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Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee Report on the Legislative Consent Memorandum (LCM) for the Levelling-up and Regeneration Bill



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Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero, Energy and Transport.



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Membership Change

1. The membership of the Net Zero, Energy and Transport Committee changed during the course of the Committee's consideration of the Legislative Consent Memorandum on the Levelling-up and Regeneration Bill. On 9 November, Ash Regan MSP was appointed to replace Natalie Don MSP as a member of the Committee. The Committee would like to put on record its thanks to Natalie Don MSP for her contribution to scrutiny of the LCM.

Introduction

2. A [Legislative Consent Memorandum](#) on the Levelling-up and Regeneration Bill was lodged by the Scottish Government on 27 July 2022. On 21 September, the Scottish Parliament agreed to designate the Net Zero, Energy and Transport (NZET) Committee as lead committee for considering the LCM. This means that the Committee must report on the Memorandum to the Scottish Parliament prior to the conclusion of the amending stages at the UK Parliament.
3. [The UK Bill](#) was introduced in the House of Commons on 11 May 2022. It forms part of the wider UK Government programme to ‘level up the country’ and reverse geographical disparities between different parts of the United Kingdom by spreading opportunity more equally.
4. The Scottish Government says that the Bill touches on devolved legislative or executive competence in three main areas—
 - "levelling-up missions";
 - planning law; and
 - environment law, via provisions to give the UK Government new powers to create a regime of “Environmental Outcomes Reports” (EORs).
5. The Net Zero, Energy and Transport Committee has focused its scrutiny on part 4 of the Bill which relates to EORs. These are a new approach to environmental assessment in planning and other statutory consenting systems. The Bill sets out a framework for EORs, with much of the detail to be left to subordinate legislation. The LCM from the Scottish Government highlights concerns about the impact of EORs on the current regime of environmental regulations and the devolved settlement.
6. Two secondary committees were also involved with scrutiny of the LCM. The Local Government Housing and Planning (LGHP) Committee considered Part 3, Chapter 1 of the Bill which relates to the processing of planning data. The Delegated Powers and Law Reform (DPLR) Committee reviewed the delegated powers pertaining to the proposed legislation.
7. References in the report to numbered Clauses in the UK Act are to those laid out in the version of the Bill as it was first introduced. In some cases, clause numbers subsequently changed due to amendments made at committee stage.

Overview of the Committees' scrutiny

Delegated Powers and Law Reform Committee scrutiny

8. The Delegated Powers and Law Reform (DPLR) Committee first considered the LCM at its meetings on 27 September 2022.ⁱ It agreed to write to the previous Secretary of State for Levelling Up, Housing and Communities (Simon Clarke MP) to query three delegated powers outlined in the Bill.ⁱⁱ These were—
 - **Clause 75 (1) and (3)** - this Clause confers powers to the Secretary of State to make regulations to require a relevant planning authority to comply with approved data standards when processing planning data described in the regulations.
 - **Clause 116** - this Clause gives powers to the Secretary of State to specify environmental outcomes which pertain to environmental protections in the UK through EORs.
 - **Clause 191** - this Clause provides the Secretary of State with the power to make regulations for consequential amendments which arise from the Bill or regulations made under it.
9. A responseⁱⁱⁱ from the Minister for Levelling Up, Dehenna Davison MP, was received by the DPLR Committee on 25 October. She said the UK Government remained in discussions with devolved administrations about conferring concurrent powers on Scottish Ministers regarding environmental assessment and data standards for planning. It also indicated that "once these discussions have concluded, the UK Government will bring forward any necessary amendments to ensure the Bill reflects what is agreed with the Scottish Government".
10. In its report^{iv} of 16 November on the LCM, the DPLR Committee said the Bill conferred "regulation-making powers on UK Ministers that are exercisable within the legislative competence of the Scottish Parliament" and notes there is "no requirement in the Bill that UK Ministers obtain or seek the consent of the Scottish Parliament or Scottish Government before exercising any of the powers in the Bill in devolved areas."
11. The DPLR Committee recommended the lead committee should explore issues relating to Clause 75 (1) and (3) and Clause 116. It also said the NZET Committee should look to ascertain what the consequences for the Scottish Parliament would

i Delegated Powers and Law Reform Committee. [Official Report, 27 September](#) .

ii [Letter from the Deputy Convener of the Delegated Powers and Law Reform Committee to the Secretary of State for Levelling Up, Housing and Communities, 28 September 2022.](#)

iii Minister for Levelling-up. [Written submission to Delegated Powers and Law Reform Committee, 25 October 2022.](#)

iv [Legislative Consent Memorandum: delegated powers relevant to Scotland in the Levelling Up and Regeneration Bill](#)

be if concurrent powers were agreed between the UK and Scottish Governments. In the case of Clause 191, the DPLR Committee highlighted to NZET Committee that currently the UK Government has not indicated that it would amend this power following discussions with the Scottish Government.

