



Levelling Up Bill and impact on devolved environmental protections

Summary

- The Levelling Up and Regeneration Bill will hand a UK Minister the power to scrap and rewrite, by secondary legislation, environmental protections currently set out in primary legislation.
- This power will apply across the UK – meaning the UK Government could directly change Scottish environmental law against the wishes of the Scottish Government.
- These proposals are of [serious concern to environmental NGOs](#) as they have the potential to weaken the protection of the environment.

Background

The Levelling Up and Regeneration Bill (Part 5) will create a new system to replace environmental assessments. The proposed new Environmental Outcome Reports (EORs) will apply to relevant plans and any projects with the potential to significantly affect the environment. EORs will be part of the wider reforms to the planning system in England, set out in other parts of the Bill; however, Part 5 indicates that such an approach will apply across the UK and thus could be used to amend Scottish planning and environmental law.

Currently, environmental impact assessments (EIAs), strategic environmental assessments (SEAs), and habitat regulation assessments (HRAs) provide a degree of protection against the possible negative environmental impacts of new developments.

The UK Government has said that EORs will “replace the existing EU-generated systems... and introduce a clearer and simpler process where relevant plans and projects are assessed against tangible environmental outcomes set by government, rather than in Brussels”.

How EORs will function – “Henry VIII powers”

The Bill will enable a UK Minister to create EOR regulations through secondary legislation. These regulations may be applied to environmental protection across the United Kingdom, including Scotland, and in offshore areas.

The Secretary of State will be able to alter or remove existing legal environmental protections. This is an example of “Henry VIII powers” when Ministers can amend existing primary legislation. This could allow the Government to weaken environmental protections with minimal parliamentary or public scrutiny.

The Bill states that the Secretary of State may use these new EOR regulations to “amend, repeal or revoke existing environmental assessment legislation.” This power affects 18 existing sets of regulations originating from primary legislation, covering areas including oil and gas exploration, nuclear power, and transport.



Relationship with devolved powers

Responsibility for the environment is devolved to the Scottish Parliament, as are related areas including planning. The Levelling Up Bill will allow UK Ministers to use “Henry VIII powers” in devolved areas, giving the UK Government the ability to change or scrap aspects of environmental law which should be within the remit of the Scottish Parliament.

UK Ministers will be able to amend, repeal or revoke legislation, including Acts of the Scottish Parliament and other devolved assemblies, placing requirements on public bodies to comply and cooperate with the new system of EORs.

Neither the Scottish Government nor the Scottish Parliament will have the ability to reject these regulations. The Bill does not expressly require consent, instead it only requires the UK Government “consult” with Scottish Ministers. This approach is at odds with the spirit of the Sewel Convention that “the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.”

Risks and potential impact

While administrations across the UK have stated their commitment to environmental protection, the approaches taken across the nations have differed. This reflects both the political priorities of the elected governments and the specific environmental circumstances in each nation. In Scotland, such differing political priorities are illustrated by the commitment to “keep pace” with EU environmental law.

There are serious questions over the democratic legitimacy of one parliament handing itself the power to alter environmental law passed by another. In the current political context, this approach risks turning long-standing and vital environmental protections into the subject of a contentious constitutional argument. This approach also risks creating policy incoherence as Scottish Ministers, currently undertaking major reforms to planning policy, will lose control of key mechanisms within the planning process.

There are broader concerns over the intentions of these changes. Their introduction in the Levelling Up Bill, legislation intended to encourage economic growth, will inevitably raise suspicions that the new regulations are intended to weaken existing protections and allow development activity that would not currently be permitted.

Whether this is the intention of current Ministers or not, the Bill would hand the UK Government sweeping powers to roll-back protections for nature with minimal scrutiny and against the wishes of the devolved administrations.

It is vital that governments across the UK ensure robust and effective environmental protections in the face of climate and nature emergencies. The Bill gives almost no detail on the nature of the new regulatory regime. Any changes to environmental assessments should be set out in primary legislation and should maintain and strengthen the current levels of protection. If EOR regulations are to apply across the UK, this should require the consent of the devolved administrations.

This briefing has been prepared on behalf of Scottish Environment LINK’s Governance Group.

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

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