

Environmental Assessments and Stakeholder Involvement

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Recent European legislation has placed a large emphasis on stakeholder involvement in decision-making that could affect communities and have an environmental impact. This paper will discuss what effect this is having in practice in the UK and where further improvements could still be made.

1. Introduction

Stakeholder involvement is an integral part of all tiers of Environmental Assessment. Stakeholders can include anyone with an interest, from Government Ministers and Statutory Bodies, through to the public and local communities. The Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) Directives give a solid foundation to the Environmental Assessment process, especially as they are now incorporating the requirements of the Aarhus Convention. This paper highlights where further improvements in stakeholder involvement can be made, together with an analysis of the influence of the Aarhus Convention in the UK since its implementation. Finally, the issue of how much power the Aarhus Convention should give stakeholders in the incremental and final decisions made in the Environmental Assessment process is discussed.

SEA and EIA are mandatory tools within the UK planning system for certain plans, programmes and projects. For policies, Sustainability Assessment can be performed in the UK [1]. All three tiers of Environmental Assessment require, and use, some form of public involvement. There are several international legal instruments to promote the use of public involvement and participation. The United Nations Economic Commission for Europe (UNECE) Convention on EIA in a Transboundary Context (Espoo) [2], the United Nations framework Convention on climate change [3], Principle 10 of the Rio declaration on Environment and Development [4], and one of the most influential instruments recently for the UK, the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in International Environmental Matters (otherwise known as the Aarhus Convention) [5].

There are three key challenges facing public involvement: identifying the appropriate stakeholders, involving them in the process and incorporating their comments effectively. Public involvement as a process should be: inclusive, open and transparent, relevant, fair, responsive and credible. It is essential to include a high-quality level of public participation within the SEA and EIA processes, especially for controversial developments that require public acceptability.

2. Stakeholder Involvement in Different Stages of the Environmental Assessment Process

The European SEA Directive [6 [Article 6.1]] states that “Authorities with environmental responsibility and the public, shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme.” The EIA Directive [7] follows a similar stance but relates to the project level rather than the strategic level.

The European Commission advocates the Aarhus Convention by stating that Environmental Bodies and the public must be given “an early and effective opportunity” to comment [6]. The UK has appointed four Statutory Bodies as Consultation Bodies who have to be involved in the SEA and also assess the stakeholder involvement within SEAs in England. These are: the Environment Agency, English Nature, English Heritage, and the Countryside Agency [8]. The equivalent Bodies have been appointed within the devolved administrations of Scotland, Wales and Northern Ireland. The Statutory Bodies consider the appropriate preparation of the documents and participate in the consultation process as it occurs at

the screening, scoping, reporting, and decision-making stages [8]. The EIA Directive [7] recommends consultation as part of the reviewing of the Environmental Statement.

Consultation and participation can, in principle, be employed at each stage of the Environmental Assessment process; however this is not always feasible. The time and resources are not always available, and there is the risk of public participation fatigue. The main forms of public participation that are often used include;

- Informing – one way dialogue between the proponent and the public;
- Consulting – two way dialogue with opportunities for the public to express their views;
- Participatory – interactive exchange, sharing analysis and agenda setting to agree on the position of the proposal and its impacts;
- Negotiating – face to face discussion to build consensus and reach a mutually acceptable resolution on the issues [9].

Ideally, public involvement should begin at the preparatory design stage of a plan, programme or project, and continue throughout. This is particularly important for major proposals that can affect people’s lives. However, there can be constraints to allowing public involvement throughout, and it can be more beneficial to just use public participation in the key stages.

