



planning, monitoring and evaluation

Department:
Planning, Monitoring and Evaluation
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

GUIDELINES

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1 Introduction

These guidelines:

1. Explain the reasons for introducing a more consistent system for assessing the impact of new policy initiatives, laws and regulations on core government priorities, even when the regulations are not directly linked to those priorities; and
2. Outline the key procedures and techniques for the new system of socio-economic impact assessments.

The guidelines should make it possible to conduct at least an initial, mostly qualitative assessment of a proposed law or regulation.

The first section outlines the mandate and structures supporting the socio-economic impact assessment system (SEIAS). The second section explains how SEIAS will work to support greater alignment across the state while gradually developing a more efficient and effective legislative programme. The third part presents the main procedures and responsibilities associated with SEIAS. The fourth part presents the main methods used in SEIAS. The final section provides answers to some frequently asked questions (FAQ).

2 Mandate and establishment of the SEIAS

In South Africa, Cabinet decided on the need for a consistent assessment of the socio-economic impact of policy initiatives, legislation and regulations in February 2007. The approval followed a study commissioned by the Presidency and the National Treasury¹ in response to concerns about the failure in some cases to understand the full costs of regulations and especially the impact on the economy.

To implement the Cabinet decision, from 1 October 2015 Cabinet Memoranda seeking approval for draft policies, Bills or regulations must include an impact assessment that has been signed off by the SEIAS Unit. Cabinet Memoranda have been reviewed for departments to include information generated by the SEIAS in the recommendations. In addition, the Memoranda provide for a summary of the main findings of the final impact assessment as well as annexing a full report (refer to the Presidency Guide for the Drafting of the Cabinet Memoranda²). Policies and Regulations that are internally signed by Ministers should also be subjected to SEIAS.

The implementation of SEIAS is overseen by an Interdepartmental Steering Committee made up of Senior Officials of the Presidency (Cabinet Office), DPME, Economic Development Department, National Treasury, Department of Trade and Industry, Department of Environmental Affairs,

¹The detailed background study on impact assessments and their relevance for South Africa (2005) is available on www.thepresidency.gov.za.

² The full Guide for the Drafting of the Cabinet Memoranda is available from the Cabinet Secretariat at 012 300 5518/323 8292 or 021 464 2161/464 2162/3

Department of Labour, Department of Public Service and Administration, Department of Social Development, State Security and the Chief State Law Advisors. The Steering Committee is intended to provide guidance and support and to oversee the implementation of SEIAS. DPME will be responsible for the establishment of a SEIAS unit to ensure the implementation, quality control and capacity support for SEIAS across government. It will be responsible for ensuring that the guidelines and templates are regularly updated and it will support the institutionalisation of the new system.

3 The role of SEIAS

SEIAS aims:

- To minimise unintended consequences from policy initiatives, regulations and legislation, including unnecessary costs from implementation and compliance as well as from unanticipated outcomes.
- To anticipate implementation risks and encourage measures to mitigate them.

A challenge for SEIAS is that in a deeply unequal society like South Africa any policy will have unequal impacts. It is therefore not possible simply to compare estimates of costs and benefits. Rather, impact assessments must analyse costs and benefits to different groups. Furthermore, some costs will prove unavoidable in order to achieve government's broader national priorities.

Finally, SEIAS recognises that many costs and benefits cannot be quantified realistically. It therefore focuses principally on identifying costs and benefits analytically, and points to the specific areas where quantification would assist in evaluating policy impacts.

3.1 The costs and benefits of regulations

Analysis of the costs of regulations is rooted in the argument that new rules aim to change the behaviour of stakeholders inside and outside of government in order to address a recognised social problem.

In this context, policy initiatives, regulations or legislation can lead to unintended consequences in three ways:

1. Through inefficient implementation mechanisms;
2. Where stakeholders face an excessive cost from complying with the regulation;
3. By over- or underestimating the benefits associated with the new rule's aims; and/or
4. By underestimating the risks involved – in other words, by overestimating the likelihood of success in achieving the anticipated benefits.

We here consider each of these elements in turn.

First, the state has a wide variety of instruments to bring about behavioural change. Amongst many others, they include the imposition of sanctions or the provision of incentives; changes to decision-making criteria and procedures; reforms to institutions and organisational structures; and improved monitoring, including stronger reporting systems and publicity for achievements.

