



Law Society
of Scotland

Levelling-up and Regeneration Bill

Law Society of Scotland evidence

June 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We welcome the opportunity to consider and provide comment on the Levelling-up and Regeneration Bill¹ (the Bill) during the Bill's Committee Stage in the House of Commons.

General remarks

The Bill is divided into eleven parts and has seventeen schedules. Various parts of the Bill extend and apply to different parts of the UK – we only seek to comment on provisions which extend and apply to Scotland. These provisions are – Part 1, Part 3 chapter 1, Part 5, Part 10 clause 186, and Part 11.

By way of general comment, we note that air quality in the context of levelling-up could be usefully considered in the Bill – we consider that this is a key area where there is scope for greater equality and levelling-up across the UK at a macro level. Issues around air quality directly relate to issues around access to environmental justice. This is of particular importance given the UK's commitments under the UN Aarhus Convention on access to environmental justice, public participation and access to environmental information. This Bill could present an opportunity for these commitments to be further referenced and integrated into UK law.

Comments on the Bill

Part 5

Our specific comments on the Bill at this stage are restricted to Part 5 concerning Environmental Outcomes Reports (EOR). This part extends and applies to Scotland.

¹ <https://bills.parliament.uk/bills/3155>

Clause 116 is an enabling provision giving the Secretary of State power to make regulations to set 'specified environmental outcomes' (EOR regulations) against which relevant consents and relevant plans will be assessed. This power to make regulations is very wide and we do not consider that the intentions around the planned use of the provisions to revise/replace existing Strategic Environmental Assessment, Environmental Impact Assessment and Habitats Assessment regimes are clear. As the provisions are of a skeletal nature with detail to be set out in subsequent regulations, it is not possible to fully appreciate the impacts of what is proposed by the Bill.

We note that the provisions appear to focus largely on cultural and natural heritage rather than on impacts on people – we consider that this may be a missed opportunity to capture the full range of environmental impacts.

Clause 117 provides that the EOR regulations may make provision requiring an EOR to be prepared in relation to a 'proposed relevant consent' or a 'proposed relevant plan'. The power to define these terms is contained in clause 118.

Clause 119 concerns assessing and monitoring the impact of a relevant consent or relevant plan. We have no particular comments to make.

Clause 120(1) contains 'non-regression' provisions, providing that the "Secretary of State may make EOR regulations only if satisfied that making the regulations will not result in environmental law providing an overall level of environmental protection that is less than that provided by environmental law at the time this Act is passed". Clause 120(2) provides a safeguard that EOR regulations may not contain provision that is inconsistent with the implementation of the international obligations of the UK relating to the assessment of the environmental impact of relevant plans and relevant consents. We welcome these commitments.

Clause 121(1) provides that the "Secretary of State may only make EOR regulations which contain provision within Scottish devolved competence after consulting the Scottish Ministers". We note the importance of respecting the devolution settlement, whereby devolved matters under Schedule 5 of the Scotland Act 1998 sit within the competence of the Scottish Parliament. There is a potential for these provisions to impact significantly on devolved competences and we are concerned that there are not accompanying requirements in the Bill for consent. We refer to our comments on clauses 116, 127 and 130 – at this stage, it is not clear how far it is envisaged that the generally drafted powers under this part of the Bill can and will be used to recast aspects of the basic Strategic Environmental Assessment, Environmental Impact Assessment and Habitats Assessment rules in Scotland. Under section 28(7) of the Scotland Act 1998, the UK Parliament has the power to make laws for Scotland. The exercise of this power is subject to "the Legislative Consent" or "Sewel" convention, being that the UK Parliament will not normally legislate on a devolved matter without the consent of the Scottish Parliament as set out in section 28(8) of the Scotland Act 1998. The regulation making powers in Part 5 of the Bill are subject to that convention as the power enables Ministers to make regulations which would affect devolved matters.

Clause 122 contains powers to allow the Secretary of State to direct when an EOR is not required – particularly for a proposed relevant consent which is solely for the purposes of national defence or preventing or responding to civil emergency, or as otherwise specified in EOR regulations (clause 122(2)). We have no particular comments to make.

Clause 123 provides that EOR regulations may make provision about enforcement of regulations and clause 124 provides that EOR regulations may make provision requiring a public authority to report on, or provide information in relation to, the delivery of specified environmental outcomes. We have no particular comments to make.

Clause 125(1) requires the Secretary of State to undertake public consultation before making regulations which contain provision under clause 116(1) or which amend, repeal or revoke existing environmental assessment legislation. Clause 125(2) also sets other further consultation requirements on the Secretary of State to “consult such persons as the Secretary of State considers appropriate” before making EOR regulations under a number of other clauses. We welcome these requirements for consultation. Given the wide scope of the powers in this part of the Bill and the potential impacts of any changes, we consider broad consultation to be necessary before the laying of any regulations. We also consider it appropriate that such regulations will be subject to the affirmative parliamentary procedure (under clause 192).

Clause 126 requires a public authority carrying out a function under this Part, or existing environmental assessment legislation, to have regard to any guidance issued by the Secretary of State. We consider that any such guidance should be subject to consultation.

Clause 127 concerns the interaction of EOR regulations with existing environmental assessment legislation (defined in clause 130) and the Habitats Regulations. We consider that the intended use of this provision as well as its connection to the powers under clause 116 and this part of the Bill more generally are unclear. For example, this clause could be read as having a limiting effect since adjustments to the existing environmental assessment provisions are envisaged only for the listed provisions under clause 130 within which “existing environmental assessment legislation” is defined as a number of specific provisions covering England and Wales only. We would welcome clarity as to the intended use of the provisions under this part of the Bill.

Clause 128 repeals certain references of the Town and Country Planning Act 1990. We have no particular comments.

Clause 129 provides additional regulation-making powers. We have no particular comments.

Clause 130 is an interpretation provision. We have no comments beyond those made above around the connection with clause 127.



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