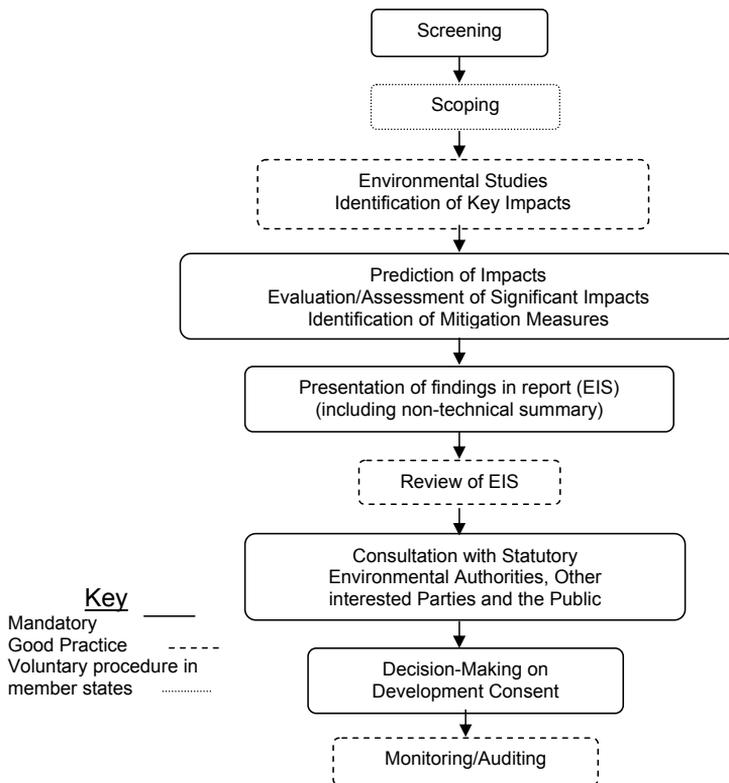


Figure 1: The Environmental Assessment Process

Figure 1 shows a simplified Environmental Assessment process adapted from the European Framework Directives [6] [7]. The stages are recommended for each Member State and it is up to the Member State to implement the SEA or EIA directives system into their legislation. Some stages of the system are mandatory, others are deemed as good practice; while scoping is not mandatory, Member States can

establish a voluntary procedure for scoping requests if they wish. Therefore each country can decide how much focus is given to public participation within each stage of the process [10]. The following sections outline what is required from the Directives in terms of public participation and what is required by UK legislation highlighting some of the benefits of continuous involvement based on literature (e.g. [1] [9] [16] [21] [24]).

2.1 Screening

Within the screening phase, public participation is not required in either Directive; however, the UK's SEA legislation does require public participation [11]. The EIA legislation does not require public participation within screening or when requesting a screening opinion from an Authority. However, early identification of the possible affected parties and their concerns can be incorporated into later public involvement.

2.2 Scoping

Public participation again is not required at the scoping phase within the Directives, but has been applied to the UK SEA legislation through the use of the Consultation bodies [11]. The UK EIA regulations currently have no mention of consultation at this stage, but of course it is recognised as good practice [11]. Public participation is critical at this stage to ensure that all significant issues are identified, local knowledge is gathered, and alternative ways of achieving the objectives can be found.

2.3 Environmental Studies, Assessment and Mitigation

Impact analysis and mitigation within the environmental studies does not require public participation in either Directive. The UK SEA legislation requires consultation between the Authority and the statutory Consultation Bodies [11]. The UK EIA regulations advocate the use of Consultation Bodies at this stage, but the only recommended method for including interested parties is through publicising the project over a 21-day period [10]. It is up to the developer to collect and prepare information, however the use of public participation can avoid bias and inaccuracies, identify local values and preferences, and assist in the selection of alternatives.

2.4 Environmental Statement or Report

The Environmental Report must be made available to the public and other interested parties to be in accordance with the Directives [10] [11]. In the UK, consultation of the reports is given a minimum of three weeks before a decision is made. Written comments can be daunting for some people, and the time factor can be rather limiting. A more proactive approach may allow for more comments on the reports.

2.5 Decision-Making

Decision-making on a proposal or development is up to the Competent Authority while considering the public's comments along with the statutory Consultation Bodies. The Directives do not give any suggestions to include active public participation at this stage; however the UK SEA legislation does recommend that "Consultation Bodies and the public are informed and given the opportunity to forward their opinion within a reasonable time" (Section 15, Paragraph 3 [11]). The Directives then require the authorities to make the decision publicly available.

2.6 Monitoring and Auditing

The EIA and SEA Directives give limited guidance on monitoring and auditing, so therefore public participation is not encouraged. However, it is recognised that monitoring of an EIA project is good practice. In UK SEA legislation, monitoring is required by the proponent, although there are no recommendations to include stakeholders within this final phase [11]. By arranging public participation throughout and after the plan, programme or project commences; any problems that arise can be addressed. It also maintains a good relationship with local communities that have been affected.

3. Examples of Good Stakeholder Involvement in Environmental Assessment

Stakeholder participation needs to be activated, stimulated and encouraged by the authorities wanting to benefit from it. The following examples show where stakeholder participation has been demonstrated successfully within the Environmental Assessment process beyond the requirements of the directives. There is a wide range of 'good practice' examples beginning to arise in the UK and internationally, and the examples chosen show how the various uses of stakeholder participation have influenced the process at a strategic level and at the project level.