Local Government, Housing and Planning Committee scrutiny

12. The Local Government, Housing and Planning (LGHP) Committee was designated as a secondary committee with responsibility for considering Part 3, Chapter 1 of the Bill which relates to planning data. The provisions included in this section of the Bill would give the Secretary of State powers to regulate planning authorities through establishing binding 'approved data standards' for processing planning data.
13. The LGHP Committee took evidence on the LCM from a panel of planning professionals on 25 October.^v The Committee heard from—
 - Craig McLaren, Director, RTPI Scotland;
 - Jim Miller, Chair, Heads of Planning Scotland;
 - Liz Hamilton, Head of Planning, Homes for Scotland.
14. On 1 November, the LGHP Committee held an evidence session with the Minister for Public Finance, Planning and Community Wealth.^{vi}
15. Following these evidence sessions, the Committee agreed to write to the Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations inviting him to respond to a number of queries around how provisions relating to planning data would interact with current planning practices.^{vii} The Committee also asked what impact the provisions would have on planning applicants.
16. On 28 November, the Committee received a response from the UK Government's Minister for Housing and Planning.^{viii} The Minister said definitions in relation to 'planning data' and 'relevant planning enactment' are set out in Clause 81 of the Bill. The Minister also stated that the UK Government was committed to the Sewel Convention and would "not legislate in areas of devolved competence in Scotland without the consent of the Scottish Parliament".
17. On 6 December, the LGHP Committee wrote to the NZET Committee to share its findings and conclusions from its consideration of Part 3, Chapter 1 of the Bill.^{ix} The

^v Local Government, Housing and Planning Committee. [Official Report, 25 October 2022.](#)

^{vi} Local Government, Housing and Planning Committee. [Official Report, 1 November 2022.](#)

^{vii} [Letter from the Convener of the Local Government, Housing and Planning Committee to the Secretary of State for Levelling Up, Housing and Communities](#), 9 November 2022.

^{viii} Minister of State for Housing and Planning, [written submission to the Local Government, Housing and Planning Committee](#), 28 November 2022.

Committee explained that it was unable to come to a clear determination as to whether the Scottish Parliament should consent to this section of the Bill due to a lack of clarity around the provisions which relate to planning data.

18. The Committee also noted there remains significant uncertainty around what role the Scottish Parliament will have in any forthcoming changes to the Bill as a result of discussions between the Scottish and UK Governments. It therefore requested the NZET Committee should look more closely at this issue as part of its own scrutiny.

Net Zero, Energy and Transport Committee scrutiny

19. The Net Zero, Energy and Transport Committee first considered its approach to the LCM on 6 September. On 20 September, the Committee agreed to seek written submissions from stakeholders. Responses were received from—
- Scottish Water^x
 - Scottish Property Federation (SPF)^{xi}
 - Heads of Planning Scotland (HOPS)^{xii}
 - UK Environmental Law Association (UKELA)^{xiii}
 - Scottish Renewables^{xiv}
 - Environmental Standards Scotland (ESS)^{xv}
 - Royal Town Planning Institute Scotland (RTPI Scotland)^{xvi}
20. On 4 October, the Committee held an evidence session with a panel of stakeholders to hear their views on Environmental Outcome Reports (EORs).^{xvii} The Committee heard from—
- Lloyd Austin, Convener, Governance Group, Scottish Environment LINK;
 - Robbie Calvert, Policy Practice and Research Officer, RTPI Scotland; and
 - David Melhuish, Director, SPF.
21. Following this meeting, the Convener wrote to both the UK and Scottish Governments on 11 October to ask a number of questions about EORs—
- [Read the letter to the UK Government.](#) ^{xviii}
 - [Read the letter to the Scottish Government.](#) ^{xix}

x Scottish Water. [Written submission.](#)

xi Scottish Property Federation (SPF). [Written submission.](#)

xii Heads of Planning Scotland (HOPS). [Written submission.](#)

xiii UK Environmental Law Association (UKELA). [Written submission.](#)

xiv Scottish Renewables. [Written submission.](#)

xv Environmental Standards Scotland (ESS). [Written submission.](#)

xvi Royal Town Planning Institute Scotland (RTPI Scotland). [Written submission.](#)

xvii Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022.](#)

xviii [Letter from the Convener of the Net Zero, Energy and Transport Committee to the Secretary of State for Levelling-up, Housing and Communities, 11 October 2022.](#)

