as the rest of Europe.

2.18. In any case, Britain had begun to build up experience in environmental assessment implementation; there was also a small but significant body of official guidance on how to incorporate environmental assessment into the existing DC decision-making process. Arguably, this guidance may in time have been formalised and incorporated into British legislation without the intervention of the EC, though there is no way of knowing how wide its scope would have been in terms of project types and dimensions covered. Interestingly, the UK finds itself in this pre-emptive position again with Strategic Environment Assessment, the DoE having published guidance on self-assessment of plans by LAs.

Pre-Directive Experience of EA in the UK

2.19. Perhaps the most important catalyst to the development of EA[1] methods in the UK was the discovery of North Sea oil and gas reserves at the beginning of the 1970s. Planning authorities in Scotland began to receive large numbers of planning applications for platform sites in environmentally sensitive locations settled by small traditional communities which were vulnerable to change. The response to this was a 1973 advice note to Local Authorities entitled "Appraisal of the Impact of Oil Related Development" by the Scottish Development Department.

2.20. According to Clarke's estimate (1988) energy-related EAs totalled approximately 100 between 1973 and 1987 in the UK. In addition, 150 more environmental statements had been included with proposals for a wide range of other developments - reservoirs, mining excavation, major roads, ski-ing facilities and more. This amounts to a not inconsiderable body of experience, considering that only 626 had been received and published across all the Regulations implementing the EIA Directive in Britain between July 1988 and July 1991 (Coles & Tarling, 1992 p.3)

2.21. The Department of the Environment was aware of the need by Local Authorities for guidance in handling these sensitive applications in such a way that the effects on the environment could be incorporated more explicitly - and publicly - in the decision-making process. Public and sometimes professional disquiet over the dominance of cost-benefit analysis for large developments (*vide* Roskill Commission exercise in 1970 on finding sites for the 3rd London Airport (Hall, 1978)), meant that the philosophy and procedures of EA began to be taken seriously.

[1] Note that, although the terms EIA and EA are interchangeable in their meaning, as both describe the same process, for simplicity's sake EA has been used when both the Directive and when referring to the British Government's implementation of it. The Department of the Environment decided to drop the word "impact" from Environmental Impact Assessment and now the term "Environmental Assessment" is generally used in UK literature.

2.22. To this end the DoE commissioned research reports on EA including the seminal one by Catlow and Thirwell in 1977. This proffered 13 recommendations which are worth detailing in part because of their historical interest and apportionment of responsibilities between proponent and decision-makers, which differ significantly from the situation we have now that the Directive has been implemented. Catlow and Thirwell recommended (para 5 ii) that if a Local Authority decides EA is required, a steering committee should be appointed to publish a statement of the key issues of the development, and prepare a brief for the analysis and appoint a team to carry it out. Possible alternatives and/or modifications were to be considered (para 6) and in recognition of the time this would take, 12 months rather than the statutory 8 weeks was recommended to complete the process (para 12 v). Finally, 12 vi contains the sensible, if radical, recommendation (from the perspective of today's cash-strapped Local Authorities anyway) that the additional costs attributable to an analysis should be shared between the developer and the planning authority. This last concept also shows little allowance for the "polluter pays" principle which had been enshrined in Community Environmental Policy since 1973 (1st EAP).

2.23. These ideas complemented a manual of procedures to be incorporated into the existing DC system (though they were not mandatory and only carried the DoE's endorsement) published in 1976. The next major publication of government guidance on EA followed some years later in 1981, and was a revision by Clark , Chapman *et al* of the 1976 manual.

2.24. In addition to research and guidance emanating from the DoE, there was a small but growing body of literature in the 1970s - mid 1980s which researched and advised on the role of EIA in the UK. Major works include Pearce, 1976; O'Riordan and Hey, 1976; Thorburn and Clark, 1978; and Clarke *et al*, 1984.

2.25. Even though EIA in the UK was evolving in a "*somewhat haphazard and unstructured manner*" (Clark , 1988) it would appear that the planning system in the UK was well suited to the incorporation and growth of EIA. As it was, the impact of small to medium developments on the environment, or more specifically, on the landscape and

local amenities, was a consideration already provided for by the Town and Country Planning Acts. So it was with some indignation, and a lot of scepticism, that the UK government (and no doubt some town planners too) faced consultation over EIA measures which were prescribed for all member states alike by the EC.

The Substance of the British Argument against the Directive

2.26. The core of the objection to EIA did not concern the principle of EIA, as the Select Committee of the House of Lords was keen to point out in its introduction to its 1981 report on EIA[1].

> *"without exception, all those who submitted oral and written evidence recognised that the assessment of potential environmental effects of development projects was an important component of the decision-making process"*

2.27. The crux of the matter was that, as in the DoE's words, EIA was already *"implicit in the Town and Country Planning System in this country"*. There was a sense of British strengths being sacrificed to the altar of European conformity and this lowering standards - a feeling expressed in the following rather arrogant tones by the representative for the Association of County Councils, at the Select Committee inquiry:

> *"I am not convinced that the British people will welcome a directive if it is only to put the affairs of Europe right. Europe must learn to join us."*

It is interesting to compare the assertions of thirteen years ago that EIA constituted an unnecessary addition to the British planning system with the results of the author's 1993 survey questions which revealed that 27.5% of Local Planning Officers strongly disagreed, and 45% disagreed with this view. Possible reasons for this change (remembering that that last quote was from a local government officer too) include increasing confidence over time in the advantages of EIA, or a more pro-environmental, pro-European stance amongst the planning profession, will be explored.

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[1] Lords' Select Committee on the EC - 11th Report, Session 1980 - 81, 3rd Feb 1981 - based on examination of the 18th Draft.

2.28. Anxiety about losing sovereignty over the development control regime aside, there were three further objections which surfaced at the Select Committee enquiry. The first was over the use of lists of projects, the Annexes were thought too prescriptive and inflexible. The DoE said that there would be risks in drawing up lists of projects to be subject to EA, since "*it is very difficult to latch on to a list of things for which you are absolutely certain you need studies and you run the risk of omitting things that do need studies ...*"

2.29. Secondly, there were warnings of unacceptably great costs and delays. The Directive was proposed at a time of deregulation and a general loosening of the UK planning system, and was seen as an added layer of bureaucracy the cost of which "could lead to considerable extra costs being imposed on developers and Local Authorities by requiring assessments to be carried out where they are not necessary ..." (DoE, Select Committee Report 1981).

2.30. Finally, on a practical point, the DoE queried the viability of setting thresholds (Article 4). The Department asked, "*would a project costing £1 million necessarily have more environmental impact than one costing £900,000? How can a developer be prevented from avoiding assessment by constructing a project in stages, each one falling below the relevant threshold?*" This was a pertinent point, which was obviously taken into consideration by the EC as Article 4 of the Adopted Directive did not fix a price limit on projects to be assessed, nor did it ask this of member states. British Regulations require redevelopments and further applications on existing sites to carry an Environmental Statement to avoid as much as possible the latter scenario of developers fragmenting development applications to remain below the threshold for assessment.

2.31. Despite these reservations the Lords' Select Committee came out in favour of a Directive in February 81 - "*the first time that the Committee had positively disagreed with the Government on a matter of EC environmental policy*" (Haigh, 1990). This is surprising in view of the vehemence of the objections stated; with the exception of the Countryside Commission, other environmental bodies who gave evidence to the Lords', wanted the Directive to be implemented.

2.32. Some of these objectives were re-iterated in the debate in a standing committee of the House of Commons (9 June 1981). In the Lords' debate all nine speakers, except the Minister, favoured the Directive. By contrast, there was much opposition to the Directive in the Commons' debate, based mostly it seems on a desire to avoid changes to UK legislation which might be necessary if the Directive was adopted. Also, fears were voiced over the opportunities for delay and litigation over failure to follow some procedure in the Directive (grounds for appeal).

2.33. However, these fears were largely overcome by amendment. The Select Committee and Commons debate had been commenting on the eighteenth draft; there were to be three more drafts until the 21st was formally proposed in 1980 and a further three years of negotiation until Britain - which had become isolated in its opposition - withdrew its remaining objections.

2.34. Thus the Directive took this final shape (as taken from Haigh's 1990 account)

- Annex I is much shorter than in the proposal, and exemptions may be made by member states without recourse to the Commission.

- A large measure of discretion over the type and scope of the information supplied by the developer was given to Local Authorities; this would reduce the risk of litigation considerably.

- The developer would not always have to describe the main alternatives studied or the reason for his or her choice. Nor does the proponent need to provide a description of the relationship between the proposed project and existing environmental and land-use plans.

Finally, as mentioned before, the Local Authority was no longer required to produce its own assessment in parallel with the developer.

2.35. The UK as we have seen consistently opposed the principle of an assessment on environmental assessment (although the Danes were responsible for a year-long "eleventh-hour" delay over a sovereignty dispute). This Government might not have acceded to it at all "*had the Lords' debate been as hostile as that in the Commons*" (Haigh, Ch 10). The Lords had partly been swayed by the conviction (acting on advice) that "*primary legislation would not be essential to implement the Directive*" (Select Committee) and that only changes to subordinate legislation, i.e. at Regulation and Circular level, would be necessary. This reading was correct - although not predicting quite how much subordinate legislation would be needed - and crucial to persuading the Commons' sceptics not to oppose the Directive's progress any further.

2.36. The Directive was notified to the member states (not "passed" since it is not technically legislation) on 27th June 1985. Its terms established that during the following three years, members states were to put in place the appropriate legislative or regulatory measures to implement it, with a deadline of 27th June 1988.

From Directive to Regulation : the Transposition of EIA

2.37. The DoE established a working party as early as 1984 to work out how best to implement the Directive. Representatives from local government, planning profession representatives, environmental groups, industrialists and other environmental departments met together to consider how the project classes which came under planning control - the majority of Annex I & II projects - should be regulated. Certain projects such as afforestation, trunk roads and nuclear power stations were discussed by other government department committees as they were, and are, covered by separate legislation of their own (which is not the focus of this research).

2.38. It is interesting to note that initial interpretations of the range of projects which would have to be subject to EA under planning regulations were much more narrow than what eventually became law under the regulations. The DoE consultation paper said that the government proposed that "*in relation to projects falling outside Annex I the appropriate Secretary of State should have the power to direct that an assessment should be*

carried out in any particular case". Implicit in this was the intention that an assessment would rarely be asked for. Put another way, British Regulations would effectively only apply to Annex I projects.

2.39. In Clark 's words (1988, p22) the Commission was "most unhappy" over this and made it clear that Article 4(2) must be read not alone, but in conjunction with Article 2 which declares that all projects likely to have significant effects on the environment by virtue *inter alia* of their nature, size or location are to be made subject to an assessment. The extent of member states' discretion is therefore strictly limited to deciding only whether the characteristics of particular projects are such that they are or are not likely to have significant effects.

2.40. This is where the thresholds and indicative criteria concept mentioned in 4(2) come into play. These thresholds are set individually by member states with the aim on helping competent authorities decide (if they were not sure that significant environmental effects were likely from a particular development) whether an Annex II project should be required to have an ES submitted.

