# Analysis of the environmental assessment regimes

England and Northern Ireland

Office for Environmental Protection

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| Prepared by | Nick Giesler, Rufus Howard | Nick Giesler, Rufus Howard | Nick Giesler |
| Signature |  |  |  |
| Checked by | Amy Phillips, Ellie Simpson | Amy Phillips, Ellie Simpson | Mark Webb |
| Signature |  |  |  |
| Authorised by | Rufus Howard | Nick Giesler | Nick Giesler |
| Signature |  |  |  |
| Project number | 70099986 | | |

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# ACRONYMNS

| Acronym | Description |
|---|---|
| ADEPT | Association of Directors of Environment, Economy, Planning and Transport |
| ALGE | Association of Local Government Ecologists |
| AONB | Area of Outstanding Natural Beauty |
| BNG | Biodiversity Net Gain |
| CIEEM | Chartered Institute of Ecology and Environmental Management |
| $CO_2$ | Carbon Dioxide |
| CoCP | Code of Construction Practice |
| DAERA | Department of Agriculture, Environment and Rural Affairs |
| DCO | Development Consent Order |
| Defra | Department for Environment, Food and Rural Affairs |
| DfI | Department For Infrastructure |
| DLUHC | Department for Levelling Up, Housing and Communities |
| DMRB | Design Manual for Road and Bridges |
| EA | Environment Agency |
| EEA | European Economic Area |
| EIA | Environmental Impact Assessment |
| EIADR | Environmental Impact Assessment for Decommissioning Regulations |
| ELMS | Environmental land management schemes |
| EMP | Environmental Management Plan |
| EOR | Environmental Outcomes Report |
| EPS | European Protected Species |
| EqIA | Equality Impact Assessment |
| ES | Environmental Statement |
| EU | European Union |
| FCS | Favourable Conservation Status |
| GDPR | General Data Protection Regulation |
| GHG | Greenhouse Gas |

| Acronym | Description |
|---|---|
| HE | Historic England |
| HIA | Health Impact Assessment |
| HRA | Habitat Regulations Assessment |
| HS2 | High Speed 2 |
| IEMA | Institute of Environmental Management and Assessment |
| IIA | Integrated Impact Assessment |
| IROPI | Imperative Reasons of Overriding Public Interest |
| JNCC | Joint Nature Conservation Committee |
| LGA | Local Government Association |
| LPA | Local Planning Authority |
| LURB | Levelling Up and Regeneration Bill |
| MHCLG | Ministry of Housing, Communities & Local Government |
| MMO | Marine Management Organisation |
| NGO | Non-Governmental Organisation |
| NI | Northern Ireland |
| NIEA | Northern Ireland Environment Agency |
| NILGA | Northern Ireland Local Government Association |
| NPPF | National Planning Policy Framework |
| NPS | National Policy Statement |
| NSIP | Nationally Significant Infrastructure Project |
| NSN | National Site Network |
| O&M | Operation and Maintenance |
| ODPM | Office of the Deputy Prime Minister |
| OECD | Organisation for Economic Co-operation and Development |
| OEP | Office for Environmental Protection |
| OPRED | Offshore Petroleum Regulator for Environment and Decommissioning |
| OWEKH | Offshore Wind Evidence and Knowledge Hub |
| PACNI | Planning Appeals Commission Northern Ireland |
| PDR | Permitted Development Rights |
| PEI | Preliminary Environmental Information |
| PGT | Public Gas Transporter |
| PINS | The Planning Inspectorate for England |
| ROI | Return on Investment |
| RTPI | Royal Town Planning Institute |

| Acronym | Description |
|---|---|
| SA | Sustainability Appraisal |
| SAC | Special Area of Conservation |
| SEA | Strategic Environmental Assessment |
| SES | Shared Environmental Services |
| SNCB | Statutory Nature Conservation Body |
| SoCG | Statement of Common Ground |
| SoS | Secretary of State |
| SPA | Special Protection Area |
| SSSI | Site of Special Scientific Interest |
| TCPA | Town and Country Planning Association |
| TWA | Transport and Works Act |
| UK | United Kingdom |
| UNECE | United Nations Economic Commission for Europe |
| WCL | Wildlife and Countryside Link |

# SUMMARY

## Background

The UK government is seeking to revitalise a national approach to environmental planning and it has started a process which aims at replacing Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) with Environmental Outcome Reports (EOR) through the introduction of the Levelling-up and Regeneration Bill (LURB)[1]. With a remit to monitor and report on the implementation of environmental law in England and Northern Ireland, the Office for Environmental Protection (OEP) has sought a platform from which they can provide independent evidence and analysis which may inform the consideration by governments and others of these future changes. WSP were commissioned as part of a wider remit, to develop this platform. This involved reviewing current practices in existing environmental assessment regimes (EIA, SEA and Habitats Regulations Assessment (HRA)), in England and Northern Ireland, to:

- understand the extent to which environmental assessments deliver environmental protection and positive environmental outcomes;
- understand strengths and weaknesses in current approaches in this regard;
- establish the basis for these strengths and weaknesses - whether they lie in regulation, policy, guidance or just established working practice; and
- provide a context for considering the emerging changes, with a view to recommending potential modifications.

The core research phase involved a literature review and wide stakeholder engagement, drawing on WSP's expertise as practitioners in environmental assessment.

## Key findings and recommendations

The fundamental principles and aims of the three environmental assessment regimes (EIA, SEA and HRA) are viewed positively by impact assessment practitioners, as was particularly evidenced by our stakeholder responses. We believe that they are consistent with the environmental principles in the Government's environmental principles policy statement[2] and the priorities for protecting people and the natural environment stated within it. The principles and aims reflect (in the case of EIA) 35 years of use and modification for a process practiced by 191 of the 193 United Nations member states[3].

Retaining these regimes (though with adaptations and improvements) presents a number of significant advantages to England and Northern Ireland, which are set out throughout this report. A departure from or replacement of these regimes could reduce environmental protection and hinder the achievement of sustainable development, which is enshrined in UK and English policy

[1] Levelling Up and Regeneration Bill 2022.

[2] Defra, *Environmental Principles Policy Statement Policy Paper,* (31 January 2023)

[3] Richard Morgan, 'Environmental impact assessment: the state of the art', (2012) 30(1), Impact Assessment and Project Appraisal, pp5–14

as the key goal of the planning system[4] (enshrined in the National Planning Policy Framework) and the UK's international commitment to the UN Sustainable Development Goals[5].

In light of the Environment Act 2021[6], and the Environmental Improvement Plan (EIP)[7], which builds on the 25 Environment Year Plan, along with the UK Government's recognition of a climate emergency[8], to diverge from the fundamental principles and internationally accepted aims of environmental assessment could undermine these wider policy goals and commitments. Moreover, having signed the Espoo Convention on EIA[9], and the Kiev Protocol (to the Espoo Convention) on SEA[10], obligations to operate consistently across international boundaries remain. Even within the UK, as the devolved administrations may not be subject to the EOR Regulations, there could clearly be practical difficulties of undertaking environmental assessments within adjacent divergent regimes.

As we leave the auspices of the EU Directives in impact assessment, there is an opportunity to retain the best aspects of the existing policy and practice, while introducing changes to improve these instruments to secure better outcomes for the environment and society. There is also a risk that, despite the Government's stated aim[11] of using new levelling up legislation to "*create a duty on the Secretary of State to ensure that the new system of environmental assessment does not reduce the overall level of environmental protection*", it could result (by accident if not design) in new policy instruments that are weaker than their predecessors.

The new regulations, and any of the mechanisms they engender to support their implementation, must be seen as a singular opportunity to refresh the approach to environmental assessment in England and Northern Ireland (noting any differences between the two); and for both the terrestrial and marine environment, addressing current weaknesses and shortcomings, while also recognising the risks in any divergence in approaches between the UK's constituent nations. This report sets out what we believe these weaknesses and shortcomings to be, as well as highlighting the strengths of current practice. It makes recommendations as to how these can inform any future regulations and wider mechanism to support them.

Drawing on the review and stakeholder engagement, and informed by an expert panel established to support this commission, we have identified specific issues and recommendations for the OEP to consider for each of the three assessment regimes. These are discussed in the main body of the report, but there are several issues which are, to varying degrees, cross-cutting. These comprise an overarching point that supports modification of the existing regimes over a

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[4] Department for Communities and Local Government, *Plain English Guide to the Planning System*, (January 2015)

[5] United Nations, *Sustainable Development Goals,* <https://sdgs.un.org/goals> accessed 1 February 2023

[6] Environment Act 2021.

[7] Defra, *Environmental Improvement Plan,* (2023)

[8] BBC, *UK Parliament declares climate change emergency*, (2019) <https://www.bbc.co.uk/news/uk-politics-48126677> accessed 30 January 2023

[9] United Nations Economic Commission for Europe, *Convention on Environmental Impact Assessment in a transboundary context*, (1991)

[10] United Nations Economic Commission for Europe, *Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a transboundary context,* (2003)

[11] Department for Levelling Up, Housing and Communities, *Levelling Up and Regeneration: further information Policy Paper,* (11 May 2022)

replacement, followed by five potential modifications aimed at improving the environmental assessment regimes:

**The weak case for replacement vs the strong case for modification** – We found that stakeholder support for regime replacement is minimal (only 3% of stakeholders favour replacing EIA, 10% favour replacing SEA, and 6% favour replacing HRA), with little supporting evidence or appetite for removing the existing regimes. Multiple drawbacks have been identified as arising from the removal of EIA, SEA and HRA which include: creating cross border friction and transboundary complexities; the loss of case law, guidance, precedent and continuity; reputational damage internationally; and increased risk of delays, increased cost, and uncertainty for developers arising from a new system. However, there is strong stakeholder support for modification of the existing regimes (support for modification was 76% for EIA, 74% for SEA, and 70% for HRA), which avoids some of these drawbacks, while still offering potential to improve elements of the existing regimes.

**Recommendation 1**. The Government needs to be clear about the problems they are seeking to resolve and in so doing, set out both a strong evidence-based case for any elements of the existing regimes that it would seek to remove, and a well evidenced justification for any introduced changes or modifications. On balance the evidence reviewed for the OEP points towards greater benefits from retaining and modifying EIA, SEA and HRA rather than creating a new regime.

**The need for earlier, more integrated, environmental assessment** – All environmental assessments are most effective when they start early in a plan/project development life-cycle (i.e. at concept / feasibility / pre-feasibility stage) and are least effective when carried out after a plan/project has already been initiated. Stakeholder support for earlier consideration of the environment in scheme design, or plans/programmes was strong: it was cited within the three most recommended modifications for EIA and SEA. The criticisms of EIA and SEA (tick box exercise, red tape, procedural focus, not changing outcomes) relate to late application of the tools. Likewise, many of the benefits of environmental assessment (more sustainable projects/plans, better designs/locations, better public acceptance, improved environmental outcomes) are directly attributed to early and integrated use of the tools.

**Recommendation 2**. Based on the evidence reviewed, to deliver more positive environmental outcomes, a modified regime should require early consideration of the environmental and social effects of proposed plans, programmes and projects. These considerations should be integrated into design and development alongside financial and technical considerations, rather than a sequential process, with environmental impacts considered after the initial development of plan or project concepts. To encourage this early and integrated approach, evidence of this should be demonstrated by promoters/proponents, of how (and when) they have incorporated environmental considerations into their plan or project development. For HRA in particular, the most effective mitigations for ecologically designated sites and species are those at the top of the mitigation hierarchy, namely avoidance of impacts through careful site selection, scheme design, layout and sequencing. These key design considerations therefore need environmental input right from the feasibility and concept phases, as later in a project or plan development many of these spatial and design decisions are already fixed and the opportunity for avoiding impacts is greatly reduced.

**The need for strengthened requirements for monitoring, mitigation and enforcement** – All three environmental assessment tools focus on pre-application assessment, with relatively little resource allocated to later post-consent stages. Identified impacts, following the mitigation hierarchy, are ideally avoided, but where this is not possible, they are minimised/reduced, rectified/repaired or compensated. Stakeholder feedback and research shows weak practice in the use of monitoring conditions to ensure mitigations are both carried out and deemed effective. Stronger post consent monitoring, enforcement, remedy and feedback were the most popular improvements identified by stakeholders for EIA and HRA (mentioned amongst the four most favoured improvements respectively in around 50% and 40% of survey responses).

Non-compliance is commonplace, and monitoring and enforcement levels are low. Therefore, monitoring and enforcement of mitigation during construction and operation is not providing adequate environmental protection. Evidence suggests a lack of resources within statutory bodies and LPAs for monitoring and enforcement, as well as a developer led monitoring system that risks conflicts of interests and poor transparency.

**Recommendation 3**. Strengthen requirements for, and governance of, monitoring of assessment outcomes. Requirements on plans/projects to monitor mitigations should be strengthened with remedies implemented where necessary. Monitoring should be required as standard and should be carried out by a neutral or independent third party. Enforcement should be used in cases of failure and should be a genuine deterrent to non-compliance.

**The need for improvements in skills, information and capacity** - Our research has identified a skills shortage, capacity (staffing) limitations, lack of government guidance, and limited training provision across the regimes, particularly in England. This collective resource capacity and capability deficit is a key contributor to delays, disproportionate reporting and assessment requirements, and to poor decision making. This was reflected in strong support by stakeholders recommending prioritising greater or dedicated resources for regulators (amongst the four most favoured improvements in around a third of survey responses for both EIA and HRA).

**Recommendation 4**. A modified regime should ensure adequate provision of sufficient expertise across competent authorities and statutory stakeholders to foster proportionate and risk-based decisions based on sound knowledge and judgement. Skills, information and capacity can be provided by a combination of measures, which could include, for example, national/regional centres of excellence, enhanced training provision, national guidance, knowledge repositories, and a review of staffing numbers allocated to planning and assessment. Any new regime proposed by the government should only be launched alongside a coherent, funded, and well-evidenced national environmental assessment skills and capacity plan to provide sufficient numbers of competent advisors to allow any new environmental assessment regime to function as intended.

**The need to provide more accessible information, and more effective stakeholder engagement** - Stakeholder engagement, including public participation, are core elements of existing regimes, which also implement requirements of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Stakeholders supported more accessible information, and improving public engagement and participation, with SEA in particular having this as the third highest rated recommendation for change.

**Recommendation 5**. Potential improvements comprise greater requirements for public participation, earlier engagement of the public, better and more accessible provision of information, effective grievance mechanisms, and use of improved community consultation for non-NSIPs. The Government should bring forward well-evidenced proposals for securing the objectives of the Aarhus Convention under a modified regime.

**The need to consider alternative solutions for delivering environmental betterment over environmental protection** - It is recognised the existing regimes are often focused on damage limitation, rather than enhancement, in large part due to the existing laws, requirements and standards that emphasise environmental protection and conservation, rather than betterment. Frustration at the focus on damage limitation rather than enhancement is reflected in stakeholder feedback on all three regimes, with one of the highest ranked recommendations being an increased focus on enhancement, recovery and improvement (mentioned amongst the four favoured improvements in around a third of survey responses for each regime). However, compared to the relatively small numbers that recommend regime replacement, this shows a clear appetite to modify existing regulations or seek other methods to set targets and requirements for enhancement, recovery and improvement.

**Recommendation 6**. A continuing re- focus from protection to enhancement could be achieved substantially through target setting in other legislation or policy emanating from the Environmental Improvement Plan 2023 and requirements for biodiversity net gain and net zero. These could be consolidated by the existing assessment regimes as material considerations and requirements. The Government should continue to look at alternative methods to set outcomes in new or amended environmental assessment regimes. This would have the same effect without the drawbacks associated with regime replacement.

# 1. CONTEXT FOR SYSTEMIC CHALLENGE

## 1.1 Strategic planning and the environment

Nature's decline in the UK is severe. The UK is in the bottom 10% of all countries, and bottom in the G7, for the state of our nature[12]. Defra accepts that the UK has become "one of the most nature depleted countries in the world"[13]. This situation has arisen despite multiple deadlines to stop nature's decline, and despite much legislation intended to address it.

The environmental pressures from development are long recognised, and various environmental assessment regimes have been in place since the early 1990s to help ensure that decisions over how development and wider land use change is planned and implemented to take account of environmental impacts. But have these regimes worked effectively?

The Government sees the need for a refreshed approach. The 2020 Planning White Paper, *Planning for the Future*[14], considered that "assessments of ... environmental impacts are too complex and opaque [and that] assessments of environmental impacts and viability add complexity and bureaucracy but do not necessarily lead to environmental improvements." To bring a new focus on design and sustainability, the white paper proposes "... a quicker, simpler framework for assessing environmental impacts and enhancement opportunities, that speeds up the process while protecting and enhancing England's unique ecosystems".

This theme of speed is a recurrent objective throughout the Government publications, with a recent publication from the Department for Levelling Up, Housing and Communities (DLUHC)[15], reiterating the need, in Section 4.4 of the report, to streamline the assessment processes through the new system of EORs, as initially proposed in the LURB.

This publication, whilst focused on the Nationally Significant Infrastructure, provides additional detail on the proposals for wider reforms and the EOR. Many of the issues raised by the Government therein align well to the key recommendations from this independent review. For example, Recommendation 2, set out above calls for earlier intervention and the importance of early consideration of alternatives, which seems to align with the Government's recognition for improving:

> *"the inter-action between assessments of environmental impacts at a strategic level, strategic mitigation options and consideration of alternatives at an early stage".*

With respect to Recommendation 3 on improving mitigation and monitoring, the Government acknowledges:

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[12] Natural History Museum, *Biodiversity Intactness Index*, <https://www.nhm.ac.uk/our-science/our-work/biodiversity/predicts.html> accessed 01 February 2023

[13] Defra, *Nature Recovery Green Paper,* (2022) (quote originally from the RSPB State of Nature Report (2016)).

[14] Ministry of Housing, Communities and Local Government, *White Paper: Planning for the future,* (August 2020)

[15] Department for Levelling Up, Housing, and Communities, *Nationally Significant Infrastructure: action plan for reforms to the planning process,* (24th February 2023), Chapter 4

> *"Key safeguards such as monitoring the accuracy of the predictions in the assessment and the effectiveness of the measures proposed to mitigate the harm are often not carried out as proposed".*

However, despite some alignment on the key issues, this action plan document still proposes 'streamlining' and 'a new system' of environmental assessment, something that only 3% of our EIA stakeholder responses indicated as the right solution. The extent to which the new system is entirely new, or more of a modification of the existing regime remains unclear. Further information was however provided on the timescale for further information, albeit without any actual dates,

> *"There will be consultation and ongoing user research during the passage of the Bill to inform content of and necessary approach to secondary legislation. We will consult on secondary legislation following Royal Assent. Detailed guidance will be prepared alongside regulations for both TCPA* [Town and Country Planning Act] *and NSIP* [Nationally Significant Infrastructure Project] *systems to assist with implementation once regulations are passed."*

Therefore, the detailed structure of this framework remains unknown. Will it be a new build; will it re-purpose certain existing parts, and if so, which ones; or is the existing framework generally sound and simply in need of some new fixtures and fittings?

A consultation on the draft EOR Regulations was launched by DLUHC in March 2023[16], following completion of much of this project. This is discussed further in Chapter 9.

## 1.2 A new approach

Off the back of exit from the European Union (EU), the Government is taking an opportunity to transform a national approach to planning, including environmental assessment. The LURB seeks to ensure that new development meets clear design standards which reflect community views, introduces focus on environmental outcomes, and expands protections for the places people value. Various measures aimed at "creating beautiful places and improving environmental outcomes" are set out in the Bill and associated policy papers[17].

The Nature Recovery Green Paper[18] marks a similar ambition to transform HRA, outlining key areas where change is required to meet the UK's nature recovery ambition. In particular, it proposes changes to EU-derived domestic legislation, moving to an approach which focuses more on outcomes and recovery, building on the strategic approaches enshrined in the Environment Act and placing impacts and mitigations into the context of nature recovery objectives for whole landscapes and catchments.

The explanatory notes to the LURB refer to the proposed replacement of EIA and SEA and make provision for the introduction of EOR Regulations. Clause 149[19] explains that these Regulations

[16] Department for Levelling Up, Housing and Communities, Environmental Outcomes Report: a new approach to environmental assessment, (17 March 2023)

[17] Department for Levelling Up, Housing and Communities, *Levelling Up and Regeneration: further information Policy Paper,* (11 May 2022), Chapter 6

[18] Defra, *Habitats Regulations Assessment Review Working Group summary of findings*, (2021)

[19] Levelling Up and Regeneration Bill 2022, HL Bill 84, <https://bills.parliament.uk/publications/49177/documents/2671> accessed 23 March 2023

may include provision for "environmental assessment legislation" (EIA and SEA regulations) and the Habitats Regulations to be disapplied in certain circumstances. These planned changes would be a significant shift in the operation of environmental assessments undertaken to support decision-making processes associated with certain proposed activities.

Much alarm has been evident in the media regarding the proposed changes to the status quo[20], and the OEP's written evidence to the LURB Committee[21] warns "*that reforms proposed in the …. Bill must be approached with care if they are to avoid undermining current levels of environmental protection*".

The LURB policy paper makes it clear that the Bill seeks to deliver more, not less, for the environment, and imposes a duty on the Secretary of State to ensure that the new system of environmental assessment does not reduce the overall level of environmental protection. Indeed Dame Glenys Stacey, Chair of the OEP recognises the "*potential benefits to this approach and scope for improvement in the current regimes*", but equally emphasises the care that is needed in implementing the reforms "*to avoid undermining existing high levels of environmental protection and ensure clarity for those to whom the law applies*"[219].

The new regulations, and any of the mechanisms they engender to support its implementation, provide an opportunity to refresh the approach to environmental assessment in England and Northern Ireland to address current weaknesses and shortcomings. But there are risks in any divergence in approaches between the UK's constituent nations and in discarding assessment regimes that, as we shall see, have been important in securing environmental protection up to now.

This report sets out - based on our research and stakeholder engagement, as well as WSP's on the ground experience - what we believe the weaknesses and shortcomings to be in the current regimes, as well as their strengths and the risks in the proposed regulatory transformation. It then details recommendations that may inform future regulations and wider mechanism to support any future regulations, as well as wider mechanism to support them.

## 1.3 Time to act

There is a time-limited opportunity for the OEP to influence policy development, particularly the passage of the LURB, as well as the development of any secondary legislation, guidance or other implementing arrangements under such proposed primary legislation.

Before any new approach takes effect, the existing policy and legislative frameworks will continue to apply. They may also continue to operate in respect of residual activities where new arrangements under the LURB or other new legislation do not apply. There may be scope, therefore, to influence practical improvements in the implementation of the existing arrangements in both England and Northern Ireland, even without legislative change.

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[20] ENDS Report, New environmental outcomes reports to be introduced 'from 2025' (2023) < https://www.endsreport.com/article/1814413/new-environmental-outcomes-reports-introduced-from-2025> accessed 13 March 2023

[21] OEP, *OEP written evidence to the Levelling Up and Regeneration Bill Committee* (8 August 2022) <https://www.theoep.org.uk/report/oep-written-evidence-levelling-and-regeneration-bill-committee> accessed 1 February 2023

This report makes recommendations for improvements in the context of the current direction of travel for environmental assessment regimes, that is manifest in the LURB and other relevant policy. The recommendations build on a body of previous research by academics and industry bodies (notably IEMA), as well as fresh research developed during this commission. In this way they reflect a wide perspective, which we believe conveys a general consensus, of the strengths and weaknesses, successes and failures, and opportunities and limitations of the current assessment regimes, as well as the potential root causes for these.

By taking an on-the-ground perspective, the recommendations reflect a practical appreciation of the mechanisms driving and directing the different assessment regimes, so that they can effect change in the most expedient way, be that through regulation, policy or a wider support framework.

# 2. GENERAL APPROACH TO THE COMMISSION

## 2.1 Remit

The requirements of this commission are to analyse the implementation of the current policy, legislative and operational frameworks for assessing and managing environmental impacts through environmental assessment regimes in England and Northern Ireland; namely EIA, SEA and HRA. As part of this commission, WSP have been commissioned to:

- analyse current 'on the ground' implementation of HRA, SEA and EIA;
- make recommendations for how the existing implementation arrangements could be improved;
- analyse the UK government's proposals for new approaches to environmental assessment and any associated risks and opportunities from these; and
- engage stakeholders across the range of interested parties to ensure a wide view on both current practice and how future changes might be viewed.

## 2.2 Objectives

The findings and outputs of this work will enable the OEP to:

- understand the current effectiveness of environmental assessment policy, legislation and operational arrangements to implement it, and appreciate the context behind and causes for any perceived weaknesses;
- understand where environmental assessment is *not* working well and why, and equally where it *is* working well and how this might be secured in any revised regimes;
- influence improvements in how laws, policy and operational frameworks are applied; and
- influence the development of new or updated legislation and implementing arrangements relevant to, or that may replace, HRA, SEA and EIA.

A separate commission to 39 Essex Chambers that ran in parallel with WSP's, was to advise the OEP with regards to legislation, case law and implementation of the environmental assessment regimes in England and Northern Ireland. This sought to explore the efficacy of the current legislative arrangements, with a focus on: the strengths and weaknesses of each of the legal frameworks and how they are implemented; any common themes of strengths or weaknesses

across the assessment regimes; and any recurring or significant issues in interpretation or implementation.

In contrast, WSP's remit has been focused more on implementation and practice. As part of the commission, WSP proposed to focus as well on procedural matters: the activities and practices of the different assessment regimes, and whether the regimes work as effectively as they might in delivering good environmental outcomes.

A separate commission to Land Use Consultants evaluated the implementation and practice of environmental assessment from an international perspective, focusing on regimes that may identify solutions to the identified issues in England and Northern Ireland.

## 2.3 Scope and influence

This commission covers HRA, SEA and EIA in both England and Northern Ireland, and the terrestrial, freshwater and marine environments. It considers overlaps and connections between assessment regimes, and between plans, programmes and projects.

The findings and recommendations will directly contribute to the OEP's function of monitoring and reporting on the implementation of environmental law. This project may also inform any advice the OEP provides to ministers, for example on the future proposals for EOR Regulations under the LURB. The work is one of the OEP's priorities as set out in its corporate plan for the 2022/23 financial year. The work will be delivered within the context of its strategic objective "better environmental law, better implemented" and its approach to delivering its functions as set out in the OEP strategy.

This work may be used by the OEP to influence i) the LURB (and any other relevant primary legislation announced in the timescales of this project); ii) any secondary legislation that arises from the LURB or elsewhere concerning HRA, SEA and/or EIA (including any changes to, replacement of, or interaction of, the new legislative mechanisms with the current assessment processes); iii) any future proposals for the practical implementation of new assessment processes; and iv) improvements in the implementation of the current assessment processes while they remain in place.

# 3. DETAILED APPROACH TO THE COMMISSION

## 3.1 Research brief

The research piece was the cornerstone of the commission. Research work was initiated through definition of five overarching tasks, with detailed questions to support each of them, namely to:

1. List regulations for analysis; clarify aims; determine wider influences on practice;
2. Assess performance and delivery of the regulatory frameworks;
3. Review assessment implementation practice;
4. Analyse gaps and weaknesses in the current regimes; and
5. Highlight possible interface of new assessment regimes with existing environmental regulations and policy.

The fourth task was later omitted on the basis that regulatory gaps in environmental legislation were deemed better covered by the 39 Essex Commission.

## 3.2 Research elements

### *Regulations for analysis*

Research task 1 involved a review of existing assessment regulations relevant to the brief, as set out in clause 152 of the LURB, as well as related policy and guidance material relevant to the implementation of environmental assessment. Key matters addressed comprised:

- confirmation of the regulatory requirements for each regime;
- identification of their common elements;
- differences and reasons for these (across regimes and between England and Northern Ireland);
- aims of each regime; and
- other drivers and determinants of assessment practice (policy, guidance, key case law, application and practice), and their effects.

### *Performance and delivery of the regulatory frameworks*

Key matters addressed under performance and delivery of the regulatory frameworks comprised:

- the aim of each assessment regime;
- measures or criteria used to determine if these are achieved;
- other criteria used to measure performance;
- evidence of performance against these criteria; and
- extent to which environmental outcomes have been identified and achieved.

### *Assessment implementation practice*

This aspect of the research phase considered assessment implementation practice and comprised:

- assessment statistics to establish trends and patterns, and what these trends are for each regime;
- drivers for these trends;
- key differences across England and Northern Ireland;
- notable successes and failures in assessment practice and outcome;
- post-consent governance and assurance; and
- emerging new assessment techniques.

### *Interface between new and old*

This aspect of the research sought to establish how wider environmental protection regimes currently interact with existing environmental assessment regimes and how changes in the latter might therefore undermine the former.

Key matters addressed comprised:

- environmental protection regulations and policies with links to current assessment regimes;

- aspects of the current assessment regimes that affect, and are affected by, these other key policies and regulations;
- risks to wider environmental protection frameworks from new assessment regimes; and
- emerging policies and regulations that might need to be considered and coloured by changes in assessment regimes.

## 3.3 Stakeholder engagement

A programme of stakeholder engagement was used to establish a wide range of cross-industry perspectives on relevant issues. This involved a collaborative approach with the OEP, with WSP leading in terms of logistics, management and consolidation of information, and the OEP leading in the branding and publicity for this phase of work.

Engagement was sought initially through two survey questionnaires: a general, practitioners' survey and a detailed, organisational survey. The remit of each is described in Table 3-1.

### *Stakeholder mapping*

A stakeholder mapping exercise identified the organisations and individuals that we wished to engage. Organisations were grouped into the following categories:

- government department;
- public authority (including regulators and other statutory bodies);
- local planning authority;
- industrial and business organisation;
- non-industrial representative body;
- environmental NGO;
- legal organisation;
- academic institution;
- consultancy and contractor; and
- other.

The list of specific consultees across these categories is provided in Appendix A. These represent some organisations whose participation was considered essential based on their involvement in one or more of the assessment regimes, as well as certain others who were taken to provide good representation across a range of similar bodies, or individuals whose specific knowledge and experience was coveted. The specific consultees were contacted initially with an invitation to complete the organisational survey.

A wider net was cast across certain industry organisations, where key members were directed to the practitioners' survey. Members of these organisations were considered to have a likely interest and knowledge of some aspects of the different assessment regimes. Organisations included:

- The Institute of Environmental Management & Assessment (IEMA), and specifically 5000+ members with a stated interest in impact assessment.

- The Chartered Institute of Ecology and Environmental Management (CIEEM), and specifically its Strategic Policy Panel, England Policy Group, Ireland Policy Group, and the Professional Standards Committee.
- The Local Government Association (LGA), and specifically members of its Planning Sounding Board, and the Association of Directors of Environment, Economy, Planning and Transport (ADEPT), which represents 95+ county, unitary and combined authority members, four sub-national transport bodies, 14 local enterprise partnerships, and 21 corporate partner members across England.