22. On 8 November, the Committee received a response from Deputy First Minister John Swinney, which outlined the Scottish Government's position on Part 5 of the Bill in relation to environmental assessment and EORs.^{xx} A response from the Minister of State for Levelling-up was received on 16 December.^{xxi} The Committee finds it regrettable that it did not receive a response from the UK Government sooner, which has inhibited its ability to adequately examine EORs and their implications for environmental assessment in Scotland.
23. On 25 October 2022, the Committee concluded its scrutiny of the LCM by holding an evidence session on environmental regulation with NatureScot, the Scottish Environment Protection Agency and Environmental Standards Scotland.^{xxii} During the session, the Committee took the opportunity to seek the organisations' views on the proposed new regime of EORs.
24. The evidence heard by the Net Zero, Energy and Transport covered 6 main themes—
- Views on a new 'outcomes-based' approach ;
 - EORs and environmental regulations in Scotland;
 - Public engagement;
 - Subordinate legislation and devolution;
 - Non-regression; and
 - International obligations.

Views on a New 'Outcomes-Based' Approach

25. Part 5 of the Bill, particularly Clauses 116 to 130, seek to establish a new outcomes-based approach to environmental assessment in the UK. Powers conferred through Part 5 of the Bill would allow UK Ministers to alter certain aspects of the current regime for environmental assessment in Scotland where they might duplicate the work of EORs. It also allows for UK Ministers to amend, repeal or revoke existing environmental assessment legislation.
26. At present, environmental assessment in Scotland currently follows a model carried over from the EU, meaning plans and major projects are assessed through a regime based on EU legislation which include—
- **Environmental Impact Assessment (EIA)** for evaluating the significant environmental effects likely to arise from proposed development projects;

^{xix} [Letter from the Convener of the Net Zero, Energy and Transport Committee to the Deputy First Minister and Cabinet Secretary for Covid Recovery](#), 11 October 2022.

^{xx} Deputy First Minister and Cabinet Secretary for Covid Recovery. [Written submission](#), 8 November 2022.

^{xxi} Minister of State for Housing and Planning, [written submission](#), 16 December 2022.

^{xxii} Net Zero, Energy and Transport Committee. [Official Report, 25 October 2022](#) .

- **Habitats Regulations Appraisal (HRA)** for plans that are likely to have an effect on a 'Natura 2000' site selected for protection by the European Union; and
 - **Strategic Environmental Assessment (SEA)** for all plans and programmes unless exempt, whereas in the rest of the UK it only applies to those within categories specified in EU law.
27. The [explanatory notes for the Bill](#) state that the introduction of the new system will mean relevant developments and projects will be reviewed against outcomes for environmental priorities set by UK Ministers.^{xxiii} The letter from the UK Government's Minister for Levelling-up to the DPLR Committee confirmed these outcomes will be set following consultation and scrutiny from the UK Parliament, allowing the system to better reflect the UK Government's environmental priorities. The Minister added that the new system will give greater clarity to consenting bodies to make decisions about whether a plan is in accordance with wider environmental goals.^{xxiv}
28. The Levelling-up Minister said—
- ” Taking the power to set outcomes in secondary legislation allows flexibility for these outcomes to change and evolve as our understanding of the environment deepens, or our aim grows beyond current government policy.^{xxv}
29. The UK Government first signalled its intention to change how the environmental impact of plans and projects is considered in a [2020 White Paper 'Planning for the Future'](#), which stated the current system of environmental assessment in the UK was overly complex, caused unnecessary delays to planning decisions and duplicated resources.^{xxvi} The paper signalled the UK Government's aims for future reforms would be to deliver a “quicker, simpler framework for assessing environmental impacts and enhancement opportunities”.
30. Some stakeholders indicated they were not opposed in principle to an environmental assessment process with a clearer emphasis on outcomes and to making the EIA process simpler and more dynamic.^{xxvii} The cost of EIAs was mentioned.^{xxviii}
31. In his letter to the Committee, Deputy First Minister John Swinney also stated the Scottish Government agrees reforms are needed to the current system to

xxiii Levelling-up and Regeneration Bill. [Explanatory Notes](#).

xxiv Minister for Levelling-up. [Written submission to Delegated Powers and Law Reform Committee](#), 25 October 2022.

xxv Minister for Levelling-up. [Written submission to Delegated Powers and Law Reform Committee](#), 25 October 2022.

xxvi UK Government. (2020) [Planning for the Future](#).

xxvii Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 2 and 4.

xxviii Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 6.

streamline consenting processes. Mr Swinney commented that reforms will be crucial to delivering the Scottish Government's programme for offshore wind.

