

IEMA Response to the Public Bill Committee: Levelling Up and Regeneration Bill (LURB)



The Importance of Environmental Assessment

The Levelling Up and Regeneration Bill (LURB) seeks to introduce changes to an existing environmental assessment regime through the new proposals to introduce Environmental Outcome Reports (EOR) and amend the existing procedures.

As we endure a record-breaking heat wave in the UK, the climate emergency and its effects are being felt across the UK. However, climate change and greenhouse gas emissions are not the only considerations we need to take into account when planning land use and consenting new developments.

The existing environmental assessment regimes, of environmental impact assessment (EIA) for projects, and strategic environmental assessment (SEA) for plans, have been developed over more than thirty years, and evolved to provide robust assessment of plans and projects which have the greatest risk of significant adverse impacts on communities and the environment. It is critically important that any reforms to the environmental assessment regime seizes the opportunity to further improve these vital safeguards, and does not unintentionally erode these protections.

The underlying rationale for carrying out environmental assessment to inform sustainable decision-making only becomes stronger with each passing year, due to rising population pressure, climate change, and continued urban and infrastructure development in a finite geography. EIA and SEA are not designed to prevent development, they are valuable tools to aid decision making to ensure that projects are well-designed, sited appropriately, and seek to embed the principle of avoiding significant adverse impacts on people and the environment.

About IEMA

IEMA (Institute of Environmental Management Assessment) is the professional body for everyone working in environment and sustainability. It is the largest professional body for environmental practitioners in the UK and worldwide with over 18,000 members. IEMA is an authoritative voice on Impact Assessment (IA) and for the past 35 years has been at the forefront of reform. We have remained an integral part of the consultation on change including previous modifications to EU Directives and to the regulations in the UK. Our IA Network brings together skilled and experienced experts in IA and includes representation from developers, consultancies, statutory consultees, academia and others. We have active members in 40 countries, with the majority of our IA practitioners based in the UK and Ireland. The IEMA IA Network is comprised of several components:

- The Impact Assessment Steering Group
- The Global Environmental and Social Assessment Group
- The EIA Quality Mark and EIA Practitioner Register
- Over 5000 individual IEMA members with a professional interest in Impact Assessment
- Multiple Cross-Sector Technical Working Groups
- The Impact Assessment Outlook Journal (Published Quarterly)
- IEMA EIA Guidance

An Opportunity to Enhance Environmental Protection

Having left the auspices of the EU Directives on EIA and SEA there is an opportunity to retain the best aspects of the existing policy and practice, as well as introducing changes to improve these instruments to secure better outcomes for the environment and society. IEMA is committed to aiding policy makers in making evidence-based policy using sound science and professional experience from competent experts.

IEMA has been publishing good practice guidance on EIA since 1993 and continues to advocate for advances in the field of impact assessment to support the objective of living within environmental limits and supporting a just transition to a sustainable economy.

For the avoidance of doubt, whilst IEMA is an advocate for improved practice and reform of environmental assessment, we remain a strong supporter of EIA and SEA. Our experience over the past 35 years is that EIA and SEA remain vital policy tools and offer the following key benefits:

- Enhances the environmental quality of plans, proposals and developments;
- Avoids and minimises potential negative impacts on people and the environment;
- Engages those who might be affected as a consequence of a plan, proposal or development; and
- Provides stakeholders and authorities with a full and clear understanding of the likely environmental effects, prior to making a consenting decision.

Review of LURB for The Public Bill Committee

In this review we have contrasted IEMA's previous advice, submissions, consultation responses and positions on EIA and SEA (the IEMA recommendations) against the Environmental Outcomes Report (EOR) proposals in the Levelling Up and Regeneration Bill (LURB).

The IEMA position is based on our previous stated and published recommendations contained in the following documents:

1. IEMAs 'Proportionate EIA Strategy'¹ (July 2017);
2. IEMA 'Levelling up EIA to Build Back Better' report (September 2020) to Defra and MHCLG in September 2020 setting out key recommendations for improvements to EIA²;
3. IEMA response (October 2020) to the Ministry of Housing, Communities & Local Government (MHCLG) Consultation on 'Planning for the Future'³;
4. IEMA briefing report 'The Future of Environmental Assessment' (December 2020) to Defra and MHCLG on improvements to EIA and SEA.

