



**Office for
Environmental
Protection**

Office for Environmental Protection
County Hall
Spetchley Road
Worcester
WR5 2NP

03300 416 581
www.theoep.org.uk

The Rt Hon Michael Gove MP

Secretary of State for Levelling Up, Housing and Communities
Fry Building
2 Marsham Street
London
SW1P 4DF

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By email only, to: PSMichaelGove@levellingup.gov.uk

Cc: eareforms@levellingup.gov.uk

Cc: kim.harding@levellingup.gov.uk

Response to Environmental Outcomes Reports: a new approach to environmental assessment

Dear Secretary of State,

I am pleased to submit the response of the Office for Environmental Protection (OEP) to your consultation. I hope you find our input useful in informing Government's thinking, in the way anticipated when you were so centrally involved in the OEP's genesis.

We set out our overall advice and observations in this letter. The accompanying annex responds to specific questions in the consultation where we consider that the OEP can provide the most helpful information at this stage.

As discussed with your officials, we are shortly to report on the current environmental assessment regimes. We will send you this report (and also lay it before Parliament), with publication likely immediately after the summer recess. I hope our detailed evaluation will be helpful to you, as you look for opportunities (reform) to deliver better environmental outcomes.

You will be all too aware of the magnitude of the task, in meeting government's ambitions for the environment both in general and in relation to recently set statutory targets relating to nature and species abundance. The next few years are simply critical: without clear sight and a comprehensive and coherent approach, there is no chance of halting further decline. It is in this context that we advise.

Risks and Opportunities of an EOR regime

The need to improve environmental assessment regimes is widely recognised – albeit many of the known issues relate to the way the regimes work in practice rather than the legislative provisions. An Environmental Outcomes Reports (EOR) regime that deals effectively with known issues (such as access to data, complexity of reports and late engagement on environmental matters in the development process) would be of real value both locally and nationally. There is an opportunity here to align with the recently refreshed the 25-year Environmental Improvement Plan (EIP), with contributions to be made to Government's

ambitions at a local, regional and national level. New regulations and guidance could provide much needed clarity for decision-makers, practitioners and local communities alike, and improvements to measures such as reporting, monitoring and mitigation could deliver an efficient regime that also delivers for the environment and local communities.

However, there are risks associated with a move from well-established regimes when so much rides on effective delivery over the next few years (and beyond). Decision-makers, developers and others must develop their understanding of EORs. Sought-after efficiencies (unless managed effectively) have the potential to undermine overall environmental protection, and the scale of change may compound acknowledged issues with the existing regimes such as public authorities' capacity and capability to deliver effectively. Experience tells us that legal challenges will increase as parties seek test and clarify the effect of the new arrangements, whereas government needs to hit the ground running now, to meet its environmental ambitions. Whether successful or not, legal challenge can hold up matters across the nation, as you will appreciate.

Elements of an effective EOR regime

We advise that there are elements to get right if the suggested environmental ambition of an EOR regime is to be met alongside and in tandem with the EIP. In short:

EOR outcomes and indicators should reflect the scale and urgency required and

- i. be underpinned by evidence to provide confidence that development is being steered towards measures which deliver greatest environmental benefit and real improvement in the environment
- ii. be coherent with the EIP, and with legally binding targets set under the Environment and Climate Change Acts
- iii. include environmental matters which are not covered by the EIP - such as noise mitigation, or improving the abundance of regionally important species, and those matters which are less easily measured, such as impacts on landscape character or delivery of wellbeing benefits

This should be combined with

- iv. an evaluation framework to measure the new regime's effectiveness and contribution to delivering EIP goals and meeting statutory targets
- v. clear, effective guidance, including to mitigate any effects of weakening links between the new regime and existing case law and established practices
- vi. measures to address existing issues of insufficient capability and capacity in the environmental assessments sector, and
- vii. measures to address existing issues of limited access to the right tools, such as an environmental database and effective IT systems within Local Planning Authorities (LPAs).

Let me expand on several points, if I may. To support Government's wider objectives for the environment, EORs should deliver an assessment regime which steers development towards environmental improvement, in addition to avoiding and mitigating environmental harm. This would also support the Government's policy on biodiversity net gain, on which the

OEP has responded to other recent consultations.¹ It is so important now that initiatives are joined up, and have a common and suitable level of ambition for the environment.

At a minimum, reform should not undermine existing levels of environmental protection. Increasing risk tolerance for example (or making assessments less amenable to scrutiny and challenge), may improve efficiency but weaken environmental protection. An EOR regime should be developed as an opportunity for government to support the delivery of outcomes at the speed and scale required to achieve its environmental ambitions.

