House of Commons Library

Research Briefing

1 June 2022

By Mark Sandford

Levelling Up and Regeneration Bill 2022-23

Contributing Authors
Gabrielle Garton Grimwood, Planning / compulsory purchase, SES;
Georgina Hutton, Missions / RICS reform, EPAS;
Ali Shalchi, Letting vacant high street premises, BTS;
Elena Ares, Environmental outcome reports, SES;
Roger Tyers, Street names, BTS;
Lauren Nickolls, Vagrancy Act, HAS;
John Woodhouse, Pavement licenses, HAS;
Lorraine Conway, Land information, HAS;
Mark Sandford, Combined authorities / development corporations, PCC

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Summary

The Levelling-up and Regeneration Bill 2022-23 had its First Reading in the House of Commons on 11 May 2022. Second Reading is scheduled for 8 June 2022. The Bill, and its Explanatory Notes, can be found on the Parliamentary website.

The Government published a press release on 11 May 2022 setting out the aims of the Bill. It also published a policy paper on 11 May 2022 entitled Levelling Up and Regeneration: further information.

The Bill would make a range of legislative changes associated with the Government's "levelling up" agenda, which intends to reduce geographical, economic, social and health inequalities. Many of these changes, though not all, were foreshadowed in the February 2022 White Paper Levelling Up the United Kingdom. The main measures that the Bill would introduce are:

- Statutory requirements regarding the **levelling-up 'missions'**. These would create a statutory requirement for the Government to report to Parliament on progress against the twelve missions set out in the Levelling Up White Paper;

- New **'combined county authorities' (CCAs) to act as recipients of powers and funding under devolution deals** within England. These are alternative legal structures to the combined authorities and mayoral combined authorities (MCAs) that exist in some parts of England. Some of the legislative provision for combined authorities and MCAs would also be altered by the Bill, to bring them into line with the proposals for CCAs in the Bill;

- The introduction of an **infrastructure levy** to be implemented by English local authorities, intended to replace the Community Infrastructure Levy (CIL) and most developer contributions to local infrastructure via 'section 106 agreements';

- **Changes to compulsory purchase** to support regeneration. Currently, local authorities may use compulsory purchase to achieve the objective of promoting or improving the economic, social or environmental well-being of their area. This definition would be expanded, to specify that "improvement" includes regeneration;

- Powers to **auction tenancies in high street shops**. Local authorities would be able to "designate" high streets or town centres that are important to the local economy, then serve a letting notice on landlords of premises in those areas which have been vacant for the past year (or over a year from the previous two years). If the landlord then fails to rent out or make use of the premises, the local authority can arrange for a

rental auction and require the landlord to rent out the premises to a particular tenant;

- Requirements for local authorities to produce **environmental outcomes reports**;
- Requirements to make available certain information regarding **land ownership**, to increase the transparency of ownership of, and interests held in, land.

The bill also includes extensive **changes to the planning system**, to:

- Facilitate the digitisation of the planning system, by setting data standards;
- **Make the planning system plan-led**. Local planning authorities (LPAs) would be required to make all planning decisions in accordance with their development plan (and any national development management policies) unless material considerations strongly indicated otherwise. Any conflict between the development plan and a national development management policy (designated as such by the Secretary of State) would have to be resolved in favour of the national development management policy;
- **Require LPAs** to draw up a local design code;
- Require Local Plans, minerals and waste plans, and (as far as appropriate) neighbourhood plans to contribute to the mitigation of, and adaption to, climate change;
- **Amend provisions for neighbourhood planning,** by (amongst other things) listing the policies and requirements that a neighbourhood plan may include. A neighbourhood development order would be prohibited from preventing housing development proposed in the area's development plan;
- Abolish local authorities' duty to cooperate with prescribed bodies with regard to plan making, which would be replaced by a requirement to assist with certain plan making;
- **Extend the current statutory requirement for LPAs** to have special regard to the preservation of Listed Buildings and Conservation Areas, to include Scheduled Monuments, Protected Wreck Sites, Registered Parks and Gardens, Registered Battlefields or World Heritage Sites;
- **Enable "street votes":** The Bill would give the Secretary of State power to make regulations permitting residents on a street to propose development on their street, and to vote on whether that development should be given planning permission;
- **Introduce commencement notices:** The person carrying out a development would be required to provide a commencement notice to

the LPA, specifying the date on which they expect the work to begin and which would be available for public inspection, as part of the LPA's planning register;

- **Remove two current requirements for completion notices,** that the Secretary of State must approve a completion notice and that the notice must be served only after the deadline for commencement of the planning permission has passed;

- **Extend the time limit for enforcement action against unauthorised development** consisting of building, engineering, mining or other operations in England from its current four years to 10 years. It would also **double the effective period for a temporary stop notice**.

The Bill would also deal with a number of other matters:

- Overhauling the procedure through which local authorities rename streets, to allow local support for the change (or not) to be expressed;

- Permitting local authorities to charge up to 200% council tax on furnished holiday homes;

- Enabling the Government to direct local authorities to reduce borrowing levels and sell assets if certain indicators are breached;

- Amendments to the legislative foundation of development corporations in England, making it easier for local authorities to establish them;

- Making permanent certain changes to the pavement licensing regime that were introduced during the Covid-19 pandemic;

- Providing for a review of the governance of the Royal Institute of Chartered Surveyors (RICS) in response to recent concerns;

- Replacing the provisions of the Vagrancy Act 1824 in regard to begging and rough sleeping;

- Requiring local authorities to have access to an up to date historic environment record.

Many parts of the Bill would extend only to England and Wales, and in some cases would have effect only in England.

The parts of the Bill concerning levelling up missions, planning data provision, environmental outcomes reports and the review of RICS extend to the whole of the United Kingdom. The parts concerning combined authorities, local government, street names, planning, the infrastructure levy, compulsory purchase, development corporations, rental auctions on high streets, and pavement licensing, extend to England and Wales but have practical effect only in England. The parts concerning land information, historic environment records, and the Vagrancy Act extend to England and Wales.

1 Levelling-up missions

1.1 Introduction

Part 1 of the Bill would place a duty on the government to publish a "statement of levelling-up missions". It would also require the government to report annually on progress towards achieving those missions. Levelling-up missions are the government's targets for reducing geographical, economic or social disparities.

The mission statement must cover a period of at least five years. It must include target dates for meeting each of the missions and metrics for measuring progress. The government would be able to modify the mission statement and update the metrics and target dates.

The Explanatory Notes explain that the purpose of this Part is to make sure the government is held to account by Parliament on levelling-up and that information on progress is available to the public.[1]

1.2 Levelling-up missions: background

Levelling Up White Paper

The Government's wide-ranging "levelling up" policy intends to reduce geographical, economic, social and health inequalities. Prime Minister Boris Johnson has described levelling up the UK as "the defining mission" of his Government.

The Levelling Up the United Kingdom white paper provides history and analysis of the causes of economic and social disparities across the UK.

The Library briefing paper Levelling Up: what are the Government's proposals? provides an overview of the White Paper. Section 5 provides statistics on key indicators of geographical disparities in the UK.

The White Paper sets out a new approach for addressing regional and local economic and social disparities based on five "pillars", the first of which concerned setting targets for levelling up objectives, called "missions":

- Pillar 1: medium-term missions (or targets)

[1] DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 20.

- Pillar 2: reshaping central government decision making
- Pillar 3: empowering local decision making
- Pillar 4: data, monitoring and evaluation at a sub-national level
- Pillar 5: transparency and accountability of this new policy regime.

As part of the fifth pillar – on transparency and accountability - the White Paper said that the Government would establish a statutory duty to publish an annual report on progress against its levelling up missions. It also stated it would establish a new external Levelling Up Advisory Council.

Levelling-up missions

The White Paper defines medium-term missions as "targeted, measurable and time-bound" objectives to help address regional economic disparities.[2] The Explanatory Notes to the Bill describes the missions as "areas of focus and goals to serve as an anchor for policy across government".[3]

The missions are aimed at embedding the commitment to levelling up, a feature the paper says was missing from past approaches.

The White Paper argues these missions are "distinct from delivery targets", because they are meant to lead to "systems change" through cooperation across public, private and voluntary sectors, instead of acting as a "mechanism for holding the government to account".[4]

What are the Government's levelling-up missions?

Part 1 of the Bill would introduce a statutory requirement for the government to publish a formal document laid before Parliament that sets out its levelling-up missions.

In the White Paper, the Government set out 12 "levelling-up missions" with a target date for these to be achieved by 2030. These indicate what the Government would likely include in a statutory statement of levelling-up missions.

The table below provides a summary of the 12 missions included in the White Paper. These missions are categorised under four "focus areas" to:

- Boost productivity, pay, jobs and living standards by growing the private sector, especially in those places where they are lagging;
- Spread opportunities and improve public services, especially in those places where they are weakest;
- Restore a sense of community, local pride and belonging, especially in those places where they have been lost;

2 DLUHC, Levelling Up the United Kingdom, 2022, p117.
3 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 4.
4 DLUHC, Levelling Up the United Kingdom, 2022, p119.

- Empower local leaders and communities, especially in those places lacking local agency.

In the White Paper the Government stressed that these policies are "only part of the answer to levelling up" and are "stepping stones on what must be a sustained journey of change".[5] The White Paper states these missions are not set in stone and could change, infrequently, as the economy adapts and lessons are learnt from past interventions.[6]

The missions in the White Paper all have headline indicators or metrics attached to them that are intended to be used to monitor progress. Each mission has a set of supporting metrics. These are described in depth in the White Paper's technical annex.[7]

Focus Area	Mission
Boost productivity, pay, jobs and living standards by growing the private sector, especially in those places where they are lagging	
1 Living Standards	By 2030, pay, employment and productivity will have risen in every area of the UK, with each area containing a globally competitive city, and the gap between the top performing and other areas closing.
2 Research & Development (R&D)	By 2030, domestic public investment in R&D outside the Greater South East will increase by at least 40%, and over the Spending Review period by at least one third. This additional government funding will seek to leverage at least twice as much private sector investment over the long term to stimulate innovation and productivity growth.
3 Transport Infrastructure	By 2030, local public transport connectivity across the country will be significantly closer to the standards of London, with improved services, simpler fares and integrated ticketing.
4 Digital Connectivity	By 2030, the UK will have nationwide gigabit-capable broadband and 4G coverage, with 5G coverage for the majority of the population.

5 DLUHC, Levelling Up the United Kingdom, 2022, p159.
6 DLUHC, Levelling Up the United Kingdom, 2022, p122.
7 HM Government, Levelling Up the United Kingdom: Technical Annex, CP604, February 2022

Focus Area	Mission
Spread opportunities and improve public services, especially in those places where they are weakest	
5 Education	By 2030, the number of primary school children achieving the expected standard in reading, writing and maths will have significantly increased. In England, this will mean 90% of children will achieve the expected standard, and the percentage of children meeting the expected standard in the worst performing areas will have increased by over a third.
6 Skills	By 2030, the number of people successfully completing high-quality skills training will have significantly increased in every area of the UK. In England, this will lead to 200,000 more people successfully completing high quality-skills training annually, driven by 80,000 more people completing courses in the lowest skilled areas.
7 Health	By 2030, the gap in Healthy Life Expectancy (HLE) between local areas where it is highest and lowest will have narrowed, and by 2035 HLE will rise by five years.
8 Well-being	By 2030, well-being will have improved in every area of the UK, with the gap between top performing and other areas closing.
Restore a sense of community, local pride and belonging, especially in those places where they have been lost	
9 Pride in Place	By 2030, pride in place, such as people's satisfaction with their town centre and engagement in local culture and community, will have risen in every area of the UK, with the gap between top performing and other areas closing.
10 Housing	By 2030, renters will have a secure path to ownership with the number of first-time buyers increasing in all areas; and the government's ambition is for the number of non-decent rented homes to have fallen by 50%, with the biggest improvements in the lowest performing areas.
11 Crime	By 2030, homicide, serious violence and neighbourhood crime will have fallen, focused on the worst affected areas.
Empower local leaders and communities, especially in those places lacking local agency	
12 Local Leadership	By 2030, every part of England that wants one will have a devolution deal with powers at or approaching the highest level of devolution and a simplified, long-term funding settlement.

Source: HM Government, Levelling Up the United Kingdom, Feb 2022, table 2.1

1.3 The Bill

Statement of levelling-up missions

Clause 1 would require a Minister to prepare and lay before each House a "statement of levelling-up missions".

A statement of levelling-up missions is defined as a document that sets out:

- the objectives that the government intends to pursue to reduce geographical disparities across the UK (called the "levelling-up missions") within a set time period (called the "mission period"); and
- details of how the government proposes to measure progress in meeting those missions (called "the mission progress methodology and metrics").

Geographical disparities are defined as "disparities in economic, social or other opportunities or outcomes".[8]

The statement must include target dates for each of the levelling-up missions, which must not be longer than the mission period. The mission period for a statement must be at least 5 years and must begin after the statement has been laid.

The first statement of levelling-up missions must come into effect within one month after clause 1 comes into force.

Subsections 8-9 would provide that there be no period during which there is no statement of levelling-up missions or mission period in effect.[9]

Reporting on progress

Clause 2 would require a Minister to prepare annual reports on the progress against meeting the current levelling-up missions.

The report must include an assessment of progress against each of the missions with reference to the mission statement methodology and metrics. The report must also describe what the Government has done in the period towards each of the missions and the Government's future plans for each mission.

The report may state that the Government no longer intends to pursue a particular mission and give reasons for why the Government considers it no longer appropriate to pursue that mission.

Clause 3 would require the levelling-up progress reports to be laid before each House of Parliament within 120 days after the end of the period to which

8 Levelling-Up and Regeneration Bill 2022-23, clause 6.

9 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 87.

the report relates – not including time when Parliament is adjourned for four or more days, dissolved, or prorogued. The report must be published as soon as reasonably practicable after it has been laid in the House.

Revising methodology, metrics or target dates

Clause 4 would govern how the government could change its mission methodology, metrics and target dates.

If a Minister considers that the mission progress methodology, metrics or target dates should be changed, the Minister could revise the mission statement. If so, as soon as reasonably practicable after doing so, the Government must publish a statement setting out the reasons for the change and lay a revised statement of levelling-up missions before each House and publish it. Clause 4 does not refer to changing missions themselves, such as adding or removing missions, only to changes in metrics and target dates.

Reviewing missions

Clause 5 would require a Minister to review the current statement of levelling-up missions. The Minister must prepare a report on the review, lay the report before each House and publish it.

Reviews must take place at least every 5 years. A review must be completed and published before a new statement of levelling-up missions is laid before each House.

The purpose of the review is to:

- consider whether the pursuit of the levelling-up missions by the government is effectively contributing to the reduction of geographical disparities in the UK;
- conclude whether the government should continue to pursue those missions and if not, what the levelling-up missions should be instead; and
- consider whether there are any additional levelling-up missions that the government should pursue.

The report must address each of the above points and set out the reasons for statements on each.

Subsection (9) would require the Government to amend the levelling-up mission statement if the report concludes that the Government should not pursue a mission or that a new mission should be added. In this scenario, a Minister must revise the levelling-up statement so that it contains the missions that the Government will pursue for the remaining mission period and make any changes to the progress methodology and metrics as appropriate.

Clause 6 sets out definitions relevant to Part 1.

1.4 Commentary on Part 1

Commentators have welcomed the statutory duty to report on levelling-up missions, but some criticised the ease with which the Government is able to change the missions and metrics set out in its statutory statements, arguing this undermines efforts to ensure policy does not change too quickly.

For example, Jovana Lalic of the Centre for Cities said that the ability of ministers to change the methodology, metrics and target dates "contradicts the reasons for which these targets are set in the first place" presenting a danger of "ever-changing targets" and diminished accountability.[10]

Eleanor Shearer of the Institute for Government noted that the Bill allows the government to adjust the missions over time, rather than specifying that the missions themselves become law. She noted that this was right to "ensure flexibility".[11] However, she argues that "annual reporting alone will not be sufficient to ensure the missions drive policy as intended".[12] She also argued that the 12 missions put forward by the Government are not ambitious or clear enough to drive the change required.[13] She said that there should be clearer lines of accountability within government, for example through Outcome Delivery Plans (performance management documents for each department) that are scrutinised by the Treasury and Cabinet Office.[14]

10 Jovana Lalic, What does the Queen's Speech mean for levelling up? Centre for Cities, 12 May 2022.
11 Eleanor Shearer, The new Levelling Up Bill lacks the ambition needed to deliver, Institute for Government, 16 May 2022.
12 Eleanor Shearer, The new Levelling Up Bill lacks the ambition needed to deliver, Institute for Government, 16 May 2022.
13 Eleanor Shearer, Will the levelling up missions help reduce regional inequality?, Institute for Government, 30 March 2022.
14 Eleanor Shearer, The new Levelling Up Bill lacks the ambition needed to deliver, Institute for Government, 16 May 2022.

2 English devolution

2.1 Introduction

Part 2 chapter 1 of the Bill makes provision for the establishment of 'county combined authorities' (CCAs). This is a new type of sub-national body that would act as a recipient of powers and responsibilities within the Government's policy on English devolution. A CCA would be a similar body in many respects to a combined authority or a mayoral combined authority, bodies that may be established via the Local Democracy, Economic Development and Construction Act 2009 and the Cities and Local Government Devolution Act 2016.

Part 2 chapter 2 of the Bill makes a number of alterations to the legal framework for existing combined authorities, to bring them into line with the provisions for CCAs in part 2 chapter 1 of the Bill. It also includes some minor provisions concerning changing local authority forms of governance (establishing or abolishing an elected mayoralty); alternative titles for elected mayors; local government capital finance management; council tax on empty properties; and changing street names. These latter provisions are discussed in Section 3 below.

2.2 Devolution to local government in England: background

Beginning with the Greater Manchester Agreement in November 2014, governments in the 2010s have devolved a number of powers and budgets to mayoral combined authorities in England. As of March 2022, devolution deals are in place with nine mayoral combined authorities (MCAs), with a further deal in place with Cornwall Council. Further devolution to Greater London has also taken place. More information on the areas included in the deals, and the powers available to the MCAs, can be found in the Library briefing Devolution to local government in England.

The pace of the devolution agenda slowed during the premiership of Theresa May. When Boris Johnson became Prime Minister, he referenced devolution within England in a speech in July 2019.[15] The 2019 Conservative Party manifesto then committed to publishing a white paper on devolution.[16] This

[15] Prime Minister's Office, PM speech at Manchester Science and Industry Museum, 27 July 2019
[16] Conservative Party 2019 manifesto, p29

was later folded into the Levelling Up White Paper.[17] The White Paper set out a rationale for devolution of power within England:

> Mayors have already shown how strong local leadership can enhance economic and other opportunities in urban areas, and we will ensure that the model is strengthened, extended and adopted more widely. With a direct mandate, fixed term, convening power, a clear incentive to demonstrate economic improvement and accountability for extending opportunity, mayors work for their communities. And meaningful devolution of power and responsibility for economic growth to an accountable local leader has been proven to help once declining areas to recover.[18]

The Government has indicated that it sees devolving power as a key component of the policy of levelling up. For instance, in an answer to a Parliamentary Question in July 2021 it said "Levelling up all areas of the country remains at the centre of Government's agenda, empowering our regions by devolving money, resources and control away from Westminster".[19] In a debate in the House of Lords in March 2022, Lord Greenhalgh, for the Government, said:

> Devolution is a central part of our levelling-up agenda and we want to give areas the powers they need, along with a simplified, long-term funding settlement. We are committed not only to extending devolution to new areas but to deepening it in areas that already have devolved powers.[20]

2.3 County devolution deals: background

In a speech on levelling up on 15 July 2021, the Prime Minister referred to:

> ...our shires where local leaders now need to be given the tools to make things happen for their communities and to do that we must now take a more flexible approach to devolution in England.
>
> We need to re-write the rulebook, with new deals for the counties. There is no reason why our great counties cannot benefit from the same powers we have devolved to city leaders so that they can take charge of levelling up local infrastructure...

Following this, the Ministry of Housing, Communities and Local Government wrote to all local authorities on 15 July 2021 stating that it was open to new bids for devolved powers from county areas, in order to "widen devolution beyond the cities and provide strong local leadership for all of our places". It stated that "county deals will be guided by some key principles". These would

17 Jessica Hill, "Devolution reforms to be replaced by levelling up white paper", Local Government Chronicle, 6 May 2021

18 DLUHC, Levelling Up the United Kingdom, 2022, pxxvii

19 PQ HC 6299 2021-22, 27 May 2021

20 HL Deb 16 Mar 2022 c36-7GC

be strong local leadership; a 'sensible economic geography'; and improvements in governance and service delivery.[21]

A Government Q&A document from July 2021 stated that the Government It anticipated negotiating with a lead upper tier authority in most cases. Deals would be expected to include "demonstratable improvements in governance, efficiency and local service join-up".[22] The letter stated that "those places with the clearest, most innovative and readily deliverable proposals that support levelling up will be prioritised".[23]

2.4 Levelling Up White Paper

The White Paper included a framework directed at areas seeking devolution deals; Government commitments to negotiate further deals, including 'county deals', with a number of areas (see below); and clarification on a number of elements of devolution policy.

One of the twelve 'missions' set out by the Levelling Up White Paper is to ensure that "by 2030, every part of England that wants one will have a devolution deal with powers at or approaching the highest level of devolution and a simplified, long-term funding settlement".[24]

The White Paper made a number of commitments to negotiate devolution deals:

- 'Trailblazer' new deals, to act as blueprints for elsewhere, will be negotiated with Greater Manchester and the West Midlands;[25]
- Mayoral deals will be negotiated with York & North Yorkshire, and an 'expanded' deal will be sought in the North East.[26] The Government will also pursue a mayoral deal in "Cumbria and similar areas";[27]
- County deals will be negotiated with Cornwall, Derbyshire and Derby, Devon (with Plymouth and Torbay), Durham, Hull and East Yorkshire, Leicestershire, Norfolk, Nottinghamshire and Nottingham, and Suffolk. Some county deals were expected to be finalised by autumn 2022.[28]

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21 See MHCLG letter to local authorities, 15 Jul 2021

22 MHCLG, 27 July Ministerial Webinar – follow-up Q&A, undated document, 2021, p2

23 As above, p3

24 DLUHC, Levelling Up the United Kingdom, 2022, pxviii

25 DLUHC, Levelling Up the United Kingdom, 2022, p235

26 At the time of writing, the North of Tyne mayoral combined authority covers Northumberland, Newcastle-upon-Tyne and North Tyneside; and the North-East combined authority (which has no mayor) covers Durham, Sunderland, Gateshead and South Tyneside. There have been indications that the Government could offer Durham a county deal and encourage Gateshead, Sunderland and South Tyneside to join NoTCA: see PQ HL 2197 2021-22, 29 Jul 2021; Jessica Hill, "North East devo deal back on the table", Local Government Chronicle, 1 Oct 2020

27 DLUHC, Levelling Up the United Kingdom, 2022, p235

28 DLUHC, Levelling Up the United Kingdom, 2022, p235

Few details are available on the likely contents of the 'trailblazer' deals in Greater Manchester and the West Midlands. Media reports state that Andy Burnham, the mayor of Greater Manchester, is seeking to take on responsibility for railway stations, the entire post-16 education system, and the power to deny public funds to bad landlords;[29] and to explore land value capture.[30] In the West Midlands, Andy Street convened a meeting with local energy companies in May 2022 to seek their views on what powers could be exercised regionally – specifically "how having greater influence on the planning and delivery of energy systems within the region can achieve greater efficiency and cost savings".[31] He is also reported as seeking control over all skills funding for 16-18 year olds, funding for adult training, and careers provision.[32]

Devolution framework

The Levelling Up White Paper set out a 'devolution framework', with three 'levels'. This contrasts with the negotiations surrounding devolution deals in 2015-16, which proceeded with no clear indication of what powers and functions were on offer to local areas, and what governance arrangements would be required to access those powers. Some commentators and stakeholders had sought greater clarity from the Government on these issues.[33]

Level 1 of the framework constitutes informal joint working between authorities. Level 2 would consist of a single institution without an elected mayoralty; and Level 3 would consist of a single institution with a directly-elected mayoralty. Level 3 bodies will be able to access the broadest range of powers.[34] The Bill will permit combined county authorities to establish directly elected mayoralties and therefore access Level 3 deals if they choose.

The narrative around the framework also restates that county deals must cover "a sensible FEA [functional economic area] and/or a whole county geography".[35] Deal areas must have a population of at least 500,000;[36] and local government reorganisation is not a prerequisite for a devolution deal.[37]

29 Ant Breach, Manchester's renaissance is underway – what next?, Centre for Cities, 4 May 2022

30 Jessica Hill, "Greater Manchester chief Boylan: 'Our default is to seek to work together'", Local Government Chronicle, 4 April 2022

31 Plant and Works Engineering, Energy crisis and a new devolution deal under discussion, 7 May 2022

32 Andy Street, Let's get our region back on track and improve our potential, 2021 election manifesto, p11

33 For instance, see Akash Paun, Alex Nice and Lucy Rycroft, How to make a success of county devolution deals, Institute for Government, 2021, p4-5; Jack Newman et al., Delivering Levelling Up: Don't turn on the taps without fixing the pipes, LIPSIT Report, September 2021

34 DLUHC, Levelling Up the United Kingdom, 2022, p140

35 As above, p137

36 As above, p137

37 As above, p143

2.5 Negotiations for new deals

The Local Government Chronicle reported in May 2022 that negotiations were progressing more slowly than had been anticipated. It stated that many areas remained reluctant to establish a directly-elected mayoralty. It reported some support for this option in Cornwall, Norfolk, Nottinghamshire and Derbyshire.[38] The LGC also published a map of progress in March 2022, which also mentioned interest in a mayoralty in Leicestershire, North Yorkshire and Cumbria.[39]

In July 2021, the Local Government Association published a guide, jointly authored with the consultancy Shared Intelligence, for member authorities seeking devolution deals.[40] This report emphasised that mayoral combined authorities were not the only option for areas seeking devolution deals, and that their focus should be on intended outcomes rather than structures.

