



# **BPF RESPONSE TO DLUHC'S CONSULTATION ON ENVIRONMENTAL OUTCOMES REPORTS**

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**PREPARED AND SUBMITTED BY**

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## British Property Federation

1. The British Property Federation (BPF) represents the real estate sector – an industry which contributed more than £116bn to the economy in 2020 and supported more than 2.4 million jobs. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.
2. The BPF welcomes the opportunity to respond to DLUHC's consultation on the new proposed system of environmental assessment through Environmental Outcomes Reports. We first provide a number of general comments on the proposals before answering the consultation questions directly.

### General comments

3. **Proposed reforms to make the process of Environmental Assessment simpler, more streamlined and focused on outcomes is welcome:** The BPF is fully supportive of the government's aim to make the process of environmental assessment simpler for all parties and the emphasis on streamlining the system through the introduction of the new Environmental Outcomes Reports. The proposed shift towards a system focused more on the environmental outcomes flowing from the appraisal process rather than procedure is also extremely welcome as well as the emphasis in the consultation paper on removing duplication.
4. **Reforms to Environmental Assessment should not lead to increased risks of litigation:** It is recognised in the consultation paper that wariness over potential future litigation is one of the factors contributing to a slower process of environmental assessment under the existing system. This in turn leads to more work being undertaken within the environmental assessment sphere to guard against this perceived risk whether it is on the part of the applicant or the local authority/public body.

A critical test as the details of the new Environmental Outcomes Reports are worked up through secondary legislation will be whether the perceived risks of litigation actually reduce in practice. It should be noted that once the Environmental Outcomes Reports regime starts to be implemented, we will be transitioning from a regime which, whilst with its flaws, is fundamentally well understood by the property sector with settled case law well established. There is therefore a question as to whether an entirely new system of environmental assessment (at least over the short to medium term) could create more uncertainty than the existing system in terms of the perceived risks of litigation.

5. **There are opportunities to incrementally improve our system of environmental assessment through mandating good industry practice.** It should be noted that there are many effective examples of best practice within the existing system of environmental assessment. One tool regularly cited during our member roundtables is the role of an effective Environmental Management Plan to manage environmental assessment through the phases of a development scheme. Such plans could be more widely utilised to drive up standards.

Members fed back that there could be opportunities to further promote these examples of industry best practice in environmental assessment as the secondary legislation and associated regulations are worked up. BPF members would certainly welcome working directly with DLUHC officials on the detail should this be of interest.

6. **The challenge of removing two EU derived forms of Environmental assessment and replacing it with one overarching system:** We received feedback from our membership that replacing two distinct EU derived forms of environmental assessment (Strategic Environmental Assessment and Environmental Impact Assessment) with one overarching system could be challenging given the particular challenges of each existing regime. Some members noted whether there perhaps needs to be greater differentiation in the approach to policy reform in this sphere given the different sets of challenges of plan-led forms of environmental assessment and the development management focused system of environmental assessment.
7. **Efforts to make the new process of Environmental Assessment more efficient and streamlined will need to be a joint effort between the private sector and the relevant public bodies:** It should be noted that if we are going to bring about a more efficient and streamlined process then there will need to be 'buy in' from the public bodies our members interact with in respect to progressing environmental assessment associated with development schemes. That is to say it would be counterproductive for the private sector to submit more concise documentation only for the given public body to follow up requesting greater levels of detail regarding assessment. In such a scenario, it would be more productive simply for the developer to provide all the information upfront as that would lead to less delay in overall terms.

Q.1. Do you support the principles that will guide the development of outcomes? [Yes / No]

Q.2. Do you support the principles that indicators will have to meet? [Yes / No]

Q.3. Are there any other criteria we should consider?

(Responding to Questions 1 – 3)

8. As noted above, we are supportive of the proposed move to an outcomes-based approach however our members do have some concerns that at this moment in time there simply is not enough evidence to suggest the new approach will deliver on the objectives of the consultation. It is also going to be a completely new system of environmental assessment so there were some concerns raised that the new system will not be piloted in any meaningful way before implementation.
9. We received feedback that more work will also need to be undertaken on the mechanics of assessing objectives. In the consultation, there is reference to effects so considerable work will need to be done to flesh out these effects in practice. The role of interpretation of the effects and applying that to the objective level assessment part of the system will too naturally be a critical part of the new regime to get right.

