

Insights

WHAT DOES THE NEW EOR FRAMEWORK MEAN FOR DEVELOPERS?

Apr 06, 2023

SUMMARY

The government's consultation on the proposed new system of Environmental Outcome Reports to replace the existing environmental assessment regime, provides a clearer idea of how it is likely to work in practice. In this Insight we examine the proposed changes and consider whether they will simplify this complex assessment regime in practice.

As discussed in our previous insight "[Levelling Up Bill: the new environmental assessment regime](#)", Brexit created the opportunity to reform the EU-derived environmental assessment processes of Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) which has been in place since the 1980s and, for a number of reasons, has become ineffective with assessments that are too long, repetitive and complicated to navigate.

The government unveiled its proposals to replace the current system of environmental assessments with new 'Environmental Outcomes Reports' (EOR) in the Levelling Up and Regeneration Bill (the Bill) last summer. The Bill provides the framework for EORs with the detailed design to be delivered through secondary legislation pursuant to its powers and guidance. The recently published [government consultation](#) (which is the first of many and closes on 9 June 2023) seeks views on the proposed new system (but not the technical detail) and provides a clearer idea of how it is likely to work in practice.

ENVIRONMENTAL OUTCOMES REPORTS

The new system of EORs is expected to come into force in 2025 and intends to clarify and simplify the environmental assessment process to address issues in the current system principally around inefficiency, duplication, risk aversion, loss of focus and issues with data, but whilst maintaining standards of environmental protection and a statutory commitment in the Bill to 'non-regression'.

EORs will apply at the strategic level to assessments of relevant plans (eg local plans) and to planning applications under the TCPA 1990 and to NSIP applications under the Planning Act 2008 and will shift the focus of the reporting to an 'outcome based' approach.

In summary, proposed EORs will:

- summarise the technical environmental assessments and surveys carried out in connection with a proposal (these will form standalone reports);
- concisely report on the contribution the proposal will make towards nationally agreed core environmental outcomes (rather than focussing on the significance of the environmental implications of the proposal);
- identify necessary mitigation following application of the mitigation hierarchy, which preferentially applies the principles of prevention of harm and rectification at source to mitigation and compensation, in the design and development of the plan or project;
- include details of alternatives considered and key dates when decisions were taken in accordance with new guidance which aims to clarify existing ambiguities to confirm that realistic alternatives that are fully consistent with the primary objectives of the project should be considered at an early stage, with no need for assessment and reporting against options that would not be credible.

WHAT OUTCOMES WILL REQUIRE ASSESSMENT?

The new outcomes approach intends to create a direct link between national environmental policy and planning decisions and development delivery. Outcomes will be set by the Secretary of State (in regulations and subject to consultation) to reflect national environmental priorities having regard to the government's goals in the Environmental Improvement Plan (a requirement under the Environment Act 2021) and to help achieve environmental targets.

Outcomes are likely to be similar to the factors assessed under the current regime, with the consultation listing biodiversity, air quality, landscape, noise, water, waste and cultural heritage as potential outcomes. However, how health and climate change outcomes will be accommodated within the new framework is unclear and subject to further policy consideration.

Outcomes will be assessed by reference to measurable indicators (to be based on existing indicators already used by DEFRA) set out in guidance and developed at a national level to ensure consistency.

WHICH APPLICATIONS WILL NEED AN EOR?

New screening criteria will introduce mandatory EORs for 'Category 1 consents' and EORs for 'Category 2 consents' if the criteria in regulations are met. The criteria will focus on the proximity of the development site to, or impact on, a sensitive receptor. This contrasts to the Schedule 1 and Schedule 2 screening criteria under the current EIA regime where scale is, in general, the primary determining screening criteria. Scale of the development will continue to be a criteria but it will be a secondary consideration.

WHAT OTHER CHANGES ARE PROPOSED?

Other changes proposed include:

- A more formal and robust approach introduced through powers in the Bill to **adaptive management** of mitigation if progress towards an environmental outcome is not as expected, or an unexpected adverse effect that was not predicted in the assessment, has arisen.
- A stronger approach to **monitoring and enforcement** of mitigation measures after decisions have been taken, for example with bonds and escrow accounts.
- Removal of **scoping decisions**. Instead, a desktop analysis will determine if outcomes can be scoped out and more proportionate approach to assessment against agreed outcomes will mean only a minimal assessment needs be carried out of an outcome where a full assessment is not required.
- Changes to the assessment of **cumulative environmental effects**, particularly in the context of climate change and the wider policy framework. However, the government seems unclear of the direction of change needed and this remains under review.
- Removal of **economic assessments**, but assessment of impacts on human health and socio-economic issues will continue.
- Removal of **Sustainability Appraisals** which are currently required for plan-making under the SEA regime as they duplicate and overlap with the wider policy and legislative requirements.

COMMENTS

This is a difficult and challenging area for the government to legislate on and to get right and it is not rushing into formalising what will amount to fundamental changes just yet. There are some good ideas in the consultation, but whether or not they simplify the assessment regime in practice will turn on the detail in the regulations and guidance. This is likely to remain a technical legal area that will remain open to interpretation. As such, it is likely the risk of legal challenge, which is not addressed in the consultation, will continue.

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MEET THE TEAM



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