### *Methods of engagement*

Stakeholder engagement involved a combination of survey questionnaires, focus groups and one-to-one meetings. Initial plans were for a limited number of workshops, each devoted to specific user groups (as listed under stakeholder mapping). However, it was evident that many organisations had several individuals with expertise in one or more of the assessment regimes, potentially resulting in unmanageable numbers of participants. In addition, we had concerns that named individuals could be reluctant to represent the views of many at a wider stakeholder forum. We therefore proposed that, with a possible small number of exceptions, most feedback would come from the surveys, with follow-up one-to-one or small group meetings where individuals expressed an interest to engage further, or where we have identified individuals we would wish to engage separately.

We developed two survey questionnaires: one general **practitioners' survey** with intended broad reach to a large number of professionals with some experience in at least one of the assessment regimes, and a second detailed **organisational survey**, issued to named individuals who we asked to provide an authoritative view as representative of that organisation. The remit and objectives of each are summarised in Table 3-1.

**Table 3-1**: Summary of the two survey remits and objectives.

| | Practitioners Survey (see Appendix B) | Organisational survey (see Appendix C) |
|---|---|---|
| **Recipients** | Individuals, survey shared via organisations with wide membership (IEMA, CIEEM, LGA) | Organisations that can provide representative feedback |
| **Representation** | Respondents to be identified at a membership organisation level or as individual practitioners rather than as organisation representatives | Respondents to be identified at organisation level. Responses provided by public bodies assumed to be representative of the organisation under their duty to co-operate |
| **Reach** | 5000+ | Approximately 100 |
| **Completion time** | ~10 minutes | ~20-30 minutes |
| **Mechanism** | Principally selective answers (from drop down list) and limited free text response | Principally free text, with possible selective option |

| | Practitioners Survey (see Appendix B) | Organisational survey (see Appendix C) |
|---|---|---|
| **Feedback** | Information allowing mostly quantitative analysis of trends and patterns; some more detailed feedback from limited free text | Detailed feedback requiring bespoke review and analysis, and potential follow-up with respondents |
| **Benefits** | • Information from a very wide range of stakeholders<br>• Enables distinction of trends in priorities<br>• Provides a quantified perspective that balances qualitative views<br>• Response period set | • Enables feedback from targeted audience<br>• Allows structured organisation of feedback<br>• Feedback can be taken to represent organisations' position |
| **Risks** | • Knowledge base of respondents will vary, with little way of distinguishing the 'quality' in the quantified information<br>• Responses not attributable to individuals (though deemed level of expertise stated) | • Additional work in collating feedback and organising trends and emphases within free text<br>• Requires longer response period which may require accommodation |

### *Data and information management*

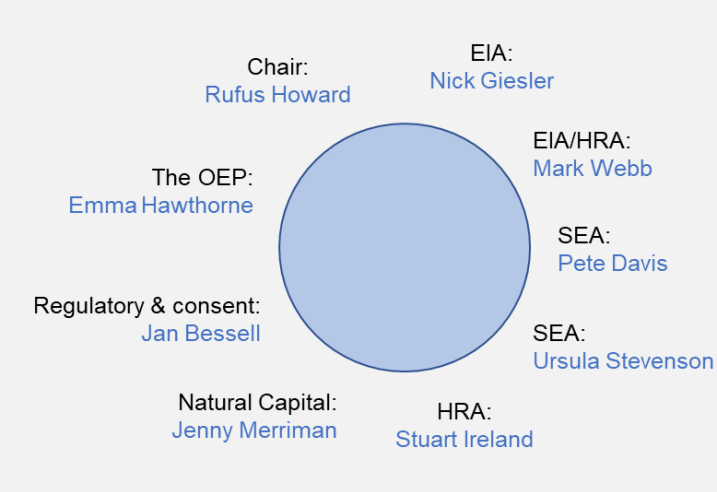
Data collected through the focus groups and meetings was recorded by the WSP teams facilitating the sessions. Personal data collected through the surveys was retained in the project SharePoint site, with access limited to those people working on the OEP Assessment Regimes project. All data was managed in line with GDPR, and handed to the OEP on completion of the project.

Survey responses provided as free text were managed using a code frame for each question, based around a series of theme codes to fully reflect the comments received. Coding and code frame development is an iterative and dynamic process. After identifying the emerging themes from submitted responses, we kept it under review as the process continued and more data became available. All results were input to a spreadsheet, which was used to inform the report.

## 3.4 Expert panel

An expert panel was established at the outset of the commission, including WSP's leading practitioners in each field of EIA, SEA and HRA, as well as experts in wider aspects of the study remit. The panel was chaired by Dr Rufus Howard who serves, amongst other roles, as the impact assessment policy lead for IEMA, although he was appointed independently for this commission. The expert panel is summarised in Figure 3-1.

**Figure 3-1**: The expert panel




There were three panel meetings which were used to help focus the project remit and to consolidate conclusions as the findings emerged.

At the first meeting, held on 2nd November 2022, we provided early feedback from the research phase of the project, addressing each of the points outlined in Section 3.2 of this report. Panel members discussed their perspectives on these findings and where they deemed the challenges for the remainder of the project to lie.

The second meeting was held on 18th January 2023. Based on the key findings and potential recommendations that had emerged from the study, we focused on mechanisms for delivering change; for example, through regulatory change, government guidance, advice notes, or industry guidance, and the facilities and resources that might also support improvement.

The third and final meeting was held on the 31st of January 2023. This session focused on the six key recommendations that emerged from our research that we consider could be pertinent to future work undertaken by the OEP in this area. The meeting explored the detail of these recommendations and the optimum mechanism(s) for achieving them.

# 4. EXISTING ASSESSMENT REGIMES

## 4.1 Environmental impact assessment

### *Evolution of EIA*

EIA has been practiced for over 50 years[22], and in the UK for around 35 years[23]. It is undertaken in around 191 countries[3]. In the UK context, environmental assessment has been heavily influenced by the European directives on EIA introduced in 1985. Indeed, the UK was a strong influencer of the EU directives and many of the principles and practices arising from the directives have been informed by UK policy and practice[24].

Changes to the UK EIA regime followed various revisions of the European EIA Directive, including those from 1997, 2003, and 2009. In 1997 the types of projects covered were increased, and new screening arrangements and minimum information requirements were introduced. In 2003, the Directive was brought in line with the UNECE Aarhus Convention on Public Participation in Decision-making and Access to Justice in Environmental Matters. In 2009, projects related to the transport, capture and storage of carbon dioxide ($CO_2$) were added to the list of projects requiring EIA.

The Directive was codified in 2011 (2011/92/EU) and consolidated in 2014 (2014/52/EU). Streamlining attempts were made that included a better integration with other assessments (including SEA and HRA, as well as the Water Framework Directive). The scope of EIA was extended to consider land, accidents and disasters, human health, climate change and biodiversity, and the consideration of construction waste and uncertainties. The need to assess at least two alternatives was introduced, including the consideration of the zero-alternative (or the future baseline) next to the promoted scheme[25].

### *Remit of EIA*

An EIA seeks to protect the environment by ensuring that a consenting authority, when deciding whether to grant consent for a qualifying development, does so in the full knowledge of the likely significant effects, and takes these into account in the decision-making process.[26]

EIA regimes in England and Northern Ireland apply the amended EU directive "on the assessment of the effects of certain public and private projects on the environment"[27] (usually referred to as the 'EIA Directive'). There are a host of different consent granting mechanisms, each relying on its own bespoke EIA legislation covering different industrial sectors or consenting regimes. The EIA

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[22] National Environmental Policy Act 1969.

[23] Urmila Jha-Thakur and Thomas Fischer, '25 years of the UK EIA System: Strengths, weaknesses, opportunities, and threats', (2016) 61, Environmental Impact Assessment Review, pp19-26

[24] IEMA, *The State of Environmental Impact Assessment Practice in the UK (Special Report),* (2011) <https://www.iema.net/articles/special-iema-report-on-eia?t=0> accessed 31 January 2023

[25] Thomas Fischer, 'Simplification and potential replacement of EA in the UK – is it fit for purpose?', (2023), Impact Assessment and Project Appraisal

[26] Regulation 26, The Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

[27] Official Journal of the European Union 'Council Directive 2014/52/EU of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment' (2014)

Directive has been transposed in the UK into over 40 regulations, with over 300 authorities bearing responsibility for its implementation[28]. The more sector-specific regulations were developed to ensure that development types (for example land drainage works, forestry or offshore oil and gas) that sit outwith the more conventional consent granting mechanisms, and which engage different consent granting organisations (such as the Marine Management Organisation (MMO) or the Oil and Gas Authority) are subject to EIA where they are likely to result in significant environmental effects. The comprehensive list of relevant environmental assessment legislation is set out in clause 152 of the LURB, which has informed Table 4-1.

**Table 4-1**: List of environmental legislation

| EIA Legislation* | Purpose |
|---|---|
| The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (TCPA) | To ensure a high level of environmental protection, applying to certain types of development listed in the directive's Annexes I and II, including Permitted Development. It aims to ensure that the public are given early and effective opportunities to participate in the decision-making procedures.<br>The aim is to protect the environment by ensuring that a local planning authority, when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision-making process. The regulations set out a procedure for identifying those projects which should be subject to an EIA. |
| The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 | The Planning Act 2008 created a new development consent regime for Nationally Significant Infrastructure Projects (NSIPs) in the fields of energy, transport, water, wastewater, and waste. These projects are commonly referred to as major infrastructure projects, which require a Development Consent Order (DCO) under the Planning Act 2008. It sets out the requirement to provide sufficient evidence to the Planning Inspectorate (PINS), on behalf of the Secretary of State (SoS), about predicted environmental impacts and effects, including mechanisms to secure mitigation and monitoring measures. The approach is considered more robust in terms of its front-loaded nature and more stringent requirements in terms of consultation and materials to be submitted for PINS's consideration and to inform their recommendation. For example, with a DCO application, documents such as preliminary environmental information (PEI) reports, Statement of Common Ground (SoCG), Statement of Community Consultation, etc. are required as part of the overall process. |
| The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 | These regulations apply to Northern Ireland, aiming to ensure that development cannot be permitted without the consideration of environmental information; describes the environmental impact assessment process; set out the matters that confirm that development is EIA development, etc. It also sets out expectations of a coordinated approach between EIA and HRA, factors for imposing monitoring measures and information required to accompany an application/decision. |

[28] Josh Fothergill and Thomas Fischer, 'EIA in England', (2022), Routledge Handbook of Environmental Impact Assessment, Chapter 18

| EIA Legislation* | Purpose |
|---|---|
| The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 | An order made under the Transport and Works Act 1992 (TWA) is the typical route of authorising a new railway or tramway scheme in England and Wales, except for nationally significant rail schemes in England which require development consent under the Planning Act 2008. These typically relate to non-NSIP railways and tramways, guided transport and trolley vehicle schemes. |
| Sections 13A to 13D of the Transport and Works Act 1992 (environmental impact assessments) | This Act established a system in which applicants can apply to the minister of state to construct rail transport, tramway, inland waterway and harbour infrastructure instead of passing a private bill. These regulations aim to ensure that Parliament has a role in procedures from an early stage, and in advance of public enquiries. |
| Schedule 3 to the Harbours Act 1964 (procedure for making harbour revision and empowerment orders) | Schedule 3 outlines the procedure for making harbour revision orders and harbour empowerment orders to the relevant minister or SoS. It specifies what the application must contain in terms of supporting materials, and what processes the applicant must undergo in order to apply for these orders. |
| Part 5A of the Highways Act 1980 (environmental impact assessments) | This specifically applies to highways schemes and the procedures in place to protect the environment from the early stages of projects, as well as specific steps regarding the project authority's decision about whether or not to proceed with a project subject to an EIA. |
| The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 | Requires applications to obtain consent to carry out of specified operations in relation to certain kinds of oil and gas projects to be accompanied by an environmental statement (regulation 5). Those applications are either ones which fall within certain categories (those which relate to the getting of petroleum and the construction of installations in relation to projects producing more than 500 tonnes of oil per day or 500,000 cubic metres of gas per day and certain large pipelines) or where the Secretary of State is not satisfied that the project will not have a significant effect on the environment. |
| The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999 | This relates to the assessment of the effects of certain public and private projects on the environment in regards to proposed pipe-line works by a public gas transporter (PGT). EIA is now mandatory for proposed oil and gas pipe-line installations which are more than 800mm in diameter and more than 40km long. EIA may also be required in relation to proposed pipe-lines falling below that threshold but only when the member State concerned considers that they are likely to give rise to significant environmental effects.<br>The regulations aim to implement the directive by making it necessary that proposed gas pipe-lines of a PGT employing permitted development rights should be subject to EIA where they are likely to have significant environmental effects. |
| The Pipe-line Works (Environmental Impact Assessment) Regulations 2000 | This regulation solely relates to pipe-line construction, specifying the requirements of the Secretary of State, including consideration for impacts to European Economic Area (EEA) states. |

| EIA Legislation* | Purpose |
|---|---|
| The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 | These apply to projects that aim to improve land drainage. Improvement works include the deepening, widening, straightening or general improvement of existing watercourses. They also include the removal or alteration of mill dams, weirs and obstructions to watercourses and the improvement or raising of existing drainage networks. |
| The Environmental Impact Assessment (Forestry) (England and Wales) 20 Regulations 1999 | These regulations typically relate to projects where consent from the Forestry Commission is required. Similar to local authority determinations, the Commissioners should take into consideration the environmental information, any representations received by them in relation to the application and any other material consideration, including in particular their assessment of the direct and indirect effects of the project on the environmental factors specified in Schedule 4. |
| The Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 | These regulations implement the EU requirements for EIA in the context of nuclear reactor dismantling and decommissioning projects. Nuclear reactor decommissioning or dismantling projects that are solely for a national defence purpose may be exempted under the EIADR at present. Exempting a project from carrying out an EIA does not reduce the regulatory measures in place to protect the public and the environment from ionising radiation. Government can therefore implement exemptions for projects with a civil emergency response purpose, or part of a project serving defence as its sole purpose. |
| The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 | These regulations apply to water management projects for agriculture and water extraction projects. It may not apply to projects that class as development in section 55 of the TCPA or land drainage Improvement Works. The regulations aim to ensure that the sustainable use of resources, and the likely effects of new development in relation to water resources are considered before a development can be approved by the Environment Agency. |
| The Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006 | The Regulations implement (in part) the 1985 European Community Directive 337 which require a formal procedure to assess the potential environmental impact of certain changes to land use before agricultural works are allowed to proceed; Natural England being the Regulator. The regulations aim to protect rural land in England that is uncultivated or semi-natural from changes in agricultural activities that might cause damage by factors such as increasing productivity and physically changing field boundaries. |
| The Marine Works (Environmental Impact Assessment) Regulations 35 2007 | These regulations outline the marine projects that require an EIA, and the process the applicant must undergo to seek regulatory approval. An EIA must be completed before the MMO can grant a marine license. When working with other authorities, the MMO will follow the principles of the coastal concordat.. |

| EIA Legislation* | Purpose |
|---|---|
| The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 | These Regulations make provision with respect to EIAs to be undertaken in relation to applications for consents for new offshore generating stations under section 36 of the Electricity Act 1989 (applications are made to the MMO; variations of existing section 36 consents under section 36C of that Act (applications are made either to the SoS or the MMO, depending on who granted the original consent); and consents for overhead electric lines under section 37 of that Act (applications are made to the SoS). The Regulations set out what constitutes EIA development and set out the procedures for an EIA. |
| The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 | These regulations aim to consider the environment when applying to the SoS for proposed offshore projects. The regulations set out the key components of Schedule 1, Schedule 2 and Schedule 3 developments, and requirements for each with respect to environmental assessment reporting and extent of consultation with bodies such as the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED). |

The approach taken and the specific regulations that apply can also depend on the consenting strategy the developer opts to follow (for example TCPA or DCO) where this option is available. EIA requirements follow the same principles of the EIA Directive, but may differ in certain details. In England, the Infrastructure Planning (EIA) Regulations 2017 (S.I. 2017/572) represent the most comprehensive model for undertaking EIA, as they are relatively more demanding than those for other consenting regimes, making provision for things such as preliminary environmental information (PEI) documents, and statements of community consultation. The regime is overseen by the Planning Inspectorate for England (PINS). As an executive agency of DLUHC[29], PINS has responsibility for providing recommendations and advice on NSIPs through the DCO process, which the Secretary of State can accept or reject in deciding whether to make the Order that empowers them.

Whether EIAs make a positive contribution to the environment is one of the principal considerations of this study. But their opportunity to make this contribution can only ever be small, since those developments that sit within Schedule 1 or Schedule 2 of the Regulations, and so would actually or potentially require EIA as part of their consent, are tiny in number. In England in 2022 (year ending September), of the 422,321 planning applications made, only 345 (0.08%) were accompanied by an Environmental Statement[30] and we believe this proportion to be similar for Northern Ireland[31]. The ten applications for NSIPs that were received by the PINS[32] over this same time frame would also have been accompanied by ESs. Of course, these would have been for the largest and potentially most impactful projects. But the influence of EIAs on environmental outcomes within a national context can only ever be very limited given their almost negligible

[29] Planning Inspectorate, *About Us* < https://www.gov.uk/government/organisations/planning-inspectorate/about> accessed 1 February 2023

[30] Department for Levelling Up, Housing and Communities, *Live tables on planning application statistics,* (15 December 2022) < https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics > accessed 30 January 2023

[31] Josh Fothergill, pers comms

[32] National Infrastructure Planning, *Register of Applications*, (2023) <https://infrastructure.planninginspectorate.gov.uk/projects/register-of-applications/> accessed 30 January 2023

coverage of land use change within a national context. And this has lessened further since new legislative provisions on EIA in the TCPA came into force in 2015 and raised the thresholds for requirements to conduct EIA for residential and other developments from 0.5ha to 5ha. This saw numbers of EIAs conducted annually fall from what was previously around the 800 mark.[25]

## 4.2 Strategic environmental assessment

SEA and the closely related sustainability appraisal (SA) are applied at the strategic stage of infrastructure development and land use planning and provide a framework that seeks to include the relevant environmental information into decision making. SA seeks to promote sustainable development by assessing the extent to which local plans and spatial development strategies, when judged against reasonable alternatives, help to achieve relevant environmental, economic and social objectives. SEA can be applied more generally to strategic plans and programmes and, echoing EIA, is focused on the identification of the likely significant effects on the environment against a given baseline, rather than against a set of objectives.

SAs and SEAs follow the requirements in England and Northern Ireland of the respective Environmental Assessment of Plans and Programmes Regulations 2004 (commonly referred to as the 'SEA Regulations'). Local planning authorities are required[33,34] to carry out an SA of each of their proposals during preparation of their strategic plans. SEA considers only the environmental effects of a plan, whereas SA considers the plan's wider economic and social effects in addition to its potential environmental impacts. However, SA should meet all of the requirements of the SEA Regulations.

Unlike EIA, SEA has changed little since inception. Guidance from 2005[35,36] remains current in England, and is referenced by the Northern Ireland Assembly in its SEA webpages[37].

One notable element of the SEA Regulations is contained in Regulation 17, which requires that the significant environmental effects that arise from implementing a plan that has been subject to sustainability appraisal should be monitored, "with the purpose of identifying unforeseen adverse effects at an early stage and being able to undertake appropriate remedial action". The monitoring results should be reported in the local planning authority's monitoring report.

Though the SEA Directive does not deal with policies and legislation, the European Commission's intention had been to subject all major policy initiatives (including regulatory proposals) to an assessment of their potential economic, social and environmental impacts[38]. However, it was felt coverage of plans and programmes would be challenging enough and this has remained the case, in England and Northern Ireland at least[37]. Much fee has since been spent on legal advice

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[33] Department of the Environment, *Development Plan Practice Note 04 Sustainability Appraisal incorporating Strategic Environmental Assessment*, (April 2015)

[34] The Planning and Compulsory Purchase Act 2004.

[35] Office of the Deputy Prime Minister, *A practical Guide to the Strategic Environmental Assessment Directive*, (2005)

[36] Office of the Deputy Prime Minister, *Sustainability Appraisal of Regional Spatial Strategies and Local Development Frameworks Consultation Paper,* (2005)

[37] The Scottish Government, *Strategic Environmental Assessment Guidelines*, (August 2013)

[38] Ministry of the Environment, Czech Republic, *Strategic Environmental Assessment at the Policy Level: Recent Progress, Current Stats and Future Prospects*, (2005), p8

deciding whether a strategic proposal by government or business is or is not a plan or a programme, and whether therefore it requires an SEA[39]. Arguably many plans and programmes that really ought to have had SEA have not, and projects that have come forward from them do so without that earlier environmental consideration. This point was raised by multiple stakeholders, for example The Wildlife Trusts stated reforms should *"address current gaps in assessment and environmental risk by applying to phased initiatives that are not identified as plans or programmes."*

## 4.3 Habitats Regulations assessment

A Habitats Regulations Assessment (HRA) refers to the multiple stages of assessment which must be undertaken by what are collectively termed 'the Habitats Regulations'[40]. The assessment is to determine if a plan or project may affect the protected features of a European site or a European offshore marine site (habitats site) before the competent authority decides whether to undertake, permit or authorise it.

Following the UK's exit from the European Union, the Habitat Regulations were amended for England in the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019[41]. Although Defra guidance (2021) states that Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) in the UK no longer form part of the EU's Natura 2000 ecological network[42], the 2019 Regulations created a national site network on land and at sea in the UK. Despite changes in terminology, the 2019 Habitat Regulations did not make any changes to protection afforded to these sites, or the process for undertaking HRAs. Subsequently, maintaining a coherent network of protected sites with conservation objectives is still required to fulfil the commitment made by the UK Government to maintain environmental protections, and continue to meet the UK's international legal obligations, such as the Bern Convention[43], the Oslo[44] and Paris[45] Conventions, Bonn[46] and Ramsar[47] Conventions.

The HRA process is a three-stage process that helps determine likely significant effects and (where appropriate) assesses adverse effects on the integrity of qualifying national sites. If adverse effects cannot be ruled out, the process then moves on to examine alternative solutions, and provides justification for where there are deemed to be Imperative Reasons of Overriding Public Interest (IROPI).

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[39] Rob Horgan, 'DfT pressed on with £27bn roads plan against official advice to review environmental impact', *New Civil Engineer*, (2021) <https://www.newcivilengineer.com/latest/dft-pressed-on-with-27bn-roads-plan-against-official-advice-to-review-environmental-impact-15-02-2021/> accessed 10 March 2023

[40] Defra, *Guidance: Habitats regulations assessments: protecting a European site*, (24 February 2021)

[41] Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

[42] Defra, *Changes to the habitats regulations 2017 Policy Paper,* (1 January 2021)

[43] Council of Europe, Bern Convention, Convention on the Conservation of European Wildlife and Natural Habitats ETS No. 104 (01/06/1982 (5 Ratifications.))

[44] United Nations Economic Commission for Europe, Convention on Environmental Impact Assessment in a Transboundary Context (1991)

[45] United Nations Framework Convention on Climate Change, The Paris Agreement COP 21 (2015)

[46] United Nations, The Convention on Migratory Species (1979)

[47] United Nations Educational, Scientific and Cultural Organization (UNESCO), Convention on Wetlands of International Importance especially as Waterfowl Habitat (1994)

The 2019 Regulations establish management objectives for the national site network. These are called the network objectives. The network objectives are to:

- maintain or, where appropriate, restore habitats and species listed in Annexes I and II of the Habitats Directive to a favourable conservation status (FCS); and
- contribute to ensuring, in their area of distribution, the survival and reproduction of wild birds and securing compliance with the overarching aims of the Wild Birds Directive.

The effectiveness of an HRA in protecting a habitat site becomes evident through the adoption of a plan or the granting of planning consent, which is permissible only where no adverse effects on site integrity are predicted following mitigation (unless there are no alternatives and IROPI, which would be determined if necessary at Stage 3). Where Stage 1 of the HRA (screening) identifies likely significant effects, Stage 2 (appropriate assessment) considers the effects in greater detail, including the consideration of mitigation measures. It is assumed that the developer will be obliged to implement the mitigation and monitoring outlined in the HRA (for example, through a planning condition), with oversight from the competent authority.

Although no longer reporting to the EU on the implementation and monitoring of the Habitats Regulations, the amended Regulations require the appropriate authority to publish a report which must include:

> *"an appropriate evaluation of the progress achieved and, in particular, of the contribution of the national site network to the achievement of the objective of enabling the natural habitat types listed in Annex I to the Habitats Directive, and the species listed in Annex II to that Directive, to be maintained at or, where appropriate, restored to, a favourable conservation status in their natural range".*

The data underpinning this report is supplied by the UK's Statutory Nature Conservation Bodies (SNCBs).

This is carried out through Common Standards Monitoring. The Joint Nature Conservation Committee (JNCC) states that the results of this monitoring within habitats sites are used to inform a UK-wide assessment of the status and trends of species and habitats for which these sites are protected[48]. There is also a 2019 general implementation report that summarises the main work and achievements in England, Scotland, Wales, Northern Ireland and UK offshore on the implementation of the Habitats Directive, including some specific information on SACs and SPAs, and their contribution to the UK site network[49].

Consequently, as the primary objective of management is to achieve the FCS of protected habitats and species, any mitigation identified during HRAs but not undertaken should be identified during the SNCB's assessment. In practice this is not always the case, as failure to reach FCS may not always be attributable to shortcomings in a specific mitigation measure if there are other reasons in play, such as local agricultural practices.

[48] JNCC (on behalf of the Common Standards Monitoring Inter-Agency Working Group), *A Statement on Common Standards for Monitoring Protected Sites*, (2022)

[49] JNCC, *Reporting under Article 17 of the Habitats Directive - UK General Implementation Report (Annex A) for the period 2013–2018,* (2019)

The 2019 UK report was submitted during the period when the UK was an EU Member State. The statutory requirement to report on the application of the Habitats Directive (including HRAs) is intended to maintain the integrity of habitats sites. This is emphasised in Article 6 of the Habitats Directive, managing and protecting Natura 2000 sites, which requires that Member States take appropriate conservation measures to maintain and restore the habitats and species for which the site has been designated to a favourable conservation status, and avoiding damaging activities that could disturb these species or habitats[50].

On the face of it, HRA can be deemed more effective than EIA or SEA in its delivery of good outcomes, owing to regulatory mechanisms that secure stronger governance. In addition to providing a high level of protection within sites, it provides wider ecosystem benefits such as reduced disturbance to wildlife through, for example, its coverage of 'supporting' habitats or features where they occur outwith designated sites. There are also increasing numbers of road and housing schemes for which Natural England is demanding stringent control of phosphate discharge to protect habitats sites, which yield wider benefits within the hydrological catchment; for example a consented housing scheme in Somerset requiring a wastewater treatment facility to prevent net increase of phosphates within the Somerset Levels and Moors catchment[51]. These issues promote joint working and wider environmental benefits.

Studies led by the Royal Society for the Protection of Birds (RSPB)[52] and British Trust for Ornithology[53] (BTO) also suggest that habitats sites have a wider role to play than simply protecting the 'qualifying features' for which the sites are designated, by establishing that numbers of threatened birds are higher at survey sites with greater levels of coverage by protected area designations, with populations especially strong at those sites protected as SPAs and SACs. Using breeding bird data, and focusing on red- or amber-listed species, the RSPB paper[52] found that numbers of these species (including many for which the sites were not originally designated) are higher where more of the survey site and a 5km buffer zone around it are within a protected area. This suggests that protected areas benefit more species and that these gains 'spill over' beyond their boundaries. An independent study by the BTO[53] showed that sites with a greater proportion of protected land are home to higher numbers and more species of bird. This research provides strong arguments for the value of protected areas and shows how protecting particular species also delivers positive outcomes for wider biodiversity.

A summary of all three assessment regimes is provided in Table 4-1.

[50] European Commission, *Managing Natura 2000 sites – The provisions of Article 6 of the Habitats Directive 92/43/EEC*, (2018)

[51] Daniel Mumby, '185 new homes coming to Yeovil after two-year wait for decision', *Somerset Live,* (6 October 2022) <https://www.somersetlive.co.uk/news/somerset-news/185-new-homes-coming-yeovil-7672360> accessed 13 March 2023

[52] Fiona Sanderson and others, 'Benefits of protected area networks for breeding bird populations and communities', (2022), Animal Conservation

[53] Robert Robinson and others, 'Rare and declining bird species benefit most from designating protected areas for conservation in the UK', (2023) 7, Nature Ecology & Evolution, pp 92-101

**Table 4-1**: Summary of assessment regimes

| | EIA | SEA | HRA |
|---|---|---|---|
| **Purpose** | Provide environmental protection by aiding decision-making and providing the opportunity for public engagement in the development of certain development projects. | Promotes environmental protection and sustainable development at the strategic planning stage | Informs decision-making regarding the protection of conservation areas of international importance from harm that may arise from activities and development |
| **Development phase application** | Qualifying development projects and certain other land-use change – dependent on where the scheme would fall within Schedule 1 or 2 (and considering respective thresholds for relevant category), taking into account its scale, size, nature of development and proximity to sensitive environmental features. | Applies to a wide range of strategic plans and programmes prepared for specific sectors.<br>Dependent on the following criteria being met:<br>• be subject to preparation and/or adoption by an authority at national, regional or local level<br>• required by legislative, regulatory or administrative provisions<br>• prepared by any of the sectors listed in Article 3(2)(a) of the Directive<br>• sets the framework for future development consent of projects listed in Annex I and II to the EIA Directive | Projects and plans.<br>It needs to be determined whether or not there is potential to affect a habitats site.<br>This would take into account the proximity of the site to the proposals as well as potential for downstream affects. |
| **Assessment stages** | 1. Screening<br>2. Scoping<br>3. Preparing an Environmental Statement<br>4. Making a planning application and consultation<br>5. Decision making | Stage A: set the context and objectives, establish the baseline and decide on scope)<br>Stage B: develop and refine alternatives and assess effects<br>Stage C: prepare the SA/SEA report<br>Stage D: seek representations on the SA/SEA report from consultation bodies and the public | Stage 1 Screening<br>Stage 2 Appropriate Assessment<br>Stage 3 Derogation |

| | EIA | SEA | HRA |
|---|---|---|---|
| | | Stage E: post adoption reporting and monitoring | |
| **Report contents** | Environmental statement. Content specified in Schedule 4 of 2017 EIA Regs (or equivalent) including:<br>• description of the development<br>• reasonable alternatives and main reasons for selecting chosen option, including comparison of the environmental effects<br>• relevant aspects of the current state of the environment and its likely evolution<br>• specified factors likely to be significantly affected by the development<br>• likely significant effects on the environment<br>• forecasting methods or evidence used to identify and assess significant effects<br>• measures to avoid, prevent, reduce or offset significant adverse effects, and proposed monitoring arrangements<br>• significant adverse environmental effects deriving from scheme's vulnerability to risks of major accidents and/or disaster<br>• non-technical summary<br>• reference list | Environmental report. Content specified in Schedule 2 of SEA Regs (or equivalent) including:<br>• outline of the plan/programme contents and objectives<br>• relevant aspects of the current state of the environment and the likely evolution<br>• environmental characteristics of areas likely to be significantly affected<br>• existing environmental problems relevant to the plan/programme<br>• environmental protection objectives relevant to the plan/programme<br>• likely significant effects on the environment<br>• measures to prevent, reduce and offset significant adverse effects<br>• outline of reasons for selecting the alternatives and how these were assessed<br>• description of monitoring requirements<br>• non-technical summary | HRA screening report and Appropriate Assessment report.<br>No clearly mandated content, but Government guidance states "An appropriate assessment (report) must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project.<br>An appropriate assessment must consider the indirect effects on the designated features and conservation objectives. It must:<br>• catalogue all habitat types and species for which a site is protected.<br>• identify and examine the implications of the proposed plan or project for the designated features present on that site, including for the typical species of designated habitats, as well as the implications for habitat types and species present outside the boundaries of that site and functionally linked; insofar as those implications are liable to affect the conservation objectives of the site. |

## 4.4 England and Northern Ireland – regime comparison

### *Overview*[31]

England and Northern Ireland have the same legislative basis for all three sets of environmental legislation, the respective EU Directives on EIA, habitats and species protection and SEA. Devolution means that the secondary legislation is specific to Northern Ireland, with it having its own Habitats Regulations[54] dating back to 1995, its own SEA Regulations (created at the same time as England's in 2004) and multiple sets of EIA Regulations. In relation to EIA, the Regulations relevant to planning permission are the 2017 Planning EIA Regulations[55], although in some cases - as in England - former sets of the planning related EIA Regulations can still apply to particular applications.

