

18 October 2022



Note for the Net Zero, Energy and Transport Committee by the Scottish Property Federation

Call for Comments on the Legislative Consent Motion for Part 5 of the Levelling Up Bill (UK)

1. The Scottish Property Federation (SPF) is the voice for the real estate industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers.
2. The Committee put one specific question to stakeholders in its call for comments:
 - What are your views on proposals in the UK Levelling-up and Regeneration Bill in relation to environmental law; and specifically in relation to provisions to give the UK Government new powers to create Environmental Outcome Reports, which would be applicable in Scotland.

Background

3. Our members will produce EIAs to support major development and investment proposals across all forms of real estate in Scotland. This is a core requirement of major development proposals and has grown as a regulatory requirement over recent decades as understanding and concern of environmental factors has grown. Our industry engages closely therefore with the Competent Authorities relevant to Environment Impact Assessments. The current EIA regulations stem from the 2017 Directive and therefore it is clear that a new framework would be expected to evolve in the UK after the decision to leave the European Union and the implementation of 'Brexit'. We are concerned that this process of policy development does not appear to have been co-ordinated by the UK and devolved administrations, which can lead to unpredictable near-term regulatory demands.

Fiscal context

4. The process of producing EIAs is intricate, technical and a significant cost in the process. A project's requirements can incorporate environmental assessments of transport impacts, natural habitats, contamination, flooding related analyses, noise and air quality. Developments will require specific assessments related to their context and location, for example protected areas around Port Developments. This is not an exhaustive range. It is important for our industry therefore, that the regulatory regimes are clear and certain.
5. Experts within our membership report that EIAs will typically cost between £80,000 and £120,000 depending on size, type and complexity of a given major development. For

sizeable mixed use schemes that may be delivered over many years, sometimes decades, this is also only an initial figure which will increase. In Scotland there are some 325 major planning applications determined per year (latest Scottish Government Planning Performance statistics) – the determination being the ‘end of the beginning’ for such schemes (there will be reserved matters, building warrants and construction, S75 agreements to deliver subsequently). The EIA related to a particular application will have been produced in advance of the determination of course, but that said, it is not unreasonable to suggest that the EIA regime is an annual multi-million pound regulatory requirement which is delivered by the industry for planning authorities and applicants, who include the public sector of course. This is a significant cost therefore on applicants and again, certainty of the regulatory regime is vital.

UK proposals

6. The LCM is required because the Levelling Up Bill covers policy areas traditionally reserved to Scottish Minister and approved by the Scottish Parliament. We understand that the implication of Brexit requires a new framework that will update and maintain the EIA regime. However, there is little detail in the current proposals before the UK Parliament and, consequently the Scottish Parliament.
7. What we do know is that the UK Government intends to reframe EIAs as Environmental Outcome Reports which are intended to be simplified in relation to the EIA structure. The intention is to create a system that is to be measured against intended environmental outcomes (related to specific development projects or infrastructure investments). The oral evidence session did focus on whether witnesses felt that the commitment to ‘non-regression’ within the regulations was sufficient to meet any concern at ‘watering-down’ environmental assessments. Without the detail for our expert members to consider, we are unfortunately in the position of saying it depends on the detail.
8. There are some concerns with the existing EIA regulations. Members suggest they do not necessarily co-exist with habitats regulations very well, or at times there may even be contradictory policy drivers in the regulatory framework. For example, the need to support offshore wind farm development on renewable energy grounds which can conflict at times with wider protected site areas. Since our evidence on 4 October to the Committee, we have also heard of the concerns expressed by other commentators that there did not appear to be an intended requirement for EORs to provide an environmental ‘baseline’ in respect for projects and related areas. However, membership feedback to us has suggested that the system is relatively well bedded in in Scotland and known, and there is a feeling that major regulatory upheaval is not required. Furthermore, with ESG (Environmental, Social and Governance) requirements now paramount for the institutional investors (and other funders) who support the real estate industry, it is vital for our members that they can future proof the environment impact aspects to a development proposal.

Potential for Regulatory conflict

9. A key question put by the Committee when it received evidence was whether there was potential for conflict between the UK Government and Scottish Ministers in relation to the detail of EORs vis-à-vis the existing EIA requirements for eligible major planning applications. In the absence of apparent agreement between the administrations and minus detailed proposals, it would appear that there could be grounds for different

positions to be taken. This would undermine certainty of the requirements for environmental assessment and potentially lead to duplication in the assessment regime.

10. The reality is that until we see the detailed proposals of the new regime, we cannot say for certain what will be the impact and consequences for our industry and the veracity of the EIA regime we know and understand. The Levelling Up Bill itself refers to the requirement for the UK Government to consult with the devolved administrations ahead of the adoption of regulations to implement EORs. As expressed in the Scottish Government's memorandum for the Committee's scrutiny of the LCM, the Scottish Ministers have concerns with this approach and do not feel it is strong enough. We are further interested to know how the proposed regime and UK led Regulations would align with wider Scottish Minister led planning regulations. The National Planning Framework 4 for examples includes the Scottish Planning Policy and this will have significant statutory implications on environmental and sustainability areas of policy.
- 11. We would urge the UK, Scottish and indeed other devolved administrations to identify how the EIA regime will be regulated in the aftermath of Brexit, and to seek agreement between the respective legislatures before any firm policies are adopted without such agreement. The EOR proposals could improve on the existing regime: we simply cannot say without the detailed proposals. Our industry members who operate across the UK would certainly prefer to avoid the emergence of serious regulatory misalignment between EORs say in England, and different EOR/EIA regimes elsewhere in the UK. But in addition to our industry members, it is also worth underlining how the public sector itself will require certainty as it will often be driving key infrastructure projects in transport and social housing.**
12. The SPF will be monitoring the progress of the UK legislation and further updates from the Scottish Government in relation to the future of EIAs. We will be pleased to comment further as this policy area progresses.

Contact

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