By encouraging drafters to identify the costs of the implementation process, SEIAS encourages them to explore more efficient ways to change behaviour. In particular, it is often quite costly to impose sanctions or provide incentives and to require detailed reporting systems. It is frequently less costly and more effective to incentivise groups other than the state to monitor and support compliance. In the labour laws, for instance, the unions take a central role in monitoring compliance by employers, greatly reducing the need for state inspectors. Similarly, public health initiatives frequently achieve more if they rely on education and positive incentives rather than harsh sanctions.

A less easily identified cost arises when an implementation mechanism opens the door to corruption. It is important to ensure that proposals provide adequate controls on the discretion of individual officials to benefit or harm the public or enterprises. These controls typically take the form of clear criteria for official decisions; requiring officials to publish their decisions and justify them in terms of the criteria provided; and establishing an easily accessible and fair appeals route.

Second, the cost to stakeholders of complying with regulations takes two forms: the regulatory burden and the cost of behavioural change itself.

The regulatory burden generally comprises reporting requirements and applications for permissions and licences. These systems should avoid excessive delays in providing permits as well as unnecessarily complex and time-consuming reporting and registration requirements. They should be realistic about the capacity of the relevant state agencies, or simply processing documents may lead to major delays.

In addition, the desired behavioural change should not in itself prove excessively onerous compared to the anticipated benefits. Thus, regulations that keep street traders from busy public places may mean they lose their livelihoods. The regulation may nevertheless be justified, but drafters should assess the costs as well as the anticipated benefits before they finalise rules.

Third, drafters may overestimate or underestimate the cost and benefits of succeeding in implementing a new rule. For instance, for many years the benefits of providing anti-retroviral treatment for people with HIV were underestimated, leading to inadequate policies in this regard. Similarly, the costs to employment creation from building RDP houses far from city centres appear to be systematically underestimated, leading to inadequate support for public transport and the densification of urban areas.

Finally, drafters are often overly optimistic about the likelihood of achieving the aims of legislation. Typically, a drafter will support her or his proposal by pointing to the gains from success, without noting that those gains may be very unlikely to occur. Risks to success arise from economic, political and social factors outside the control of the state or that are not covered by the proposed rules. For instance, a law that reduces the price of inputs along the value chain may not succeed because a lower price, by itself, may not be sufficient to incentivise the desired investments.

The procedures and methods in SEIAS aim to enable drafters consistently to assess all four kinds of unintended costs and risks that may arise out of new policy initiatives, regulations and legislation.

3.2 National priorities in SEIAS

In South Africa, SEIAS must help ensure that government policies do more to support the core national priorities. It therefore requires that new rules be measured in terms of their impact on

1. Social cohesion and security (safety, food, financial, energy and etc.)
2. Economic inclusion,
3. Economic growth, and
4. Environmental sustainability.

Policy makers should assess the likely impact of policy, regulation or law on all these priorities in order to ensure not only that the implementation process is efficient but also that it is effective from the standpoint of national aims.

They must also take into consideration that policies, legislation and regulations may have an impact on concurrent functions.

A common risk is that policy/law makers focus on achieving one priority without assessing the impact on other national aims at all. In particular, measures around infrastructure, the social services and the environment often have unforeseen implications for economic growth and inclusion. In addition, measures to support economic inclusion may impose excessive costs on growth, and vice versa.

A more complex challenge arises when meeting national priorities leads to contradictory outcomes. For instance, economic growth on the current path is environmentally unsustainable, since it is highly emissions intensive. New rules must manage the transition to a greener economy in ways that minimise the costs to economic growth, employment and the poor. Similarly, regulations to protect workers and communities from exploitative practices may deter some investments. A balance has to be struck between protecting the vulnerable and supporting a growing economy that will ultimately provide them with more opportunities.

SEIAS can clarify how proposed policies and regulations are likely to affect all the national priorities, but it will not pre-empt tough decisions in these difficult cases. It should, however, ensure more reasoned and effective measures and programmes, which strike an appropriate and sustainable balance between national imperatives.

The underlying challenge is that efforts to achieve our national priorities necessarily impose some costs on some social groups. After all, these priorities have been adopted because the economic and social systems inherited from apartheid reproduce unsustainable inequalities and exclusion. SEIAS must help determine when the benefits from state action justify the cost of transformation, as well as whether the implementation costs have been minimised as far as possible.

