Q. What are your views on proposals in the UK Levelling-up and Regeneration Bill in relation to environmental law; and specifically in relation to provisions to give the UK Government new powers to create Environmental Outcome Reports, which would be applicable in Scotland.

Context

Part 5 of the LURB creates a power to make regulations which develop a new system of Environmental Outcomes Reports (EORs), which will, in some areas at least, replace EU procedures such as Habitats Regulation Assessments (HRAs), Environmental Impact Assessments (EIAs) and Strategic Environmental Assessments (SEAs). It should be noted by the committee that countries outside of the EU have EIA processes in place including the USA[1].The intentions of EORs are to assess the extent that a proposed plan or consent will impact on the implementation of specified environmental outcomes with a shift from assessing impacts to reporting on the potential outcomes of those impacts. This outcome focused shift may not be such a significant shift in practice with many EIAs already reporting on outcomes but at this stage we do not have enough detail to understand the impact on processes. The UK government will still have to meet obligations under the UN Aarhus and Espoo Conventions, something which has been confirmed at a Bill committee hearing on the 8th September[2]. RTPI Scotland support this commitment and would encourage the Committee to continually press for such an approach.

As recognised in the Scottish Government's Legislative Consent Memorandum, there is currently very little information regarding planned changes. This is because the Bill itself contains broad brushed enabling powers with important detail still needing determined by regulations. This includes information on, for example:

- Proposed content of EORs
- How EORs are taken into consideration by public authorities in decision making
- The extent to which EORs are taken into consideration by public authorities in decision making
- What plans and consents are to be subject to procedures

As with existing EIAs, the LURB sets out that projects requiring an EOR will be split into those that will always require EOR before consent and others that will be dependent upon a set of criteria being met, which could be, for example, scale and/or location. Of note, the LURB contains a provision for waiving the need for an assessment on elements already covered in a different EOR. Whilst details are still to be set out, the RTPI would advocate for the retention of the consideration of alternatives, an expanded assessment for population health (as long as they are in alignment with Health Impact Assessments set out I the Planning (Scotland) Act 2019) and proposals which encourage better public engagement. The RTPI understands that a consultation on EORs is due to be issued soon and we therefore would welcome a continued dialogue with the Committee as details are further revealed.

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[1] IEMA (2014) EIA in the US, the UK and Europe. January. Available here: https://www.iema.net/articles/eia-in-the-us-the-uk-and-europe
[2] UK Parliament (2022) Levelling-up and Regeneration Bill committee meeting (Twenty First sitting). September. Available here: https://hansard.parliament.uk/commons/2022-09-08/debates/860cfb5a-3cf2-4773-9af5-a020d8cd5f34/Levelling-UpAndRegenerationBill(TwentyFirstSitting)

The need for significant structural change to the SEA/EIA system should be evidenced. In England in 2019, research has shown that 99.9% of projects did not require an EIA. As yet, no substantive evidence has been published that the EIA process is a key factor in project delays, although a number of improvements to current processes have been set in out in work published by IEMA[3]. In the first instance the RTPI would support the publication of evidence from across the nations and an impact analysis that builds a case for reform in this area. It would also be helpful if proposals were mapped onto existing proposals regarding biodiversity net-gain (and how proposals would interface with a different policy approach with Scotland on the matter), reform of protected sites in England, net-zero targets and on-going planning reforms across the nations. Whilst we understand intentions are to streamline processes, uncertainty in processes could inadvertently lead to delays, especially considering the longer-term nature of large infrastructure projects.

Scottish context

As set out in section 121 of the Bill, the Secretary of State can make EOR regulations covering devolved matters subject to consultation with the Scottish Ministers, but not necessitating consent. However, it should be noted that the provision handling interaction with existing legislation only lists measures that apply in England, it is not a clear intention to create significant changes to the law in Scotland. It is also not clear at this stage if all nations were to agree on a common framework for an outcomes-based approach, whether the specified outcomes would have to be the same in different nations. RTPI Scotland supports any safeguarding of consenting arrangements between the nations and therefore support amendments 178, 179,180 to Clause 121 as the Bill moves through the UK Parliament. Beyond Scottish Ministers, RTPI Scotland wishes to see a range of stakeholders involved in the consultation process especially the recently established Environmental Standards Scotland and, if timings allow, the emerging roles of the National Planning Improvement Coordinator role and Future Generation Commissioner. RTPI Scotland believes there to be a significant role for Chief Planning Officers in the development and implementation of any reforms that will affect the planning system and we would welcome to opportunity to work with Scottish Government in developing the impending guidance to ensure this is the case[4].

The RTPI expresses concerns that a differing SEA/EIA system in England could lead to added complexities when compared to a singular process conducted across the rest of the EU. In a Scottish context, changes to environmental law in England will potentially impact cross-boundary SACs/SPAs including the River Tweed SCA, Solway Firth SAC & SPA and the Berwickshire & Northumberland Coast SAC. We are unclear at this stage how the proposed Environmental Common Frameworks will interface with proposals. This would include air quality, as this stage forms part of the EIA process which was consulted on by the NZET Committee earlier this year[5].