Moving on, you will be aware of the capacity and capability issues. Our research suggests strongly that capacity and capability in LPAs is a significant constraint in delivering the current regimes. We know that some monies have been made available to local authorities in this area and we welcome the intention of Government to support LPAs, both financially and with other resources to help them recruit and retain appropriately skilled and experienced staff.²

But we see little prospect of success here without a more concerted effort to increase materially and as quickly as possible the skills base most particularly in LPAs (and also in the Planning Inspectorate). Whilst regulations will provide the framework, sufficient resources and effective tools are required for successful implementation. As it is, new requirements are bound to slow matters down, as practitioners develop their understanding of the new regime or seek clarity through litigation.

I mention effective tools, as it is vital that planning decision-makers have the tools they need to support environmental outcome reporting. We welcome the intention to deliver more effective tools for managing the environmental effects of development, supporting better, faster and greener delivery of infrastructure and setting clear environmental outcomes. Well formulated guidance, available and accessible data, and planning conditions that are appropriate and enforceable would enable LPAs to fulfil their duties as required. Without these, there is a risk of the new regime not achieving its full potential.

Evidence basis of the EOR regime

We note that the consultation document is intentionally high-level and is partly intended to gather evidence to inform further development of the EOR approach. There is at present a lack of published evidence to demonstrate how the proposed new approach will offer an improvement on existing environmental assessment regimes. The Post Implementation Review reports for Environmental Impact Assessment (EIA) regulations published alongside this consultation and the single short, worked example of an EOR outcome provided in the consultation document give limited additional insight. As a result, important matters are not yet clear.

We understand part of the intention of the EOR regime is to establish processes which are efficient and effective. Central concerns identified in the consultation document include duplication, risk aversion, loss of focus and issues with data. Given that many of these issues relate to cultures within organisations with responsibilities in this area and the choices around how existing provisions are implemented in practice, it is presently unclear how

¹ Office for Environmental Protection, *Advice in response to Biodiversity Net Gain consultation* (18 May 2022) <www.theoep.org.uk/report/oep-advice-response-biodiversity-net-gain-consultation> and *Response to Marine Net Gain consultation* (5 September 2022) <www.theoep.org.uk/report/oep-response-principles-marine-net-gain-consultation> both accessed 18 May 2023.

² Department for Levelling Up, Housing & Communities, *Technical consultation: Stronger performance of local planning authorities supported through an increase in planning fees* (28 February 2023) <<https://www.gov.uk/government/consultations/increasing-planning-fees-and-performance-technical-consultation/technical-consultation-stronger-performance-of-local-planning-authorities-supported-through-an-increase-in-planning-fees>> accessed 18 May 2023.

legislative change alone would reduce or remove such issues. I do think this is particularly important: there are long established practices here that must be recognised and tackled if you are to meet your ambitions. If this is not done, then these issues are likely to persist and be replicated under any new legislative regime.

I do think our impending report will help, as you consider options, but in any event, we anticipate that Government will wish to make available a clearer evidence base as the policy develops so that planners, developers and others can better understand the proposed new system and provide helpful feedback.

We welcome the commitment in DLUHC's evaluation strategy³ to assessing the holistic impact of previous and future planning reforms and to developing evaluation plans, to be undertaken in quarter two 2023.

It would be helpful if Government, when consulting on draft EOR Regulations, publishes an impact assessment. This should set out clearly the anticipated consequences (including for the natural environment) of implementing the proposed new regime. Proper regard should also be had to the Government's recently published environmental principles policy statement.

We elaborate on these points in our response to specific questions in the annex to this letter, but to be clear, we appreciate that following through our suggestions and advice would take real effort, resources and commitment to deliver. Nevertheless, we think these steps necessary if you are to succeed in your aims and government is to meet its ambitions for the environment. With time now so pressing for nature, it is so important to get this right.

I trust that our observations will be of assistance in further developing the EOR regime. We look forward to seeing Government's more detailed proposals for the EOR Regulations in due course.

We would also be pleased to discuss with you or your officials how any further input can be of most value.

Yours sincerely,



Dame Glenys Stacey

Chair, Office for Environmental Protection

³ Department for Levelling Up, Housing & Communities, *DLUHC evaluation strategy* (18 November 2022) <<https://www.gov.uk/government/publications/dluhc-evaluation-strategy/dluhc-evaluation-strategy>> accessed 18 May 2023.

