

Response ID ANON-N89E-BSKH-C

Submitted to Environmental Outcomes Reports: A new approach to environmental assessment
Submitted on 2023-06-07 12:00:46

Respondent details

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Organisation:
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What type of organisation are you representing?

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If you answered "other" please provide further details:

About this consultation

Would you like anything in your response to be kept confidential?

No

If yes, please state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality. If no, please state none in the box. :

None.

An outcomes-based approach

1 Do you support the principles that will guide the development of outcomes?

Yes

2 Do you support the principles that indicators will have to meet?

Yes

3 Are there any other criteria we should consider?

Please specify:

We broadly support the development of outcomes that are in line with EIP goals. However, it would be helpful to see how EIP goals are to be interpreted and applied for the purposes of EOR. For instance, the EIP does not include a definition of cultural heritage, and the explicitly outlined actions under Goal 10 are all limited to cultural heritage in designated landscapes, and not wider aspects of the cultural heritage or historic landscape – even if this is implied. We therefore cautiously look forward to working with government to develop a set of cultural heritage outcomes and indicators for EOR, but we must be mindful about unhelpfully restricting interpretation of the scope defined by EIP when considering how to develop EOR.

We also wish to highlight a concern with the last principle of duplication of 'matters more effectively addressed through policy'. While we agree that some matters will be effectively resolved through other policies, we believe that outcomes for all 10 goals of the EIP and the 8 matters highlighted in this consultation at paragraph 4.10 should still be represented in outcomes even if they may be discharged through other policies, as applicable to avoid duplication.

For example, paragraph 4.12 highlights the overlapping treatment of impacts on the historic environment through the TCPA system. We agree that the planning system provides an adequate procedure for managing impacts on the historic environment and that this runs in parallel to EIA. However, the consultation references the Listed Buildings and Conservation Areas Act 1990, which does not provide comprehensive statutory protection for activities involved in the assessment of impact on the historic environment in planning. This is set out in the NPPF and is therefore more vulnerable to future reform. Even given this current protection in policy, the EOR process can provide added value by;

(1) encouraging issues to be acknowledged at an early stage of design and therefore involved with a multi-disciplinary scoping process: This is a benefit of the existing EIA system. This integrated approach to design and scoping is good practice which the most experienced and effective applicants will usually follow. However, the EOR process has the ability to encourage greater good practice across all applicants by instituting positive scoping requirements. Simply ignoring areas of the EIP's goals where other policies exist will reduce the sense of EOR as an integrated process and limit this good practice.

(2) enabling measurement to take place: Inclusion of outcomes which are discharged via other policies would still allow measurement of outcomes to take place against EOR goals. This would add value to existing NPPF procedures for impact assessment on the historic environment and maintain a sense that EOR was a comprehensive and integrated process examining all aspects of environmental impact. It also allows cross-cutting outcomes to be recognised.

(3) securing against future changes in the overlapping policy: Inclusion of outcomes irrespective of overlapping policies guards against changes in those policies that could result in no protections for matters relating to EIP goals, and therefore failure to maintain non-regression. For example, any future changes to the NPPF which changed the approach to heritage assessment could undermine EOR's efficacy if historic environment objectives were not considered by EOR processes.

We therefore support an integrated approach to defining EOR outcomes based on identified matters (4.10), discharging those outcomes either through EOR or through any relevant other policy, as applicable to resolve any duplication, but retaining an accountability to EOR outcomes even where other policy is used to resolve impact assessment. We would support, however, a high-level, proportionate and inclusive scoping system which provided a pathway to integrate issues such as the historic environment, even where such issues may be resolved in detail through other policies. We also support the conducting of measurement against those outcomes via the EOR process.

These points regarding duplication are also relevant in the marine EIA regime, where marine licensing provision, underpinned by the UK Marine Policy Statement and Marine Plans provide certain coverage for the assessment of impacts on the historic environment.

Across certain other regimes, there will be no duplication with other policies. For example, the EIA process is critical to the inclusion of the historic environment in agricultural development, where EIA provides the only hook through which to consider impacts on the historic environment for many activities.