The Institute for Government published a report entitled How to make a success of county deals in late 2021. This suggested that counties seeking devolution should ensure that their proposals interlink with central government priorities, such as pursuing net zero; and that they should seek financial flexibility. Counties choosing not to seek an elected mayoralty should expect to "have to work hard to demonstrate how their proposed alternative governance structures will provide the level of accountability, stability and strategic vision central government is looking for".[41] The report also suggested that securing local stakeholder and MP support would be advantageous for county deals.

A report from Grant Thornton and the County Councils Network, published in November 2021, analysed different possible approaches to governance alongside the different types of geographical area that might seek a devolution deal. It suggested that:

- A mayoral combined authority would be inappropriate for a devolution deal for a single unitary council, but would be a good model to enable multiple unitary authorities to work together;
- A leader and cabinet model, or a directly-elected leader with a cabinet, would work well for a county council partnering with a small number of unitary authorities, or for a single county council with district councils, but would be less effective for multiple unitary authorities. This is

38 Jessica Hill, "County deals latest: more areas consider mayoral model as talks go on", Local Government Chronicle, 5 May 2022

39 "Devo map finds new deals in sight as negotiations begin", Local Government Chronicle, 7 March 2022

40 LGA / Shared Intelligence, Devolution deal to delivery, July 2021

41 Akash Paun, Alex Nice and Lucy Rycroft, How to make a success of county devolution deals, Institute for Government, 2021, p11

because it would be less easy for a leader based with a county council to maintain relationships with multiple partner authorities;

- A multi-authority statutory board (without a named leader) could be used for any geographical area, but this model might only be able to access a limited range of powers within the Government's devolution framework.[42]

The report also suggested a number of policy areas that deal negotiations could focus upon, including: transport; the Apprenticeship Levy and school funding; spatial planning, compulsory purchase, and development corporations; net zero investment; energy efficiency; council tax on unused planning applications; and community improvement districts.

2.6 CCAs: establishment and constitution

Part 2 chapter 1 of the Bill focuses largely on providing legislative authority for establishing Combined County Authorities (CCAs). Many of the legislative provisions in part 2 chapter 1 bear a close resemblance to the provisions for combined authorities and mayoral combined authorities in the Local Democracy, Economic Development and Construction Act 2009 and the Cities and Local Government Devolution Act 2016.

The powers and functions made available to individual areas are set out within the devolution deals negotiated to date, and within the Parliamentary Orders that establish mayoral combined authorities. This would also be the case for CCAs. The Bill does make certain provisions around the devolution of policing and health powers.

Currently, the legislative provisions for combined authorities require all local authorities within the area covered to be members of the combined authority. The CCAs introduced by this Bill may be established solely with upper-tier authorities – county and unitary councils – as members.[43]

Clause 7 of the Bill would permit regulations to establish a CCA for an area containing at least one two-tier county council and at least one further county council or unitary authority. These would be known as 'constituent councils'.

A CCA cannot cover one county council area and part of a neighbouring county council area: this would mean that a county could not, for instance, form a CCA with a district council in a neighbouring county area. A CCA also

[42] Grant Thornton / County Councils Network, County deals: options for governance, powers and funding, November 2021

[43] Grant Thornton / County Councils Network, County deals: options for governance, powers and funding, November 2021, p10

cannot overlap with another CCA, a combined authority, or an integrated transport area established under the Local Transport Act 2008.

Clause 8 would permit the Secretary of State to make regulations regarding the constitutional arrangements of CCAs. This could include the number of members of a CCA and any remuneration provisions; the voting powers of members of the CCA; the functions that can be exercised by its executive body; and how its executive arrangements function. Clause 8 (6) states that the function of agreeing the CCA budget must remain with the CCA as a whole.

Clause 8 (3) states that 'executive arrangements' includes, amongst other things, the assignment of functions to an executive of the CCA; which functions can be assigned to a committee of the CCA; arrangements for overview and scrutiny; and arrangements for access to information on the executive's proceedings.

Clause 8 (4) provides that regulations made under clause 8 (1) must state that each constituent council of the CCA must appoint at least one elected member to the CCA. The membership of the CCA may only consist of a CCA mayor, appointees from the constituent councils, non-constituent councils, or associate members (see clause 9 below).

Clause 8 (8) provides that any regulations made under clause 8 (1) must be made with the consent of the constituent councils and, if the CCA already exists, the CCA itself. However, clause 8 (10) provides that this does not apply to regulations conferring powers directly on an elected mayor. In that scenario, the elected mayor must consent to the regulations, but consent from the CCA is not required. Clause 8 (9) provides that, where a CCA makes constitutional amendments pursuant to a change in boundaries, the consent requirements for them are the same as for the change in boundaries itself (see also clause 22).

Non-constituent and associate members

A number of existing combined authorities have non-constituent member authorities. For instance, York is an associate member of the West Yorkshire Combined Authority (see appendix 2 of the Library briefing Devolution to local government in England). Such authorities are specified as non-voting members in the orders establishing the combined authority. Similarly, a number of combined authority orders state that the Local Enterprise Partnership (LEP) in the area may nominate a member of the combined authority. Combined authority orders state that both these types of member are non-voting members unless the authority resolves otherwise.

Clause 9 of the Bill would make equivalent provision for CCAs, concerning non-constituent CCA members, and clause 10 concerns associate members. A non-constituent member must be a 'body', and an associate member is an individual. The CCA may appoint non-constituent members and associate members.

Clause 9 (1) would permit a CCA to designate a 'nominating body' to nominate a member of the CCA. Non-constituent members may not vote unless the CCA resolves otherwise (clause 9 (4)). The Explanatory Notes to the Bill state that a non-constituent member might be "a district council, Local Enterprise Partnership or university", whereas an associate member might be "a local business leader or an expert in a local issue".[44]

Clause 10 would make comparable provisions for associate members. Clause 10 (1) would permit a CCA to appoint individuals as associate members, and clause 10 (2) would provide that they cannot vote unless the CCA resolves otherwise.

Clause 11 would permit the Secretary of State to make further regulations regarding CCA members, covering constituent members, a mayor, non-constituent members and their nominating bodies, and associate members. This would include, but not be restricted to:

- regulations specifying that votes on certain matters would require a certain type of majority. This reflects practice to date in MCAs. For instance, individual MCA Orders provide that a two-thirds majority is required to overturn the mayor's budget. Where an MCA has the power to create a statutory spatial strategy, the individual Orders require it to be approved unanimously.

- the process of designating a nominating body; the number of members that a designated body may appoint; the appointment, resignation, disqualification or removal of a non-constituent member; the maximum number of non-constituent members of a CCA; the appointment of a substitute for a non-constituent members; and the making of payments to a CCA by a nominating body. In regard to the latter point, many constituent councils of mayoral combined authorities make payments to them to cover some administrative costs.

- the appointment, resignation, disqualification or removal of an associate member; provisions regarding substitute members for associate members; and the maximum number of associate members that a CCA may appoint.

Constitutional review

Clause 12 would make provision for a process for a CCA to review its constitution. This would be done by an 'appropriate person', defined in clause 12 (7) as a mayor or as a CCA member appointed by a constituent authority. For a review to be carried out under this clause, the appropriate person must propose the review, and the CCA must consent by a simple majority (clause 12 (4)). That majority need not include the vote of the mayor. However, the

[44] Levelling Up and Regeneration Bill 2022-23, Explanatory Notes, 2022, p28

review may propose constitutional changes (clause 12 (3)), and the mayor must consent to any changes before they can be implemented (clause 12 (5)).

This clause would clarify the power of a CCA to undertake a constitutional review.

Overview and scrutiny, audit, and funding

Clause 13 and **Schedule** 1 would make provision for CCAs to have at least one overview and scrutiny committee. This mirrors the requirement that combined authorities and MCAs must have at least one overview and scrutiny committee, and an audit committee. These are found in schedule 5A of the Local Democracy, Economic Development and Construction Act 2009.

The provisions of Schedule 1 of the Bill are identical in effect to those of schedule 5A of the 2009 Act. Schedule 1 would also permit regulations to be made concerning the remuneration of members of overview and scrutiny committees and audit committees who are members of constituent councils (paragraphs 3 (2) and 4 (3)). Combined authorities and MCAs cannot do this at present, but they would be permitted to do so by clause 65 of the Bill (see below).

Schedule 1 provides that a CCA must appoint at least one overview and scrutiny committee. It must have powers to review the CCA's decisions and make reports and recommendations to the CCA, or to the mayor. This includes the power to direct that a decision that has not yet been implemented must be paused while the overview and scrutiny committee reviews it, and that the committee can recommend that it be reconsidered.

Paragraph 2 would provide that a CCA overview and scrutiny committee cannot include a member of the CCA. The committee may appoint sub-committees, and it is subject to the access to information requirements that apply to local authorities. Overview and scrutiny committees may require members of the CCA, or the CCA mayor, to appear before them.

Paragraph 3 would permit the Secretary of State to make regulations on matters pertaining to the operation of CCA overview and scrutiny committees. The Government made regulations in 2017 regarding combined authority overview and scrutiny committees.[45]

Paragraph 4 would require a CCA to appoint an audit committee, and defines the functions that it must carry out. Paragraph 4 (4) requires regulations to ensure that at least one member of an audit committee is an independent member (and to define 'independence' for this purpose). Local authorities are not required by statute to have an audit committee (though many do), whilst combined authorities and MCAs are.

[45] See the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 (SI 2017/68)

Clause 14 (1) would permit the Secretary of State to make provision for CCA constituent councils to provide funding for the CCA's administrative costs, and how the amounts paid by the constituent councils should be divided between them. This is akin to provision for MCAs and combined authorities.[46] Many orders establishing MCAs make provision for specific annual amounts to be paid to MCAs by constituent councils, or specify how a total contribution must be proportioned between constituent councils. These amounts are not expected to cover the full costs of MCA operations: MCAs obtain funding from many sources to cover their running costs and delivery of their functions.

Clause 14 (2) would require the constituent councils, and the CCA if it already exists, to consent to any regulations made by the Secretary of State.

Clause 15 would permit a CCA to change its name. Clause 15 (2) requires this to be done at a meeting convened specially for that purpose, and for a change to be passed by a two-thirds majority. Clause 15 (3) requires a CCA that changes its name to publicise the fact and to notify the Secretary of State. These provisions are equivalent to provisions for local authorities in section 74 of the Local Government Act 1972.

2.7 Devolution of powers to CCAs

The powers that have been devolved to individual MCAs, following devolution deals agreed between the Government and local areas, have been devolved in Parliamentary orders rather than in primary legislation. Sections 91, 105 and 105A of the Local Democracy, Economic Development and Construction Act 2009 permit Orders to be made to transfer powers to combined authorities from local authorities or from other public authorities.

Clauses 16 and 17 of the Bill would replicate the effects of the powers to transfer functions to MCAs in respect of CCAs. The scope of these powers is very wide: subject to certain limitations, almost any public authority power could be transferred to a CCA via regulations under these clauses.

Clause 16 (1) would permit the Secretary of State to transfer functions to a CCA from a county or district council within its area. Clause 16 (3) provides that the regulations doing so can set limits to how a function may be exercised. Clause 16 (4) permits functions to be transferred in their entirety; to be exercised jointly (by both the council and the CCA); to be exercised concurrently (by either the council or the CCA); or to be exercised either jointly or by either authority. Regulations transferring functions must be consented to by the constituent councils and the CCA itself (if it already exists).

[46] See an equivalent provision at section 92 of the Local Democracy, Economic Development and Construction Act 2009; see also section 105 (3), which applies this provision to CAs and MCAs.

One effect of this clause could be to permit a CCA to take over district council powers within its area without the consent of the district councils – as district councils could not be constituent members of the CCA. This has caused some disquiet amongst district councils.[47] For instance, district councils are responsible for housing and planning, and these functions have played a significant part in the debate around devolution deals.

Clause 17 (1) (a) would permit a CCA to take on a function of another public body in respect of its area. Clause 17 (1) (b) would permit the Secretary of State to confer a function on a CCA that is exercisable by a public authority in another area. This latter power is, in effect, a 'copy and paste' function, that permits a CCA to take on a power that exists elsewhere. An equivalent power, in regard to MCAs and combined authorities, exists in section 105A (1) (b) of the 2009 Act. That power has been used, for instance, to permit MCAs to develop statutory spatial strategies and establish Mayoral Development Corporations, by 'copying' powers available to the Greater London Authority in the Greater London Authority Acts of 1999 and 2007.

Clause 17 (2) would permit regulations transferring a power to specify limits on how it may be exercised, including making provisions requiring joint working between the CCA and public authority. Clause 17 (3) replicates clause 16 (4) (see above), permitting regulations to provide for concurrent functions, joint functions, the transfer of a function, or functions to be exercisable either by both the public authority and the CCA together, or separately. Clause 17 (4) provides that regulations may abolish a public authority if its functions are transferred to the CCA in their entirety: in effect, a CCA would be able to absorb another public body.

Clause 17 (5) would stipulate that regulations cannot confer on a CCA regulatory powers applying to functions that it exercises. In other words, a CCA cannot be permitted to regulate itself through this clause.

Clause 18 would make further provisions for the procedure through which public body functions are conferred on CCAs under clause 17. Much of clause 18 is equivalent to section 105B of the 2009 Act, in regard to MCAs.

Clause 18 (2) would provide that constituent councils, and the CCA if it exists, must consent to regulations transferring powers from public bodies. However, this does not apply if functions are being conferred solely on the mayor (clause 18 (3)), where existing functions are being revoked or amended, or where health service functions are being removed (clause 18 (4)).

Clause 19 makes specific provision for the functions of Integrated Transport Authorities (ITAs) and Passenger Transport Executives (PTEs) to be conferred on CCAs, via regulations made by the Secretary of State. This reflects the situation in MCAs. Clause 19 (2) would provide that functions may only be transferred when they relate to the geographical area covered by the CCA.

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47 Jessica Hill, "New combined authorities could take district powers without their consent", Local Government Chronicle, 13 May 2022

Clause 19 (5) requires consent from the constituent councils, and the CCA if it exists, for regulations under clause 19.

Clause 20 would permit the Secretary of State to make regulations permitting a CCA to give directions to county or unitary councils in its area, in respect of their role as highway authorities and traffic authorities. Clause 20 (3) specifies that the regulations may only cover powers of county and unitary authorities (things that they can do) and not duties (things that they must do). This power reflects that available to combined authorities and MCAs in section 104 (1) (d) of the 2009 Act.

Clause 20 (4) specifies that the power of direction must only apply within the CCA's area, and clause 20 (5) provides that it must only relate to a type of road or a specific road. A power of direction may not cover a toll road.

Clause 20 (7), amongst other things, would permit regulations to enable a CCA to require a power to be exercised or not exercised. The power of direction must be exercised in writing. The regulations must also provide that the CCA is to meet the costs of any exercise of the power of direction – that is, to reimburse the highway and traffic authorities.

Clause 21 would provide that, if a highway or traffic authority disregards a direction from a CCA, the CCA may take steps to reverse the effects of that decision. Clause 21 (2) provides that this extends to taking over the powers that are the subject of the direction, and clause 21 (3) provides that the costs of doing so may be recovered from the highway or traffic authority.

2.8 CCA boundaries

Clauses 22 and 23 of the Bill would permit the Secretary of State to adjust the boundaries of a CCA area, or to dissolve a CCA, via regulations.

Clause 22 (1) would permit regulations to add or remove areas from the area of a CCA. In line with clause 7, areas added or removed must be county council or unitary authority areas, and cannot cause overlaps with other combined authorities or ITA areas (clause 22 (2) and 22 (5)).

Regulations under this clause require consent from the CCA and from the council(s) being added or removed (clause 22 (7-8)). Consent is to be obtained via a simple majority of voting CCA members present at the meeting.

Clause 23 (1) would permit regulations to be made dissolving a CCA. In this scenario, its functions may be passed to any other local authority or public authority (clause 23 (1) (a)), or the regulations can provide that they cease to exist (clause 23 (1) (b)). Regulations dissolving a CCA require consent from a majority of the constituent councils, and from the mayor if one exists (clause 23 (4)).

2.9 CCA mayors

Clauses 24 and 25 permit the establishment of a mayor for a CCA. These clauses are very similar to sections 107A and 107B of the Local Democracy, Economic Development and Construction Act 2009, which permit the establishment of combined authority mayors.

Clause 24 (1) would permit the establishment of a mayor for a CCA, who is to be elected by the local government electors for the CCA area. Clause 24 (4) provides that the mayor is 'entitled to the style of' – i.e. may call themselves – 'mayor'. However, clauses 39 and 40 (see below) provide a power to change the mayor's title.

Clause 24 (6) states that the mayor is both a member of, and chair of, the CCA. This would mean that the mayor has one vote, alongside the CCA constituent members. Clause 24 (7) would provide that a non-mayoral CCA can decide to establish a mayor (see clause 25 below), but a mayoral CCA cannot decide to become a non-mayoral CCA.

Clause 25 (1) would provide that a mayoralty can be established following a proposal from local authorities to establish a CCA (see clause 42 below), or a proposal to adjust the area or functions of a CCA (see clause 44 below). Alternatively, clause 25 (2) (a) would provide that no proposal is necessary if the authorities planning to establish a CCA agree to the mayoralty.

A CCA mayoralty may be established provided that the CCA and at least two constituent councils consent. In this scenario, the regulations establishing the mayor **must** also remove the non-consenting councils from the CCA's area (clause 25 (3)).[48]

Clause 26 would require a CCA mayor to appoint a deputy mayor from amongst the constituent members of the CCA. This clause is identical to section 107C of the 2009 Act. A non-constituent or associate member cannot be appointed as deputy mayor. Clause 26 (5) provides that the deputy mayor must act if the mayor is unable to: if both are unable to act, the remaining members of the CCA must act in their place by majority decision.

Mayoral functions

Clauses 27 and 28 concern the conferral of functions upon a CCA mayor as distinct from upon the CCA itself. They provide a number of regulation-making powers for the Secretary of State. Clause 27 is very similar to section 107D of the 2009 Act, which covers mayoral combined authorities, but clause 28 has no counterpart in the 2009 Act.

[48] In this eventuality, the consent requirements in clause 22 – requiring consent from a majority of the membership for the change – do not apply.

Clause 27 (1) would provide that regulations conferring functions on a CCA may provide that the mayor alone may exercise the functions. These are to be known as 'general functions' (clause 27 (2)). Where a CCA mayor holds the functions of the Police and Crime Commissioner (PCC) for their area, those functions do not constitute 'general functions'. This reflects the position for MCA mayors who hold PCC functions (at the time of writing, this applies to the mayors of Greater Manchester and West Yorkshire).

The mayor can delegate general functions to the deputy mayor, a deputy mayor for policing and crime (see below), a CCA member (but not a non-constituent or associate member), a CCA officer, or a committee of the CCA (clause 27 (3)).

Clause 27 (9) states that regulations may provide for CCA members or officers to assist the mayor in exercising general functions, and for the mayor to appoint a political advisor. The mayor must consent to functions being conferred directly upon them, as must the CCA's constituent authorities (clause 27 (11)): but this does not apply where functions are being transferred from a public body (clause 27 (13)).

Powers conferred on a mayor may relate to powers exercised under a general power of competence (GPC) or functional power of competence (FPC) (see below), but they cannot include a power to borrow. Schedule 4 paragraph 16 (2) of the Bill would enable the Secretary of State to make regulations to bring CCAs within the local authority borrowing regime in the Local Government Act 2003.[49]

Clause 28 provides that functions may only be conferred directly on a CCA mayor at the mayor's request.

Clause 29 would permit the Secretary of State to make regulations concerning the joint exercise of a CCA mayor's general functions by the mayor and another local authority. This would bring CCA mayoral functions into line with the powers available to local authorities, which have a general power to exercise their functions jointly (see section 101 (5) of the Local Government Act 1972). This clause is also identical to section 107E of the 2009 Act.

2.10 Police and fire

Clauses 30-37 of the Bill would make provision for the transfer of police and crime functions from Police and Crime Commissioners (PCCs), and for fire and

[49] Regulations have been made permitting borrowing by combined authorities and MCAs: see the Combined Authorities (Borrowing) Regulations 2018 and the Combined Authorities (Borrowing) Regulations 2022.

rescue authority functions, to CCA mayoralties. Equivalent provisions exist for MCAs.[50]

At the time of writing, the mayors of the combined authorities of Greater Manchester and West Yorkshire are the PCCs for their areas, and have been since their inception (in 2017 and 2021 respectively). In each case, the PCC post for the area was abolished. The Mayor of London has controlled policing and fire functions in Greater London since the mayoralty's establishment in 2000.

Separate provisions in schedule 1 of the Policing and Crime Act 2017 permit PCCs to become the fire and rescue authority for their area. PCCs in four areas have taken on their fire and rescue authorities via Orders under the 2017 Act: Northamptonshire, North Yorkshire, Staffordshire and Essex. In addition, the mayor of Greater Manchester controls the fire service there.

In May 2022 the Government published a consultation entitled Reforming our Fire and Rescue Service.[51] This stated that the Government would prefer fire and rescue services across England to be headed by a single individual, either a PCC or a directly-elected mayor. The consultation sought views on this proposal. It also stated that the Government plans to transfer fire and rescue services to four MCAs which share boundaries with fire and rescue authorities: Cambridgeshire & Peterborough, Sheffield City Region, West Yorkshire and West Midlands.

The other four MCAs that exist at the time of writing (Liverpool City Region, North of Tyne, Tees Valley, West of England) do not share boundaries with fire and rescue authorities. The consultation stated that "subject to this consultation, we will need to consult with those in the local areas to establish the way forward".[52] This aligns with the Levelling Up White Paper, which stated in this regard that "there may be scope to consider public sector boundaries on a case-by-case basis, when requested, to support devolution".[53] Alternatively, the consultation document suggests that fire and rescue services could be transferred to PCCs across England.

Clause 30 of the Bill would permit the Secretary of State to make regulations conferring the functions of a police and crime commissioner ('PCC functions') on a CCA mayor. Clause 30 (4) would provide that the mayor would have to consent to taking on PCC functions – but consent from the CCA itself would not be required. The PCC post itself must be abolished in this scenario (clause 30 (5)), and the term of an incumbent PCC may be adjusted to align with the election of a CCA mayor (clause 30 (6)).

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50 See section 107F, and sections 107EA-EG, of the Local Democracy, Economic Development and Construction Act 2009. The latter were inserted by section 8 of the Policing and Crime Act 2017.

51 Home Office, Reforming our fire and rescue service, 18 May 2022. See also HCWS849 2019-21, 16 Mar 2021, which signalled the policy of a single individual heading a fire service, and HCWS 35 2022-23, 18 May 2022, which accompanied the consultation.

52 Home Office, Reforming our fire and rescue service, 18 May 2022, p26

53 DLUHC, Levelling Up the United Kingdom, 2022, p139

Further provision is made by **Schedule 3** of the Bill, which would permit regulations that provide that a mayor taking on the PCC role must appoint a deputy mayor for policing and crime (who must not be the statutory deputy mayor appointed under clause 26); for the appointment of a panel equivalent to a policing and crime panel, the statutory scrutiny body for a PCC; and which provides that a CCA mayor must maintain separate finances for PCC matters.

Clause 31 would enable the Secretary of State to make regulations permitting a CCA mayor to transfer fire and rescue functions to the chief constable of the relevant police force, following the 'single employer model'.[54]

Clause 32 would allow the Secretary of State only to make regulations transferring fire and rescue functions to a CCA mayor if the mayor has requested them. A request must also include details of any consultation, responses to the consultation, and representations made to the mayor on the subject. If two-thirds of constituent CCA members disagree with the mayor's request to take on fire services, an independent assessment of the request is required. The Explanatory Notes to the Bill state that "such an independent assessment may be secured from HMIC, the Chief Fire and Rescue Adviser or any such other independent person as the Secretary of State deems appropriate".[55]

Clause 33 would permit regulations transferring fire and rescue functions to transfer property, and to enable the chief constable to appoint and pay staff. It makes further provision regarding financial management and the payment of a chief constable's costs following certain types of claim relating to fire and rescue staff members.

Clause 34 would provide that a chief constable is responsible for securing good value for money from fire and rescue services for which they are responsible, and that a CCA mayor must ensure that a chief constable effectively exercises fire and rescue duties.

Clause 35 would enable the Secretary of State to make regulations regarding complaint processes regarding fire and rescue services. **Clause 36** would enable the Secretary of State, via regulations, to apply provisions within fire and rescue-related legislation to chief constables and their staff to whom fire and rescue functions have been delegated. **Clause 37** would make equivalent provision regarding applying PCC-related legislation to mayors, chief constables, or scrutiny panels for mayors with PCC functions.

