

ENVIRONMENTAL OUTCOMES REPORTS (EORs)

Are EORs the answer for sustainable development?

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Several articles have been published on the implications of the proposed Environmental Outcomes Reports (EORs) on the **Environmental Impact Assessment** regime for projects but there has been little analysis of the proposed changes to the **Strategic Environmental Assessment (SEA)/Sustainability Appraisal (SA)** for plans. This article therefore focuses on the implications of the EORs on SEA/SA for plans.

The **Levelling Up and Regeneration Bill (LURB)** is seeking powers to implement a new domestic framework for environmental assessment. The Government is consulting on the use of powers in the Bill and seeking views from stakeholders across environmental assessment regimes.

The consultation - **Environmental Outcomes Report: a new approach to environmental assessment, 17 March 2023** - seeks views on how this new framework could work as a replacement to the existing environmental assessment regimes, namely Strategic Environmental Assessment (SEA) and Environmental Impact Assessments (EIA). The consultation only applies to England and is open until **9 June 2023**.

“ Sustainable development recognises that eradicating poverty in all its forms and dimensions, combating inequality within and among countries, preserving the planet, creating sustained, inclusive and sustainable economic growth and fostering social inclusion are linked to each other and are interdependent. ”

UN 2030 Agenda for Sustainable Development, 2015

LEGISLATION

The proposals focus on the existing regimes for Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA), transposed into UK law from EU directives, including:

- ▶ **EU Strategic Environmental Assessment Directive 2001/42/EC**
Transposed in England through the Environmental Assessment of Plans and Programmes Regulations 2004
- ▶ **EU Environmental Impact Assessment Directive**
Transposed in England through the EIA Regulations 2017.

Other legislation of relevance, includes:

- ▶ **Planning and Compulsory Purchase Act 2004**
Section 19(5) of the act specifically refers to the need for Development Plan Documents to be subject to Sustainability Appraisal (SA).
- ▶ **Localism Act 2011 (amended 2012)**
The amendment to the Localism Act removed the need for Local Authorities to prepare an Annual Monitoring Report.
- ▶ **Levelling Up and Regeneration Bill 2023**
Part 5 of the LURB relates to EORs.
Schedule 7 of the LURB relates to changes to section 15-37 of the PCP Act 2004 and removes the requirement for Sustainability Appraisal and replacement with an EOR.
Clause 120 Safeguards: non-regression, international obligations and public engagement.
Subsection (1) requires that the Secretary of State must be satisfied that any regulations do not reduce the overall level of environmental protection provided by existing environmental law at the time the Act is passed.
Subsection (2) also ensures the regulations cannot contain provisions that are inconsistent with the implementation of the UK's international obligations relating to the assessment of the environmental impact of relevant plans and relevant consents.

UK REGULATIONS

The need for Strategic Environmental Assessment was introduced by the **EU Strategic Environmental Assessment Directive 2001/42/EC**, which was transposed into UK legislation by the **Environmental Assessment of Plans and Programmes Regulations 2004**.

In the same year, the **Planning and Compulsory Purchase Act 2004 [section 19(5)]** introduced the requirement for Local Authorities to prepare a Sustainability Appraisal (SA) in support of development plans.

“ The local planning authority must also -

- (a) carry out an appraisal of the sustainability of the proposals in each development plan document;
- (b) prepare a report of the findings of the appraisal.”

The National Planning Policy Framework (NPPF) identifies the purpose of the planning system as ‘**contributing to the achievement of sustainable development**’ through the overarching and interdependent objectives of social, economic and environment, to enable a net gain across all three objectives.

The preparation of the Sustainability Appraisal also encompasses the requirements for SEA as set in the **National Planning Practice Guidance (NPPG)**. The NPPG and regulations make clear there is a need to assess **social, economic and environmental** issues together, rather than environmental issues in isolation.

THE PROPOSALS

The Government intends to simplify and streamline the assessment process to make it more effective as a tool to support the delivery of the environmental commitments set out in the **Environment Act 2021** and **Environmental Improvement Plan**.