Policy initiatives, legislation and regulations typically have a different impact on:

- the richest 10% of households, which control almost half of the national income and virtually all formal enterprises, and the poorest 40% of households that gets less than 6% of national income;
- the metros and other major urban areas, and the poorest regions of the country, which are essentially the former homeland areas;

- employers and employees;
- women and men as well as youth and older people; and
- existing industries, which have a range of established state supports, and new industries, which require new measures around infrastructure, skills development and access to capital.

In sum, given complex government priorities in a divided society, SEIAS must generate an assessment of the impacts of a proposed rule that goes beyond a simple cost-benefit analysis. It must help decision makers to understand and balance the socio-economic impacts of proposals on different constituencies. It thus constitutes a tool to improve policy proposals, not a simple measure of their net value.

4 Procedures and responsibilities

SEIAS consists of a set of common procedures and support institutions for assessing the socio-economic impact of new or to be amended policies, regulations and legislations.

4.1 Procedures

SEIAS distinguishes six main stages in the policy process.

1. The decision to develop (or amend) policies, regulations or legislations in order to address an identified social or economic problem.
2. An initial assessment involving (a) identification of options for addressing the problem and (b) a rough evaluation of the costs and benefits of each option for different social or economic groups.
3. Agreement on the basic option and finalisation of the draft policy initiatives, regulations or legislation in a process that includes appropriate consultation and a continual review of the impact assessment as the proposals evolve.
4. Development of a final impact assessment that provides a detailed evaluation of the likely effects of the legislation in terms of implementation and compliance costs as well as the anticipated outcome.
5. Publication of the draft policy initiatives, regulation or legislation for public comment and consultation with stakeholders, with the final assessment attached.
6. Revision of the draft and the final assessment based on comment from the public and stakeholders, if required, and submission of the draft policy initiatives, regulation or legislation for approval with the final assessment attached.

The SEIAS procedures shape a structured process, where the costs, benefits and risks of draft rules are continuously assessed and used to strengthen proposals. The assessment is not a once-off exercise but rather an on-going analytical process that happens alongside and informs the development of policies, legislations and regulations.

A SEIAS analysis of a rule will not dictate specific remedies. This is particularly important where rules have been agreed with stakeholders, limiting the ability to change them. In these cases, SEIAS should serve primarily to inform the position of the state in engaging with stakeholders.

The SEIAS applies to:

- New or to be amended primary legislation, although the impact assessment need not be published for matters affecting national security;
- Subordinate legislation that can have a significant impact on society;
- Significant regulations, legislations and policy proposals; and
- Major amendments of existing legislation, regulations, policies and plans that have country coverage with high impacts.

Every new rule or policy should be subject to an initial assessment. The effort expended on the final assessment should however be proportional to the likely impact of a rule. It does not make sense to bring in expensive consultants or spend months on assessments of routine updates of regulations, for instance. The initial assessment should indicate the amount of time and resources required for the final assessment.

A more in-depth analysis and broader consultation with stakeholders should be undertaken for proposals where the initial assessment suggests there will be substantial implementation costs, compliance costs, outcomes, risks or political sensitivity. In contrast, if a proposal seems unlikely to have a significant impact, either by itself or through subordinate regulations, the final assessment can be more limited.

In many cases, legislation provides an enabling framework for more detailed regulations, which in turn determine the impact. In these cases, the subordinate regulations should be the main subject of the assessment process.

The following regulations are exempt from the SEIAS:

- Automatic increases in statutory fees as long as the increase is at or below the headline inflation rate measured by the Consumer Price Index, and
- Regulations giving effect to budget decisions (such as the Division of Revenue Act).

The above exemptions are however subject to assessment and engagement with the sponsoring departments.

The information contained in the published impact assessment should be suitable for public consumption in line with the provisions of the Promotion of Access to Information Act, 2000 (taking into consideration updates and amendments to the Act). Where an assessment cannot be published because it requires or generates classified information, the drafters must state their reasons.

4.2 Roles and responsibilities

The responsibility for developing an assessment of policies, regulations or legislative proposals under SEIAS falls to the sponsoring government department. Departments should develop

appropriate capacity to ensure quality assessments, whether conducted entirely by their own officials or in conjunction with external experts.

A SEIAS unit in the Department of Planning, Monitoring and Evaluation will provide oversight and training, and generally support government departments in implementing SEIAS. The National Treasury can also provide technical assistance, when required.