OEP Comments in Response to Specific Consultation Questions

We welcome the opportunity to provide a response to this consultation. We consider that the OEP can provide the most helpful information at this stage in relation to the EIP in England and that being developed in Northern Ireland. We therefore present our question responses in two groups, the first relating to the relationship between the EIP and an EOR regime and the second in response to technical matters on the design and implementation of that regime:

The relationship between the EIP and an EOR regime

- Section 4. An outcomes-based approach
- Section 10. Reporting against performance

Design and implementation of an EOR regime

- Section 5. What an Environmental Outcomes Report will cover
- Section 6. When an Environmental Outcomes Report is required
- Section 7. Strengthening mitigation
- Section 8. Mainstreaming monitoring
- Section 9. Unlocking data

The Relationship between the EIP and an EOR regime

Section 4. An outcomes-based approach

Q.1. Do you support the principles that will guide the development of outcomes?

Q.2. Do you support the principles that indicators will have to meet?

Q.3. Are there any other criteria we should consider?

Relevant learning should be taken from other jurisdictions

Before addressing proposed principles, it is important to recognise that an outcomes-based approach is untested in the UK and the consultation material provides little detail on how the proposed regime will work in practice.

Of the 191 countries that apply EIA, for example, we are aware of only two, the Netherlands⁴ and New Zealand,⁵ which have legislated or are legislating for an outcomes-based approach. We therefore recommend that, where relevant, experiences in these jurisdictions are considered in the development of EOR Regulations. For example, DLUHC may wish to

⁴ Government of the Netherlands, *Environment and Planning Act – Explanatory Memorandum*, (February 2017) <www.government.nl/documents/reports/2017/02/28/environment-and-planning-act-%E2%80%93-explanatory-memorandum> accessed 18 May 2023.

⁵ New Zealand Government, *Resource management reform: the Natural and Built Environment Act*, (November 2022) <<https://environment.govt.nz/assets/publications/rm-reform-natural-and-built-environment-act.pdf>> accessed 18 May 2023.

explore relevant lessons from the New Zealand Resource Management Review Panel,⁶ including the inclusion of climate mitigation and adaptation and the provisions for transition.

The EIP should be a central factor in development of the EOR regime

We welcome the stated principle of setting outcomes for the EOR regime by reference to the EIP. The EIP sets out the Government's plan for significantly improving the natural environment by 2042. It establishes interim targets by reference to the long-term, legally binding environmental targets recently set under the Environment Act 2021. The EIP also reflects the legally binding target of net zero emissions by 2050, and associated carbon budgets from 2023 to 2037, established under the Climate Change Act 2008. As such, the EIP, Environment Act targets and Climate Change Act target/budgets together provide a central focus for delivering Government's long-term national policy for the natural environment.

Coherence with these national objectives and targets is essential to ensure a co-ordinated and comprehensive approach which maximises the potential benefits of an EOR regime. Hence, we would wish to see the EIP and legally binding targets (in particular those set under the Environment and Climate Change Acts) acting as a lodestar for the priority national environmental outcomes which development is steered towards supporting.

This should, however, be in conjunction with consideration of environmental matters which are not covered by the EIP and those which are less easily measured. We deal with this point further below.

Establishing a baseline and outcomes to ensure environmental protection across relevant scales and geographic areas

We note Government's commitment that the EOR approach will ensure there is 'a clear focus on protecting our environment, pursuing positive environmental improvement and providing clear join-up between strategic and project scale assessments',⁷ and that the new regime will ensure 'as much overall protection as the current system'. Government will therefore need to devise and publish a method of establishing a baseline and a means of evaluating progress in order to assess whether this is achieved.

The EIP Outcome Indicator Framework (OIF) indicators must be finalised to maximise coherence with the proposed EOR regime

As set out in our first EIP progress report in January 2023,⁸ we consider Government's indicator framework and system to report environmental outcomes to be incomplete, despite being under development for some years. Furthermore, national targets and indicators are not yet comprehensive.

Our EIP progress report identified gaps in targets which include protected sites condition and extent, major pressures in the water environment, and resource use and the associated environmental impacts. Gaps in Government's OIF include indicators for soil health.

The requirement for a more complete indicator framework and reporting system will become all the more critical if the EIP and environmental targets are to underpin a new environmental assessment regime. We therefore recommend that DLUHC work with Defra via the Cross-

⁶ New Zealand Government, *New directions for resource management in New Zealand*, (June 2020) <<https://environment.govt.nz/publications/new-directions-for-resource-management-in-new-zealand/>> accessed 18 May 2023.

