

# Levelling Up & Regeneration Bill: Briefing for Commons Committee

## Environmental Outcomes Reports

### 05.09.2022

#### Introduction

This briefing is on behalf of the Better Planning Coalition, representing 29 organisations across the housing, planning, environmental, transport and heritage sectors. It covers Part 5 of the Bill on Environmental Outcomes Reports (clauses 116 to 130).

Part 5 of the Bill is a cause for significant concern, as it gives the Government extensive powers to change environmental protections in the future, with limited scrutiny. These clauses open a door to environmental regression and significant amendments are required to ensure that this part of the Bill does not weaken important environmental protections, setting back both nature's recovery and the achievement of net zero. We set out below **our strong support for amendments 173 to 182** tabled by Matthew Pennycook MP, which would deliver these safeguards.<sup>1</sup>

#### Environmental Outcomes Reports

The Environmental Outcomes Reports regime proposed by Part 5 of the Bill is intended to replace Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA)<sup>2</sup>, the processes currently used in planning to assess the impacts of projects, plans and programmes on nature and climate.

Together, SEA and EIA inform good decision-making to ensure species, habitats, landscape character and cultural heritage are taken into account in the land use planning system. They can require on-site assessment of the effects of development on nature, direct development away from nature-rich sites, reduce harm to important habitats, inform mitigation measures, and, as a last resort, inform compensation measures for environmental impacts.

Details on how the replacement regime will operate are scarce in the Bill, with clauses 116 to 130 just setting out a skeleton framework for a new system whereby:

- The Secretary of State will set specified environmental protection outcomes.
- Specified plans and projects will have to prepare reports demonstrating how they will impact on these outcomes (to be known as Environmental Outcomes Reports, EORs).
- EORs will be taken into account in consent decisions.
- Anything done in relation to an EOR can override requirements from existing environmental protections.

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<sup>1</sup> [https://publications.parliament.uk/pa/bills/cbill/58-03/0006/amend/levelling\\_rm\\_pbc\\_0902.pdf](https://publications.parliament.uk/pa/bills/cbill/58-03/0006/amend/levelling_rm_pbc_0902.pdf)

<sup>2</sup> See the explanatory notes for the Bill, on page 17 (para 5):

<https://publications.parliament.uk/pa/bills/cbill/58-03/0006/en/220006en.pdf>

Beyond this basic structure, the detail of how the EOR regime will work, including which projects and plans it will apply to and what outcomes will be set, will be brought forward as secondary legislation. Deferring the detail of such a significant environmental policy to regulations, which will be subject to a lesser degree of parliamentary scrutiny than the Bill itself, without opportunity for amendment by MPs and peers, is highly problematic policy making.

The scant details on the face of the Bill and the broad enabling powers to amend existing legislation are concerning. Part 5 of the Bill contains nothing to prevent feasible future weakening of protections for:

Nature: The Bill gives the Secretary of State the power to set environmental protection outcomes at a national level, which plans and projects can then contribute to instead of following requirements from existing protections. This substitution of protection requirements for outcome contributions could cause significant damage to nature. For example, a project could be consented despite damaging a site protected for nature, on the basis that the project would contribute to a nationally set environmental protection outcome. It is particularly worrying that the Habitats Regulations, which prevent plans and projects that would affect our most important nature sites, are not exempt from this potential substitution of protections.

Climate: Part 5 of the Bill makes no reference to climate, giving no assurance that the environmental outcomes set by the Secretary of State will include contributions to net zero. This absence is in contrast to the EIA regime to be scrapped by the Bill, which requires a description of the project's likely significant effects on climate (alongside other environmental impacts).

While there are potential positives that could arise from an outcomes-based approach, and the inclusion of heritage and landscape is welcome, Part 5 of the Bill amounts to the scrapping of well understood systems of environmental assessment for an entirely new process, with no safeguards against possible nature and climate weakening within it. It is not sufficient to rely on the word of current Ministers that they have no intention of weakening climate and nature protections – these safeguards need to be on the face of the Bill from the start.

Without significant amendment, this part of the Bill could open the door to further ecological decline and climate change. We strongly support the below amendments, tabled by Matthew Pennycook MP, to ameliorate the worse impacts of these clauses:

## **Amendments we strongly support**

### **Amendment 173 (Introducing climate safeguards)**

This amendment would require the environmental protection outcomes set by the Secretary of State to relate to the protection of the climate from the effects of human activity, as well to the protection of the natural environment, cultural heritage and the landscape. This would ensure that environmental outcomes cover climate (as well as nature, cultural heritage and the landscape), addressing the omission of climate from the EOR regime proposed by the Bill.