¹ Proportionate EIA – A Collaborate Strategy For Enhancing UK Environmental Impact Assessment Practice, IEMA 2017 <https://www.iema.net/resources/reading-room/2017/07/18/delivering-proportionate-eia>

² See IEMA's paper on Levelling Up EIA to Build Back Better (bit.ly/34Hfikt)

³ See IEMA's formal response to the MHCLG consultation here (bit.ly/34Hfikt)

5. IEMA response (March 2021) to the Housing, Communities and Local Government Committee (HCLGC) inquiry: The future of the planning system in England⁴;
6. IEMA response (April 2022) to Defra's Environmental Impact Assessment (EIA) Regulations: Post Implementation Review- Impact Evaluation Survey; and
7. IEMA response (May 2022) to Defra's Nature Recovery Green Paper.

In the following pages, Table 1 summarises IEMA's recommendations and compares them against the key elements of the EOR section of LURB. Each recommendation is colour coded based on a 'traffic light' system, with orange being partial or potential alignment, and red representing contradictory (or missing) based on the IEMA recommendations.

It should be noted that the LURB only provides the outline of the EOR at this stage, and for that reason many recommendations are currently orange, until further detail is provided in subsequent consultations on the EOR.

For comments or questions relating to IEMA's written evidence on LURB please contact:

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⁴ See IEMA's written evidence to HCLGC here
<https://committees.parliament.uk/writtenevidence/23564/html/>

Table 1: Comparison of LURB EOR against IEMA Recommendations

IEMA Recommendation	Categorization (Traffic Light)	Short Description
<p>Enhancing People So that those involved in Impact Assessment (IA) have the skills, knowledge and confidence to avoid an overly precautionary approach.</p>		<p>There is no mention of investing in training for those involved in EOR so that they have the skills, knowledge and confidence to make good professional judgements and avoid an overly precautionary approach. Whilst this is not expected in the LURB itself this is something that needs to accompany the roll out of EOR.</p>
<p>Sharing Responsibility Recognising that disproportionate IA is driven by many factors and that enabling proportionate assessment will require collaborative actions that work towards a shared goal</p>		<p>Again, not expected in LURB but in surrounding communication there is no mention of working across institutes, departments, academia, legal profession, planners and environmental bodies to develop a more proportionate approach. There has not been any formal consultation to date on EOR (or EIA/SEA) although this has been announced.</p>
<p>Governance on ‘scoping’ non-EIA development Provide new requirements and standards on how the need for reporting is scoped for projects which are not EIA development – i.e. the 99.8% of planning applications.⁵</p>		<p>Part 5 Section 118 provides the Power to define “relevant consent” and “relevant plan” etc and describes Category 1 and Category 2 consents which seem to largely mirror Schedule 1 and Schedule 2 developments under current EIA terminology. The EOR are silent on non-Category 2 requirements and therefore will likely be limited to the similar number of projects currently assessed, i.e. projects with potential for significant adverse effects due to the nature and/or location of the proposal.</p>
<p>Appraise the role of a national IA unit Create a National Environmental Assessment Unit/Centre of Excellence:</p> <ul style="list-style-type: none"> - Direction and leadership of EIA and SEA and independent voice; - Ownership and maintenance of guidance working with the established content, tone and breadth of the Planning Practice Guidance (PPG); 		<p>No mention of any kind of national unit to support the delivery of EOR or to bring consistency and independence, using an evidence based approach, to screening (Categorizing under EOR) and scoping (defining assessment under EOR) projects and plans. Missed opportunity to level-up impact assessment and provide a world class or leading impact assessment unit to drive the improvement and successful delivery of IA and EOR.</p>

⁵ Based on 432,200 planning applications in England in 2019

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875032/Planning_Application_Statistics_October_to_December_2019.pdf) compared to IEMA estimates of annual UK ES submissions ranging between 600 to 900 gives a conservative total of 0.2%.