⁷ Department for Levelling Up, Housing & Communities, *Levelling Up and Regeneration: further information*, (May 2022) <<https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information>> accessed 18 May 2023.

⁸ Office for Environmental Protection, *Progress in improving the natural environment in England, 2021/2022*, (January 2023) <www.theoep.org.uk/report/progress-improving-natural-environment-england-20212022> accessed 18 May 2023.

Government 25 YEP Delivery Board to ensure the OIF is complete and comprehensive before the EOR regime is implemented.

The EOR regime must be coherent with the EIP and targets, including over time

DLUHC proposes the principle that setting EOR outcomes should ‘drive the achievement of statutory environmental targets and the [EIP]’. As set out above, we support this principle.

For this to work effectively in practice, the EIP/targets and EOR regimes must be coherent and consistent with each other, including over time. For example, outcomes for the EOR regime will need to be set so as to make a meaningful contribution towards meeting national targets and EIP goals whilst also delivering local priorities. In determining this contribution, DLUHC will need to consider the current state of the natural environment, the direction of environmental trends, the role of development in contributing (negatively or positively) to such states and trends, and the urgency of action required for Government to achieve its EIP goals and legally binding targets.

DLUHC also proposes as a principle that outcomes should be ‘measurable using indicators at the correct scale’. In our view, outcomes should be *objectively* measurable and time-bound, in the way Environment Act targets must be.⁹ Where DLUHC establishes indicators that are additional to those developed for use with the EIP (as set out in the OIF), we suggest the same should apply. More generally, there should be a clear link between these indicators and those in the OIF to ensure coherence and consistency. It is important that departments work in a joined-up way in this regard.

The EIP and legally binding targets are not static but will evolve, including on a 5-year cycle as provided for in the Environment Act 2021. Provision for EORs to refer to EIP goals and targets will need to recognise their dynamic nature. DLUHC should consider how that is to be accommodated in relation to relevant development timeframes. For example, for developing local plans, bringing forward large-scale development and implementing measures to provide agreed environmental mitigation or enhancement. This could cause uncertainty, and how this will be dealt with and communicated to stakeholders will be important.

We therefore recommend that DLUHC develop and set out its framework for ensuring that EOR requirements similarly evolve and respond to changes in national priorities, and how these changes will operate at an individual plan or project level. Such a framework should support effective implementation of the EOR regime, maximising its potential to steer development to support national environmental priorities and helping planners, developers and others to see clear alignment and consistency across outcomes and priorities.

Consideration should be given to both long-term legally binding targets and interim targets

DLUHC’s guiding principles for the development of outcomes include the achievement of statutory targets. These are long-term, in many cases not due to be achieved until 2042 or beyond. The EIP includes interim targets which establish a 5-year trajectory towards meeting the long-term Environment Act targets. Net Zero is supported by 5-yearly carbon budgets. In many cases, these nearer-term targets will be relevant; EOR outcomes should be coherent with interim targets/carbon budgets, alongside the long-term statutory targets. Furthermore, by aligning with the 5-year review process, EOR outcomes should retain coherence with necessary changes to interim targets and carbon budgets as progress is assessed and trajectories amended.

⁹ See s.1(4) Environment Act 2021.

Where relevant, EORs must consider outcomes not included in the EIP

As we set out in our EIP progress report, national outcomes do not account for all environmental pressures and drivers and the EIP's indicators are not yet comprehensive. Further, Government's delivery plans were not found to be comprehensive and do not, as yet consider local issues and decision making.

In our report we give the example of the EIP goal for Clean Air, which has elements of national good practice but is more limited at sub-national level. Regionally, air pollution is unevenly distributed, with areas of higher concentrations tending to be found in lower-income and more ethnically diverse neighbourhoods.¹⁰ EOR outcomes which might for example measure the contribution to Local Air Quality Action Plans,¹¹ could significantly benefit both local and national priorities.

Whilst the contribution of an EOR regime to steer development towards delivering positive environmental outcomes is potentially significant, many developments are likely to also require measures to prevent or mitigate negative outcomes. For example, preventing pollution of a watercourse is a beneficial outcome, but is one that stops a negative impact occurring rather than inherently delivering a positive change. The pursuit of positive outcomes should include those to avoid environmental harm in addition to securing environmental improvement.

