

## Insights

# LEVELLING UP BILL: THE NEW ENVIRONMENTAL ASSESSMENT REGIME

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## SUMMARY

In the third and final Insight in our series on the planning changes in the Levelling Up and Regeneration Bill (the first was on the [proposed changes to local plans](#) and the second on the new [Infrastructure Levy](#)), we examine the proposed new environmental assessment regime and how it contrasts with the current EIA and SEA regime.

Since Brexit, there has been talk by government of reforming and streamlining the notoriously complicated environmental assessment and strategic environmental assessment process in order to reduce delays in the planning system. The Levelling Up Bill takes this opportunity for reform forward, subject to the government's commitment not to weaken existing environmental protections.

### **The current EIA and SEA regime**

An environmental impact assessment ("EIA") requires assessment of a range of likely environmental impacts of a development proposal and must be prepared strictly in accordance with the EIA Regulations 2017 [\[1\]](#) ("EIA Regulations") and is used to inform decision-makers on the environmental implications of a proposed development. The EIA Regulations require an EIA for projects listed in Schedule 1 in every case and for projects listed in Schedule 2 if they are likely to have significant effects on the environment.

Sustainability appraisals and strategic environmental assessments ("SEA") are the equivalent assessment tools used at the plan-making stage to assess the likely effects of a local plan to help achieve environmental, economic and social objectives. They are governed by a different set of regulations[\[2\]](#).

### **Environmental Outcomes Reports**

A new environmental assessment regime is proposed by the Levelling Up Bill<sup>[3]</sup> to replace EIAs, SEAs and sustainability appraisals with a new 'Environmental Outcomes Reports' ("EOR") procedure that builds on the information required in the reporting stages of the EIA and SEA Directive and the targets set by the Environment Act 2021. The Bill provides the broad framework for EORs but notably, the detail will be set out in regulations to be consulted on separately.

An EOR will be required for proposed 'relevant consents' (including nationally-significant infrastructure projects) and 'relevant plans' with an absolute requirement for submission of an EOR for 'category 1 consents' and the requirement applying to 'category 2 consents' if certain conditions are met.

At the heart of an EOR will be an assessment of the anticipated environmental effects of a proposed development measured against 'clear and tangible' 'specified environmental outcomes' to be set by the Secretary of State. These outcomes will be wide reaching and (i) cover the protection of the natural environment, cultural heritage and the landscape in the UK and offshore areas; (ii) have regard to the 25 Year Environmental Plan; and (iii) uphold the Brexit non-regression agreement.

The exact detail of what will be included in an EOR will be set out in regulations, but it is expected to be prepared using a digitally enabled platform and that the report will include any 'steps' proposed to:

- increase the extent to which a specified environmental outcome is delivered;
- avoid, mitigate and remedy the effects of and compensate for a specified environmental outcome not being delivered.

The consenting authority cannot grant the relevant consent unless an EOR has been prepared and taken into account in determining whether and on what terms the proposed consent is to be given. This will be a matter for planning judgement although the EOR Regulations may require more weight to be given to the EOR in certain circumstances.

## **How is the new assessment regime different?**

The intention is that the new EOR regime will improve and simplify the process used to assess the potential environmental effects of proposed development and ensure that the assessment process is joined up at the strategic and project level.

Whilst there are many aspects of the new framework that are likely to be similar, for example in the range of environmental effects requiring assessment and the categorisation of development to create an absolute EOR requirement in some cases and a conditional requirement in others, the main differences with the proposed new regime are that it will:

- establish a specific outcomes-based approach to assessment, in contrast to the current regime which is focussed on the significance of the effects on a range of environmental factors a development is likely to give rise to;
- require ongoing assessment and monitoring against the specified outcomes to inform when remedial action and/or mitigations are needed;
- require public authorities to report to the government on the delivery of the 'specified environmental outcomes'.

## Comment

Whether the new framework delivers its 'clearer and simple' objective will hinge on how the 'specified environmental outcomes' are defined in the EOR regulations, as data will be collected, analysed and reported on against these benchmarks. The list of outcomes is likely to be long and the 'tangible' targets ambitious as the policy paper accompanying the Bill says that the government wants to "deliver more, not less, for the environment".

However, if a properly tested and fully functioning digital platform is introduced to support these reforms (as suggested by the government's Chief Planner) this could be a real improvement for applicants and their consultants.

Nonetheless, the government has a challenge on its hands to simplify such a technical area. Whilst still in the process of conducting user research to develop options<sup>[4]</sup>, how the new regime will work in practice remains work in progress, but simplifying the process whilst maintaining its robustness will no doubt require ingenuity.

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1. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 applies the EU directive on the assessment of the effects of certain public and private projects on the environment
  2. Environmental Assessment of Plans and Programmes Regulations 2004 (commonly referred to as the 'Strategic Environmental Assessment Regulations')
  3. Part 5 Levelling Up and Regeneration Bill
  4. See [DLUHC's Chief Planner's Newsletter dated 6 May 2022](#)

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## MEET THE TEAM



### **Clare Eccles**

London

[clare.eccles@bclplaw.com](mailto:clare.eccles@bclplaw.com)

+44 (0) 20 3400 4267

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