While departments may contract out elements of the technical analysis, the impact assessment and its conclusions should be finalised by department officials. Experience shows that buying a complete assessment from consultants leads to two problems: first, the product often does not adequately reflect government priorities; and second, it is frequently subject to allegations of bias.

In short, departments are responsible for the following.

1. Departments must ensure that their policy-making processes conform with SEIAS, starting with the initial impact assessment immediately after the mandate to develop a process is received.
2. Departments should make sure that the effort expended on the impact assessment is proportional to the likely impact of the new regulations or regulatory changes.
3. Both the initial and final impact assessments must use the formats and methods established by guidelines issued by the DPME.
4. Departments must publish the draft final assessment with the policies, legislations or regulations when it goes for public comments and consultation, unless it can provide sound reasons not to, which will generally relate to security and confidentiality.
5. Departments are responsible for attaching the final impact assessment to legislation, regulations or policy when submitted for approval by the relevant authorities, whether Cabinet, the Minister or Parliament. Directors General and Ministers are expected to sign for the quality of impact assessments by their departments when they submit them to Cabinet.

5 Methodology

By their nature, impact assessments require an estimate of the likely effects of an action that has not yet been undertaken. To achieve that end, they analyse the existing situation so as to forecast the effects of a change in the rules. The discussion here aims to establish some common approaches to make these estimates as reliable and consistent as possible. Again, the aims are to improve proposals, not simply to accept or reject them as is; many of the costs and benefits will be described but not quantified; and the SEIAS process should always identify the main risks to achieving the desired outcomes and ways to mitigate them.

The SEIAS builds on two fundamental approaches to evaluating the impact of a new rule:

1. Technical analysis, where researchers identify from their investigations, published studies and more or less complex simulations how the new rule will likely to affect different groups in society, and

2. Participatory research, mostly through consultation with stakeholders, in order to get an assessment of the impact of a new rule from those most affected and knowledgeable about the context.

Policy makers must manage the following challenges in the assessment process.

First, as noted above, it is important to ensure that the assessment process is proportionate to likely impact of the proposed rule. A relatively minor technical change, for instance to modify standards for solar water heaters, would require some consultation with producers and consumer representatives, as well as a fairly rough calculation of the cost of re-tooling production lines and the implications for the final price. In contrast, assessment of, say, the National Health Insurance policies, legislation and regulations will require a large research programme and ideally some modelling of the economic and social impacts. It would also necessitate a very broad programme of consultation with representatives of various healthcare providers, the public (as healthcare consumers), employers, unions and provincial health departments, amongst many others.

Second, the assessment process must manage the biases that, especially in such an unequal society, inevitably affect both the people doing the assessment and their respondents. For this reason, as noted in the assessment formats proposed in the next section, estimates of costs and benefits should always be linked to the affected groups. In addition, assessments should explicitly look at the impact of proposed new rules on the core national priorities of social cohesion and security, economic inclusion and growth, and environmental sustainability.

A particular challenge arises in evaluating stakeholders' inputs. By definition, stakeholders often know more about the context and likely impact of any policy than government officials. But their information is also necessarily shaped by their own interests. Framing the consultation in terms of the broader, longer term national interest helps contain overt self-interest bargaining. Nonetheless, some bias will persist in all stakeholder inputs. Their information is critical for sound decision making, but it must be evaluated carefully against research as well as other stakeholders' views.

A further issue around stakeholders is that some elite groups – notably suburban ratepayers associations, professional groups and business associations – have more capacity to engage with drafters than comparatively impoverished, poorly organised and vulnerable people and groupings. In any democracy, however, the government does not just mediate between stakeholders, but is responsible for representing the long-term interests of the majority of the population and the country as a whole. It is therefore critical that the drafter consult where possible with representatives of the majority of the electorate, for instance through union and community leaders.

Third, any new rule inevitably imposes some burdens on those who benefited from the pre-existing laws and structures. In South Africa, in particular, achieving a more equitable and inclusive society requires systematic changes in the behaviour of formal enterprises and relatively well-off communities. Relatively small sacrifices on their part can lead to a significant improvement in the conditions of the majority. The challenge is to identify when the burdens of

change loom so large that they could lead to excessive costs to society, for instance through disinvestment by business or a loss of skills to emigration.

The impact assessment should help manage these risks by pointing to ways to reduce the burdens associated with change as well as identifying benefits to offset them. Many relatively well-off households and businesspeople understand that a more equitable and inclusive economy will benefit them in the longer run both by providing a more welcoming and supportive society and by reducing the level of crime.