### **Amendment 174 (Introducing nature and climate safeguards)**

This amendment would require the Secretary of State to have regard to relevant environmental commitments when setting environmental protections. Currently the Bill only requires the Secretary of State to consider the Environmental Improvement Plan, currently 25 Year Plan for the Environment (2018). This is a start, but omits crucial subsequent environmental commitments, as well climate ones. The amendment would require the full range of relevant environmental commitments to be considered when setting environmental outcomes, including:

- Crucial parts of the Environment Act 2021, including the apex target to halt the decline in species abundance by 2030.
- The commitment to lower the net UK carbon account as required under section 1 of the Climate Change Act 2008.

### **Amendment 175 (Requiring site surveys for all EORs)**

This amendment would ensure that all EORs include a site survey. This would be a helpful requirement, placing a crucial environmental detail on the face of the Bill, rather than trusting that it will be included in regulations. Environmental assessment is hugely improved by the on-the-ground analysis and site surveys should be an essential feature of each and every EOR.

### **Amendment 176 (Strengthening non regression)**

As drafted, clause 120 fails to provide a robust safeguard against EOR regulations being used to weaken environmental protections. The clause gives the Secretary of State the power to sidestep existing protections when making regulations, as long they are satisfied that the *“overall level of environmental protection”* will not be less than before.

The lack of specificity in this phrase has the potential to cover a range of harms. As Wildlife & Countryside Link CEO Richard Benwell said to the Bill committee when giving evidence on 23.06.22: *“We must keep in place the rules that protect the particular, the peculiar and the exciting at the local level that matter [and are] important [to] people, and those local populations of species and habitats that are so important. Otherwise, we get into a runaway offsetting mentality where the assurance that things will be better overall can be taken to obscure a lot of harm to the natural environment at the local level.”*<sup>3</sup>

There is a real risk that claimed contributions to broad environmental protection outcomes at an *“overall level”* could be used to license specific environmental harms on the ground.

The amendment would guard against this by removing the *“overall level”* wording which opens the door to regression, instead requiring the Secretary of State to demonstrate that EOR regulations will not diminish any protections that apply at the time of the Act’s passage into law. This provides a tighter, stricter non regression test.

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<sup>3</sup> [https://hansard.parliament.uk/commons/2022-06-23/debates/38f2e87a-2fd1-46ac-8f20-674ef0d9bf8c/Levelling-UpAndRegenerationBill\(FourthSitting\)](https://hansard.parliament.uk/commons/2022-06-23/debates/38f2e87a-2fd1-46ac-8f20-674ef0d9bf8c/Levelling-UpAndRegenerationBill(FourthSitting))

### **Amendment 177 (International obligations)**

This amendment would strengthen a weak assurance in clause 120, which states that EOR regulations must not undermine certain environmental international obligations of the United Kingdom (namely the assessment of the environmental impact of relevant plans and relevant consents). This is a start, but EOR regulations should not undermine any of the UK's environmental international obligations. The amendment broadens the scope of the assurance to include all environmental international obligations

### **Amendments 178, 179 and 180 (addressing regression and devolution competence threats)**

Clause 121 as drafted requires UK Government Ministers to consult with Ministers of devolved Governments, should EOR regulations fall within a devolved Government's competence. This is a weak requirement, which could see EOR regulations imposed on devolved nations without the consent of their Governments. This provides a further risk of environmental regression, should EOR regulations impose weaker requirements than requirements put in place by the devolved Government.

In August 2022 the Environmental Links UK (ELUK) network, representing the UK's largest environmental coalitions, wrote to the UK Government to express their concern at the regression risk posed by Part 5 of the Bill, and its threat to the competence of devolved Governments.<sup>4</sup> The Scottish Government has expressed its opposition to the Bill on these grounds.<sup>5</sup>

Amendments 178, 179 and 180 would address these threats by requiring Ministers to secure the consent of a devolved Government before setting an EOR regulations within the competence of that Government.

### **Amendments 181 and 182 (protecting the Habitats Regulations)**

The Habitats Regulations are the first line of defence for our most precious and vulnerable habitats and species. They provide a very high level of protection, requiring applicants proposing a development affecting a Habitats Regulation site to first prove that mitigation is in place to avoid significant harm, or that there are imperative overriding public interest reasons to proceed and that compensatory measures are in place.