Each of the three sets of environmental legislation are discussed in further detail below.

### *EIA*

**Table 4-2**: Comparison of English and Northern Irish EIA

| | England | Northern Ireland |
|---|---|---|
| **Screening** | Screening *opinions* made by consenting authorities, and required in three weeks | Screening *determinations* made by consenting authorities, and required in four weeks |
| | Screening opinions can be appealed only by developer and third parties. Appeals considered by Secretary of State | Screening determination can be appealed only by developer. Appeals informed by Planning Appeals Commission Northern Ireland (PACNI); advisory only |
| | Schedule 2 development largely the same, though threshold for urban infrastructure developments increased to >5ha | Schedule 2 development largely the same, though threshold for urban infrastructure developments retained at >0.5ha |
| **Statutory consultees** | Prescribed set of statutory consultees (Section 42 Planning Act 2008 and Table 2 of government's guidance on consultation and pre-decision matters[56]) | No defined set of statutory consultees in Regulation 2. Uses broad definition of "other authorities likely to be concerned by the proposed development by reason of their specific environmental responsibilities or local or regional competences" (Regulation 8(12) Planning (EIA) NI Regulations 2017) |

[54] The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995.

[55] The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

[56] Department of Levelling Up, Housing and Communities, and Ministry of Housing, Communities and Local Government, *Consultation and pre-decision matters,* (6 March 2014), Table 2 – Statutory consultees on applications for planning permission

| | England | Northern Ireland |
|---|---|---|
| **Scoping** | Procedures largely identical. Six-week period for consenting authority to generate a scoping opinion | Procedures largely identical. Five-week period for consenting authority to generate a scoping opinion |
| | Quite standard practice, with the majority of developers using this voluntary regulatory mechanism | Scoping requests more unusual; developers often submit applications/ES without one, so risking requests for further information |
| **Application fees** | Fees set by the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012; not EIA related | Development fee charged for EIA development application (c£11K), intended to reflect cost of staff time and potential need for external advice |

### *SEA*

There are no notable differences between SEA regulations or application between England and Northern Ireland. Both systems implemented secondary legislation in the form of 'SEA Regulations' in 2004, in line with requirements set out in the EU 'SEA Directive' and the legislative basis for SEA in both countries has remained largely unchanged since then.

Practice in both jurisdictions remains dominated by an 'objective led' approach to SEA, as set out in the 2005 joint SEA guidance from the governments of the four UK nations.

Neither England or Northern Ireland governments or related bodies appear to have provided significant support or guidance in relation to the delivery of SEA in the planning system in at least the last decade, though Northern Ireland's Department for Communities – Historic Environment Division issued guidance in 2018[57] matching a similar publication from Historic England two years before[58].

### *HRA*

Overall HRA legislative requirements, good practices and key challenges are largely similar between England and Northern Ireland, with Northern Ireland's Habitats Regulations first being set down in 1995[54]. Although the consenting authority is considered the 'competent authority' under the HRA requirements in both England and Northern Ireland, the delivery of this differs considerably in the latter. The complexity and challenge of HRA compliance was recognised and planned for as part of the return of planning decisions to councils in 2015. As a result, Northern Ireland's Shared Environmental Services (SES) was established to provide expert HRA support for

[57] Northern Ireland Department for Communities – Historic Environment Division, *Guidance on Sustainability Appraisal and Strategic Environmental Assessment for the Historic Environment*, (June 2018)

[58] Historic England, *Sustainability Appraisal and Strategic Environmental Assessment. Historic England Advice Note 8*, (Dec 2016)

all 11 councils in delivery of their competent authority role. SES is funded by the 11 councils and hosted by Mid and East Antrim Council[59].

Although facing the same general challenges, Northern Ireland has an additional issue of sharing its land border with an EU Member State (the Republic of Ireland), with implications for HRA on both sides were there to be any divergence in regimes. A divergence by England from the approaches taken by the devolved administrations, which may not be subject to the EOR Regulations, could present similar challenges.

Natural England is the dedicated nature conservation statutory body which is the statutory consultee on HRA. In Northern Ireland this function falls to the Department for Agriculture, Environment and Rural Affairs (DAERA), in particular the Northern Ireland Environment Agency (NIEA) which sits within it, but has a broader remit than Natural England, covering wider matters of agriculture and rural affairs, with potential conflict with nature conservation considerations.

## 4.5 Public participation and stakeholder engagement in environmental assessment[60]

The public participation requirements in the UK EIA and SEA regulations differ slightly across the UK but these differences are generally minor and procedural. Public participation requirements are normally discharged by proponents and authorities via some limited public engagement, such as through a public exhibition, some localised advertising, and provision of the ES alongside the plan or project application. Prescribed statutory consultees are generally consulted by the competent authority after they have received the formal environmental documentation.

These public participation requirements are higher for NSIPs, for which the Planning Act 2008's enhanced requirements include the notification of affected parties, the provision of preliminary environmental information (often a draft of the Environmental Statement), and a Statement of Community Consultation setting out what comments have been received about the NSIP, and how and where the comments have been addressed. However, along with the increased requirements for NSIPs, the right to question the project need was removed,[61, 62] based on the strategic nature and justification for the scheme having been previously set out in one of 12 National Policy Statements.

In England and Northern Ireland, participation in general is widely and broadly considered positive in terms of a democratic process. This assumption is supported in the academic literature which has found increased public participation to be a good thing[63, 64], and that this will have benefits for

[59] Belfast City Council (Shadow), *Establishment of Shared Environmental Service*, (19 February 2015)

[60] Thanks to Dr Rufus Howard for this perspective

[61] Friends of the Earth, *Nationally Significant Infrastructure Projects Regime - Campaigner Guide,* (November 2021), p34

[62] Thomas Fischer, 'Simplification and potential replacement of EA in the UK – is it fit for purpose?', (2023), Impact Assessment and Project Appraisal

[63] Jens Newig and others, 'The environmental performance of participatory and collaborative governance: a framework of causal mechanisms', (2018) 46(2), Policy Studies Journal, pp 269-297

[64] Vincent Luyet and others, 'A framework to implement Stakeholder participation in environmental projects', (2012) 111, Journal of Environmental Management, pp 213-219

environmental decision making[65]. The focus on access to environmental information is reflected in a range of international agreements[64] such as the Earth Summit[66], Aarhus Convention[67], European Landscape Convention[68], and European Water Framework Directive[69]. The Aarhus Convention in particular was signed by the UK in 1998 and was integrated into the amended EIA directive (in 2003), with the goal of ensuring 'early' and 'effective' participation in EIA[70]. The integration into SEA goes even further, not only providing certain minimal requirements for public involvement, but also requiring the proponent to state how the consultation response received has been taken into account by the decision makers[71].

In 2011, IEMA carried out a review of the state of EIA[24] in which it identified a rising focus on the need to provide enhanced opportunities for local community participation, citing the Eddington[72] and Barker[73] reviews, as well as the Scottish Government's 2006 Planning (Scotland) Act, all aiming to improve consultation and participation.

Since the 1970s there has been a considerable academic research focus in the field of impact assessment on considering the effectiveness of environmental assessment[23,25,74,75,76,77,78,79,80]. Within these reviews and other literature, public participation is generally listed as advantageous, identifying several benefits such as: better trust in decisions, improved project design through local knowledge, better understanding of issues, integration of interests and opinions, optimising implementation of plans and projects, public acceptance, and fostering and developing social

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[65] Anne Glucker and others, 'Public participation in environmental impact assessment: why, who and how?', (2013) 43, Environmental Impact Assessment Review, pp 104-111

[66] United Nations, United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992, <https://www.un.org/en/conferences/environment/rio1992> accessed 1 February 2023

[67] United Nations Economic Commission for Europe, Aarhus Convention, <https://unece.org/environment-policy/public-participation/aarhus-convention/introduction> accessed 1 February 2023

[68] European Landscape Convention 2004 (European Treaty Series No.176)

[69] Council Directive 2000/60/EC of 23 October 2000 establishing a framework for Community action in the field of water policy (2000)

[70] Nicola Hartley and Christopher Wood, 'Public participation in environmental impact assessment—implementing the Aarhus Convention', (2005) 25(4), Environmental Impact Assessment Review, pp 319-340

[71] Carlo Rega and Giorgio Baldizzone, 'Public participation in Strategic Environmental Assessment: A practitioners' perspective', (2015) 50, Environmental Impact Assessment Review, pp 105-115

[72] Eddington Transport Study (2006)

[73] Barker Review of Land Use Planning (2006)

[74] Mat Cashmore and others, 'Application of the SEA Directive to EU structural funds: Perspectives on effectiveness', (2010) 30(2), Environmental Impact Assessment Review, pp 136-144

[75] Jos Arts and Angus Morrison-Saunders, 'Assessing Impact, Handbook for EIA and SEA follow-up', (2012)

[76] Thomas Fischer, 'Simplification of environmental and other impact assessments – an international trend?', (2022) 40 (5), Impact Assessment and Project Appraisal, pp 355

[77] Thomas Fischer and Francois Retief, 'Does strategic environmental assessment lead to more environmentally sustainable decisions? Reflections on its substantive effectiveness', (2021), Handbook on Strategic Environmental Assessment, Chapter 8

[78] European Commission, (2009)

[79] John Glasson, 'The first 10 years of the UK EIA system: strengths, weaknesses, opportunities and threats', (1999) 14(3), Planning Practice and Research, pp 363-375

[80] Ivar Lyhne and others, 'Theorising EIA effectiveness: A contribution based on the Danish system', (2017) 62, Environmental Impact Assessment Review, pp 240-249

learning[64]. Scholars seem therefore to have formed a broad consensus that public participation supports effective environmental assessment.[65]

However, despite the widespread popularity of increasing participation, the literature also points out the challenges for applicants and their consultants; for example, the accusation that EIA documents are often hard to read, being long and technical, especially for a member of the public is a longstanding complaint which is recorded as far back as 1989[81]. Subsequent research some 20 years later found this still to be the case, following consultation with UK EIA practitioners and stakeholders[24]. Furthermore, research[82] suggests that the engagement process normally favours business interests over those of individual citizens, and potentially entrenches existing power relations rather than challenging them[83].

This 'entrenchment' point can be seen in the UK context where large corporations and national bodies (such as National Highways, the Environment Agency, National Grid, HS2 Ltd) have access to significant financial, legal and consultant support to prepare assessments in support of achieving planning permission.

A 1999 review of the first 10 years of EIA[79] in the UK identified a lack of effective participation ('too little too late'), as one of the regime's key weaknesses. A later review published in 2016[23] found little change after 15 years of further UK practice. Researchers[84, 85] also identified disparities between who attends public meetings or submits comments, versus whose comments shape the eventual decision, with evidence of the latter being weighted to organisations, and the former, more often members of the public.

In SEA specifically, research suggests participation is limited, and with little influence on decision making.[86, 87] Researchers[71] cite a lack of political willingness, lack of public information, and the weakness of legal frameworks as key factors limiting public involvement in SEA. In addition to identifying advantages, some literature[64] provides supporting evidence of several risks of participation in environmental projects; for example it can be expensive, time consuming, frustrating for stakeholders, and un-representative of stakeholders.

In practice, the volume, timing, content and quality of participation in England and Northern Ireland depends greatly on the project applicant and their consultants and advisors, with substantial variation across project promoters, sectors and geographies[88]. This variation in practice can make

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[81] Jimmie Killingsworth and Dean Steffens, 'Effectiveness in the environmental impact statement', (1989) 6(2), Written Communication, pp 150-180

[82] Marissa Martino Golden, 'Interest groups in the rule-making process: who participates? Whose voices get heard?', (1998) 8(2), Journal of Public Administration Research and Theory, pp 245-270

[83] John Devlin and Nonita Yap, 'Contentious politics in environmental assessment: blocked projects and winning coalitions', (2008) 26(1), Impact Assessment and Project Appraisal, pp 17-27

[84] Chris Koski and others, 'Representation in collaborative governance: a case study of a food policy council', (2016) 48(4), American Review of Public Administration, pp 359–373

[85] Iris Hui and others, 'Patterns of participation and representation in a regional water collaboration', (2020) 48(3), Policies Studies Journal, pp 754-781

[86] Thomas Fischer, 'Reviewing the quality of strategic environmental assessment reports for English spatial plan core strategies', (2010) 30(1), Environmental Impact Assessment Review, pp 62-69

[87] Scottish Environment Protection Agency with Historic Scotland and Scottish Natural Heritage, *The Scottish strategic environmental assessment review,* (2011)

[88] IEMA, 'Public Participation, Stakeholder Engagement and Impact Assessment', (2023) 15, Impact Assessment Outlook Journal

generalisations about the state of practice difficult. Nevertheless, criticisms of the status of participation in the England and Northern Ireland are not a uniquely UK phenomenon. Even a cursory review of international academic work (as set out in the proceeding section) in this area reveals issues identified in other jurisdictions, comparative studies and wider global reviews that are instantly recognisable to a UK practitioner.

## 4.6 Planning regimes and environmental assessment

### *English context*

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these should be applied, and it provides a framework within which locally-prepared plans for housing and other development can be produced. It does not dictate or guide assessment requirements directly, but it does determine how decision makers should use assessment information to inform decision-making through consideration of (for example) 'significant harm to biodiversity' or in assessing 'the significance of heritage assets and the contribution they make to their environment'. The NPPF does not apply in Northern Ireland which has its own devolved planning system.

Other key policy instruments include the National Policy Statements (NPS) which have been developed to provide overarching policy and support for specific industry and development sectors, such as Energy and Transport. These NPSs are a material consideration particularly for NSIPs under the DCO regime and largely set a presumption in favour of developments that meet the requirements of the NPS.

For individual SEA and EIAs the policy context will also include the local planning policy relevant to the geography and jurisdiction of the plan or project. Additional policy may be available for specific sectors. For EIA, a project's performance with regard to policy compliance with both national and local policies are normally set out within a 'planning statement' which often accompanies an Environmental Statement. However, ultimately it is the LPA (for example under the TCPA) that will need to determine compliance or conflict with local policies. The planning officer will normally set out their views on policy compliance in their recommendation to elected members on local planning committees. For NSIPs, PINS will perform the role of reviewing the project against national and local policy, albeit taking into account any representations from the LPA(s). From an EIA and SEA perspective, a competent expert reviewing the effects of a plan or project on the environment may consider a combination of factors in their assessment which includes; legal compliance, key national and local policies, sectoral guidance and good practice, as well as any industry or professional guidelines.

### *Northern Irish context*

Before 2015, planning in Northern Ireland was centralised with decisions made by a single government department, including those applications involving both EIA and HRA. In 2015, planning powers were transferred from central to local government under the Planning Act (Northern Ireland) 2011. Major applications of a regional scale or above were retained centrally and applications managed by the case work unit within the Department for Infrastructure, with the relevant councils (where the land that is to be developed is situated) consulted as part of the application process.

The reorganisation of planning powers has seen the reassignment of planning staff from central government to local authority positions. As a result, the knowledge, skills and experience of planning staff (including in environmental assessment) was unevenly distributed between the 11 councils. Further to this, elected members in the 11 councils formed planning committees, with an inevitable lack of experience of the skills and knowledge at that time as they had not been delivering this role previously.

Like England, the Northern Ireland planning system is in the process of considering reforms. The proposed reforms[89] in Northern Ireland are, however, arguably less systemic and substantive in nature, than the current proposals in England via the LURB and previous Planning White Paper (2020), though EOR Regulations could be applied in Northern Ireland following consultation with the Assembly. Northern Ireland's review and reform of the planning system is very much linked to the findings of the review of its existing 2011 Planning Act[90], seeking to improve performance of the planning system to help enable sustainable economic development in Northern Ireland. It is notable that the Northern Ireland Audit Office has been critical of how EIA cases are dealt with[91], including the lengthy application time for EIA qualifying projects, as well as (para 5.33):

> *"*[t]*he complexity of environmental regulations, the number and fragmentation of organisations involved, the issues noted with resourcing, the growing volume of consultation requests and rising legal challenges increase*[ing] *the potential for delays and the risk of getting the planning decision wrong".*

## Comparison of planning systems

Both jurisdictions have a 'plan-led' planning system with national and local planning policy set out in formal development plans to direct decisions in relation to the consenting - through planning permission - of individual developments. National and local planning policies in both countries also cover environmental protections and community interest. Planning decisions are based on relevant planning policies, with other material planning considerations also taken into account. However, both jurisdictions have their own primary planning legislation. The legislation in both England and Northern Ireland sets its own definitions of types of development that are permitted without the need for a planning application and establish "classes" where change of use within each class is generally permitted. In both England and Northern Ireland an appeals system exists to review decisions on applications, although there is no third-party right of appeal in Northern Ireland to the Planning Appeals Commission, which has implications on who is can appeal decisions, such as EIA screening determinations, other than by way of an application for judicial review. Both jurisdictions have an enforcement system in place to enforce breaches of planning control, with councils given the right over whether to exercise these powers.

Although the basic structures of the systems are similar there are inevitably many differences in the detail of the primary and secondary legislation, implications of local case law, the influence of the decisions of their respective appeals bodies, with the Planning Inspectorate (England) and Planning Appeals Commission Northern Ireland (Northern Ireland). It is certainly the case that regular changes brought about in the English planning system by successive Governments since

[89] Department for Infrastructure, *Review of the Implementation of the Planning Act (NI) 2011*, (January 2022)

[90] Planning Act (Northern Ireland) 2011

[91] Northern Ireland Audit Office, *Planning in Northern Ireland*, (February 2022).

the 2010 coalition, have generated greater divergence between English planning and Northern Irish planning, the latter having seen greater stability in terms of changes to national planning policy, for example, since the 2011 Act's changes came into effect in 2015.

## 4.7 Guidance

A host of guidance documents prepared by government and industry bodies cover the three assessment regimes or specific subjects or topics that inform them. However, the different pieces of guidance have different weight in planning terms. For example, national policy guidance such as the NPPF and NPS have the strongest legal weight. Following this, all other guidance generally has weight based on a combination of the provenance of its source and the quality of the guidance. For example, on provenance, guidance from PINs and bodies such as Natural England carry more weight in practice (for example with planning inspectors) than those from NGOs. Similarly, guidance written by longstanding professional bodies, like IEMA, that have been endorsed and contributed to by multiple expert stakeholders, and are agreed by wide consensus to be 'best practice' carry more weight than guidance published by less well established or more sectoral focused bodies, such as a trade association or think tanks.

In terms of government guidance, there was some initial efforts to provide general guidance; for example, the Environment Agency prepared an EIA scoping handbook[92] in 2002, along with several industry specific appendices. But aside from generic procedural advice on the .gov website, nothing has superseded these. PINS has published a series of advice notes to inform applicants, consultees, the public and others about a range of process matters in relation to the Planning Act 2008. These include: AN3 dealing with EIA consultation and notification; AN10 dealing with HRA as relevant to NSIPs; and AN17 dealing with cumulative effects assessment[93]. It is widely known within the industry and government departments that there was an active Government policy since the late 2000s to retire and reduce guidance, and a moratorium on new guidance - a policy presented as the red-tape-challenge,[94] and the 'better regulation framework' although some of this has now been withdrawn.[95]

In the absence of government guidance, IEMA, in response to an obvious need and at the request of practitioners and stakeholders, has produced around 20 pieces of formal guidance notes over the past 30 years, including assessment of transport, materials and waste, major accidents and hazards, cultural heritage, greenhouse gases, soils and land, health, as well as digital impact assessment. Additional guidance is produced by the Chartered Institute of Ecology and Environmental Management (CIEEM) on Ecological Impact Assessment[96], and by the Landscape Institute and IEMA who jointly published Landscape and Visual Impact Assessment Guidelines.

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[92] Environment Agency, *Environmental Impact Assessment (EIA) – A Handbook for scoping projects,* (2002)

[93] National Infrastructure Planning, *Advice Notes,* <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/> accessed 30 January 2022

[94] Department for Business, Innovation and Skills, *One-in, two-out: statement of new regulation*, (10 July 2013)

[95] Department for Business, Energy and Industrial Strategy, *Better regulation framework manual*, (10 July 2013)

[96] CIEEM, *Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine*, (September 2018)

The Institute of Acoustics[97] and the Institute of Air Quality Management[98] have each produced numerous specific guides on different aspects of assessment pertinent to their professions. These all provide valuable references, though some have tended to view their topics independently of a wider assessment process, leading to divergence in certain terms and definitions. The more bespoke approach to heritage significance that is dictated in England by the NPPF is addressed by Historic England[99].

There are a host of other industry or topic specific guidance notes. The Design Manual for Road and Bridges (DMRB)[100] includes amongst its hundred of documents that address every aspect of road infrastructure, an introduction to environmental assessment, which sets out the requirements and procedures to be followed when 'screening, scoping, assessing, reporting and monitoring the environmental effects of [road] projects'. The DMRB also includes a suite of supporting documents on specific aspects and topics of environmental assessment.


Guidance on SEA for England and Northern Ireland, as mentioned previously, dates from 2005[35]. Government organisations (such as Historic England) and industry bodies (such as IEMA) have produced their own guides.

[97] Institute of Acoustics, *Institute of Acoustics Library*, <https://www.ioa.org.uk/publications/institute-acoustics-library> accessed 10 March 2023

[98] Institute of Air Quality Management, *Guidance,* <https://iaqm.co.uk/guidance/> accessed 10 March 2023

[99] Historic England, *Statements of Heritage Significance: Analysing Significance in Historic Assets, Historic England Advice Note 12*, (2019)

[100] Standards for Highways, Design Manual for Roads and Bridges (2021)

Guidance on HRA is centred on the gov.uk website[101], as well as the PINS advice note referred to above. Natural England have prepared a standard on HRA[102] which was produced for its staff to use when Natural England is acting as the competent authority; nothing comparable for Northern Ireland exists. The HRA Handbook[103] produced by consultants, DTA, is also seen as a definitive source of guidance on the issue.

In summary, there are reams of supporting and helpful guides. But these vary in their application, some covering the UK for a specific development type (such as the DMRB for Highways) and others, only countries within it (such as the NPPF which applies to England only). Few take an overarching perspective on the respective assessment processes as a whole, and those that do are now almost 20 years old. In terms of any review of guidance, rather than removing or invalidating existing guidance, the Government could look to adopt or build on existing guidance, taking advantage of the benefits that have come from practical experience of experts who have been refining and improving the use of the assessment tools over many decades.

# 5. EFFECTIVENESS OF ASSESSMENT

## 5.1 The theory

The effectiveness of environmental assessment has been the subject of much research and discussion in the UK and has produced a relatively large percentage of global research and guidance dedicated to reflecting on and improving impact assessment practice[104].

From an academics' perspective, definitions of EIA effectiveness[23] fit into several categories, including procedural effectiveness (the extent to which formal process is adhered to) and substantive effectiveness (the extent to which environmental values are incorporated in decision-making and reflected in stakeholder awareness).

Academic literature on the effectiveness of SEA provides several dimensions[105], although only two of these (substantive and normative effectiveness) concern actual environmental outcomes, of which normative is arguably of most interest to us, concerned as it is with SEA delivering good environmental outcomes. The various definitions are illustrated in Figure 5-1.

[101] Defra, *Habitats regulations assessments: protecting a European Site,* (2019)

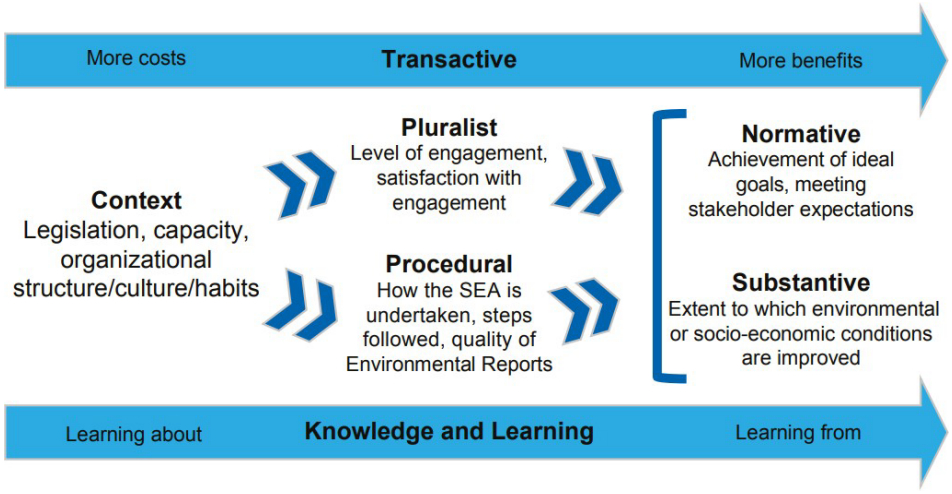
[102] Natural England, *Standard Habitats Regulations Assessment (HRA),* (2019)

[103] David Tyldesley and others, 'The Habitats Regulations Assessment Handbook', (2013), edition UK: DTA Publications Limited

[104] Andreea Nita, 'Empowering impact assessments knowledge and international research collaboration – A bibliometric analysis of Environmental Impact Assessment Review journal', (2019) 78(106283), Environmental Impact Assessment Review

[105] Riki Therivel and Ainhoa González, 'Introducing SEA effectiveness', (2019) 37(3-4), Impact Assessment and Project Appraisal, pp 181-187

**Figure 5-1**: Effectiveness of SEA definitions found in academic literature[105]




In practice, it is tricky to determine if and how well environmental assessment delivers what it should. Regulations (to varying degrees) provide for the monitoring of the outcomes in delivery of the plan or project. But, with consent granted or a plan adopted, the extent to which later performance is tested is, as we shall see, patchy. Determining substantive performance would, in any case, require mechanisms to check the environmental damage that has been avoided, and confirmation of these outcomes is difficult to both determine and attribute[106].

For this commission, and maintaining a focus on what environmental assessment was conceived to deliver, the delivery of good environmental outcomes and sustainable development – what is referred to in academic studies on the subject as substantive and normative effectiveness – are perhaps the most critical aspects. But its more immediate capacity to effect change in the subject of its attention (plans and projects) is another, as is the value for money of its implementation and the efficiency.

## 5.2 Challenging causes of nature's decline

A criticism levelled at environmental assessment by the Government[107], is that it has not prevented the evident decline of biodiversity, nor addressed other key environmental challenges. The principal and accepted causes of environmental decline have been attributed to a combination of well-known development pressures such as agricultural policy, habitat conversion and loss to urban and agricultural development, use of pesticides and herbicides, declining soil health and erosion, air and water pollution and pressures on fisheries. These issues are recognised as both

[106] Rowan Machaka, 'The Improved Model of the Method, Rights, and Resources (MRR) for the Evaluation of the EIA System: Revising the Sustainability Indicators', (2020), Energy Efficiency and Sustainable Lighting - a Bet for the Future, Chapter 1

[107] Ministry of Housing, Communities and Local Government, *Planning for the Future White Paper,* (6 August 2020)

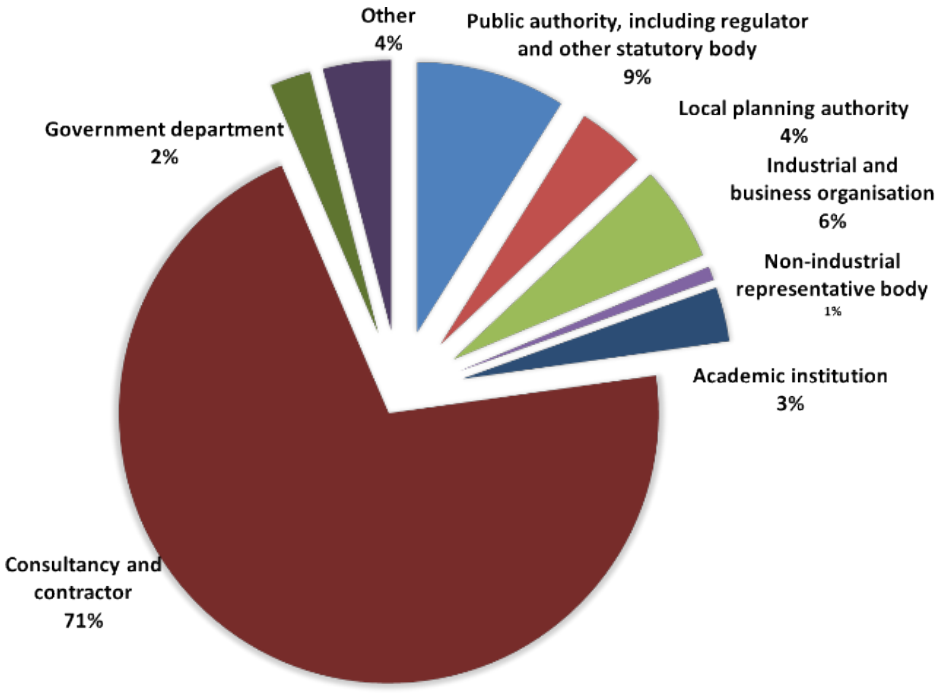
national[108] and global[109] priorities. No evidence has yet been published by the UK government to support criticism of the planning and environmental assessment system in this regard.