10. Members also fed back that whilst the crux of the consultation paper is to strive towards more simplicity, the proposals (set out in Chapter 4) could simply result in another layer of assessment. Applicants could perhaps be put in a position whereby once the processes associated with the existing system of environmental assessment have been achieved, the relevant project would then be appraised against the objective level of assessment. Such an approach could lead to some tension with wider policy objectives around simplifying the process of environmental assessment.

**Q.4. Would you welcome proportionate reporting against all outcomes as the default position? [Yes/ No]**

**Q.5. Would proportionate reporting be effective in reducing bureaucratic process, or could this simply result in more documentation?**

(Responding to Q4 – 5)

11. The BPF are naturally supportive of a proportionate approach to the reporting against all the outcomes however there will clearly be more nuance needed in practice. For example, what is considered proportionate reporting against an outcome will differ on a project by project basis. This therefore could lead to more challenge and uncertainty in reality.
12. Members also fed back that whilst on the surface bureaucracy seems to be reduced through a more streamlined official submission this could lead to lots of supplementary information (through appendices etc) being submitted outside the main submission. In such a scenario, whilst there is an appearance of a more streamlined process, because of all of the supplementary submissions, the level of analysis and volume of paperwork could simply remain the same.
13. A further important point members raised is that the submission associated with reporting will inevitably need to cater for different audiences with varying levels of technical expertise. How the more streamlined submissions can effectively cater for these different audiences is a fundamental challenge for the proposals in respect to proportional reporting.

**Q.6. Given the issues set out above, and our desire to consider issues where they are most effectively addressed, how can government ensure that EORs support our efforts to adapt to the effects of climate change across all regimes?**

14. Reducing greenhouse gas emissions to achieve net zero and developing resilience to climate change impacts will require action by all parts of the economy including the development sector. The BPF therefore supports climate change being an integral part of environmental assessment.
15. We received feedback from our members that existing practice through the use of arbitrary thresholds generates outcomes which do little to reflect the importance of climate change as an issue. This can be addressed through reforms to make sure that mitigations to address such impacts, such as the use of sustainable construction materials, reducing water demand and shifts to low carbon transport are

implemented. Including consideration of climate change within environmental assessment at the design stage also offers a route to embed these measures into a project from the start.

**Q.7. Do you consider there is value in clarifying requirements regarding the consideration of reasonable alternatives?**

16. Yes – this proposal within the consultation is welcome. The assessment of alternatives requires higher priority and should be undertaken earlier in the plan/design process. We received feedback from members that currently alternatives are often considered retrospectively and thus the benefits of early exploration of other options are lost.

**Q.8. How can the government ensure that the consideration of alternatives is built into the early design stages of the development and design process?**

17. Members broadly welcomed the policy intent of this section of the consultation paper in terms of clarifying the assessment of reasonable alternatives. There are peculiarities within the existing system whereby consideration of alternative sites is listed however this is irrelevant in practice given an applicant will only have involvement in one particular site.

18. We also heard that it would be welcome if DLUHC were able to provide clarity on what information is needed for alternative assessment.

**Q.9. Do you support the principle of strengthening the screening process to minimise ambiguity?**

19. Yes – this is an area of the existing system where there has always been a risk of legal challenge. All parties in the development sector will therefore welcome better guidance on when you need to commence the screening process or not.

20. It is however worth noting that this will be a decision for a public body so there will still be the need for a 'professional judgement'. It will therefore be important that sufficient resources are dedicated to this area within public bodies to ensure their decision-making is robust and consistent.

21. Members also fed back that it will be important that guidance is provided on what information will and will not be needed as part of the screening process. There are certainly opportunities to further promote greater efficiency and standardisation to create a more efficient process in the round. There could also be a role for digitisation in this space to maximise efficiency further.

**Q.10. Do you consider that proximity or impact pathway to a sensitive area or a protected species could be a better starting point for determining whether a plan or project might require an environmental assessment under Category 2 than simple size thresholds? [Yes/No]**

22. No.

Q.11. If yes, how could this work in practice? What sort of initial information would be required?

23. Please see our response to Q.10.

Q.12. How can we address issues of ineffective mitigation?

Q.13. Is an adaptive approach a good way of dealing with uncertainty? [Yes/No].

Q.14. Could it work in practice? What would be the challenges in implementation?

(Responding to Q12 -14)

24. The BPF are supportive however we would also note that implementation could be quite challenging. For example, there could be issues of accountability when a site is sold and a question over how often monitoring and mitigation should be carried out.