Moreover, while some outcomes are easily measurable, such as 'area of woodland planted'¹² (providing issues such as species, density and other factors are also appropriately considered), their inclusion should not come at the expense of excluding less easily measured, but nevertheless important, outcomes. These include issues such as 'landscape and waterscape character'¹³ which might measure the appropriateness of a development (or its design) in the context of the wider environment. This will require some careful consideration to develop a regime that is both comprehensive and practical.

The EOR regime should therefore include a framework for the development of local and regional outcomes which consider this complexity. It should involve working with regulators, local communities and other stakeholders to identify and agree local outcomes which meet both national and locally agreed priorities.

Q.4. Would you welcome proportionate reporting against all outcomes as the default position?

Q.5. Would proportionate reporting be effective in reducing bureaucratic process, or could this simply result in more documentation?

We consider that reporting the specified outcomes is critically important and we are currently working with Defra on how monitoring progress towards EIP goals and targets can be further developed.

Proportionate reporting for EORs is dependent on ensuring the relevant data are available and there is sufficient capacity and capability available. Such reporting is further dependent

¹⁰ National Audit Office, *Tackling local breaches of air quality* (June 2022), <www.nao.org.uk/wp-content/uploads/2022/01/Tackling-local-breaches-of-air-quality.pdf> accessed 18 May 2023.

¹¹ Department for Environment, Food & Rural Affairs, *Air Quality Management Areas (AQMA)*, <<https://uk-air.defra.gov.uk/aqma/>> accessed 18 May 2023.

¹² Department for Environment, Food & Rural Affairs, *Outcome Indicator Framework, Indicator D3: Area of Woodland in England*, <<https://oifdata.defra.gov.uk/themes/wildlife/D3/>> accessed 18 May 2023.

¹³ Department for Environment, Food & Rural Affairs, *Outcome Indicator Framework, Indicator G1: Changes in landscape and waterscape character*, <<https://oifdata.defra.gov.uk/themes/natural-beauty-and-engagement/G1/>> accessed 18 May 2023.

on the implementation of appropriate data standards and systems which support the reduction in bureaucratic processes.

Q.6. Given the issues set out above, and our desire to consider issues where they are most effectively addressed, how can government ensure that EORs support our efforts to adapt to the effects of climate change across all regimes?

We note that the consultation considers the potential use of EORs to assess implications for both climate change mitigation and adaptation. However, we are concerned at the omission of climate change mitigation and the Net Zero target from the list of matters expressly to be considered for EORs. Climate change is a pressing national and international concern, inherently linked to achieving all other environmental outcomes. It is crucial that development control decision-making takes account of the need for climate mitigation, including through Government's legally binding targets to eliminate net UK greenhouse gas emissions. As set out above, Net Zero is also an important part of the EIP which should, therefore, be considered for relevant outcomes.

Consideration of climate mitigation in EORs would support emission minimisation

Further, to ensure that the climate impact of any development and its greenhouse gas emissions is fully understood, we consider that EORs should assess the direct, indirect, secondary, cumulative, and transboundary effects of a plan or development. Assessment of indirect contributions to climate change should include scope 3 emissions insofar as these are identifiable and sufficiently certain, following recognised methodologies.¹⁴

EOR outcomes should encourage delivery of co-benefits for climate adaptation and other environmental goals, such as via nature-based solutions

Climate adaptation and environmental protection and improvement are inter-related. In many cases, actions in respect of one can also deliver beneficial outcomes for the other. Nature-based solutions can deliver multiple ecosystem services that benefit the environment, the economy, wellbeing and support adaptation to climate change.

Natural flood management, for example, can reduce flood risk by storing or slowing runoff while creating habitats and improving river water quality.¹⁵

We therefore consider that, as far as practical, the EOR regime should specify outcomes that help deliver environmental protection and improvement, whilst also delivering increased climate change resilience.

Section 10. Reporting Against Performance

The ability to assess progress against indicators is central to the EIP and successful delivery of its aims across its 10 goal areas. Coherence and reporting in conjunction with the EIP are therefore important to demonstrate the contribution of the EOR regime to national priorities.

¹⁴ For example, the methodologies set out in the *Greenhouse Gas Protocol, A Corporate Accounting and Reporting Standard*, (2004) <<https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf>> accessed 18 May 2023.

¹⁵ Environment Agency, *Working with natural processes to reduce flood risk*, (February 2021) <www.gov.uk/flood-and-coastal-erosion-risk-management-research-reports/working-with-natural-processes-to-reduce-flood-risk> accessed 18 May 2023.

Q.22. Would you support reporting on the performance of a plan or project against the achievement of outcomes?

Q.23. What are the opportunities and challenges in reporting on the achievement of outcomes?