54 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes, p39

55 As above, p40

2.11 CCA mayoral finance

Clause 38 would make provision for a CCA mayor to have access to a precept on council tax bills within the area of the CCA. Equivalent provision is made for MCAs by section 107G of the 2009 Act. Of the MCAs in existence at the time of writing, all except for the West of England Combined Authority hold this power; but only two (Liverpool City Region and Greater Manchester) have exercised it to date. Where a CCA mayor holds PCC functions, separate precepts must be set for the mayor's general functions and the mayor's PCC functions.

Clause 38 (5) would permit regulations to be made concerning how a CCA mayor must manage funding for general functions, and how a CCA mayor must prepare an annual budget. Regulations may specify how a CCA budget must be made, scrutinised by the CCA, and under what circumstances it may be approved or overturned.

2.12 Mayoral titles

In the mid-2010s, the Government struggled to deliver devolution outside of England's major urban areas. Devolution deals in Lincolnshire, East Anglia and the North East all collapsed (though the latter two were revived, covering smaller areas). The majority of devolution deals operate in areas with a large city or multiple large urban areas.

The Government made it clear in the mid-2010s that an elected mayoralty was a precondition for significant powers to be devolved to local areas.[56] Nevertheless, many of the proposals for devolution emanating for local areas in 2015-16 rejected the idea of a mayoralty. This became a bone of contention in a number of negotiations, as noted by John Curtice et al.:

> Many local authority figures, both elected representatives and council officials, reported that they felt that they had been ambushed and forced into having a mayor as a condition of any devolution deal. One devolution deal within central southern England had brought together a fragile coalition of partners but collapsed as a result of insistence by government on having a metro mayor, which those involved felt was imposed late in the development of the deal. However, this account was challenged as inaccurate by some others involved in these deals; some felt that all those involved were aware from the start of the importance ascribed to mayors and thus insistence on the inclusion of a metro mayor in the deal should not have been a surprise.[57]

[56] HM Treasury, "Chancellor on building a Northern powerhouse", 14 May 2015

[57] John Curtice et al., Governing England: devolution and mayors in England – regional roundtables, British Academy, 2017, p5

The Conservative Party manifesto of 2017 then stated that the party would not support mayoralties in rural areas.[58]

Although the Levelling Up White Paper says explicitly that the most extensive devolution deals will require a mayoralty, many areas continue to oppose introducing one. Of the localities negotiating with the Government in 2022, Durham, Devon, Suffolk, and Hull / East Yorkshire have stated that they do not support elected mayoralties.[59]

One approach to this issue has been to seek alternatives to the word 'mayor' to denote a single-person executive covering a large rural area, on the basis that the term 'mayor' is associated with urban areas. Michael Gove, the Secretary of State for Levelling Up, Housing and Communities, floated this possibility in early 2022.[60]

Clauses 39-41 permit CCA mayors to be known by a range of titles other than 'mayor'. Currently, both local authority directly-elected mayors and combined authority mayors must be known as 'mayors'.

Clause 39 (1) would permit a CCA to change the title of the mayor at the first meeting after regulations establishing the mayor, under clause 24 (1), come into force. Clause 39 (2) would permit the mayor to be renamed 'county commissioner', 'county governor', 'elected leader', 'governor', or an alternative title. Any change must be publicised and notified to the Secretary of State (clause 39 (5)).

Clause 40 would permit further changes to the title of a CCA mayor. The procedure and requirements are the same as those laid out in clause 39. A further change can only occur at the first meeting after the election of a mayor, and after at least three elections have passed since the first change to the title, not including mayoral by-elections (clause 40 (5)).

Clause 41 would permit the Secretary of State to make regulations to add or remove alternative titles to or from the lists in clauses 39 and 40, and to make consequential amendments to those clauses.

2.13 Establishing a new CCA

Clause 42 would permit a proposal for a new CCA to be made to the Secretary of State. The proposal can be made by a county or unitary authority, an economic prosperity board, an integrated transport authority,

58 Conservative Party, Forward Together (PDF), 2017, p32

59 Jessica Hill, Megan Kenyon and Sarah Calkin, "County deal talks begin amid prevailing reluctance to elect mayor", Local Government Chronicle, 18 Feb 2022

60 Jessica Hill, "County leaders hit back at Gove's governor notion as a 'recipe for disaster'", Local Government Chronicle, 7 Jan 2022

or an existing combined authority.[61] Clause 42 (4) would provide that a public consultation must be conducted across the area of the proposed CCA before a proposal is made. This requirement may be satisfied by a consultation conducted before the Bill becomes law (clause 42 (5)).

This clause would permit proposals for new CCAs to be made by existing combined authorities in areas such as Durham. Durham Council (a unitary county) is a member of the North East Combined Authority at the time of writing, but the Levelling Up White Paper suggested that the Government plans to negotiate a county deal with Durham alone.[62] All authorities within the area of the proposed CCA must consent to the proposal being submitted.

Clause 43 would specify that the Secretary of State must be satisfied that a CCA would contribute to economic, social and environmental well-being, reflect the interests and identities of local communities, and secure effective and convenient local government.[63] Clause 43 (1) clarifies that the Secretary of State may make an order establishing a CCA even if no proposal has been received from a local area. In that scenario, the Secretary of State must carry out a public consultation (clause 43 (3)).

As with mayoral combined authorities, CCAs can be established between areas that do not share a boundary: or they can be established as a 'doughnut', with the CCA surrounding a non-member authority. A potential example of the latter is Leicestershire, where the county council has expressed interest in a county deal but the city council, entirely surrounded by the county council, has not (at the time of writing).[64] In these scenarios, the Secretary of State must have regard to the possible effect on neighbouring authorities in terms of the functions exercised by the CCA and those authorities (clause 43 (5)). This requirement might apply, for instance, to the impact of a CCA on cross-border transport plans and policies.

Clause 44 concerns changes to already-existing CCAs. Clause 44 (1) would permit member authorities, or the CCA, to propose new functions, constitutional changes, or the election of a mayoralty. Proposals may also be made by authorities hoping to join an existing CCA, via the provisions in clause 22. Any such proposals must be preceded by a public consultation; and where an authority proposes to join the CCA, the consultation must extend to that authority's areas (clause 44 (3)).

Clause 45 would permit the Secretary of State can propose new functions, constitutional changes, boundary changes, or a mayoralty, without the need

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61 Economic Prosperity Boards can be established via a procedure in the Local Democracy, Economic Development and Construction Act 2009. One exists at the time of writing, in West London.

62 DLUHC, Levelling Up the United Kingdom, 2022, p235; see also Jessica Hill, "County deal wish list: Durham seeks skills, transport and housing powers", Local Government Chronicle, 7 Feb 2022

63 These phrases occur elsewhere in legislation, as criteria to evaluate certain proposals for local government restructuring: see section 8 (6) of the Local Government and Public Involvement in Health Act 2007

64 Jessica Hill, Megan Kenyon and Sarah Calkin, "County deal talks begin amid prevailing reluctance to elect mayor", Local Government Chronicle, 18 Feb 2022

for a local proposal. The Secretary of State must take account of the need to secure effective and convenient local government; of the interests and identities of local communities; and must be satisfied that the changes will improve the economic, social or environmental wellbeing of some or all residents of the area. They must carry out a public consultation in the relevant area, if this has not been done as part of a local proposal; and they must take account of the effects on neighbouring areas, in the same way as under clause 43.

2.14 General and functional powers of competence

Local authorities in England, Wales and Northern Ireland have access to a 'general power of competence', expressed as the power "to do anything that individuals generally may do".[65] The power enables local authorities to do things without needing a specific statutory power to do them. The purpose of the power is to enable local authorities to do things without fearing that they will be regarded as 'ultra vires' – unlawful because no power exists to take the action in question.

A number of other types of authority in England hold a power that is more restricted than the general power of competence. This has been described as a 'functional power of competence'. It is normally expressed in legislation as permitting a body to do "anything it considers appropriate for the purposes of the carrying-out of any of its functions".

This form of general power is available to integrated transport authorities; passenger transport executives; economic prosperity boards; English national park authorities; and some fire and rescue authorities. It resembles a power available to local authorities in the Local Government Act 1972. The Greater London Authority has a general power to do anything in connection with its 'principal purposes': promoting economic development, social development or the protection of the environment.[66]

Neither the general power nor the functional power of competence can be used to borrow or impose taxes. Nor can they be used to avoid a 'pre-commencement limitation' – that is, they cannot be used to do something that is explicitly prohibited in statute.

More information on the general power of competence and the functional power of competence can be found in the Library briefing paper The general power of competence.

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65 See section 1 of the Localism Act 2011; section 24 of the Local Government and Elections (Wales) Act 2021; and section 79 of the Local Government (Northern Ireland) Act 2014.

66 See the Localism Act 2011, respectively sections 11-13; the Cities and Local Government Devolution Act 2016, section 22; the Fire and Rescue Services Act 2004, section 5A&ff; and the Greater London Authority Act 1999, section 30

Clause 46 would confer a functional power of competence on all CCAs. The clause is equivalent to section 113A of the 2009 Act, which confers a functional power of competence on combined authorities. Clause 45 (1) (c) provides that CCAs can do things for purposes incidental to their purposes, or incidental to incidental matters.[67] Clause 46 (1) (e) also provides that a CCA can use the functional power for commercial purposes, also covering things that it can do for a non-commercial purpose.

Clause 47 would set limits on the exercise of the functional power of competence. It is similar to section 113B of the 2009 Act. Clause 47 (1) prevents the functional power from overcoming limitations elsewhere in legislation or regulations. Clause 47 (3) provides that the functional power cannot be used to borrow money. Clause 47 (4) provides that CCAs can only charge individuals for services provided for a commercial purpose, and clause 47 (5) provides that charges cannot be made for services that a CCA is under a statutory duty to provide. Commercial services must be provided via a company.[68]

Clause 48 would give the Secretary of State power to make regulations limiting the exercise of the functional power of competence by all or some CCAs.

Clause 49 would permit the Secretary of State to apply the general power of competence to CCAs, with their consent. The same provision exists with regard to combined authorities in section 10 of the Cities and Local Government Devolution Act 2016. At the time of writing, the combined authorities in Cambridgeshire and Peterborough, West of England, and Sheffield City Region have the general power of competence.

2.15 General and supplementary matters

Clause 50 would give the Secretary of State a general power to make regulations on supplementary matters in support of the powers elsewhere in the Chapter. **Clause 51** permits the transfer of property, rights and liabilities between organisations, including TUPE (relating to the transfer of staff). **Clause 52** provides the Secretary of State with a general power to issue guidance on matters in the chapter, to which CCAs, local authorities and combined authorities must have regard. **Clause 53** and schedule 3 concern consequential amendments, and **clause 54** provides for interpretation of terms in the chapter.

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67 This provision addresses the judgment of *McCarthy & Stone (Developments) Ltd. v Richmond upon Thames LBC* [1992] 2 AC 48, in which the judge held that charging for pre-planning application advice to a developer was "at best, incidental to the incidental and not incidental to the discharge of the functions" – and therefore unlawful.

68 See sections 1-8 of the Localism Act 2011

2.16 Combined authorities: minor amendments

Clauses 55-65 of the Bill make various minor amendments to the existing legislation regarding combined authorities and mayoral combined authorities. The effect of these clauses is to bring certain elements of the law regarding CAs and MCAs into line with the provisions for CCAs in the earlier part of this chapter.

Clause 55 would permit a combined authority or MCA to undertake a constitutional review. The clause is equivalent in effect to clause 12 of the Bill (see above), which only covers CCAs. Like clause 12, this would clarify that MCAs and combined authorities have the power to carry out such a review.

Clause 56 would amend the 2009 Act to permit local authority areas to be accepted into a combined authority, as long as the local authority consented. In a mayoral combined authority, consent would be required from the mayor (but not the MCA itself), but in a combined authority without a mayor, the authority itself would have to consent (clause 56 (4)).[69]

Clause 57 would provide that a combined authority mayor must consent to having functions of the combined authority, or functions from other public bodies, conferred upon them; but there would be no requirement for the combined authority itself to consent. This is akin to clause 28 (see above).

Clause 58 would make equivalent provision to clause 57 regarding police and crime commissioner functions. It would provide that consent only from an MCA mayor, not from the MCA itself, would be required for the mayor to take on PCC functions. This equates to clause 30 (4) (see above).

Clause 59 would permit MCAs and combined authorities to appoint non-constituent members and associate members. These provisions parallel the provisions in clauses 9 and 10 for CCAs. As noted (see above), a number of existing MCAs already have non-constituent members. However, this term is not used in the 2009 and 2016 Acts: non-constituent membership is only provided for in the Orders establishing MCAs.

Subsections 9-12 make further consequential provision to clarify that non-constituent and associate members cannot exercise delegated mayoral functions; cannot alone form a committee to exercise delegated mayoral functions; cannot act as deputy mayors; and cannot take part in decisions to apply a council tax precept.

Clause 60 would replace the procedures for establishing new combined authorities in sections 108 and 109 of the 2009 Act. It replaces them with procedures akin to those for CCAs in clauses 42-45. One or more authorities may propose a combined authority for a given area. All the authorities

[69] These consent requirements would not apply where a council is being removed from a combined authority, where it has failed to consent to the election of a mayor or the transfer of powers.

covered by the proposed area must consent to the proposal being submitted, and they must carry out a public consultation before submitting the proposal. These changes will not apply to any proposal that has been submitted before the Bill becomes law.

Clause 61 would repeal sections 111 and 112 of the 2009 Act, concerning changes to existing combined authorities, and replace them with procedures that are equivalent to those relating to CCAs in clauses 44 and 45 of the Bill. Member authorities, an MCA, or a combined authority could propose new functions, constitutional changes, or the election of a mayoralty. Proposals may also be made by authorities hoping to join an existing combined authority. Any such proposals must be preceded by a public consultation; and where an authority proposes to join the combined authority, the consultation must extend to that authority's areas.

Subsections 4-11 would permit the Secretary of State to propose new functions, constitutional changes, boundary changes, or a mayoralty, without the need for a local proposal. They must carry out a public consultation in the relevant area, if this has not been done as part of a local proposal. They must take account of the effects on neighbouring areas.

Clause 62 would make minor amendments consequential to clauses 60 and 61, and **clauses 63 and 64** make provisions concerning statutory instruments made under the provisions of chapter 2.

Clause 65 of the Bill would introduce powers for the Secretary of State to make regulations permitting members of combined authority overview and scrutiny committees, audit committees, and police and crime panels, to be paid allowances. These bodies are mostly made up of local authority councillors. The 2009 and 2016 Acts do not include any power to pay them allowances for their work on those panels, nor to introduce regulations to enable them to be paid.

This would bring combined authorities and MCAs into line with the provisions that the Bill makes for CCAs, at schedule 1 paragraphs 3 and 4 and schedule 3 paragraph 6. The Centre for Public Scrutiny noted in 2018 that introducing allowances "would be a way to acknowledge that the CA scrutiny role places unique demands on councillors".[70]

[70] Ed Hammond, Combined authority scrutiny: six months on, Centre for Public Scrutiny, 2018

3 Local authorities: miscellaneous provisions

3.1 Creating local authority mayors

Clause 67 would adjust a specific element of the procedure for establishing a directly-elected mayor in a local authority. This would not apply to combined authorities or CCAs.

The current arrangements for establishing a local authority mayor are found in schedule 2 of the Localism Act 2011. They permit a local authority to resolve to change its governance arrangements, or to hold a referendum on the question. Where a local authority has resolved to change its governance arrangements, it must wait at least five years resolve to make another change. If it wishes to make a change in less than five years, it must hold a referendum.

Clause 67 (2) would permit a local authority to submit a proposal to the Secretary of State to enable it to pass a resolution less than five years after a previous resolution. The Secretary of State may then consent to this proposal if they consider that doing so would improve the economic, social or environmental wellbeing of those living in the area. The local authority may then pass the resolution, and must do so within three years of receiving the Secretary of State's consent.

The provisions in clause 67 would apply to a proposal to change to a mayor and cabinet or a leader and cabinet. They could not be applied to a proposal to move to a committee system. A resolution on any such proposal would still have to wait until five years after the local authority had passed a previous resolution.

Circumventing the time limits on mayoral referendums

Clause 66 (3) would make a similar provision regarding the holding of a referendum on moving to a mayor and cabinet system or a leader and cabinet system. At present, ten years must elapse between the holding of a first referendum and the holding of a subsequent referendum on moving to executive arrangements. Clause 66 (3) would allow a local authority to make a proposal to the Secretary of State to hold a referendum within that ten year period. As above, the Secretary of State would have to consent, and the resolution local authority would then have to pass the within a three year period.

Without this clause, a local authority would be legally barred from establishing an elected mayor pursuant to a devolution deal, if it had held a referendum in the previous years which had rejected a mayoralty. That could prevent the local authority from taking on a full range of powers under the 'Level 3' approach detailed in the Levelling Up White Paper. This clause would permit a local authority to proceed with a devolution deal in that scenario.

Clause 66 (3) would not apply to a proposal to use a referendum to move to a committee system of governance. For instance, the May 2022 referendum in Bristol City Council proposed (successfully) to replace the Bristol elected mayoralty with a committee system of governance. This referendum could not have been held at an earlier date if the provisions in this clause had been in force.

Reviewing devolved functions

Clause 66 (4) would permit the Secretary of State to revoke the devolution of public authority functions to a local authority if it proposed to change its governance arrangements away from that of a mayoralty. This would apply to the abolition of a mayoralty either by a referendum or via a local authority resolution.

If a local authority proposed to abolish a mayoralty having taken on additional public authority functions via a devolution deal, it must notify the Secretary of State. The Secretary of State must then decide whether to revoke or amend the regulations transferring those functions. If s/he decides to revoke or amend the regulations, the local authority cannot resolve to abolish a mayoralty – or, in the case of a referendum, implement a change in governance supported by the referendum – until the regulations have been changed.

Without this clause, in principle, a local authority could negotiate the transfer of some functions from the Government via a devolution deal, establish a mayoralty, then later abolish it and retain the transferred functions. In the Levelling Up White Paper, and in prior statements, the Government has consistently said that certain transferred powers would only be available to local bodies with directly-elected mayors.

Clause 68 would adjust the procedure for devolving public authority functions, such that the Secretary of State must take into account the economic, social or environmental well-being of people who live in the area concerned when deciding whether to devolve functions. At present, section 17 (1) (b) provides that the Secretary of State must believe that the change is likely to "improve the exercise of statutory functions" in the relevant area.

Mayoral titles

Clause 69 would permit existing and new combined authority mayors to use alternative titles. These clauses have an equivalent effect to that of clauses 39-41 in respect of CCAs (see above). The same range of alternative titles is

available, and the procedure for adopting one of them is identical to that for CCAs. **Clause 70** would make identical provision for local authority mayors.

3.2 Capital finance risk regulations

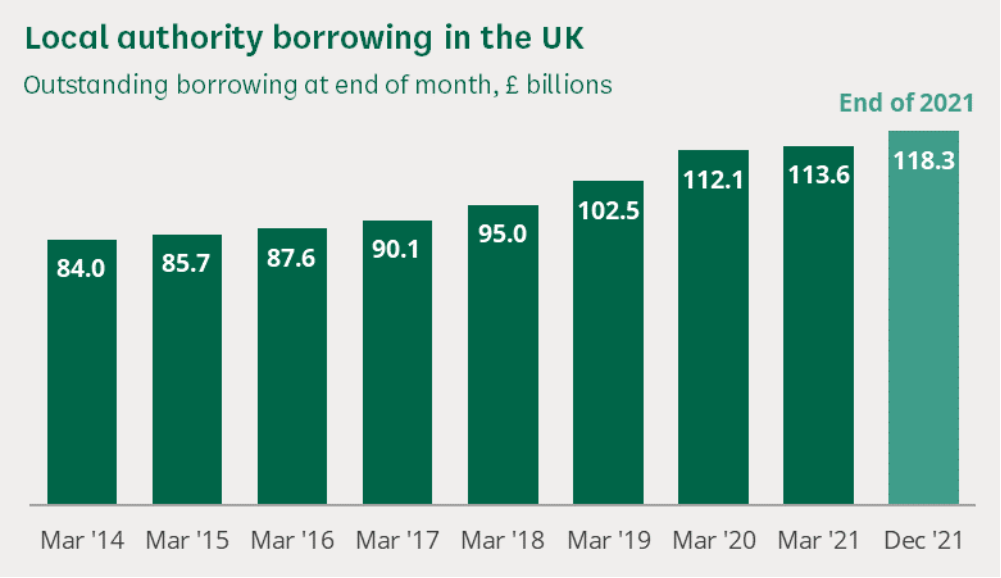
Clause 71 of the Bill would insert a new section 12A into the Local Government Act 2003. The new section would give the Government new powers to intervene in English local authorities to limit their borrowing and to direct them to sell assets under certain circumstances.

Local authority borrowing: developments

Clause 71 is the latest of a number of Government actions in the late 2010s and early 2020s in response to Government concerns regarding local authority borrowing.

Local authorities may only borrow for capital investment, not to fund public services. Local authorities have faced substantial reductions in central government funding since 2010. The National Audit Office stated in 2020 that spending power (Government grant funding plus council tax revenue) fell by 28.4% between 2010-11 and 2019-20.[71]

Borrowing by English local authorities increased considerably from 2015 onwards, as shown in the chart below:



Note: Excludes short-term borrowing and all borrowing and lending between local authorities.

Source: Department for Levelling Up, Housing and Communities, Borrowing and investment live table, Q3 2021 to 2022, 3 March 2022

[71] NAO, Local authority investment in commercial property, HC-45 2019-20, 13 Feb 2020, p20

This chart shows that the level of local authorities' outstanding borrowing in the UK has been over £80 billion in every year since at least 2014. Growth in borrowing began to accelerate around 2017 – at the end of March 2020, the level of borrowing was 9% higher than it had been the previous year, although this then slowed in 2020/21.

Local authorities regularly borrow funds to purchase or develop assets, often property, which they can then use to deliver services more efficiently. Since 2015, a number of local authorities have also pursued substantial investments in commercial property for revenue purposes alone. A common practice has been to borrow funds from the Government-owned Public Works Loan Board (PWLB). The spread between the loan rate and the return rate on letting out the property enables the local authority to make a profit (see the Library briefing paper Local government: commercial property investments for more detail). That money can then be spent to support service provision. Data on this practice suggests some increase in borrowing purely for revenue purposes since 2015.[72]

Concern has been expressed that some local authorities were borrowing sums well in excess of their annual revenue. This represents financial risk for local authorities. An authority that has borrowed to purchase a commercial property, but is unable to let it, will still have to repay the loan. That could reduce the funds available to the local authority to provide public services. The National Audit Office reported on these developments in March 2020.

> "There are inherent potential risks associated with the acquisition of commercial property. These include 'specific risk' associated with each individual property such as the length of the lease or the financial strength of the tenant. Local authorities also face 'systematic risk', which reflects movements in markets; in the last recession UK commercial property values and market rental values both fell".[73]

The NAO also noted a lack of centrally-held data on the investment decisions made by local authorities:

> "The Department has data on local authority debt levels and costs and it has used these to support its work on the financial sustainability risks of commercial investments. However, there are a range of other areas such as trends in buying out of area, the contribution of commercial income to service expenditure, and the scale of contingency funds where the Department needs better and more timely data and analysis".[74]

Local authority borrowing: Government responses

The UK Government has taken a number of actions to mitigate the risk posed by local authorities borrowing substantial sums of money. First, it updated the Treasury's statutory guidance on local government investments in 2018.

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72 See NAO, NAO, Local authority investment in commercial property, HC-45 2019-21, March 2020, pp36-39

73 NAO, Local authority investment in commercial property, HC-45 2019-21, March 2020, p8

74 As above, p10

The new guidance requires local authority treasury management strategies to include an explicit statement of the degree to which commercial income supports the delivery of services.[75] The commentary published alongside the statutory guidance states that each local authority must set annual limits for the proportion of gross debt compared to net service expenditure, and the percentage of net service expenditure that comes from commercial income. The investment strategy should also include "quantitative indicators that allow councillors and the public to assess a local authority's total risk exposure as a result of its investment decisions".[76] These indicators "should be presented in a way that allows elected members and the general public to understand… total risk exposure…".[77] These provisions reflected Government concerns that

> Local authorities need to consider the long term sustainability risk implicit in becoming too dependent on commercial income or in taking out too much debt relative to net service expenditure.
>
> In addition, whilst under statute, local authority debt is secured on the revenues of that authority, in practice, there is no realistic prospect of the revenues of any local authority being sufficient to pay back debt equating to many multiples of the sum of NNDR and Council Tax Income, without a pervasive and long term impact on service delivery. It is unclear whether local authorities who have adopted a debt financed commercial investment strategy have realistic plans to manage failure.[78]

The Government also published a new edition of the statutory guidance on minimum revenue provision (MRP) in 2018. Local authorities are required to set MRP as part of their annual budgeting process. This is the minimum sum that will be required to service the local authority's debt in the relevant financial year.