We support the principle that indicators will have to meet, although the list of indicators is not very detailed at this stage, we support the list of principles and look forward to working with government to define appropriate indicators to support historic environment outcomes. We do, however, note that many outcomes of good environmental management which accrue benefits to people and places are difficult to measure, and we hope that Government adopts a pragmatic and nuanced approach to trying to understand and measure the more qualitative changes to things like historic character, visual amenity, sense of place and other similar outcomes.

We note that at present, the EIP only includes one specific cultural heritage indicator (the condition of scheduled monuments). It will be important to develop a wider set of indicators for EOR which would give a more representative (or even directly relevant) measure.

As above, we note that many outcomes of good environmental management which accrue benefits to people and places are difficult to measure, and we hope that Government adopts a pragmatic and nuanced approach to trying to understand and measure the more qualitative changes to things like historic character, visual amenity, sense of place and other similar outcomes.

4 Would you welcome proportionate reporting against all outcomes as the default position?

Yes

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

Please specify:

We support appropriate mechanisms for proportionate reporting against outcomes that enables the scoping out of issues where a full assessment is not required. For example, while it may be rare that many outcomes are not relevant at all, for the historic environment, and in particular for buried heritage assets with archaeological interest, for the majority of sites, this impact will be able to be scoped out fairly quickly. Our experience is that current nervousness around EIA processes means that in some cases it is difficult to scope out the historic environment, even where there are no substantial concerns. In many cases, clearer guidance to support proportionate reporting would be helpful.

A high-level proportionate scoping system, which paid appropriate regard to the precautionary principle, could be useful in this regard. However, we would be concerned about any system which was too reliant upon particularly narrow triggers (e.g. presence of a designated heritage asset) to scope out issues like the historic environment too early. This is because many sites will have impacts on non-designated heritage assets, including assets which are not known prior to evaluation, or an impact on setting or landscape/seascape. Therefore, proportionate reporting will likely include a high-level Desk Based Assessment (DBA) as a minimum.

It is also worth noting that one important reason why EIA assessments have become repetitive, voluminous, and cumbersome, is that contractors are throwing everything at the application in order to avoid legal challenge. This system serves no-one as it only serves to create assessments where the important information is buried and harder to identify. However, it is not necessarily the process which is broken, but the expectations. A system which enabled the confident scoping out of unnecessary elements, and allowed greater flexibility in reporting so as to reduce any need for duplicate assessments (eg where issues are assessed for multiple EIA regimes or parallel policies) would be beneficial.

We believe that proportionate reporting could reduce the bureaucratic process and would be unlikely to result in more documentation. However, as explained above, we feel that the main issue creating overly long and repetitive EIA assessments is a practice issue, not one of process. Therefore it may

be more beneficial to focus on guidance which encouraged the confident scoping out of irrelevant issues and allowed greater flexibility in reporting so as to reduce any need for duplicate assessments (eg where issues are assessed for multiple EIA regimes or parallel policies).

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?

Please specify:

We see EOR adding value in terms of (1) setting high level obligations for development across all regimes in respect of environmental goals, (2) providing a process through which developers are required to show an integrated understanding of both impacts and outcomes, and (3) adding measurement to ensure long term positive contribution of EOR to environmental benefit.

We would welcome strategic and project reporting that was required to situate outcomes in the context of national objectives, where these exist elsewhere, but note that not all areas are subject to national strategies or goals.

What an Environmental Outcomes Report will cover

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

Please set out the reasons for your answer:

Yes. We support the principle of increasing clarity on how alternatives should be considered at an early stage of development. We would like to see EOR applied in a form which incorporates evidence that demonstrates to the public and decision makers that alternatives have been considered and good practice and sound decision making processes followed.

8 How can the Government ensure that the consideration of alternatives is built into the early design stages of the development and design process?