National reporting of EOR regime performance should be accompanied by appropriate evaluation

We welcome reporting against performance of a relevant plan or project requiring relevant consent. However, reporting and evaluation at a national level is required to evaluate the EOR regime, its outcomes and indicators. We welcome the commitment in DLUHC's evaluation strategy to assessing the holistic impact of previous and future planning reforms and to developing evaluation plans,¹⁶ However, we are not aware of any relevant ongoing or planned evaluations.

We further suggest that Government's reporting of EOR outcomes and indicators should be consistent with its reporting with the EIP, where Government uses the Outcome Indicator Framework Update Report¹⁷ and the Environment Plan Annual Progress Report¹⁸ to track delivery against its ambitions and legal obligations. The contribution of EOR outcomes and indicators to these should be similarly tracked and evaluated. It should also be accessible and consistent with Government's data standards and the Code of Practice for Statistics.¹⁹

Such reporting would allow the contribution of EOR outcomes to delivering the EIP goals and meeting statutory targets to be reported and would support the identification of those outcomes, geographical areas, plans or projects where contributions to outcomes might be improved. This would further support the development of policy interventions or enhanced guidance.

Reporting performance is also key to providing ownership by a plan or project, whilst a clear line of sight to national outcomes and indicators will provide relevance to the ambition set.

We agree with the statement in paragraph 4.7 of the consultation document that outcomes should 'have an organisation responsible for monitoring overall progress of specific outcomes i.e., a responsible 'owner''. The mechanism for this is not yet clear and this will be an important element of the ongoing regime design. It is also unclear whether overall performance will be reported, which we suggest should be the case. Fragmented reporting across outcomes could undermine the delivery of outcomes envisaged by the EOR regime. We therefore recommend that DLUHC identifies how monitoring and reporting will operate at the level of individual plans and projects, and more broadly how it intends to evaluate and report on the overall progress of the EOR regime in supporting the delivery of outcomes.

There is an absence of detail of measures to support the achievement of outcomes

Monitoring, evaluation and enforcement will be important elements to support the new EOR regime. There is, however, an absence of detail on the enforcement measures, especially in

¹⁶ Department for Levelling Up, Housing & Communities, *DLUHC evaluation strategy*, (18 November 2022), para 101 <<https://www.gov.uk/government/publications/dluhc-evaluation-strategy>> accessed 18 May 2023.

¹⁷ Department for Environment, Food & Rural Affairs, *Outcome Indicator Framework for the 25 Year Environment Plan: 2022 update*, (May 2022) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1084360/25-year-environment-plan-2022-update.pdf> accessed 18 May 2023.

¹⁸ Department for Environment, Food & Rural Affairs, *25 Year Environment Plan Annual Progress Report, April 2021 to March 2022*, (July 2022) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1092495/25y-ep-annual-progress-report-2022.pdf> accessed 18 May 2023.

¹⁹ UK Statistics Agency, *Code of Practice for Official Statistics*, (March 2018) <https://uksa.statisticsauthority.gov.uk/wp-content/uploads/2012/11/images-codeofpracticeforofficialstatisticsjanuary2009_tcm97-25306.pdf> accessed 18 May 2023.

regard to the provisions for enforcement outlined in the Levelling-up and Regeneration Bill. Those tasked with undertaking enforcement must be appropriately resourced, skilled and have access to the tools to support enforcement activity.

Similarly, there is limited reference to other measures that will need to be in place to support good governance such as data requirements and publishing of information on, for example, mitigation measures. We would also welcome further detail about reporting on project-level progress towards achieving the requirements of project consent and for regular policy-level reporting on the effectiveness of the EOR regime in delivering environmental improvement.

Design and implementation of an EOR regime

Section 5. What an Environmental Outcomes Report will cover

DLUHC should consider the risk of unintended consequences across environmental assessments associated with a new streamlined approach

We understand the intention to increase the efficiency of reports in the EOR regime, compared to the current EIA and SEA regimes, by reducing duplication and that such matters are reported where they are most effectively addressed. Whilst the focus on ensuring efficiency through EORs is understandable, there are associated risks around effectiveness which it will be important to ensure the regulations effectively manage.

Paragraph 4.10 of the consultation document suggests that certain matters currently included in environmental statements will fall outside the scope of EORs. This may include matters such as climate change, human health, sustainability, and socio-economic effects. As set out above, we are concerned by the suggestion that implications for climate mitigation could not be in-scope for EOR reports.