The Transposition of Directive into UK Planning Law

2.41. As already mentioned, the Directive has been implemented in the UK by means other than primary legislation through its insertion into existing consent procedures. This may have been politically desirable because it avoided undue interference into the heart of British planning legislation. It was necessary to create a large number of Regulations because of the variety of project classes in Annexes I & II (responsibility for which was shared by more than one Government Department). This is the main cause for the failure of the UK to implement the Directive in time for the 27th June 1988, though as we shall see later this delay was crucial to the avoidance by the Government of the need to apply EA to two major road developments. Eleven sets of Regulations for EA were implemented in 1988, to be followed in by a further seven new or amended Regulations over the next three years. One more regulation relating to Drainage in Northern Ireland is imminent at time of writing.

2.42. By far the most important Regulation in terms of volume of environmental statements generated is the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1199) - England. This is the main reference point of this thesis, and is referred to hereafter as "the Regulations" (the document itself comprising a series of regulations each prescribing different parts of the same process. Fuller, Coles and Tarling of the Institute of Environmental Assessment (IEA, the research and advice body for British Practitioners of EA) have the most up-to-date tally of the quantity and relative proportions of statements to be generated by each Regulation. Their research shows that 63%, or 985 out of the total of 1564 ESs published in the UK from July 1988 - March 1993 related to SI 1199 (IEA Conference, Oxford, 1993).

The Timing of the translation of Directive into Regulations

2.43. The EA Directive should have been implemented in the UK by June 27th, 1988. In fact, the regulations implementing the Directive were implemented 12 days later than that date. The period in between famously saw the announcement by the Government that a route for the Winchester Bypass had been agreed. This major road development, which affected a number of designated sites - SSSIs, Ancient Monument - an Area of Outstanding Natural Beauty - was consented to without reference to an environmental statement which the Department of Transport should have prepared under the Directive's guidance. However, by arguing that its own Regulations were implemented very soon after development consent had been given and Community law did not have direct effect on UK Regulations, the Government after a great deal of protest and threats of formal proceedings from the Commissioner for the Environment, managed to get away with this transgression, and six others.

2.44. Since this period (around 1989 - 90) of colourful exchange between the Commission and the Department of the Environment, the UK Government has on the whole taken very seriously the need to comply with the Directive. The seminal 1993 "5-year Review" of the implementation of the Directive by Member States is the most detailed assessment of how well states have translated the Directive into their own legal systems and the extent of their formal compliance. Though the review goes into some

detail into the many minor omissions and divergences from the Directive - which are in fact less heinous than those committed by many of the other Member States, its conclusions are on balance quite positive. The Review's overall assessment (p.97) of the effectiveness of the translation and implementation of the Directive is as follows:

> *"A number, but not all, of respondents consider that the formal provisions made by the UK broadly implement the requirements of Directive 85/337/EEC."*

In order to put the performance of the UK in its European context to judge how well or badly it is complying with the spirit of the Directive compared to its neighbours, and also to pick up on the "best practices" elsewhere, it is necessary to look at implementation at a Community level. It is to this we turn next.

CHAPTER THREE

THE IMPLEMENTATION OF EA IN THE EUROPEAN COMMUNITY
A Selective Critique and Comparison of Progress with Implementation in the UK

3.1. The starting point for the divergence in implementation by individual member states of the Directive is the considerable amount of discretion allowed in the transposition of it into national legislation. This chapter explores the extent of both formal/legal and (more importantly) practical compliance with the Directive.

3.2. No assessment of the European experience of implementation is complete without a dissection of the problem of thresholds. These are chosen by individual member states and the result is a bewildering variety of sizes and quantities of developments which must be subjected to environmental assessment (if planners consider it necessary). The question, "does it matter that we all do things differently?" is pertinent to the future shape and survival of EC-wide environmental policy, especially now that subsidiary may be "invoked" by a member state as justification for choosing not to alter policies to suit its own circumstances.

Integration

3.3. The 5-year Review of the Directive's implementation neatly encapsulates the long process of getting Member States integrating EA into their existing development control systems. It states that the final approval of the Directive by the Council of Ministers in 1985 "*did not signal the end of the process of adoption, but rather the beginning of gaining acceptance for the details of its transposition in practice*"; (thus recognising that the main goal is compliance that is practical not formal). It acknowledges the "*uncertainty over the precise interpretation* [by individual member states] *upon the basic assessment procedural requirements*" which has been caused by the broad, and some say, vague nature of the Directive.

Implementation

3.4. If we look at the track record for implementation of Community Directives, from the legal viewpoint, we can see that not only is this less than perfect, but also very variable between member states. Renger and Nathanson (1992) have compiled a "table of compliance" as at March 1992 which puts Denmark at the top of the league with a 99% implementation rate and Luxembourg the worst at 89.8%. The UK is vindicated in its diligent approach towards implementing Directives of all kinds - 3rd place in the league. However, the authors note that for the UK "*the implementation rate applicable to the environment is poorer than for the implementation of Directives generally*". With specific reference to Environmental Assessment, the UK transposed the Directive into national legislation two weeks late, but this does not seem so bad (save for the let-out it gave the Government over failing to provide an ES for the controversial Twyford Downs/Winchester Bypass Scheme[1]) compared with some other member states. Germany was two years late in its implementation and Luxembourg in 1992 was still on the brink of compliance. There is an absence of national EIA data in Belgium (Devuyst & Hens, 1991), which confusingly allows its different regions to enact their own EA legislation.

Interpretation : The "Threshold" Problem

3.5. Wide variations of "minimum size" thresholds of projects needing EA are apparent. Jones, speaking at a UCL conference in December 1992, demonstrated this and the links between thresholds, "scope" or coverage and the quantities of ESs generated per member state. Taking the example of Annex 2[2] project category, pig rearing, she said that the minimum threshold requirement ranged from 20 pigs in Greece, through 1500 in the Netherlands, to 5000 in the UK. However, she went on to compare these differences with those over scope of coverage Annex 2 projects: some countries are more generous with the types and range of developments they admit to

[1] Salter, March 1992.

[2] Familiar to UK planners transposed into "Schedule 2".

this version of Annex 2. Thus in Denmark there are low thresholds and narrow scopes (producing fewest - six - ESs in one year (1991)); the UK has high thresholds and wide coverage, which evens out at the average annual tally of ESs for member states - 321 (see also 5-year Review, p39). The other extreme is France, which has low thresholds and wide coverage, and handled 5500 ESs in 1991 (see also 5-year Review, p39 Table 4.1 for a wider exposition of this pattern).

3.6. On the one hand the UK's choice of thresholds would seem to be rather high and therefore allowing sizeable projects to slip through the "EA net" which would have elsewhere been subject to assessment for Environmental impact - hardly a boon for environmental protection. On the other hand by virtue of a broad coverage of Annex II projects the UK has managed to keep its generation of ESs to manageable and sensible proportions[1] (to the benefit of the implementers in LPAs). Hence an interesting "play-off" between potential for environmental protection, or at least the formal inclusion of environmental impacts in the decision-making process, and ease of implementation.

3.7. It should be noted that a variation in thresholds is directly attributable to what is perhaps the single most confusing aspect of the EA process as prescribed by the Directive: the interpretation of "significant environmental impact" which is the criteria for inclusion of a project category in Annex/Schedule 2.

Comparison of Public Access to ESs

3.8. The UK emerges with honour compared to some of its European neighbours over the openness of EA procedures, statements and decision making to scrutiny of the public. By contrast the Southern EC countries in particular have not made sufficient provision for consultation by the public, or even the right to obtain copies of statements

[1] France, by contrast, is having to consider raising its thresholds to reduce the great weight of ESs generated - it hopes to "eliminate about 500 - 700 EASs each year" (p84, 5-year Review, Annex for France)

for consultation. In Greece the ES is in general only presented by *reading* it to interested parties.

The Need for Provision for Monitoring and the Establishment of a Statutory Independent EA Body

3.9. One major area where the UK could learn from the good practices of other member states is in the arrangements for central collection of ESs and the establishment of an independent statutory body to set and maintain standards relating to scoping, the determination of significant impacts, and monitoring of ESs for quality and objectivity/accuracy. Most Member States have arrangements for central collection of ESs which are working well, and Belgium and the Netherlands have appointed an independent statutory body. The scant and patchy coverage of research into EA in this country can be directly attributed, in the author's firm opinion, to the DoE refusal, so far, to invest time and money in such a repository. Accurate sequential research is lacking; and it is impossible for even the most diligent research group to obtain totally accurate counts of ESs while there is no statutory central repository for them. Wood and Jones were made acutely aware of this in their 1991 research and made recommendations - which have not been heeded - to remedy this (Section 5, Monitoring EA and Planning, 1991).

3.10. Examples of further discrepancies and deficiencies in formal compliance between countries are too numerous to mention; the 5-year Review discusses them in some detail. The latter noted however also that Member States are "*trying to assist in reducing the existing deficiencies and discrepancies between countries,* [but] *many are likely to remain unless further remedial measures are taken*" (p18). This is interpreted by the author as an acknowledgement of the need to re-examine and tighten up the sloppy provisions and guidelines of the Directive itself.

The Lesson from Europe : Conclusions

3.11. In the meantime, in the UK would be prudent to train a weather eye on the developments and improvements in implementing the Directive achieved by its fellow Member States. By continuing[1] to rationalise its interpretation of the Directive as portrayed in the Regulations, the Government will be making a virtue of the Directive's flexibility, not perpetuating the initial inconsistencies this created.

[1] For example, the Government has just added wind generators, motorway service areas, coastal protective works and private toll roads to Schedule 2. The Amendments to the Town & Country Planning (Assessment of Environmental Effects) Regulations 88, became effective from April 8th, 1994.

CHAPTER FOUR
QUESTIONNAIRE RESULTS

Survey Coverage

4.1. In March 1993, a 10-question survey on attitudes towards and experiences of processing environmental data - through EA and environmental auditing - was sent out to all Local Planning Authorities (LPAs) in part of the SERPLAN[1] area. The scope of the survey, comprising a total of 58 authorities from Surrey, East and West Sussex, Kent, Hampshire and the Isle of Wight, was chosen for its compactness for research purposes and cohesion as a regional planning unit. The survey was intended as the first to give 100% coverage - the whole population - of LPAs in the South East Region, on the subject of EA and related fields.

Methodology

4.2. Following a pilot survey to LPAs in West Sussex, 58 questionnaires were forwarded to the most appropriate (i.e. EA-experienced) planning officer. A follow-up by letter and/or telephone was carried out in order to maximise the number of returns and follow up incomplete answers. A copies of the questionnaire and covering letter are reproduced in Appendices B and C.

Response Rate

4.3. 40 of the 58 authorities returned a completed survey form: a response rate of 69%. This is not as high as the 100% coverage rate achieved by Thérivel at Oxford Brooke University (for the completion of the Annual EA Directory). Other surveys (Coles & Tarling 1993, Wood & Jones 1991, Thérivel 1994, for example) have used a sample of up to 40 LPAs. Thus the conclusions of other surveys are based on

[1] SERPLAN: the London and South East Regional Planning Conference.

information collected from the same number of LPAs nationally as this survey has used from one region. This could be said to reinforce the latter's statistical validity.

4.4. There were three main contributory factors why the author's survey (despite follow-up efforts) did not achieve 100% response rate.

- Lack of familiarity among professionals at time of survey with the issues surrounding EA, SEA and environmental auditing. The most usual number, or modal frequency, of ESs handled was zero. Half the respondents had handled one or no ESs. It may be that some officers who did not return a form were discouraged from answering questions because they did not have the experience - and perhaps interest - in environmental assessment.

- Time constraints on Local Government Officer workload was the apology appended to four uncompleted forms. As someone employed in a Local Authority Planning Department herself, the author is reasonably sympathetic to this lack of time for "peripheries", when targets for determination and so-called productivity have to be met first.

- Lack of "leverage" associated with solo student surveys (related to previous point), compared with surveys undertaken, for example, by the University of Manchester on behalf of the DoE (Wood & Jones 1991).

Format & Scope of the Questionnaire

4.5. The scope of the survey is deliberately broad. The aim was to complement and add to the limited body of knowledge about EA, but also to explore the extent to which related environmental management tools - environmental auditing and the proposals for SEA - were being acknowledged and approved by planners. As far as the author is aware, this is the first published survey which tried to collect data on all three concepts.

The survey form was divided into two parts - half for establishing opinions and progress, and the remainder for the collection of statistics on quantities of EAs handled. A brief listing of **issues chosen for analysis** under which questions were assembled, is as follows:

a. Ease of Implementation
- in determining the need for EA.
- clarity of Government guidance.

b. The "Place", or Status of EA
- in the decision-making process.
- as an environmental protection measure.
- its validity as an addition to the established British planning regime.

c. Objectivity of Environmental Statements
- should statements be prepared under statute by LPAs or a Neutral Agency (as in Holland) or by a combination of both?

d. Environmental Auditing
- progress, if at all, so far, by the LPA.
- type of audit.

e. The Implications of Strategic Environmental Assessment
- on LPA technical resources.
- on practicability of implementation.

4.6. The factual half of the survey aimed to extract statistical information on numbers of ESs handled, and the proportions which went on to appeal. Care was taken to design the form so as to lead the respondent gently through opinion-oriented questions on to the more complex quantitative questions at the end. Despite this, "respondent fatigue" might have played a part in the inconsistencies between totals quoted in Questions 6 and 7. The total of ESs by type (Question 7) should have added up to the total of ESs in Question 6, but did not in around a fifth of cases, until respondents were 'chased up'.

4.7. Respondents were asked to quantify:

f. Numbers of EAs Handled or Received

- since the Regulations were activated in July 1988
- over the year preceding the survey (actually 15 months starting from January 1992)

4.8. The inclusion of two concurrent time periods was designed to establish what proportion of all ESs produced over a five year period had arrived in the latest year of the Regulations. This was evidently a difficult question to answer; one reason may be that the determination period of an application with ES attached can stretch for months (Coles & Tarling, 1993, found that the average span was 43½ weeks). This complicates the authorities' ability to keep an accurate annual tally. Nevertheless it was essential to ask both "totals" questions for comparison with other surveys.

g. Quantities of ESs received by Development Type

- proportion covered by Schedule 1 and 2.
- refusal of application on strength of lack of information supplied in ES.
- whether those refused applications went to appeal, and if so, what the outcome was.

Background to Responses by LPA Type and Level of "EA Experience"

4.9. Twenty out of twenty-five (69%) Borough Councils, eleven out of eighteen (61%) District Councils, four out of five (80%) City Councils, and five out of six (83%) County Councils responded to the survey. The average number of ESs handled by each authority type was found to be 1.0 for Boroughs, 1.2 for Districts, 6 for City Councils, and 14 for County Councils. At this level of fragmentation by authority type, the figures do not reveal much. However, if they are amalgamated into two groups - counties and "the rest" (grouped under "districts") to reflect planning responsibility divisions into strategic "County matters" (minerals, waste disposal etc) and day-to-day development control, handled by districts, boroughs and cities in the SERPLAN area, there is a more

interesting picture. 51% of ESs handled over the survey period (July 1988 - March 193) were handled by districts / boroughs / cities, and 49% by counties.

4.10. Comparing these figures with those collected in 1991 by Wood and Jones for the DoE there would appear to be a rise in the involvement of counties in the determination of EA applications. Their research revealed that there was a proportional ratio of 25% to 75% for counties to districts[1]. This may be linked to the nature of ES-type application: large and by definition with "significant effects" on the environment. Since counties are consulted and often employ in-house environmental (e.g. ecological, archaeological) specialists they are likely to be sent the majority of non-county matters ES applications by the districts in this area. In any case, these new findings could be an indicator or guide to the need for adequate resources and technical abilities in the assessment field to be secured for county councils. This is even more a requirement for the rigours of carrying strategic environmental assessment of development plan policies.

Experience with Handling ESs - the "Zero Count"

4.11. At the time of this survey twelve out of forty (30%) of all LPAs had not received or been consulted on an EA. This represents a substantial gap in the collective experience of South East authorities, which is intensified by the "skew" effect of a small number of authorities having a very large number of ESs. There was little correlation between the actual level of experience and the grade given in the survey for ease of implementation of the Directive or opinion of Government guidance. It is difficult, therefore, to be sure that all answers are equally valid in as far as they are based on knowledge acquired "on the job".

[1] 5% of the total of ESs handled was accounted for by Urban Development Corporations and National Parks, a different category of planning authority. Neither is a part of the South East sample area.

4.12. This 30% figure, when inserted in a chronology of other surveys, shows that the number of LPAs without EA experience is continuing to fall at steady rate. This is illustrated below.

Figure 1 **Proportion of "Zero Count" LPAs (no experience of applications with ES since 1988)**

YEAR	LPAs with zero EAs	REFERENCE/ RESEARCHERS
1990	69%	Coles & Fuller 1990
1991	57%	Tarling 1991
1992	41%	IEA Survey 1992
1993 (early)	***30%***	***YORKE***
1993	20%	Healey & Thérivel 1993
1994 (projection)	<15%	Thérivel 1993

Explanatory Commentary on Data Collected

Questionnaire results are reproduced in table form in Appendix B.

Question 1 **In implementing the 1988 Environmental Assessment Regulations, how easy has it been in practice to distinguish between applications for which EA must be requested and those which do not?**

4.13. This question was intended to follow up, without actually duplicating, research by Wood and Jones in 1991 and 1992 on the ease of implementation of the Regulations. The author's survey asked respondents to grade how easy or difficult they had found determining whether an application was required to carry an environmental statement (this would require matching the application to the brief threshold/descriptions listed in Schedules I and II). Fortunately, none found that very difficult. 12.5% had no opinion

(of which the majority had had no experience of EA) and more than a third (37.5%) said it was quite easy. Finally, 20% of respondents said making the distinction was "no problem".

4.14. It must be concluded that with over half of the sample recording a "quite easy" or "no problem" response there is evidence of confidence in implementing the basics of the Regulation. Further more, it can be shown that this confidence has increased over time. Wood and Jones (1992) found that in a sample of 34 LPAs "just over ⅓ of officers found the Circular to be helpful in identifying those Schedule 2 projects which should be subject to EA. Just over $^1/_5$ had found them unhelpful". Naturally, change over time can only be expected as officers become familiar with the decision-making process.

Question 2 **How far would you agree with the following statements?**

a) **"Guidance too vague"**

4.15. 50% of respondents agreed with this and a further 5% strongly agreed with this statement. This is slightly less encouraging than the conclusions reached about interpretation of the Regulations in the question above. The lack of guidance in the UK was also criticised in the 5-year EC Report on the Directive which said:

> *"More specific guidance should be issued to reduce any ambiguity in the interpretation of the indicative criteria and thresholds for Annex II projects ..."*
>
> COM(93)28 VOl 12, Annex for the United Kingdom, April 1993.

The findings also tally with Wood and Jones' 92 survey, ⅔ of whose respondents felt further guidance on this front was needed.

b) **"Other material considerations come first"**

4.16. Planners seem to have the pragmatic opinion that the power of EA is not unlimited: a conclusive 67.5% of authorities agreed and a further 17.5% strongly agreed that when the different factors affecting individual applications come to be weighed up, the EA was certainly not the only - nor always the most - important material consideration in their decision. Further research into what other material consideration the planners were putting first would clarify this finding; presumably the conformity with the development plan would be first (especially with the Environment emphasis on the primacy of the development plan, *pace* PPG12, 1992). Notwithstanding this, the Circular is firm in stating that:

> *"planning permission shall not be granted for projects of this kind (Schedule I and II projects) unless the authority granting the permission has first taken the environmental information into consideration."*
>
> Circular No.15/88, para 4-558 (Author's emphasis).

The Planning inspectorate does not give any further guidance in this respect to its inspectors. According to a Senior Planning Inspector,

> *"the evidence in the environmental statement as far as the inspectorate is concerned more or less gets swallowed up in the body of evidence as a whole"*
>
> Harris 1993, Personal Communications

c) **"EA can be seen as an environmental protection measure"**

4.17. As we have seen earlier in Chapter 3, many expert commentators are rather sceptical about EA being an environmental protection measure. On the whole it is regarded, in the words of Clark and Herrington, 1988 along the lines of *"a tool to aid planning decision taking rather than an environmental protection measure per se"*. However, this view from the academics is rather at odds with the endorsement given to it by planners who are actually implementing the Regulations. 34 of the 40 (85%) respondents said that they agreed or strongly agreed with the statement above. This was

the most positive reaction, in terms of proportion of answers, to the EA Regulations in the whole survey. It may have been useful to probe further and ask how many development schemes had been required to incorporate environmental modifications before permission was given - or subject to S.106 conditions - on the strength of information contained in the ES. Wood and Jones 91 and Coles and Tarling 93 found that between a half and two-thirds of their sample of "environmentally assessed" applications had been improved in this way.

d) **"EA Regulations are an unnecessary addition to the Planning System"**

4.18. This question was included as a test to gauge whether the doubts expressed by the UK Government over the need for EA during the Directive's drafting are reflected in the planning profession in 1993. At the House of Lords Select Committee, the DoE, in its oral evidence,

> *"expressed doubts on both the practicability and the desirability for legislation in the kind of detail implied by the draft directive"*
>
> Para 31, Select Committee 1981.

The DoE also said in the same report that EA was already implicit in the whole of our Town and Country Planning system in this country. This feeling that Britain did not need extra legislation is echoed right up to the Circular (4-555 para 6).

4.19. This attitude is not apparent in the results of this 1993 survey. Only 5% of respondents apiece agreed or strongly agreed that "EA is an unnecessary addition to the planning process. 45% disagreed, and 27.5% strongly disagreed (the rest had no opinion). This is evidence of acceptance of a European planning concept into the British system, as well as a growing awareness of the need to incorporate environmental considerations into the development control process.

Question 3 **At present, EA in the UK is carried out by the developer, or a consultant hired by the developer. Do you think that EAs would be more objective if carried out instead by a Local Authority, a neutral agency or a combination of those two?**

4.20. Bias in presentation of environmental information by the developer/consultant is a danger inherent in the EA procedure, as long as the developer is free to be the author or commissioner of the ES. This problem is compounded in Britain by the Government's decision not to regulate the quality of ESs through the compulsory use of officially-approved consultants (as happens in France and Belgium) or appoint a central non-commercial institute to prepare the statement (as in Italy and the Netherlands). Either of these options would be likely to produce assessments which present more objectively the likely impact of a development on the environment. The alternatives to the "neutral agency" path would be to have all ESs prepared independently by Local Authorities on the developer's behalf[1].