25. The new proposed monitoring and mitigation regime outlined in Chapter 7 of the consultation paper could also increase uncertainty and risk associated with the development process. For example, one consequence of the proposed approach could be to increase uncertainty among the lending and investment community who fund development.

26. Ultimately as the policy detail of the new system is worked up, this will hopefully enable the lending and investment market to adjust to the new regulatory regime. However, it should also be noted that this part of the property sector (which is crucial to its operation) does not like uncertainty in terms of regulation.

Q.15. Would you support a more formal and robust approach to monitoring? [Yes/No]

Q.16. How can the government use monitoring to incentivise better assessment practice?

Q.17. How can the government best ensure the ongoing costs of monitoring are met?

Responding to (Q15 – 17)

27. As noted above, the BPF are supportive of monitoring however it will be important that local authorities get the resources they need to be able to keep the system of environmental assessment running efficiently. It will be equally important that any new requirements and responsibilities for local authorities in terms of monitoring do not lead to further delays in the development process. We would also reiterate that monitoring for the sake of monitoring would certainly not be a proportionate approach so thought will need to be given to the instances where monitoring can truly add value and lead to better outcomes.

28. A further important question for the new system will be where responsibilities lie for the new monitoring requirements. In many instances, the private sector is already monitoring environmental impacts of development very effectively. This could be one area of the new system where the role of an Environmental Management Plan could play an effective role in driving best outcomes. Where Environmental Management Plans are implemented effectively towards the end of the process a concise document is generated which gives you all the relevant information and crucially sets out the relevant responsibilities going forward.

Q.18. How should the government address issues such as post-decision costs and liabilities?

29. No specific comments received.

Q.19. Do you support the principle of environmental data being made publicly available for future use?

Q.20. What are the current barriers to sharing data more easily?

Q.21. What data would you prioritise for the creation of standards to support environmental assessment?

(Responding to Q19 – 21)

30. Members cited a number of barriers to sharing data more effectively:

- **Data accessibility** – it should be noted that there is not a national accessible platform to enable the effective sharing of data. Whilst much of the data is already in the public domain it can often be hidden behind paywalls, not in a digital format and not all in one place.
- **Lack of data standards** – there is an absence of data standards covering relevant data on environmental assessment. This means data is often lost through poor management or practice relating to storage of data.
- **Skills and resourcing** - there are not enough individuals with the skills and expertise to manage relevant data effectively which is preventing a greater amount of data being shared.

Q.22. Would you support reporting on the performance of a plan or project against the achievement of outcomes? [Yes/ No]

31. The BPF are supportive however this again comes back to the issue of proportionate reporting against the achievement of the outcomes. For larger development schemes, these sorts of processes are already happening in practice however this will not be proportionate for all projects.

32. An effective system would focus on the key areas of concern but certainly not a blanket approach of reporting against all outcomes on all projects.

**Q.23. What are the opportunities and challenges in reporting on the achievement of outcomes?**

33. One challenge for the new system will be to make sure environmental assessment is holistic in its approach. A risk of the proposed outcomes-based approach will be that these outcomes will be analysed in silos rather than the cumulative environmental effects in the round.

**Question 24: Once regulations are laid, what length of transition do you consider is appropriate for your regime?**

i) 6 months

ii) 1 year

iii) 2 years

34. The BPF would be supportive of a transition of at least 2 years. An effective transition period will be particularly important for larger development schemes as it would be highly disruptive to have the system of environmental assessment change mid-way through the implementation of a multi-phase and complex development. In such a scenario, protracted discussion and negotiation with the local authority would need to happen again and as such DLUHC should have particular regard to managing the impacts of the transition for larger complex development schemes to the new system.

35. Some members also suggested the merit of a formal 'test and learn approach' to be adopted during the transition to the new system. This approach would involve testing the new system on a number of projects at different scales to further understand the new approach before wider roll out. It should be noted that a 'test and learn' approach is already being pursued for another important planning reform area – the new proposed Infrastructure Levy which is also being consulted on at the moment.

**25. What new skills or additional support would be required to support the implementation of Environmental Outcomes Reports?**

36. The resources needed to implement an objective-led system of environmental assessment will be considerable. Significant resources will be required to work up the new national suite of objectives and supporting indicators. This will be followed by a need to resource effective implementation, training and monitoring at a national level.