Second, the Government altered the lending terms of the Public Works Loan Board (PWLB) in 2020. The PWLB provides the majority of local authority borrowing: it provided £69.9 billion of just over £93 billion of total local government borrowing in 2019-20.[79] The new lending terms stated that authorities purchasing an asset purely for yield after 26 November 2020 would be unable to access the PWLB for the remainder of the financial year in question. Authorities seeking to borrow from the PWLB are now required to confirm that they have no plans to buy assets primarily for yield.[80]

Following on from this change, the PWLB's guidance for applicants was updated in May 2022. This was intended to provide "broad definitions of the permissible categories of local authority capital expenditure (service delivery, hosing, regeneration, preventative action and treasury management), to

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75 MHCLG, Statutory Guidance on Local Government Investments: 3rd edition (PDF), 2018, p7

76 As above.

77 As above, p4

78 As above, p14-15

79 MHCLG, Local Government Financial Statistics England no. 31, July 2021, p36

80 HM Treasury, Public Works Loan Board: future lending terms – responses to consultation (PDF), November 2020, p4. See also paragraphs 49-53 of the PWLB Lending Guidance for Applicants, May 2022, for a definition of 'primarily for yield'.

encapsulate the core activities of local authorities which the government wishes to support, whilst setting out a stricter definition of investment assets bought primarily for yield, which the lending terms restrict".[81]

In a policy paper published in July 2021, the Government raised the prospect of further action in response to concerns that some local authorities were pursuing questionable financial management strategies:

> These trends are concerning as some authorities have taken on excessive debt in pursuit of commercial income and pursued investment strategies that place tax-payers' money at undue risk. ...while many authorities are compliant with the Framework, there remain some authorities that continue to engage in practices that push the bounds of compliance and expose themselves to excessive risk.
>
> Further, although recent scrutiny has focussed on the risks associated with borrowing for commercial investments, it is clear that pursuit of commercial profit is not the only activity that creates risk to the system. government is aware of risky practices such as authorities taking on disproportionate levels of debt and pursuing novel investments for which they do not have the right skills and experience. [82]

The paper also gave details of a number of measures under way to manage what it considers to be excessive borrowing, including plans to review statutory powers to cap borrowing:

> Government does not want to move to a system of central control, but it must have the levers to deal with instances of excessive risk and non-compliance with the Framework. Where authorities hold too much risk or demonstrate clear non-compliance with the principles of the Framework, we will consider direct measures:
>
> - We are reviewing the statutory powers for capping borrowing and considering how and when we will apply these to protect local financial sustainability.
>
> - We are developing a range of interventions to directly address risk. This starts with communications with individual local authorities but may also involve engaging local government auditors and other actors in the capital system. We recognise that actions need to be proportionate and appropriate.[83]

A number of local authorities suffered financial difficulties during, and immediately after, the Covid-19 pandemic in 2020-21. Notably, four authorities have issued section 114 notices since 2020. These are statutory notices issued by a council's head of finance, signifying that the authority may be unable to balance its budget or that unlawful expenditure may have

81 HM Treasury, PWLB Guidance for applicants (PDF), May 2022, paragraph 6

82 MHCLG, Local authority capital finance framework: planned improvements, 28 July 2021, pargraphs 10-12

83 As above, paragraph 19

occurred.[84] However, excessive borrowing was not a primary factor in any of these authorities' financial troubles.

The Government also made bilateral agreements with a number of authorities suffering financial difficulties in the early months of 2021.[85] In each case, the Government agreed a 'capitalisation direction', permitting it to transfer a specified sum from its capital to its revenue account, and to use that sum to bolster its revenue spending.[86]

The Bill

Clause 71 (2) would introduce new sections 12A-12D into the Local Government Act 2003. This would permit the Secretary of State to issue a 'risk mitigation direction' to a local authority if one of a number of 'trigger events' occurs.

New section 12A (2) provides that the trigger events are:

- Breach of a risk threshold. Risk thresholds are defined in new section 12B of the 2003 Act (see below);
- The issue of a section 114 notice by the local authority's head of finance;
- The issue of a capitalisation direction to a local authority, or the making of a grant, by the Secretary of State in order to avert a section 114 notice being issued.

New section 12A (3) would provide that a risk mitigation direction can set a limit to a local authority's borrowing, or direct certain specific actions. It can direct the authority to dispose of a specific asset within a specific time (new section 12A (5)). The Secretary of State must have regard to local authorities' duty of best value, to the provision of public services, and to central government programmes, when exercising this power (new section 12A (6) and (7)).

New section 12A (8) would provide that the Secretary of State must notify a local authority in advance of their intention to give a direction under this clause, and must consider any representations made by the local authority before doing so. New section 12A (9) specifically defines 'financial risk' as the inability of the authority to set a balanced budget in the current, or any future, financial year.

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84 Nottingham City Council (15 December 2021), Slough Borough Council (2 July 2021), the London Borough of Croydon (11 November 2020 and 2 December 2021), and Northumberland Council (23 May 2022). See section 2.2 of the Library briefing paper Local government in England: capital finance for an explanation of section 114 notices.

85 MHCLG, Exceptional financial support for local authorities, 7 April 2021

86 For an explanation of 'capitalisation', see section 1.5 of the Library briefing Local government in England: capital finance.

New section 12B of the 2003 Act specifies four metrics that constitute risk thresholds for the purposes of section 12A. These are:

- The total of a local authority's debt compared to "the financial resources at the disposal of the authority". It is not yet clear whether this phrase refers to the authority's Net Revenue Expenditure (its annual spending) or another measure;
- The proportion of capital assets held purely as commercial investments;
- The proportion of debt that has been borrowed from bodies other than the Government or other local authorities. Data on the sources of local authorities' borrowing is available on the DLUHC website.[87] At the end of December 2021, English local authorities held £7.7 billion in short term loans from other local authorities, and £1.9 billion in long term loans;
- The amount of funds the local authority has set aside as MRP (see above).

In response to concerns about financial resilience in the local government sector, CIPFA (the Chartered Institute for Public Finance and Accountancy, the membership body for local government finance professionals) has produced a 'financial resilience index' since 2019-20. This uses nine indicators, but it does not give individual authorities an overall resilience rating. None of these nine indicators are the same as the metrics proposed by the Bill.[88]

The Secretary of State may make regulations establishing additional metrics (new section 12B (2)), and establishing how to calculate when a specific threshold has been breached (new section 12B (3)). They must consult with all English local authorities before making regulations on additional metrics.

New section 12C would provide that the Secretary of State must make a 'cessation notice' in regard to a risk mitigation direction under certain circumstances. These are: when 12 months have elapsed since the risk mitigation direction, the measures within it have been complied with, and a further risk mitigation direction is not required. After a cessation notice has been issued, the risk mitigation direction cannot be revived in respect of the original event (new section 12C (2)).

New section 12D would require a local authority to co-operate with an independent expert, if the Secretary of State appoints one to review the local authority's financial risk levels.

Clauses 71 (3-6) and (8) make consequential amendments to the Local Government Act 2003 relating to the provisions in new clauses 12A-12D. Clause 71 (7) provides that the powers in new clause 12A-12D do not apply to parish and town councils.

87 DLUHC, Live tables on local government finance: borrowing and investment, March 2022

88 CIPFA, Local authority financial resilience index, 2022

3.3 Council tax

Empty Homes Premium

Billing authorities in England, Scotland and Wales have the power to increase council tax on properties which have been 'unoccupied and substantially unfurnished' for a long period of time. This is known as the 'empty homes premium'. Council tax is a devolved matter, and the empty homes premium was introduced by separate legislation in each country.[89]

In each country, the power to impose a premium emerges after a specified amount of time. The premium can be imposed across the billing authority's area or in part of it only. Additionally, in each country a period of occupation of the property qualifies as a break in the empty period, 'resetting the clock' for the purposes of the empty homes premium.

In each country, it is for individual billing authorities to decide whether to levy an empty homes premium. The powers to levy an empty homes premium in each country are compared in the table below.[90]

Table: empty homes premium

	England	Scotland	Wales
Introduced	2013	2013	2017
Maximum charge as % of standard bill	200% / 300% / 400%	200%	200%
Property must be empty for	2 years	1 year	1 year
'Reset period'	6 weeks	3 months	6 weeks

Clause 72 (1) (b) of the Bill would permit billing authorities in England (district and unitary councils) to impose an empty homes premium after one year instead of two. This gives effect to a commitment made in the Levelling Up White Paper.[91]

89 For England, see section 12 (2) of the Local Government Finance Act 2012 and the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018; for Scotland, see the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 (SI 2013/45); for Wales, see section 139 of the Housing (Wales) Act 2014, which inserts a new section 12A and 12B into the Local Government Finance Act 1992.

90 Further details on the most recent adjustments to the empty homes premium in England can be found in the Library's briefing paper on the 2018 Act.

91 DLUHC, Levelling Up the United Kingdom, 2022, p225

Clause 72 (1) (a) provides that billing authorities must have regard to any guidance issued by the Secretary of State when deciding whether to implement an empty homes premium.

Clause 72 (2) provides that this change would come into effect from the 2024-25 financial year. It also provides that from 1 April 2024, a property can be charged an empty homes premium even if it became empty before 1 April 2024.

A new 'second homes premium'

At present, English billing authorities may only impose an empty homes premium on properties that are 'unoccupied and substantially unfurnished'. This term is defined via case law, not in legislation. However, it would be unlikely to cover properties that have no permanent occupant(s) but are furnished and habitable. An empty homes premium could therefore not be imposed on properties that are maintained as second homes for regular use by their owners.[92]

Clause 73 of the Bill would insert new section 11C into the Local Government Finance Act 1992. This would permit billing authorities to apply an empty homes premium to properties that have no resident and are "substantially furnished". The maximum council tax payment that could be imposed would be 200% of the standard bill. There would be no requirement for a property to have been used as a second home for a fixed period of time before the premium can apply.

New section 11C (3) would provide that the first decision to impose this class of premium must be taken at least 12 months before the financial year to which it would apply. This would mean that premiums of this kind could not take effect until the 2024-25 financial year at the earliest. As with clause 72 (1) (a), new section 11C (4) provides that a billing authority must have regard to any guidance issued by the Secretary of State when deciding to impose this type of premium.

New section 11C (5) provides that a property cannot be subject to both a second homes premium and an empty homes premium imposed under section 11B of the 1992 Act, and that an existing empty homes premium would cease to apply to a property which became subject to a second homes premium.

New subsections 11C (7) and (8) would provide that the decision must be publicised in at least one local newspaper, within 21 days of its being taken. New section 11C (6) provides that a decision to impose a premium can be revoked or varied before the beginning of the financial year to which it would apply.

[92] Some properties that are 'holiday lets' are eligible to be charged business rates instead of council tax. Neither the existing empty homes premium, nor the proposed new second homes premium, would apply to those properties.

New section 11D would permit the Secretary of State to prescribe classes of property that could not be subject to a second homes premium. The Secretary of State has an equivalent power in regard to the current empty homes premium (see section 11B (2) of the Local Government Finance Act 1992). This has been used to provide that the empty homes premium cannot be applied to homes that are empty due to the occupant living in armed forces accommodation for job-related purposes, or to annexes being used as part of a main property.[93]

The provisions in clause 73 of the Bill are almost identical to provisions that apply in Wales, introduced from the 2017-18 financial year by section 139 of the Housing (Wales) Act 2014. The only substantive difference is that Welsh billing authorities cannot apply a holiday home premium only to part of their area.

The Welsh Government has made regulations providing that the holiday home premium cannot apply to annexes being used as part of a main property; holiday homes with use restrictions; caravans; boat moorings; where a property is empty due to the occupant living in armed forces accommodation for job-related purposes; or to properties being marketed for sale or rental.[94]

3.4 Street names

In a 2022 consultation, the Government expressed concern that local authorities can currently change the names of streets without obtaining adequate consent from local residents, and proposed to change the existing procedures for street name changes accordingly.[95]

The consultation explained that the Government "is concerned that there are attempts to erase and cancel local heritage and that residents are not being properly consulted" and that the current procedure allows "insufficient opportunity for residents to express a view and gives disproportionate weight to campaigns and the representations of third parties".[96]

Responsibility for naming streets rests with local authorities. There are relevant laws which currently govern street naming procedures in England:

- Section 21 of the Public Health Acts Amendment Act 1907;
- Section 18 of the Public Health Act 1925;

93 See the Council Tax (Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2012 (SI 2012/2964)

94 See the Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015 (SI 2015/2068); Welsh Government, Guidance on the Implementation of the Council Tax Premiums on Long-Term Empty Homes and Second Homes in Wales (PDF), January 2016

95 DLUHC, Technical consultation on street naming, 11 April 2022

96 DLUHC, Technical consultation on street naming, 11 April 2022

- Section 6 of the London Building Acts (Amendment) Act 1939 (in Greater London only);
- Paragraphs 25-26, Schedule 14 of the Local Government Act 1972.

Paragraph 25 of schedule 14 of the Local Government Act 1972 allows local authorities outside of London to choose between using the 1907 or 1925 Acts for street name changes.

Only the 1907 Act specifically requires the consent of local residents, through a requirement to obtain a two-thirds majority of business rates payers and council taxpayers for a street before a proposed name change can proceed.[97] Many local authorities have disapplied the 1907 Act, and use the 1925 Act instead which does not require consent (although it allows people to object to a street name change proposal via the courts).[98]

The 1939 Act is only applicable in Greater London and, while it allows for London boroughs to 'have regard to' any public objections to a street name change, they can still proceed with a street name change if they see fit.[99] Paragraph 26 of the 1972 Act excludes London boroughs from using either the 1907 or 1925 Acts.[100]

Clause 74 seeks to ensure that any proposed street name change in England must have 'necessary support' before it can proceed. Subsection 74(6) says that a street name proposal would have such necessary support:

> only if—
>
> a) it has sufficient local support, and
>
> b) where it is an alteration of a specified kind, it has any other support specified as a pre-condition for alterations of that kind.

Subsection 74(7) would allow the Secretary of State to issue regulations to set out how this necessary support could be established. Subsection 74(8) sets out what kinds of things such regulations might provide for. It includes requirements for referenda such as a required level of voter turnout, the required majority required for approval of a street name change proposal, and a minimum period of time before a 'failed' referendum can be run a second time.

Subsection 74(9) would require a local authority to have regard to any statutory guidance published by the Secretary of State for approval of street name changes. Subsection 74(10) would ensure that this Bill would override any local Act which may already exist regarding street name changes. The

97 Section 21, Public Health Acts Amendment Act 1907
98 Section 18, Public Health Act 1925.
99 Section 6, London Building Acts (Amendment) Act 1939 (PDF)
100 Schedule 14, Part II, Local Government Act 1972

Bill's explanatory notes give the example of section 13 of the Oxfordshire Act 1985, which deals with local street name alterations.[101]

Subsection 74(12) refers to Schedule 5 of the Bill which would make consequential amendments disapplying the relevant sections of the four Acts that currently apply to this topic.[102] This disapplication would only apply to these laws in England, so the current regime around street name changes would remain in force in Wales.

[101] Levelling-Up and Regeneration Bill Explanatory Notes paragraph 454 (PDF)

[102] Section 21, Public Health Acts Amendment Act 1907; Section 18, Public Health Act 1925; London Building Acts (Amendment) Act 1939; Paragraph 26(c), Part 2, Schedule 14, Local Government Act 1972

4 Planning

The Bill provides for the reform of the planning system in England, to reflect the Government's priorities for levelling up and regeneration.

The Bill's provisions have a long history, in that the Government first set out its agenda for planning reform for England in the Planning for the Future white paper (PDF) in August 2020.[103]

The Levelling Up, Housing and Communities select committee's report on the future of the planning system in England (PDF)[104] and the Government's response to that report in May 2022, which set out how it intended to proceed on the various proposals set out in the white paper Planning for the Future, are examined below.[105]

4.1 Context: Housing need and targets

The Government's aim to build more housing continues to attract controversy.The executive summary to the Levelling Up white paper (PDF) speaks of "building more housing in England, including more genuinely affordable social housing".[106]

The Levelling Up White Paper (PDF) says "The UK Government will continue working towards our ambition of delivering 300,000 new homes per year in England by the mid-2020s to create a more sustainable and affordable housing market".[107] There is no further comment there on how (if at all) the Government proposes to change how housing need is calculated, although some other comments from Ministers (discussed below) suggest that change might be afoot.

The Commons Library briefing on calculating housing need in the planning system (England) discusses (amongst other things) how the figure calculated

[103] Ministry of Housing, Communities and Local Government (MHCLG), White paper: Planning for the Future (PDF), August 2020. See also MHCLG, Press release: Launch of Planning for the Future consultation to reform the planning system, 6 August 2020 and PM's Office and 10 Downing Street, Press release: PM: Build, build, build, 30 June 2020

[104] Housing, Communities and Local Government Committee, The future of the planning system in England (PDF), HC 38 2021-22, 10 June 2021

[105] DLUHC, Policy paper: Future of the planning system in England: government response to the Select Committee report, 12 May 2022

[106] HM Government, Levelling Up the United Kingdom (Executive Summary (PDF), February 2022, p15

[107] HM Government, Levelling Up the United Kingdom: White paper (PDF), CP 604, February 2022, p206, p223

according to the standard method is a starting point, not a target for housing need in any area.

When he appeared before the Housing, Communities and Local Government select committee in November 2021, the Secretary of State for Levelling Up, Housing and Communities, Michael Gove, was asked about "leeway" for local planning authorities (LPAs) in deciding their local housing need. He argued that some of the assumptions were "probably out of date" and so he wanted to look at how the numbers were generated.[108] In February 2022, the Telegraph reported that Conservative backbenchers had also pressed for the standard method to be scrapped.[109]

In a debate in March 2022 on planning permission and housing need in Wealden, the housing minister, Stuart Andrew, said that the Government had heard "loud and clear" the concern that housing need figures should be advisory rather than mandatory and was considering how to take forward its proposals for modernising the planning system.[110]

After publishing the Levelling Up and Regeneration Bill, the Government also published its response[111] to the Levelling Up, Housing and Communities select committee's report on the future of the planning system in England (PDF) (discussed again below).[112]

In that response, the Government confirmed that it was listening to MPs, councillors and others about the effectiveness of the standard method for calculating housing need and the policies surrounding it. The changes in the Levelling Up and Regeneration Bill would necessitate an update to the National Planning Policy Framework (NPPF) and the Government would publish an NPPF prospectus setting out its "further thinking".[113] The Government reiterated its ambition to deliver 300,000 homes per year on average.[114]

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108 Housing, Communities and Local Government Committee, Oral evidence: Work of the Department 2021, HC 818, 8 November 2021, Q85

109 "Gove abandons reforms that give developers free rein", Telegraph online, 26 October 2022 (accessed via the Commons Library subscription to Nexis News)

110 HC Deb 3 March 2022 c295 WH onwards

111 DLUHC, Policy paper: Future of the planning system in England: government response to the Select Committee report, 12 May 2022

112 Housing, Communities and Local Government Committee, The future of the planning system in England (PDF), HC 38 2021-22, 10 June 2021

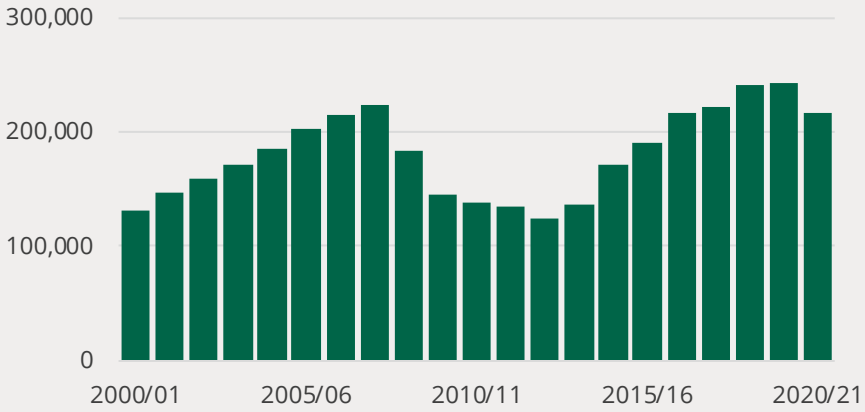
113 DLUHC, Policy paper: Future of the planning system in England: government response to the Select Committee report, 12 May 2022, paragraph 34

114 As above, paragraph 35

How much new housing is being delivered?

Around 216,000 new homes were supplied in England in 2020/21 (this total accounts for new builds, conversions, and demolitions). This is lower than the 243,000 new homes supplied in 2019/20, in part because of disruption to housebuilding caused by Covid-19 restrictions in 2020. Before 2020/21, new housing supply had been increasing year-on-year since 2012/13.

Net additional homes supplied in England



Source: DLUHC, Live tables on housing supply: net additional dwellings, Table 118 (25 November 2021)

For local data on housing supply, see the Library's online data dashboard Local authority data: housing supply.

The Library briefing Tackling the under-supply of housing (England) explores the available data on housing need and supply in more detail, as well as providing background on some of the barriers and solutions to addressing housing need.

4.2 Recent proposals for planning reform in England

The white paper Planning for the Future (PDF) was launched in August 2020.[115] The Commons Library briefing Planning for the Future: planning policy changes in England in 2020 and future reforms examines its proposals.

The background briefing notes (PDF) to the Planning Bill announced in the Queen's Speech 2021 outlined its likely content, but the promised Bill was not published in 2021.[116]

Some media commentary suggested that the delay in bringing forward the Bill was because of the hostile reception (including from Government backbenchers) to many of the proposals in Planning for the Future.[117] In replies to Parliamentary Questions, Government ministers said they were taking time to consider the "valuable feedback" they had received through the 44,000 responses to the white paper.[118]

There was speculation, too, that the creation of the Department for Levelling Up, Housing and Communities, with a new Secretary of State, might mean a different approach to planning reform.[119]

When questioned by the then Housing, Communities and Local Government committee in November 2021, Michael Gove said that many aspects of the reforms would be taken forward:

> No, we will not be abandoning it. There are some things in it that everyone agrees are sensible. There is no one who has yet said to me, "We mustn't digitise the planning system." There is no one who has said, "I'd like to keep it as paper-based and bureaucratic as possible." As we have just discussed, you cannot look at questions of housing just through the prism of planning. Improving the planning system is one thing, but there are lots of other things that we need to do to achieve our goal of more people in decent homes in the areas that they want to live in, with communities welcoming regeneration.[120]

In February 2022, the Telegraph reported that Michael Gove had told Conservative backbenchers that plans for a standalone planning bill had been abandoned, with more limited planning reforms to be taken forward through the broader Levelling Up and Regeneration Bill.[121]

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115 MHCLG, White paper: Planning for the Future (PDF), August 2020

116 See, for example, "Planning Bill set for significant delay", Housing Today, 20 November 2020

117 The Queen's Speech 2021: Background Briefing Notes: Planning Bill (PDF), page 61

118 See, for example, PQ 8631, 27 May 2021

119 See, for example, "Michael Gove: What will he do with beefed-up planning and levelling up job?", BBC News online, 17 September 2021

120 Housing, Communities and Local Government Committee, Oral evidence: Work of the Department 2021, HC 818, 8 November 2021, Q79

121 "Gove abandons reforms that give developers free rein", Telegraph online, 26 October 2022 (accessed via the Commons Library subscription to Nexis News)

The Queen's Speech 2022 outlined the Levelling Up and Regeneration Bill's provisions, saying that "the planning system will be reformed to give residents more involvement in local development".[122]

The background briefing notes for the speech (PDF) said that the purpose of the Bill as it related to planning was to "improve the planning system to give communities a louder voice, making sure developments are beautiful, green and accompanied by new infrastructure and affordable housing". The three main benefits for planning would be:

- Improving outcomes for our natural environment by introducing a new approach to environmental assessment in our planning system. This benefit of Brexit will mean the environment is further prioritised in planning decisions.
- Capturing more of the financial value created by development with a locally set, non-negotiable levy to deliver the infrastructure that communities need, such as housing, schools, GPs and new roads.
- Simplifying and standardising the process for local plans so that they are produced more quickly and are easier for communities to influence.[123]

4.3 The proposals in Planning for the Future

The Housing, Communities and Local Government select committee's report on the future of the planning system in England (PDF), which examined the White Paper's proposals, was published in June 2021.[124]

The Government published its response to the select committee report in May 2022, after publishing the Levelling Up and Regeneration Bill.[125] In that response, the Government confirmed that:

- It would not pursue the proposal in Planning for the Future for three planning zones (growth areas "suitable for substantial development", renewal areas "suitable for some development", and protected areas). The Bill would make clear the relationship between plans, national policy and the requirements placed on new development and would give Local Plans more weight in law. The Government would not extend the 30 month deadline for the production of Local Plans, but would set out arrangements for transition;[126]

122 Prime Minister's Office and HRH The Prince of Wales, Queen's Speech 2022, 11 May 2022

123 Prime Minister's Office, Policy paper: Queen's Speech 2022: Background briefing notes (PDF), 11 May 2022

124 Housing, Communities and Local Government Committee, The future of the planning system in England (PDF), HC 38 2021-22, 10 June 2021

125 DLUHC, Policy paper: Future of the planning system in England: government response to the Select Committee report, 12 May 2022

126 As above, paragraphs 8 - 15

- It agreed with the select committee's view on promoting greater public involvement in creating Local Plans and would require two rounds of community engagement and consultation (to longer timescales than currently) before Local Plans were submitted for examination. The "right to be heard" would be retained;[127]

- The Government would strengthen the role of neighbourhood plans and would give people even more say on local development, by enabling "street votes" to decide whether development should be given planning permission;[128]

- The duty to co-operate would be abolished, to be replaced by an "alignment policy" in an updated NPPF;[129]

- Under the reformed planning system, people would still be able to comment on individual applications for planning permission. Digital reforms would facilitate this;[130]

- Local authorities would continue to approve Local Plans and make decisions on planning applications;[131]

- The Government was listening to MPs, councillors and others about the effectiveness of the standard method for calculating housing need and the policies surrounding it. The changes in the Levelling Up and Regeneration Bill would necessitate an update to the NPPF and the Government would publish an NPPF prospectus setting out its "further thinking".[132] The Government's ambition remained to deliver 300,000 homes per year on average;[133]

- The Government agreed with the conclusions of the Letwin review of build-out on the diversification of very large sites. Provisions within the Bill would give LPAs powers to act where development was "unreasonably slow". Developers would have to provide the LPA with a Development Commencement Notice (with a trajectory setting out annual rates of housing delivery) when they commenced development and the process for the LPA to issue a completion notice (setting out the period after which planning permission would lapse) would be streamlined;[134]

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127 As above, paragraphs 16-8

128 As above, paragraphs 19 - 21

129 As above, paragraph 22

130 As above, paragraphs 26-9

131 As above, paragraphs 29 - 30

132 DLUHC, Policy paper: Future of the planning system in England: government response to the Select Committee report, 12 May 2022, paragraph 34

133 As above, paragraph 35. See also the Commons Library briefing Calculating housing need in the planning system (England) (CBP 9268).