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<ul style="list-style-type: none"> - Generation, maintenance and ownership of national IA data; - Ownership and maintenance of IA case law database; - Coordination of IA skills, training, research and funding (and links to institutions/academia/education) and monitoring feedback; - Regulator of competent training; and - Driver of requirements for competent professionals in EIA and SEA. 		
<p>Competence in EIA and SEA Acknowledge IA as a specialist area of expertise, one that requires competent experts to lead assessments and prepare reports and recognises their role in underpinning the decision-making process. This may include a decision on shared technical capacity across determining authorities so that the value of skills development and training is realised.</p>		<p>There is no mention of investing in training for those involved in EOR so that they have the skills, knowledge and confidence to avoid an overly precautionary approach. In addition, no mention of regional centres of excellence or pooling expertise to address chronic shortage of expertise and capacity in public sector.</p>
<p>Adopt a Tiered Assessment Regime There should be a new tiered assessment regime, where the level of assessment relates to the complexity of the development and environment. The level of assessment will ideally be determined/informed at the national plan/programme level to provide certainty for developers – it is likely that relatively few developments will require an upper tier assessment, the majority of projects will be at the lowest tier.</p>		<p>There is little content within LURB and EOR on providing a tiered system, if anything the reverse is true with a single EOR approach being taken to both plans and projects. The lack of a tiered system may lead to either the strategic assessments being too detailed, or the project level assessments being too vague, depending on where the balance of assessment is set for EOR.</p>
<p>Embed the Mitigation Hierarchy There should be a requirement to demonstrate that the ‘Mitigation Hierarchy’ has been applied from the concept level and then throughout design and implementation, with strong incentives and penalties for failing to avoid and prevent</p>		<p>Part 5 Section 117 Para 4 subsection b mirrors the logic of the mitigation hierarchy. However, it does not include the hierarchical nature, in the sense that there is no requirement to start at the top, it merely lists them as assessment steps. This is an important omission.</p>

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impacts, rather than an over-reliance on often ineffective mitigation and compensation.		
<p>Promote Evidence-based Practice The UK (and/or England) should develop a systematic national evidence programme and central repository (online)⁶ with institutional governance and appropriate funding. This would, over time, correct many of the criticised aspects of EIA and SEA practice (scoping, screening, proportionality, costs, accuracy, environmental and social outcomes).</p>		<p>Part 5 Section 119 makes provisions for assessing and monitoring impact on outcomes etc. However, this is written in a project specific manner that does not suggest any centralised collection and reuse of monitoring or mitigation data. There are no provisions to create any strategic industry or national evidence base to assist screening, scoping or assessment.</p>
<p>Mandate the use of Competent Experts IA should be a process that is transparent, independent and distanced from politics, prepared by and used by qualified and experienced professionals. The government should consider adopting standards (such as the IEMA EIA Quality Mark and EIA Practitioner Register) in Central and Local government procurement for EIA services to ensure the use of recognised ‘Competent Experts’.</p>		<p>Part 5 Section 129 (1 B) make further provisions on allowing a public authority to determine who has qualifications or experience to prepare an environmental outcomes report. Whilst it is good to see the recognition of the important of qualifications and experience is noted, it is not clear if this is a purely discretionary role of the local or public authority and to what extent central guidance or clarification will be provided to bring consistency to the definition of competence. Furthermore, the language of qualifications and experience is a watering down of the current requirement to use competent experts. Furthermore, there is no mention of any requirement for authorities to have (or to have access to) sufficient expertise, as currently required under EIA. If this provision is not included this is a retrograde step for competence.</p>
<p>Support an Integrated Assessment of Effects As one of the few truly integrated assessment tools in the design process (of plans and projects) SEA and EIA, when implemented early and properly by ‘Competent Experts’, can reduce costs, speed up implementation, build stakeholder and public consensus, and crucially, avoid and minimise unnecessary and undesirable environmental and social impacts.</p>		<p>Part 5 Section 118 provides the Power to define “relevant consent” and “relevant plan” etc and describes Category 1 and Category 2 consents which seem to largely mirror the concept of Schedule 1 and Schedule 2 developments under current EIA terminology. The EOR are silent on non-Category 2 requirements and therefore will likely be limited to the similar number (or less depending on the nature of the two new categories) of projects currently assessed. On this basis, unless the new Category 2 is wider in scope than the current Schedule 2, the recommendation that some form of integrated environmental</p>

⁶ See “Industry Evidence Programme Offshore Wind Farms - Pilot Industry Evidence Base” June 2018 (IEMA, TCE & RHDHV).

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<p>On this basis, it is recommended that some form of integrated environmental assessment is undertaken for all projects and plans, scaled to the appropriate level, and proportionate to the potential effects of the proposal.</p>		<p>assessment is undertaken for all projects and plans, scaled to the appropriate level, and proportionate to the potential effects of the proposal is unlikely to be included.</p>
<p>Improve Public Participation and Stakeholder Public Participation: Public participation is currently low, mainly due to barriers (often unintentional) to many sections of society from engaging with the current planning and policy system. At present EIA is one of the few parts of the process that offers an opportunity for public participation, however this is highly variable between projects. Any reform should look to widening and enabling greater public participation in line with legal and policy requirements such as the Aarhus Convention.</p> <p>Accessibility and Transparency: IA reporting and consultation should be transparent both in outcomes and simple language that are accessible to all (both in terms of relevance and terminology). Modern technology, and in particular, information technology and digital innovations have created 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.</p>		<p>Part 5 Section 125 concerns public participation but is largely restricted to the development of the EOR and outcomes, rather than providing provisions to safeguard or improve; Public Participation and Stakeholder Engagement, Accessibility and Transparency, Access to Environmental Information and Access to Environmental Justice within EORs that come forward. This is a missed opportunity to improve the status quo and we will need to see to what extent this is addressed in the subsequent consultation on EOR.</p>
<p>Promote Better Informed Decisions Recommendation on governance infrastructure to lead to better informed decisions:</p> <ul style="list-style-type: none"> - Creation of a National Environmental Assessment Unit and a National Regulator (role outlined below); - A new, single set of EIA Regulations (with sector specific annexes if required); 		<p>This recommendation included the combined effect of multiple recommendations to form an overarching impact assessment ‘ecosystem’ that would deliver better informed decisions leading to positive environmental outcomes. Most of these recommendations are absent from LURB and EOR regarding tiering, competent experts, national data hubs, centre of excellence, etc.</p>

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<ul style="list-style-type: none"> - The development of a tiered approach to EIA and SEA; - Central online platform for data and decisions; and <p>Creation of a national repository of environmental assessment evidence.</p>		
<p>Improving Scoping To generate a more consistently focused approach to this critical activity throughout the IA process</p>		<p>There are no details of if (or how) scoping will be improved. LURB only provides provision for setting the scope in Part 5, Section 117 Para 7 Subsection F. IEMA has concerns about how 'outcomes' based on national targets will be measured at a project level to determine impact in terms of determining materiality, acceptability or significance.</p>
<p>Embracing Innovation and Digital Modernising IA to deliver effective and efficient assessment and reporting that adds value to projects/plans and their interaction with the environment. Priorities should include a national impact assessment data hub, digital submissions and improved use of interactive mapping to provide clarity on whom or what is impacted.</p>		<p>Part 5 Section 124 leaves open the potential for modernising IA. However, it does not explicitly specify in LURB that digital IA will be allowable. Part 3 Chapter 1 of LURB sets out new provisions for planning data. However, there is no direct reference to EOR in Part 3 so it is not clear to what extent this enables digital integration of EOR.</p>
<p>Publish clear requirements and standards for EIA and SEA Convene a working group to define existing good practice to develop an agreed set of enhanced and simplified requirements and standards and would give practitioners and decision makers the evidence to substantiate the approaches taken and decisions made.</p>		<p>Part 5 Section 126 provides for the SoS to produce guidance and for that guidance to be required to be followed. However, the nature of the guidance, its scope and quality are not provided, nor is the mechanism for how that guidance will be developed.</p>
<p>Ensure EMPs are central to the EIA process and provide certainty on implementation Environmental Management Plans (EMPs) should become a validation requirement of any EIA containing all design and mitigation requirements. The EMP can then be monitored through construction to ensure implementation/deliver post consent monitoring and evolve to provide the</p>		<p>Part 5 Section 119 makes provisions for assessing and monitoring impact on outcomes etc. However, the nature of these provisions, their scope and quality are not provided.</p>