Further, the distinction between these elements and those which remain in-scope may not necessarily be clear. For example, as we discuss above, climate change adaptation may be delivered through nature-based solutions that also contribute to habitat mitigation proposed via the environmental outcome reporting process. Similarly, impacts relating to pollution control, land contamination or other environmental matters may also contribute to human health effects.

It is therefore unclear how leaving these matters to be dealt with separately in different documents would support effective participation or well-informed decision-making, whilst maintaining environmental protections. The approach proposed to the EOR regime should therefore be coherent and co-ordinated with other regimes to ensure planners have the information required to ensure overall, effective decision-making in the manner intended by the consultation.

Section 6. When an Environmental Outcomes Report is required

Q.9. Do you support the principle of strengthening the screening process to minimise ambiguity?

Q.10. Do you consider that proximity or impact pathway to a sensitive area or a protected species could be a better starting point for determining whether a plan or project might require an environmental assessment under Category 2 than simple size thresholds?

Q.11. If yes, how could this work in practice? What sort of initial information would be required?

Assessment by impact pathway is central to determining plans or projects that require an environmental assessment

We consider the identification of significant impact pathways to be a primary factor in understanding the potential risk (or positive opportunity) presented by a relevant plan or project requiring a relevant consent in line with current Defra environmental risk and management guidance.²⁰ We suggest that determination should be undertaken by assessing the significance of the risk posed (for example to location, species or habitat) and the vulnerability of that receptor.

To be able to determine whether a proposal is in proximity to, or creates an impact pathway to a sensitive receptor, comprehensive and up to date information needs to be available (as to which see our comments below).

The threshold against which Category 2 consents are assessed should be carefully considered

We note the intention to simplify the process of deciding when an assessment is required by being clearer about what does, and does not, require assessment. We agree that clarity on this point will be helpful.

It appears that Category 2 consents will be determined based on criteria set out in regulations, with scope for judgement and discretion of the consenting authority. Inevitably, the scope for judgement and discretion will create a tension with the outcome of being clear in advance about what requires assessment. The criteria should therefore themselves be as clear as possible. In order to support Government's environmental objectives, we suggest that they should closely reflect the desired outcome of protection and enhancement of all sensitive environmental receptors, irrespective of their relationship to protected areas or species, rather than reducing the number of consents considered.

Where discretion is afforded to decision-makers in this way, it is crucial that they have the information available and the skills and capacity to take sound, evidence-based decisions.

Section 7. Strengthening Mitigation, and Section 8. Mainstreaming Monitoring

We welcome the focus on strengthening mitigation and mainstreaming monitoring. We summarise our overarching response to both sections here and respond to specific questions below.

The EOR regime should be delivered alongside improvements to capacity and capability of public authorities

Our research suggests that the effectiveness of the current regimes is limited by an inability of public authorities to acquire or retain sufficient staffing with the necessary capacity and

²⁰ Department for Environment, Food & Rural Affairs, *Guidelines for environmental risk assessment and management: Greenleaves III*, (November 2021) <www.gov.uk/government/publications/guidelines-for-environmental-risk-assessment-and-management-green-leaves-iii> accessed 18 May 2023.

expertise. This contributes to delays, disproportionate reporting and assessment requirements, and to poor decision making. We intend to publish our research later this year.

The National Audit Office, in its recent report on regulation and environmental outcomes,²¹ also notes that 'existing workforce issues have affected the Environment Agency and Natural England's ability to deliver their current workload' and that regulators will need further resources to support the EIP approach. Without careful consideration and resource planning, therefore, the risk is that public authorities will be unable to effectively implement the EOR regime. Plans for implementation should also ensure the process of change itself does not exacerbate existing system-wide workforce issues.

Q.12. How can we address issues of ineffective mitigation?

Q.13. Is an adaptive approach a good way of dealing with uncertainty?

Q.14. Could it work in practice? What would be the challenges in implementation?

Mitigation requires an effective framework to deliver the required outcomes

While adaptive mitigation provides the ability to react to future or emerging issues, there is some risk to the approach. Adaptive mitigation should only be used as a tool which responds to changes in circumstances during development (for example, through updated monitoring or where initial assumptions or decisions were subsequently found to be incorrect), and not one which allows developers to avoid having to identify and consider reasonable alternatives earlier in the assessment process.

Adaptive mitigation will also place additional responsibilities on planners. This will be, for example, to check and approve the rationale and measures proposed, and to determine whether any adjustments are required in response to changes in circumstance, updated evidence or from monitoring. It is therefore important that planning decision makers have the appropriate data and tools to support an adaptive system. The proposal will also require provision for adequate guidance and enforceable conditions that include triggers for intervention, tied to agreed and mandated environmental management plans.