Please set out the reasons for your answer:

Consideration of alternatives should take place at the inception or feasibility stage for projects, and at the plan-making stage for strategies. Multiple benefits are often lost because such assessment is not conducted in good faith, as developers are often already committed to sites or a site has already been effectively selected/approved. It is important to demonstrate that reasonable and proportionate alternatives (including 'do nothing') are properly considered before promoting a preferred approach or outcome. However, design is also an iterative process and this necessarily means that initial consideration of alternatives may need to be revised during the process of design and evaluation. For example, certain environmental impacts may only become fully realised later in the design process, at which point design alternatives are likely to need to be considered iteratively.

We urge the Government through EOR to encourage the involvement of accredited archaeology practitioners in the assessment of both plans and projects to ensure early design input to inform locations for development. Archaeologists can play an important part in selection of sites and in the identification of design constraints and opportunities. Such early involvement increases efficiency and has the potential to improve the outcomes of design and delivery. A process for requiring developers to consider positive environmental outcomes at the outset could usefully be enshrined within EOR to this end.

When an Environmental Outcomes Report is required

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

Please set out the reasons for your answer:

Size thresholds are an important and broadly predictive factor of whether a site is likely to have environmental impacts in many cases. While location is ultimately more important, with more detailed considered leading to some large sites being scoped out – at least for the historic environment – size remains an important predictive factor for the presence of buried heritage assets. For this reason, we believe that a high-level desk-based-assessment should be required before any site is scoped out if it is above a given size threshold. This initial scoping assessment should be proportionate and may often be light touch, but is required.

Other current screening criteria, such as protections for uncultivated land, are an important trigger for EIA screening of heritage assets. These could be at risk of being lost under a new system. These EIA triggers are often the only processes that capture unscheduled features such as dry-stone walls which don't meet other threshold or planning tests.

A 'sensitivity' or 'designation' based approach would not be appropriate without such screening tests. This is because many sites for which we have no prior knowledge of heritage assets subsequently reveal important remains. This can be assessed with reference to specialist knowledge of existing known assets in the surrounding area, the topology of geology of the site, and other indicators, but no single nationally available dataset could provide as clear a benchmark for the need for EIA as the size of the site.

We would support the development of a procedure that could successfully apply additional criteria for determining whether a plan or project triggers environmental assessment. However, we are concerned that any simple trigger would likely be unhelpfully restrictive, meaning that many sites would fall outside Category 1 even where the environmental impact may be significant. We are therefore cautious about what triggers would be used and how they would work. In any case we would suggest that any new triggers based on sensitive sites were additional to a size threshold.

We could support this system if blind spots with the types of projects captured by Category 1 triggers were appropriately mitigated with a more flexible approach to Category 2 assessment (which may include consideration of the size of a site as part of a judgement). This could account for a need to undertake a precautionary approach to the assessment of sites. This is vital for the consideration of sites with high archaeological potential or significant but non-designated landscapes).

We would be keen to ensure that Category 2 sites were not automatically treated as implying a lower level of environmental impacts, as this may not be the case. Rather, the logic should be that categorisation limits the need to give detailed consideration to sites which exhibit certain highly predictive indicators.

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?

No

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

Please set out the reasons for your answer:

EOR should apply to all types of landscape whether 'designated' or not, including urban and peri-urban areas. We have concerns that the government's proposal would likely end up being too restrictive and limit what sites would clear the bar for EOR, notwithstanding actual likelihood of environmental impact. Size thresholds are an important and broadly predictive factor for whether a site is likely to have environmental impacts in many cases.

Size thresholds help to catch the many sites for which we have no prior knowledge of heritage assets at the point of application, but subsequently reveal important remains. Size is the trigger that enables assessment with reference to specialist knowledge of existing known assets in the surrounding area, the topology of geology of the site, and other indicators, but no single nationally available dataset could provide as clear a benchmark for the need for EIA as the size of the site.

There are no viable historic environment designations that would be able to provide such a simple test to trigger assessment. While, for example, the presence of listed buildings, scheduled monuments, protected wrecks or World Heritage Sites may provide a useful starting point for understanding whether there are impacts on setting from a given project, this will not always be the case. Even more challenging is that scheduled monuments represent only a tiny fraction of heritage assets with archaeological interest – with many assets only being discovered following an initial assessment. Data sets of high potential archaeological landscapes or other historic landscape characterisation mapping may be helpful, but national datasets are incomplete and may be out of date. This is especially true offshore, where there has never been comprehensive survey and data is often first obtained at the point that development is considered.