The Bedfordshire Minerals and Waste Development Framework was appraised using a Sustainability Assessment [13]. The scoping exercise used accomplished an excellent baseline study. The methods used were facilitated workshops with a range of stakeholders, smaller workshops for key issues, public questionnaire through the media and Internet, all of which were widely advertised. All comments were given feedback and the findings were clearly displayed on the website. The scoping report then went to public consultation between November 2005 and January 2006.

The West Midlands Regional Spatial Strategy [14] has been praised for the innovative methods used in stakeholder participation also within the scoping phase. It provided two scoping workshops and two sets of appraisal workshops for the SEA. The Authorities used interactive participatory appraisal workshops to allow the stakeholders to select their preferred option through the use of matrices.

One of the most impressive uses of stakeholder participation that is still in progress is the Hong Kong 2030: Planning Vision and Strategy report to review the Territorial Development Strategy [15]. There are four components within the review and each part has a high level of proactive consultation arranged. For the first component, objectives and agenda setting, there were six workshops, briefings, an assigned planning panel, two public forums, discussion sessions, 24 presentations, two seminars and over 40 media articles. All comments received were published on the Internet with the responses. This proactive approach received 106 written comments and 33 Internet comments that have redefined the projects objectives and will ultimately adapt how the strategy evolves.

In Tychy, Poland, for a new municipal waste landfill, the competent authority involved the public 12 months before a location or specification was decided. Most of the 12 months was spent explaining the idea and use of the landfill, and discussing the issues with them. Allowing the public to be involved within the specifications even before the screening stage of an EIA began to occur meant that the initial decisions did actually involve them. The Authority then spent 6 months consulting on the proposed location and specification [16].

At a project level, the Environment Agency in the UK has an electronic public consultation web tool, currently in a pilot phase. The residents in Southwest England are able to register for electronic notification of any applications for waste disposal sites in their area. It is then possible for them to submit their comments online. This tool hopes to encourage dialogue between the public, waste managers and the Local Authorities as early as possible. However, this tool is only for use once an application has been submitted and consequently some incremental decisions have already been made [17].

4. Has the Aarhus Convention Made a Difference?

The Aarhus Convention emphasises the importance of public participation within environmental decision-making and was fully implemented in the UK in February 2005. The three pillars of the Aarhus Convention are; access to information, public participation and decision-making, and access to justice in environmental matters. Has this made a difference to how public participation is practised in the UK? The main modifications applied to EU Directives [6] [7], and subsequently to the UK, were:

- To require the public to be informed early in the decision-making process.
- To include “early and effective opportunities” to participate [Article 6.1].
- To emphasise the importance of carefully timed public participation.
- To justify the decisions made.
- To enable the public to challenge the legality of decisions.

The following sections outline where positive steps have been made and also where problems still exist.

4.1 Proactive Public Participation

The Aarhus Convention aims to bring a more proactive approach to public participation, which is especially useful within controversial developments. Within radioactive waste management, the Committee on Radioactive Waste Management (CoRWM) has been established to recommend long-term management option(s) to the Government. It is using several stakeholder participation methods, such as workshops; meetings and discussion forums, across the whole of the UK to ensure the public are actively involved in this policy development [18].

4.2 Public Access to Information

The access to documentation in the UK seems to have improved and is demonstrated by increased publication in the media of previously confidential documentation. However, this may be connected to the introduction of the Freedom of Information Act 2005 and the Environmental Information Regulations 2004 rather than solely on the implementation of the Aarhus Convention. A good example is the publication of the initial proposed sites for a Rock Characterisation Facility for the UK. The location of the sites was released in 2005 after being withheld for 16 years [19] [see 20 for more information]. With the increased use of the Internet, information is easier to access. There does perhaps need to be more information as to the amount of documentation the public can access to increase their awareness of Aarhus and their environmental rights.

4.3 Timing of Participation

Ensuring good timing of public participation depends upon the experience of the facilitators. In a study by Hartley and Wood [21] about waste disposal facilities and public involvement, Vale Royal Borough Council demonstrated poor timing and organisation within the Winsford disposal site EIA. This resulted in the local action group having an ineffective contribution to the inquiry. The timing of 'early' is left to the plan or project facilitator. However, within the Newcastle City Centre Action Plan, 12 months was spent in continuous public participation and consultation, which achieved positive results [14].

4.4 Resources for Public Participation

In the UK, the public are not usually provided with resources to enable them to participate in the debate or obtain independent advice. In Sweden, the municipalities who have volunteered to have their area investigated to determine whether it is suitable for a long-term radioactive waste management facility have been given annual funding to allow them to fully participate [22].