The Levelling Up and Regeneration Bill intends to secure powers to replace the current processes set out in EIA and SEA Directives with one new system of **Environmental Outcomes Reports (EORs)**.

Further consultation will be carried out with users, expert stakeholders and the public to design and develop the detail of the new system, which will be delivered through secondary legislation.

The Government wants to focus the reform on:

- ➔ inefficiency
- ➔ duplication
- ➔ risk aversion
- ➔ loss of focus
- ➔ issues with data

The consultation proposes an outcomes based approach through the preparation of EORs.

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Environmental information under the Convention goes beyond information on the elements of the environment and their interaction to include information on human and non-human factors and activities or measures that affect or are likely to affect the elements of the environment. Furthermore, the definition also includes economic analyses and assumptions used in environmental decision-making.

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Aarhus Implementation Guide, 2014

INTERNATIONAL OBLIGATIONS

The UK is committed to several international obligations, which relate to environmental assessment and the pursuit of sustainable development, including:

▶ **Rio Declaration, 1992**

The Rio Declaration on Environment and Development, Principle 4 states:

“ In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it. ”

▶ **Espoo Convention, 1991**

The Espoo (EIA) Convention came into force in 1997 and sets out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning.

The SEA Protocol complements the Espoo Convention by ensuring that individual Parties integrate environmental assessment into their plans and programmes at the earliest stages, thereby helping to lay the groundwork for sustainable development. The Protocol entered into force on 11 July 2010.

▶ **Aarhus Convention, 1998**

The Aarhus Convention relates to Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted by the European Parliament and Council under **Regulation No. 1367/2006** on 6 September 2006.

▶ **UN 2030 Agenda for Sustainable Development, 2015**

This Agenda is a plan of action for people, planet and prosperity. The agenda introduced 17 global Sustainable Development Goals (SDGs) and 169 targets with all signatories expected to contribute to them internationally and deliver them domestically. The SDGs are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental. The last National Review of progress on delivering the SDGs in the UK was in 2019.

THE CONSULTATION

There are definitely positive aspects to the proposed reforms, which address some of the current issues including:

- The system needs to be refined
- Duplication of effort needs to be addressed
- Data collection needs to be improved
- Reports need to be streamlined and made more accessible.

However, the consultation paper shows a lack of discussion or evidence to show the pros and cons of the existing systems and the need for change. Before a systematic change is made there should be a thorough review of what is working and what needs to be modified to make the process more efficient. Not everything in the current system needs to be altered and a focussed refinement, rather than a whole new process, is likely to be more beneficial in terms of both costs, speed of implementation and certainty for the industry.

Engagement with key stakeholders and the profession also needs to be more transparent. There are currently no details of those involved in the consultation to date or any evidence of the review undertaken.

There are several acknowledgements that such assessments are complex but that there is a need for EORs to be simple. Whilst there is a need for information to be presented in a clear and accessible manner, the nature of the assessments is inevitably complex owing to the number of variables being assessed, the technical nature of data and the need to forecast or predict likely impacts or 'outcomes'.

Furthermore, the proposal to change the SEA/SA from assessing sustainability factors to assessing purely environmental can only be seen as a regressive move, contrary to the LURB and the international obligations which the UK is committed to such as the Aarhus and Espoo Conventions.

The suggestion in the consultation (**para 3.8**) that SEA has been expanded to include social and economic considerations and rebranded as 'Sustainability Appraisal' is simply incorrect. The Planning and Compulsory Purchase Act introduced the formal requirement for the Sustainability Appraisal of development plans in 2004, and such appraisals were being implemented long before this date.

SEA/SA

There is also considerable confusion within the document between the two assessment regimes. The proposals suggest that EORs will be used for both regimes even though the methodologies for SEA/SA and EIA assessments are markedly different. The proposals switch between the two processes throughout the document and fail to demonstrate an adequate understanding of the two systems.

