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Environmental Outcomes Reports

Preparations are being made by the UK Government to introduce a new system of environmental assessments to replace rules inherited from the EU. Part 5 of the Levelling-up and Regeneration Bill, introduced to the House of Commons at the start of the parliamentary session in May, creates a power to make regulations in relation to Environmental Outcomes Reports (EORs) which will, in some areas at least, replace Strategic Environmental Assessment, Environmental Impact Assessment and Habitats Assessment.

The Bill itself takes the form of a broad enabling power, with vital issues affecting the scope and impact of the proposed requirements left to be determined by regulations. The starting point for the EOR process is the specification of the outcomes relating to environmental protection and enhancement which are to be the focus of the new structure. In identifying these, regard must be had to the environmental improvement plan established under the Environment Act 2021. When required, an EOR must report on how the proposed project or plan is likely to impact on the delivery of the outcomes and on steps in relation to enhancing delivery and to avoiding, mitigating or compensating for the consequences of failing to deliver them.

As with existing procedures, an EOR will be required before certain consents can be issued or certain plans can be implemented, but it is in the regulations that the details will be set out on which consents and plans are subject to the procedure, what the reports must contain, and how, and to what extent, reports are to be taken into account by public authorities in their deliberations. Again, as with existing environmental impact assessments, the Bill envisages that the projects requiring an EOR will fall into two categories: projects that will always require an EOR before consent can be given and those where this requirement will depend on further criteria being met (presumably issues such as scale and location). One particular point noted is the potential to waive an assessment on aspects already covered by a different EOR. Arrangements for monitoring and assessing the actual impact of projects or plans may also be contained in the regulations as well as provisions requiring subsequent action to enhance delivery of the outcomes or mitigate, remedy or compensate for non-delivery.

The regulation-making power is very wide but subject to some limitations. Regulations cannot be made unless the Secretary of State is satisfied that that the overall effect will not lower the level of environmental protection overall, nor if any provision is inconsistent with the UK's international obligations in relation to environmental assessments. The Secretary of State must also seek to ensure that the public will be informed of proposed plans and projects and that adequate public engagement can take place.

The Bill envisages the Secretary of State being able to make regulations covering devolved matters in Scotland, subject to consultation with, but not consent from, the Scottish Ministers. On the other hand, the particular provision dealing with the interaction with existing assessment legislation lists only the measures that apply in England, suggesting that the intention is not to use that broad power to rework the law in Scotland completely.

The Government's aim is that this Part of the Bill will "introduce a clearer and simpler process where relevant plans and projects ... are assessed against tangible environmental outcomes set by government, rather than in Brussels. ... In bringing forward a new approach to environmental assessment, we want it to deliver more, not less, for the environment."¹ Nevertheless, there will be fears that the recasting of the environmental assessment procedures at a time when there is strong

¹ <https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information>

deregulatory rhetoric from other parts of the Government may not match that ambition. At this stage so much is uncertain, not least the implications for Scotland, that it is too early to reach any conclusion other than the need to watch this space closely.

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