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structure and control mechanisms of an operational Environmental Management System (EMS).		
<p>Adopt Receptor-led Assessment Environmental: Consideration of environmental receptors needs to move beyond the narrow consideration of protected sites and protected species to assess the impact of the proposals on both the biotic and abiotic elements of the affected ecosystems to ensure any impacts to the functioning of ecosystem as well as individual habitats and species are safeguarded. In terms of net environmental gain, reversing biodiversity loss and declining species diversity, richness, and abundance, the focus should be on a proposal's contribution to (and compatibility with) an ecosystem restoration and recovery programme with the aim of maintaining functioning bioregions.</p> <p>Social: The advantages of changing to a receptor led structure would be that stakeholders, residents and the public with a broader interest in the impacts of a project can more easily access a holistic view of the impacts on a receptor, such as their community or home rather than for example, air quality and noise considered in isolation.</p>		<p>With the absence of the standard EIA/SEA 'topics' or 'factors' there is scope to reappraise the role of receptors within the EOR. However, the factors may be largely replaced by outcomes, which would mirror the topic-based approach and miss the opportunity to refocus on receptor led assessment, such as assessing impacts on a community (rather than on a series of target outcomes). On the social side there is concern that the definition of the EOR in Part 5 Section 116 Para 2 may not encompass the full range of social issues that EIA and SEA are starting to explore regarding wellbeing, equity, the determinants of health and amenity. This will need to be made clearer in the EOR consultation</p>
<p>Renewed Focus on Monitoring and Management Recommendations for Evidence-based Environmental Monitoring and Management:</p> <ul style="list-style-type: none"> - Consider a requirement for an Environmental Assessment Coordinator to be appointed at the earliest phase of design akin to the former role of the CDM coordinator for health and safety matters. 		<p>Part 5 Section 119 makes provisions for assessing and monitoring impact on outcomes etc. However, the nature of these provisions, their scope and quality are not provided. In addition, no mention of independent environmental clerks of works or the environmental equivalent of the concept of the CDM (Construction Design and Management) coordinator⁷ for managing health and safety. A similar regime could embed an Environmental Assessment Coordinator into projects from conception to implementation to maximise the opportunities for early intervention,</p>

⁷ CDM Regulations 2007, now superseded by CDM 2015.

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<ul style="list-style-type: none"> - Consider the use of independent Environmental Clerks of Works who report directly to the local authority on implementation of environmental outcomes during construction. - Major refocus across the post-consent regime on monitoring and adaptive management; - Renewed focus on gathering evidence and recycling the evidence to inform revisions/updates and subsequent proposals; and - Mandate Environmental Management Plans (EMPs) – to capture and condition all mitigations and monitoring. 		<p>identification of opportunities, and continuity across the project life cycle.</p>
<p>Measure Sustainable Development and Environmental Net Gain</p> <p>Sustainable Development: In order to measure achievement, compliance and contribution against the overarching aim of the NPPF and SDGs some measure or other method of incorporating sustainable development should be included explicitly into the practice of EIA and SEA.</p> <p>Environmental Net Gain: Net gain principles should be a requirement of all developments above a certain threshold (except for example very minor works), encompassing non-EIA development to NSIPs, but scaled appropriately to the impacts of the development. This should not be limited to biodiversity net gain but could include social value or other environmental and climate related metrics.</p>		<p>No explicit mention of SDGs, sustainable development or environmental net gain. These may become defined and or captured under the development of outcomes.</p>