The main focus of the consultation is the EIA used at the project level and the failings of this regime. For example, the worked examples provided only relate to the project level assessment.

The assessment of plans is very different to projects owing to their strategic nature. The SEA/SA process assesses plans to determine whether the policies will achieve sustainable development over a short, medium and long timescale, including the spatial options for development and the policies that will control development.

The profession recognises the need for reform but the difficulties with the SEA/SA process, apart from their length and complexity, have frequently been the failure of the assessments to link to the evidence base available and the inadequate assessment of alternatives, particularly spatial options.

The assessment of environmental factors in isolation will fail to demonstrate the likely impacts upon issues such as health, education, jobs, viability etc. for the very communities that will be affected, and goes against the principles of sustainable development committed to in the UK's international obligations.

In turn, it must be questioned whether limiting the assessment to environmental issues will result in good planning and the delivery of the sustainable places and communities that are so badly needed.

“ Sustainability appraisals incorporate the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 (commonly referred to as the ‘Strategic Environmental Assessment Regulations’). Sustainability appraisal ensures that potential environmental effects are given full consideration alongside social and economic issues. ”

INDICATORS

The proposals suggest the introduction of a system of indicators, derived nationally to assess the 'outcomes' of the plans. However, there is confusion between:

- ▶ the need for National Indicators and Local Indicators
- ▶ how indicators will be prepared
- ▶ qualitative and quantitative indicators
- ▶ the different level of assessment needed between assessments.

What is not mentioned, is that SEA/SA already uses a system of Objectives and Indicators to assess effects. The indicators are set locally and were initially monitored through Councils' Annual Monitoring Reports.

The difficulty with National indicators is that inevitably such indicators will be very 'high level' and will not be able to measure the 'outcomes' at a local level. This then presents the risk of many different additional indicators being prepared at the local level, which could prove difficult to manage.

Furthermore, UK data for the Sustainable Development Goals in the form of indicators and targets already exists and is regularly updated by the Office for National Statistics, yet there is no reference to this data and its potential use in the assessments.

It is also not clear how the temporary, short term and indirect effects that are currently measured will be considered, in particular the impacts felt by communities during construction.

MITIGATION

The Bill enshrines the mitigation hierarchy (avoid, mitigate, compensate) as part of the new system of environmental assessment. The proposal that mitigation is strengthened as part of the assessments, is regarded as a positive change, although enforcement will inevitably raise its own challenges.

The consultation focuses on the mitigation of the adverse effects on the environment and fails to mention positive mitigation, which is part of the SEA Directive.

The concept of adaptive or dynamic mitigation is also introduced, which is interesting but it is unclear how this would work in practice.

MONITORING

The need to improve the system for monitoring is recognised and welcomed, although it should be remembered that the mandatory requirement for Local Authorities to prepare Annual Monitoring Reports (AMRs) was removed as a consequence of the amendment to the Localism Act in 2012.

The data in the AMRs was linked to the sustainability indicators in the SA process and was previously used as part of the monitoring system. The role of monitoring has subsequently diminished for many local authorities, coupled with the increasing pressures on local authorities' resources.

CONCLUSIONS

- ▶ **The need for improvements to the current system are recognised but there is a need for evidence of the pros and cons of the existing system before systematic change is made**
- ▶ **Consideration of 'Environmental' rather than 'Sustainable' Outcomes is considered regressive and contrary to the requirements of LURB**
- ▶ **The proposals fail to consider data and systems already in place which can be utilised**
- ▶ **A lot more detail on how the different regimes will work in practice is needed, particularly at the plan level**
- ▶ **It is not necessarily a system of one size fits all - strategic plans and local project level assessments are very different**
- ▶ **The strengthening of mitigation and monitoring is welcome, however a commitment to the resources to implement the new system is needed**
- ▶ **The proposals will provide further uncertainty for the industry and delays to the preparation of Local Plans and projects at a time when there is a need for action and delivery on the ground.**