

# Consultation Response

Enabling powers for  
Scotland's Environmental  
Impact Assessment  
regimes & Habitats  
Regulations

17 May 2024

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## Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Planning Law and Environmental Law sub-committees welcome the opportunity to consider and respond to the Scottish Government's consultation: *Enabling powers for Scotland's Environmental Impact Assessment regimes & Habitats Regulations* (the "**Consultation**").<sup>1</sup> They have the following comments to put forward for consideration.

## Consultation Questions

### Questions 1-12

Please refer to our comments below.

### 13. Do you have any further comments you wish to add?

We welcome attempts to clarify the law in these areas.

We suggest consideration of how the proposals can cover the Environmental Impact Assessment procedures across as wide a scope as lies within the competence of the Scottish authorities, to help ensure consistency in the procedures across various matters.

Particularly in the context of the Habitats Regulations proposals, we observe that the current legal framework on nature conservation is fragmented, as recognised by the Scottish Law Commission's adoption of consolidation in this area as part of its work programme for 2023-2027. The proposals should be considered in the context of wider further prospective legislative change, e.g. relating to the implementation of the Biodiversity Strategy and the proposals for a Natural Environment Bill.

We highlight the importance of understanding how a divergence, or convergence, of approaches across the United Kingdom and Europe could impact large-scale and cross border developments. For example, depending on the outcome and application of the proposals, there could be separate legal regimes for

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<sup>1</sup> [Enabling powers for Scotland's Environmental Impact Assessment regimes & Habitats Regulations](#)



Environmental Outcome Reports in England and Wales; Environment Impact Assessments in Scotland; and a distinct Environmental Impact Assessment regime in the European Union. It is important that there is legal clarity and certainty for those operating in this area, and we consider that the potential impact of such divergences would merit consideration.

We also note that thought should be given to how these powers would interact with other aspects of the wider legal framework, including the potential impact of the United Kingdom Internal Market Act 2020, assimilated European Union Law, and the environmental principles as required by s.13 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

We further highlight generally the importance of there being appropriate parliamentary scrutiny and stakeholder engagement in relation to these proposals, and further legislative developments should the powers be introduced.



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