4.21. Only 7.5% of respondents said that they would like to see Local Planning Authorities carry out the assessments for the developer. This may represent a desire to deflect further assessment work from a mounting deskload as much as an opinion that LPAs would not on the whole by more objective at preparing EAs. The majority of respondents (57.5%) envisage a neutral agency as being an objective assessor. 20% favoured a combination and a further 20% did not know which option was best.

4.22. This question could have been better phrased, with hindsight, since a small number of respondents initially ticked more than one box, having not realised that the three options were mutually exclusive. A re-arrangement of the data, with a fourth option, "don't know", assembled from the sum of the "don't knows", was necessary to present the data in a clear way.

[1] Except where the LPA is the developer, in which case the ES should be prepared by a neutral agency to minimise bias. This was an option unfortunately not explored in the survey.

4.23. As mentioned in the footnote future research would incorporate a further option covering the situation when the LPA is the developer.

Question 4 **Has your authority considered producing an environmental audit and, if "yes", what does this assess?**

4.24. Half (50%) of the LPAs sampled had not considered producing an environmental audit (EAU). The remaining half divided into those who have an audit in progress (35%) and those who have already published one (10%). Thus, although at present there are relatively few EAUs in existence, there are many more about to be published. Evidence of additional efforts to produce an audit, which have been thwarted at present by lack of resources was noted in the inclusion of three notes pleading "lack of funds" by those three respondents alongside their "no" responses.

4.25. Environmental auditing is quite different from the auditing of environmental statements, which is a stage in the process of environmental assessment. EAUs are a linchpin in the Strategy for Sustainable Development (DoE 1993). It is one of the fastest growing manifestations of environmental management being practised by LPAs today. It is rather surprising that only half of the LPAs sampled had started or completed an EAU. This is low compared with the proportion countrywide identified by the CPOS in 1991. Of all the counties in England and Wales, 26 had or were prepared to conduct an EAU while a further 13 were considering the possibility, together accounting for 87% of the county councils in England and Wales. [Note the slight difference in question *emphasis* compared with the author's question categories; this would lead to a smaller total than that produced by CPOS, but probably would not account for a difference as great as 37%.]

4.26. The second half of the question seeks to establish what kind of audit was being produced. This division by type was chosen in order to explore the extent to which planners were taking environmental auditing. This amounted to requiring an indication that the authority was assessing the implications of its planning policy decision, or whether it was assessing its own internal performance. Two more options were

computed following cross-tabulation of data sets to produce a "neither" and "both" option. The fact that more than half of LPAs surveyed here had produced the most comprehensive and wide-ranging type of EAU - that dealing with both their own internal performance and the impact of the authority area's environment - is very encouraging. It is clear that the sustainable development messages from the Rio Summit and the Government's 1994 Strategy are galvanising Local Authorities into initiating self-auditing. Out of the sample of 20 authorities who were preparing or who had completed audits, one assessed the implication of planning policy only; a further six looked at their authority's internal performance only. Finally, there was one return apiece from respondents who did not know what the audit covered, and who claimed their audit covered neither of the types described in the question.

Question 5 **Does you Authority have sufficient technical / scientific capability "in-house" should SEA become part of the statutory planning process?**

4.27. Nearly half (47.5%) of respondents reacted rather pessimistically to this question, saying that they had insufficient capability for SEA, the assessment of Development policies and plans, plus insufficient funds to call in a developer to do the job. A further quarter of the sample also said that they did not have sufficient technical/scientific capability "in-house" but that they were able to hire consultants. 10% of respondents gave a "don't know" response. Only 17.5% of authorities have what their representative considered to be appropriately experienced/available officers to cope with the addition of SEA to the planning regime. One of the reasons why such a relatively small proportion feel this positive towards SEA is probably down to a reaction against the perceived amount of time and effort involved in preparing a strategic environmental assessment of each new development plan - and all the extra consultation at public inquiry that that entails. Secondly, it could represent the "fear of the unknown". The Government would be well advised to learn from its experience of tardy promoting of EA by giving advanced guidance or simply explanatory notes on the workload and techniques likely to be required for the imminent new directive. The DoE has been criticised for lack of guidance from many fronts but most significantly in the 5-year Review of the Directive from the EC (COM(93)28) Vol 12).

4.28. The second part of the question asked if SEA is a "practicable" proposition (i.e. could be implemented in practice). It was intended to field "gut responses" to the concept of SEA. Out of 37 responses, almost half (18) stated that it was practicable and half that number again thought it wasn't. As they stand, these answers suggest that planners are reasonably optimistic about implementing this complex procedure effectively.

4.29. However, the high number of "don't know" responses, as well as the three missing responses, suggest that not everybody was comfortable about the wording of the question, which could perhaps have been clearer. A future version of this question (i.e. in further research) would read "Do you think it is practical to assess all development policies and land allocated for development in your authority's Plan for the environmental impacts likely to be created by development?"

Question 6 **Number of EAs handled or received for consultation by authority**

4.30. Over the whole period during which the Regulations have been in operation, 40 South East LPAs have processed 149 Environmental Statements. This averages out at around 30 per year over the whole region. (The true figure will be higher since not all the Region's LPAs responded to the survey.) The rate of publication of ESs has increased over time with the total for the latest year (from Jan '92) reaching 41. The maximum number of ES handled by any authority was 50 (a county), followed by seventeen, of which 10 were in the latest year (by a borough). The distribution of ES-related applications around the region is very uneven: twelve authorities are still waiting for their first ES and nine have only handled a single one (as at April 1993). This patchiness is a nationwide phenomenon highlighted in other surveys (see the earlier section on "Zero Count").

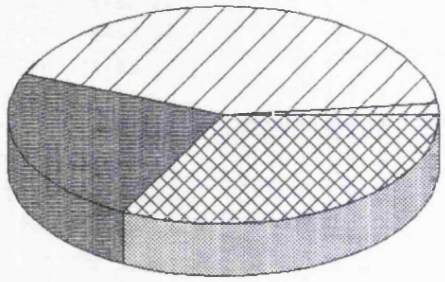
4.31. There is no exact way of comparing the annual totals of ESs handled by the sample authorities with the annual totals from other survey samples because of the differing sample sizes and areas - 40 South East LPAs compared with the 500+ UK "competent authorities". Other researchers have estimated the annual total of ESs for

FIGURE 2

ENVIRONMENTAL STATEMENTS BY TYPE OF DEVELOPMENT
South East Region. Totals from July 1988 to April 1993

Schedule 1

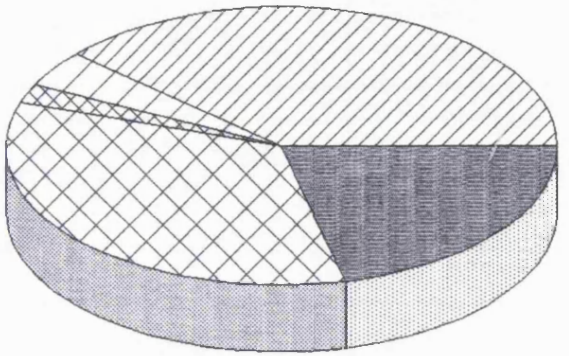
Total: 55 ESs



	No. of ESs per project type
Chem. Installation	1
Transport	23
Power Station	13
Other	18

Schedule 2

Total: 94 ESs



	No. of ESs per project type
Minerals	36
Energy	4
Heavy Ind.	2
Infrascrtuture	32
Other	20

the UK as 131 (Wood and Jones 1991), 250+ (Newson 92), 350 (Coles and Tarling 1993) and 400 (Thérivel 1993). Given that there are 518 competent authorities under the EA regulations (the total UK LPAs), from which these totals are drawn, the 40 authorities within this survey make up around 8% of the total. Yet the latter handled around 12% of all ESs if the UK annual average is taken as 350 ESs. This demonstrated a higher than average concentration of ESs in the south east - a trend first noted by Wood and Jones in 1991; however the well-known fact that the development-pressurised south-east is subject to more applications of all descriptions than any other region goes a long way towards explaining this slight anomaly.

Question 7 Quantities and types of ESs received

4.32. Respondents were asked to mark down the number of ESs received by their authority for each category of project. A total of nine types of project category were grouped under the heading of "Schedule 1" (Sc1) and "Schedule 2" (Sc2). The total ESs for each schedule were 55 and 94 respectively - a very high proportion of Schedule 1 projects.

4.33. The project types (which are listed in much more detail of course in the Regulations) were amalgamated by the author with the hope of making the question easier to complete, and not so long as to deter correspondents from completing the questionnaire. Judging from the poor quality of answers - with differences in totals given between questions six and seven, this strategy was not entirely successful. (On the other hand, a lack of familiarity of the individual with the EA process, or lack of internal monitoring by the LPA, may have made this question difficult to complete). Efforts were made to pursue the correct answer, but some (six) authorities said they did not have a breakdown of ESs by project category. The resulting necessity to impute some answers so as to equal the overall ES total of 149 mean that this question's results must be treated with some caution.

4.34. The largest group of ESs published under Schedule 1 was for Transport projects - just under half of all projects, and around 15% of all statements. Power stations

represented quite a high proportion - a third - of the SC1 and 9% of all ESs. "Other" projects, covering waste disposal, ports, iron/steel works and radioactive waste amounted to around 12% of Sc1 projects and an eighth of all ESs.

4.35. Minerals applications - covering the extractive industry - were responsible for the largest share of Sc2 ESs published: 24% (or around a quarter of all ESs). Infrastructure projects were the second most numerous after this - evidence of a heavy road-building programme in their region. A third of all Sc2 projects, and 22% of all projects with ESs, came under the transport umbrella. These results are illustrated in Table 2 (over).

Question 8 **Grounds of Refusal of Planning Application**

4.36. Only 3 applications have been refused on grounds of inadequacy or incompleteness of the accompanying environmental statement. That there were any refusals attributed to this at all is very surprising considering this is against government advice. This question has proved a good test of the level of knowledge of the Circular and Regulations! The Circular states firmly that:

> *"It will not be open to the local planning authority to take the view that a planning application is invalid because an inadequate environmental statement has been supplied or because the applicant has not provided further information when required to do so ..."*
>
> Para 44, Circular 15/88

next page...

It is equally surprising that so few applications have been refused because the information contained in the ES revealed a too dangerous (insupportable) impact on the environment. This raises the issue of how well the environment is actually being protected by the EA Regulations, and casts doubt over the objectivity of the statements themselves.

4.37. The topic of refusal/reasons leading up to a determination could be explored further under the heading of "modifications". Research into the number of applications which are modified before determination or which have mitigating S.106 conditions attached after permission would be a good test of the power of EA to protect the environment (though this cannot be quantified). This would build on the work done by Wood and Jones in 1991 for the DoE which found that ⅔ of the 24 case studies had been modified in this way. Tarling (Coles and Tarling 1993) found the equivalent proportion was almost half of his sample.

4.38. None of the applications refused on the above grounds went to appeal (though one application was made but then withdrawn). The fact that there have been no court cases across the whole sample and only a handful of high profile inquiries challenging contents or impacts revealed in an ES suggests that EA has been successfully introduced into the planning process[1].

Conclusions and recommendations arising from analysis of the questionnaire

4.39. In relation to the issues highlighted at the beginning of this chapter, the conclusions are as follows:

Ease of Implementation

[1] Note that over the past 18 months there have been a small number of test cases for example the Gateshead Incinerator application, in which the precedence of the EA Regulations over the Environmental Protection Act (1990) has been debated.

- The proportion of "zero-count" authorities is falling steadily. This means that officers in more authorities are becoming familiar with the EA techniques - and gaining skills which can be usefully transferred or adapted to other environmental planning /management techniques such as EAU and SEA.

- The high proportion of respondents who found it "quite easy" or "no problem" to implement the basics of the Regulations is encouraging and shows increasing confidence in identifying applications which should be subjected to EA.

- More then half of those sampled agreed or strongly agreed that the current guidance is too vague. Government advice is woefully inadequate: a case of "too little, too late" from the outset. There is still no sign of the promised additional guidance (personal communication with Parry, DoE, November 1993, followed up May 1994). Indeed, the DoE seems to have switched the focus of its attention from EA to sustainable development. It has published "This Common Inheritance", 1990 and the Strategy for Sustainable Development 1994, before it has made sure that Local Authorities have enough information to implement an earlier - but no less important - planning policy.

The "Place" or Status of EA

- Environmental Assessment may be the first part of the decision-making process for relevant applications, but is frequently regarded by the Government through to Planning Officers (as surveyed here) as not the most important consideration to weigh up. It would be interesting to conduct more research into which order of precedence officers give other considerations and whether this varies with different project categories.

- Planners have faith in the powers of EA to protect the environment - more so it would appear than previous researchers have given credit.

- Further satisfaction with EA is evident in the widespread disagreement with the contention that EA is an unnecessary addition to the planning system. Early Government scepticism over its contribution to the well-established UK planning régime seems not to have affected those who are now implementing the Regulations.

Objectivity of Environmental Statements

- The majority of respondents envisage a neutral agency as being a more objective option for the preparation of ESs compared with the present statute.

Environmental Auditing

- Half of the sample LPAs had not considered producing an EAU. But with the 13 EAUs recorded as being "in the pipeline" there is likely to be full coverage by EAU of the South East within the next two or three years (if this rate continues).

- More than half the authorities are producing wide-ranging and detailed EAUs. LPAs are taking the initiative from the Rio Summit and the advice of their own colleagues (see Morphet 1992).

The Implications of Strategic Environmental Assessment

- Many planners responded pessimistically to the prospect of having to carry out SEA. Perceived lack of suitably trained/available staff and financial resources were the main reasons for this. Ignorance of the practical differences between EA and SEA, or "fear of the unknown" prompt the need for guidance from the Government on the likely workload and techniques demanded by SEA.

Numbers of ESs Handled or Received

- Around 30 ESs per year are being produced for the 40 South East authorities sample (though the true figure, which would include the remaining 18 non-responding authorities, will be rather higher).

- The "top three" types of project by number of ESs published are minerals (Sc1), infrastructure (Sc2) and transport (Sc1).

- Very few applications for planning permission have been refused on the strength of insufficient information - a predictable result given Government advice against this practice. Also, an equally small proportion were refused because of an insupportable impact on the environment; this is more cause for concern because if begs the question of whether the EA process is actually "weeding out" developments which have the potential to damage the environment. Perhaps the interpretation of the term "significant effects" is being weighed too strongly in favour of development and to the detriment of conservation.

4.40. The research has achieved its aim by exploring the opinions/experiences of planning officers implementing the Regulations, and it has produced some interesting statistics some of which challenge existing research literature, but others of which help to update and augment the limited body of hard facts about volumes and distribution of ESs. The conclusions drawn from the above will be useful in the further consideration (in Chapter 5) of the relationship between EA and sustainable development, SEA and the Environmental Protection Act.

CHAPTER FIVE

ENVIRONMENTAL PROTECTION MEASURE OR PLANNER'S CHECKLIST?

5.1. One of the most interesting dilemmas facing the commentator on EA is how to describe what it is. The author has noted at least sixteen viewpoints in her review of literature. To reproduce them all would be tedious for the reader but to choose just five which cover the spectrum of views would serve as an illustration of the difficulty in placing EA in any one "slot" in the land use planning regime.

5.2. Clark (1988) proffers one of the most succinct and balanced descriptions, *viz*

> "*an ordered process for gathering and evaluating information and opinions concerning the likely environmental consequences of proposed projects, to aid rational decision making*".

5.3. Thompson (1990) on the other hand is one of the commentators who sees EA as a specific tool more that a process. He says:

> "*The value of EIA as a tool for project modification cannot be stressed too strongly. Its success in this function may depend largely on the way in which any given methodology is applied to the project in hand*"

5.4. Fuller, Coles and Tarling (1993) discuss EA from the point of view of its perception not by the planning profession but by the "interested" public, in other words "environmentalists":

> "*Environmental groups initially perceived EA as an aid to their cause. However, as it became clear that it was not designed to prevent development and industry began to utilise EIA as a design tool, then environmental groups have placed less emphasis on it. Nevertheless the adequacy of an environmental impact statement is still often the lever which environmental or community groups will attempt to use to prevent development or enforce changes.*"

5.5. Nelson (1988) proffers the most complex description of EA, which highlights the "*distinction between use of EA as a process or philosophy of approach and the much*

narrower definition of EA as technique for presenting and evaluating the findings of such work to satisfy the requirements of the Directive" (author's own emphasis). He describes the variety of techniques used for the different stages of the EA process - analysis, assessment and presentation of information - as merely the "mode of execution", not the essential justification for the activity in question. He emphasises that it is the sum of all these actions which constitutes the EA and "*singles it out*" from conventional feasibility studies, and development control planning reports, with which EA has sometimes been compared.

5.6. A contrasting approach to these complex theories is simple to describe EA as a list. This most basic reading, or justification of EA, appears to hold sway high up in the planning policy-making world. The recently retired Assistant Chief Planning Inspector (Harris, 1993, personal communication) believes that "*EA doesn't do a vast amount extra over and above our own planning system but it does provide a check list ... without an ES you* [referring to the inspector presiding over an appeal] *have a situation where all the issues - environmental and everything else, emerge from different directions. EA is an extra safeguard.*"

5.7. From these excerpts it can be rationalised that EA is enormously flexible in its application and that the more effort and technical ability put into carrying out the assessment the more useful a technique it is for making informed decisions.

5.8. However, the specific issue of whether EA can be seen as an environmental protection measure is often sidestepped or not tackled at all in literature. This may in large part be due to the difficulty in quantifying the success of the EA system in providing environmental protection (a problem identified by Fuller *et al* 1993). If EA's one *raison d'être* is to protect the environment from significant impacts by developments then there must be some yardsticks to indicate whether EA, like any other policy, is achieving its aim.

5.9. Fortunately, on the strength of the author's own survey findings and the detailed discussion of EA's environmental protection rôle contained in the EC 5-year Review, some more firm conclusions can now be drawn.

5.10. In Section Two of the EC Review's Final Considerations, the conclusion is reached that,

> *"it is clear that the Directive has had certain beneficial effects in protecting the environment of Member States."*

The ways in which this has been achieved are threefold, namely by (quoted verbatim)

- providing lead authorities with environmental information to be used in measurement of individual project proposals.

- identifying in advance of project realisation, mitigating measures for the impact of the project on the environment and modifications to the project proposal.

- formal involvement of the designated environmental authorities in the process of project analysis, although not completely satisfactory, has led to a greater awareness of the impacts of projects on significant biotopes in the Community.

5.11. The EC's final conclusion on environmental protection is that the benefits above will be *"more evident once full implementation of the Directive has occurred"*. This expectation that the benefits of performing EA will increase over time is a very important theme, one which is very evident in the author's own research which makes the additional observation that planners are getting to grips with the EA Regulations and are becoming more aware and confident the use of EA to help protect the environment. In fact 85% of respondents to the survey said that they agreed or strongly

agreed with the statement that EA could be seen as an environmental protection measure.

Post-Assessment Monitoring

5.12. Until now, this research has only considered the steps taken which ensure that the likely environmental impacts are assessed up to the point of decision. However, once the decision to approve the application is made, there is little guarantee of any monitoring to ensure that the project is implemented as authorised, or that it does give rise to unintended impacts. This has the potential to cancel out any environmental benefits or protection measures that application of environmental assessment might have. More importantly, it leaves us even further from being able to quantify whether EA has been successful in preventing undesirable environmental impacts for the life of the development.

5.13. The Directive contains (see para 2.13) no formal requirements for what it terms compliance monitoring - a major deficiency which has been transported to the UK Regulations, and to the national statutes of every Member State. Although the Directive does *"provide that conditions may be attached to a consent decision, and these could include monitoring conditions"* (5-year Review), the lack of evidence it finds of Member States actually following through with monitoring conditions - less still physically monitoring those conditions - proves that the Directive fails to safeguard the environmental protection it has secured through the EA decision-making process beyond the moment the permission is granted.

5.14. To conclude Environmental Assessment can - all things considered - be seen as an imperfect policy measure in terms of its ability to achieve environmental protection. Although the 5-year Review and many of the respondents to the author's survey have reacted positively to this aspect of EA, it is widely acknowledged that it is difficult to quantify just how successful at protecting the environment EA has been in this respect; however it is clear that it is unlikely to reach

its full potential unless provisions for compliance are added to the Directive and then the Regulations.

CHAPTER SIX

RECENT DEVELOPMENTS IN UK ENVIRONMENTAL POLICY: RELATIONSHIP WITH EA

A: EA & The Environmental Protection Act : Overlaps in Controls

Background

6.1. Whether out of choice or necessity, those seeking to develop land by the construction and operation of incineration plant (a Schedule 1 development) are faced with the dual hurdles of gaining planning permission for the development and of gaining an authorisation to operate the incineration plant and processes under the Integrated Pollution Control provisions of the Environmental Protection Act 1990 ("The EPA").

6.2. The two statutory régimes serve different functions. The aim of the planning régime is the regulation of the use and development of land. The aim of the statutory environmental protection régime is the "*improved control of pollution*" (preamble to EPA 1990). These different legislative functions mean that there is a potential for overlap of, and conflict between, the controls imposed by each régime. The rôle of environmental information on the planning side, is to provide an assessment of the impact of the incineration plant and form the basis of any controls on emissions or modifications made to the application.

6.3. The potential for overlap between the two codes was recognised by the Government in the White Paper "This Common Inheritance" 1990 and in the draft PPG on Planning and Pollution Controls issued in June 1992. Crucially, there is no requirement that planning permission should be in force before authorisation from Her Majesty's Inspectorate of Pollution (HMIP) is granted. In the absence of any further judicial guidance (i.e. until this point had been tested in the courts) uncertainty was bound to arise about the extent to which planning conditions - based on an EA - can or should regulate a process covered by (Part 1) of the EPA regulations. Planning

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authorities were having to do "*considerable lateral and forward thinking as to what issues* [could] *be left to EPA conditions*" (Pugh-Smith, 1992)

The Gateshead Ruling

6.4. Such guidance on the matter now exists, as a result of a "landmark" High Court ruling on the application for a clinical waste incinerator to Gateshead MBC. Unfortunately, as the following details of the judgement show, the controls for pollution deemed necessary in the opinion of HMIP now take precedence over the opinions on environmental protection reached by planning authorities through the process of environmental assessment.