If such oversimplified categories were used, it would result in projects likely to have significant effect on the historic environment being scoped out of environmental assessment. There would also be no assurance that an alternate proximity or other trigger would not scope in projects when they need not be. For example, World Heritage buffer zones or settings of listed buildings may have different degrees of sensitivity. A blanket rule that all sites where there are listed buildings within a certain distance may set the bar too low in many cases.

However, we remain open minded about the possible effectiveness of an approach to alternate impact triggers, if set broadly enough, with flexible criteria as the basis for the trigger or if a more complex 'check-list' style approach were designed. For example 'is there existing evidence of buried heritage assets of high archaeological interest being present on or near the site' or 'has the site been previously cultivated?'. While these questions inherently request a more involved answer, rather than a simple check against an existing designation, they would allow an authority or an applicant to undertake a very high level sift of information and draw upon a range of informational sources available locally, such as local historic landscape archaeological sensitivity information, or other high level historic environment checks to arrive at a high-level screening solution. Additionally, proximity impact pathways could be useful if they were used in addition to size thresholds triggers.

For Category 1 assessment to work, it would need to be based on an agreement of which types of asset or area would be listed as relevant. However, designated areas including World Heritage Sites, National Parks, AONBs, Conservation areas, Registered Parks and Gardens, and sites including listed buildings, scheduled monuments, protected wrecks, etc. would only represent a minority of sites likely to be 'sensitive'. The system would need to include other sensitivity tests, drawing on landscape characterisation or archaeological sensitivity mapping data, where available. It would then also need a way to ascertain what kind of buffer zone would be appropriate for what kind of asset as a minimum to trigger assessment. This would likely vary depending on the type of development.

Then there would then need to be procedures for understanding how cases not involving these assets could be passed through a more deliberative or flexible system for Category 2 sites. This category would likely include some a more deliberative process. It would be very difficult to design set criteria that would accurately scope this based upon simple nationally available datasets.

These deliberative processes would require information related to the potential or degree of sensitivity of a site. This would likely need to draw upon a range of potentially available local data and specialist understanding. For example, local historic landscape archaeological sensitivity information, where available, or a high level Historic Environment Record search, would likely be required. Additionally, proximity impact pathways could be useful if they were used in addition to size thresholds triggers.

Strengthening mitigation

12 How can we address issues of ineffective mitigation?

Please set out the reasons for your answer:

We support the codification of the mitigation hierarchy as a fundamental component of the new system of environmental assessment. We would also support recognition of other fundamental environmental principles like polluter pays and the precautionary principle in legislation, or make reference to the Environment Principles policy statement and make clear that they apply to all elements of environmental assessment.

We note that approaches to compensation/offsetting will be different between different environmental outcomes. For example, 'compensation' for the loss of one physical heritage asset cannot be offset with the rebuilding of a new one – unlike say, habitat replacement. However, physical harm to a heritage asset can be offset by a range of measures that produce public benefit – for example, increasing knowledge of an asset through excavation and analysis, publication of results, public display of objects, and engagement with members of the public. The system for EORs should specifically target 'outcomes' which are designed to increase these forms of public benefit.

We would welcome a conversation about how 'compensation' could work for historic environment assets within EOR, for instance, whether a new approach to off-site compensation could be included within EOR guidance. This could leverage investment in things like capacity for the storage of archaeological archives, the development of data repositories like the National Marine Historic Environment Record, and the synthesis of research as well as the direct results of on-site archaeological work and would represent a huge step forward in terms of outcomes from individually mitigated projects with 'on-site' offsetting.

We also support the intention to ensure the mitigation hierarchy is applied as part of the assessment of alternatives in the early development of projects.