134 DLUHC, Policy paper: Future of the planning system in England: government response to the Select Committee report, 12 May 2022, paragraphs 39–41. See also the Commons Library briefing Calculating housing need in the planning system (England) (CBP 9268).

- Work alongside the Bill would further encourage the re-use of brownfield land;[135]
- The Government would go ahead with its proposals for a new Infrastructure Levy, but section 106 agreements would remain available in certain circumstances. The Levy would deliver at least as much affordable housing as currently;[136]
- The spending review 2021 had provided additional investment for planning. The Government would (subject to consultation in summer 2022) introduce regulations to increase planning fees for minor and major applications by 25% and 35% respectively, to better resource the planning system;[137]
- Locally-set design codes would be integral to the revised planning system and the Bill would require LPAs to produce them;[138]
- The Government would not initiate a national review of the Green Belt, but remained committed to protecting and enhancing it; the Levelling Up white paper had made a commitment to further improving Green Belt land;[139]
- Historic Environment Records would be put on a statutory basis. The Bill would align protections for key designated heritage assets with those already in place for listed buildings and conservation areas;[140]
- There would be a review (to be completed in 2022) of planning barriers that might limit households' ability to install energy efficiency measures, including in listed buildings and conservation areas;[141]
- The NPPF had been revised in July 2021 to place more emphasis on sustainable development, including on responding to the impacts of climate change;[142]
- Environmental considerations would be central to the reformed planning system. The Bill would introduce a new (but not weaker) outcomes-based

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135 DLUHC, Policy paper: Future of the planning system in England: government response to the Select Committee report, 12 May 2022, paragraph 49

136 As above, paragraphs 51-2

137 As above, paragraphs 53-6. Similarly, the policy paper accompanying the Bill says "To improve capacity in the local planning system, we intend to increase planning fees for major and minor applications by 35% and 25% respectively, subject to consultation". [DLUHC, Policy paper: Levelling Up and Regeneration: Further information, 11 May 2022]

138 DLUHC, Policy paper: Future of the planning system in England: government response to the Select Committee report, 12 May 2022, paragraph 58

139 DLUHC, Policy paper: Future of the planning system in England: government response to the Select Committee report, 12 May 2022, paragraph 59. See also the Commons Library briefing Green Belt (SN 934).

140 As above, paragraphs 62-3

141 As above, paragraph 64

142 As above, paragraphs 65-7

framework of environmental assessment, founded on the UK's international obligations.[143]

4.4 Overview of the Bill's planning provisions

The Government press release accompanying the Bill set out how its planning provisions intended to deliver the right homes in the right places:

> The Bill will also deliver new reforms to the planning system, ensuring new development is more beautiful, produces more local Infrastructure, is shaped by local people's democratic wishes, improves environmental outcomes, and occurs with neighbourhoods very much in mind.
>
> Measures include:
>
> - Local plans - the way in which councils set the vision for future development in their area and decide whether to give planning permission - will gain stronger legal weight and be made simpler to produce. Communities will have a major say in these plans giving them more opportunity to shape what happens in their areas. Currently 61% of councils do not have an up to date local plan, which leaves communities exposed to development on which they haven't had a meaningful say.
> - A digitised planning system making plans and planning applications fully available on your smartphone.
> - Stronger protections for the environment in local plans, empowering councils to make better use of brownfield land and protect precious greenbelt land.
> - Local design codes will be made mandatory so that developers have to respect styles drawn up and favoured locally - from the layout or materials used, to how it provides green space.[144]

On timescales for the introduction and implementation of the reforms, a newsletter from the chief planner at DLUHC in May 2022 observed that the Bill was the start of a programme of changes to policy and practice, but this would not start immediately; some would require public consultation:

> The Bill was introduced into Parliament on Wednesday 11 May and will now progress through the different stages in both Houses and through Committee. The introduction of the Bill marks the start of a programme of policy and practice change, but this will not happen immediately. Once the Bill is enacted, the changes that are set out in legislation will be accompanied by updates to regulations and policy. Some matters will be subject to public

[143] As above, paragraphs 68-9

[144] DLUHC, Press release: New bill to level up the nation, 11 May 2022

> consultation, as indicated in the next steps section of the policy document listed below.[145]

Similarly, the policy paper accompanying the Bill set out next steps, including regulations and consultations. It suggested that changes would begin to take place from 2024:

> We will continue work on the detail of regulations, policy, and guidance, and will consult on how a number of important provisions could be taken forward. These include:
>
> (...)
>
> We will, subsequently, consult on the proposed suite of National Development Management Policies, as well as the revised National Planning Policy Framework.
>
> We will publish further details of our plans for transition, but in broad terms changes to planning procedures will begin to take place from 2024, once the Bill has Royal Assent and associated regulations and changes to national policy are in place. We recognise the importance of minimising disruption whilst transitioning to the new system, so that plans can and do continue to come forward in the meantime. We will work with the sector to agree the details of this transition, beginning engagement following the publication of this document, and will provide more details shortly.[146]

Most (but not all) of the Levelling Up and Regeneration Bill's provisions for planning apply only to England. The provisions concerning compulsory purchase apply to England and Wales, and the provisions concerning planning data and environmental outcomes reports extend to the whole of the UK.[147]

4.5 Commentary

Responding to the publication of the Bill, the Royal Town Planning Institute (RTPI) welcomed the Government's commitment to reform, but argued that there were "some notable omissions" and the Bill's aims could not be realised without better resourcing for local planning.[148]

Jonathan Carr-West, chief executive of the Local Government Information Unit, was quoted in the Local Government Chronicle as claiming that people

145 DLUHC, Follow-up: DLUHC Broadcast on "Planning in the Levelling Up and Regeneration Bill", 13 May 2022

146 DLUHC, Policy paper: Levelling Up and Regeneration: Further information, 11 May 2022

147 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF)

148 RTPI, RTPI welcomes planning reform at the heart of the Levelling Up and Regeneration Bill, 11 May 2022. The RTPI has also published a "levelling up hub", bringing together their research and policy statements.

in local government would be left feeling "somewhat underwhelmed" by the measures announced in the Queen's speech.[149]

Property consultants Lichfields remarked that the Bill did not go into detail of how Local Plans might be simplified and standardised, and that many of the most important actions do not require legislative changes, but suggested that three looming issues – uncertainty, nitrate neutrality and resourcing – remained to be addressed.[150]

Writing for Conservative Home, Nicholas Boys Smith, Co-chair of the Building Better Building Beautiful Commission, argued that the current plan-making system for England was broken, and the Bill was more radical than it might appear; it was right to link housing and levelling up, but the sequencing would be "very hard".[151]

On 12 May 2022, in the Commons debate on fairness at work and power in communities, the junior minister at the Department for Business, Energy and Industrial Strategy, Paul Scully, said that the Government was "giving local communities more tools to bring about regeneration, including a planning system that places beauty, infrastructure, democracy, the environment and neighbourhoods at its heart".[152]

Dr Liam Fox suggested that there were tensions in the planning system between the need for more housing and yet to avoid building on the Green Belt or flood plains. Housing targets (he argued) should not be instructions.[153] Maria Miller argued that the Government should not allow the south-east of England to continue as "a hothouse of house building".[154]

Clive Betts remarked that the Government had abandoned its plans to "tear up the planning rules and start again", but the "few clauses in the Bill" contained "actually some quite good proposals", reflecting the select committee's views. He expressed disappointment that the Government was not doing more about build-out (ensuring properties given permission are actually built) and asked what had become of the target of 300,000 homes per year by the end of this Parliament. He commended the Government for taking action on the "whole problem of compulsory purchase".[155]

Closing the debate, the Minister for Levelling Up Communities, Kemi Badenoch, said in reply to a question from Clive Betts that the Government

149 'Underwhelming' – reaction to the Levelling Up and Regeneration Bill, Local Government Chronicle, 11 May 2022

150 Lichfields, The Queen's Speech – Levelling Up and Planning Reform, what can be legislated for?, 10 May 2022

151 Nicholas Boys Smith, The Levelling Up Bill's plan for housing and how it can be made to work, Conservative Home, 17 May 2022

152 HC Deb 12 May 2022 c292 onwards

153 HC Deb 12 May 2022 c304

154 HC Deb 12 May 2022 c310

155 HC Deb 12 May 2022 c312

had not changed anything about its housing targets but was "looking at other things beyond targets, not just a statistic or number".[156]

4.6 Further reading

- "Does the Queen's speech deliver on levelling-up, planning system reforms & energy security?", PBC Today, 11 May 2022
- "Planning reforms met with scepticism as levelling-up bill is tabled", Construction News, 12 May 2022
- Royal Institute of British Architects, Levelling Up and Regeneration Bill – the details, 12 May 2022
- Country Land and Business Association, How the planning system is changing, 12 May 2022
- "The housing crisis puts Tories in a death spiral", Times online, 12 May 2022
- "Empowering local people is the key to levelling up", Times online, 10 May 2022
- "We've done it before, others do it now – a national housing plan is not beyond our wit", Observer online, 15 May 2022
- "Channelling the Nimby spirit won't fix Britain's housing problems", Financial Times, 14 May 2022
- How to kick-start the UK's digital planning 'golden-age', Estates Gazette, 17 May 2022[157]
- "Government to draw up national policies that would override local plans in decision making", Planning, 12 May 2022[158]
- Bat Conservation Trust, Climate, nature and people need to be at heart of planning reforms in Levelling Up Bill, 11 May 2022

156 HC Deb 12 May 2022 c372

157 Subscription required – available to Parliamentary users via Nexis News

158 Subscription required – Members and their staff may obtain copies of this and other articles from Planning from the Commons Library on 020 7219 3666.

5 In more detail: The Bill's planning provisions

5.1 Planning data

As the Commons Library briefing Planning for the Future: planning policy changes in England in 2020 and future reforms discusses, one plank of the Government's plans for planning reform is making better use of technology and digital tools for planning.

The Bill

Clauses 75 to 82 deal with planning data. They would give the Secretary of State the power to make regulations requiring a "relevant planning authority" to comply with any approved data standards (**clause 75**) and the relevant planning authority to issue a notice, specifying the form or manner in which any person or persons (but not the Crown or a court or tribunal) should present any planning data (**clause 76**).

Clause 77 would create a power to require certain planning data to be publicly available. **Clause 78** would provide that planning data regulations may restrict or prohibit relevant planning authorities from using software not approved by the Secretary of State. **Clause 79** deals with copyright.

Here, the Explanatory Notes to the Bill (PDF) say that the provisions will raise standards and make it easier and more efficient to compare information and deal with cross-boundary matters.[159]

5.2 Development Plans

Preparing the Local Plan

Although they are not currently statutorily required to have a Local Plan, current planning policy in England encourages LPAs in England to have such a plan. (See sections 1.2 and 1.3 of the Commons Library briefing Planning for the Future: planning policy changes in England in 2020 and future reforms for discussion of the white paper's proposals for every area to have a Local Plan, which would be simplified and quicker to produce).

[159] DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), example 1 on page 74

Local Plans must be positively prepared, justified, effective and consistent with national policy in accordance with section 20 of the Planning and Compulsory Purchase Act 2004 (as amended) and the NPPF. The Town and Country Planning (Local Planning) Regulations 2012 (SI 2012/767) set out the process for preparing a Local Plan.

LPAs are already required to prepare and maintain a local development scheme, setting out the timetable for preparing local development plan documents.[160]

The Planning Practice Guidance (PPG) on Local Plans covers (amongst other things) the evidence base to be used in preparing a plan.[161] The PPG on housing and economic needs assessment says that use of the standard method is not mandatory, but Local Plans using any other method will be scrutinised more closely at examination (see below).[162]

Any Local Plan not based on robust evidence of local housing need might be found unsound. LPAs cannot adopt unsound plans, and so the LPA would then face a choice between modifying it to make it sound, or not adopting it.

Examination of the Local Plan

Independent planning inspectors must look at all Local Plan documents that LPAs in England prepare for an examination. The LPA submits the Local Plan, alongside the consultation representations and other required documents, to PINS. PINS then arrange for the Local Plan to be scrutinised through an Examination in Public.[163] During the Examination, the Inspector will be testing the Local Plan for soundness, legal procedural compliance and whether the council has met the duty to co-operate. The Inspector will consider any representations made on the plan. The Inspector will write a report, setting out whether they are satisfied that the Local Plan is sound, meets the legal procedural requirements and the duty to co-operate. The report may recommend main modifications (changes) to the submitted plan, where requested by the LPA, to make the Local Plan sound and compliant with the legal procedural requirements.

PINS do not approve or reject the whole of the plan – they suggest modifications to make the plan sound, which the LPA can then choose to accept, or not. The LPA cannot have an unsound plan and so, in effect, the LPA's choice is between rejecting the modifications and so not having a Local Plan (in which case, the Government might intervene to take over the plan) or, if they choose to adopt the plan, accepting the modifications. If the LPA is not

160 Planning and Compulsory Purchase Act 2004, section 15

161 DLUHC, Guidance: Local plans, 1 January 2012, updated 4 October 2021

162 DLUHC, Guidance: Housing and economic needs assessment, last updated 16 December 2020, paragraph 003

163 See PINS, Plain English Guide to the Planning System (PDF); PINS, Guidance on the examination process; and PINS, Procedural Guide for Local Plan Examinations

content with the any change suggested by PINS, it could seek to challenge the decision at judicial review.

Determining a planning application: Departure from the Local Plan

The rules relating to how an LPA must consider a planning application are set out in The Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595).

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions, as is any up-to-date Local Plan made by the LPA.

The PPG also sets out how applications for planning permission should be determined. Planning decisions must be plan-led and so the LPA must consider the application against the background of the Local Plan and other policies.[164]

Material considerations

Currently, section 38 (6) of the Planning and Compulsory Purchase Act 2004 allows LPAs to depart from the development plan, where material considerations indicate that the departure is warranted.

Under section 70 of the Town and Country Planning Act 1990, LPAs are directed to take into account any "material considerations" when taking planning decisions. The PPG on determining a planning application observes that "the scope of what can constitute a material consideration is very wide" but the courts have generally held that purely private interests such as neighbouring property values could not be material considerations.[165]

The Bill

Clauses 82 to 84 cover development plans and national policy.

Clause 82 deals with the content of development plans (amending section 38 of the Planning and Compulsory Purchase Act 2004) so that each Local Plan or spatial development strategy, minerals and waste plan, supplementary plan or neighbourhood development plan within the area is part of the development plan. The Explanatory Notes to the Bill (PDF) say that the provision is procedural and will encourage consistency.[166]

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164 MHCLG, Guidance: Determining a planning application, last updated 24 June 2021, paragraph 006

165 MHCLG, Guidance: Determining a planning application, last updated 24 June 2021, paragraph 008

166 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 492

Clause 83 (on the role of the development plan and national policy in England) makes further amendments to section 38 of the 2004 Act, so any determination of a planning matter under the planning Acts must be made in accordance with the development plan (and any national development management policies) "unless material considerations strongly indicate otherwise". This therefore reduces the scope for departing from the Local Plan.

Subsection 5C provides that any conflict between the development plan and national development management policy "must be resolved in favour of the national development management policy".[167]

Clause 84 defines a "national development management policy" as any policy relating to development or use of land in England which the Secretary of State by direction designates as such a policy.

The Explanatory Notes to the Bill (PDF) say this provision will give statutory weight to the Secretary of State's policies.[168] The Explanatory Notes do not give examples of what will be designated as a "national development management policy", but the policy paper accompanying the Bill suggests that these policies will be those which "apply in most areas":

> To help make the content of plans faster to produce and easier to navigate, policies on issues that apply in most areas (such as general heritage protection) will be set out nationally. These will be contained in a suite of National Development Management Policies, which will have the same weight as plans so that they are taken fully into account in decisions.[169]

The policy paper also notes that these policies will be identified and consulted on; they may include some elements of the current NPPF:

> Most fundamentally, we will need to identify and consult on the National Development Management Policies which will sit alongside plans to guide decision-making. They will be derived from the policies set out currently in the National Planning Policy Framework, where these are intended to guide decision-making, but we will also identify and seek views on any gaps in the issues which are covered. The rest of the National Planning Policy Framework will be re-focused on setting out the principles to be taken into account in plan-making, whilst also streamlining national policy, making it more accessible and user friendly.[170]

Clause 85 deals with the spatial development strategy for London, such that the strategy must include statements of the Mayor's policies on development and use of land in Greater London which is of strategic importance to London and designed to achieve objectives relating to Greater London's particular characteristics or circumstances.

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167 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 498

168 As above, paragraphs 502-3

169 DLUHC, Policy paper: Levelling Up and Regeneration: Further information, 11 May 2022

170 As above

According to the Explanatory Notes to the Bill (PDF), this clause would update the spatial development strategy powers within the Greater London Authority Act 1999, which have already been conferred on some combined authorities and may be conferred on others, so affecting areas outside London.[171]

Clause 87 introduces Schedule 7, which would replace Part 2 of the Planning and Compulsory Purchase Act 2004, sections 15 to 37 (dealing with development schemes, documents and joint committees etc). Amongst Schedule 7's provisions are:

- **Joint spatial strategies [new sections 15A-AI]:** The schedule would create a new power for two or more LPAs to work together to create a Spatial Development Strategy (SDS). The power would be available to all LPAs other than Combined Authorities, Mayoral Combined Authorities and Greater London. The schedule sets out provisions for their contents, consultation, public examination, adoption, review and monitoring, alteration and withdrawal and what happens when a combined authority is created in an area where an SDS is being made or has been made;

- **Plan timetables [new section 15B]:** The concept of a public timetable for the development plan would remain, but the intention here, according to the Explanatory Notes (PDF), is to use regulations to promote a shift from a document-based approach to making data available in a prescribed digital format;[172]

- Similar provisions would apply to minerals and waste plans **[new section 15BB]**;

- **Local Plans [new section 15C]:** Section 19 of the Planning and Compulsory Purchase Act 2004 would be amended. LPAs would no longer be expected to have a suite of development plan documents, but would instead be required to prepare a single Local Plan, setting out the amount, type, location and timetable for development in the area. There may be only one Local Plan effective in an LPA at any time. The Schedule lists those things which a Local Plan must or may contain and those which it must not contain. The Local Plan must be "designed to secure that the use and development of land in the local planning authority's area contribute to the mitigation of, and adaption to, climate change";

- **Minerals and waste plans [new section 15CB]:** Likewise, every minerals and waste authority must have a Plan and the schedule sets out what it must, may and must not contain. The Plan must be "designed to secure that minerals and waste development in the relevant area contributes to the mitigation of, and adaption to, climate change";

- **Supplementary plans [new section 15CC]:** A plan-making authority may make one or more supplementary plans. The Schedule sets out what they may include. To the extent that the plan-making authority considers it

[171] DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraphs 507-8
[172] DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 1186

appropriate, given its subject matter, the plan must be "designed to secure that the development and use of land in the authority's area contribute to the mitigation of, and adaption to, climate change";

- **Independent examination of Local Plans [new section 15D and 15DA]:** The Schedule retains existing provisions for examination of Local Plans, while adding a new one, enabling the Inspector to pause the examination at any point, where remedial work needs to be done, to make the plan sound;

- **Independent examination of supplementary plans [new section 15DB]:** This section sets out arrangements for the examination of supplementary plans;

- **Withdrawal of a Local Plan [new section 15E]:** Currently, LPAs may withdraw a local development document at any point before it is adopted. Section 15E translates the concept of withdrawal to the new framework for Local Plans, but removes LPAs' ability to withdraw a plan from examination, unless the inspector recommends it or the Secretary of State directs it;

- **Design code [new section 15F]:** LPAs are already required to have regard to the desirability of achieving good design. Section 15F would create a new duty to prepare a local design code for the area;

- **Intervention powers in relation to plans [new section 15H]:** Provisions here consolidate the Secretary of State's existing powers to intervene in Local Plans;

- **Failure to ensure design code [new section 15HB]:** This section creates a power for the Secretary of State to intervene, where an LPA fails to comply with the requirement to include a design code in the development plan;

- **Neighbourhood priority statements [new section 15K]:** A neighbourhood priority statement is intended to be a simpler planning tool than a neighbourhood plan and so perhaps (the Explanatory Notes (PDF) suggest) more likely to be taken up in urban and more deprived areas, and other areas where take-up of neighbourhood planning is currently low.[173] Any qualifying body would be able to make a neighbourhood priority statement, setting out their needs and priorities on "local matters" (which are defined here);

Responses and reaction to the Bill

As discussed earlier, one aspect of the Government's proposals for planning reform which attracted much controversy was the potential impact on

[173] DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 1382

community involvement in the planning process, whether shaping Local Plans or commenting on planning applications.

Responding to the publication of the Bill, Victoria Hills, chief executive of the Royal Town Planning Institute (RTPI), said about its provisions for Local Plans:

> We welcome the substantial reform of local plans, but recognise that the function of local plans is as important as their production. Each local plan produced now will need to implement the 6th carbon budget and contribute to delivering 80% reduction in CO2 by the end of the local plan period.[174]

The Planoraks blog observed that there were many regulations still to come. It noted too that the requirement in clause 83 to take planning decisions in accordance with the development plan (and any national development management policies) "unless material considerations strongly indicate otherwise" would change the law in at least two important ways. National policies would be given clear priority above local development plans, and material considerations would need to be 'strong'.[175]

5.3 Secretary of State's intervention in Local Plans

The Secretary of State has powers to intervene in local plan making under sections 21 and 21A of the Planning and Compulsory Purchase Act 2004 (the 2004 Act). Procedure for call-in under section 21 of the 2004 Act is set out in schedule 1 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (SI 2012/767).

Section 21 of the 2004 Act gives the Secretary of State power to direct the LPA to modify the plan in accordance with his direction and (in that case) the document has no effect until it has been approved by the Secretary of State. The Secretary of State's power is very broad and can be used whenever they believe that a Local Plan is "unsatisfactory". This term is not defined further in the legislation. The power can be used by the Secretary of State at any time up until the Local Plan has been formally adopted by the LPA.

In March 2021, a reply to a Parliamentary Question confirmed that new criteria for intervention in Local Plans would be considered alongside other responses the white paper Planning for the Future.[176]

Holding directions

A new section (section 21A) was added to the 2004 Act by the Housing and Planning Act 2016. Under section 21A, the Secretary of State can issue a

174 RTPI, RTPI welcomes planning reform at the heart of the Levelling Up and Regeneration Bill, 11 May 2022

175 All change please: the new test at the heart of the "Levelling-up and Regeneration Bill", Planoraks blog, 12 May 2022

176 PQ HC 164536, 8 March 2022

"holding direction" if they want to consider using his powers under section 21. Section 21A can help to ensure that a Local Plan does not proceed any further towards being adopted until such time that the Secretary of State decides whether or not to use his intervention powers.

The Bill

As discussed earlier, **Clause 87** and **Schedule 7** would consolidate the Secretary of State's powers to intervene in Local Plans.

5.4 Design

For discussion of planning's role in promoting good design, see section 1.11 of the Commons Library briefing Planning for the Future: planning policy changes in England in 2020 and future reforms and section 2 of the March 2020 debate pack on housing and planning in England(CDP 2020/041).

Section 5.2 of the of the Commons Library briefing Planning for the Future: planning policy changes in England in 2020 and future reforms outlines the proposals on design and beauty, as set out in the Levelling Up white paper.

The NPPF has chapters on promoting healthy and safe communities (PDF) and achieving well-designed places (PDF).[177]

The Building Better, Building Beautiful Commission was an independent body set up to advise government on how to promote and increase the use of high-quality design for new build homes and neighbourhoods. Its final report Living with beauty: Promoting health, well-being and sustainable growth (PDF) was published in January 2020. It proposed a new development and planning framework which would ask for beauty, refuse ugliness and promote stewardship.[178]

In its response to the Commission's report in January 2021, the Government agreed that (especially after the public health challenge of Covid) "creating and maintain places that offer a high quality of life should be a central goal of everyone involved in the planning and development process".[179] At an event in July 2021, the then Housing Secretary, Robert Jenrick, reiterated what the Government was doing to promote beauty and wellbeing within the planning system.[180]

177 MHCLG, National Planning Policy Framework (PDF), July 2021

178 Building Better, Building Beautiful Commission, Living with beauty: promoting health, well-being and sustainable growth (PDF), January 2020, page v

179 MHCLG, Building Better, Building Beautiful Commission: Government response to the Living with Beauty report, January 2021, page 33

180 MHCLG, Press release: Vision for building beautiful places set out at landmark design event, 20 July 2021

The Bill

As discussed earlier, **clause 87** and **Schedule 7** would create a duty for LPAs to draw up a local design code.