In contrast, multiple reports have been published highlighting the underinvestment in environmental protection agencies, lack of monitoring and enforcement for pollution and the effect of agricultural policy on the environment[110]. As we have seen earlier, in Section 4.1 of this report, a key factor undermining the link between EIA and environmental decline is that it is only applied to 0.08% of planning applications, and does not apply to any existing operations or assets that pre-date EIA.

## 5.3 Survey feedback

The organisational survey was targeted at organisations with applied interest and expertise in one or more of the assessment regimes. The practitioners' survey had a broad reach to a large number of professionals with some experience in at least one of the assessment regimes. The respondents for both surveys are illustrated in Figure 5-2 and Figure 5-3.

**Figure 5-2**: Practitioner survey, 123 respondents

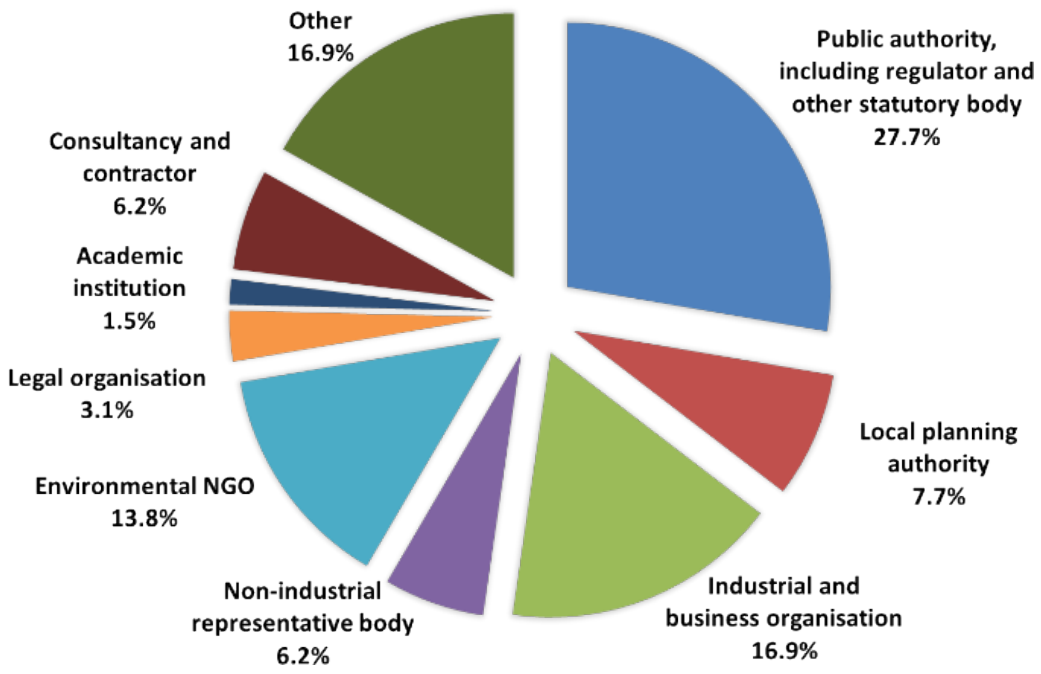



[108] Defra, *Environmental Improvement Plan,* (31 January 2023)

[109] IPBES, 'Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services', (2019)

[110] Environment Agency, *Working with Nature: Chief Scientist's Group report*, (2020)

**Figure 5-3**: Organisational survey, 65 respondents




Respondents with a direct interest respectively in EIA, SEA and HRA are as described in Table 5-1.

**Table 5-1**: Survey Respondents direct interests

| | Direct Interest in: | | |
|---|---|---|---|
| | EIA | SEA | HRA |
| **Practitioners' Survey** | 92% (62% self-identified as expert) | 36% (15% self-identified as expert) | 37% (10% self-identified as expert) |
| **Organisational survey**[111] | 91% | 60% | 85% |

One question on both surveys sought (through use of a slider to indicate a broad percentage) a general impression of how effective each regime was in "securing environmental protection". From the 188 responses in total, for those that responded to this question, the responses were as described in Table 5-2.

[111] As these were organisational level responses, all should be deemed to have a high level of expertise in the relevant assessment regime

**Table 5-2**: Survey responses for EIA effectiveness in securing environmental protection

| Regime | Environmental Protection |
|---|---|
| EIA | 57% effective |
| SEA | 29% effective |
| HRA | 53% effective[112] |

On the face of it, this seems quite stark: SEA is perhaps viewed overall by the survey respondents that responded to the question, as being quite ineffective in protecting the environment, and EIA and HRA are deemed only moderately effective. There is important context around this, that the next sections elaborate.

# 6. EIA – CRITIQUE AND REVISION

## 6.1 Overview

### *Literature review*

We have drawn information from a range of research articles - many of which have addressed specific aspects of EIA - as well as from consultation responses to government requests, from IEMA in particular[113,114], which tend to represent multiple aspects of EIA. The state of EIA has been the subject of several studies over the years, with each presenting a range of positive and negative impressions depending on the remit of the study in question.

John Glasson provided a relatively early view on EIA in the UK in 1999[79]. At that time, EIA was not considered to be 'over-technical', and the observation that 'voluminous documentation … has been avoided in most cases' would prompt a wry smile amongst current practitioners who would be unlikely to offer such a plaudit today. Commendations for the UK's preparation of plentiful guidance remain valid (see Section 4.7 of this report), though much overarching government advice on assessment is now long in the tooth. More contemporary assessment guidance from industry bodies lacks the authority of a national 'standard', though its elaboration of many points of good practice has been helpful in moving the process forward.

Glasson also identified eight weaknesses: two suggesting a need for simplification, and six requiring elaboration of process. Reported concerns about the multitude of fragmented legislation, and the excessive numbers of competent authorities have not diminished, as we saw earlier in the review of current EIA regimes. Of the six perceived weaknesses in process, again many current practitioners bemoan these same shortcomings, namely poor consideration of alternatives; insufficient monitoring and auditing of outcomes, over-emphasis of bio-physical aspects of environment over socio-economic issues, little consideration of cumulative impacts, risk of bias from a developer/consultant led EIA process; and lack of effective public participation.

[112] Represents effectiveness in securing protection of European designated sites.

[113] IEMA, *Levelling up to EIA to Build Back Better*, (September 2020)

[114] IEMA, *Response to Defra's Environmental Impact Assessment (EIA) Regulations: Post Implementation Review-Impact Evaluation Survey*, (April 2022)

IEMA most recently provided some feedback to Defra on its EIA survey[114], and in responding to the survey's generic questions across all EIA regimes, offered a compelling perspective on numerous aspects of EIA. Their note consolidated numerous recommendations from an earlier consultation, relating to better scoping, clarified requirements and standards for EIA (and SEA) and the potential role of a national impact assessment unit in overseeing these, stronger assurance and governance of environmental outcomes post EIA, and innovation through, *inter alia*, digital impact assessment.

IEMA deemed that the extent to which the EIA regulations succeeded in helping us to live "within environmental limits while achieving a sustainable economy" were "below expectations". This was considered inevitable given the evident limitations to the scope of EIA in its application (affecting less than 1% of developments); its timespan (applied within only a small window of a development's lifecycle); its authority (conclusions are only advisory); and its safeguards (that would rely on monitoring and enforcement, which are not mandated by EIA). The report concludes that "Many of [EIA's] limitations sit outside of the EIA regulations; nevertheless the greatest failing of the current system has been to secure mitigations, monitor impacts and implement enforcement". This issue had been highlighted in previous IEMA feedback to government, including its 2020 report[115].

Jha-Thakur and Fischer's 25-year review of EIA in the UK in 2016[23] garnered information from surveys, workshops and a literature review. Its findings echoed many of those from Glasson's 1999 study, although there was also a sense that the complex mix of permits and legislation perhaps simply reflected the diversity of necessary environmental considerations and so provided a 'catchall for anything that doesn't fit elsewhere'. Certainly, many of our survey responses referred to EIA's importance in consolidating wide ranging environmental matters, and its provision of an umbrella for their consideration. Josh Fothergill, former Policy and Engagement Lead at IEMA and now EIA training specialist, referred in interview to EIA bringing "a more coordinated view of environmental issues [that] enables greater conversation on cross cutting issues than a standard planning application, that triggers what could be several separate analyses of individual 'environment' topics".

The Jha-Thakur and Fischer 25-year review presented a quite positive perspective, with survey results and workshops representing EIA as an instrument that generally enhanced environmental awareness, and influenced decision-making processes towards more environmentally sustainable outcomes, often directly via project design. However, it also recognised EIA's operation as being within 'a culture of resistance and disownment', and to a planning context unsupportive of EIA, with planners viewing it as a burden.

The 2020 Planning White Paper[14] discusses this perceived burden, which had been manifest in the UK Government's 2015 raising of thresholds above which EIA is required (e.g. for new housing developments). Although the UK EIA system was historically considered to be not overly technical, contributors to the 2016 study referred to its increasing 'technical obesity' and its suffering from non-proportionality and overly long documentation.

[115] IEMA, *Levelling up to EIA to Build Back Better*, (2020)

## Survey feedback

The practitioners' survey feedback has provided some general impressions of the way EIA is viewed, as well as more specific feedback. The organisational survey has provided some detailed insight from a select group of organisations, which was complemented by follow-up interviews. Survey responses are summarised in Figures 6-1 and 6-2.

**Figure 6-1**: Practitioner survey responses

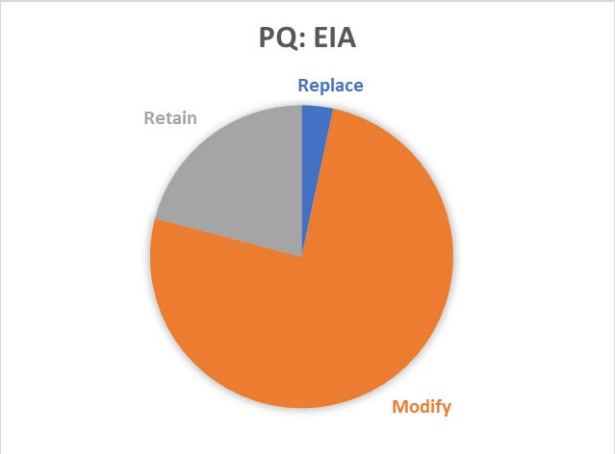
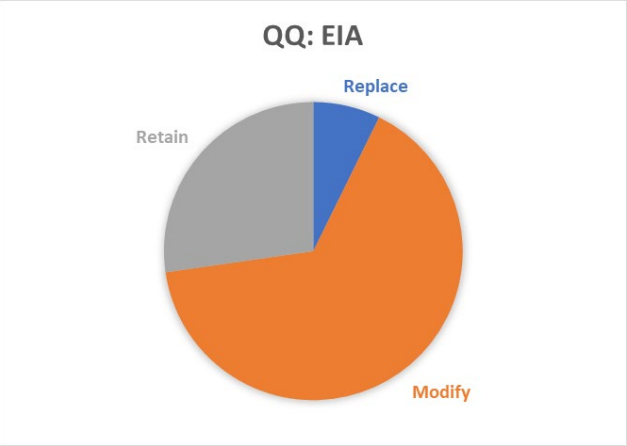



**Figure 6-2**: Organisational survey responses




Although the survey responses (especially the organisational survey) shown in Figures 6-1 and 6-2 suggests some reservations about the effectiveness of EIA, more detailed survey responses suggest that EIA is viewed more positively.

There was a clear preference for modifying the regime, with the Mineral Products Association noting:

> *"Better the devil you know given the law of unintended consequences. The existing system has evolved and developed over 30+ years - evolution is better than revolution"*

A key insight was provided in the following Town and Country Planners Association comment in the organisational survey:

> *"Pre EIA regs, planning had no systematic way of gauging impacts on people and the environment. EIA transformed that understanding but was problematic in that it revealed the scale of damage done by many forms of development."*

This is an important observation, in that EIA may be considered problematic by some because it shines a light on negative impacts of developments, though this is its intent as a tool for environmental protection.

Our research and survey feedback strongly indicates that EIA could be more effective, but that equally the absence of a mandated EIA process would have negative consequences for the environment, and for sustainable development. This view was shared by the Council for Nature Conservation and the Countryside, a statutory advisor to DAERA in Northern Ireland:

> *"There are aspects of EIA that could be improved but without the process the environment in NI would likely have been more damaged."*

In terms of the discussion concerning the need to change legislation versus non-legislative means of intervention, the Campaign for National Parks sees this issue as one of implementation:

> *"If implemented well, EIA is a rigorous and systematic process which allows for evidence-based decision-making and ensures environmental and sustainability concerns are embedded in the planning system. However, its implementation needs to be improved if it is to be fully effective in securing environmental protection."*

These views were echoed by the United Kingdom Environmental Law Association (UKELA):

> *"There will be many instances where the EIA regime has been effective in helping to secure better environmental assessment and, potentially, better outcomes and other occasions where it has not. However, the occasions where it has not been effective are likely to be down to the application of the regime rather than the regime itself. UKELA's view is that maintaining and improving the EIA regime is vital. It should be a central component of environmental law, policy, and decision-making."*

Legal colleagues of UKELA at Town Legal LLP pinpointed their view of some of the key implementation failings, stating:

> *"[EIA is a] very good aid to decision making which protects the environment, but not enough in the process to secure outcomes or monitor effects."*

The Bat Conservation Trust augmented this point:

> *"The EIA (legislation and principles) is a fit-for-purpose process so does provide environmental protection. The issues come with the way that EIA is implemented which can erode the effectiveness of the EIA, leading to anticipated outcomes not being achieved."*

The Mineral Products Association emphasised EIA's role as an important decision-supporting tool:

> *"The existing EIA regime has developed and evolved over several decades - it is certainly more effective at supporting the delivery of environmental protection than it was. But it remains a supporting tool to help regulatory decision making, rather than an end in itself. And that is important to recognise."*

This issue of the nature of EIA as 'informing decision making' rather than 'setting the targets' is key, and was captured well by Natural England:

> *"Environmental protection is secured through legislation, policy, guidance and planning decisions, rather than EIA itself. However, the EIA process and reporting, when completed to a good standard, can be a rigorous test that can help in avoiding and mitigating adverse effects on environmental assets, and provide evidence for decision makers."*

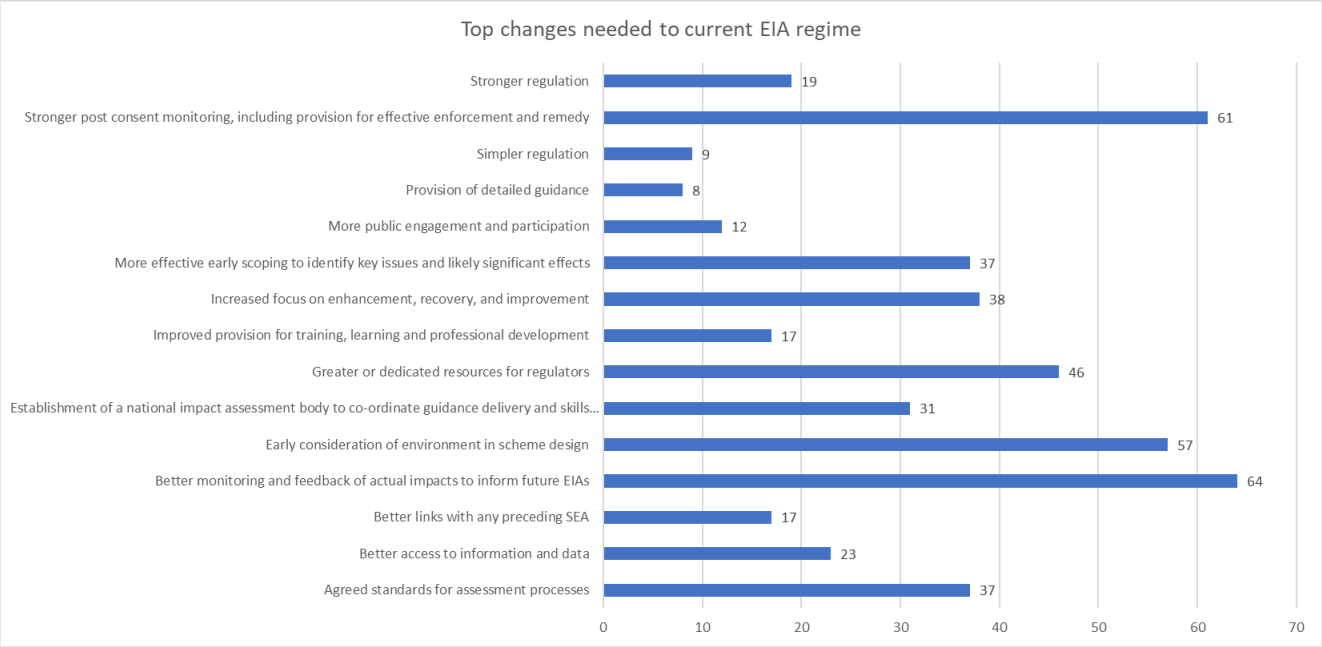
Several comments alluded to the limitation of EIA due to its application to less than 1% of developments, including one local authority respondent who stated:

> *"…the vast majority of development does not trigger an EIA, and significant activity that compromises environmental protections falls outside the planning system in any case. Ultimately EIA is only relevant in a very small proportion of environmental protection".*

From our two sets of survey responses, it is clear that change to the current EIA regime is desired, but equally, that its wholesale replacement is not a well-regarded option.

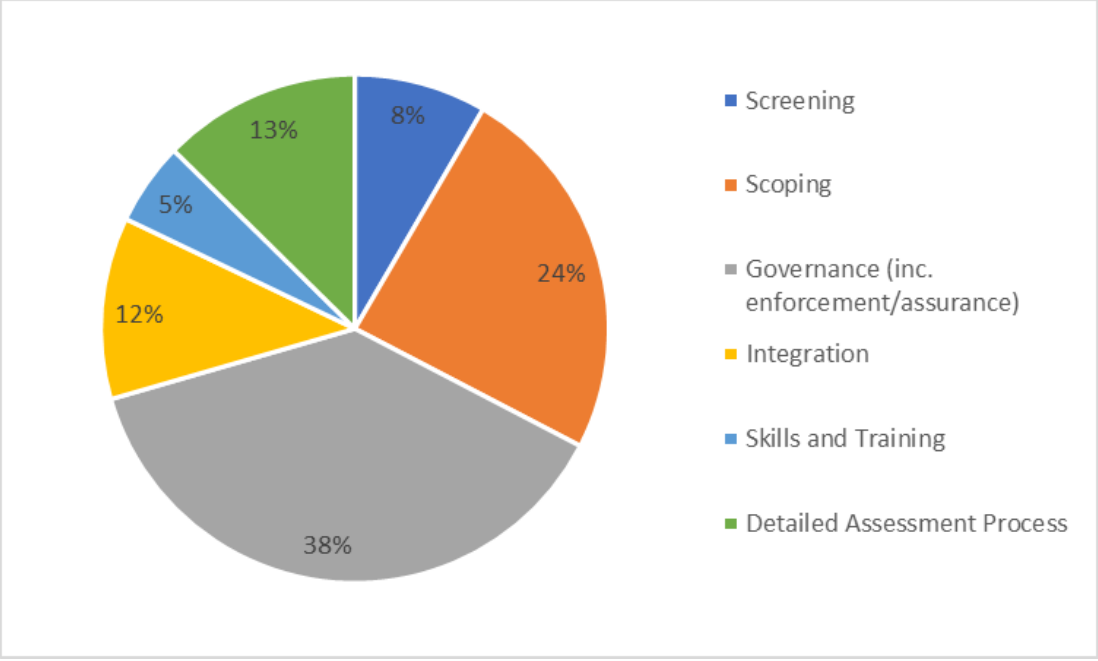
The practitioners' surveys asked respondents to list their preferences for reforms to the EIA regime. These findings are summarised in Figure 6-3.

**Figure 6-3**: Practitioner survey recommended changes




The more detailed organisational survey responses were analysed to establish the most prevalent themes and suggestions for improvement. These are summarised into generic categories in Figure 6-4.

**Figure 6-4**: Key survey themes and suggestions



## 6.2 The big issues for EIA

Our research and stakeholder engagement has crystallised several key improvements required for EIA, listed here and elaborated thereafter.

- increased proportionality, slim-lining a process, whose growth in complexity and product has served no clear benefits and has disincentivised use.
- improved scoping, involving more early assessment and engagement to support better allocation of resource and attention on important issues.
- early engagement of EIA in the project life-cycle, including formalised consideration of alternatives.
- improving skills, knowledge and competence across all actors, to better engage with and understand the process of environmental assessment.
- assuring environmental outcomes through improved governance post-consent.
- increasing emphasis and incentive for maximising environmental benefits and gains and from early consideration of the environment.

## 6.3 Proportionate EIA

### *Proportionality and scoping*

A good proportion of feedback from almost every avenue of enquiry of research on this commission is that EIA has become a behemoth, whose size and complexity in both process and product have yielded many drawbacks without a balance of advantage. A vast quantum of information can deter meaningful engagement, and can obscure issues of real importance. This was noted by a number of stakeholders, with one commenting:

> *"The scope of an EIA tends to be conservative and addresses all the issues as set out in the legislation rather than the key issues* [of relevance for that site]. *Partly due to the issues with scope …. the resulting documents are too long and often poorly presented, therefore their influence on decision-makers is debateable."*

This is, of course, not new ground. Proportionality has been a challenge to the EIA profession for several years, as we have seen environmental statements (ESs) get larger, yet with no obvious benefits for anyone involved. Indeed IEMA held a conference on this topic in 2016[116], and its findings reiterated many of those from earlier referenced research (for example, the Killingsworth/Steffens 1989 study, the Glasson 10 year review and the Jha-Thakur/Fischer 25 year review). But naming the problem and resolving it are quite different challenges.

One key reason for over-elaboration in process is the risk-aversion by many decision-makers and regulators in scoping out issues, partly due to fear of legal challenge by objectors based on absence of information, and partly due to lack of experience and expertise in some to make professional judgements. Legal advisors may often compound this diffidence by giving precautionary advice, with 'bullet-proofing' or 'belts and braces' approaches recommended to

[116] IEMA, *Delivering Proportionate EIA: A Collaborative Strategy for Enhancing UK Environmental Impact Assessment Practice*, (2017)

reduce any risk of challenge or delays. An example reported by a colleague was of a national agency with teams across regions each varying in seniority and experience and consequently in their confidence and willingness to endorse consultants' advice to scope out from assessment issues deemed highly unlikely to result in significant environmental effects. The Country Land and Business Association consolidated a lot of issues in a survey response, providing more of a developer focus:

> *"The EIA process often takes too long - running into months - with a lot of back-and-forth consultation, and risk aversion means that they are effective in preventing any change. Requests for expensive surveys and delays leads to applicant frustration and areas being removed from proposals or projects being dropped"*

Equally, proponents and their consultants are often guilty of not providing the necessary information to help decision-makers scope out certain topics or aspects of topics, or in submitting scoping requests with insufficient project definition or very wide parameters or 'Rochdale envelopes'[117] , all of which leads to bloated assessments.

The Chair of the North West and North Wales Coastal Group hinted at both excessive caution and poor knowledge and information as causes for over scoping:

> *"The ability to provide positive outcomes is … reduced by the inclusion of topics requested to be scoped into the EIA by regulatory authorities at the request of consultees who may not fully understand the nature of the scheme."*

There is no single intervention that would deliver a more proportionate approach to EIA, since its causes seem widely rooted. Suggestions made by IEMA and others include the provision of better environmental information (and the time to gather and use it) to decision-makers, upskilling of those tasked with making scoping decisions (or better access to those with the requisite skills), improved and universally accessible tools such as digital information sets, and collaborative industry-wide research to identify and codify scoping for specific development types. The current Offshore Wind Evidence and Knowledge Hub (OWEKH)[118] instigated by IEMA and The Crown Estate is a live project aiming at improving scoping of EIA for offshore wind projects.

A key point from the previous research and discussion on proportionality is that the issue is not derived from the primary legislation or wording of the regulations, but is a result of the human actors and implementation by lawyers, planners and developers, and primarily driven by risk aversion and fear of legal challenge. The measures set out above, with others, would have an important role to play, but a shift in mindset will be fundamental to implementing the bolder approach to scoping that is needed.

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[117] National Infrastructure Planning, *Advice Note Nine: Rochdale Envelope,* <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-nine-rochdale-envelope/> accessed 13 March 2023

[118] Crown Estate, *Offshore Wind Evidence & Knowledge Hub enters Discovery Phase on road to streamlining consenting process through data,* (4 November 2022) <https://www.thecrownestate.co.uk/en-gb/media-and-insights/news/2022-offshore-wind-evidence-knowledge-hub-enters-discovery-phase-on-road-to-streamlining-consenting-process-through-data/> accessed 2 February 2023

## *Proportionality and product*

We referred earlier to the 'technical obesity' of environmental information. An ES must provide information to many different parties: consenting authorities, regulators, lawyers, and environmental officers. The public should also be given high priority, as the group most often directly affected by the impacts of a scheme. Over the years, ESs have grown in size and complexity, leaving many people, particularly the communities most affected by development, rather marginalised. Complex technical information prepared with the best intention of transparency, does little to foster trust and can make the decision-making process an opaque one, a clear barrier to effective public engagement. The Wildlife and Countryside Link (WCL) noted that:

> *EIA should be informed by appropriate, high quality and up to date environmental data from the existing environmental database, and any evidence gaps identified should be filled in with site-based surveys. The presentation of EIA documentation could be improved to ensure that the environmental information and conclusions are more accessible and transparent to those involved in the planning system, including the public."*

Natural England noted (in respect of EIA development regimes) that:

> *"Priorities for protection are lost due to overlong and risk averse reporting."*

The Chair of the North West and North Wales Coastal Group summarised well the need for access to information through good communication:

> *"The end result is a product that does not allow the reader to easily understand which environmental issues are really significant and which require further work, assessment and mitigation."*

BDB Pitmans added a legal perspective to this overall sentiment, with a focus on understanding mitigation:

> *"ESs have become so long that it is difficult to see what residual environmental effects there are. Reporting on effectiveness of mitigation and remedying that which is not effective is patchy and depends on the level of scrutiny of the decision-maker".*

This graphic neatly illustrates how ESs have grown over the last 25 years.

**Current practice**

- Hinkley Point C (2011)
  **31,133 pp, 185 docs**
- Thames Tideway (2013)
  **25,600 pp, 93 docs**
- HS2 (2013)
  **39,610 pp, 536 docs**
- HS2 (with additional provisions)
  **50,000 pp +**

**Previous projects**

- HS1 – (1994)
  **900 pp, 10 docs**
- Thameslink 2000 (2004)
  **750 pp, 5 docs**

Certainly, the use of technology, and in particular, information technology and digital innovations offers multiple new techniques for aiding public participation and engagement. These tools need to be better harnessed to provide more accessible, transparent, and timely information to a greater range of affected communities (and diverse groups within communities) and stakeholders.

There is no shortage of digital techniques[119] and practical examples using digital technology[120]. A clearer demand for digital innovation from government, PINS and developers is essential to move the game on. However, once again, it is perhaps culture and habit which is one of the biggest obstacles to improved digital reporting.

## 6.4 Earlier engagement of EIA in the project life-cycle

One area, where EIA can influence better outcomes, under the existing regimes, is through early input to feasibility and design, which although not mandatory, is employed by more enlightened developers. Early environmental input, can make best use of the hierarchy of mitigation to identify and avoid key impacts before they occur, thereby modifying the design and/or location, through the consideration of alternatives. These avoided 'negative outcomes' may not be visible to the majority of stakeholders unless they are explicitly addressed under 'alternatives, within the ES. However, some of the finer refinements that the environment team can bring to scheme design may be unreferenced.

To best employ EIA as a design tool requires early adoption within the project life cycle, a key issue that is picked up by several stakeholders including the Bat Conservation Trust:

> *"EIA is not always carried out and applied early enough in the process to inform the evolution of projects. This early approach is what enables that vital first step of avoiding environmental harm to take place. Clarity and consistency about the stage at which EIA should be applied is needed."*

The WCL echoed this point:

> *"EIA should be built in earlier in the planning process to inform the evolution of proposals of plans, projects and programmes, rather than being applied to the final outcome, in order to ensure the right development is in the right place."*

The clear feedback, particularly from practitioners working with developers, was that environmental assessments are most effective when they start early in a project development life-cycle and are least effective when carried out after a project has already been initiated. As stated in the opening summary of recommendations, stakeholder support for earlier consideration of the environment in scheme design was strong, with around half of EIA responses ranking it amongst their four most popular required interventions.

Many of the criticisms of EIA (tick box exercise, red tape, procedural focus, not changing outcomes) relate to the late application of the assessment tools. Likewise, many of the benefits of environmental assessment (more sustainable projects/plans, better designs/locations, better public acceptance, improved environmental outcomes) are directly attributed to early and integrated use of the tools.

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[119] IEMA, *Digital Impact Assessment – A Primer*, (2020)

[120] IEMA, *Digital Impact Assessment in Practice*, (2020) Vol.6 Impact Assessment Outlook Journal

## 6.5 Better skills, capacity and competency

One consideration that has been raised by multiple parties is the matter of the capacity and competence of the various stakeholders engaged in the process. There is anecdotal evidence from practitioners and stakeholders that local planning authorities (planning officers, councillors), statutory advisors and regulators (national heritage bodies, biodiversity advisors, environmental protection agencies, etc.), are stretched in terms of capacity, resource and skills, having neither sufficient staff time to allocate to the amount of casework, or sufficient experience and expertise in environmental assessment regimes and processes.[24] Staff retention is also a challenge where the private sector can offer more competitive salaries to personnel once their skills have accrued. The RSPB and RSPB NI stated:

> *"Resourcing EIA is an issue across government departments, statutory agencies and planning authorities in NI and England due to funding cuts and consequent reductions in staff (particularly access to technical specialists such as ecologists). This has impacted on EIA practice through, for example, delays in the process, reduced specialist scrutiny and input, reduced capacity to follow up on projects post-consent (e.g., monitoring and enforcement)."*

Skills and capacity were considered acute issues for local authorities in England. A member of the Local Government Association in interview referred to the difficulties in recruiting planners and keeping them when in competition with the private sector, as well as having people with the right skills and ability to be able to carry out the assessments. They said:

> *"Quite often we're asking officers to work across a number of disciplines* [where smaller councils] *cannot afford large teams compared to those councils with a large county who can afford to have people with those individual specialisms."*

They added:

> *"… we will need a lot of guidance for officers to ensure that they can carry out their responsibilities and in an efficient professional way"*

Adding to this, they emphasised the challenge of capacity:

> *"…. if you're an ecological officer in a local authority at the moment you're just drowning because you know there's you and you're just covering everything".*

Academic research indicates that this capacity and competency gap has been identified as one of the core obstructions to EIA implementation internationally[121, 122]. In a review of the key components of environmental assessment going forwards, Sinclair et al. (2022)[123] identified accreditation and competence as a key gap identified by international stakeholders, stating that accreditation and capacity building is nonexistent in most countries. The review goes on to identify

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[121] Andreea Nita and others, 'Researchers' perspective on the main strengths and weaknesses of Environmental Impact Assessment (EIA) procedures', (2022) 92, Environmental Impact Assessment Review

[122] Kultip Suwanteep and others, 'Environmental impact assessment system in Thailand and its comparison with those in China and Japan', (2016) 58, Environmental Impact Assessment Review, pp 12–24

[123] John Sinclair and others, 'Next generation impact assessment: Exploring key components', (2021) 4(1), Impact Assessment and Project Appraisal, pp 3-19

14 essential elements for global improvement of environmental assessment. At least three of these elements (relating to meaningful public participation; credible, accountable and authoritative decision-making; and effective, efficient and fair process) need to be underpinned by stakeholders with sufficient time, resources and expertise to engage with the environmental assessment process[123].