6.5. Originally, Gateshead MBC had followed such an EA procedure and on the basis of this (though other considerations were also involved) refused the application, finding that,

> "*The Applicants have failed to supply sufficient information to demonstrate that the plant could be operated without causing a nuisance to the surrounding locality including the possible release of noxious substances.*"
>
> (Kitson & Harris, 1994)

The refusal was supported at appeal by a Planning Inspector but on further appeal by the developers the Secretary of State went against the Inspector's decision and granted permission for the development. His reasons are worth reproducing for they imply that while planners must take into account environmental impact on the locality, they do not have the power to refuse on grounds of unacceptable impact unless HMIP finds that none of the pollution controls it (alone) is empowered to impose will be enough to protect the environment from unacceptable levels of pollution. Nor may the planning system impose pollution controls on an application it is minded to permit, it can only determine where the development should best be located. Thus, in the Secretary of State's words to the Inspector he overruled,

> *"While the planning system alone must determine the location of facilities of this kind ... it is not the role of the planning system to duplicate controls under the EPA 1990. Whilst it is necessary to take account of the impact of potential emissions on neighbouring land uses when considering whether or not to grant permission, control of those emission should be regulated by HMIP"*
>
> (Kitson & Harris, 1994)

6.6. In backing the Secretary of State's reasons for his decision, the High Court established six propositions regarding the order of decision making which are now required[1] to be followed by all planners who are faced with incinerator/crematoria applications and their accompanying Environmental statements.

The Need for Clarification

6.7. Despite the length of the enquiries and amount of pronouncements made, the decision still does not resolve the essential uncertainty over the relationship between planning and pollution controls. In effect, it leaves planning permission as a starting point only, with the pollution control decisions under EPA determining the conditions imposed on the development. Although it is possible for HMIP to decline an authorisation, - even in the event of planning permission having been put forward for approval - in practice this is unlikely. Environmental impacts and risks acceptable to HMIP may still affect the locality of a proposed development, including for example material assets and the cultural heritage[2], which are mainstays of the tourism industry and not considered under EPA. This seems to be in conflict with the aims of the EA Regulations. Equally disturbingly, the outcome of BATNEEC[3] considerations have final sway over the design of the development, in respect of fixing chimney stack heights and

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[1] This situation at time of going to press is still fluid and may yet be altered by a final ruling on the application at the Court of Appeal, where Gateshead MBC is at present appealing against the High Court decision.

[2] See Article 3 of Directive and para 2.5 of this work.

[3] BATNEEC: "Best available techniques not entailing excessive environmental costs", a technique used by HMIP in their decision-making process.

related "functional" components. This may create visual impacts which before the Gateshead ruling may have been a reason for refusal by planning authorities.

UK versus EC Approaches to Environmental Protection : Will the EC Court Intervene?

6.8. While the relationship between EA planning and HMIP is probably more complex and more subtle than has been portrayed here, it would be fair to say that the ability of planners to implement Environmental Assessment in the spirit intended by the EC Directive has been dealt a blow by the terms of the Environmental Protection Act. This presents the intriguing situation of a home-grown environmental protection measure (i.e. one whose implementation methods are not prescribed by the EC) competing directly with another quasi-environmental protection measure which originates directly from EC environmental policy. It would be interesting to see whether the European Commission for the Environment challenges the UK Government on the legal implications and/or the implications for environmental sustainability of the Gateshead decision. In the end it may all boil down to choosing between approaches to environmental protection, making it possible for better communication between HMIP environmental health authorities and the planning profession so that conflicts can be resolved before they ever reach the courts.

B. Sustainable Development, Environmental Appraisal & Environmental Auditing

i) Introduction to Sustainable Development

6.9. "Sustainable Development" is a slippery concept: used and abused to justify a multitude of causes from "nimbyism" to economic growth, its proper meaning and purpose is in danger of being lost. It is such a contentious and widely applicable concept that to explore it fully would probably take another thesis. However, since sustainable development provided the background to practically all environment policy initiatives in the 1990s, including environmental appraisal and environmental auditing, as well as one of the biggest challenges for a LPAs in years, it is worth a brief discussion.

Development and Environment: the Origins of Sustainable Development

6.10. The idea of "sustainable development" assumes that development and environmental protection can go hand in hand. It allows reconciliation between the polarised "environment" and "development" camps by offering something for both:

- recognition that long term development relies ultimately on the environment; and

- recognition that it may be possible to achieve development without destroying the environment.

6.11. The idea of sustainable development underpinned the "world conservation strategy" in 1980. The message reached a wider audience in 1987 following the publication of the more accessible report "Our Common Future" by the World Commission on Environment and Development. The most significant international support for it came at the Earth Summit in 1992 (the United Nations Conference on Environment and Development). By agreement of all government representatives present, a policy for sustainable development for the world was published under "Agenda 21". This specifically recognised the value of local government in implementing Agenda 21. This has galvanised both the UK Government and LPAs into action, each level of government publishing their strategies[1] for implementation.

6.12. Although sustainable development is receiving widespread attention, the argument as to what is meant by sustainable development and what is necessary to achieve it continues. The environment is the item most often inferred to be sustained into the future, although it is important to recognise that the question of what is being sustained lies at the heart of much confusion.

[1] DoE 1994 UK Strategy for Environmental Assessment.

6.13. Adhering to the strict principle that it is the environment that is to be sustained, a useful starting point to understanding sustainable development is the Brundtland Commission definition which sees it as development that:

> *"meets the needs of the present without compromising the ability forfuture generations to meet their own needs"*

However, since this is all but useless as a working definition, its combination with a more exact definition conveys the core meaning of sustainable development more accurately. Thus the UK Local Authority Associations (1993, The UK's Report to the UN Commission on Sustainable Development) chooses effectively to combine it with 2nd World conservation strategy's 1991 definition:

> *"Improving the quality of life while living within the carrying capacity of supporting ecosystems"*

The Link with Environmental Assessment

6.14. Jacobs (1993) draws attention to the distinction between the "weak" and "strong" interpretations of sustainable development. The former allies closely with the form and processes of environmental assessment. The "weak" interpretation of sustainable development involves simply raising the profile of environmental considerations in economic decision making. It involves doing more for the environment but still trading off the environment against other objectives (this part obviously relates to the planning decision making process). There is no doubt that the experience gained in assessing environmental impacts through implementing the EA Regulations is, on the strength of these definitions, going to be enormously productive in the quest for sustainable development.

6.15. No assessment of sustainable development would be complete without a look at the other policy measures besides EA which are (more directly) aimed at carrying it out (or at least putting its principles into practice).

ii) **Environmental Appraisal**

6.16. In the context of sustainable development, this enables the environmental consequences of planning actions to be taken into account systematically when development plans are being prepared. It is in widespread use in Local Planning Authorities today.

6.17. Environmental appraisal has been added to the remit of development planning through the publication of a Good Practice Guide to development plan-making (Baker, 1994). PPG 12, 1992, which makes environmental appraisal a formal requirement in the plan-making process, explains that environmental appraisal

> *"links the "state of the environment" with the plan, contributing purpose at the beginning of the process, and providing a measure of its effectiveness at the end."*

Where the policy context is one of moving towards sustainable development - and this is extremely likely to be the case given the concept's ubiquity across all levels of the planning system - environmental appraisal will make a positive contribution to that goal.

6.18. These are early days in the implementation of this particular environmental tool. Looking ahead to the future, it will be interesting to see how much support at the Examination in Public, the Local Plan Inquiry or Appeal the rigorous tough-talking, environmentally-appraised development plans will get from the public, and from the Secretary of State. The latter recently dismissed an authority's objections to a major incinerator development (see the "Gateshead" Case, para 6.4) which had been based directly on conclusions drawn from the environmental assessment. Will environmental appraisal, unlike environmental assessment, keep its teeth?

Environmental Appraisal as a Forerunner to SEA

6.19. Furthermore, it will be interesting to see how much of the techniques and experiences gained from the environmental appraisal will be transferable for the

implementation of Strategic Environmental Assessment. The concepts of environmental appraisal and SEA are very similar, if not synonymous. The latter is usefully filling a policy hiatus until the much-delayed SEA Directive arrives later this year.

iii) Environmental Audits (EAUs)

6.20. Thompson and Thérivel define environmental auditing as "*a tool for evaluating the effects of an operator's activities on the environment*". The most immediate distinction to be drawn between EAUs is between those prepared for Local Authorities and those prepared for private companies. In Local Authorities, the audit is often published as "a State of the Environment Report"; in private companies the audit appears in a wider variety of forms, and scope. In as far as this research focuses on the implementation of environmental policy by Local Government, the mere description of the "State of the Environment Report" will never gain the concept of EAU much credit, nor allow it to be implemented as a management technique. However, if this is supplemented by a thorough analysis of how the authority's policies affect the environment, proposals for improving these policies, and activities based on these proposals, then it would have a similar effect to a strategic EIA: the audit would improve existing conditions, whilst the strategic EIA would predict and mitigate against future impacts.

6.21. As well as its similar suitability for use alongside SEA, environmental auditing enjoys with environmental appraisal, growing popularity with Local Authorities. By the end of 1990 a survey by CPOS found that 87% of county councils had prepared, or were preparing to conduct an EAU.

The Status of EAU

6.22. In the USA, EAU has a clearly defined meaning and is enforced by legislation which ensures its compliance. Here, where the concept is newer, EAU is not yet legally required, though Thompson and Thérivel noted in 1992 that a number of draft standards for it have been prepared. Until it is accorded the same statutory status as environmental assessment and appraisal, EAU will be the "poor cousin" to other

environmental protection/management measures; in terms of quality of outcome as well as status.

Conclusion

6.23. Environmental Assessment is only one of a panoply of measures which are aimed, to various degrees, at protecting the environment and/or implementing sustainable development. Unfortunately this collection of measures does not fit in to a coherent unified programme, which has resulted in some overlap in jurisdiction. Both environmental audit and environmental assessment show remarkable similarities with aspects of Strategic Environmental Assessment. This is a very useful concept which is awaiting legal status in the form of a Directive later in 1994, some years after first promised by the EC. It is to be hoped that these initiatives, which have been introduced by Local and Central Government in the absence of SEA to implement the aims of sustainable development are not to be disbanded once SEA becomes operational.

"THE NEXT BIG THING": A Glance at Strategic Environmental Assessment

6.24. The benefits of bringing SEA into the environmental protection/planning regime have become increasingly apparent as experience of EA's strengths and weaknesses increases over time. As far back as 1980 it was predicted that once EA (project assessment) had been introduced and tested "*it is probably that attention will turn to the problems of integrating EIA to both the formulation and assessment of plans, programmes and policies*" (Clark *et al*, 1980).

6.25. Now we are on the brink of arriving at this vision - with the promise of a SEA Directive later in 1994 - it is time to take stock of what we are going to be dealing with, especially on the government's past track record (with EA) there is unlikely to be sufficient early guidance on implementation.