On design codes, Victoria Hills, chief executive of the RTPI, said:

> We welcome and encourage any system that supports local residents in becoming more involved in planning in their areas, and encourage the use of our recently published design codes that put nature recovery and net zero front and centre." [181]

5.5 Neighbourhood planning

The Commons Library briefing on neighbourhood planning examines relevant policy and practice in more depth. Section 1.3 examines the relationship between neighbourhood plans and Local Plans and section 2.2 discusses the role of the LPA.

The Localism Act 2011 allows parish councils and neighbourhood forums to formulate Neighbourhood Development Plans (NDPs) and Orders, to guide and shape development in a particular area. Policies produced in an NDP cannot block development that is already part of the Local Plan, but NDPs can shape and influence where that development will go and what it will look like.

The NPPF (PDF) sets out how NDPs should relate to the area's strategic policies.[182] The PPG on neighbourhood planning also sets out the relationship between an NDP and a Local Plan.[183]

Section 5 of the Commons Library briefing Planning for the Future: planning policy changes in England in 2020 and future reforms examines what the Levelling Up white paper said about (amongst other things) widening the accessibility of neighbourhood planning.

More information about neighbourhood planning can be found in:

- the Planning Policy Guidance note (PPG) on neighbourhood planning;[184]
- Neighbourhood planning: A simple guide for councillors from the Local Government Association and Planning Advisory Service (dated December 2013);

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181 Royal Town Planning Institute, RTPI welcomes planning reform at the heart of the Levelling Up and Regeneration Bill, 11 May 2022

182 MHCLG, National Planning Policy Framework, July 2021, paragraphs 29-30

183 MHCLG, Guidance: neighbourhood planning, last updated 25 September 2020

184 MHCLG, Guidance: neighbourhood planning, last, updated 25 September 2020, paragraph 021 onwards

- the Royal Town Planning Institute's webpage on neighbourhood planning.

The Bill

Clauses 88 and 89 deal with neighbourhood planning.

Clause 88 amends section 38B of the Planning and Compulsory Purchase Act 2004, to list the policies and requirements that a neighbourhood plan may include. The clause also creates a new requirement for the qualifying body (the parish or town council or (in unparished areas) the neighbourhood forum) to design the plan so that it contributes to the mitigation of climate change, as far as it considers appropriate. The plan must not be inconsistent with, nor must it repeat, any national development management policy.

Clause 89 covers basic conditions for neighbourhood development plans and orders. Its effect is to prohibit a neighbourhood development order from preventing housing development proposed in the development plan for the local area and to require that neighbourhood development plans and orders should comply with the new framework for environmental assessment.[185]

5.6 The duty to cooperate

The duty to cooperate - introduced by the Localism Act 2011 - is set out in section 33A of the Planning and Compulsory Purchase Act 2004.

As the NPPF says, LPAs and county councils (in two-tier areas) are under a duty to cooperate with each other and with other prescribed bodies on strategic matters crossing administrative boundaries.[186] Under the NPPF, plans are sound if they are positively prepared, justified, effective and consistent with national policy.[187]

The PPG on plan making sets out how plan-making bodies should co-operate and what the planning inspector will be looking for when examining the Local Plan.[188]

The Bill

Schedule 7 would replace section 33A of the 2004 Act and thereby would abolish the duty to cooperate.

185 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraphs 527-8

186 MHCLG, National Planning Policy Framework, July 2021, paragraph 24

187 As above, paragraph 35

188 MHCLG, Guidance: Plan making, last updated 4 October 2021, see in particular paragraphs 009 and 031

Clause 90 would introduce a new section 39A into the 2004 Act, setting out a requirement to assist with certain plan making.

The policy paper accompanying the Bill says that there will be a "more flexible alignment test", to be set out in planning policy:

> Several other changes are provided for to improve the process for preparing local plans and minerals and waste plans: digital powers in the Bill will allow more standardised and reusable data to inform plan-making; a series of 'Gateway' checks during production will help to spot and correct any problems at an early stage; there will be a new duty for infrastructure providers to engage in the process where needed; and the 'duty to cooperate' contained in existing legislation will be repealed and replaced with a more flexible alignment test set out in national policy (see below). New Local Plan Commissioners may be deployed to support or ultimately take over plan-making if local planning authorities fail to meet their statutory duties. These changes will increase the numbers of authorities with up-to-date plans in place (currently only at 39%), giving more communities a meaningful say over new development in their area while supporting new homebuilding.[189]

5.7 Heritage

The Commons Library briefing Contested heritage: Controversy surrounding public monuments analyses planning policy for the historic environment, including the listing process and development control for buildings already listed.

Currently, in addition to the normal planning framework set out in the Town and Country Planning Act 1990:

- the Planning (Listed Buildings and Conservation Areas) Act 1990 provides specific protection for buildings and areas of special architectural or historic interest;
- the Ancient Monuments and Archaeological Areas Act 1979 provides specific protection for scheduled monuments; and
- the Protection of Wrecks Act 1973 provides specific protection for protected wreck sites.

The Bill

Clause 92 would amend relevant provisions in the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990. In exercising their planning functions, LPAs are already statutorily required to have special regard to the preservation of Listed Buildings and

[189] DLUHC, Policy paper: Levelling Up and Regeneration: Further information, 11 May 2022

Conservation Areas.[190] This clause would extend that statutory duty, to include Scheduled Monuments, Protected Wreck Sites, Registered Parks and Gardens, Registered Battlefields or World Heritage Sites.[191]

When determining a planning application, the LPA or the Secretary of State (as the case may be) would have to have "special regard to the desirability of preserving or enhancing the asset or its setting", which would include "preserving or enhancing any feature, quality or characteristic of the asset or setting that contributes to the significance of the asset". A table in **subsection 3 of the clause** lists "relevant assets" and the "significance" in relation to each.

5.8 Community involvement: "Street votes"

Current policy in England centres on consulting the public about the development of the Local Plan and applications for planning permission.

The Planning Practice Guidance (PPG) on consultation and pre-decision matters sets out how the public will be informed that a planning application has been submitted and the steps the LPA must take formally to consult the public. There are minimum statutory requirements - as prescribed in article 15 of the Development Management Procedure Order (as amended) - but LPAs have discretion about how they inform communities and interested parties.[192]

Table 1 in the PPG summarises the statutory publicity requirements for applications for planning permission and listed building consent. LPAs may provide more detail in their Statement of Community Involvement. Consultation requirements for prior approval (for Permitted Development Rights) are less prescriptive, although in certain circumstances there may be consultation with neighbouring properties.

Section 1.2 of the Commons Library briefing Planning in England: permitted development and change of use outlines the neighbour consultation scheme, which applies to larger domestic extensions built under PDRs. The PPG on when permission is required summarises the scheme's provisions.[193]

The Housing, Communities and Local Government select committee's report on the future of the planning system in England (PDF) – which examines the

[190] Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. For more background, see the Commons Library constituency casework guide to Planning permission in Conservation Areas and listed buildings in England

[191] DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes, paragraph 543

[192] MHCLG, Guidance: consultation and pre-decision matters, last updated 1 April 2022, paragraph 002. See also paragraph 004.

[193] MHCLG, Guidance: When is permission required? last revised 4 January 2022, paragraph 031

white paper Planning for the Future's proposals – was published in June 2021.[194]

The Government published its response to the select committee report in May 2022, after publishing the Levelling Up and Regeneration Bill.[195] In that response, the Government said it would "strengthen the role of neighbourhood plans and would give people even more say on local development, by enabling "street votes" to decide whether development should be given planning permission".[196]

The Bill

Clause 96 provides that the Secretary of State may make regulations, permitting residents on a street to

- propose development on their street; and
- determine, by means of a vote, whether that development should be given planning permission on condition that certain prescribed requirements are met.

The Explanatory Notes to the Bill (PDF) describe clause 96 as a placeholder and explain that the Government intends to replace it with a substantive provision:

> The placeholder provision is subject to an affirmative procedure so that Parliament will be assured of an opportunity to scrutinise any proposals that could, in principle, be brought forward using the power. The Government does not intend to use the power as drafted, but to replace it with substantive provisions. The substantive provisions may mean that it is appropriate to remove the placeholder provision entirely and replace it with provisions that are subject to a different Parliamentary procedure.[197]

Responses and reaction to the Bill's provisions

Tom Tugendhat MP, writing in the Daily Telegraph, suggested that street votes might reconcile opposed interests:

> The idea of street votes is simple. Residents of a street can get together, if they wish, and write a street plan. This plan would set out a range of rules around development on the street, within strict limits set by national regulation. For example, it could propose to redevelop a disused service alley into an inhabited mews with housing around it, or to allow mansard roof stories to be added onto existing terraces.

194 Housing, Communities and Local Government Committee, The future of the planning system in England (PDF), HC 38 2021-22, 10 June 2021

195 DLUHC, Policy paper: Future of the planning system in England: government response to the Select Committee report, 12 May 2022

196 DLUHC, Policy paper: Future of the planning system in England: government response to the Select Committee report, 12 May 2022, paragraphs 19 - 21

197 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 567

> If this plan can secure an overwhelming majority of support among street residents, all residents on the street are given permanent planning permission to develop this way, if they so choose. The same rules apply to everyone.[198]

Jackie Weaver, chief officer of the Cheshire Association of Local Councils, took a different view, suggesting that street votes could case "serious rifts in our neighbourhoods":

> But the system is not broken. 'Street votes' and other gimmicks are not the way to empower local communities. The Government should start by giving appropriate weight to the decisions preferred by local councils in the first place.[199]

The CPRE cast doubt on whether street votes could boost housing supply:

> But the countryside charity CPRE said the policy would allow homeowners to simply have more space and increase the value of their properties, making it harder still for first-time buyers to get on the property ladder.
>
> "We don't think it will provide any more affordable homes, [it] will make existing homes in urban areas less affordable, and there are no guarantees it will lead to more homes overall," said Paul Miners, the group's policy director.
>
> (...)
>
> "It has the scope to be very divisive in terms of neighbours," said Peter Rainier, principal director of planning at law firm DMH Stallard.[200]

The Town and Country Planning Association (TCPA) argued that it was "difficult to understand the basis on which the Government has claimed that communities will have a stronger voice in planning" and highlighted three areas of concern about community participation:

> The first is just how hard [the Bill] is to understand because of the failure to consolidate planning law for 32 years. There are amendments to amendments on the amendments. This is not conducive to the public interest in terms of transparent law making.
>
> The second issue is the number of 'Henry the 8th' clauses which allow the Secretary of State to create entirely new parts of the planning system, for example 'Street Votes', through secondary legislation. This inevitably reduces the scrutiny of measures which may have a fundamental impact on community rights but which we cannot understand from the primary legislation.
>
> Finally, it is interesting that the legislation ignores so much of what communities and NGOs have been calling for on planning reform. There are no new measures which address the climate crisis. Nor are there any creative

198 Tom Tugendhat MP, Street votes will unlock housing where it is needed most, Daily Telegraph online, 12 May 2022 [subscription required – available to Parliamentary users via Nexis News]

199 Jackie Weaver, Jackie Weaver: You think my parish council meeting was heated? New 'street votes' could be much worse, iNews opinion, 11 May 2022

200 "Street votes on England planning rules 'will not increase affordable housing'", Guardian online, 11 May 2022

measures which might enable communities to deal with the climate or cost of living crisis.[201]

5.9 Planning permission for Crown development

Broadly speaking, the Crown is subject to the same requirements as any other person undertaking development and must apply for planning permission in the same way.

Section 292A of the Town and Country Planning Act 1990 (as amended) confirms that the Act binds the Crown. Section 293 of that Act (as amended) defines "Crown land" as land in which there is a Crown interest or a Duchy interest, where "Crown interest" means:

- an interest belonging to Her Majesty in right of the Crown or in right of Her private estates;
- an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
- such other interest as the Secretary of State specifies by order.

"Duchy interest" here means "an interest belonging to Her Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall".

The Bill

Clause 97 of the Bill would amend the Town and Country Planning Act 1990 to create a new power, so that – where the development by the Crown is of national importance and it needs to be carried out as a matter of urgency – the appropriate authority may apply for planning permission direct to the Secretary of State. Similarly, there would a direct route of application to the Secretary of State for applications of national importance not considered urgent.

"As soon as practicable after receiving the application", the Secretary of State would have to notify the appropriate authority of whether they intend to decide the application, which they may do only if they consider it to be of national importance (and, where relevant, urgent). Where the Secretary of State declines to determine the application, it will be referred back to the LPA to which it would otherwise have been made.

Applicants would also make "connected applications" direct to the Secretary of State for listed building consent, hazardous substances consent, or any other consent meeting a prescribed description set out in a development

[201] Town and Country Planning Association, The Levelling Up and Regeneration Bill: A decisive shift of power to Whitehall, 12 May 2022

order. This would be so that one decision-maker may decide the various connected consents.[202]

The Secretary of State would be able to grant planning permission conditionally or unconditionally or to refuse it. The Secretary of State would have to consult the LPA to which the application would otherwise have been made and later to notify the LPA of their decision.

The policy paper accompanying the Bill says that this provision would "provide a faster and more effective route for urgent and nationally important Crown development".[203] The Explanatory Notes (PDF) confirm that these provisions apply only to England; the existing Crown Land provisions in section 293A of the Town and Country Planning Act 1990 remain in place for Wales.[204]

5.10 Minor amendments to planning permission

The PPG on flexible options for planning permission sets out how planning permission may be amended, once granted. "Fundamental" or "substantial" modifications will require a fresh application for planning permission, but for less substantial changes, there are the options of making a "non-material amendment" or amending the conditions attached to the planning permission, including seeking to make "minor material amendments".[205]

The PPG also offers information on requests for minor material amendments. It points out that there is no statutory definition of a "minor material" amendment, but this is "likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved".[206]

An article from the Designing Buildings website gives examples - but not a definitive or official list - of the sort of changes that might be regarded as material changes, which might require a fresh application for planning permission.[207]

The Bill

Clause 98 would make provision concerning minor variations to planning permission. It aims to provide clarity, following litigation on this matter.

The clause provides that - for applications for planning permission which are "substantially the same" as existing permission and where the LPA is satisfied

202 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), page 91
203 DLUHC, Policy paper: Levelling Up and Regeneration: further information, 11 May 2022
204 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 569
205 MHCLG, Guidance: Flexible options for planning permission, 6 March 2014, paragraph 001
206 As above, paragraph 017
207 Designing Buildings, Non-material amendment to planning permission, 2 September 2020

that its effect "will not be substantially different" from the existing permission – the LPA must confine its consideration of the application to those respects in which the permission (if granted) would differ in its effects from the existing permission. Planning permission granted in this way may not be used to change planning conditions relating to when the development must start or an application for approval of reserved matters must be made.

The Explanatory Notes (PDF) argue that applicants and LPAs regard current arrangements as "confusing, burdensome, and overly restrictive".[208] The clause would "allow greater flexibility for making non-substantial changes to planning permissions"[209] and "enable sensible and practical changes to be made to planning permissions which are not possible under the existing framework without the submission of multiple applications under different routes".[210]

5.11 Commencement and completion notices

Broadly speaking, planning policy in England seeks to encourage a prompt start to development, but there are longstanding concerns about the timescales to which developments are started and completed and the so-called build-out rate.

Relevant provision is in the Town and Country Planning Act 1990. The definition of commencement of development is set out in section 56(4) of the Act and centres on "material operations", which may include (for example) "any work of construction in the course of the erection of a building" or the digging of a trench for the foundations.

The Commons Library briefing What next for planning in England? The National Planning Policy Framework examines timescales for development in section 12, including the independent review of build-out chaired by Sir Oliver Letwin, and the Housing Delivery Test (HDT). Section 5.3 of the Commons Library briefing Calculating housing need in the planning system (England) offers more analysis of the HDT and build-out. The Commons Library briefing Planning for the Future: planning policy changes in England in 2020 and future reforms discusses the commitment to the HDT Test in the white paper Planning for the Future.

The NPPF (PDF) contains measures (first added in 2018) giving LPAs the power to impose planning conditions requiring that development should begin within a timescale shorter than the statutory default time limit (currently 3 years for a full planning permission) or longer if they so decide, but there is no

208 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 571
209 As above, paragraph 572
210 As above, paragraph 573

provision there for planning conditions to require development to be completed within a certain time.[211]

The PPG on use of planning conditions discusses conditions relating to time limits. Here too, the focus is on time limits for the work to begin.[212]

Where planning permission is granted and the decision notice does not include a condition stating the time limit within which development must begin, the conditions set out in section 92 of the Town and Country Planning Act 1990 will apply.[213]

Where a planning condition has been imposed, requiring development to begin with a specified period, and development has begun but not been completed within that period, the LPA has powers to serve a completion notice.[214] The completion notice will state that the planning permission will cease to have effect at the expiration of a further period specified in the notice. The threat to the developer here is that the planning permission will expire unless development is completed. The LPA does not have the power to require that the development actually be completed.

The Bill

Clause 99 would amend the Town and Country Planning Act 1990 by requiring the person carrying out a development to provide a commencement notice to the LPA, specifying the date on which they expect the work to begin. If they do not, the LPA may serve a notice requiring that the information be provided. Failing to provide the information within 21 days would be an offence, for which on summary conviction the person would be liable to a fine up to level 3 on the standard scale, for which the current maximum is £1000. Commencement notices would be available for public inspection, as part of the LPA's planning register.

Clause 100 would amend the Town and Country Planning Act 1990's provisions relating to completion notices. It would remove two current requirements, that the Secretary of State must approve a completion notice and that the notice must be served only after the deadline for commencement of the planning permission has passed.

The policy paper accompanying the Bill says that these provisions will address perceptions around land-banking and slow build-out:

> To increase transparency further, the Bill will also introduce new commencement notices which will be required when a scheme with planning permission starts on site, addressing perceptions of 'land banking' and slow build out by larger developers. In addition, by removing the requirement to seek Secretary of State confirmation before they can take effect, the Bill will

211 MHCLG, National Planning Policy Framework (PDF), July 2021, paragraph 77
212 MHCLG, Use of planning conditions, last updated 23 July 2019, paragraph 027
213 MHCLG, Use of planning conditions, last updated 23 July 2019, paragraph 027
214 TCPA 1990, section 94

also give more control to authorities to issue completion notices to developers to complete their project.[215]

5.12 Planning enforcement

Section 1.2 of the Commons Library briefing Planning enforcement in England provides detailed analysis of (amongst other things) enforcement options. These range from a temporary stop notice which can stop a specified activity at short notice, seeking a court injunction, and/or serving a planning enforcement notice.

Any breach of planning control may be subject to enforcement action, but enforcement action is discretionary; LPAs are told to act in a proportionate way in responding to suspected breaches of planning control. Whether and how to take enforcement action is therefore for the LPA to decide. The Planning Portal sets out what might happen after a planning breach, observing that the LPA will often permit a retrospective application.[216]

The NPPF (PDF) states that enforcement can be important for maintaining public confidence in the planning system, but enforcement action is discretionary and must be proportionate.[217] The PPG on enforcement sets out steps for responding to suspected breaches of planning control.[218] Although an enforcement notice may be served, that is not to say that it necessarily will in every instance; as the Planning Portal observes, this will depend (amongst other things) on the level of perceived harm to the neighbourhood and the effect on public amenity.

There is a time limit for acting against the breach of planning control. As set out in Section 171B of the Town and Country Planning Act 1990, development becomes immune from enforcement if no action is taken within four years of a breach of planning control consisting of operational development (unauthorised building, engineering, mining or other operations) or within 10 years of all other breaches of planning control.

The white paper Planning for the Future argued that the new planning system which it proposed would enable LPAs to devote more time and resources to enforcement activities.[219] It set out how LPAs should give greater emphasis to enforcement, which it described as the "Cinderella" of local planning services.[220]

215 DLUHC, Policy paper: Levelling Up and Regeneration: Further Information, 11 May 2022
216 Planning Portal, Planning permission: Failure to obtain or comply with planning permission (undated, accessed 19 May 2022)
217 MHCLG, National Planning Policy Framework (PDF), July 2021, paragraph 59
218 MHCLG, Guidance: Enforcement and post-permission matters, last updated 22 July 2019
219 MHCLG, White paper: Planning for the Future, August 2020, paragraph 3.35
220 As above, paragraphs 5.28 – 5.30

The Housing, Communities and Local Government select committee's report on the future of the planning system in England (PDF) noted that there were "some concerns about enforcement under the current system".[221]

Appeals against enforcement notices

The Localism Act 2011 made some changes to the enforcement regime from April 2012 (see the Library briefing paper Planning enforcement in England).

Section 123 of the 2011 Act amended certain sections within the Town and Country Planning Act 1990. It sought to tackle some tactics that were seen as abuses. It removed from an applicant, in certain circumstances, the right to use two separate defences in a single case: appeal to the Secretary of State against an enforcement notice and application for retrospective planning consent.

Sub-section (2) granted LPAs the power to decline to determine retrospective applications after an enforcement notice has been issued. Sub-section (4) limited the right of appeal against an enforcement notice after a retrospective planning application has been submitted, but before the time for making a decision has expired. There are several possible grounds for appeal against an enforcement notice, only one of which is that planning consent ought to be granted. Sub-section (5) meant that a successful appeal on other grounds – for example that the enforcement notice was not served in the proper manner – would not result in the granting of planning consent.

The Bill

Chapter 5 of the Bill deals with planning enforcement.

The policy paper accompanying the Bill summarises how it would change enforcement powers:

> Ensuring that planning enforcement works effectively by: extending the period for taking enforcement action to ten years in all cases; introducing enforcement warning notices; increasing fines associated with certain planning breaches; doubling fees for retrospective applications; extending the time period for temporary stop notices from 28 to 56 days; and giving the Planning Inspectorate the power to dismiss certain appeals where the appellant causes undue delay. The scope for appeals against enforcement notices will be tightened so that there is only one opportunity to obtain planning permission retrospectively.[222]

Clause 101 would, for England, extend the time limit for enforcement action against unauthorised development consisting of building, engineering, mining or other operations from its current four years to 10 years. The time limit would remain four years in Wales.

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221 Housing, Communities and Local Government Committee, The future of the planning system in England (PDF), HC 38 2021-22, 10 June 2021, paragraph 216

222 DLUHC, Policy paper: Levelling Up and Regeneration: Further Information, 11 May 2022

Clause 102 would double the effective period for a temporary stop notice (used by an LPA to pause development while it is established whether a planning breach has taken place) from 28 to 56 days in England. In Wales, the effective period would remain 28 days.

Clause 103 deals with enforcement warning notices. It would create a new power for LPAs, enabling them to issue a warning notice where they become aware of an unauthorised development that has a "reasonable prospect of being acceptable in planning terms". Using the new power, they could then serve an enforcement warning notice, inviting a retrospective application for planning permission.

Clause 104 would introduce further restrictions on appeals against enforcement notices. It would again amend section 174 of the Town and Country Planning Act 1990, to extend the circumstances in which an appeal cannot be brought on the ground that planning permission ought to be granted, or that the condition or limitation imposed on the grant of permission ought to be discharged. An enforcement notice appeal could not be brought on this ground if the notice was issued after a 'related application for planning permission' (that is, one covering the same development as the enforcement notice) was submitted. The restriction on appeals on this ground would only apply to enforcement notices served within two years of the date the related application ceased to be under consideration; the clause sets out the circumstances (summarised in a table in the Explanatory Notes) where an application has ceased to be under consideration and the day on which consideration ceased.[223]

Thus, according to the Explanatory Notes (PDF), "there is only one opportunity to obtain planning permission retrospectively after unauthorised development has taken place".[224]

5.13 Developer contributions: Infrastructure Levy for England

Currently, there is a two-fold system through which LPAs may seek developer contributions through planning obligations and the Community Infrastructure Levy (CIL). The Commons Library briefings Planning obligations: Section 106 agreements and Community Infrastructure Levy provide detailed analysis of each.

Planning obligations – sometimes known as section 106 agreements – are legally enforceable obligations made under section 106 of the Town and Country Planning Act 1990 (as amended). They are negotiated and made between a developer and the LPA, to meet the concerns the LPA may have

223 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 613

224 As above, paragraph 607

about meeting the cost of providing new infrastructure for an area: for instance, contributions to affordable housing or to transport infrastructure.

The CIL was brought into force in 2010 by the Community Infrastructure Levy Regulations 2010, made under section 206 of the Planning Act 2008.[225] The Regulations empowered LPAs to impose a levy, but did not compel them to do so. They could choose the rate for the levy in their area, set at a rate per square metre, and could set it at zero if they so chose. The CIL was intended to be a more transparent system, whereby developer contributions could be calculated upfront.