32. However, the Scottish Government says it was not sufficiently consulted on the provisions relating to EORs and is yet to receive satisfactory clarification on the scope and deployment of environmental outcomes.^{xxxix} In the LCM, the Scottish Government argues the adoption of a new system of EORs and a move away from current processes of environmental assessment could have significant consequences for environmental protections in Scotland.^{xxx}
33. The Committee also heard neither of Scotland's current statutory consultees for environmental assessments, Scottish Environment Protection Agency and NatureScot, were consulted by the UK Government on the Bill, despite the new regime of EORs having implications for how these agencies function.^{xxxi}
34. Stakeholders also told the Committee that Part 5 of the Bill lacked sufficient detail to make a clear determination of how the new system of EORs would operate in practice. There was also uncertainty about how outcomes would be decided and how their success would be measured. UKELA said—
- ” The provisions in Part 5 of the Levelling Up Bill are effectively skeleton or framework provisions and much of the detail policy will need to be set out in regulations or subsequent legislation.^{xxxii}
35. The Committee also notes the views expressed by the DPLR Committee in its consideration of Clause 116 of the Bill, which set out the key principles for how a new outcomes based system would work. The DPLR Committee noted that Clause 116 in its current form does not give the Scottish Parliament sufficient oversight of future secondary legislation made in relation to this aspect of the proposed legislation.
36. Stakeholders raised concerns about the potential impact of an overhaul in environmental assessment in Scotland.^{xxxiii} They noted the advantages of the current processes, which were seen as well-established and supported by detailed regulations and guidance. The lack of clarity surrounding the new EOR system led most to believe an overhaul in the current system was not the best approach.^{xxxiv} The SPF said—

” To a degree, we are better with the devil we know, and we do know the devil of the Scottish system at this stage.^{xxxv}

^{xxix} Deputy First Minister and Cabinet Secretary for Covid Recovery. [Written submission](#), 8 November 2022.

^{xxx} [Legislative Consent Memorandum on Levelling-up and Regeneration Bill](#), paragraph 8.

^{xxxi} Net Zero, Energy and Transport Committee. [Official Report, 25 October 2022](#), cols 10-11.

^{xxxii} UKELA. Written submission, paragraph 11.

^{xxxiii} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 4, 7 and 17 and written submissions from [RTPI Scotland](#), [HOPS](#), [Scottish Renewables](#), [UKELA](#) and [SPF](#).

^{xxxiv} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022 and 25](#)

37. RTPI Scotland and Scottish Renewables said the proposed reforms were not supported with a sufficient evidence base. They called for the UK Government to provide more detail to substantiate their claims that EORs would be a step forward.^{xxxvi} Stakeholders also said there was a lack of evidence that delays in planning decisions were caused by the EIA process, with many highlighting most projects do not require an EIA.^{xxxvii} For instance, Scottish Water told the Committee—
- ” As a developer, we engage the relevant Local Authority for EIA screening requests for approximately 20 projects a year, however very few projects (less than one project per annum) meet the requirements for Environmental Impact Assessment (EIA) under the existing EIA regulations.^{xxxviii}
38. Instead, stakeholders said improvements should be made to the existing system of environmental assessment in Scotland to ensure current processes are robust and efficient. A number of practical steps were proposed for resolving current issues in the EIA structure. For example, RTPI Scotland argued the current system could be streamlined through embracing technological innovation and strengthening the digital capabilities of current processes.^{xxxix}

EORs and Environmental Regulations in Scotland

39. The implementation of EORs would require the new system to operate within the current landscape of consenting arrangements in Scotland, and therefore will interact with regimes of environmental protections and the roles of Scotland's environmental regulators. The proposed legislation in its current form allows for EORs to co-exist with Environmental Impact Assessments (EIAs) and Habitat Regulations Appraisals (HRAs), but on the basis that EOR would complement the current arrangements for environment assessment and would seek to avoid any potential duplication of work between consenting frameworks.
40. The Scottish Government has highlighted concerns about the potential impact of the new EOR system on existing consenting arrangements in Scotland, saying—
- ” This could lead to an over-complicated set of multiple regulatory regimes each with their own procedures that would be burdensome for business and counterproductive to increasing the efficiency and effectiveness of the system.^{xl}

October 2022 and written submissions from [RTPI Scotland](#), [HOPS](#), [Scottish Renewables](#), and [SPF](#).