Regarding proposed environmental assessment reforms in the UK, the OEP (2022)[124] stated that, "*delivery will also depend … on appropriately skilled and resourced public authorities. … [I]t is widely felt that local planning authorities are under-resourced and lack the ecological expertise they need*." Given the weight of evidence and consensus, any proposals that don't seek to address the competency and resourcing deficit will be failing to address a key shortcoming in the implementation of environmental protection through environmental assessment.

## 6.6 Assuring environmental outcomes

For EIA qualifying development, consents are granted, *inter alia*, on the basis of an assumed set of mitigation measures, generally set out within the ES but also elaborated as a variety of other commitments, such as legal assurances and undertakings, planning obligations or planning conditions. The discharge of these measures can be patchy and relies on a host of factors, including the integrity of the developer and their own governance mechanisms; and the skills and resource of the authorities who tend to be responsible for monitoring the impacts. Town Legal LLP mentioned that there was "*not enough in the process to secure outcomes or monitor effects*". ADEPT also noted:

> *"…too little on site-supervision of environmental mitigation. Similarly, post project 'effectiveness monitoring' is often inadequate to establish whether stated aims and objectives have been met".*

The use of assurance tools, such as codes of construction practice (CoCP) and environmental management plans (EMP), is tried and tested, especially for larger developments, although these focus on the construction phase of the project. Certainly, with other prevailing monitoring techniques, such as local authority air quality modelling, there are mechanisms to support assurance, though these tend to be focused on specific technical areas. Moreover, their use is not mandated, and the extent to which post-consent outcomes (predicted likely significant effects or implemented mitigation) are checked is low. The NIEA echoed this point:

> *"A significant weakness in the EIA regime has been in the effective conditioning and monitoring of these measures and that further positive environmental outcomes are often not adequately resourced, monitored or enforced. This is more likely to be a failure of understanding and implementation of the EIA Regulations rather than a weakness in the Regulations themselves, but there is room for improvement within the current Regulations to ensure that any necessary mitigation measures identified*

[124] Office for Environmental Protection, 'Written Evidence from the Office for Environmental Protection (OEP) to the Levelling Up and Regeneration Bill Committee' (submitted 31 August 2022) <https://www.theoep.org.uk/report/oep-written-evidence-levelling-and-regeneration-bill-committee> accessed 14 March 2022

> *are robustly conditioned upon approvals and appropriately monitored. The impetus to achieve these outcomes is lost post consent."*

A 2016 study to establish EIA follow-up and uptake of monitoring[125] reviewed 50 EIA non-technical summaries for projects between 2005 and 2011, and found that over a third (17) made at least one provision for post consent follow-up through monitoring, though none specified auditing measures. Specification for construction phase EMPs was more commonplace.

The study lists a range of barriers to post consent assurance uptake, with the lack of funding, enforcement and legislation as the most pressing, although the latter is now addressed in the most recent EIA Regulations. Practitioners referred to a supportive context through availability of good guidance and assistance from professional bodies on follow-up. But without stronger enforcement and resourcing, the conclusions were gloomy.

While echoing concerns about post-consent monitoring, the MMO also noted the challenges of "*disentangling the cumulative effects of other activities on the environment*" when undertaking it.

In reality, many mitigations are not properly secured with legally-binding conditions, and monitoring conditions are often absent or inadequate. Furthermore, the implementation and monitoring of mitigations are routinely left to developers and contractors with little (or no) oversight from independent environmental clerks of works (at the construction stage), regulators or authorities. The end result is that many mitigation measures are not carried out, or are deficient in their implementation. The situation is further exacerbated by site conditions and construction techniques deviating from those assessed in the EIA.

The most recent (TCPA) EIA requirements in the UK in 2017 that implemented the 2014 amendment to the EIA Directive, make clear provision for monitoring of outcomes (Article 8a). The consenting authority is allowed to specify a proportionate and appropriate degree of monitoring, as well as to make provision for potential remedial action. The 2017 Regulations also require ESs to include, where proposed, any monitoring arrangements.

This measure was intended, as a minimum, to place much greater emphasis on the consenting authorities to define clear monitoring requirements and environmental conditions as part of the consent. However, feedback from stakeholders has raised the issue of monitoring in 2022, five years after the regulations came into force, indicating that the implementation of this aspect has been limited. The government has made no discernible effort to support the implementation of these aspects of the reforms. ADEPT emphasised this frustration at the local authority level:

> *"Too little emphasis is placed on the quality of implementation - and arguably this is because many working in the EIA and HRA fields don't have adequate site experience to ensure their office-based proposals can be effectively delivered. This is exacerbated by the fact that there is too little on site supervision of environmental mitigation. Similarly, post project 'effectiveness monitoring' is often inadequate to establish whether stated aims and objectives have been met."*

Different mechanisms may be used to bridge the gap between the pre- and post-consent processes. A clear commitments register can provide an explicit task list of the things the scheme applicant and their contractors must abide by as the scheme progresses, and this can be a

[125] Thomas Fischer and Robert Jones, 'EIA Follow-Up in the UK – a 2015 Update', (2016) 18, Journal of Environmental Assessment Policy and Management

dynamic schedule, as details evolve through the discharge of planning conditions, agreement of specific consents with regulators, etc. An EMP or similar is frequently drafted alongside the ES to encapsulate the environmental measures that have to be implemented (and which are assumed by the assessment in determining likely significant effects), particularly during construction.

Although EMPs are currently best practice, IEMA[126] recommends ensuring EMPs are central to the EIA process and certainty is provided on their implementation. Overall, EMPs offer developers, consultees and authorities a formal platform to ensure that mitigation and enhancement measures identified during the assessment process are implemented during both the construction and operation phase to create high quality development[127]. For operation, an operational and maintenance manual (OMM) addressing the environmental effects arising from the operational activities of the development can be created based on the EMP developed at the pre-application and consenting stage or the Construction EMP prepared prior to construction. The use of an OMM also provides the opportunity to feedback the success or failure of mitigation. The establishment of such a longer-term feedback mechanism could assist in the development of more environmentally and cost-effective EIA and improve the quality of mitigation for future projects.

In practice, once built, operational monitoring of noise, air quality, traffic movements, etc are rarely checked against those predicted in the EIA, unless these are subject to specific consent (for example, in validating contaminated land remediation). Enforcement of breaches is rare and is normally triggered by complaints by the public rather than any active monitoring or auditing by local authorities or regulators. Given that the operational phase of a development represents decades of potential environmental impacts, these fall outside the scope of the EIA process to manage. The ongoing pollution of waterways and the sea with raw sewage, and the inadequacy of enforcement and sanctions of breaches of operational permits is a topical example of a failure in operational controls generally.

## 6.7 Delivering positive environmental outcomes

The argument concerning the extent to which EIA has delivered positive environmental change is a nuanced one. EIA reduces potential environmental impacts by identifying them, and recommending mitigations to avoid, reduce, minimise or otherwise compensate adverse effects. However, these measures are largely focused on environmental protection, or damage limitation, rather than environmental enhancement. Some commentators have therefore criticised EIA for not delivering positive environmental outcomes, although its capacity to achieve this is limited.

EIA seeks to assess the effects on people and the environment, using scientific techniques and using evidence collection and assessment and prediction techniques. However, when it comes to determining significance, the EIA regulations are silent. Instead, EIA practitioners refer to other legislation (legal requirements), national and local plans and policies, and good practice guidelines, to establish what are the legal targets, requirements or acceptable thresholds to

[126] IEMA, *Response to the Housing, Communities and Local Government Committee inquiry: The future of the planning system in England*, (2021) <https://www.iema.net/policy-and-practice/government-consultation-responses> accessed 30 January 2023

[127] IEMA, *A New Perspective on Land and Soil in Environmental Impact Assessment,* (2021) <https://www.iema.net/resources/blog/2022/02/17/launch-of-new-eia-guidance-on-land-and-soils> accessed 20 January 2023

measure against. For example, on air quality, reference points might be local air quality management zones, and World Health Organisation guidelines on particulates. For a topic such as ecology, practitioners will consider the requirements of legislation such as the Wildlife and Countryside Act 1981, and the Protection of Badgers Act 1992.

Therefore, unless these legislative or policy requirements specifically require 'enhancement' or 'betterment' then EIA will not be able to add additional requirements outside of these legislative and policy requirements. EIA practitioners may seek to encourage a developer to go further than legal requirements with respect to enhancement, but the developers are under no legal duty to do so. Although some developers do voluntarily seek to deliver betterment, in practice most do not. Therefore, whilst it is true to say that EIAs do not necessarily improve the environment, the reason is that the laws and policies of England and Northern Ireland do not require enhancement; the fault lies with the wider legal and policy requirements rather than EIA.

# 7. SEA – CRITIQUE AND REVISION

## 7.1 Overview

### *Literature review*

As with the EIA research, we have drawn information from research articles and third party consultation responses to government requests, as well as the survey and interview feedback.

The UK Government Ministry of Housing, Communities & Local Government (MHCLG) published some extensive work that sought to promote more efficient and effective use of SEA and SA in spatial planning[128]. The report identified several shortcomings in SEA practice at that time, and made some associated recommendations to address them. Although dating from 2010, our review of more recent literature, as well as our own stakeholder work suggests that these recommendations remain apposite.

Many of the shortcomings referred to failures in implementation – where practice simply did not match prescription, suggesting that the failings do not necessarily lie in the regulations themselves, but in the way they are applied. One overarching conclusion was that SEA/SA was simply not being implemented and undertaken in an efficient way. While the SEA Directive sets out a process that parallels that for preparing regional and local plans, and so integrates the Directive's requirements into the plan preparation process, the opportunity for integration is frequently missed, with SEA/SA undertaken as a late appendage to the wider plan development, leading to inefficiency in time and resource. The evidence-base and policy framework that provide the context for plan-making are central to the SEA/SA process as well, yet too often they are addressed independently. This was an observation endorsed by some of our interviewees who bemoaned poor integration of assessment and plan-making.

By extension, it is the timing of assessment work that often undermines its effectiveness. SEA/SA should inform the subject of its attention, not simply offer a backward glance or auditing role, when the opportunity to effect meaningful change in its subject is more limited. This is an issue too for EIA, where assessment should be instrumental in shaping options and alternatives, and not simply

[128] Ministry of Communities and Local Government, *Towards a more efficient and effective use of Strategic Environmental Assessment and Sustainability Appraisal in spatial planning,* (2010)

focus on the single preferred option. Assessment of the performance of the plan, programme or project should commence at day one, or preferably before, so that the assessment scope can be devised and focused on the things that will be fundamental to the subject's environmental performance. And the scope may need to change to accommodate new alternatives as they arise.

Fischer[25] summarises six recurring areas of SEA shortcomings from various studies, including: the questionable use of baseline information, where a substantial amount is provided, but then barely or only partially used in the actual assessment; failure to acknowledge the role of plans in effecting later decisions, and of their relationship with other assessments at later stages; cursory and poorly described treatment of alternatives; poor explanation of the impact and influence on plan making in SEA reports; insufficient explanation of uncertainties and difficulties; and poor specifications for monitoring and follow-up.

There are a host of other issues raised by stakeholders that are central to the critique of SEA/SA. For example:

- the need for a more spatial and useful evidence base;
- the respective merits of a baseline-led and objectives-led approach to assessment;
- the need for more well thought out and clearly articulated alternatives;
- wider engagement through more focused and inclusive assessment to deliver better outcomes;
- the need for more intelligent, succinct and digestible reporting; and
- the potential for drawing other assessment processes (e.g. Equalities Impact Assessment, Health Impact Assessment) into SEA/SA

A previous IEMA review found that in their members' experience, assessments were best undertaken from the outset, informing (and being informed by) the plan making process[129]. However, playing catch up, or even retrofitting SA/SEAs, were not uncommon situations for some practitioners, and there was a view that this approach undermined the value of the appraisal process overall.

### *Survey feedback*

Although raising numerous issues of concern in SEA, our stakeholder engagement highlighted several examples where SEA has been effective. For example, the National Infrastructure Planning Association (NIPA) referenced the water sector as:

> *"… a good example of where SEA can form part of a wider options appraisal process* [wherein] *SEAs for the current Water Resources Management Plans (WRMPs) have been the product of significant stakeholder engagement and consideration of a diverse range of alternative technologies and solutions, drawing on regional water resource planning."*

Our discussions with the MMO also suggest that SA is a generally well-managed and effective process. The MMO has set up an SA advisory group (made up of statutory conservation bodies) that provides assurance of SA reports. The Marine and Coastal Access Act 2009 (MACAA) also

[129] IEMA, *SEA and SA: learning from practice,* (2010) <https://www.iema.net/articles/sea-and-sa-learning-from-practice> accessed 15 December 2022

requires the MMO to periodically (three yearly) monitor the implementation of marine plans, allowing for recommendations for change, which are submitted to Defra for approval. The MMO stated *"the process is clear; methodologies easy to work through, and to explain and articulate, and the outputs are useful"*.

Survey responses are summarised in Figures 7-1 and 7-2.

**Figure 7-1**: Practitioner survey responses

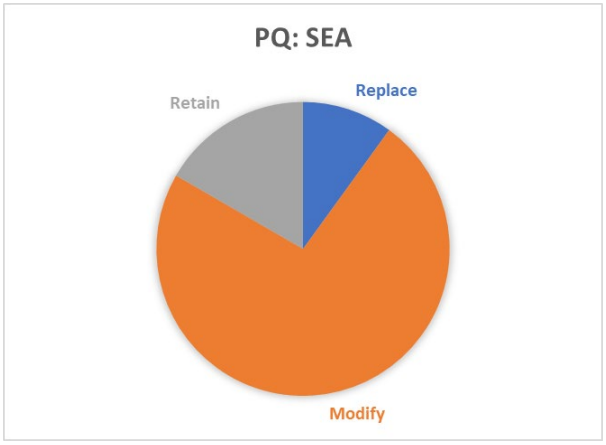
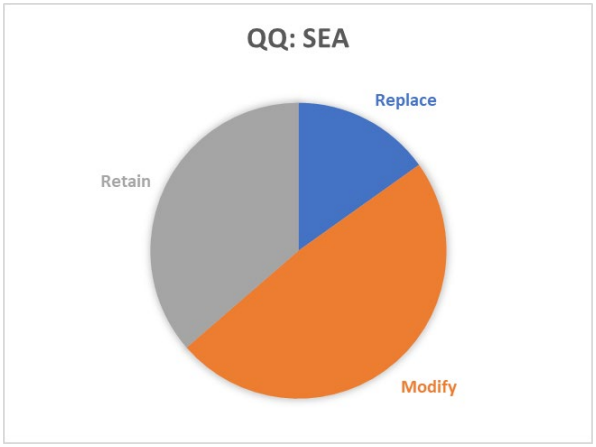



**Figure 7-2**: Organisational survey responses




More generally though, we have seen that our survey respondents were far from convinced of SEA's effectiveness in delivering environmental protection, and a sizable minority that would be willing to see it completely replaced, although with the majority favouring modification, and many of our organisational survey respondents showing a clear requirement for it as it is.

As with EIA, stakeholders were generally supportive of a retained or modified SEA regime. The Wildlife Trusts stated:

> *"The processes and principles of SEA are basically effective, but the benefits are undermined when SEA is incomplete, inaccurate or not undertaken at all because projects fall through the gap. ..... At sea, a thorough SEA is undertaken for offshore energy, but we do not see impacts or recommendations implemented from this assessment"*

The Bat Conservation Trust neatly summarised a more general perspective:

> *"When implemented well, SEA assesses the environmental impacts of plans and programmes and provides the right information and evidence to inform good decision-making….. The SEA (legislation and principles) is fit-for-purpose, so does provide environmental protection. The issues come with the way that SEA is implemented which can erode effectiveness, leading to anticipated outcomes not being achieved."*

One local authority respondent provided a more critical perspective:

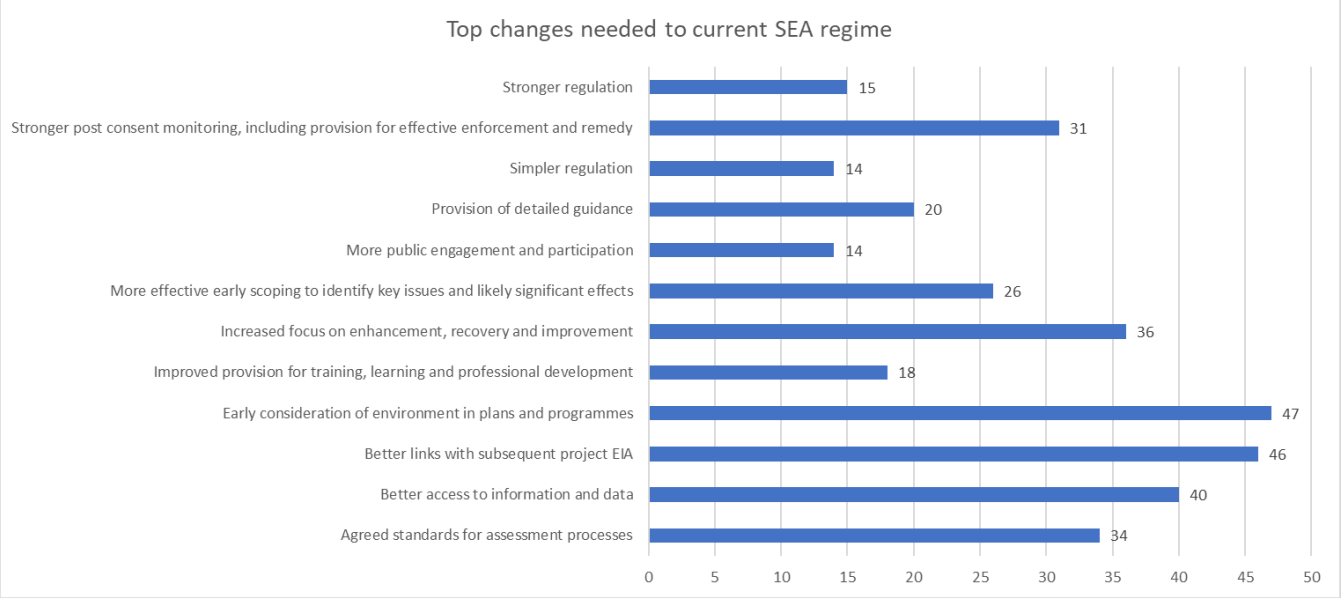
> *"While some version of SEA is necessary, the way in which it currently operates is not effective or helpful ….SEA is often a tick box exercise completed after all decisions have been taken, rather than a meaningful process that informs the policy direction or development of strategies*."

Emphasising a preference for modification, NIPA stated:

*"There is much variation between plans/programmes but generally it was felt by our members that SEA was often not an effective tool to secure environmental protection and outcomes but, if well resourced, and best practice and guidance developed, had the potential to be."*

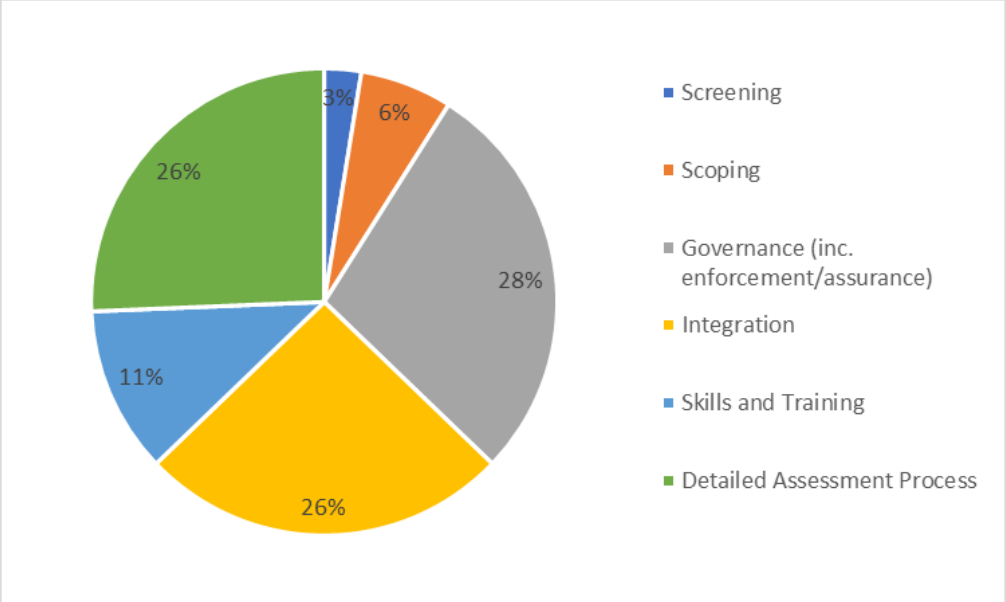
The practitioners' surveys asked respondents to list their preferences for reforms to the SEA regime. These findings are summarised in Figure 7-3.

**Figure 7-3**: Practitioner survey recommended changes




The more detailed organisational survey responses were analysed to establish the most prevalent themes and suggestions for improvement. These are summarised based on generic categories in Figure 7-4.

**Figure 7-4**: Key survey themes and suggestions



## 7.2 Delivering outcomes

The MHCLG 2010 research (see Section 7.1 of this report) indicated that, in terms of influencing plan content, SEA/SA plays more of a 'fine tuning' than a 'plan-shaping' role[130]. Levett-Therivel[131] and Therivel and González[132] claim that, in practice, SAs "*have a limited, tweaking role at best*". This limited influence is attributed to various causes, from the limited choice of options; the remit of the plan; the fact that appraisal findings only need to be 'taken into account'; and procedural issues such as constrained timetables that affect the capacity for SEA/SA findings to feed into the plan-making process.

The SEA Regulations are more definitive than the EIA Regs in their requirement for the responsible authority to "*monitor the significant environmental effects of the implementation of each plan or programmes,* [in order to identify] *unforeseen adverse effects at an early stage, and … undertake appropriate remedial action*"[133]. The Environmental Report needs to set out, as well as mitigation measures, '*a description of the measures envisaged concerning monitoring*' (Schedule 2, 9). Monitoring should allow the actual significant environmental effects of implementing the plan or strategy to be tested against those predicted in the environmental report, ensuring that issues arising during implementation can be identified and future predictions can be more accurate. Whether or not these clearer requirements are actually met is, of course, another matter.

The findings of any monitoring programme should be used to inform future plan revisions, as well as other relevant strategic programmes. Monitoring is therefore integral for compiling baseline information for future plans and strategies, forming a crucial part of the feedback mechanism[35]. The UK Guidance on SEA (see Section 4.7 of this report) concluded that feedback from the monitoring process helps provide more relevant information to pinpoint specific performance issues and significant effects, and ultimately lead to more informed decision-making. This reflects the European Commission (2003) Guidance[134] which highlights the purpose of monitoring as enabling the planning authority to undertake appropriate remedial action if monitoring reveals unforeseen adverse effects on the environment. Consequently, this should improve the environmental performance of the plan or strategy as any unforeseen adverse effect should be minimised as a result of the SEA.

Town Legal LLP emphasised the need for better post implementation monitoring, stating:

> "[SEA] *is a useful aid in the plan-making process to help focus on environmental impacts, but it is rarely referred to after local plan adoption. To be more effective the*

[130] Planning Advisory Service, *LDF learning and dissemination project: making sustainability appraisal manageable and influential*, (2006) < https://www.local.gov.uk/sites/default/files/documents/entire-guide-4c0.pdf> accessed 13 March 2023, p51

[131] Levett-Therivel, 'Environmental Sustainability and English Regional Strategies, a Report to the CPRE, WWF-UK and Friends of the Earth England', (2007)

[132] Therivel González, 'Strategic Environmental Assessment', (2021), Political Science and Public Policy 2021, p100-113

[133] Article 17, Council Directive 2008/56/EC of the 17 June 2008 establishing a framework for community action in the field of marine environmental policy, (2008)

[134] European Commission, Implementation of Directive 2001/42 on the assessment of certain plans and programmes on the environment, (2003) < https://ec.europa.eu/environment/archives/eia/pdf/030923_sea_guidance.pdf> accessed March 2023

*monitoring duty needs strengthening and there needs to be a closer relationship between SEA and EIA enshrined in regulation."*

In the event of adverse effects being revealed during the monitoring stage of SEAs, legislation and policies may require action to address these by the planning authority or another body. In practice, these actions are often linked to existing national or local monitoring regimes, making it difficult to measure the plan's performance against. For example, a local plan assessment might propose the monitoring of Sites of Special Scientific Interest's (SSSI) favourable condition status. However, the condition of SSSIs could be linked to several influences not necessarily linked to local plan development. Plan-specific monitoring on the other hand, would need to be funded and resourced by the local authority, so it is unlikely to be achievable.

Analysis of the effectiveness of SEA in delivering environmental protection or avoidance of environmental harm is lacking[135]. SA/SEA frequently results in changes in local plans in England, but these tend to be minor, and whether they are themselves drivers for more sustainable development is unclear. However, some stakeholder feedback provided evidence to the contrary. For example, NIPA referred (in respect of Appraisal of Sustainability or AoS, which is an SEA compliant process carried out in parallel with the publication of relevant National Policy Statements) to:

*"… instances where AoS has excluded potentially harmful options from being progressed, for example in respect of the nuclear NPS where three potential sites for nuclear new build … were excluded for environmental reasons."*

A suite of research reported by Therivel suggests that wider socio-economic drivers often enjoy legal or political eminence over environmental protection. Therivel's analysis of trends in SA/SEA over the last 10 years notes certain improvements: most notably analysis of alternatives is generally significantly improved, with alternatives better reflecting the choices actually being made by planners (although our own stakeholder feedback suggests there is still much work to do here).

Although outside the focus of this commission, a recent internal study for the Irish Environmental Protection Agency[136] established that, in Ireland, published monitoring data were available for only two out of eighteen SEAs (ten plans but eighteen SEAs, since several plans went through multiple cycles of plan-making over the years). In Scotland, published monitoring information was available for only one Scottish SEA, out of ten reviewed. Experience suggests that examples in England and Northern Ireland would reveal no more impressive results.

Work by Therivel[135] to identify and, in some cases, monetise the benefits of SEA, has shown that SEA's benefits can greatly exceed its costs, where it helps developers to avoid the additional costs of environmental mitigation or external benefits of development. The public and the environment gain most of the benefits.

Stakeholder feedback and the expert panel saw greater efficiencies deriving from a more integrated approach to SEA, including making better use of digital information and approaches such as natural capital, in addition to clearly demonstrating where the process is feeding into plan or policy-making.

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[135] Riki Therivel, 'Effectiveness of English local plan SA/SEAs', (2019) 37(3-4), Impact Assessment and Project Appraisal, pp 266-278

[136] Riki Therivel pers comms

## 7.3 The big issues for SEA

Our research and stakeholder engagement has crystallised several key improvements required for SEA, listed here and elaborated thereafter.

- The need to modernise the overall approach to and guidance in SEA.
- More prevalent screening to determine the need for SEA; and bolder scoping to determine its coverage.
- Better definition and consideration of alternatives.
- Improved and comprehensive evidence base to provide adequate and consistent information.
- Better integration of SEA/SA into plan making.
- More effective stakeholder engagement through more accessible information and bespoke events.
- Realising synergies in SEA and EIA through better tiering.
- Improving skills and resources.

## 7.4 Refining and modernising assessment techniques and guidance

A common problem for SEA practitioners is that the only detailed government guidance dates to 2005 and has not been updated to reflect many of the issues raised in this paper[35]. Many SEAs appear locked into following a template that was set over 15 years ago – proficient at producing the SEA Report, but limited in terms of positive environmental outcomes[137].

This is probably most acute in the method of assessment advocated, which uses an objective-led approach and system of simple matrices. Josh Fothergill, referring to his work with authorities in Northern Ireland, says that although it was an easy way to roll out SEA to an entire country in three months or six months, England, Wales and Northern Ireland are now locked into a single methodology that has no true basis in the Regulations. Scotland in contrast has made greater investment in SEA practice and enabled it to have a more diverse and innovative approach.

Other stakeholder views on an objective-led approach suggested that:

- it is too complicated for effective public engagement, resulting in consultation fatigue;
- it is too often a back-end process that is distinct from and separate to decision-making;
- it is insufficiently refined to accommodate more subtle aspects of the environment; for example all biodiversity designations are under a single objective.

Despite its short-comings, practitioners and plan-makers continue to use an objective-led approach due to a perceived risk of legal challenge from straying from the government guidance. This could be remedied through updated guidance that allows greater flexibility in approach and stronger integration with plan making processes. Assessment could be better based on environmental baselines, which is similar to EIA, and use of a natural capital-led approach.

[137] Fuller K, 'Time for an SEA shake-up' (2022) Environment Agency

This leads to one of the more recent characteristics of SEA, which has moved to an 'Integrated Impact Assessment (IIA) approach that acts as an umbrella process and report summarising and integrating the findings of other assessments addressing, for example, strategic housing needs, strategic flood risk, Green Belt impacts, equalities compliance, health impacts, air quality, and some aspects of HRA[138]. Both Aldersgate Group and the Association of Local Government Ecologists (ALGE) suggested adding climate change and resilience, including climate action plans to this list. There is clearly an opportunity for greater integration of sustainability assessments in plan-making.

An example of the potential for legislation aligning with and supporting SEA can be found in Wales. The Well-being of Future Generations (Wales) Act 2015 (WFGA)[139] and Environment (Wales) Act 2016[140] provide the framework to guide sustainable development and the sustainable management of natural resources. Both are well aligned with SEA legislation. Natural Resources Wales uses SEA as a tool to embed the objectives and principles of this legislation into internal plans, and statutory responses to external plans. There is no evidence to suggest it is being implemented as such, or that assessment techniques in practice have been refined to match this new legislation, however it provides an opportunity to refine assessment techniques through legislation like this.