6.26. One simple illustration of the benefit of SEA over EA is given by Pinfield (1992). He points out how illogical - and perverse - it is that the majority of EAs are carried out

at the "tail-end stage of the decision-making process". He says that there would be far greater hope for preventing environmentally-damaging schemes such as, to take a notorious example, the M5 extension across Twyford Down in Hampshire, if the environmental costs of road-building programmes were assessed at an early stage. SEA enables such costs to be weighed up and taken into account at the points when first policies, then plans and programmes, and lastly projects are being drawn up.

6.27. A number of further justifications can be given for SEA. Most of these are linked to deficiencies in the existing system of project assessment - for example, the need by planning authorities to anticipate rather than react to development proposals, the present system's viability to address cumulative or secondary impacts adequately, SEA's greater scope to consider alternatives or mitigation measures, and the need to clarify and formalise the framework for decision-making.

6.28. Another alternative prospect is the more productive link between SEA, the objectives of sustainability and the planning of individual projects. Thus, Local Authorities could establish sustainability as an objective that all their plans and policies must attain; SEA could then be used to achieve - or make the best practicable progress towards - sustainability at these levels, followed later at the project level.

6.29. Though this seems to be quite a high target to be setting Local Authorities, it must be remembered that they have already had some practice - with procedures that resemble those of SEA - namely policy appraisal and environmental auditing. It is simply the next logical step. With a three-pronged approach there is much better hope that more comprehensive protection of the environment than at present will be achieved.

CONCLUSIONS & PRESCRIPTIONS FOR THE FUTURE

1. It is now almost six years since the requirement for EA gave the development control system a rational, more systematic way of processing significant planning applications which placed the likely impact on the environment under scrutiny at every stage.

2. EA is focused - too narrowly, perhaps, on individual applications without considering the cumulative or indirect impacts on or from other nearby development projects. That it is not necessarily the paramount consideration in decisions (especially when it overlaps with the Environmental Protection Act) is clear from the facts presented by this research. Its role as an environmental measure is not always clear - most of the EA implementers surveyed thought it could be considered as such but those who make or scrutinise the policies see it as but one of a portfolio of tests to be applied to the determination of planning applications. This latter finding is confirmed through discussion with a senior planning inspector - who saw EA as "*an added safeguard, a checklist*". A DoE official with responsibility for EA emphasised that it does not operate alone, with the observation that one "*can't expect EA in isolation to do everything - different measures go together*". This may be true in a practical sense (and EA is a very practical addition to the decision-making procedure). But EA is remarkable because it represented a paradigm shift in development control on two fronts. Firstly, it was the first real pan-European environmental management instrument. Secondly, it introduced an "environmental accounting" methodology to planning which provides a very useful basis for the implementation of policies for sustainable development - a globally endorsed goal.

3. The only sizeable - and avoidable - hindrance to the operation of EA - and related environmental measures - to its fullest potential has been the twin lack of guidance to implementors and provision for monitoring its inadequacies have surfaced again and again in the course of this research: it is only to be hoped that the Government will be more diligent in its duties in this department with the new generation of environmental instruments, particularly SEA.

4. The latter represents EA in a more powerful and expanded form. The original procedures (modifies and improved with each 5-year EC-wide review, hopefully) will continue to be applied to projects.

5. One final conclusion has to be that there is room for a lot more research into the implementation of the EA Directive. This thesis has hopefully highlighted and made useful suggestions on a selection of the many complex issues which surround EA. Equally it has run up against gaping holes in our knowledge which will have to be filled by inspired future researchers, for that is the way to achieving the fullest understanding of planning with the environment in mind.

APPENDIX A

QUESTIONNAIRE RESULTS

A 100% sample of Local Planning Authorities (LPAs) in the South East Region of England, numbering 58, was sent a questionnaire in March 1993. Forty Authorities completed a survey form, producing a 69% return rate.

Qu 1 In implementing the 1988 Environmental Assessment Regulations, how easy has it been in practice to distinguish between applications for which EA must be requested and those which do not?

	Overall Results %	Number of Responses
Very Difficult	0	0
Quite Difficult	30	12
No Opinion	12.5	5
Quite Easy	37.5	15
No Problem	20	8
	TOTAL	40

6. **Qu 2 How far would you agree with the following statements?**

	Opinion	Overall Results %	Number of Responses
Guidance too vague	Strongly Disagree	0	0
	Disagree	32.5	13
	No Opinion	12.5	5
	Agree	50	20
	Str Agree	5	2
		TOTAL	40
Other material consids 1st	Strongly Disagree	0	0
	Disagree	10	8
	No Opinion	5	15
	Agree	67.5	15
	Str Agree	17.5	2
		TOTAL	40

	Opinion	Overall Results %	Number of Responses
EA = Envtl protection measure	Strongly Disagree	0	0
	Disagree	10	4
	No Opinion	5	2
	Agree	67.5	27
	Str Agree	17.5	7
		TOTAL	40
Unnecessary addition to planning process	Strongly Disagree	27.5	11
	Disagree	45	18
	No Opinion	17.5	7
	Agree	5	2
	Str Agree	5	2
		TOTAL	40

Qu 3 **At present, EA in the UK is carried out by the developer, or a consultant hired by the developer. Do you think that EAs would be more objective if carried out instead by ...**

		Overall Results %	Number of Responses
	LPA	7.5	3
or	Neutral Agency	57.5	23
or	Combination	20	8
	Don't Know	20	8

Qu 4 **Has your authority considered producing an environmental audit and, if yes, what does this assess?**

	Overall Results %	Number of Responses
No	55	22
Yes - in progress	35	13
Yes - published	12.5	5
	TOTAL	40

... if "Yes", what does the Audit assess?

		"Yes" Results %	Number of Responses
Implcs of plg policy	Yes	5	1
	Don't Know	5	1
or LPA's internal performance	Yes	30	6
	Don't Know	0	0
or Both the above		55	11
Neither		5	1
		TOTAL	20

Qu 5 Does your Authority have sufficient technical/scientific capability "in-house" should SEA become part of the statutory planning process?

	Overall Results %	Number of Responses
Yes	17.5	7
No - but could consult	25	10
No - insufficient funds	47.5	19
Don't know	10	4
TOTAL		40

... if Strategic Environmental Assessment a practicable proposition?

	Overall Results %	Number of Responses
Yes	48.6	18
No	24.5	9
Don't know	27	10
TOTAL		37
Missing Answers		3

Qu 6 Number of EAs handled or received for consultation by authority

	Overall Results (numbers)	Average # EAs handled (all LPAs)
Since July 1988 to the present	149	
Since Jan 1992 (up to April 1993)	41	

Qu 7 Quantities and types of ESs received ...

		% of all ESs	Number of ESs
Schedule 1	Chemical Installation	0.7	1
	Transport	15.4	23
	Power Station	8.8	13
	Other	12.1	18
Schedule 2	Minerals	24.2	36
	Energy	2.7	4
	Heavy Industry	1.3	2
	Infrastructure	21.5	32
	Other	13.4	20
		100.00	TOTAL 94
		GRAND TOTAL	149

NB. 12 Local Authorities at the time of the survey (April 1993) had not received or been consulted on an Environmental Statement, and 9 had only handled one.

Qu 8 Have any planning applications been refused on the grounds of ...

	Overall Results % (% of 149)	Number of individual applications
Inadequate/incomplete ES	2.0	3
Revealing too dangerous an impact	2.0	3

... Did these applications go to appeal?

	Overall Result (% of those refused)	Number of individual applications
Yes (Allowed)	0	0
No	83.3	5
Withdrawn	16.7	1

Qu 9 Other Comments

See separate extracts.

SURVEY TO ALL SOUTH EAST (ex London) L.P.A.s on

ENVIRONMENTAL IMPACT ASSESSMENT

AND ENVIRONMENTAL AUDITING

Please try to answer all the questions ; in questions which require quantities to be given, give an estimate (" a quarter" for example) rather than no answer if you do not have the required data to hand.

1. In implementing the 1988 Environmental Assessment Regulations, how easy has it been in practice to distinguish between applications for which an EA must be requested and those which do not? (tick one box)

V. Difficult	Quite Diffic.	No opinion	Quite easy	No problem

2. How far would you agree with the following statements?
(Strongly disagree=1. disagree=2, no opinion=3, agree=4, strongly agree=5)

The planning guidance on EA is too vague	
The Government places a low priority on the significance of EA in the decision-making process (i.e. other material considerations come first).	
EA can be seen as an environmental protection measure	
EA is an unnecessary addition to the planning process because existing planning legislaton already requires that the likely impact of development proposals to be taken into account.	

3. At present, EA in the UK is carried out by the developer, or a consultant hired by a developer. Do you think that EAs would be more objective and thorough if carried out instead by a . . .

	yes	no	don't know
Local Authority **or**			
Neutral Environmental assessment agency **or**			
A combination of the above			

4. Has your authority considered producing an environmental audit?

No	
Yes - in progress	
Yes - published	

If 'Yes' does this

	Yes	No	Don't know
assess the implications of policy decisions by your authority?			
assess the internal performance of your authority?			

5. **The European Commission is moving towards creating a Directive requiring Strategic Environmental Assessment S.E.A. (formalised evaluation of the environment impacts of all policies and plans and their alternatives).**

Does your authority have sufficient technical/scientific capability 'in-house'? should S.E.A. become part of the statutory planning process? (Tick one)

Yes	No-but could get consultant help	No-insufficient funds for staff	Don't know

Is S.E.A. a practicable proposition? (funding not withstanding)

Yes	No	Don't know

6. **Please give an indication of the number of environmental assessments handled or received for consultation by your local authority:**

since July 1988 to the present

since January 1992

7. **As a proportion of total applications accompanied by Environmental Statements, how many were of the following type:**
(Write N/A if not applicable to your authority's D.C. responsibilities)

		Number			Number
Schedule 1	Chemical installation		Schedule 2	Minerals	
	Transport			Energy	
	Power Station			Heavy Industry	
	Other			Infrastructure	
				Other	

8. **Have you refused an application on grounds of....**

	Yes	No	How many?
an inadequate or incomplete ES			
an ES which predicted too damaging an effect on the environment to be permitted			

9. **Did this/these applications go to appeal?**

Yes	No	Awaiting confirmation

What was the outcome of the appeal?

Allowed	Dismissed	Awaiting confirmation

10. **If you have any further brief comments on your experience of interpteting &/ or implementing the EA Regulations, please record them on a separate sheet**

THANKYOU FOR COMPLETING THIS QUESTIONNAIRE. PLEASE RETURN IT IN THE ENVELOPE PROVIDED BY WEDS. 21ST APRIL

UCL

M. P. Collins, Director of Planning Studies

The Bartlett School of Planning

University College London

Wates House 22 Gordon Street
London WC1H 0QB
Tel: 071-387 7050 Ext. 4889
Fax: 071-380 7453

Dear

Environmental Protection : Implementing the Town and Country Planning (Assessment of Environment Effects) Regulations 1988-92

I am writing to seek your assistance in respect of the enclosed questionnaire prepared by Rachel Yorke, who is an M.Phil. planning student on day-release from West Sussex County Council. She is currently seeking preliminary information about:

1. the working of the arrangements introduced by DoE circular 15/88; and

2. your authority's progress (if any) with an environmental audit.