There is greater stakeholder power in Scotland. If one of the official consultees assigned by Government disagrees with the plan, programme or project and the decision taken, then they can refer it to a Minister. If the Minister decides that the public have not had enough time, then the time period can be extended up to 28 days. Public participation is therefore crucial in the extent used and the timing [23].

4.5 Consideration of Public Views

Several case studies examined by Hartley and Wood [22] found that planning officers felt that the public's opinions were carefully considered within the decision-making process. However, the members of the public felt otherwise. Decisions made in the UK tend to be politically driven and there is a historic scepticism around the amount of information provided. There needs to be a continued practice of transparency in order to ensure that the public feel that they are part of the decision-making process.

4.6 Effectiveness of Public Participation

Judging how 'effective' public participation is in the UK can be difficult. The Aarhus Convention does seem to have increased the amount of public participation that takes place. However, in the UK, public participation is not always practiced to its full potential. From analysing the case studies, the following changes could be made to make it more effective:

- Amendments to the EIA legislation to increase the current three weeks assigned for consultation to a more reasonable time period to allow for effective input by the stakeholders.
- Strengthening the role of public participation within the Environmental Assessment process as in other countries to allow for increased resources to be provided and benefit all those involved [24].
- Providing guidance on tried and tested effective public participation methods to help authorities to choose which techniques might be appropriate. This will give them no excuse as to why public participation cannot be performed within the process.

The Aarhus Convention has certainly made the planning authorities more aware of public participation and the benefits it produces when performed well. However, practical guidance on how to perform public participation would help them actually undertake it.

5. Stakeholder Power in the Decision-Making Process

The Aarhus Convention [5] gives more power to stakeholders within the decision-making process, but how much power should they actually have to contribute? Should they just be involved with the

incremental decisions throughout the process, or given the opportunity to contribute to the final decisions made on a plan, programme or project? The SEA Directive [6] requires the “decision-maker to take account of, opinions and concerns which may be relevant to those decisions” as does the EIA Directive. The Aarhus Convention recommends that feedback to comments should be given to ensure they were considered in the final decision. However, there is no guarantee that the public’s opinions will definitely be integrated into the decision-making process at any stage and have an impact on the final decisions made.

The European Commission advocates public participation as a tool to increase “the accountability and transparency of the decision-making process” [6]. However, public involvement is currently not integrated within key decision stages. A more structured decision process that involves the public throughout would help to address this problem. As the public authorities should be working on the public’s behalf, it is essential the public are involved within the decisions to ensure their issues and concerns are taken into account and influence what happens on their behalf.

There are various methods to empower the public [25]. In some countries legislation has been used, in Sweden [23], and in Belgium [26] the use of ‘partnerships’ and agreements have been used. The Belgian agreements were a way of achieving an understanding within a complex legal framework and ensuring the communities’ powers could not be transferred over to other issues. This particular method could potentially work within the UK, as the legal frameworks are similar. The various ‘power’ tools include; volunteerism, veto rights, technical support and financial backing.

Communities certainly have less power in the UK. If a decision is made at a local level, it can be overturned at a devolved or national level. Localisation of decisions is difficult when there are several tiers of Government, and in the UK, Central Government tends to step in more frequently on decision-making. Governments in all countries ultimately have the power of decision. Through democracy they are elected to represent the country, but what makes them best to judge a decision? Certainly within the decision-making process, roles need to be clearly established from the outset and adhered to.

6. Conclusion

Directives and legislation on EIA and SEA need to provide more guidance on how and when public participation should be used. There are now several examples of how well public participation can be performed, and the methods are becoming more proactive and innovative. By increasing the role of public participation within the Environmental Assessment process, plans, programmes and projects will become more publicly acceptable. There does need to be a balance as to where public participation is performed in the system, as too much can be a stress on resources and time, as well as producing ineffective results. Key stages such as scoping, preparing the environmental statement or report and decision-making need to be highlighted for the benefits public participation can have.

The Aarhus Convention is certainly making a difference in the UK; however it is difficult to judge exactly how much difference yet. It was only fully implemented in the UK in 2005 although some Authorities were applying the three pillars prior to implementation. It is not clear how aware the general public are of the Convention and their rights. Empowering communities in the UK will increase awareness of their environmental rights, but how much power could actually be given to the communities for decision-making in Environmental Assessments? Providing the public with resources to enable them to fully engage in the process will improve the participation and increase their confidence, but how will this increase their influence within the decision-making process? Ultimately, should the stakeholders and public just influence the incremental decisions made in Environmental Assessments or have more responsibility within the major decisions taken? It will be interesting to see how these issues are addressed over the coming years.

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