The Broadway Initiative feels there is too much emphasis on environmental protection of the status quo in assessment when the emphasis on policy is increasingly on environmental improvement. Also at a local level the plethora of existing and new policies (e.g. local nature recovery strategies, ELMS, land use framework, etc) lacks any coherence –and there is no real sense of how the schemes will impact in the local area as a whole and how they add up to a meaningful local environmental plan.

Similarly, not all biodiversity net gain (BNG) tools will translate directly to the strategic scale, although integration of Natural Capital/ Ecosystems services into SEA has been undertaken by some organisations already, particularly through use of GIS mapping and digital data at a strategic level[141].

## 7.5 Prevalent screening; bolder scoping

Written guidance can contribute to the development of effective screening in SEA, delivering relevant information for those involved in policy, plan and programme making processes. Generally speaking, guidance should aim at setting best practice standards[142]. However, to date, there is little in the way of academic literature specific to SEA screening. The need for clearer guidance on SEA screening was echoed by survey responses from stakeholders and expert panel discussions. Advice on screening that reflects regulation 9 of the SEA Regulations is contained

[138] Levett-Therivel for the RTPI South-East, 'Strategic Environmental Assessment: improving the effectiveness and efficiency of SEA/SA for land use plans', (2018), RTPI Practice Advice

[139] Well-being of Future Generations (Wales) Act 2015.

[140] Environment (Wales) Act 2016.

[141] David Hourd, 'Strategic Impact Assessments – Exploring the scope for integration of Natural Capital, Ecosystems Services and Environmental Net Gain', (2022) 12, Impact Assessment Outlook Journal, pp 16-19

[142] Marcelo Montano M and Thomas Fischer, 'Towards a more effective approach to the development and maintenance of SEA guidance', (2018) 37(2), Impact Assessment and Project Appraisal, pp 97-106

within the ODPM 2005 guidance document. However, in some cases SEA is applied where no significant effects are likely, incurring cost and resources, whereas in others, where significant environmental effects are likely, SEA is not undertaken. Thomas Fischer, Professor for Environmental, Spatial and Transport Policy, Planning, Assessment and Management at the University of Liverpool, in consultation for this project agrees that SEA is not really applied where it should be, and feels the problem is the application of legislation.

The Chair of the North West and North Wales Coastal group highlighted the need for:

> *"A quick and easy means to challenge screening and scoping opinions i.e., agreement through a formal meeting before screening/scoping determinations are issued (to provide the developer an opportunity to challenge a consultee request for assessment)"*

Examples of screening guidance in Scotland include the Environmental Assessment (Scotland) Act 2005[143], which broadened the reach of SEA to include 'pre-screening' of effectively all public sector policies, plans or programmes for their potential environmental impacts and for those determined to have significant impacts to be subject to SEA. In a review of Scottish practice, the pre-screening procedures were not found to be used inappropriately to screen out qualifying plans, programmes or strategies, partly helped by the Scottish SEA Gateway[144].

In 2021 the Environmental Protection Agency in Ireland released their Good Practice Guidance on SEA Screening[145]. The Guidance Note provides specific stand-alone guidance on SEA Screening, i.e. whether SEA of a plan / programme (P/P) is required. It adds to a collection of existing guidance on SEA process and practice published by the EPA. Whilst this guidance is specific to the Irish context, it includes an elaboration of the steps needed for screening, the legislative landscape underpinning SEA screening, and step-by-step process and templates to assist in preparing the required documentation. The guidance also includes reference to case law which is shaping the SEA process, noting that this is an evolving space and guidance also includes case studies to illustrate good practice.

Similar to SEA Screening, there is little academic research specific to SEA Scoping, although one body of research undertaken for MHCLG confirmed that SA/SEA was not being implemented in an efficient way, and that tailoring of scoping at an earlier stage[128] would make an important contribution to improving its effectiveness.

The survey response received by Natural England highlights the importance of scoping in the SEA process:

> *"SEA Scoping provides statutory consultees with an opportunity to be consulted on the scope of and level of detail of the information to be included in the report. This important early-stage involvement in the process enables environmental assets and issues to be identified."*

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[143] Scottish Government, *Strategic Environmental Assessment: Guidance*, (2013) <https://www.gov.scot/publications/strategic-environmental-assessment-guidance/> accessed March 2023

[144] Samuel Hayes and Thomas Fischer, 'Objectives for, of and in strategic environmental assessment: UK practice as an example', (2021), Political Science and Public Policy, Chapter 3 pp 26-40

[145] Environmental Protection Agency, *SEA Good Practice Guidance on SEA Screening*, (2021)

Similar to EIA, effective scoping can also improve proportionality in SEA. Josh Fothergill[31] points out that if you retain all the topics that are under the SEA Regulations, "*you're then going to be forcing your hand to address and predict effects for every one of those areas*".

A common issue identified in our study is the need for better application of scoping to include all stakeholders: consultants, regulators, statutory bodies and lawyers. Historic England is explicit within its own advice note[146] about the importance of scoping (described as setting "the context against which the likely effects of the plan in question can be measured) in delivering proportionate assessment. This is supported by research in academic literature whereby it is identified that there should be a clearer focus on key issues to provide better scoping, which has the potential to reduce costs and further improve the benefit:cost ratio of SEA[147].

## 7.6 Better consideration of alternatives

According to academic research, the introduction of SEA has led to a better consideration of alternatives at strategic levels[23]. However, there is still improvement required, a point that has been endorsed in our stakeholder feedback. The alternatives/options in SEA are currently often poorly defined, and there is a need to put more effort into the development of feasible and realistic alternatives[148]. It has been highlighted in feedback from NIPA:

> *"Consideration of alternatives (an important focus of SEA) is arguably weak, largely being a retrospective endorsement of favoured policies or proposals, rather than a balanced assessment"*

It was clear from engagement through stakeholder interviews and discussion in the expert panel that SEA can play a much greater role in identifying and assessing alternatives, and this would benefit later tiers of assessment, particularly EIA. Academic research[149] provides evidence of this, highlighting how SEA can shape alternatives at the project/EIA level. For example, nine of twelve projects reviewed in a study indicated that the project development locations discussed as EIA alternatives tiered down from those addressed at SEA[35]. Supporting this, survey feedback from the RSPB and RSPB NI stated:

> *"SEA, if carried out early enough in the process (which is often not the case), should be genuinely influencing decisions on projects through proper testing of alternatives including location and project type / technology and result in less environmentally damaging proposals coming forward. This would provide a helpful tier of alternative testing that can feed into project-level EIAs."*

The RTPI pointed out in an interview that plan-makers are not always putting forward properly assessed alternatives, and that, while SEA is supposed to address alternatives, it frequently does not, failing also to allow people the opportunity to comment on alternatives at the plan stage. Josh

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[146] Historic England, *Sustainability Appraisal, Strategic Environmental Assessment and the Historic Environment. Historic England Advice Note 8*, (December 2016)

[147] Riki Therivel and Ainhoa Gonzalez, 'Is SEA worth it? Short-term costs v. long-term benefits of strategic environmental assessment', (2020) 83, Environmental Impact Assessment Review

[148] Thomas Fischer, 'Identifying shortcomings in SEA practice', (2012), Town & Country Planning.

[149] Ainhoa Gonzalez and Riki Therivel, 'Raising the game in environmental assessment: Insights from tiering practice', (2022) 92, Environmental Impact Assessment Review

Fothergill agrees that 'reasonable alternatives' under the Regulations are 'grey' and alternatives assessed aren't always 'real' options. One local authority respondent commented:

> *"…. The requirement to assess the proposals against reasonable alternatives is an unhelpful mechanism that often involves 'manufacturing' arbitrary alternatives to assess against.".*

A more methodological approach set out in guidance may help. For example, the Environmental Protection Agency in Ireland provides guidance on a hierarchy of alternatives to be followed for energy plans[150].

The Environment Agency noted that it can be challenging to apply SEA alternatives to some plans. For example, water company plans have models to come up with best value, and there are thousands of options and outputs from those models, which makes it hard to fit into the 'reasonable alternatives' category in the Regulations. They provided another example where adaptive management is part of the plan for the Thames Estuary 2100. With decision points at 2030 and 2050 for deciding if the Thames Barrier is needed to be based on the latest information, long term plans would need to reflect changing conditions, making it difficult to assess using current SEA practices, which are undertaken at a single and early point in time.

## 7.7 Use of a consistent and comprehensive evidence base

Because SEA is undertaken at a strategic level, there are often issues around obtaining data sets over large geographical areas with poor or inconsistent levels of detail. Providing sufficient information to enable consultees to usefully contribute is essential. Historic England, in interview, noted:

> *"If the standard of the environmental evaluation doesn't allow for reasonable and sensible and proportionate judgment and determination of risk to either the known or the unknown historic environment, it places us in an impossible position to advise the regulatory authority about the appropriateness of the mitigation measures that are required".*

NIPA referred to the limited availability of data for SEA (including AoS) resulting in a weak evidence base, as well as potentially deferring some important decisions to the later project stage (see also Section 7.9 of this report).

> *"This means that many significant environmental effects which should be considered at the strategic level (most notably cumulative effects between projects in the plan or programme) are invariably "stepped down" to the project level, leaving individual developers to resolve the coordination and management of strategic level interactions and impacts*".

Scotland has developed an SEA Gateway Database[151] to manage the formal correspondence between the authority responsible for preparing public plans, programmes or strategies and the consultation authorities. This information is recorded and held on the SEA database to support

[150] Environmental Protection Agency, *Good Practice Note on SEA for the Energy Sector*, (2021)

[151] Scottish Government, *Strategic Environmental Assessment Gateway and Database*, <https://www.strategicenvironmentalassessment.gov.scot/> assessed December 2022

transparency and ensure it is publicly available. The establishment of the SEA database is unique in making Scotland's SEA correspondence fully accessible and searchable online, aiding transparency and putting past SEAs at practitioners' fingertips. This goes some way to addressing the evidence base concerns, however this only collates SEA submissions, rather than the environmental data itself.

Greater dataset availability would provide opportunity to improve the context of SEA. In Ireland, for example, there has been a rapid growth in the availability and accessibility of spatial datasets pertaining to the environment – mainly fostered by the implementation of the European Infrastructure for Spatial Information in the European Community (INSPIRE) Directive, but also as a result of considered governmental initiatives to tackle knowledge and data gaps[152]. These datasets have been created by disparate sources and made available through an array of websites. The effective use of these data often requires specialised GIS skills and technical competencies to understand and interpret any mapped outputs. To overcome most of the technical and accessibility barriers to the effective use of environmental information in Ireland, González and others have developed an Environmental Sensitivity Mapping (ESM) webtool. The ESM has made it possible to readily visualise, interrogate and use over 130 data sources at once in a structured and purposeful manner to inform SEA, AA, EIA and, ultimately, plan-making. This is an example of a potential solution to comments received as part of our interview and survey process, and is backed by academic research highlighting the need for digital data analysis and management as key to developing an efficient and repeatable approach at the strategic level[141].

The Government has taken steps to address this challenge in England, building on the UK Geospatial Strategy through pursuit of Mission 2 in the strategy, to improve access to better location data. Sponsored by the Geospatial Commission's Data Improvement Programme, the study looked at the costs, benefits, and management of species data in England and presented options to make species data more consistent, joined up and accessible for end-users.[153]

Whether the evidence base be improved through the measurement of gains/losses of features in GIS, the linking of that directly to metrics in calculation tools or the ability to calculate more complex ecosystems service benefits, it is clear in academic literature that digital data analysis and management will be key to developing an efficient and repeatable approach at the strategic level[152,152].

## 7.8 Integration with plan/programme development

Observed weaknesses of many SEAs include a poorly established and ill-explained integration of plan and SEA processes[148]. SEA is undertaken as a separate process to policy or plan-making and decision-making is a common issue that has been raised throughout academic research[135] and reflected elsewhere in this report. In practice the lack of integration has been highlighted by multiple survey respondents. For example, NIPA's survey response states:

[152] Ainhoa González and others, 'Environmental Sensitivity Mapping: Supporting evidence- based Strategic Environmental Assessment and spatial planning', (2022), University of Dublin

[153] Cabinet Office – Geospacial Commission, *Mapping the Species Data Pathway: Connecting Species Data Flows in England,* (May 2021)

> "*SEA for large infrastructure programmes is often very much treated as a "tick box" exercise – with a focus on compliance with the regulations, rather than taking an important opportunity to direct, amend or influence the relevant plan or programme. Very often the plan or policy being assessed is not modified or varied"*

NIPA is one of many organisations to describe SEA as a 'tick box' exercise in our research. A local authority respondent also referenced this point in bemoaning SEA's lack of integration into the decision-making process:

> *"The typical application of SA/SEA via lengthy tables with scores given for different policies and lack of meaningful analysis means that SEA is often a tick box exercise completed after all decisions have been taken, rather than a meaningful process that informs the policy direction or development of strategies."*

The RSPB elaborate this point in emphasising the importance of timing of SEA:

> *"To be effective and have a positive influence, SEA must occur in parallel with the plan and decision-making process. If done in this way, the SEA work can support plan and decision-making process through, for example, sharing and supplementing evidence bases and identifying alternative plan options to be tested, as well as providing a clear audit trail of how decisions were made".*

IEMA's Impact Assessment Journal, Volume 12[154] refers to a current practice within strategic impact assessment of playing a fine-tuning role focused more on the production of a report, than on actually shaping plan or programme development[128]. The Environment Agency reiterated this point in their survey response, and the Agency's Karl Fuller, in his contribution to IA Journal Volume 12, argues that one of the hallmarks of a reformed SEA approach would be to place far greater weight in influencing a plan/programme over producing a product.

## 7.9 Improved stakeholder engagement

Public participation and the engagement of stakeholders should play a fundamental role in any SEA. The importance of engagement has been underlined by legislation (as has already been well referenced). This is supported by academic research that highlights that stakeholder engagement and public participation is more than a stage, but rather a component that should be conducted at least both at scoping and SEA report preparation stages[155,156]. SEA literature has traditionally identified several benefits attached to stakeholder engagement, from more open and transparent decision-making to greater acceptance of plans/programmes' output by the affected population[71]. However, our research suggests that in practice, stakeholder engagement is limited, and the potential benefits are not being realised. During interview Historic England challenged SEA practitioners to ensure effective early engagement:

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[154] Ellie Askham and Josh Fothergill, 'Strategic Impact Assessment: Thought pieces from UK practice', (March 2022) 12, Impact Assessment Outlook Journal

[155] Thomas Fischer and others, 'Reflecting on the preparation of guidelines for strategic environmental assessment (SEA) of nuclear power programmes', (2019) 37(2), Impact Assessment and Project Appraisal, pp 165-178

[156] Ralf Aschemann and Giorgio Baldizzone, 'Public and stakeholder engagement in strategic environmental assessment', (2016), European and International Experiences of Strategic Environmental Assessment, Chapter 11

> *"We are not always brought into projects early enough. For example, because HE's view wasn't taken onboard early enough in the planning stage for a local plan, we are now seeing detailed proposals that have big issues around the impacts on setting and archaeology. This will then require more difficult discussions at a later stage".*

NIPA, give an insight into this in their survey response:

> *"Very often the plan or policy being assessed is not modified or varied, and, although public consultation does take place, opportunities for stakeholders to effect meaningful influence within and on the process is limited."*

Stakeholder engagement may include trans-boundary consultations in other affected countries[155], and it is important to acknowledge stakeholder engagement for SEA will have specific requirements depending on the national context.

Riki Therivel (Levett-Therivel Sustainability Consultants), who has advised many local and national government entities in the UK on SEA, believes SEA, while potentially highly informative for public engagement, is very under-used. It offers a valuable forum for learning – for the planners, the public and the consultants. However, this isn't captured or used for subsequent plans.

As with EIA, making information accessible is a key part of this paradigm. Much stakeholder feedback highlighted the inaccessibility of environmental reports. The Chair of the North West and North Wales Coastal Group commended the principle of SEA but noted that:

> *"…. the process is time-consuming and the documents presenting the results of these processes are unnecessarily long and complex".*

A local authority respondent referred to:

> *"…. a regime that is unnecessarily confusing and generally inaccessible to communities and members of the public".*

Use of digital platforms as a tool for improving access is increasingly supported, though it is still in its infancy[157]. The use of digital SEA practice by some consultants has had benefits to stakeholder engagement. For example, Jacobs' use of an online platform for its SEA of options on the A83[158] provides an example of how access might be improved through this medium, and is as relevant to EIA and HRA.

## 7.10 Realising synergies in SEA and EIA through better tiering

The organised transfer of information between SEA and EIA processes, known as tiering, has been identified in academic literature to have the potential to enhance the overall efficiency and effectiveness of environmental assessments and improve the coherence of information to support decisions[149]. Tiering has been discussed for both EIA and SEA as a way to streamline plan-making and assessments, and improve decisions at each stage of planning[137]. In particular, it can lead to more consistent and comprehensive impact mitigation at the later stages. In practice, however,

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[157] Isaac S, 'Digital SEA in practice' in IEMA Impact Assessment Outlook Journal Vol. 12 (2022) (assessed December 2022)

[158] Access to Argyll and Bute (A83) SEA, *Strategic Environmental Assessment (SEA) Environmental Report: Non-Technical Summary,* <https://storymaps.arcgis.com/stories/02f1f40a799a4120985fe3e543c6a2c9> accessed 13 March 2023

tiering of assessments is carried out only sporadically[159]. The RSPB considered the "*integration between different assessment processes, specifically between SEA and EIA and HRA*" as one of the factors inhibiting the progress in SEA. They continued:

> *"SEA, if carried out early enough in the process (which is often not the case), should be genuinely influencing decisions on projects through proper testing of alternatives …. This would provide a helpful tier of alternative testing that can feed into project-level EIAs."*

If implemented in practice, tiering can provide data for lower-tier SEA/EIAs, as well as identifying gaps that could be filled by lower tier assessment[160] and helping facilitate a solution to the issues raised in Section 7.7 of this report, around evidence base. The concept of tiering is supported by Professor Fischer in his response to the survey, stating we require *"A consciously tiered assessment system"*.

Improving environmental assessment tiering involves better mutual reflection and acknowledgement in SEA and EIA: undertaking SEAs with EIAs in mind, and referring to strategic environmental outcomes in EIA. Professor Fischer supports this in his survey response:

> *"More effective tiering with other policy, plan, programme and project decisions (in this context SEA and EIA, should be understood as being part of one environmental assessment 'system' / 'framework'). Enforcement of particular substantive outcomes; in this context, enhanced monitoring / auditing is required."*

An academic study reviewing international literature and case studies on SEA concludes that a conscious and explicit transfer of information from the SEA level, and an explicit receipt of this information at the EIA level are necessary prerequisites for effective practice of tiering[35]. SEAs must be carried out with local actions in mind, to enable mitigation measures to support environmental protection on the ground. Lower-tier decision-makers must also be willing to be bound by decisions by the higher-tier SEA, focusing on implementation of these decisions.

When SEA and EIA communicate, knowledge of issues can be enhanced and better addressed[35], and monitoring can close the loop by filling any knowledge gaps and capturing the intricacies of mitigation implementation, informing future assessments[160]. However, like EIA, in practice SEA suffers from a lack of monitoring of its effectiveness in delivering mitigation and improving the sustainability performance of the Plan or Policy. The lack of monitoring is highlighted in the quote above from Professor Fischer.

Despite this, there are instances where strategic plan monitoring is undertaken. The MMO referred to the three-yearly and six-yearly monitoring cycle of Regional Marine Plans[161] where they acknowledge monitoring will be an important part of how marine plans are reported on, including to identify content that may need amending. The three-year report on the East Marine Plans 2014 -

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[159] Riki Therivel and Ainhoa Gonzalez, '"Ripe for decision": Tiering in environmental assessment', (2021) 87, Environmental Impact Assessment Review

[160] Kelesto Malepe and others, 'Tiering of Environmental Assessment – the Influence of Strategic Environmental Assessment on Project-level Environmental Impact Assessment', (2019), EPA Research, Report No 391

[161] Marine Management Organisation, *North East, North West, South East and South West Marine Plans Approach to Monitoring*, (2020)

2017[162] released by the MMO demonstrates the benefits of strategic plan monitoring in practice. The monitoring approach addressed three key components: context, process and outcomes. These components respectively cover the implementation of marine plans and policies, whether the intended outcome of the plans occur, and confirmation that the context the plans were adopted in remains similar, or whether any implications if the context has changed. The results of this monitoring have informed marine licencing projects, alongside demonstrating how the MMO evidence their decision making.

## 7.11 Skills and resources

Similar to EIA, a lack of resource and available expertise has been referenced often in the stakeholder feedback, particularly for local authorities. Feedback from both ADEPT and the LGA members referred to the difficulties for local authority planning teams in recruitment of skilled planners, in the face of more competitive salaries in the private sector. This is supported by academic research, finding that even when available, assessors, planners and decision-makers often lack the technical skills required to interrogate and apply environmental datasets[152].

Consultants are frequently required for SEA, which is costly, and there were concerns expressed during stakeholder engagement that any new legislation or framework could exacerbate the problem.

In their consultation feedback, ALGE, with their focus on ecologists, stated in reference to SEA (although equally pertinent to other assessment regimes):

> *"Local planning authorities lack sufficient expertise to conduct SEAs, with 65% of LPAs not having any in-house ecological expertise* [with other ALGE survey finding that] *53% of respondents reported that their LPA has limited access to an ecologist for planning work (half or less full time equivalent) and 8% reported they do not have any access (internal or external) to ecological expertise (though the authors argue that this number could be as high as 26%)."*

Suggestions to improve capacity include a central government unit to provide additional resource and expertise, as well as increased working across authorities.

# 8. HRA – CRITIQUE AND REVISION

## 8.1 Overview

We have drawn information from research articles and third-party consultation responses to government requests, as well as the survey and interview feedback.

The most contemporary overarching perspective on HRA comes from Lord Benyon's 2021 findings[18], which emerged from a working group established by the then Secretary of State, George Eustice following his speech at Delamere Forest on restoring nature and building back

[162] Defra, *Three-year report on the East Marine Plans 2014 – 2017*, (2017)

greener. In this speech he announced his intentions to re-focus the Habitats Regulations to ensure legislation's adequate support for the Government's ambition for nature recovery.[163]

An HRA review working group was established to consider changes that might be appropriate. The Group evaluated evidence from HRA experts (competent authorities and statutory advisers, LPAs, developers, consultants, land manager representative bodies, and environmental NGOs) and the advice of its members. The Group recommended focusing on developing a single new assessment process that would complement a more coherent and simplified approach to habitats sites, although interestingly, this recommendation was not made by the HRA experts, but persisted from the Nature Recovery Green Paper[173].

Although HRA was considered a straightforward process in some respects, the findings of the HRA Review Working Group concluded that the amount and type of specialist evidence it required, coupled with the perceived risk of legal action, had created an overly cautious approach to decision-making.

With a view to delivering better outcomes for the environment and sustainable development, the Group prioritised both replacing or improving the existing process (via a clearer decision-making framework), and taking a more strategic approach. Process improvements would be delivered, the Group concluded, through:

- clarification of legal terminology and processes;
- making existing data readily available and user friendly;
- making site-specific advice more accessible in one place;
- basing scientific judgements on a clearer framework of evidence;
- allowing for earlier consideration of avoidance or mitigation measures; and
- ensuring earlier expert engagement to increase LPA confidence in scientific evidence.

Expert evidence also led to recommendations for use of strategic mitigation solutions to look at nature recovery outcomes that reach beyond a specific site and thus enable greater flexibility, for example by compensating for a lost habitat elsewhere.

## 8.2 Survey findings

Our two survey responses show a sizable number wishing to see modifications to the existing HRA regime, and very few willing to see it replaced altogether. Notably, the majority of the more specialist HRA-focused respondents to the organisational survey seem to be content with the regime as it stands now. Survey responses are summarised in Figures 8-1 and 8-2.

[163] Defra, *Environment Secretary speech at Delamere Forest on restoring nature and building back greener*, (18 May 2021) <https://www.gov.uk/government/speeches/environment-secretary-speech-at-delamere-forest-on-restoring-nature-and-building-back-greener> accessed 13 March 2023

**Figure 8-1**: Practitioner survey responses

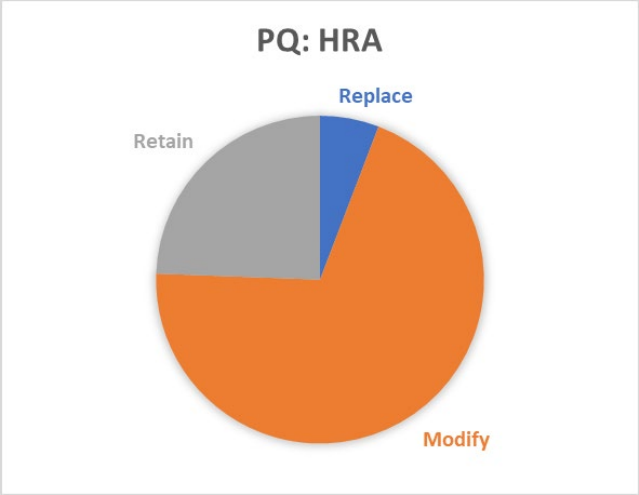
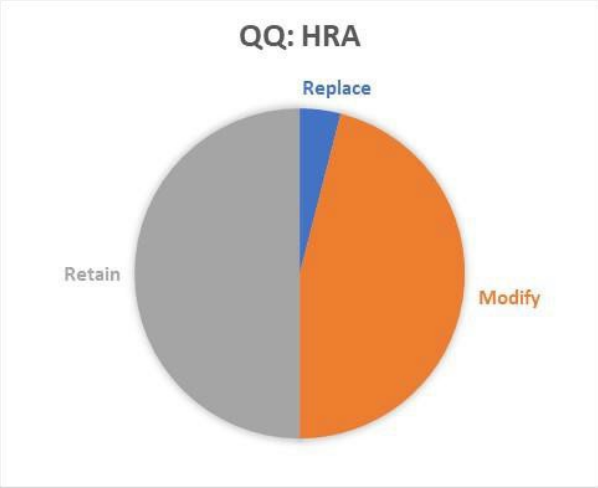



**Figure 8-2**: Organisational survey responses




The sentiment of many of the specialist respondents of a system working well is evidenced by many; for example, the Wildlife Trusts commented:

> *"The Habitat Regulations give our best wildlife sites and species within them the strongest protection from damage. …. At sea 64% of Marine Protected Areas are either a Special Area of Conservation (116) or Marine Special Protection Area (125). Without the rigorous assessment afforded by HRA, site protection and where required appropriate compensation would be threatened – with no possibility of achieving 30% of land and sea in recovery by 2030".*

DTA Ecology commented:

> *"HRA is, without a doubt, the most effective piece of UK legislation to secure site protection from proposed plans and projects. This is because the precautionary principle is embedded within the legal tests which apply to decision-making."*

The Campaign for National Parks noted that:

> *"The Habitats Regulations are the most effective legal protections for important habitats and species and the HRA provides a robust legal mechanism for assessing the impacts on protected sites. However, the implementation of the regulations needs to be improved".*

HS2 Ltd commented:

> *"The HRA enables the competent authority to determine the effects on certain European protected sites and whether a project should proceed or not. This is a very focussed activity with real purpose and clear decision-making intent and is well respected".*

In referring to the BTO and RSPB research which demonstrated the wider benefits of habitats sites to birdlife (see Section 4.3), the WCL stated that:

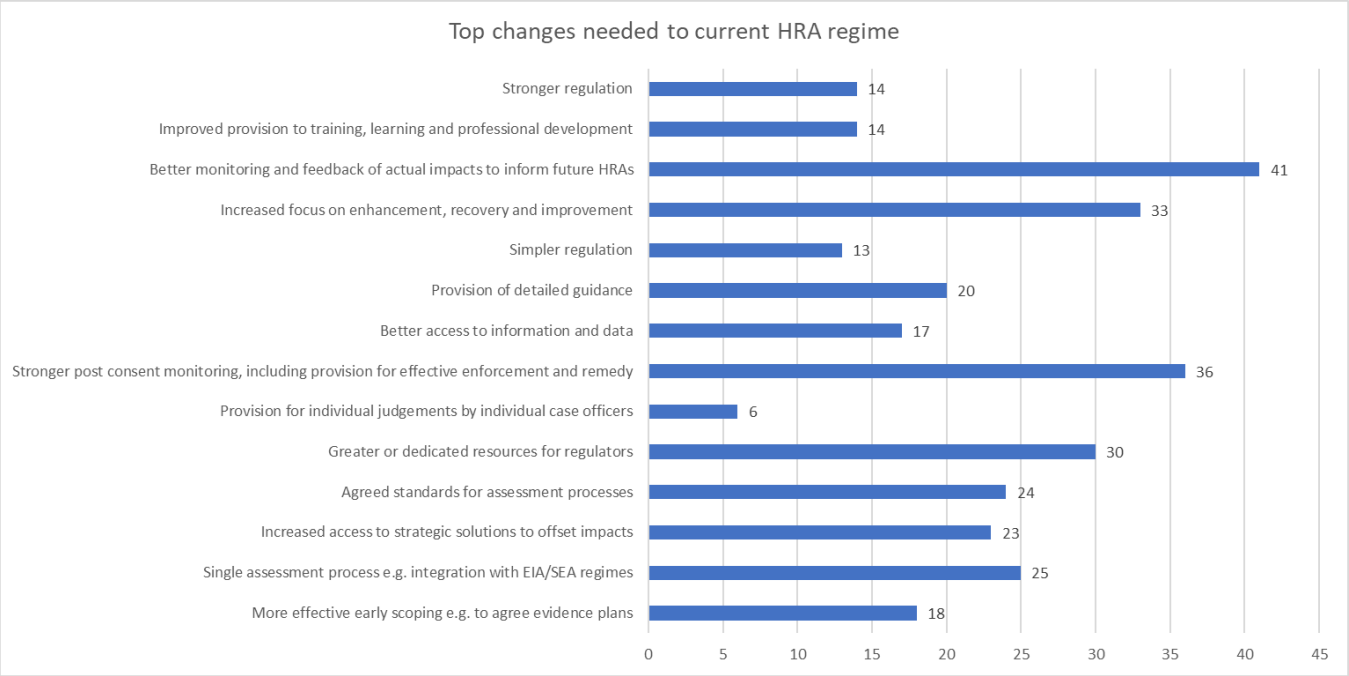
> *"There is clear evidence that the Habitats Regulations (which includes HRA) are the most effective nature conservation laws in the UK"*

Echoing the thoughts of many in seeing a preference for modification of the HRA regime, one of the consulted industrial and business organisations (transport sector) noted:

> *"As with the EIA and SEA, we would prefer to see the Habitats regs modified and improved rather than completely replaced with a new regime. For developers, clarity in process is important and we know how to work with these regulations and would prefer to see them improved rather than replaced".*

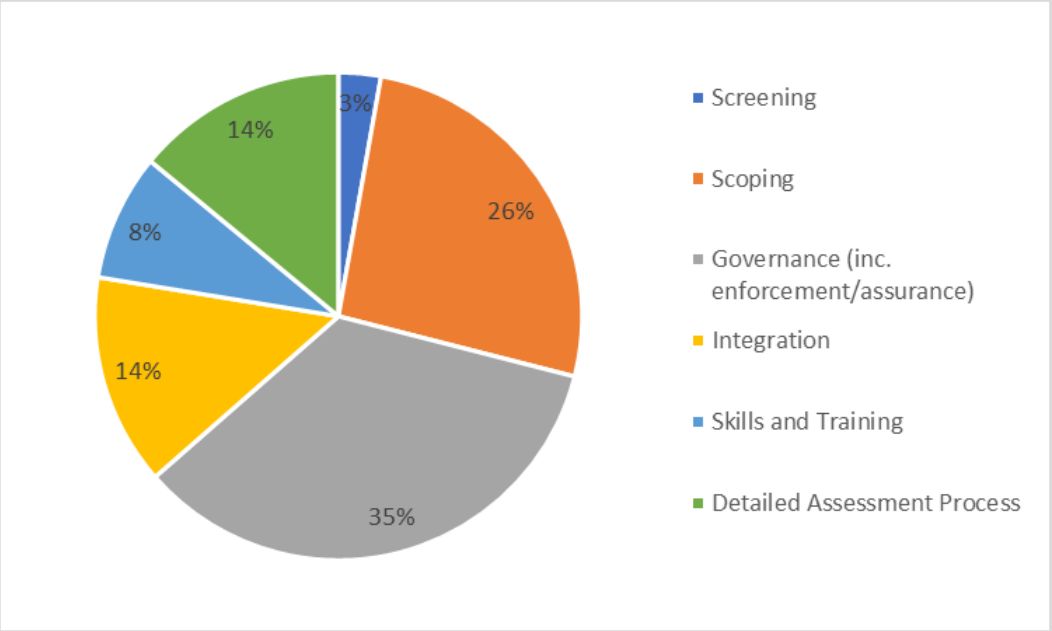
As previously stated, WSP has identified a clear preference to see the current regimes improved on. A general sentiment among many stakeholders was that a substantial change in process would bring uncertainty and undermine confidence, and there was a preference to see time and effort focused on improvements to existing practice and the processes and rules that underpin it. The practitioners' surveys asked respondents to list their preferences for reforms to the HRA regime. These findings are summarised in Figure 8-3.