Section 1.10 of the Commons Library briefing Planning for the Future: planning policy changes in England in 2020 and future reforms outlines how the Government proposed to reform developer contributions through the white paper Planning for the Future. The White Paper proposed a new nationally-set value-based flat rate charge - to be called the Infrastructure Levy and set at a single or varied rate - to replace both section 106 agreements and the CIL. Planning for the Future argued that this would sweep away months of negotiation and deliver at least as much affordable housing as at present.

Section 5.2 of the briefing summarises the more recent proposals for the Infrastructure Levy, in the Levelling Up White Paper. The Government argued there that the new levy would "enable local authorities to capture value from development more efficiently, securing the affordable housing and infrastructure communities need".[226]

The Government also said that it was considering the details of the Infrastructure Levy in its response to the Lords' Built Environment Committee's report into meeting housing demand (PDF) in March 2022.[227]

The Bill

Clause 113 introduces **Schedule 11**, which would amend the Planning and Compulsory Purchase Act 2004 to provide for the imposition in England of the Infrastructure Levy (IL). The Schedule provides the framework, but regulations (which would be drawn up following consultation) would supply the detail.

Amongst the IL's main features would be:

- The Secretary of State would make regulations with the consent of the Treasury;
- The IL would be mandatory (unlike the CIL, which charging authorities may choose to charge);

[225] SI 2010/948

[226] HM Government, Levelling Up the United Kingdom: White paper (PDF), CP 604, February 2022, page 227

[227] Her Majesty's Government's response to the House of Lords Built Environment Committee report on Meeting Housing Demand, 28 March 2022, page 12

- The IL's purpose would be to ensure that costs incurred in supporting the development of an area "can be funded (wholly or partly) by owners or developers of land in a way that does not make development of the area economically unviable" **[new section 204A(1)];**

- The LPA would be the charging authority, but regulations may provide instead for the charging authority to be a county council in England, a district council, a metropolitan district council, or a London borough council **[new section 204A(4)];**

- The Bill outlines arrangements for liability to pay the IL. Charities in England and Wales would be exempt, if the building or structure for which the liability for the IL would otherwise arise was to be used wholly or mainly for a charitable purpose as defined by the Charities Act 2011 **[new section 204F];**

- The charging authority would be required by regulations to publish a charging schedule, setting out the IL rate in its area. In setting rates or other criteria, the charging authority must have regard (in line with IL regulations) to the level of affordable housing funded by developers and the level of funding provided by developers, over a specified period, ensuring that it is "equal to or exceeds" that over an earlier period of the same length **[new section 204G(2)];**

- The charging authority must also have regard to other matters to be specified in IL regulations, including: the economic viability of development; the actual or potential economic effects (including increases in the value of land) of a development plan, planning permission, and the provision of infrastructure; the amount of IL provided in the area over such period as may be specified in IL regulations; and its infrastructure delivery strategy **[new section 204G(4)];**

- The Bill lists other matters which the IL regulations may cover or to which the charging authority may be required to have regard **[new section 204G(6)–(11)];**

- IL payments may be made in kind, by delivering infrastructure (including affordable housing) or making land available **[new Section 204R(4)];**

- Arrangements for enforcement would be similar to those in section 218 of the Planning Act 2008, although it would now be a requirement (rather than an ability) for regulations to include enforcement provisions about the failure to assume liability and maximum rates for surcharges and penalties would be increased **[new section 204S)];**

- The Secretary of State would have the power to issue guidance on any matter connected to the IL. Recipients of that guidance would have to have regard to it **[new section 204W].**

Clause 115 provides for the Community Infrastructure Levy to continue in Greater London (Mayoral CIL only) and Wales; the introduction of IL does not affect the operation of the CIL in Wales or of Mayoral CIL in London.

The Explanatory Notes to the Bill (PDF) provide detailed commentary, with various examples.[228] In the example of delivery of affordable housing in kind, the Explanatory Notes say that it is intended that "a substantial proportion of the value captured through IL will be delivered in this way".[229]

As to how the IL will be calculated, the Explanatory Notes say the exact method will be set in regulations, but the intention is to charge according to final gross development value (rather than the floorspace of development when planning permission is granted, used for the CIL).[230]

The policy paper accompanying the Bill sums up how the Government expects the IL to work:

> The Levy will be charged on the value of property when it is sold and applied above a minimum threshold. Levy rates and minimum thresholds will be set and collected locally, and local authorities will be able to set different rates within their area. The rates will be set as a percentage of gross development value rather than based on floorspace, as with the Community Infrastructure Levy at present.
>
> This will allow developers to price in the value of contributions into the value of the land, allow liabilities to respond to market conditions and removes the need for obligations to be renegotiated if the gross development value is lower than expected; while allowing local authorities to share in the uplift if gross development values are higher than anticipated. The government is committed to the Levy securing at least as much affordable housing as developer contributions do now. The Bill will set out the framework to enable this approach, with some of the details set out in regulations.[231]

The policy paper confirms that much of the detail here will be in regulations, and there will be a consultation. The Government says that:

- There will be a new "right to require" to redress the inequality between developers and LPAs in determining how much onsite affordable housing there should be;
- Through use of planning conditions and section 106 agreements, the Government will require developers to deliver infrastructure "integral to the operation and physical design" of the site, such as a play area or flood risk mitigation;
- The neighbourhood share will be retained (as with the current CIL); and

228 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), pages 201 - 226
229 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), page 217
230 As above, paragraph 648
231 DLUHC, Policy paper: Levelling Up and Regeneration: Further information, 11 May 2022

- The IL will be rolled out over several years, to allow for monitoring and evaluation.[232]

Section 106 will not be abolished entirely. The policy paper confirms that section 106 agreements will continue to be used, in a "narrowly targeted" way, for some infrastructure and to support delivery of the largest sites. Sites with existing planning permission would remain subject to their CIL and section 106 agreements.[233]

Responses and reaction to the Bill

In its response to the Bill, the RTPI welcomed the Infrastructure Levy being set locally:

> The RTPI has long advocated for locally set rates within an infrastructure levy. We believe that locally set rates will contribute further to consultations, helping to make this approach distinct. [234]

The RTPI's blog piece on the infrastructure levy mentioned concerns in the housing sector about the extent to which the new levy would deliver affordable housing (although it noted that the Bill aims to deliver at least as much affordable housing as the current system of developer contributions).[235]

Councillor James Jamieson, chairman of the Local Government Association, remarked that a local, plan-led system would be integral to ensuring that councils could deliver the right homes in the right places, with appropriate infrastructure. He too welcomed the Infrastructure Levy being set at a local level.[236]

Kate Henderson, chief executive of the National Housing Federation, also welcomed the Bill's provisions here, but argued that the Government should go farther, to deliver affordable housing at scale:

> We've been clear in our conversations with government that the delivery of on-site affordable housing must be protected. We were pleased they have responded to this by putting a mechanism in place to ensure affordable housing levels will be maintained, with current levels as a minimum.
>
> With such large-scale changes to the planning system proposed, we think there's room for the government to go further. There is inevitably going to be some disruption with these changes, so they should be ambitious and create a

232 As above

233 DLUHC, Policy paper: Levelling Up and Regeneration: Further information, 11 May 2022

234 RTPI, RTPI welcomes planning reform at the heart of the Levelling Up and Regeneration Bill, 11 May 2022

235 RTPI, Harry Steele: Infrastructure levy, 16 May 2022

236 LGA statement on Queen's Speech: Levelling Up and Regeneration Bill, Local Government Association, 10 May 2022

system which delivers affordable housing at the scale and quality the country needs.[237]

[237] National Housing Federation, NHF response to the Infrastructure Levy under the Levelling Up and Regeneration Bill, 12 May 2022

6 Environmental outcomes reports

6.1 Introduction

The Government signalled its intention to change how the environmental impact of plans and projects is taken into account in the August 2020 Planning White Paper (PDF). This stated the aim of introducing a "quicker, simpler framework for assessing environmental impacts and enhancement opportunities".[238]

Currently, plans and major projects are assessed through a regime based on EU legislation which include Strategic Environmental Assessment (SEA) for any significant plans or programmes (often as part of a Sustainability Appraisal) and Environmental Impact Assessments (EIA) for individual projects. EIAs are completed by developers as part of their planning process with the aim of determining the impact of projects that meet the threshold criteria. SEAs are completed by Government, planning authorities and other public bodies to assess the likely environmental impact of any proposed plan or programme.

Proposals in the Bill to replace both processes with Environmental Outcome Reports (EORs), which are intended to ensure that plans and projects are "assessed against tangible environmental outcomes set by government, rather than in Brussels".[239] The Planning White Paper also highlighted specific Government concerns about the current system:

> Environmental Assessment, Sustainability Appraisal, and Environmental Impact Assessment – can lead to duplication of effort and overly-long reports which inhibit transparency and add unnecessary delays. Outside of the European Union, it is also important that we take the opportunity to strengthen protections that make the biggest difference to species, habitats and ecosystems of national importance, and that matter the most to local communities.[240]

238 MHCLG, Planning for the Future White Paper, August 2020
239 DLUHC, Levelling Up and Regeneration: further information, 11 May 2022
240 MHCLG, Planning for the Future White Paper, August 2020

6.2 Current assessment regime

The requirements for both SEAs and EIAs were implemented through regulations in the UK. One of the key requirements for both regimes is public consultation with the aim of ensuring public participation in decision-making.

Strategic Environmental Assessment (SEA)

All local and environmental plans require a Sustainability Appraisal to consider their environmental, social and economic impacts. Any appraisal should also meet the requirements for a Strategic Environmental Assessment, which focuses on the environmental impact of any plan, and should meet the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004. These regulations were introduced to meet the requirements of EU Directive 2001/42/EC (known as the SEA Directive). For plans and programmes where a Sustainability Appraisal is not required, a free-standing SEA must be completed. The requirement for a SEA is broad-ranging. Examples of where a SEA would be required include local plans, national park management plans, air quality action plans or oil and gas licensing rounds. A full list was included in the original guidance (PDF) for implementing the Directive in 2010.

The DLUHC guidance on SEAs sets out that they should identify, describe and evaluate "the likely significant effects on the environment of implementing the plan or programme and reasonable alternatives taking into account the objectives and geographical scope of the plan or programme".[241]

Environmental Impact Assessment (EIA)

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the '2017 Regulations') implemented the requirements of EU Directive 2011/92/EU, known as the EIA Directive, in England. This covers the assessment of the effects of certain public and private projects on the environment.[242] As planning is devolved, the Directive is implemented through similar regulations made by the devolved administrations.

The EIA regime goes beyond the general responsibility of planners to consider the environmental implications of developments that fall within the planning system. The Regulations cover two types of projects, referred to as Schedule 1 and Schedule 2 projects. Schedule 1 projects, as set out in the regulations, automatically require an EIA to be carried out. Examples include airports, motorways and a range of industrial facilities over a certain size. A wider range of Schedule 2 projects only require an EIA if they meet certain thresholds or criteria.

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241 DLUHC, Strategic Environmental Assessment and Sustainability Appraisal, 31 December 2020

242 DLUHC, Guidance: Environmental Impact Assessment, Paragraph: 002 Reference ID: 4-002-2014030, 6 March 2014

Planning guidance sets out the main aims of an EIA as being:

> To protect the environment by ensuring that a local planning authority when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision making process.[243]

A further aim is to ensure "the public are given early and effective opportunities to participate in the decision-making procedures". The guidance also sets out that any EIA should not be a barrier to growth and that its scope should be limited "to those aspects of the environment that are likely to be significantly affected".[244]

6.3 Habitats Regulations Assessment

Under the Conservation of Habitats and Species Regulations 2010, known as the Habitat Regulations, a habitats regulations assessment (HRA) is required if a plan or project proposal could significantly harm the designated features of a European site. The regulations were introduced to implement a range of EU legislation protecting conservation sites of importance. These include the following, as set out in Government guidance:

- Special Areas of Conservation (SACs) which protect sites of significance to wildlife other than birds
- Special Protection Areas (SPAs) which protect sites of significance to birds.

Any proposals affecting the following sites would also require an HRA because these are protected by government policy:

- Proposed SACs
- Potential SPAs
- Ramsar sites - wetlands of international importance (both listed and proposed)
- areas secured as sites compensating for damage to a European site.

The Bill does not include provisions changing the Habitat Regulations, although it includes powers to allow the new regime to meet HRA requirements, and to amend environmental legislation more generally. Powers already exist, introduced through the Environment Act 2022 (section 112 and 113), for the Secretary of State to amend the Habitat Regulations.

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243 DLUHC, Guidance: Environmental Impact Assessment, Paragraph: 002 Reference ID: 4-002-2014030, 6 March 2014

244 DLUHC, Guidance: Environmental Impact Assessment, Paragraph: 002 Reference ID: 4-002-2014030, 6 March 2014

Specifically, Section 113 allows amendments to Part 6 of the regulations covering the assessment of plans and projects.

The Nature Recovery Green Paper consultation, which closed on 11 May 2022, set out proposals for significant changes to protected sites designations, and for reforming the HRA process:

> UK Government wants to fundamentally change the way the assessments under Habitats Regulations work to create clearer expectations of the required evidence base at an early stage, for example, building on the concept of a site improvement plan.
>
> The approach should focus on the threats and pressures both on and off the site that, when addressed, will make the greatest difference to the site and help drive nature recovery whilst enabling truly sustainable development – addressing challenging issues such as nutrient neutrality and marine development.[245]

The Government also wants to ensure that "there is space for individual evidence-based judgement by an individual case officer on an individual case" and echoed the focus on outcomes that is included in the current Bill:

> Guidance from the UK Government should relate to the policy outcomes we seek whilst recognising the importance of due process in arriving at reasonable and rational decisions in a consistent and clear manner.[246]

6.4 The Bill

Part 5 of the Bill, clauses 116 to 130, introduces a new system for setting environmental outcomes for plans or projects that ensures environmental protection, as it is defined in the Bill. As the explanatory notes set out, Environmental Outcome Reports (EORs) will replace the existing system. The proposed legislation is drafted to ensure continued compliance with international legislation: specifically, the 1998 UN Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters and the 1991 UN Espoo Convention on Environmental Impact Assessment in a Transboundary Context.

The explanatory notes for the Bill summarise how Government intends the process, focused on setting and achieving outcomes, to be different to the existing system:

> The Bill introduces an outcomes-based approach that will allow the government to set clear and tangible environmental outcomes which a plan or project is assessed against. This will allow decision-makers and local communities to clearly see where a plan or project is meeting these outcomes

245 Defra, Nature Recovery Green Paper: Protected Sites and Species, 26 March 2022
246 Defra, Nature Recovery Green Paper: Protected Sites and Species, 26 March 2022

and what steps are being taken to avoid and mitigate any harm to the environment.

These outcomes will be set following consultation and parliamentary scrutiny but will, for the first time, allow the government to reflect its environmental priorities directly in the decision-making process.[247]

International environmental conventions

The Aarhus Convention provides for a right of access to environmental information upon request, including the state of the environment, policies and measures affecting the environment, and impact on human health and safety. Public bodies also have a duty to actively disseminate environmental information. There is also an obligation to allow public participation in decision making. Finally, the Convention requires access to justice if any of the above obligations are not met by the Government and other public bodies.

The Espoo Convention requires signatory countries to assess the environmental impact of certain transboundary activities at an early stage of planning.

Setting environmental outcomes for the UK

Clause 116 of the Bill would provide powers for the Secretary of State to specify environmental outcomes for the UK, both onshore and offshore, in relation to "environmental protection" as defined in the Bill. This would protect three areas - the natural environment, cultural heritage and landscapes - from the effects of human activity, and protect people from these effects. The definition also extends to maintaining, enhancing and restoring all three, and monitoring and assessing impacts. The clause also defines what is meant by natural environment and cultural heritage.

Environmental outcomes must take into account any current environmental improvement plan as set out in the Environment Act 2021, and must be no shorter than 15 years. The current plan is the 25-year Environment Plan (PDF) published in 2018, which is due to be reviewed in 2023.

Environmental Outcomes Reports

Clause 117 would provide powers for the Secretary of State to require an Environmental Outcomes Report (EOR) before considering whether to allow a "relevant plan" or "relevant consent", as defined in Clause 118, to go ahead.

247 Levelling-Up and Regeneration Bill Explanatory Notes 11 May 2022

As set out in the Explanatory Notes, this will be "an outcomes-based approach to assessment". The clause would require an EOR to:

- Measure the expected environmental effects of a plan or consent against the environmental outcomes set out by the Secretary of State;
- Set out the impacts of any reasonable mitigation or compensation measures;
- Consider reasonable alternatives to the plan or consent.[248]

When an EOR is required by the Secretary of State, it must be taken into account when considering whether to go ahead with a plan or consent.

Clause 117 also sets out what provisions may be included in regulations regarding what an EOR must cover, and when it must be produced. The Explanatory Notes summarise the approach as building on the mandatory information required in the reporting stages of the EIA and SEA Directives.[249] An article by Stefano D'Ambrosio-Numez, on legal website Lexology, raised concerns that this clause makes no reference to the elaboration of an environmental baseline before the preparation of the EOR:

> One of the initial steps for preparing an EIA is gathering information to elaborate an environmental baseline, which shows the current status of the environment before any development takes place, such as the type and number of species present in the area to be developed. Without a baseline it is not possible to clearly determine what the environmental impacts from the development are.
>
> While it is possible to gather some baseline information from secondary sources, such as scientific literature, it is normally not sufficient as it is unlikely to find comprehensive information for the specific site where the development will take place. In that regard, we do not understand why the Bill does not consider the preparation of an environmental baseline as one of the core requirements of an EOR.[250]

Clause 118 would allow the Secretary of State to define what qualifies as a relevant plan through regulations. In addition, specific relevant plans could be included in the regulations. What is meant by a relevant consent for a project is broadly defined in the Bill, as is the meaning of 'project'.

Similar to the EIA regulations, there would be two types of relevant consents: Category 1 will always require an EOR and Category 2 will require an EOR if specific criteria, which will be set out in the regulations, are met. This is similar to the existing provision for Schedule 1 and Schedule 2 projects within the EIA Regulations. However, as the categories will be defined through

248 Levelling-Up and Regeneration Bill Explanatory Notes 11 May 2022
249 Levelling-Up and Regeneration Bill Explanatory Notes 11 May 2022
250 Lexology, Irwin Mitchell LLP - Stefano DAmbrosio-Numez, The Beginning of the End of Environmental Impact Assessments, 26 May 2022

regulations, there is no detail in the Bill on whether they will be the same as those in the existing legislation, or if they will require different thresholds.

The Explanatory Notes summarise how Clauses 117 and 118 would result in a regime where the Secretary of State will be able to decide, within certain constraints which include non-regression, which plans and consents will require an EOR:

> The use of this power is linked to the definition of "relevant plans" and "relevant consents". The combined effect of these provisions will allow the Secretary of State to specify what consents and plans require an Environmental Outcomes Report. The use of this power is constrained by the commitment to non-regression and a duty to consult relevant public authorities but will allow the Secretary of State to set out which consents must produce an Environmental Outcomes Report ("category one consents") and which consents must produce an Environmental Outcomes Report if certain conditions are met ("category two consents"). Similarly, the Secretary of State will be able to set which plans require an Environmental Outcomes Report.[251]

Clause 119 would provide powers for the Secretary of State to set out in regulations how any consent or plan that does affect the delivery of an environmental outcome will be assessed or monitored. It also provides powers for regulations to require mitigating, remedying or compensating for any environmental outcome that fails to be delivered.

Non-regression provisions

Clause 120 sets out safeguards that would ensure the UK continues to meet its international obligations. It includes provisions on ensuring public engagement and non-regression. Non-regression of environmental legislation is part of the UK-EU Trade and Cooperation Agreement. The commitment to non-regression is further spelt out in the Explanatory Notes:

> This is a new provision enshrining the government's commitment to non-regression of environmental protection, public engagement and international obligations. In introducing a new framework of environmental assessment, the Government is committed to maintaining overall existing levels of environmental protection as required by the relevant provisions of the EU-UK Trade and Cooperation Agreement. This provision also ensures that the process of environmental assessment provides suitable opportunity for public engagement.[252]

Devolution, enforcement and reporting

Clause 121 would require the Secretary of State to consult Ministers from the Devolved Administrations before making provisions within EOR regulations within their competencies. **Clause 122** would allow the Secretary of State to exempt defence and civil emergency projects from EORs.

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251 Levelling-Up and Regeneration Bill Explanatory Notes 11 May 2022

252 Levelling-Up and Regeneration Bill Explanatory Notes 11 May 2022

Clause 123 would provide a general power for the Secretary of State to introduce enforcement provisions through regulations. It also lists measures that may specifically be introduced. This includes measures such as creating a criminal offence (not punishable by prison), powers of entry and powers of inspection, search, seizure and detention.

The Bill also includes provisions that would:

- Require public authorities to report on delivery of environmental outcomes (**Clause 124**);
- Require the Secretary of State to consult the public before making regulations under Clause 116, specifying environmental outcomes, or when changing existing environmental impact legislation in any way (**Clause 125**);
- Require public authorities and any other specified person to have regard to any guidance issued by the Secretary of State (**Clause 126**).

Interaction with Habitats Regulations

Clause 127 would allow the Secretary of State to make regulations on how the EOR legislation and the Habitats Regulations interact with each other. This would allow work carried out to meet either requirement to be recognised as meeting both.[253]

The clause also includes a broader provision to amend existing legislation, stating that "EOR regulations under this section may amend, repeal or revoke existing environmental assessment legislation". What is meant as "existing environmental legislation" is listed in **Clause 130** of the Bill.

Further provisions

Clause 128 would repeal Section 71A of the Town and Country Planning Act 1990 covering assessment of environmental effects. **Clause 129** would provide further enabling powers for the Secretary of State to set out the procedures for carrying out an EOR. **Clause 130** sets out the list of existing legislation referred to by the term "existing environmental legislation" within this part of the Bill, and also includes definitions.

The clauses set out in this Part of the Bill come into force two months after the commencement of the Act, as set out in Clause 195.

[253] Levelling-Up and Regeneration Bill Explanatory Notes 11 May 2022

6.5 Further reaction to the Bill

An ENDS report article, setting out reaction to the Bill, highlighted the view that the effectiveness of the legislation will depend on how environmental impacts are defined. Dr Rufus Howard, impact assessment lead at the Institute of Environmental Management and Assessment (IEMA), said "if we're measuring against environmental outcomes, the assessment will be limited to how these environmental outcomes are conceived". He specifically highlighted the importance of setting environmental outcomes that do not have "really long time frames". [254]

Planning lawyer Angus Walker, a partner at law firm BDB Pitmans, speaking to Planning Magazine, highlighted how significant the changes EORs would be. They would:

> ...profoundly change the development and examination of all major planning applications and almost all development consent applications, as well as shaking up an entire industry of environmental assessment professionals.
>
> It is to be hoped that it will be introduced slowly and carefully so that there are no unintended consequences.[255]

In advance of the publication of the Bill, Carl Bunnage, Senior Policy Officer (Planning) at RSPB, called for the Bill to include a new nature conservation designation to be part of the planning system aimed at protecting sites with potential for nature recovery:

> A new designation for nature's recovery, covering sites that do not currently have a high value for nature but have the potential to do so if managed correctly and protected. The new planning designation would see Local Nature Recovery Strategies identify and protect sites through this new designation, enabling them to be managed to significantly increase their biodiversity value to support nature's recovery and to connect together other sites of importance for nature.[256]

Kit Stoner, CEO of the Bat Conservation Trust, welcomed the Bill as an opportunity to reform planning to benefit people and the environment, but cautioned against any reduction for the consideration for wildlife in the new EORs:

> The Levelling Up Bill is a chance to reform planning policy in a way that can benefit people and wildlife while simultaneously helping to tackle the climate change and the biodiversity crisis by measures such as creating new well managed natural green spaces. There is much to be gained if done well, from providing health and economic benefits for people to creating homes for bats

254 ENDS Report, What does the Levelling Up Bill mean for the environment? 12 May 2022 [subscription required]

255 Planning Magazine, Levelling Up Bill to scrap environmental impact and strategic environmental assessment [accessed 30/05/2022, subscription required]

256 Wildlife and Countryside Link, The Levelling Up and Regeneration Bill can deliver for nature, May 2022

> and other wildlife. However, in the proposed new approaches to environmental assessment it is important that the consideration of our wildlife is not reduced and the current protection of species and habitats is at least retained at its current level.[257]

Richard Benwell, CEO of Wildlife and Countryside Link, interpreted Clause 127 as giving "complete leeway for Government to simply swap out existing environmental protection requirements with new rules". He highlighted the relationship between EORs and the Habitats Regulations specifically and that "meeting new requirements will be taken as satisfying any existing obligations under the Habitats Regulations".[258] Stefano D'Ambrosio-Numez, on legal website Lexology, raised concerns that this broad power to amend primary legislation through regulation is problematic "considering the importance of the environmental assessment procedures".[259]

257 Bat Conservation Trust, Climate, nature and people need to be at heart of planning reforms in Levelling Up Bill, 11 May 2022

258 Richard Benwell, CEO of Wildlife and Countryside Link @RSBenwell The clauses on EnvironmentalOutcomesReports in the #LevellingUp bill mean: 1) Ministers can set new conditions for environmental consents for projects 2) Reports must show how projects meet the conditions 3) These can replace existing requirements under the #HabitatsRegulations (Twitter). 11 May 2022 [accessed on 30 May 2022]. Available from https://twitter.com/RSBenwell/status/1524381150134685696

259 Lexology, Irwin Mitchell LLP - Stefano DAmbrosio-Numez, The Beginning of the End of Environmental Impact Assessments, 26 May 2022 [subscription required]

7 Development corporations

A development corporation is a public body established via one of four statutory procedures. Development corporations have been used as an independent vehicle to acquire and repurpose land in order to drive the systematic regeneration of an area. They have also been used to manage the development of 'new towns' in the second half of the 20th century.