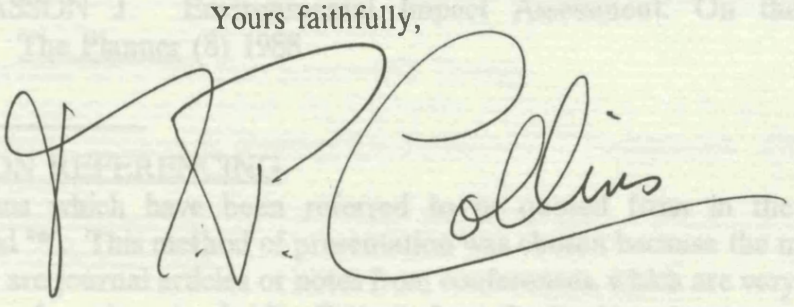
It would be very much appreciated if you could pass on the questionnaire to an appropriate colleague and, if possible, nominate a person whom Rachel could contact to discuss these matters further.

Please ensure that the questionnaire is forwarded directly, by April 21st 1993, to:

Rachel Yorke
West Sussex County Planning Dept.
Grange Block
Tower Street
CHICHESTER
West Sussex P05 1RL. Please use the SAE provided.

Thank you in advance for your help in this matter.

Yours faithfully,



M.P. Collins

Enc.

BIBLIOGRAPHY & REFERENCES (*)[1]

ATKINSON N and AINSWORTH R, 1992. Environmental Assessment and the Local Authority: Facing the European Imperative. Environmental Policy & Practice Vol 2 Number 2 1992.

BALDRY T, Oct 1992. Environment Assessment: Current Issues IEA Conference. London.

BAKER J, 1994. Development Plans: A Good Practice Guide. Baker Associates for Department of Environment. *

BARNES P. Towards Sustainability: Implementing the EC Strategy for Sustainable Development. European Environment Vol 2 Part 6 Dec 1992

BEGG H M. Town and Regional Planning and the Challenge of Sustainable Development. The Planner Vol 77 Number 22 June 1991

BRADLEY M D K. The Implementation of EEC Directive 85/337/EEC in Ireland: A Perspective. Environmental Impact Assessment Review 1989 No.9

BRIGGS D J. Environmental Issues and Policies in the EC. The Planner Vol 77 Number 40 Dec 1991 *

BROCK D. IPC Authorisations versus Planning Permission. Environmental Impact Review Vol 2 Number 4 1993

CARNEWORTH R. Environmental Enforcement: The Need for a Specialist Court. Journal of Planning Law Sept 1992

CATLOW J and THIRWELL C G, 1976. The Assessment of Major Industrial Applications, DoE Research Report No 15 *

CATLOW J and THIRWELL C G, 1977. Report No.11, Department of Environment *

CLARK, BISSET & WATHERN, 1980. Environmental Impact Assessment: A Bibliography. Mansell, London.

CLARK G and GLASSON J. Environmental Impact Assessment: On the Eve of Implementation. The Planner (8) 1988

[1] NOTES ON REFERENCING
Publications which have been referred to or quoted from in the text are highlighted "*". This method of presentation was chosen because the majority of texts used are journal articles or notes from conferences, which are very brief and easy to scan for reference checks. Extracts from the few long documents however are page-referenced in the body of the thesis.

CLARK M and HERINGTON J, 1988. The Role of Environmental Impact Assessment in the Planning Process. Mansell

COLES D and TARLING J. Practical Experience of Environmental Assessment in the UK July 88 - March 93. Environmental Assessment Magazine Vol 1 Issue 1 July 1993

Commission of the European Communities, 1990. Green Paper on the Urban Environment. Brussels

Commission of the European Communities, Dec 1992. Fifth Action Paper on the Environment. Brussels

Commission of the European Communities, April 1993. Report on the Implementation of Directive 85/337/EEC. Com(93) 28 Vol 12. Brussels *

Council for the Protection of Rural England, 1992. Environmental Assessment and Planning: Extension of Application. CPRE

DEVUYST D and HENS L. Environmental Impact Assessment in Belgium. Environmental Assessment Review 1991; 11

Department of Environment and Secretaries of State from other Departments, 1990. This Common Inheritance. HMSO

Department of Environment, 1990. Environmental Protection Act (1990). HMSO *

Department of Environment, 1991. Monitoring Environmental Assessment and Planning. HMSO

Department of Environment, 1991. Policy Appraisal and the Environment. HMSO

Department of Environment, 1992. PPG 12: Development Plans and Regional Planning Guidance. HMSO

Department of Environment, 1992. Strategic Environmental Assessment & PPG 22: Renewable Energy. HMSO

Departments of Environment and Transport, 1993. PPG 13: Transport. HMSO

Department of Environment, 1993. PPG22: Renewable Energy.

Department of Environment, 1994. UK Strategy for Sustainable Development. HMSO *

Environmental Assessment Group and MONTAGU EVANS, 1990. Environmental User Guide. Planning Exchange Pub.

ENDS Report 196, May 1991. Opening Shots in the Debate on Strategic Environmental Assessment. Environmental Data Services Ltd.

ENDS Report 221, June 1993. Analysis No.3, Taking Stock of Environmental Assessment. Environmental Data Services Ltd.

FERRARY C, 1992. Emerging Issues in Environment Assessment. Conference Report. Aston University.

FULLER K, COLES D and THIRLING J. Strategic Environmental Assessment. Institute of Environmental Assessment. April 1993 *

FULLER K. Overlaps in the Requirement for Environmental Assessment. Environmental Assessment Magazine Vol 1 Issue 1 July 1993 *

GERAGHTY P J. Environmental Assessment and the application of an Expert Systems Approach. Town Planning Review 63(2)92

GIBBS D, European Environmental Policy & Local Economic Development. European Environment Vol 3 Part 5, October 1993

HALL P, Environmental Impact Analysis - Scientific Tool or Philosopher's Stone? Built Environment Vol 4 No 2 1978 *

HEALEY P and SHAW T. Planners, Plans and Sustainable Development. Regional Studies Vol 27.8.1993

HEANEY D and Thérivel R, 1993. Directory of Environmental Statements 1988 - 1992, Oxford Brookes University *

HUMBER R. Sustaining the Planet. The Housebuilder Oct 1993

JACOBS M. The Economics of Sustainability. Streetwise Number 11, Summer 1992.

JOHNSON S and CORCELLE G, 1989. The Environmental Policy of the European Communities. Graham & Trotman *

JUKES G M. The Environmental Protection Act - An Overview. Environmental Policy & Practice Vol 1/No.1/1991

KENYON R C. Environmental Assessment: An Overview on behalf of the Royal Institute of Chartered Surveyors. Journal of Planning Law May 1991

KIRKWOOD G. The Evolution of Community Environmental Policy. Environmental Policy and Practice Vol 2 Number 2 1992 *

KITSON T and HARRIS R. A Burning Issue? Planning Controls, Polution Controls and Waste Incineration. Journal of Planning Law January 1994 *

KRÄMER L, 1990. EEC Treaty and Environmental Protection. Sweet and Maxwell *

MINTER R. Decision Making, Landscape Assessment and Environmental Assessment. Seminar Paper. Countryside Commission, 1992

MORPHET J (Ed). Towards Sustainability: The EC's Fifth Action Programme on the Environment; A Guide for Local Authorities. The Local Government Management Board. June 1992. *

NEWSON M. Environmental Assessment and the Academic Environmentalist. Environmental Policy & Practice Vol 2 No.2 1992 *

OSBORNE D. The Impact of EC Environmental Policies on UK. Public Administration. Environmental Policy & Practice Vol 2 No.2 1992

PINFOLD G. Strategic Environmental Assessment and Land-Use Planning. Project Appraisal Vol 7 Number 3 Sept 1992

PUGH-SMITH J. The Local Authority as Regulator of Pollution in the 1990s. Journal of Planning Law Feb 1992

REDMAN M. European Community Planning Law. Journal of Planning Law Nov 1993

RENGER M & NATHANSON N. Green Words and Black Deeds? The Implementation of European Environmental Law. European Environment Vol 2 Part 4 Aug 1992 *

RICHARDS L and ARMSTRONG W. Local Authority Environmental Audits: Implementation and Management Systems. European Environment Vol 2 Part 6 Dec 1992

RIFKIND M. Environmental Impact Assessment Legality. Journal of Planning Law Jan 1992

SALTER J. Environmental Assessment: The Challenge from Brussels. Journal of Planning Law Jan 1992

SALTER J. Environmental Assessment - The Need for Transparency. Journal of Planning Law March 1992

SALTER J. Environmental Assessment - The Question of Implementation. Journal of Planning Law April 1992 *

SÀNCHEZ L. Environmental Impact Assessment in France. Environmental Impact Review 1993; 13

Select Committee. Eleventh Report on the EC, House of Lords Session 1980-1. Hansard Feb 3rd, 1981 *

THÉRIVEL et al. Strategic Environmental Assessment. Earthscan 1992 *

THÉRIVEL et al. Environmental Assessment and Audit: A User's Guide 1992-3. Planning 1993

THOMPSON M. Determining the Impact Significance in EIA: A Review of Twenty Four Methodologies. Journal of European Management Vol 30 April 1990

THOMPSON S & THÉRIVEL R (Eds), 1992. Environmental Auditing Working Paper 130. Oxford Polytechnic. *

Town & Country Planning Association. News Digest November 36/95 Oct 1993

TRIPPIER D. Developments in Environmental Policy at the European Level - A Government View. European Environment Vol 1 Part 6 Dec 1991

West Sussex County Council. State of the Environment - A Draft Report. Sept 1993

WOOD C and JONES C. Monitoring Environmental Assessment and Planning. University of Manchester Department of Environment, 1991 *

WOOD C and JONES C. Impact of Environmental Assessment on Local Planning Authorities. Journal of European Planning and Management Vol 35 Number 2 1992 *

ABSTRACT

This thesis explores the origins of environmental protection policies and traces the course of their implementation through the EC's Environmental Action Programmes. One of the most important, and contentious, Directives to emerge from any Action Programme - the Environmental Impact Assessment Directive (EIA) - is the focus of this thesis. The latter addresses the problems experienced by Planners in interpreting and implementing the legislation which, in the form of a Planning Regulation, translates the Directive into British Planning Law.

Although there will be analysis of the links between, and potential for environmental protection of other management measures (such as environmental audits and appraisals), it is exploring the progress of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 that particularly interests the author.

To this end, a survey of Local Planning Authorities in the South East has been undertaken. It is divided into two parts - half for establishing opinions and progress, and the remainder for collection of statistics on quantities of environmental statements received. Issues covered were ease of implementation, the "Place", or status of EA, the environmental auditing process, and the implications of Strategic Environmental Assessment.

The research was intended as an important addition to the limited body of research. It makes suggestions for improvement which are hoped will inform and benefit both the "end user" of EA, the planners, and the DoE which produces (or doesn't produce) guidance on implementation. The remaining purpose of the thesis is to gather the different strands of commentary and research on this topic. The thesis ends with conclusions and prescriptions for improving implementation.