**Figure 8-3**: Practitioner survey recommended changes




The more detailed qualitative survey responses were analysed to establish the most prevalent themes and suggestions for improvement. These are summarised based on generic categories in Figure 8-4.

**Figure 8-4**: Key survey themes and suggestions




## 8.3 The big issues for HRA

Our research and stakeholder engagement has crystallised several key improvements required for HRA, listed here and elaborated thereafter.

- securing increased resource and competency amongst competent authorities.
- need for an accessible and consistent information base.
- more pragmatic and creative approach to conservation objectives delivering wider gains beyond avoiding harm
- simpler more inclusive process fostering wider engagement of stakeholders.
- broadened remit to address prevailing influences on conservation objectives, as well as predicted impacts from new development (developing a 'zero base').

## 8.4 Increasing resource and competency

Natural England in their survey response consider a major barrier to the effective and speedy implementation of the Habitats Regulations is the limited ecological capacity and capability amongst competent authorities such as local planning authorities[164] (see also ALGE's comment in this regard in Section 7.11 of this report). The point was reinforced by the NIEA who said:

> *"….. there is still a fear and misunderstanding about the process and many competent authorities are not 'competent'".*

[164] www.alge.org.uk/members - of the 333 local authorities in England alone, only 111 have membership of the Association of Local Authority Ecologists (including National Parks). Of the 11 local planning authorities in Northern Ireland, only one is an ALGE member.

This often limits the provision of positive contributions from these authorities and can be a significant cause of delay to the HRA process, creating an over-reliance on Natural England advice and/or developer information.

The Natural England response refers to only one-third of planning authorities in England having their own in-house qualified ecologist and almost 90% planners considered to have only a basic understanding of ecological impact assessment procedures such as HRA, which is confirmed by the Local Government Association[165]. As a result, decision-making can be over-precautionary. The use of a shared planning service[166] as provided by the LGA could help to rectify this.

In addition, HRA practitioners are sometimes lacking in sufficient experience to produce reports which are suitably robust without being excessively cautious. During an interview, Natural England advocated a commercial basis for providing advice to allow for improved resourcing to carry out their function, as well as to offer training to competent authorities.

## 8.5 Consistent and accessible information base

Several respondents indicated that access to sound ecological data for habitats sites was an issue for undertaking HRAs, with one public authority consultee noting the difficulties in *"concluding a HRA …. where there is no information on vulnerable habitat location or the criteria to assess against"*. They recommended:

> *"… creating a central Defra Group platform to store key information for each site including leads, targeted conservation objectives and supporting information, list of standards and targets and compliance, how far the site is from compliance and source apportionment information, modelling, etc".*

At present there are many instances where a single area may be surveyed for qualifying features of National Site Network sites on multiple instances, often within the same survey period. This is considered to be a waste of time and financial resources, and a potential disturbance factor for those qualifying species.

Progress in the Government's pursuit of Mission 2 of the UK Geospatial Strategy (see Section 7.7 of this report) to improve access to high quality, current and accessible species data would be an important step to addressing this need in HRA, as well as more generally in implementing and evaluating outcomes from the Environment Act, BNG and the new Environmental Land Management Scheme (ELMS)[167].

## 8.6 Pragmatic and creative approach

A clear sentiment from much of our research, especially the survey feedback and interviews, is about HRA's lack of pragmatism: its rigid focus on certain sites and their qualifying features, although, to be fair, that is what it was set up to do.

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[165] William Eichler, 'Only one third of planning authorities have access to 'in-house' ecologist', *Local Gov,* (12 August 2021) <www.localgov.co.uk/Only-one-third-of-planning-authorities-have-access-to-in-house-ecologist> accessed 13 March 2023

[166] Local Government Association, *Shared Services,* <https://www.local.gov.uk/our-support/efficiency-and-income-generation/shared-services> accessed 24 March 2023

[167] HM Treasury, *Final Report – The Economics of Biodiversity: The Dasgupta Review*, (2021)

A member of the LGA noted that:

> *"As for EIA,* [there is] *too little emphasis on outcomes and the likely effectiveness of proposed mitigation. Instead, too much emphasis is currently placed on preparation of enormous documents with assessment of impacts and design of mitigation often not being grounded in the real world i.e. what happens or is going to happen on site".*

The JNCC commented:

> *"HRA does not protect from activities, such as diffuse pollution, which do not require consent and are not plans and projects. For example, air pollution puts significant pressure on a high proportion of sites. Source attribution studies show sites are often dominated by diffuse, unregulated, sources. HRA can protect from new sources where they are part of a plan or project and should consider background inputs, but the HRA process itself does not tackle the diffuse sources".*

With the HRA regime as it currently stands, there is a series of tests which must be passed in order to legally consent a plan or project. However, this does lead to assessments aiming to achieve the minimum standard that will enable these tests to be passed and for the competent authority to consent the plan or project. For example, Natural England stated:

> *"…although the current regime does not prevent the development of strategic approaches or the co-ordination of mitigation which are likely to secure greater environmental benefits, the major focus of HRA is on avoiding and minimising harm rather than a proactive drive towards nature recovery at a site-level and across the designated sites network - needed in order to enable the increased contribution of the sites towards the Environment Improvement Plan biodiversity targets."*

The JNCC echoed this point:

> *"The focus of HRA is on adverse effects on the integrity of sites and species. It does not deal with the environmental benefit. Any measures for mitigation or compensation do not usually go beyond the scale of the impact assessed and therefore do not provide additional environmental benefit (or at least none that can be measured)".*

Although the tests as set out by the legislation are seen as very effective at protecting designated sites, caselaw can sometimes add a level of potential complication, and with the Habitats Regulations often used by objectors to deter development, practitioners and competent authorities can be highly cautious and veer from a more pragmatic perspective on potential effects arising from plans or projects. Natural England commented that "*with marine environments there have been challenges with how you deal with ecosystems when you're focussing on the site boundaries"*.

Proposed and potential changes to national policies in relation to agricultural practice – specifically ammonia[168] – provide an opportunity for plans and projects to make positive contributions to designated site health and favourable conservation status. However, the sometimes fine-line between what may be considered mitigation and what is considered to be compensation, combined with caselaw, leaves many plans or projects in difficulties. The intent of the original EU

[168] DAERA, *Draft Ammonia Strategy Consultation*

Directive and the Regulations enacted in the UK was to establish a network of sites to ensure the protection of the most valued habitats and species within Europe. We must not lose sight of this intent, and therefore should question whether the strict division between measures which are seen as mitigation (those which reduce the impact of a plan or project on a site) and those which are considered compensation (those which redress an impact which arises from a plan or project) is entirely pragmatic and helpful. If a site designated under the regulations is left in as good a state, or even better, through the implementation of a plan or project, and the associated conservation measures, the relevance of whether a measure is 'mitigation' or 'compensation' may be irrelevant outside of a strict legal definition.

Further, there is significant potential for BNG to be a source of site improvements through management measures such as rewetting bog habitats or introducing appropriate management to other sites or providing appropriate functional habitat outside designated site boundaries, and the potential to include these positive conservation outcomes within the assessment process. This would seem to present a significant opportunity to fulfil UK obligations under the original EU Directives (Articles 6(1) and 6(2)), and other international agreements, such as the Bonn, Bern and Ramsar conventions.

## 8.7 Simpler more inclusive process

The HRA process is often highly technical, and there are many legal points which must be taken into account in HRAs or considered and accommodated by a competent authority. However, in common with findings from this research project into EIA and SEA, these factors are often seen as reducing the ability of stakeholders to engage fully with the process and for their opinions to be fully considered within the assessment process.

Measures to improve inclusivity and seek to simplify the process would facilitate a robust conversation about the potential effects of any plan or project.

One public authority respondent noted that "[HRA] *suffers from overcomplication*" and makes a clear recommendation to adopt a more proportionate and pragmatic approach to HRA, rebalancing it from a process focused to an output focused activity. It advocates:

> *"An approach which is simpler, streamlined and melded to a national, strategic approach that determines where and how we can permit new developments, and where we need to reduce stresses on habitats, without getting bogged down on whether a planned improvement to boost habitat conditions is 'HRA compliant' or not".*

## 8.8 Using a zero base

Zero base is an accounting term, where items are costed anew, rather than relying on information from a previous budget. For HRA, this means considering prevailing factors within a baseline that influence a habitats site's conservation objectives, such as nutrient pollution.

Greater clarity on the metrics to be used during assessments would be beneficial to practitioners and competent authorities. However, care needs to be taken that metrics are sufficiently robust to ensure the protection of the features and coherence of the National Site Network; for example where incidents in the wider environment (e.g. avian influenza) may cause potentially short-term

reductions in populations, or where population trends are unfavourable, current species records (e.g. the Wetland Bird Survey 5-year peak mean) may not represent a useful metric.

Our interview with the National Farmers Union and Ulster Farmers Union presented intractable examples of farmers being prevented from making improvements to farms through new infrastructure, but being frustrated through HRA where development is treated as new rather than replacement. This results in both the farm forgoing economic benefits essential for continued viability, and habitats sites missing out on the benefits of reduced risk of pollution.

Many of our National Site Network sites support habitats which are vulnerable to excessive nutrient levels. Although the regulations and the HRA process can be seen to be protecting such sites from increases deriving from plans or project proposals, the underlying fact that it is agricultural nutrients that are making a far more significant contribution to the damage of these sites, gets disregarded within the existing regime.

It should also be noted that at the time of designation, sites within the National Site Network were not necessarily in favourable condition, and thus measuring effects of plans or projects against the extent of habitats or populations of species from the citation does not deliver the intention of the regulations or directives.

Although Natural England have undertaken significant work in recent years to provide Supplementary Advice on Conservation Objectives (SACO) through their Designated Sites Viewer[169], there is often confusion within local authorities about what targets should be applied to assessments.

# 9. PROPOSED FUTURE REGIMES

## 9.1 The Levelling up and Regeneration Bill

### *Principles of the Bill*

The Levelling Up and Regeneration Bill was introduced into Parliament on 11th May 2022. Amongst several key elements of the Bill is a clear intent to improve the planning process. It includes proposals for reforms that it is hoped will:

- deliver high quality design and beautiful places, and protect our heritage;
- enable the right infrastructure to come forward where it is needed;
- enhance local democracy and engagement;
- foster better environmental outcomes; and
- allow neighbourhoods to shape their surroundings, as this is where the impact of planning is most immediately felt.

The Bill would also enable further changes that enhance the way that planning works, including full digitalisation of the system and improving processes.

[169] Natural England, *Designated Sites View,* <https://designatedsites.naturalengland.org.uk/> accessed 13 March 2023

The proposals seek an outcome-oriented focus on assessment, that drives environmental betterment and gain. There are various details which will influence the environmental planning of projects. The Policy Paper that accompanies the Bill sets out concepts for:

- giving more power to local leaders;
- making better places through a plan-led approach;
- delivering infrastructure, including use of an Infrastructure Levy rather than s.106 agreements[170];
- regenerating brownfield/underused sites and rejuvenating town centres;
- reforms to the housing and land markets; and
- improving planning procedures (including digital transformation), with improvements also to the NSIP regime.

Of most immediate relevance to the subject of this commission is the focus on creating beautiful places and improving environmental outcomes.

### *Creating beautiful places and improving environmental outcomes*

This part of the Bill seeks to ensure new development meets clear design standards which reflect community views, introduces a strengthened framework of environmental outcomes, and expands protections for the places people value. The policy paper[17] states that the Bill seeks to deliver more, not less, for the environment, and imposes a duty on the Secretary of State to ensure that the new system of environmental assessment does not reduce the overall level of environmental protection.

Notable elements include:

- good design to reflect community preferences.
- every local planning authority to produce a design code for its area.
- all heritage designations to have the same (high) status as listed buildings and conservation areas.
- improved process to assess the potential environmental effects of relevant plans and major projects.
- SEA/EIA directives replaced with clearer and simpler process, with relevant plans and projects (including NSIPs) assessed against tangible environmental outcomes set by government.
- priorities in protecting our environment, pursuing positive environmental improvements and clearer linkages between strategic and project scale assessments.
- requirement to prepare Environmental Outcome Reports (replacing environmental statements).
- more weight given to plans and national policy, with more assurance that areas of environmental importance (e.g. National Parks, Areas of Outstanding Natural Beauty, Flood

[170] A Section 106 Agreement is an agreement between a local authority and a developer that contains planning obligations for the developer in return for planning permission.

Zone 3, as well as Green Belt) are respected in decisions on planning applications and appeals.

- Environment Act's reforms to be embedded fully in plan-making and decisions, particularly around BNG.

### *Potential changes to current regimes*

By moving to an outcomes-based approach, the LURB provides the opportunity to go further for the environment and to turn passive assessment into a more active tool to support environmental regeneration[171]. Of course, the detailed implications of the EOR system will only become evident within the EOR Regulations. A consultation on these was launched by DLUHC in March 2023[172], seeking "*views on a proposed new system of environmental assessment ('Environmental Outcomes Reports') to replace the current EU-derived environmental assessment processes of Strategic Environmental Assessment and Environmental Impact Assessment*". A comparison of the current system and the EOR approach is presented in Table 2 of the consultation, and is summarised in Table 9-1.

**Table 9-1**: Potential changes moving from the current regime to EOR regime

| | Current Regime | EOR Regime |
|---|---|---|
| **Process** | EIA, SEA, HRA. Processes defined in relevant regulations. | Process to amalgamate EIA and SEA, but consultation document states no reform of HRA. |
| **Assessment Basis** | EIA/SEA assess change (impact) against a baseline condition, focused on identifying significant adverse effects, and mitigating them. The effect is evaluated depending on merit of the resource and overarching aim to inform decision makers of environmental consequence of a decision.<br>SA intended to assess plan outcomes against environmental, social and economic objectives.<br>HRA addresses potential for plan/project to adversely affect qualifying features and thus the integrity of the site(s). | EOR (NB. Process not named, just the product) seeks to introduce an outcomes-based approach, though equally, there is no evident change to prevailing techniques of assessing change. A notable omission is any reference to 'significant effects'.<br>The 'central issues' the regulations would seek to address: inefficiency, duplication, risk aversion, loss of focus, and issues with data, |
| **Screening** | EIA is needed when project falls into one of the categories listed in Annex I or II to the EIA Directive. Annex II describes both project types, activities and scale, as well as being likely to result in a significant effect. For SEA, determinants are far looser and affect strategic documents | Clause 140 allows regulations to be brought forward which specify when an EOR is required.<br>Screening criteria to change with Category 1 and Category 2 consents to replace the existing thresholds for assessment. |

[171] Levelling Up and Regeneration Bill 2022, explanatory notes

[172] Department for Levelling Up, Housing and Communities, Environmental Outcomes Report: a new approach to environmental assessment, (17 March 2023)

| | Current Regime | EOR Regime |
|---|---|---|
| | deemed to be a plan or a programme. | |
| **Scoping** | Project applicants may seek a scoping opinion from the consenting authority who are obliged to provide one if requested. Should cover the scope and level of detail of the information to be provided in the ES. | Presumption is that 'everything is scoped in, and applicants report on the performance of projects or plans against all relevant outcomes on a proportionate basis. |
| **Product** | Reports (ES, environmental report, AA report) with mandated content, or for HRA indicated requirements through guidance notes. | Environmental outcomes report. Mandated content to be provided in EOR Regulations (clause 119 (7g)). Reporting against agreed outcomes with summaries pinpointing relevant sections in supporting technical analysis. |
| **Mitigation** | Various terminology but often presented, in descending order, as avoiding, minimising, rectifying and compensating (note specific legal definitions separating mitigation and compensation under the Habitats Regulations). | Proposes a 'more robust' approach to mitigating impacts throughout the development of the policy, plan or project. Captures core elements under clause 139, with steps to enhance outcomes. |
| **Delivery** | Mitigations secured primarily via planning conditions (or DCO) and in some cases via Section 106 agreements set by the competent authority. | EOR Regs to make provision on extent that EORs to be taken into account or given effect by consenting authorities in decision making (clause 119 (7h)). Use of an Infrastructure Levy rather than s.106 agreements |
| **Monitoring** | Requirements included although with no governance on their implementation. Monitoring falls largely on the developer. The competent authorities and statutory stakeholders typically receive and review reports from the developer, with limited, or no, independent verification. | EOR Regulations to make provision on how consents and plans should be assessed and monitored once in place.<br>Clause 141 will allow 'a more robust approach' to how the delivery of outcomes is monitored, clarifying monitoring requirements and directly linking monitoring with data collection |
| **Assurance (including enforcement)** | Assurance is typically self-certified by the developer where requested. In practice, competent authorities and statutory bodies have limited resources to provide third party assurance. | Clause 146 provides the government with the power to require public authorities to report on the performance against specified environmental outcomes. |

## 9.2 Nature Recovery Green Paper

The Nature Recovery Green Paper sets out proposals that support Defra's ambitions to restore nature and halt the decline in species abundance by 2030. It looked at what institutional and delivery arrangements would best support the UK's nature recovery objectives. A consultation

document[173] was published in March 2022. Consultation ran from March to May 2022, although at the time of writing the outcome to the public feedback had not been reported.

The Green Paper consultation document outlined areas that built on other measures, such as the Fisheries Act 2020, the Agriculture Act 2020, the Sustainable Farming Incentive, Local Nature Recovery strategies, and Landscape Recovery, each of which contribute to the Government's commitment to protect 30 per cent of land and sea by 2030 ('30 by 30'), and to reach net zero emissions by 2050.

The approach in the Green Paper focuses more on outcomes and recovery, so chiming with the strategic approaches enshrined in the Environment Act 2021 which places impacts and mitigations into the context of nature recovery objectives for whole landscapes and catchments.

The paper's reference to nature recovery sites is particularly notable, where it states:

> *In recent decades, the legal designation of protected sites and our approach to their management has been based on the assessment of habitats or species that are still present. It has been intended that designation would create the legal tools needed to restrict certain activities with the hope of seeing sites recover to a more favourable condition and to avoid further decline. It is a strategy which, overall, has not been particularly successful.*
>
> *Although it is likely that the approach has stemmed or moderated the speed of decline, it has not really created the possibility to reverse decline nor to make new space for nature. The decline of nature outside of protected sites has continued and external pressures have had impacts on protected sites themselves. While there will always be a role for more defensive, site-specific protections, the Government believes that in order to see a genuine national recovery in species abundance, the old approach will not be sufficient.*

With regard to HRA, the Green Paper refers to Lord Benyon's 2021 working group, from which emerged priorities[18] of improving the current HRA process, while taking a more strategic approach.

# 10. DELIVERING CHANGE

## 10.1 A long list of issues

There is evidently much to commend the current regimes in what they have achieved, and what they continue to achieve in terms of environmental protection. **There is almost nothing in either the research we have undertaken, nor in the stakeholder engagement that suggests the system is broken, and the call for reform rather than substitution is the loudest**. With that in mind, this section outlines the changes that should form part of any new regimes, commencing with a long list of twenty-two issues that crystallise the findings of this study. The long list of issues can be found in Table 10-1.

[173] Defra, *Nature recovery green paper: protected sites and species,* (March 2022)

**Table 10-1**: Long List of Issues

| Regime | EIA | SEA | HRA |
|---|---|---|---|
| **Key Issues** | • Proportionality: slim-lining a process, whose growth in complexity and product has served no clear benefits and has disincentivised use<br>• Improved scoping, involving more early assessment and engagement to support better allocation of resource and attention on the important issues<br>• Weak link between EIA and environmental decline<br>• Skills and confidence: more explicit requirements, standards and competence in EIA and the mechanisms to deliver these<br>• Getting better and productive engagement with stakeholders and the public in order to secure good environmental outcomes<br>• Post-consent: poor assurance of commitments to environmental performance of the implemented scheme<br>• Little emphasis or incentive for maximising environmental benefits and gains. | • Clearer and stronger requirement for SEA and definitions of the plans and programmes that trigger this requirement<br>• Bolder scoping that focuses on data and issues that are likely to be significant, and disregards those that are not<br>• Generation and assessment of thought out and clearly articulated alternatives. Ensuring effective coverage of alternatives means that these do not need to be revisited at the EIA stage<br>• Use of more comprehensive spatial evidence base to provide consistent data sets<br>• Assessment - baseline-led or objectives-led assessment? Integration of wider assessment processes under SEA/SA<br>• Better integration of SEA/SA into the plan making it is intended to report. Examples include use of the environmental evidence base and plan-makers to respond to explicit recommendations made by the SA/SEA | • Clarification of legal terminology and processes;<br>• Making existing data readily available and user friendly;<br>• Making site-specific advice more accessible in one place;<br>• Basing scientific judgements on a clearer framework of evidence;<br>• Allowing for earlier consideration of avoidance or mitigation measures; and<br>• Ensuring earlier expert engagement to increase LPA confidence in scientific evidence. |

| Regime | EIA | SEA | HRA |
|---|---|---|---|
| | | • More effective stakeholder engagement through more accessible information and bespoke events<br>• Implementation – monitoring and tiering<br>• Skills and resources. | |

## 10.2 Short list of priority issues

From the long list there are several recommendations that cut across the three assessment regimes. These comprise an overarching point that supports modification of the existing regimes over a replacement, followed by five potential modifications aimed at improving the environmental assessment regimes: The short list of priority recommendations are the:

- weak case for replacement vs the strong case for modification;
- need for earlier, more integrated, environmental assessment;
- need for a greater focus on monitoring, mitigation and enforcement;
- need for provision of improved skills, information and capacity;
- need to provide more accessible information and more effective stakeholder engagement; and
- need to adapt assessment regimes and techniques to better deliver positive outcomes alongside environmental protection.

## 10.3 The weak case for replacement vs the strong case for modification

**Main issues**

- Stakeholders' support for regime change is minimal.
- No robust evidence has been provided setting out the benefit of regime removal
- Clear evidence reviewed by WSP points towards greater benefits from retaining and modifying EIA, SEA and HRA rather than creating a new regime

**Risks and threats of replacement**

- Multiple assessment frameworks across sectors and disciplines that sit under existing assessment regimes.
- Negates huge wealth of practice and experience (30+ years of practice), resulting in a knowledge gap.
- Transboundary issues with Ireland and other European states, as well as potentially with Devolved Administrations.
- Loss of case law, guidance and continuity.
- Reputational damage, with UK joining a very short list of those without EIA and SEA.
- Loss of certainty and increased risk to developers and stakeholders (from new system).

**Solutions, alternatives and opportunities for modification over replacement**

- Can build on and improve the existing well understood system, and existing practice, building on existing knowledge base.
- Retention of existing framework reduces of transboundary issues, case law and guidance conflict – better continuity.
- Opportunity for international reputational benefit by having an improved environmental assessment regime (as opposed to a new regime).
- Reduced risk to developers and stakeholders from uncertainty surrounding a new regime and the delays to plans and projects that may be incurred.

## 10.4 The need for earlier, more integrated, environmental assessment

**Main issues**

- Environmental assessments are most effective when they start early in a plan/project development life-cycle (i.e. at concept / feasibility / pre-feasibility stage) and are least effective at later stages.
- Many of the criticisms of EIA and SEA (tick box exercise, red tape, procedural focus, not changing outcomes) are related both to late application of the assessment, and peripheral treatment of assessment.
- Many of the benefits of environmental assessment (more sustainable projects/plans, better designs/locations, better public acceptance, improved environmental outcomes) are directly attributed to early and integrated use of the tools.

**Risks and threats of late and non-integrated assessment**

- Consideration of the environment is too late to affect key stages of decision-making, resulting in poor environmental outcomes that incur high mitigation costs at later stage.
- Consideration of the environment as an external influence misses the opportunity to fully embed environmental risks and opportunities in decision-making.
- Back-end inclusion of SEA in particular may be rushed risking information gaps and incomplete assessment.

**Solutions, alternatives and opportunities for earlier, integrated environmental assessment**

- SEA/EIA/HRA to be mandated earlier in the process of project or plan development, with a change of emphasis from environmental assessment of the final project/plan to the consideration of environmental and social issues through project/plan conception, design and development, with iterative assessment feeding back in an integrated manner, balancing environmental, technical and financial considerations to develop an improved proposal.
- Greater emphasis on the influence of the environmental assessment process in plan/project development over its lifecycle, over the delivery of an 'end' product (report), by promoting environmental outcomes as an integral consideration.
- Current practice relies overly non-statutory guidance and enlightened developers and applicants adopting the tools early and integrating them into design and decision making. Government should issue guidance that, *inter alia*, advocates *earlier* use of the tools in the plan/project development process, and requires demonstrable consideration of outcomes.

## 10.5 The need for a greater focus on monitoring, mitigation and enforcement

**Main issues**

- SEA/EIA/HRA are focused on pre-application assessment. Identified effects, following the mitigation hierarchy, are ideally avoided, but where this is not possible, they should be reduced, compensated or offset (in that order of priority). Evidence shows weak application of monitoring conditions to ensure mitigation is both implemented and effective.
- Evidence suggests a lack of resources within statutory bodies and LPAs for monitoring and enforcement, and a developer-led monitoring system that risks conflicts of interests and transparency is low.

**Risks and threats of low post-consent monitoring and enforcement**

- The description of a plan/project's environmental performance (as presented in terms of significant environmental effects in environmental reports) is fundamental to the plan approval/consent award process. Poor monitoring of environmental performance post approval undermines decision making and risks unsustainable development.
- Failure to monitor post approval misses the opportunity to put things right and avoid environmental impacts.
- With no feedback about actual versus predicted environmental performance, assessment regimes cannot be upgraded to ensure more effective process in the future.

**Solutions, alternatives and opportunities for stronger post consent assurance**

- A modified regime should provide strengthened requirements on plans/projects to monitor mitigations and provide remedy where necessary.
- Monitoring should be a standard condition.
- Monitoring should be carried out by an independent third party.
- Enforcement should be used in cases of failure and should be a genuine deterrent to non-compliance.
- Developers/applicants should contribute funds to planning/competent authorities to administer and report on independent monitoring of environmental performance and potential non-compliance.
- LPAs should have strengthened powers to condition and approve mechanisms for monitoring (including remedy clauses) and enforcement where not satisfied.

## 10.6 The need for provision of improved skills, information and capacity.

**Main issues**

- Research has identified a shortage in skills and capacity (staffing) in competent authorities, with limited training provision in England across the regimes (NB Northern Ireland has taken strides in upskilling local authority staff). And limited resource within NGOs is also highlighted.
- Despite multiple non-statutory guidance documents from NGOs and industry bodies in different assessment techniques, government guidance in England and Northern Ireland across the assessment regimes is old and does not reflect current priorities (including many of the issues raised in this report).

**Risks and threats of a low skills and resource base**

- The collective resource capacity and capability deficit is a key contributor to delays, disproportionate reporting and assessment requirements, and poor decision making.
- Lack of definitive and statutory guidance risks increasingly inconsistent approaches both within and across disciplines, and incoherent approaches to assessment.

**Solutions, alternatives and opportunities for improving skills, information and capacity**

- A modified regime should help to secure better provision of expertise across competent authorities and statutory stakeholders to foster proportionate and risk-based decisions based on sound knowledge and judgement.
- Skills, information and capacity can be provided by a combination of measures; for example; national/regional centres of excellence, enhanced training provision, national guidance, knowledge repositories, use of shared (local authority) services (e.g. LGA), and a review of staffing numbers allocated to planning and assessment.

- Additional funding provision for NGOs and competent authorities in carrying out their duties in this regard.
- Any new regime proposed by the government should only be launched alongside a coherent, funded, and well-evidenced national environmental assessment skills and capacity plan to provide sufficient numbers of competent advisors to allow any new environmental assessment regime to function as intended.

## 10.7 The need to provide more accessible information and more effective stakeholder engagement

**Main issues**

- Stakeholder engagement and public participation are core elements of existing regimes. The regimes must also implement requirements of the Aarhus Convention.
- Despite the stated merits of community and public participation, the existing regimes exhibit some failings, including inaccessible information, and prioritisation of business/corporate stakeholders and interest.
- Reporting in particular has become increasingly long and overly technical, deterring understanding and participation by non-experts

**Risks and threats from poor stakeholder engagement**

- Failure to engage widely and effectively misses opportunity to reflect local priorities and get scheme support
- Local involvement can highlight risks and priorities that, if missed, represent risks and delays at later stages or promoting the 'wrong' plans and proposals.