^{xxxv} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 6.

^{xxxvi} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 4, 7 and 18 and written submissions from [RTPI Scotland](#) and [Scottish Renewables](#).

^{xxxvii} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 18 and written submission from [RTPI Scotland](#).

^{xxxviii} Scottish Water. [Written submission](#), paragraph 5.

^{xxxix} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 6 and written submission from [RTPI Scotland](#).

41. Similar concerns were also heard by the LGHP Committee in its consideration of Part 3, Chapter 1 of the Bill. The Committee noted a lack of clarity on how the UK Government would embed provisions pertaining to planning data into the current planning system. It was also unclear what impact these changes would have on planning authorities.
42. Stakeholders raised concerns about the potential impact of embedding EORs into an already extensive network of consenting frameworks in Scotland, and called for more clarity from the UK Government to better describe how the outcomes based system would interact with existing consents and environmental regulations in Scotland.^{xli} For instance, RTPI Scotland said—
- ” A lot of detail is still needed on, for example, the proposed contents of the EORs, how and to what extent they are to be taken into consideration by public authorities in decision making, and what plans and consents are to be subject to procedures.^{xlii}
43. The Committee heard practical concerns about how the changes to current consenting arrangements would impact on collaboration between the UK and Scottish Governments for cross border projects.. In particular, there remains uncertainty about how the new arrangements might impact on a number of conservation projects being undertaken on the River Tweed and the Solway Firth.^{xliii}
44. The Scottish Government says cross-boundary projects are currently managed through administrative arrangements between both Governments based on common and well-established practices. However, proposed changes could significantly impact on how cross border work would work in practice and allow the UK Government to make decisions on cross-border projects without the consent of Scottish Ministers.^{xliv}
45. The Committee heard concerns from HOPS about the UK Government making significant changes to the current system for joint-working on cross border projects. They called for the UK Government to ensure that new arrangements do not cause a detrimental impact on work in this area.^{xlv}

Public Engagement

46. Clause 120 sets out provisions which seek to impose a number of conditions which
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^{xl} Deputy First Minister and Cabinet Secretary for Covid Recovery. [Written submission](#), 8 November 2022.

^{xli} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022 and 25 October 2022](#) and written submissions from [RTPI Scotland](#), [ESS](#), [HOPS](#), [Scottish Renewables](#), [Scottish Water](#) and [SPF](#).

^{xlii} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 9.

^{xliii} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 16 and 17.

^{xliv} Deputy First Minister and Cabinet Secretary for Covid Recovery. [Written submission](#), 8 November 2022.

^{xlv} Heads of Planning Scotland (HOPS). [Written submission](#), paragraph 10.

UK Ministers must adhere to when exercising powers outlined in the Bill. One of these safeguards relates to public engagement. The Bill requires the UK Government to ensure "that the process of environmental assessment provides suitable opportunity for public engagement" and that the UK Government undertakes "adequate public engagement in the process of preparing an Environmental Outcomes Report"^{xlvi}.

47. The principle of delivering an improved approach to public engagement was broadly welcomed by stakeholders.^{xlvii} An apparent lack of transparency and community involvement in decision making around environmental assessment was identified by many as a key issue with the existing framework.^{xlviii} As a result, RTPI Scotland and SPF both indicated action needed to be taken to address this through strengthening digital engagement tools to operate alongside in-person consultation events.^{xlix}
48. However, stakeholders said proposed legislation lacked detailed guidance for how the UK Government will consult on EORs. They called on the UK Government to clarify aspects around its approach to public engagement and the practicalities around the consultation process.^l
49. Scottish Environment LINK explained that because much of the detail relating to public engagement will be set out in secondary legislation, the organisation will be looking closely at future legislative output from the UK Government around this matter to assess whether its strong rhetoric around community engagement is reflected in forthcoming regulations.

Subordinate Legislation and Devolution

50. Clause 121 of the proposed legislation explains the UK Government must consult the Scottish Government on EOR regulations where they directly relate to areas of devolved competence. The Committee notes similar provisions were also laid out in Clause 75 (2) of the Bill, which stipulates UK Ministers must consult with Scottish Ministers when seeking to implement new regulations relating to planning data.
51. The LCM lodged by the Scottish Government states this provision allows UK Ministers to legislate in devolved areas without Scottish Ministers consenting to these regulations. They also explain the powers outlined in the Bill would effectively provide the UK Government with authority to override environmental protections in Scotland.^{li}

^{xlvi} Levelling-up and Regeneration Bill. [Explanatory Notes](#).

^{xlvii} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 13 and 14.

^{xlviii} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 13 and 14.

^{xlix} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 13 and 14 and written submission from [RTPI Scotland](#).

^l Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 13 and 14.

52. The Committee notes issues were raised by secondary committees regarding the impact of the proposed legislation on devolution in Scotland. The Committee shares these concerns and has been unable to establish what role, if any, the Scottish Parliament will have in considering regulations on EORs laid before the UK Parliament if and when the Bill is enacted.
53. In its correspondence to the DPLR Committee, the UK Government clarified its view regarding the intended use of powers described in Clause 121—
- ” This power was included at introduction to maintain the current position for those circumstances where the UK Government has historically legislated for matters within the area of devolved competence, such as between inshore and offshore region for marine works.^{lii}
54. A similar assessment of how the UK Government envisaged using these powers was also set out by the Minister of State for Housing and Planning in her letter to this Committee.^{liii}
55. However, this narrow use envisaged by the Minister is not reflected in the Bill in its current form. Rather, as the DPLR Committee underlined in its report to this Committee, the Bill instead confers broad powers to be exercised by the Secretary of State within devolved competence on areas of environmental assessment more generally without the explicit consent of Scottish Ministers or sufficient oversight from the Scottish Parliament. Moreover, there has yet been no indication from the UK Government that it plans to amend these provisions to confine itself to this specific use.
56. Stakeholders said it was unclear what the implications of Clause 121 would be for the devolved settlement in Scotland.^{liv} Further clarity was called for on how the UK Government envisages EORs would interact with devolved competence before stakeholders could properly assess the impact of the provision.^{lv}
57. Furthermore, stakeholders were concerned the clause required consultation, not consent.^{lvi} Scottish Environment LINK and RTPi Scotland called for the Scottish Parliament to have a role in scrutinising EORs.^{lvii}
58. In addition, stakeholders were clear that both Governments needed to work more collaboratively on the proposed Bill in order to work through concerns and seek to

li [Legislative Consent Memorandum on Levelling-up and Regeneration Bill](#), paragraph 20.

lii Minister for Levelling-up. [Written submission to Delegated Powers and Law Reform Committee](#), 25 October 2022.

liii Minister of State for Housing and Planning, [written submission](#), 16 December 2022.

liv Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 3, 4 and 5 and written submissions from [UKELA](#), [Scottish Renewables](#) and [HOPS](#).

lv Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 3, 4 and 5 and written submissions from [HOPS](#).

lvi Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 3, 4 and 5 and written submission from [HOPS](#).

lvii Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 6.

develop a consensus-based approach.^{lviii} This would help to avoid potential conflicts or inconsistencies in regulatory regimes at a Scottish and UK level. To that end, this Committee was encouraged by the Minister of State for Housing and Planning's letters to this Committee^{lix} and the LGHP Committee^{lx} which both indicate that discussions are ongoing between the Scottish and UK Governments regarding the operation of EORs which will inform how the clauses will work in a way that respects the devolution settlement in Scotland.

Non-regression

59. Clause 120 of the Bill seeks to establish a commitment for the UK Government to ensure there will not be a regression in environmental standards and protections as a result of the implementation of a new outcomes-based regime. Provisions relating to non-regression will come to interact with those already conferred to the Scottish Government through the [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#) for it to 'keep pace' with environmental law set by the EU.
60. In [a policy paper accompanying the Bill](#), the UK Government has said—
- ” In bringing forward a new approach to environmental assessment, we want it to deliver more, not less, for the environment. Reflecting this, the Bill creates 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.^{lxi}
61. Some stakeholders supported the non-regression clause as a welcome inclusion in the Bill.^{lxii} However, the majority were dissatisfied with the vagueness around this safeguarding measure^{lxiii} and how it will impact on the Scottish Government's decision to keep pace with EU law.^{lxiv} This is because much of the detail around how the UK Government will deliver its commitment to non-regression has been deferred to future regulations.
62. Stakeholders also said provisions around non-regression in their current form were not sufficiently robust to deliver their intended purpose.^{lxv} They told the Committee

lviii Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 11, and written submissions from [Scottish Renewables](#) and [SPF](#).

lix Minister of State for Housing and Planning, [written submission](#), 16 December 2022.

lx Minister of State for Housing and Planning, [written submission to the Local Government, Housing and Planning Committee](#), 28 November 2022.

lxi UK Government (2022). [Levelling Up and Regeneration: further information](#)

lxii Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 12 and written submission from [HOPS](#).

lxiii Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 12 and 13 and written submissions from [SPF](#).

lxiv Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 12 and 13.

the provisions needed to be clearer and more ambitious if they are going to sufficiently protect environmental standards. Lloyd Austin from Scottish Environment LINK said—

” My view is that that is a rather poor non-regression Clause in so far as it is a rhetorical statement of good intent but it does not have very much meat to it.^{lxvi}

International Obligations

63. Clause 120 also seeks to ensure that provisions laid out in the Bill are consistent with the international obligations of the UK on matters relating to environmental assessment. This includes commitments made by the UK Government in the [EU-UK Trade and Cooperation Agreement](#).
64. Whilst stakeholders agreed with the inclusion of these commitments in the Bill^{lxvii}, many raised concerns about the vagueness around what international obligations the UK Government would need to comply with when implementing EORs.^{lxviii} For instance, Scottish Environment LINK argued the Bill in its current form would only apply to a very limited number of international obligations which relate to specific areas of environmental assessment. They stated it would not commit the UK Government to treaties which relate to environmental protections more broadly.^{lxix}
65. RTPi Scotland and HOPS welcomed the comments made by the UK Government in a Public Bill Committee hearing on the Bill in Westminster on September 8 2022 regarding two key international obligations to be included in the proposed legislation.^{lxx} These were—
- [The Aarhus Convention](#) - which guarantees the public rights to participation and access to information regarding environmental decision making; and
 - [The Espoo Convention](#) - which ensures environmental impact of projects and developments are assessed at an early stage of planning.
66. Stakeholders said that more detail was needed from the UK Government in relation to what international obligations the Bill will apply to and how they will be delivered in the new EOR system. In addition, Scottish Environment LINK called for the scope of international obligations to go beyond environmental assessment and consents to incorporate a broader set of environmental international obligations.^{lxxi}

^{lxv} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 8 and 12.

^{lxvi} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 8.

^{lxvii} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 9 and 12 and written submissions from [RTPi Scotland](#) and [HOPS](#).

^{lxviii} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), cols 8 and 9.

^{lxix} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 8.

^{lxx} Net Zero, Energy and Transport Committee. [Official Report, 4 October 2022](#), col 9 and written submissions from [RTPi Scotland](#) and [HOPS](#).

Conclusions and recommendations

67. Environmental Outcome Reports would lead to a significant change to environmental assessment in Scotland. However, the UK Government has not provided sufficient clarity around how they will operate in practice. Similar concerns were also highlighted by both secondary committees in their consideration of the Bill.
68. The Committee did not receive a response from the UK Government until after it had concluded its evidence taking on the LCM. It would have been more helpful to have received this response earlier to give the Committee sufficient opportunity for this information to inform its consideration of EORs. It is also disappointing that Scotland's statutory consultees on the environment were not consulted on the EOR proposals.
69. The Committee heard evidence from stakeholders which highlighted that the UK Government had not made a sufficiently strong case for introducing EORs into the regulatory landscape and that the implications for existing environmental regulation were unclear. Stakeholders suggested improvements to the current EIAs system to simplify the process would be preferable. **The Committee seeks detail on consideration given by the Scottish Government to improvements to the current process of environmental assessment in Scotland.**
70. The Committee acknowledges the UK Government intention to only utilise these powers in a very limited set of circumstances. However, this does not correlate with the broad set of order-making powers detailed in the Bill, which gives the UK Government authority to make regulations in these and other areas of devolved competence without the consent of the Scottish Government. If the UK Government is serious about its narrow intentions for this power, it must seek to address this imbalance by bringing forward the necessary amendments to the Bill. It is welcome that discussions between both Governments are ongoing and the Committee would encourage and expect both sides to agree on an acceptable outcome.
71. Committees of the Scottish Parliament involved in scrutinising the LCM agreed there was a lack of clarity on how the Bill would impact on the devolved settlement in Scotland. In their view the role of the Scottish Parliament in scrutinising proposed regulation was also unclear. The Committee is also concerned about the potential impact of EORs on the current arrangements for collaboration between the UK and Scottish Governments on cross border projects.
72. **The Committee recommends the Scottish Government provide more detail of ongoing discussions between the Scottish and UK Governments on the use of delegated powers by the latter in areas of devolved competence.**
73. **The Committee welcomes the principle behind provisions in Clause 120 concerning public engagement, non-regression in environmental regulation, and international obligations.** However, stakeholders raised concerns about a lack of detail. The Committee is also concerned that the Bill in

its current form does not give Scottish Parliament sufficient locus to influence these safeguarding measures and to scrutinise future regulations in this area. More certainty is also needed on how the UK Government's commitments outlined in Clause 120 will be delivered in practice.