[3] IEMA (2020) Levelling up EIA to Build Back Better. September. Available here: https://www.iema.net/resources/reading-room/2020/10/01/iema-paper-levelling-up-eia-to-build-back-better
[4] RTPI Scotland (2021) Chief Planning Officers, RTPI Scotland Thinkpiece. October. Available here: https://www.rtpi.org.uk/policy/2021/october/chief-planning-officers/
[5] RTPI Scotland (2022) RTPI Scotland's response to the Net Zero, Energy and Transport Committee's call for views on Environmental Common Frameworks. June. Available here: https://www.rtpi.org.uk/consultations-rtpi/2022/june/rtpi-scotlands-response-to-the-call-for-views-on-environmental-common-frameworks/

Planning

As also set out in the Scottish Government's Legislative Consent Memorandum, EIAs cover a range of consenting regimes, such as Planning, Marine Licensing, Forestry, Energy, trunk Roads and Agriculture. As we understand, proposed reform will affect 18 different consenting regimes. The planning system itself engages with a considerable number of these consenting regimes and their respective EIAs, so is in itself a fundamental consideration when looking at improving the consenting process. In order to improve the EIA process, it is essential to ensure an adequately resourced planning system[6]. Research from RTPI Scotland[7] has revealed significant concerns around the resourcing of planning services with:

- Nearly a third of planning department staff have been cut since 2009
- Planning authorities' budgets have diminished in real terms by 42% since 2009
- In 2020 local authorities only spent 0.38% of their total net revenue budgets on planning
- Planning application fees only cover 66% of their processing costs
- There are 91 new and unfunded duties in the Planning (Scotland) Act, which could cost between £12.1m and £59.1m over 10 years

Research has also showed that planning has demographic and succession challenges with a limited pipeline. Only around 9% of staff in planning authorities are under 30 and there is an estimated replacement demand of around 500 planners over the next 15 years is required[8]. Given this, RTPI Scotland wishes to stress the need to invest in initiatives to promote planning as a career and a vital component of the green transition through widening access to the profession through establishing apprenticeships[9]. Whilst RTPI Scotland broadly support a move towards outcomes-based approaches, doing so can be complicated as highlighted by research we have undertaken[10]. RTPI Scotland are concerned that a significant amount of upskilling will be required for planners to adapt to such fundamental reforms, which will need to be considered in the context of planners in Scotland adapting to existing significant changes to policy and legislation deriving from the Planning (Scotland) Act. 2019 and the National Planning Framework 4. This also needs to be considered in the current context of skills shortages in the planning profession for large infrastructure projects. This can be seen with, for example, the handling of onshore wind applications. These require particular skills-sets for planners, with their height and movement making them very different to other forms of development. This includes being able to evaluate Landscape Capacity studies, Zones of Visual Influence (ZVI), Landscape and Visual Impact

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[6] RTPI (2020) Invest and Prosper – A Business Case for Investing in Planning. October. Available here: https://www.rtpi.org.uk/media/6721/investandprosper_oct2020.pdf
[7] RTPI Scotland (2021) Resourcing the Planning Service: Key Trends and Findings 2021. June. Available here: https://www.rtpi.org.uk/research/2021/june/resourcing-the-planning-service-key-trends-and-findings-2021/
[8] Skills Development Scotland (SDS), Partners in Planning & EKOS (2021) Skills in Planning Publication. February. Available here: https://www.partnersinplanning.scot/__data/assets/pdf_file/0016/23623/Skills-in-Planning-Research-Final-February-2021.pdf
[9] Improvement Service, Heads of Planning Scotland & RTPI Scotland (2022) Future Planners Project Report. July. Available here: https://www.partnersinplanning.scot/__data/assets/pdf_file/0016/23623/Skills-in-Planning-Research-Final-February-2021.pdf
[10] RTPI (2020) Measuring What Matters: Planning Outcomes Research. November. Available here: https://www.rtpi.org.uk/research/2020/november/measuring-what-matters-planning-outcomes-research/

Assessments (LVIA), alongside relatively unique considerations of ecological impacts, construction on peatlands, and aviation concerns. More broadly we need to ensure all statutory consultees are appropriately resourced and have sufficient skills and experience to deliver a new system, especially during the early stages of assessment such as screening and scoping.

RTPI Scotland believe that there are clear efficiencies that could be brought into the process through better use of digital technologies. A report from IEMA (2020) suggests a number of potential improvements through use of digital technologies including[11]:

- The use of software and hardware that uses digital data as the storage medium
- Use of digital innovation beyond EIAs such as SEAs, HRAs Sustainability Appraisals (SA) & Health Impact Assessments (HIA)
- Use of digital practices beyond reporting, underpinning the process

Such technological innovations could be used to drive efficiencies in the process, improve proportionality and provide more accessible reporting tools for the development industry and local communities to engage with (as EIA/SEAs are as much about reporting, transparency, and engagement as they are determining potential effects). We understand that there are good examples of existing initiatives to improve evidence sharing across stakeholders such as the Crown Estate's Offshore Wind Evidence and Change Programme[12]. RTPI Scotland wishes to highlight the opportunities that exist to support EIA/SEA processes through the implementation of Scottish Government's Digital Planning Strategy[13], for example through:

- Developing a shared, cloud-based data resource for planning and place data
- Build a foundation of data that is robust, trusted and can be exchanged and used a
- Define and implement a data ecosystem approach
- Realising Potential programme to explore data-driven innovations within planning
- Enhanced community engagement

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[11] IEMA (2020) Digital Impact Assessment A Primer for Embracing Innovation and Digital Working. March. Available here: https://www.iema.net/resources/news/2020/03/25/iema-launch-new-digital-impact-assessment-primer/
[12] https://www.thecrownestate.co.uk/en-gb/what-we-do/on-the-seabed/offshore-wind-evidence-and-change-programme/
[13] Scottish Government (2020) Transforming Places Together: digital strategy for planning. November. Available here: https://www.gov.scot/publications/transforming-places-together-scotlands-digital-strategy-planning/pages/17/