**Key solutions, alternatives and opportunities for improved engagement**

- Potential improvements include greater requirements for public participation, earlier engagement of the public, better and more accessible provision of information, effective grievance mechanisms, and use of improved community consultation for non-NSIPs.
- Stipulation of report quality in terms of size/proportionality and readability as part of wider research initiative exploring improved communication and engagement in environmental assessment.
- Digital information platforms should become the norm for the regimes, either supporting more conventional documents or as singular products.
- The Government should bring forward well-evidenced proposals for securing the objectives of the Aarhus Convention under a modified regime.

## 10.8 The need to consider alternative solutions for delivering environmental betterment over environmental protection

**The issues**

- One of the criticisms aimed at the existing regimes has been the declining state of nature. However, limited evidence has been provided linking the environmental assessment regimes as the cause of this decline. Evidence points towards agriculture, fishing, pollution, urbanisation and climate change as the key factors.
- It is acknowledged, however, that the environmental assessment regimes are generally focused on damage limitation and protection, rather than enhancement. The environmental assessment regimes do not set targets, but assess change to a baseline and monitor against existing laws/requirements, so this is unsurprising.

**Risks and threats from focusing on protection over betterment**

- The current assessment regimes (EIA and HRA at least) affect a very small proportion of land use influences, so continuation of this, while still affecting some of the bigger developments, misses impacting other prevailing causes of environmental degradation
- Assessing change against a baseline is at odds with the emerging Government prioritisation for environmental improvement (notably its Environmental Improvement Plan (EIP) 2023). Continuation of the current approach will fail to support this changing approach.

**Key solutions, alternatives and opportunities**

- A modified regime does not need to drastically amend the environmental assessment regimes to change the focus from protection to enhancement. Separate legislation or policy can set targets, such as in NPS, NPPF, Environment Act, etc, which once in force, would be automatically picked up by the existing environmental assessment regimes, as material considerations/requirements, and reported within the existing environmental assessment regimes.
- The Government could look at alternative methods to set outcomes, including use of the EIP, that would have the same effect of requiring outcomes, without replacing existing environmental assessment regimes. These would need to cascade to local levels to ensure relevance at different scales of application.

## 10.9 Creating a modern assessment framework

This comprehensive review of the three environmental assessment regimes – SEA, EIA and HRA – in England and Northern Ireland encapsulates some strong misgivings about the way that environmental assessment works and how it delivers the outcomes it is intended to. But the majority of these misgivings centre on the way the regimes are now implemented rather than on the regulatory frameworks that prescribe them. Having been in operation, in the case of EIA, for over 30 years it is perhaps inevitable that practice has wavered from what may have been intended or, more likely, foreseen when the processes were first conceived.

Revision of the regulatory frameworks has varied between the regimes. EIA has been 'upgraded' on multiple occasions to improve its application through legislation and as a practical tool. The

consequences of its most recent iteration in 2017 are yet to be fully determined, though much of the feedback from this study would suggest there is still much to do, including better post consent assurance that the 2017 Regulations sought to address through clearer demands for monitoring. SEA Regulations remain unchanged in almost 20 years, and this is perhaps central to SEA being one of the more critically perceived of the three. None of the regimes, in England and Northern Ireland, are supported by up-to-date statutory guidance, and this has no doubt left working practices to follow their own path to varying degrees and with varying results.

A new assessment regime, as proposed by the LURB, provides a great opportunity to address the shortcomings identified in this study. Certainly the opportunity to use environmental assessment to drive *improvements* in the environment is one that must be grasped. The current regimes have not achieved this, as was never their intent. They have however, been fundamental to ensuring that environmental issues remain central to strategic decisions on land use planning. That they could do this more effectively seems certain, but without these systems of environmental protection in place, the environmental degradation that remains such a pressing challenge would unquestionably have been worse. Any future system for environmental assessment that did not build in the evident strengths of its predecessors, and learn from their weaknesses, would be unconscionable.

This report shows there is strong support, from both research and stakeholders, for improving environmental assessment to aid the achievement of environmental outcomes. There is a notable lack of enthusiasm to see it removed and replaced in its entirety. The specific modifications that would deliver better outcomes are clearly set out here. They centre around improved efficiencies and synergies, better engagement, increased skills and resources, and a clearer focus on environmental gain. These are evidently supported across the range of organisations involved in this study, and any new approach that builds on this enthusiasm would have a significant chance of success.

# Appendix A

## List of Consultees

# TABLE A1: LIST OF STAKEHOLDERS/CONSULTEES

| Stakeholder / Consultee | Type | Qualitative Questionnaire | Interview | |
|---|---|---|---|---|
| | | | Led by OEP | Led by WSP |
| **ADEPT** | Rep Body | - | - | ✓ |
| **Aldersgate Group** | Rep Body | - | - | ✓ |
| **Applied Ecological Services** | Private Company | ✓ | - | - |
| **Armagh City, Banbridge and Craigavon Borough Council** | Public Authority | ✓ | - | - |
| **Associated British Ports** | Private Company | ✓ | - | - |
| **Association of Inshore Fisheries and Conservation Authorities** | Public Authority | ✓ | - | - |
| **Association of Local Government Ecologists** | Rep Body | - | - | ✓ |
| **Bat Conservation Trust** | Rep Body | ✓ | ✓ | - |
| **BDB Pitmans LLP** | Private Company | ✓ | - | - |
| **Broadway Initiative** | Rep Body | - | - | ✓ |
| **Campaign for National Parks** | Rep Body | ✓ | - | - |
| **Corpus Christi Oxford** | Academic | - | - | ✓ |
| **Council for Nature Conservation and the Countryside** | Council for Nature Conservation and the Countryside | ✓ | ✓ | - |
| **Country Land and Business Association (CLA)** | Rep Body | ✓ | - | - |
| **DTA Ecology** | Private Company | ✓ | - | - |
| **Ecus Ltd** | Private Company | ✓ | - | - |
| **Electricity Network Operator** | Public Authority | ✓ | - | - |
| **Environment Agency** | Public Authority | ✓ | - | ✓ |
| **Environmental Assessment and Management Research Centre, University of Liverpool** | Academic | ✓ | - | - |

| | | | | |
|---|---|---|---|---|
| **Fermanagh and Omagh District Council** | Public Authority | ✓ | - | - |
| **Forestry Commission** | Forestry Commission | ✓ | - | - |
| **Fothergill Training & Consulting Ltd** | Private Company | ✓ | - | - |
| **Friends of the Earth NI** | eNGO | ✓ | - | - |
| **Greater London Authority** | Public Authority | ✓ (x2)* | - | - |
| **Greener UK** | eNGO | - | - | ✓ |
| **High Speed Two (HS2) Limited** | Private Company | ✓ (x2)* | - | - |
| **Historic England** | Public Authority | ✓ | - | ✓ |
| **Homes England** | Public Authority | ✓ | - | - |
| **Humber Nature Partnership** | Rep Body | - | - | ✓ |
| **Joint Nature Conservation Committee** | Rep Body | ✓ | - | - |
| **Local Government Association** | Rep Body | - | - | ✓ |
| **Local Planning Authorities Northern Ireland** | Public Authority | - | - | ✓ |
| **Loughs Agency** | Private Company | ✓ | - | - |
| **Marine Management Organisation** | Public Authority | ✓ | - | ✓ |
| **Mid and East Antrim council** | Public Authority | ✓ | - | - |
| **Mineral Products Association/British Marine Aggregate Producers Association** | Public Authority | ✓ | - | - |
| **National Association of Local Councils** | Public Authority | ✓ | - | - |
| **National Farmers Union** | Rep Body | ✓ (x2)* | - | ✓ |
| **National Highways** | Public Authority | ✓ | - | - |
| **National Infrastructure Planning Association (NIPA)** | Public Authority | ✓ | - | - |
| **Natural England** | Public Authority | ✓ | - | ✓ |
| **NIE Networks** | Public Authority | ✓ | - | - |
| **NIEA** | Public Authority | ✓ | - | - |
| **NIEL Freshwater Task Force/ Ulster Angling Federation** | Public Authority | ✓ | - | - |
| **North Lincolnshire Council** | Public Authority | ✓ | - | - |

| | | | | |
|---|---|---|---|---|
| **North York Moors National Park Authority** | Public Authority | ✓ | - | - |
| **Northern Powergrid** | Public Company | ✓ | - | - |
| **Northwest & North Wales Coastal Group** | Public Authority | ✓ | - | - |
| **Plantlife** | eNGO | - | - | ✓ |
| **Plymouth City Council** | Public Authority | ✓ | - | - |
| **Royal Society for the Protection of Birds** | eNGO | ✓ | - | ✓ |
| **Royal Town Planning Institute** | Rep Body | - | - | ✓ |
| **Royal Town Planning Institute** | Public Authority | ✓ (x2)* | - | - |
| **Save Knock Iveagh** | eNGO | ✓ | - | - |
| **Scottish and Southern Electricity Networks** | Public Company | ✓ | - | - |
| **Suffolk County Council** | Public Authority | ✓ | - | - |
| **The Environmental Gathering Group** | eGNO | ✓ | - | - |
| **The Wildlife Trusts** | eGNO | ✓ | - | ✓ |
| **Town and Country Planning Association** | Rep Body | ✓ | - | - |
| **Town Legal LLP** | Private Company | ✓ | - | - |
| **UK Environmental Law Association** | eGNO | ✓ | - | - |
| **UK Major Ports Group** | Rep Body | ✓ | - | - |
| **Ulster Angling Federation** | Rep Body | ✓ | - | - |
| **Ulster Farmers Union (UFU)** | Rep Body | ✓ | - | ✓ |
| **University College London** | Academic | - | - | ✓ |
| **University of Liverpool** | Academic | - | - | ✓ |
| **Warwickshire County Council** | Public Authority | - | - | ✓ |
| **WildFish** | Rep Body | ✓ | - | - |
| **Wildlife and Countryside Link** | Rep Body | ✓ (x2)* | - | ✓ |
| **Woodland Trust** | Rep Body | ✓ | - | ✓ |

*'x' equates to the number of questionnaire responses per stakeholder.

We also received responses to our practitioners survey from 123 individuals.

# TABLE A2: LIST OF GOVERNMENT DEPARTMENT ENGAGEMENT

| Government Department | Interview | Information provided to OEP |
|---|---|---|
| **Department for Business, Energy and Industrial Strategy** | No | No |
| **Department for Communities** | ✓ | No information held. |
| **Department for Infrastructure** | ✓ | ✓ |
| **Department for Environment, Food and Rural Affairs** | No | No |
| **Department for Levelling Up, Housing and Communities** | No | No |
| **Department for Transport** | No | ✓ |
| **Department of Agriculture, Environment and Rural Affairs NI** | No | ✓ |

N.B. At the time of writing this report, the OEP is still waiting to receive the information requested from the Government departments highlighted in yellow.

# Appendix B

## Practitioners' Survey

# The OEP - Survey on EIA, SEA and HRA Regimes

## 1. About the OEP

The Office for Environmental Protection (OEP) is a public body created under the Environment Act 2021. We protect and improve the environment by holding government and other public authorities to account. Our work covers England, devolved matters in Northern Ireland, and reserved matters across the UK.

We are an independent, non-departmental public body. Whilst we are funded by the Department for Environment, Food and Rural Affairs (Defra) in England and the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland, we pursue our objectives and implement our functions impartially and separately from government. Our judgements are our own, formed independently.

You can find out more about us on our website.

**Environmental assessment regimes (EIA, SEA and HRA)**

The UK Government has introduced legislation (the Levelling Up and Regeneration Bill) to allow for the UK-wide replacement of Environmental Impact Assessments (EIAs) and Strategic Environmental Assessments (SEAs) and, in certain situations, Habitats Regulations Assessments (HRAs). The Environment Act 2021 also includes powers to amend HRAs in England. In addition, the UK Government has recently introduced the Retained EU Law (Revocation and Reform) Bill which would provide ministers and Northern Ireland departments (and other devolved authorities) with powers to revoke or amend EU-derived laws, including those for EIA, SEA and HRA.

The OEP has commissioned consultants WSP to undertake a review of the implementation of existing environmental assessment regimes (EIA, SEA and HRA), in England and Northern Ireland. We want to explore how effective the regimes have been on the ground, and establish an independent, evidence-based view on what works well and what might be improved. We intend to use the findings of this work to produce a report that will be published and laid before Parliament and the Northern Ireland Assembly. The findings may also be used to inform future work. The UK Government and the NI Executive are required to respond to our report and lay their response before Parliament and the Northern Ireland Assembly respectively.

**Our report will provide independent evidence, analysis and recommendations for government (including ministers and officials in Defra and DAERA), Parliament, the Northern Ireland Assembly and others to consider. Our objective is to influence any changes to environmental law, or its implementation, so that they are well designed and coherent, enabling positive outcomes for the environment and people's health and wellbeing.**

**Your input**

We are contacting you as someone with expertise in EIA, SEA or HRA. We would like to consider any relevant information you wish to provide based on your experience. We would be grateful if you could complete this questionnaire by **3 January 2023**. There may also be further opportunities for you to input into this work later if you so wish.

The questionnaire should take around 10 minutes to complete.

## 2. About you

We will identify you in our report either as a practitioner or by the stakeholder category you select in Q2.

## 1. Your details

| | Answer Choices | | |
|---|---|---|---|
| 1 | Name | | |
| | | | |
| 2 | Email | | |
| | | | |
| 3 | Organisation | | |

## 2. Which of the following best describes who you work for?

| | Answer Choices | | | |
|---|---|---|---|---|
| 1 | Public authority, including regulator and other statutory body | | | |
| 2 | Local planning authority | | | |
| 3 | Industrial and business organisation | | | |
| 4 | Non-industrial representative body | | | |
| 5 | Environmental NGO | | | |
| 6 | Legal organisation | | | |
| 7 | Academic institution | | | |
| 8 | Consultancy and contractor | | | |
| 9 | Government department | | | |
| 10 | Other (please specify): | | | |

## 3. Principal interest: [Please select all that apply]

| | Answer Choices | | | |
|---|---|---|---|---|
| 1 | EIA | | | |
| 2 | SEA | | | |
| 3 | HRA | | | |

## 4. What is your level of expertise with the following?

| | | Expert (10+ years) | Sound knowledge | Some knowledge |
|---|---|---|---|---|
| 1 | EIA | | | |
| 2 | SEA | | | |
| 3 | HRA | | | |

## 3. Environmental Impact Assessment (Not interested in EIA? Click next page)

| 5. How effective do you believe EIA to be in securing environmental protection? | | | | | |
|---|---|---|---|---|---|
| [Please move the point on the slider to your perceived % of effectiveness] | | | | | |

| 6. If you believe changes are needed to the current EIA regime, what measures would you propose?<br>[Please select your top four improvements] |
|---|
| **Choices:** |
| Stronger regulation |
| Simpler regulation |
| Provision of detailed guidance |
| Agreed standards for assessment processes |
| Improved provision for training, learning and professional development |
| Greater or dedicated resources for regulators |
| Better access to information and data |
| More effective early scoping to identify key issues and likely significant effects |
| Early consideration of environment in scheme design |
| Better links with any preceding SEA |
| More public engagement and participation |
| Stronger post consent monitoring, including provision for effective enforcement and remedy |
| Better monitoring and feedback of actual impacts to inform future EIAs |
| Increased focus on enhancement, recovery and improvement |
| Establishment of a national impact assessment body to co-ordinate guidance delivery and skills provision |

| 7. Please use the box below to explain your selection or if there are other changes you'd wish to see.<br>[50 words max] | | |
|---|---|---|
| | | |

| 8. Government is proposing to replace the current EIA regime. Do you believe the regime should be...? | | | | |
|---|---|---|---|---|
| **Answer Choices** | | | | |
| 1 | Replaced | | | |
| 2 | Modified | | | |
| 3 | Retained | | | |

| 9. Which aspects of the EIA regime, if any, would you like to see retained? [30 words max] | | |
|---|---|---|
| | | |

## 4. Strategic Environmental Assessment (Not interested in SEA? Click next page)

| 10. How effective do you believe SEA to be in securing environmental protection? | | | | | |
|---|---|---|---|---|---|
| [Please move the point on the slider to your perceived % of effectiveness] | | | | | |

| 11. If you believe changes are needed to the current SEA regime, what measures would you propose? [Please select your top four improvements] |
|---|
| **Choices:** |
| Stronger regulation |
| Simpler regulation |
| Provision of detailed guidance |
| Agreed standards for assessment processes |
| Improved provision for training, learning and professional development |
| Better access to information and data |
| More effective early scoping to identify key issues and likely significant effects |
| Early consideration of environment in plans and programmes |
| Better links with subsequent project EIA |
| More public engagement and participation |
| Stronger post consent monitoring, including provision for effective enforcement and remedy |

| |
|---|
| Increased focus on enhancement, recovery and improvement |

| **12. Please use the box below to explain your selection or if there are other changes you'd wish to see.<br>[50 words max]** | | |
|---|---|---|
| | | |

| **13. Government is proposing to replace the current SEA regime.<br>Do you believe the regime should be...?** | | | | |
|---|---|---|---|---|
| **Answer Choices** | | | | |
| 1 | Replaced | | | |
| 2 | Modified | | | |
| 3 | Retained | | | |

| **14. Which aspects of the SEA regime, if any, would you like to see retained?<br>[30 words max]** | | |
|---|---|---|
| | | |

## 5. Habitats Regulations Assessment (Not interested in HRA? Click next page)

| **15. How effective do you believe HRA to be in securing protection of European designated sites?** | | | | | |
|---|---|---|---|---|---|
| Please move the point on the slider to your perceived % of effectiveness | | | | | |

| **16. How effective do you believe HRA to be in securing protection of European Protected Species?** | | | | | |
|---|---|---|---|---|---|
| Please move the point on the slider to your perceived % of effectiveness | | | | | |

| **17. If you believe changes are needed to the current HRA regime, what measures would you propose?<br>[Please select your top four improvements]** |
|---|
| **Choices:** |
| Stronger regulation |

| |
|---|
| Simpler regulation |
| Provision of detailed guidance |
| Agreed standards for assessment processes |
| Improved provision for training, learning and professional development |
| Greater or dedicated resources for regulators |
| Better access to information and data |
| More effective early scoping e.g. to agree evidence plans |
| Single assessment process e.g. integration with EIA/SEA regimes |
| Provision for individual judgements by individual case officers |
| Increased access to strategic solutions to offset impacts |
| Stronger post consent monitoring, including provision for effective enforcement and remedy |
| Better monitoring and feedback of actual impacts to inform future HRAs |
| Increased focus on enhancement, recovery and improvement |

| **18. Please use the box below to explain your selection or if there are other changes you'd wish to see.<br>[50 words max]** | | |
|---|---|---|
| | | |

| **19. Government has proposed to make changes to the current HRA regime.<br>Do you believe the HRA regime should be...?** | | | | |
|---|---|---|---|---|
| **Answer Choices** | | | | |
| 1 | Replaced | | | |
| 2 | Modified | | | |
| 3 | Retained | | | |

| **20. Which aspects of the HRA regime, if any, would you like to see retained?<br>[30 words max]** | | |
|---|---|---|
| | | |

## 6. Further information

| 21. If you have any other thoughts or comments please type these below. [100 words max] | | |
|---|---|---|
| | | |

| 22. Thank you for completing this survey. Would you be happy for us to contact you for further discussion? | | | | |
|---|---|---|---|---|
| **Answer Choices** | | | | |
| 1 | Yes | | | |
| 2 | No | | | |

## 7. Data protection

The information you provide, including personal data, may be published or disclosed in accordance with the access to information regimes. These are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances.

If you want the information that you provide to be treated as confidential, please be aware that as the OEP is bound by FOIA and the EIRs we may be obliged to disclose all or some of the information you provide.
In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential (OEPenquiries@wsp.com).
If we receive a request for disclosure of the information, we will take full account of your explanation. However, we cannot give an assurance that confidentiality can be maintained in all circumstances since we must consider this case-by-case in accordance with the relevant legal provisions.

We will hold and process any personal data you provide in accordance with the privacy notice on our website.

# Appendix C

## Organisational Survey

# The OEP – Organisational Survey on EIA, SEA and HRA Regimes

## 1. About the OEP

The Office for Environmental Protection (OEP) is a public body created under the Environment Act 2021. We protect and improve the environment by holding government and other public authorities to account. Our work covers England, devolved matters in Northern Ireland, and reserved matters across the UK.

We are an independent, non-departmental public body. Whilst we are funded by the Department for Environment, Food and Rural Affairs (Defra) in England and the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland, we pursue our objectives and implement our functions impartially and separately from government. Our judgements are our own, formed independently.

You can find out more about us on our website.

**Environmental assessment regimes (EIA, SEA and HRA)**

The UK Government has introduced legislation (the Levelling Up and Regeneration Bill) to allow for the UK-wide replacement of Environmental Impact Assessments (EIAs) and Strategic Environmental Assessments (SEAs) and, in certain situations, Habitats Regulations Assessments (HRAs). The Environment Act 2021 also includes powers to amend HRAs in England. In addition, the UK Government has recently introduced the Retained EU Law (Revocation and Reform) Bill which would provide ministers and Northern Ireland departments (and other devolved authorities) with powers to revoke or amend EU-derived laws, including those for EIA, SEA and HRA.

The OEP has commissioned consultants WSP to undertake a review of the implementation of existing environmental assessment regimes (EIA, SEA and HRA), in England and Northern Ireland. We want to explore how effective the regimes have been on the ground, and establish an independent, evidence-based view on what works well and what might be improved. We intend to use the findings of this work to produce a report that will be published and laid before Parliament and the Northern Ireland Assembly. The findings may also be used to inform future work. The UK Government and the NI Executive are required to respond to our report and lay their response before Parliament and the Northern Ireland Assembly respectively.

**Our report will provide independent evidence, analysis and recommendations for government (including ministers and officials in Defra and DAERA), Parliament, the Northern Ireland Assembly and others to consider. Our objective is to influence any changes to environmental law, or its implementation, so that they are well designed and coherent, enabling positive outcomes for the environment and people's health and wellbeing.**

**Your input**

We are contacting you as someone with expertise in EIA, SEA or HRA. We would like to consider any relevant information you wish to provide based on your experience. We would be grateful if you could complete this questionnaire by **3 January 2023**. There may also be further opportunities for you to input into this work later if you so wish.

The questionnaire should take around 20-30 minutes to complete.

## 2. About you

We will identify you in our report either by your organisation or by the stakeholder category you select in Q2.

| 1. Your details | | | |
|---|---|---|---|
| **Answer Choices** | | | |
| 1 | Name | | |
| | | | |
| 2 | Email | | |
| | | | |
| 3 | Organisation | | |
| | | | |

| 2. Which of the following best describes your organisation? | | | | |
|---|---|---|---|---|
| **Answer Choices** | | | | |
| 1 | Public authority, including regulator and other statutory body | | | |
| 2 | Local planning authority | | | |
| 3 | Industrial and business organisation | | | |
| 4 | Non-industrial representative body | | | |
| 5 | Environmental NGO | | | |
| 6 | Legal organisation | | | |
| 7 | Academic institution | | | |
| 8 | Consultancy and contractor | | | |
| 9 | Other (please specify): | | | |

| 3. Principal interest:<br>[Please select all that apply] | | | | |
|---|---|---|---|---|
| **Answer Choices** | | | | |
| 1 | EIA | | | |
| 2 | SEA | | | |
| 3 | HRA | | | |

## 3. Environmental Impact Assessment (Not interested in EIA? Click next page)

| 4. How effective do you believe EIA to be in securing environmental protection? | | | | | |
|---|---|---|---|---|---|
| [Please move the point on the slider to your perceived % of effectiveness] | | | | | |

| 5. Please explain the reason for your answer. | | |
|---|---|---|
| | | |

| 6. How effective do you believe EIA to be in securing positive environmental outcomes? | | | | | |
|---|---|---|---|---|---|
| [Please move the point on the slider to your perceived % of effectiveness] | | | | | |

| 7. Please explain the reason for your answer, and where appropriate, include the environmental outcome you believe is secured. | | |
|---|---|---|
| | | |

## 4. EIA regime (cont.)

| 8. Government is proposing to replace the current EIA regime. Do you believe the regime should be...? | | | | |
|---|---|---|---|---|
| **Answer Choices** | | | | |
| 1 | Replaced | | | |
| 2 | Modified | | | |
| 3 | Retained | | | |

| 9. What aspects of the current EIA regime would you wish to be removed or replaced and why? [100 words max] | | |
|---|---|---|
| | | |

| 10. What aspects of the current EIA regime would you wish to be retained and why? [100 words max] | | |
|---|---|---|
| | | |

| 11. What new or amended aspects would you like to see included in any new or modified EIA regime? [100 words max] | | |
|---|---|---|
| | | |

| 12. If you have any other thoughts or comments on EIA, please type these below. | | |
|---|---|---|
| | | |

## 5. Strategic Environmental Assessment (Not interested in SEA? Click next page)

| 13. How effective do you believe SEA to be in securing environmental protection? | | | | | |
|---|---|---|---|---|---|
| [Please move the point on the slider to your perceived % of effectiveness] | | | | | |

| 14. Please explain the reason for your answer. | | |
|---|---|---|
| | | |

| 15. How effective do you believe SEA to be in securing positive environmental outcomes? | | | | | |
|---|---|---|---|---|---|
| [Please move the point on the slider to your perceived % of effectiveness] | | | | | |

| 16. Please explain the reason for your answer, and where appropriate, include the environmental outcome you believe is secured. | | |
|---|---|---|
| | | |

## 6. SEA regime (cont.)

| 17. Government is proposing to replace the current SEA regime. Do you believe the regime should be...? | | | | |
|---|---|---|---|---|
| **Answer Choices** | | | | |
| 1 | Replaced | | | |
| 2 | Modified | | | |
| 3 | Retained | | | |

| 18. What aspects of the current SEA regime would you wish to be removed or replaced and why? [100 words max] | | |
|---|---|---|
| | | |

| 19. What aspects of the current SEA regime would you wish to be retained and why? [100 words max] | | |
|---|---|---|
| | | |

| 20. What new or amended aspects would you like to see included in any new or modified SEA regime? [100 words max] | | |
|---|---|---|
| | | |

| 21. If you have any other thoughts or comments on SEA, please type these below. | | |
|---|---|---|
| | | |

## 7. Habitats Regulations Assessment (Not interested in HRA? Click next page)

| 22. How effective do you believe HRA to be in securing protection of European designated sites? | | | | | |
|---|---|---|---|---|---|
| Please move the point on the slider to your perceived % of effectiveness | | | | | |

| 23. Please explain the reason for your answer. | | |
|---|---|---|
| | | |

| 24. How effective do you believe HRA to be in securing protection of European Protected Species? | | | | | |
|---|---|---|---|---|---|
| Please move the point on the slider to your perceived % of effectiveness | | | | | |

| 25. Please explain the reason for your answer. | | |
|---|---|---|
| | | |

| 26. How effective do you believe HRA to be in securing positive environmental outcomes? | | | | | |
|---|---|---|---|---|---|
| Please move the point on the slider to your perceived % of effectiveness | | | | | |

| 27. Please explain the reason for your answer and, where appropriate, include the environmental outcome you believe is secured. | | |
|---|---|---|
| | | |

## 8. HRA regime (cont.)

| 28. Government has proposed to make changes to the current HRA regime. Do you believe the regime should be...? | | | | |
|---|---|---|---|---|
| **Answer Choices** | | | | |
| 1 | Replaced | | | |
| 2 | Modified | | | |
| 3 | Retained | | | |

| 29. What aspects of the current HRA regime would you wish to be removed or replaced and why? [100 words max] | | |
|---|---|---|
| | | |

| 30. What aspects of the current HRA regime would you wish to be retained and why? [100 words max] | | |
|---|---|---|
| | | |

| 31. What new or amended aspects would you like to see included in any new or modified HRA regime? [100 words max] | | |
|---|---|---|
| | | |

| 32. If you have any other thoughts or comments on HRA, please type these below. | | |
|---|---|---|
| | | |

## 9. Further information

| 33. If you have any other thoughts or comments please type these below. [100 words max] | | |
|---|---|---|
| | | |

| 34. Thank you for completing this survey. Would you be happy for us to contact you for further discussion?<br><br>If you have any further queries, please contact Emma Hawthorne (emma.hawthorne@theOEP.org.uk) or OEPenquiries@wsp.com | | | |
|---|---|---|---|
| **Answer Choices** | | | |
| 1 | Yes | | |
| 2 | No | | |

## 10. Data protection

The information you provide, including personal data, may be published or disclosed in accordance with the access to information regimes. These are primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances.

If you want the information that you provide to be treated as confidential, please be aware that as the OEP is bound by FOIA and the EIRs we may be obliged to disclose all or some of the information you provide.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential (OEPenquiries@wsp.com).
If we receive a request for disclosure of the information, we will take full account of your explanation. However, we cannot give an assurance that confidentiality can be maintained in all circumstances since we must consider this case-by-case in accordance with the relevant legal provisions.

We will hold and process any personal data you provide in accordance with the privacy notice on our website.

| **35. Public authorities**<br><br>**Information that we receive from public authorities under their duty of cooperation with the OEP (section 27 Environment Act 2021) will be treated as confidential unless an exemption under section 43 applies. For this reason, if you are responding on behalf of a public authority, please confirm that consent is given for the OEP to disclose your information in our report.**<br><br>**Do you consent to your organisation's information being disclosed by the OEP?** | | | | |
|---|---|---|---|---|
| **Answer Choices** | | | | |
| 1 | Yes | | | |
| 2 | No | | | |
| 3 | N/A (not a public authority) | | | |
| 4 | Please explain if you are giving consent to disclosure in respect of some elements but not others | | | |

| **36. Call for evidence**<br><br>**Are there further matters related to EIA, SEA and HRA that you would like to tell us about, for example in a workshop or in a bilateral discussion?** | | | | |
|---|---|---|---|---|
| **Answer Choices** | | | | |
| 1 | Yes | | | |
| 2 | No | | | |

## 11. Call for evidence

If you have recent written material of a factual or analytical nature on certain aspects of the subject we would like to receive, or be informed of, this material.

These aspects are:

1. how well the existing EIA, SEA and HRA policy, legislation, and operational arrangements to implement them work in practice
2. how the current EIA, SEA and HRA policy, legislation and operational arrangements could be improved, and
3. what any new environmental assessment policy, legislation and operational arrangements intended to replace EIA, SEA or HRA should aim to achieve, and how.

If you have material that fits this description, and that you would like us to consider in this project, please send it to OEPenquiries@wsp.com .