Q.15. Would you support a more formal and robust approach to monitoring?

Q.16. How can the government use monitoring to incentivise better assessment practice?

Q.17. How can the government best ensure the ongoing costs of monitoring are met?

Q.18. How should the government address issues such as post-decision costs and liabilities?

Government needs to understand the drivers of poor monitoring practice and develop an appropriate response

Monitoring is important for environmental management at all levels and is central to Government evaluating progress with the EIP. We agree that post consent monitoring should be strengthened.

Our research suggests that current monitoring arrangements are not being delivered effectively and this may have an adverse impact on environmental mitigation. There is a further split between the construction and operational phases of projects. Whilst there are often construction environmental management plans, operational phase monitoring appears to happen rarely, and issues may only be identified through complaints by members of the public. This situation does not appear to have changed despite the changes made to the EIA

²¹ National Audit Office, *Regulating to achieve environmental outcomes*, (April 2023) <www.nao.org.uk/wp-content/uploads/2023/04/regulating-to-achieve-environmental-outcomes.pdf> accessed 18 May 2023.

Regulations in 2017 to include the requirement to consider whether it is appropriate to impose monitoring measures, along with remedial action, when granting consent.

The consultation document appears to reflect DLUHC's agreement that this is an issue. It does not, however, demonstrate what DLUHC considers to be the systemic causes why post consent monitoring is currently limited. The consultation document also contains limited information on how DLUHC intends to support more robust mitigation through monitoring.

In our view, the following points are key to developing a coherent and effective monitoring system:

- i. monitoring of significant impact pathways to evaluate delivery of relevant and measurable outcomes and indicators
- ii. monitoring being a central driver for adaptive mitigation (and vice-versa)
- iii. ensuring evaluation of, and response to changes in monitoring results, mitigation measures or project delivery during development
- iv. providing for adequate and enforceable conditions
- v. clear guidance
- vi. ensuring capacity and capability of planners and other public authorities to address monitoring tasks
- vii. costs and liabilities should be borne by developers, and
- viii. engaging with industry and professional bodies who may develop best practice.²²

Initiatives such as requiring monitoring to be undertaken by independent third parties might also be considered to increase robustness and provide added certainty for planners, developers and communities.

9.Unlocking Data

We welcome the proposal to capture and make available data produced through environmental assessments. While unlocking data is a positive development, it is critical that LPAs have access to the necessary tools and data to inform their decision making.

Q.19. Do you support the principle of environmental data being made publicly available for future use?

Q.20. What are the current barriers to sharing data more easily?

Q.21. What data would you prioritise for the creation of standards to support environmental assessment?

Public access to data needs to be via effective systems

We recognise that currently significant data is lost to future assessments and other environmental analyses. Addressing this has the potential to create efficiencies and increase understanding of predicted impacts and the effectiveness of mitigation measures. Benefits to academic and public research, outside of the intended use for future environmental assessments may also be significant. Issues relating to agreed terms and expectations of data re-use; privacy and intellectual rights; loss of control and consent²³ and data

²² Examples include, the Chartered Institute for Ecology and Environmental Management, *Guidelines for Ecological Impact Assessment in the UK and Ireland*, (September 2018) <<https://cieem.net/wp-content/uploads/2018/08/ECIA-Guidelines-2018-Terrestrial-Freshwater-Coastal-and-Marine-V1.2-April-22-Compressed.pdf>> accessed 18 May 2023.

²³ OECD, *Principles and Guidelines for Access and Research Data from Public Funding*, (2007) https://www.oecd-ilibrary.org/science-and-technology/oecd-principles-and-guidelines-for-access-to-research-data-from-public-funding_9789264034020-en-fr> accessed 18 May 2023.

accessibility, quality and completeness²⁴ will require consideration to ensure that efficient use of data is maximised.

Local Planning Authorities require effective tools and information to inform decision-making

Whilst we welcome the intention to make environmental data publicly available, our research suggests that many LPAs may not have the necessary IT systems and expertise to effectively store and subsequently use this information. Providing planners with the appropriate data and tools to undertake their duties effectively is critical in supporting efficient and effective decision making of the nature proposed by the consultation.

²⁴ Geospatial Commission, *Mapping the Species Data Pathway: Connecting species data flows in England*, (may 2021)
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1045922/2021-05-25-Speciesdatapoint-final-report-forpublication.pdf> accessed 18 May 2023.