We would support improvement in the mapping of significant archaeological sites or areas which have been preserved in situ through the EIA process. This is particularly common in the marine regime where avoidance of assets is usually possible and the easiest design choice for most development types, but this means that many sites do not get recorded archaeologically, thereby limiting the accrued benefit to the historic environment.

We would also welcome guidance to support better completion of mitigation requirements. For example, it often takes developers far too long to upload data to public repositories

13 Is an adaptive approach a good way of dealing with uncertainty?

No

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

Please set out the reasons for your answer:

It is important that impact assessment and decision-making processes aim to deliver a robust and accurate assessment early in the process in order to guide design decisions and approaches to mitigation. However, adaptive approaches will be appropriate for responding to unexpected consequences or changed circumstances, and in reality, this is already practiced under many EIA regimes.

For example, Archaeological Exclusion Zones for marine development may be amended or removed on the basis of new information, or new ones implemented where new data shows newly identified sites.

This is practical because environmental studies offshore tend to be dictated by engineering and design survey schedules – archaeology specific investigations are not as common.

It is also the case that precautionary 'worst case scenarios' evaluations may be 'over assessed' with mitigation able to adapted to fit the actual impacts as designs are refined.

Mainstreaming monitoring

15 Would you support a more formal and robust approach to monitoring?

Yes

16 How can the Government use monitoring to incentivise better assessment practice?

Please set out the reasons for your answer:

At present there is very little guidance on what is required for monitoring impacts on the historic environment.

Monitoring should be able to provide reflection on the effectiveness of mitigation approaches, enabling lessons learned from one project to help us better deal with the next one. This would help to overcome the tendency for contractors to settle into risk averse methodologies where we can use evidence from monitoring to demonstrate to decision-makers or regulators that there may be more streamlined approaches that could be equally effective.

17 How can the Government best ensure the ongoing costs of monitoring are met?

Please set out the reasons for your answer:

The polluter pays principle should apply with the developer paying for ongoing monitoring as part of a project budget.

18 How should the Government address issues such as post-decision costs and liabilities?

Please set out the reasons for your answer:

Project owners should be held legally responsible for costs. Examples of how similar issues are managed through s.106 and the use of bonds exist in the planning system.

Unlocking data

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

Please set out the reasons for your answer:

Yes. We support the principle that EOR data should be publicly available including as raw data and shared using common standards and databases. This data also needs to be produced in a timely manner.

We would support guidance which would help to break down common arguments about 'commercial confidentiality' which can be a major barrier to data sharing when it does not need to be.

We would support processes that meant that data was required to be provided, not hidden away in technical reports which are a barrier to public access and institutional deposition, and which simplified or removed the challenges associated with trying to obtain data post-consent.

For example, GIS data should be automatically shared in addition to reports as a matter of course.

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

Please set out the reasons for your answer:

Data standardisation and platform interoperability may be issues. The perception of commercial sensitivity, particularly with post-application/pre-construction data, currently leads to unwillingness to share such data in a timely manner. It would be helpful to change expectations surrounding this as it simply results in data needing to re-collected (i.e. if a developer changes) and this does not benefit the environment.

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

Please set out the reasons for your answer:

Where they exist, archaeological sensitivity/alert maps and historic landscape characterisation data would be useful to incorporate.

Reporting against performance

22 Would you support reporting on the performance of a plan or project against the achievement of outcomes?

Yes

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

Please set out the reasons for your answer:

There is currently no appropriate detailed base level assessment against which to measure change. We recommend that EOR may represent an impetus to develop projects to build a baseline and recommend that the Government works with Historic England and local Historic Environment Records to instigate this.

Transition

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

Not Answered

Please state regime:

Supporting the capacity and capability across regimes

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

Please provide an answer:

Funding and training would likely be required across the historic environment sector, particularly specialist local authority historic environment staff and commercial contractors in the archaeology sector.

The system for EOR will also reinforce the need for well qualified and well-staffed historic environment services serving all local planning authorities.

Public Sector Equality Duty

26 The Government would be grateful for your comments on any impacts of the proposals in this document and how they might impact on eliminating discrimination, advancing equality and fostering good relations.

Please provide your comments: