



# Levelling-up and Regeneration Act 2023

## 2023 CHAPTER 55

### PART 6

#### ENVIRONMENTAL OUTCOMES REPORTS

##### *Safeguards, devolution and exemptions*

#### **156 Safeguards: non-regression, international obligations and public engagement**

- (1) An appropriate authority 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.
- (2) EOR regulations may not contain provision that is inconsistent with the implementation of the international obligations of the United Kingdom relating to the assessment of the environmental impact of relevant plans and relevant consents.
- (3) In exercising functions under this Part, an appropriate authority must seek to ensure that (so far as would not otherwise be the case) arrangements will exist under which the public will be informed of any proposed relevant consent or proposed relevant plan in sufficient detail, and at a sufficiently early stage, to enable adequate public engagement to take place.

- (4) In this section—

“adequate public engagement” means such engagement with the public, in relation to a proposed relevant consent or proposed relevant plan, as the appropriate authority considers appropriate;

“environmental law” means environmental law (within the meaning of Part 1 of the Environment Act 2021 but disregarding section 46(3) and (4) of that Act), whether or not the environmental law is in force.

**157 Requirements to consult devolved administrations**

- (1) The Secretary of State may only make EOR regulations which contain provision—
  - (a) within Scottish devolved legislative competence, or
  - (b) which could be made by the Scottish Ministers,with the consent of the Scottish Ministers, unless that provision is merely incidental to, or consequential on, provision that would be outside that devolved legislative competence.
- (2) The Secretary of State may only make EOR regulations which contain provision that confers a function on, or modifies or removes a function of, the Scottish Ministers after consulting the Scottish Ministers, unless—
  - (a) that provision is contained in regulations which require the consent of the Scottish Ministers by virtue of subsection (1), or
  - (b) that provision is merely incidental to, or consequential on, provision that would be outside Scottish devolved legislative competence.
- (3) Provision is “within Scottish devolved legislative competence” where, if the provision were included in an Act of the Scottish Parliament, it would be within the legislative competence of that Parliament.
- (4) The Secretary of State may only make EOR regulations which contain provision within Welsh devolved legislative competence with the consent of the Welsh Ministers, unless that provision is merely incidental to, or consequential on, provision that would be outside that devolved legislative competence.
- (5) The Secretary of State may only make EOR regulations which contain provision that could be made by the Welsh Ministers or that confers a function on, or modifies or removes a function of, the Welsh Ministers or a devolved Welsh authority after consulting the Welsh Ministers, unless—
  - (a) that provision is contained in regulations which require the consent of the Welsh Ministers by virtue of subsection (4), or
  - (b) that provision is merely incidental to, or consequential on, provision that would be outside Welsh devolved legislative competence.
- (6) “Devolved Welsh authority” has the same meaning as in the Government of Wales Act 2006 (see section 157A of that Act).
- (7) Provision is “within Welsh devolved legislative competence” where, if the provision were included in an Act of Senedd Cymru, it would be within the legislative competence of the Senedd (including any provision that could be made only with the consent of a Minister of the Crown).
- (8) The Secretary of State may only make EOR regulations which contain provision within Northern Ireland devolved legislative competence with the consent of the relevant Northern Ireland department, unless that provision is merely incidental to, or consequential on, provision that would be outside that devolved legislative competence.
- (9) The Secretary of State may only make EOR regulations which contain provision that could be made by a Northern Ireland department or that confers a function on, or modifies or removes a function of, a Northern Ireland department after consulting the relevant Northern Ireland department, unless—

- (a) that provision is contained in regulations which require the consent of the relevant Northern Ireland department by virtue of subsection (8), or
  - (b) that provision is merely incidental to, or consequential on, provision that would be outside Northern Ireland devolved legislative competence.
- (10) The “relevant Northern Ireland department” is such Northern Ireland department as the Secretary of State considers appropriate having regard to the provision which is to be contained in the regulations concerned.
- (11) Provision is within “Northern Ireland devolved legislative competence” where the provision—
- (a) would be within the legislative competence of the Northern Ireland Assembly, if contained in an Act of that Assembly, and
  - (b) would not, if contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State.
- (12) In this section “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.

#### **158 EOR regulations: devolved authorities**

[Schedule 13](#) contains restrictions on the exercise of the powers under this Part by devolved authorities.

#### **159 Exemptions for national defence and civil emergency etc**

- (1) The Secretary of State may direct that no environmental outcomes report is required to be prepared in relation to a proposed relevant consent which is solely for the purposes of national defence or preventing or responding to civil emergency.
- (2) EOR regulations may provide for further circumstances in which the Secretary of State is to be able to direct that no environmental outcomes report is required to be prepared.
- (3) A direction under this section may provide that provision in EOR regulations specified in the direction applies (subject to any modifications specified in the direction), despite the fact that no environmental outcomes report is required to be prepared.
- (4) The Secretary of State may modify or revoke a direction under this section.