Fourth, impact assessment should support the alignment and integration of government strategies by identifying the economic impacts of non-economic measures and the social effects of economic measures. By extension, impact assessments for rules that target improvements around infrastructure, social services, the environment and security should include an estimate of the impact on economic growth, investment, employment creation and equity. Similarly, rules designed to affect economic activities, for instance supporting investment or employment creation, should be assessed in terms of their implications for the environment, social cohesion and security.

Finally, policy makers need to decide how far they can go in quantifying the impact of their measures, in addition to providing a broad qualitative analysis. As noted above, any quantification necessarily involves estimates, since the assessment relies on predictions for outcomes that do not yet exist. For many assessments, only an understanding of the broad order of magnitude is required, based on an evaluation of how the measure will affect different groups. Again, SEIAS aims to clarify decisions and focus discussions, not to come up with a simple numerical judgment. Even if no definitive cost-benefit analysis is possible, the impact assessment should point to major concerns and opportunities.

That said, modelling techniques can simulate the impact of some kinds of measures, including the indirect economic effects. They provide more precise (although not necessarily more accurate) estimates. For most new rules and policies, however, the cost and time required for modelling outweigh the benefits. Furthermore, the precision of the models often masks unproven assumptions, building in a hidden bias.

6 Frequently Asked Questions

a) Who should do the impact assessment?

The impact assessment should be managed by the drafters of the policy. As a rule, they should carry out the initial assessment, which should be approved by their Director General. Where the proposal affects other departments or government agencies, they should discuss the assessment with these bodies.

Who does the final assessment depends on how complex an analysis is required, which in turn depends largely on the scope of the proposal being assessed. For major interventions, it is desirable to ensure an expert analysis, possibly including a modelling exercise. As a rule of thumb, the drafters should seek outside expertise to help fill out sections of the form that they cannot complete using their own knowledge.

- b) Will Cabinet consider a proposal without the impact assessment?

From [DATE], only proposals that have an impact assessment attached will be considered by Cabinet.

- c) Stakeholders just lobby for their own interests – why should I listen?

Stakeholders generally know more about their conditions and the likely impact of a proposal than government officials. If drafters simply ignore their inputs, they often come up with erroneous estimates of the cost of new measures. The time spent in consultation should be viewed as participatory research. If the stakeholders appear to have exaggerated views, then more academic research should be used to check them.

It is useful to frame discussions with stakeholders by (a) requiring that their inputs provide alternative ways to solve the problem identified, if they do not like the one that has been drafted, and (b) requiring that they consider how their inputs would impact on broader development and growth. This approach seeks to move the discourse from power and self interest to reason and evidence. Experience demonstrates that it generates much more meaningful and thoughtful discussions.

- d) All this research will just stop us from implementing anything.

SEIAS permits drafters to adjust the scope of the assessment process to the significance of each proposal. In any case, a failure to take unintended consequences into account can mean policies become unnecessarily contentious, impose large undesirable costs on society, or are simply ignored.

- e) My job is to provide a specific service. Why should I care about the priorities of other departments that are listed in the assessment format?

The failure to align government around core priorities has undermined service delivery and economic transformation. Taking the impact on national priorities into account with every measure, even if it is not directed at those priorities, is critical to improve the alignment of government actions. The process also builds in a quid pro quo, since other departments also have to take into account your priorities, as long as they align with the national mandate.

- f) Will the impact assessment count even if I can't quantify costs and benefits?

Often only a qualitative analysis of the impact of a policy is possible or desirable. That kind of estimate improves the policy process by pointing to areas where costs and risks can be moderated or where they are patently excessive relative to the anticipated benefits of the policy. The impact assessment should serve more to focus discussion and identify areas of debate and improvement than to provide a fully quantified accounting.

- g) How should I quantify costs and benefits if they're intangible or very broad or long term? For instance, improved ECD leads to better educational outcomes and income over a person's whole lifetime. That can't be meaningfully put into a single number.

Often it is important to point to the existence of major costs and benefits, even if they can't be fully quantified. Again, the aim is mostly to ensure that policy makers take these costs and benefits into account. There are techniques for quantifying them if it proves really necessary, but usually it is less important than having a broad understanding of the issues involved.

Thank you for co-operating with this effort to improve policy making and achieve a more coherent, sustainable, prosperous and secure society!