It is therefore concerning that clause 127 explicitly allows the EOR regime to supersede Habitats Regulations, by making provision for actions carried out under an EOR to satisfy Habitats Regulations requirements. This opens the door to strong Habitats Regulations protections being swapped out for weaker rules devised by the Secretary of State and imposed by regulations (with limited parliamentary scrutiny). Given the stated desire of previous Secretaries of State to weaken Habitat Regulations protections to enable development<sup>6</sup>, this scenario is plausible.

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<sup>4</sup> <https://www.nienvironmentlink.org/site/wp-content/uploads/2022/07/LUR-Bill-ELUK-letter.pdf>

<sup>5</sup> <https://www.scotlink.org/wp-content/uploads/2022/08/Response-202200316151.pdf>

<sup>6</sup> <https://www.bbc.co.uk/news/uk-politics-17479165>

A number of leading nature charities, including the RSPB and Greenpeace, have launched public campaigns this summer to express their concern at this threat to the Habitats Regulations posed by Part by the Levelling Up & Regeneration Bill, and other Government proposals.<sup>7</sup>

Amendment 181 would address this threat to the Habitats Regulations by preventing EOR regulations from substituting actions carried out under an EOR for requirements arising from the Habitats Regulations. This will mean EOR actions are additional to requirements arising from the Habitats Regulations, and that the former cannot substitute for the latter. Amendment 182 would confirm the additionality of EORs by preventing EOR regulations from amending, repealing or revoking existing environmental protections.

These amendments would preserve the stringency of the Habitats Regulations, and the critical sites for nature they protect.

### **New clause 52 (Super affirmative procedure for EOR regulations)**

This new clause will not be discussed until later on in the committee's considerations, along with all other new clauses, but provides an essential democratic safeguard.

Currently clauses 116 to 130 give the Secretary of State powers to make unspecified changes to environmental law, through regulations subject only to the affirmative procedure. The inherent democratic deficit in the affirmative procedure is well understood. In 2020, the Chairs of the Secondary Legislation Scrutiny Committee, Constitution Committee and the Delegated Powers and Regulatory Reform Committee wrote to the Cabinet Office to complain about the rising numbers of 'skeleton' bills "in which broad delegated powers are sought in lieu of policy detail". The letter highlighted how:

*"Scrutiny of secondary legislation is far less rigorous than that to which primary legislation is subject. It is unamendable, and the only recourse for Parliament, if either House wishes to object to an instrument, is to adopt the 'nuclear option' of rejecting it outright. But that option is used only in the rarest of circumstances...The use of skeleton provision enables the Government to truncate policy development, which is detrimental to good government as well as effective parliamentary scrutiny."*<sup>8</sup>

This detriment is particularly evident with regards to Part 5 of the Bill, which gives Ministers the power to pass sweeping measures affecting the environment with a minimum of parliamentary scrutiny. New clause 52 would address this by requiring EOR regulations to be made under a super- affirmative procedure, offering additional opportunity for parliamentary scrutiny of draft proposals before secondary legislation is formally brought forward. Such scrutiny will address the scrutiny deficit in Part 5 and give parliamentarians the opportunity to ensure that EOR regulations improve on current environmental assessment, contributing to nature recovery and the achievement of net zero.

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<sup>7</sup> See

RSPB: <https://community.rspb.org.uk/getinvolved/naturesheroes/b/weblog/posts/act-now-to-protect-the-laws-that-protect-nature/>

Greenpeace: <https://action.greenpeace.org.uk/protect-and-restore-nature-in-england>

Bat Conservation Trust: <https://www.bats.org.uk/news/2022/08/urgent-call-for-help-the-laws-protecting-bats-are-under-threat-again>

<sup>8</sup> <https://committees.parliament.uk/publications/2960/documents/28317/default/>

## Summary

Part 5 of the Bill gives future Secretaries of State the power to weaken environmental protections with limited scrutiny, threatening nature's recovery and net zero. Significant safeguards need to be put on face of the Bill to avoid these outcomes, including the addition of climate requirements, strengthening of the non-regression clause and inserting new measures to ensure that EORs are additional to Habitats Regulations requirements. These safeguards, which amendments 173 to 182 would deliver, are the minimum required to ensure that the proposed EOR regime does not harm the environment.

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## About the Better Planning Coalition

The Better Planning Coalition represents 29 organisations across the environment, housing, planning, heritage and transport sectors with one common goal: a planning system fit for people, nature and the climate. The Coalition is working to improve the Levelling Up & Regeneration Bill.

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