74. The Committee notes the Scottish Government's view that it cannot recommend the Parliament consent to the UK Levelling-up and Regeneration Bill in its current form.

Annexe A - Minutes

Net Zero, Energy and Transport Committee - 24th Meeting, 2022 - Tuesday 20th September October 2022 - [Meeting minutes](#)

3. Decision on taking business in private:

The Committee agreed to take items 5 and 6 in private.

5. Work programme (in private):

The Committee considered its work programme.

The Committee agreed to issue a targeted call for views in relation to the Legislative Consent Memorandum on the Levelling-up and Regeneration Bill (UK Parliament legislation), and agreed witnesses to take evidence from at a later date.

Net Zero, Energy and Transport Committee - 26th Meeting, 2022 - Tuesday 4th October 2022 - [Meeting minutes](#)

1. Decision on taking business in private:

The Committee agreed to take items 6, 7 and 8 in private.

2. Levelling-up and Regeneration Bill (UK Parliament legislation):

Edward Mountain indicated that he is a member of the Royal Institution of Chartered Surveyors, through his previous profession as a qualified surveyor.

Edward Mountain indicated that he has experience in the planning sector, from private practice.

The Committee took evidence on Legislative Consent Memorandum LCM-S6-23 from—Robbie Calvert, Policy, Practice and Research Officer, Royal Town Planning Institute; Lloyd Austin, Convener, Governance Group, Scottish Environment LINK; David Melhuish, Director, Scottish Property Federation.

6. Levelling-up and Regeneration Bill (UK Parliament legislation) (in private):

The Committee considered the evidence it heard earlier under agenda item 2.

The Committee agreed to write to the Scottish and UK governments to seek further information.

Net Zero, Energy and Transport Committee - 29th Meeting, 2022 - Tuesday 8th November 2022 - [Meeting minutes](#)

1. Decision on taking business in private:

The Committee agreed to take items 3, 4, 5 and 6 in private.

6. Work programme (in private):

The Committee considered its work programme.

The Committee—

- further considered its approach to the legislative consent memorandum on the Levelling-up and Regeneration Bill (UK Parliament legislation) and agreed to conclude its evidence-taking and to consider a draft report on the memorandum at a future meeting.

Net Zero, Energy and Transport Committee - 33rd Meeting, 2022 - Tuesday 13th December 2022 - [Meeting minutes](#)

1. Decision on taking business in private:

The Committee agreed to take items 2, 3 and 4 in private.

3. Levelling-up and Regeneration Bill (UK Parliament legislation) (in private):

The Committee considered a draft report on Legislative Consent Memorandum [LCM-S6-23](#).

Various changes were agreed to. The Committee agreed to consider a revised draft by correspondence and delegated to the Convener responsibility for finalising the draft report for publication.

Net Zero, Energy and Transport Committee - 34th Meeting, 2022 - Tuesday 20th December 2022 - [Meeting minutes](#)

1. Decisions on taking business in private:

The Committee agreed to take items 4, 5 and 6 in private.

6. Levelling-up and Regeneration Bill (UK Parliament legislation) (in private):

The Committee considered a draft report on Legislative Consent Memorandum [LCM-S6-23](#).

Various changes were agreed to. The Committee agreed to delegate to the Convener responsibility for finalising the draft report for publication.

Annexe B - Evidence

Oral Evidence

- [4 October 2022](#) - Oral evidence - Stakeholders
- [25 October 2022](#) - Oral evidence - Scottish environmental regulators

Written Evidence

The Committee received submissions of written evidence from—

- [Scottish Water](#), 18 October 2022.
- [Scottish Property Federation](#), 18 October 2022.
- [Heads of Planning Scotland](#), 18 October 2022.
- [UK Environmental Law Association](#), 18 October 2022.
- [Scottish Renewables](#), 27 September 2022.
- [Environmental Standards Scotland](#), 14 October 2022.
- [Royal Town Planning Institute Scotland](#), 3 October 2022.
- [Scottish Government](#), 8 November 2022.
- [UK Government](#), 16 December 2022.