Development corporations established under the four different statutory procedures have slightly different powers. Part 6 of the Bill aims to standardise the range of powers available to each type of development corporation. It also establishes a power for local authorities to request the formation of a development corporation.

7.1 Types of development corporation

There are currently four different types of legal entity known as 'development corporations':

- Urban development corporations, established under the Local Government, Planning and Land Act 1980;
- Mayoral development corporations;
- New Towns Act 1981 development corporations;
- New Towns Act 1981 development corporations with oversight authorities.

Mayoral Development Corporations

The Mayor of London may establish 'mayoral development corporations' (MDCs) via sections 196-222 of the Localism Act 2011. The Orders establishing combined authority mayors apply to those mayors the Mayor of London's powers to establish MDCs. Amongst other things, MDCs may:

- Acquire, develop or regenerate land;
- Provide infrastructure or buildings;
- Take on the role of the planning authority for the area that it covers;
- Adopt private roads;
- Make compulsory purchase orders (with consent from the Secretary of State);

- Carry on any business, or acquire interests in bodies corporate.

An MDC holds a 'functional power of competence', whereby it "may do anything it considers appropriate for the purposes of its object or for purposes incidental to those purposes".[260]

Four MDCs are currently in existence. The Mayor of London has established two development corporations – the Queen Elizabeth Olympic Park (established by Boris Johnson in 2012, and formally known as the London Legacy Development Corporation) and the Old Oak and Park Royal Development Corporation (OPDC). The Mayor of Greater Manchester has established the Stockport Town Centre West Development Corporation. The Mayor of Tees Valley has established the South Tees Development Corporation, and plans to establish further corporations in Middlesbrough town centre and Hartlepool.[261]

Urban Development Corporations

The Local Government, Planning and Land Act 1980 provided powers for the Secretary of State to create Urban Development Corporations (UDCs).[262] UDCs had powers to acquire, manage and dispose of land and property, provide utility services, build property, and "carry on any business or undertaking in or for the purposes of [securing] the regeneration of the area".[263] They could submit plans for redevelopment to the Secretary of State, who was able to approve them without passing through the planning process at local authority level. Alternatively, the Secretary of State could designate a UDC as the planning authority for the area that it covered.[264]

UDCs could also be given housing provision and building control functions, normally exercised by local authorities, for their areas. The UDCs were managed by independent boards, with no requirement for local authorities in the area(s) covered to have membership or consultation rights over the UDCs' activities.

Two UDCs were created in 1980: the London Docklands Development Corporation and the Liverpool Development Corporation.[265] A further five were created in 1987: the Black Country, Teesside, Cardiff Bay, Trafford Park, and Tyne & Wear, followed by Leeds, Sheffield, Bristol and Manchester in 1988; Birmingham Heartlands in 1992; and Plymouth in 1993. Further UDCs have been created in Thurrock (2003), London Thames Gateway (2004), West

260 Localism Act 2011, s201 (2). See the discussion of the General Power of Competence in section 3.16 above.

261 TVCA, Mayors join forces to launch new vision for Middlesbrough town centre, 16 May 2022; Bill Edgar, "Revealed: how Hartlepool is set to be 'transformed' by cash", Hartlepool Mail, 28 April 2022

262 Local Government, Planning and Land Act 1980, s136

263 Local Government, Planning and Land Act 1980, s136

264 Home Office, Reforming our fire and rescue service, 18 May 2022, s149

265 See the London Docklands Development Corporation (Area and Constitution) Order 1980 (SI 1980/936); the Merseyside Development Corporation (Area and Constitution) Order 1980 (SI 1981/481).

Northamptonshire (2004), and Ebbsfleet (2015). Ebbsfleet is the only UDC currently in existence.

New Towns Act 1981 development corporations

The New Towns Act 1981 permits the Secretary of State to designate an area of land for the development of a new town and to create a development corporation.[266] The corporation may have up to 13 members, including a chair and deputy chair, and its role is to "to secure the laying out and development of the new town".[267] It may acquire, manage and dispose of land and property, provide utility services, build property, and "carry on any business or undertaking in or for the purposes of the new town".[268]

This form of development corporation cannot become the planning authority for its area. They may submit plans for development within the corporation area to the Secretary of State, who may grant planning permission via a special development order (under section 59 of the Town and Country Planning Act 1990). They may also exercise compulsory purchase powers, with the Secretary of State's agreement.

Development corporations with oversight authorities

The Government made regulations in 2018 permitting individual local authorities to become 'oversight authorities' for New Towns Act 1981 development corporations.[269] The regulations permit local authorities to take on a number of the roles allotted to the Secretary of State by the 1981 Act. These include consenting to the development corporation paying for matters such as acquiring land and providing utilities; directing the development corporation to act; consenting to special development orders; consenting to compulsory purchase; consenting to borrowing; and requiring the provision of information.

These regulations do not apply automatically to all development corporations: they only apply where the Secretary of State has specifically appointed an 'oversight authority' to manage a new or existing development corporation. No development corporations have been created using this model at the time of writing.

266 The 1981 Act built upon the New Towns Act 1965, which was used to create development corporations in a number of areas, including Milton Keynes, Telford, Warrington and Runcorn, Peterborough, Bracknell, Redditch, Skelmersdale, Washington, Peterlee, Cwmbran and Harlow.

267 New Towns Act 1981 s4 (1), inserted by section 16 of the Neighbourhood Planning Act 2017

268 New Towns Act 1981,. s4 (2) (d)

269 The New Towns Act 1981 (Local Authority Oversight) Regulations 2018 (SI 2018/891). The power to introduce these regulations was introduced by section 16 (2) of the Neighbourhood Planning Act 2017

7.2 Government policy

The Government launched a consultation in 2018 on the future of development corporations. The main purpose of the consultation was to seek views on whether the legislation governing the four existing types of corporation should be consolidated. It sought general views on:

- how to facilitate private sector involvement and investment;
- whether the existing models are "sufficiently broad in scope to support modern mixed-use development";[270]
- whether all forms of development corporation should be able to become the planning authority for their area;
- whether all forms of development corporation should have access to revenues from Community Infrastructure Levy (CIL), Strategic Infrastructure Tariff (SIT), and section 106 revenues.

The consultation also provides a useful statement of the Government's view of the role of development corporations more generally:

> … they harness the expertise of the private sector with boards that bring together skills from across the development sector; they have the specific purpose to develop a strategic vision for an area, and the planning and delivery tools to implement it; and they have the brand and backing to attract investment. Following recent reforms, development corporations also now have the potential to be locally-led, with mayoral development corporations being established over the past decade, and new legislation in 2018 to allow the creation of locally-led new town development corporations (LNTDCs) under the oversight of local authorities.[271]

The Government has not yet published a response to this consultation, though the provisions of Part 6 of the Bill address some of the points raised in it.

In November 2019 the Government made available a £10 million fund, running from 2019 to 2022, for 'new development corporations' to support 'transformational regeneration or housing delivery'. In September 2021, Milton Keynes was awarded £665,000 to explore how a locally-led development corporation can support the delivery of up to 60,000 homes by 2050 and create opportunities to support 50,000-90,000 jobs over the next 30 years. Sheffield was awarded £763,000 to deliver 8,000 homes and create up to 4,000 jobs by 2040. This follows a total of £2.8 million awarded to Carlisle, Exeter, Tewkesbury and Wirral.

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270 MHCLG, Development Corporation reform: technical consultation, 2019, p9

271 As above, p6

7.3 The Bill

Clauses 131 and 132 would insert a similar range of provisions into each of the Local Government, Planning and Land Act 1980 and the New Towns Act 1981. In each case, a local authority or authorities would be permitted to make a proposal to the Secretary of State that a development corporation should be set up in their area, and that one or more of those authorities should act as the 'oversight authority' for the corporation.

Clause 131 (2) would amend section 134 of the 1980 Act to permit the Secretary of State to establish a development corporation following a proposal from a local authority, if they believed that it should be designated as an urban development area and that a development corporation should therefore be established.

Clause 131 (4) would insert new section 134A into the 1980 Act. This would permit a local authority or local authorities to propose a new development corporation, specifying the area to be covered, the name, and which authority was to be the oversight authority. The proposal must come from the local authorities within which the proposed area lies (new section 134A (5)). The 'area' can consist of separate, non-contiguous areas (new section 134A (4)).

New section 134A (6 and 7) provides for a range of statutory consultees on a proposal. The local authority must have regard to these, and must publish their comments on any comments from a local authority consultee or the Greater London Authority that it does not accept.

The statutory consultees are local people, local businesses, local authorities for the areas covered by the proposal, and the Greater London Authority (if part of the area lies within Greater London). New section 134A (7) (c) also makes local Members of Parliament statutory consultees for this procedure. It is unusual for legislation to stipulate that Members are statutory consultees.

New section 134A (8) and (9) would provide that the proposal may permit the functions of the oversight authority would be exercised by one or other of the proposal authorities. An oversight authority must be an authority within which part of the development corporation area lies. Details of the functions of an oversight authority are provided by new section 135A of the 1980 Act (see below).

New section 135 (4A) would provide that, when establishing a development corporation in response to a local proposal, the Secretary of State must state the number of members of the corporation, and which authority is to be the oversight authority.

Oversight authorities

Clause 131 (11) would introduce new section 135A into the 1980 Act. This would specify that the Secretary of State may establish an oversight authority via regulations. The oversight authority could have the power to exercise any functions of Ministers or the Secretary of State in part 16 of the 1980 Act, except the power to make regulations. Regulations could provide that the development corporation could exercise certain functions only with the consent of the oversight authority, or that limitations may be made on which functions it exercises.

Clause 132 (2) would make equivalent provision to that in Clause 131 with regard to development corporations established under the New Towns Act 1981, enabling the designation of 'locally-led new towns'. It inserts new sections 1ZA and 1ZB in to the 1981 Act. These would provide that a local authority or authorities may propose a development corporation within their area to the Secretary of State. They must consult local authorities, businesses, local Members of Parliament, and the local authorities for the areas covered by the proposal. They may specify which authorities are to act as the oversight authority, and which roles they are to take on in that regard. New section 1ZB would provide that, when establishing a development corporation in response to a local proposal, the Secretary of State must state the number of members of the corporation, and which authority is to be the oversight authority.

Planning powers

Clause 134 would amend the Local Government, Planning and Land Act 1980, to allow Urban Development Corporations access to planning powers equivalent to those available to Mayoral Development Corporations.

Similarly, **clause 135** would amend the New Towns Act 1981, to allow New Town Development Corporations access to planning powers equivalent to those available to Mayoral Development Corporations.

Clause 136 would allow Mayoral Development Corporations to become the mineral and waste authority, for the purpose of plan-making, for all or part of the MDC's area.

Membership and borrowing powers

Clause 138 would have the effect of removing the cap on the number of members of a development corporation established under either the 1980 and 1981 Acts. Currently the cap is at 11 members. The cap remains at 11 for development corporations established in Scotland and Wales.

Clause 139 would repeal provisions in the 1980 and 1981 Acts that set limits on the total amount of money that development corporations in England could borrow. At present, development corporations established under the 1980 Act can collectively borrow a maximum of £100 million, and development

corporations established under the 1981 Act can collectively borrow a maximum of £5,250 million. This clause removes these limits in respect of development corporations in England.

8 Compulsory purchase

8.1 Current use of compulsory purchase

The legal basis for compulsory purchase is highly complex and is known as the Compensation Code. This is a collective name for principles set out in a number of Acts of Parliament supplemented by case law.

Compulsory purchase orders can be made by a number of public bodies but require approval from a confirming minister, often the Secretary of State.

Section 226 of the Town and Country Planning Act 1990 (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) provides for local authorities to compulsorily purchase land and buildings in certain circumstances for planning purposes, in order to develop, redevelop or improve the land or building, provided that the development, redevelopment or improvement contributes to at least one of three objectives.

Section 226 (1) (as amended) speaks of the local authority having the power to compulsorily acquire any land in their area "if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land … which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated".

Section 226 (1A) sets out the three objectives:

- the promotion or improvement of the economic well-being of the area;
- the promotion or improvement of the social well-being of their area;
- the promotion or improvement of the environmental well-being of the area.

When making an order under section 226, the appropriate acquiring authority is required by the terms of the Act to demonstrate that the land to be taken is genuinely "required" in order to secure the carrying out of development, redevelopment or improvement of the land.

The Compulsory purchase and compensation booklets offer an overview of the process, covering procedure and compensation to business, agricultural and

residential owners and occupiers. The guidance on the compulsory purchase process and Crichel Down Rules (PDF) offers more information.[272]

8.2 The Bill

Part 7 of the Bill deals with compulsory purchase. **Clause 140** would expand the definition in section 226 of the Town and Country Planning Act 1990, to specify that "improvement" includes regeneration. The Explanatory Notes (PDF) say that this provision would "give local authorities greater confidence that they have the power to acquire land by compulsion to support regeneration schemes".[273]

Clause 141 is concerned with online publicity and would amend procedure as set out in the Acquisition of Land Act 1981, for example by making provision for publicity on websites. Subsection 5 sets out the final day for making objections to a proposed compulsory purchase order.

Clause 142 deals with confirmation proceedings. According to the Explanatory Notes (PDF), it would "make the confirmation process more efficient by ensuring that the most appropriate and proportionate procedure for considering objections to a CPO [compulsory purchase order] is used" and would give the confirming authority "greater discretion to use the appropriate procedure while still giving any remaining objector who wishes to be heard in person by the confirming authority the right to do so".[274]

Clause 143 would grant confirming authorities a new power to make a conditional confirmation of a CPO. According to the Explanatory Notes (PDF), it would "increase the certainty of land assembly through compulsory purchase generally and shorten the delivery of a scheme by encouraging acquiring authorities to make a CPO earlier in the delivery process alongside other consenting and funding processes".[275]

Clause 144 would make corresponding provision for Ministers, when they are the acquiring authority.

Clause 145 deals with the date of operation of the CPO (to provide for those which are confirmed conditionally) and **clause 146** deals with time limits for implementation. The Explanatory Notes (PDF) offer examples of how these will work in instances of staged development and provide earlier certainty of land assembly.[276]

Clause 147 would create a new power to vary the vesting date (the date on which the acquiring authority takes possession of the land subject to the

272 DLUHC, Guidance on Compulsory purchase process and The Crichel Down Rules (PDF), July 2019
273 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 784
274 As above, paragraphs 804-5
275 As above, paragraph 812
276 As above, page 138

CPO). This is intended to provide greater flexibility to both sides, should circumstances change.[277]

The policy paper accompanying the Bill sets out how the compulsory purchase provisions are to support land assembly and regeneration:

> The Bill measures will speed up the delivery of projects where compulsory purchase is needed and clarify local authorities' powers for using compulsory purchase, including providing for the ability for compulsory purchase orders to be conditionally confirmed, allowing for an expiry period of more than three years and increasing the flexibility on the date an acquiring authority becomes the legal owner of land. Flexibility is also increased for the Planning Inspectorate to be able to determine the appropriate procedure for confirmation of a Compulsory Purchase Order.[278]

[277] As above, paragraph 834

[278] DLUHC, Policy paper: Levelling Up and Regeneration: Further information, 11 May 2022

9 Compulsory letting of vacant high street premises

9.1 Background: the struggling high street

Even before the Covid-19 pandemic in 2020-21, the British high street was struggling. The shift to online shopping during the pandemic built on an earlier trend of consumers favouring larger shops that were further away from the high street.[279]

The pandemic aggravated the high street's troubles. Forced closures of non-essential retail, and changes in customer behaviour due to travel restrictions and more home working, meant less was spent on the high street and more online. Internet sales in Great Britain were just 4.2% of all retail sales in January 2008. By February 2020 (shortly before the first coronavirus lockdown) this was 19.6%. The figure has been over 25% ever since April 2020.[280]

In the first quarter of 2022, 14.1% of retail shops were vacant in Great Britain. Whilst an improvement from the pandemic peak of 14.5%, this figure is still significantly higher than the pre-pandemic figure of 12.2% in Q1 2020.[281]

There is significant regional variation in England, with the Q1 2022 vacancy rate being much lower in Greater London (11.1%) and the South East (11.8%) than in the North West (15.7%) and the North East (18.8%). Around 30 English local authorities had a vacancy rate of over 20%, with seven of them being in each of the North West and North East and none being in Greater London.[282]

9.2 The Levelling Up White Paper

The Levelling Up White Paper said that high street rejuvenation was a "priority for the UK Government".[283] The Government believes that high levels of vacant

279 See section 1.3 of our Library briefing, Town centre regeneration, 13 December 2021

280 Office for National Statistics, series MS6Y, RSI: Internet: All Retailing excl auto fuel: All Bus: SA: proportion of retail (Retail Sales Index time series), released 20 May 2022

281 See section 1.2 of our Library briefing, Town centre regeneration, 13 December 2021

282 As above

283 DLUHC, Levelling Up the United Kingdom, 2022, p211

property can "foster a spiral of decline", with "scarring" that "can undermine pride in place".[284]

The White Paper therefore committed to bringing forward measures to "incentivise landlords to fill vacant units to rent our vacant properties to prospective tenants". This would "tackle both supply and demand side issues" and "increase the attractiveness and vitality of our high streets".[285]

On the same day, Levelling Up Secretary Michael Gove told the House of Commons that the Government would ensure "properties cannot remain unloved and unused for months, dragging down the whole high street. Instead, we will put every property to work for the benefit of the whole community".[286]

Initial commentary

According to the Daily Mail, the Government's plan was welcomed by stakeholders including trade body UKHospitality and campaign group Save the High Street. Wetherspoons chief executive Tim Martin welcomed the plan but said the Government's initiative would be doomed to failure unless it also addressed the fundamental tax imbalance between hospitality and supermarket businesses.[287]

However, the Local Government Chronicle noted that the Government is understood to have not consulted local authorities about these new powers, leading to concern over the Government's "fragmented approach". It also noted concern from:

- Hugh Ellis, policy director of the Town and Country Planning Association, who questioned whether councils would have the capacity to use these powers, whether it would help solve the problem of vacant premises, and whether the policy could violate property rights; and

- An "expert" who said landlords could avoid the Government's measures (gaming the system) by using short-term lets, and that councils didn't have the necessary information on where vacant premises are to implement the measures.[288]

284 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes, paragraph 42
285 DLUHC, Levelling Up the United Kingdom, 2022, p211
286 HC Deb 2 February 2022, vol 718 col 314
287 Daily Mail, Vacant shops will be reborn under plan to breathe life into high streets by forcing landlords to let out retail units that have been vacant for six months, 20 April 2022
288 Local Government Chronicle, Workload fears over town centre property 'auction' role for councils, 27 April 2022

9.3 The Bill

The policy paper published alongside the Bill noted that the Bill would give local authorities an "important new power" to require auctions of vacant commercial properties. Contrary to initial press reports,[289] the powers could be exercised for properties that have been vacant for one year (rather than six months).[290]

The policy paper noted that the Government would work with local authorities and industry to develop guidance on how rental auctions would work, and would also consult further on the auction process, a model lease, and guidelines for a cooperative process between local authorities, landlords and tenants.[291]

Part 8 of the Bill contains 27 clauses, divided into five segments.

Key terms

These clauses set out the key terms used in Part 8.

A local authority's powers under Part 8 don't apply everywhere: the local authority must "designate" a high street or town centre first. To be designated under **clause 150**, the high street or town centre must be "important to the local economy because of concentration of high-street uses of premises" there.[292] Designations must be made public and can be changed at any time.

Premises can be included in Part 8 (becoming "qualifying high-street premises") if they are in a designated area and the local authority considers them suitable for high-street use. **Clause 151** explains what "high-street use" means. It mainly means use as shops, offices, providing services to the public, the sale of food and drink for immediate consumption, public entertainment, communal halls and manufacturing that can be carried out close to the other uses.[293]

A local authority could only start the process to let out "qualifying high-street premises" if a "vacancy" and "local benefit" condition is satisfied. The "vacancy condition" (set out in **clause 152)** is that the premises must be unoccupied (vacant) and must have been vacant for either the last year, or for one year within the previous two years, but the Secretary of State can amend these periods through secondary legislation.[294] The "local benefit"

289 Daily Mail, Vacant shops will be reborn under plan to breathe life into high streets by forcing landlords to let out retail units that have been vacant for six months, 20 April 2022

290 DLUHC, Policy paper: Levelling Up and Regeneration: further information, 11 May 2022, "In the Bill" section

291 As above, "Alongside the Bill" section

292 Clause 150(1) and (2)(b)

293 Clause 151(1)

294 In this case the Secretary of State for Levelling Up, Housing and Communities.

condition (set out in **clause 153**) is that the local authority must consider that occupation of the premises (for a high-street use it is suitable for) would be "beneficial to the local economy, society or environment".[295]

Procedure preliminary to letting

Where a qualifying high-street premises meets both the vacancy and local benefit conditions, a local authority would be able to serve an "initial letting notice" on the landlord[296] of the premises (**clause 154**). This notice would expire after 10 weeks and can be withdrawn at any time (or superseded by a "final letting notice").

While the initial letting notice was in force, the landlord could not let out the premises without the consent of the local authority (**clause 155**). The local authority would have to grant consent to a letting if: it would start within 8 weeks of the initial letting notice taking effect, would be for at least one year, and would likely lead to the occupation of the premises for activity that involves the regular presence of people there (**clause 156**). This would give the landlord an opportunity to genuinely let out the premises before the local authority starts the compulsory rental process.[297]

If the landlord had not granted a tenancy within eight weeks of an initial letting notice taking effect, the local authority would be able to issue a "final letting notice" under **clause 157**. This would give the local authority a two-week window to issue this notice before the initial letting notice expires. A final letting notice expires 14 weeks after it takes effect (but is extended if the landlord issues a counter-notice or appeals).

Appeals

While a final letting notice was in force, the landlord would be unable to let out (**clause 158**) or carry out unnecessary works (**clause 159**) at the premises without the consent of the local authority. The restriction on works is there because the local authority can start the letting out procedure once the final letting notice is served.[298] A local authority would have to give consent to works unless there are reasonable grounds for refusing it. A landlord carrying out such works without local authority consent and without reasonable excuse, while a final letting notice is in force, commits a criminal offence punishable by a fine of up to £2,500.[299]

Clause 160 would give a landlord 14 days to serve the local authority with a "counter-notice" after a final letting notice against their premises takes effect. The landlord must specify one of seven grounds of appeal in the counter-notice, which the Secretary of State can amend through secondary

295 Clause 153

296 This is the person entitled to possesses of the premises and who can grant a tenancy of one year or more – **clause 177(6).** So it could sometimes be a sub-tenant rather than the actual landlord.

297 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 884

298 As above, para 904

299 As above, para 908 and clause 159

legislation. The seven grounds (in brief) are that: the vacancy or local benefit conditions are not met; the premises are unsuitable; the local authority failed to give consent to a tenancy it should have consented to during the period of the initial letting notice; the landlord needs to carry out substantial works; or that the landlord intends to occupy the premises for a business or as their residence.[300]

If a counter-notice were served by the landlord, and the local authority had not in the subsequent 14 days withdrawn its final letting notice, the would have has a further 14 days[301] to appeal to the County Court against the final letting notice, on the same ground of appeal specified in the counter-notice (**clause 161**).

Procedure for letting

If a final letting notice has been served and the local authority has not consented to a letting out, the local authority would be able to arrange for a "rental auction" (**clause 162**). This is a process for finding people willing to rent out the premises. The Government would have to make regulations about this process, which must provide for the local authority to specify the high-street use of the premises they consider suitable, and how to identify successful bidders.

Under **clause 163**, if the final letting notice is still in force, the period for any appeal against it (42 days) has expired, a rental auction has been carried out, and the premises has not been let out with the consent of the local authority, the local authority would be able to enter into a tenancy contract for the premises with the successful bidder from the rental auction. The local authority would enter into this contract in its own name, but it would legally bind the landlord rather than itself. The tenancy contract is intended to be a short-term contract under which the landlord agrees to grant a short-term tenancy to the successful bidder (of between one and five years)[302] to allow for necessary works to be carried out to the premises before the tenancy begins.[303]

This tenancy contract would have to set out the terms of the tenancy to be granted and can provide for pre-tenancy works to be carried out (by the tenant or the landlord) (under **clause 164**). The Secretary of State would be able to make regulations imposing conditions or restrictions on these works or the terms of the contract, taking into account commercial market practice.

Clause 165 gives more information about the terms of the tenancy contract. The contract would have to require the premises to be used wholly or mainly for suitable high-street use, on the basis specified by the local authority before the rental auction. If the rental auction resulted in the successful

300 Schedule 15, Part 1

301 Specifically, the landlord has 28 days to appeal from the date the counter-notice is received by the local authority – clause 161(4).

302 Clause 177(8)

303 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 929

bidder indicating the rent they would pay, that should be included too. The tenancy terms would have to include terms typically found in tenancy contract such as: maintenance or repair, permitted alterations, insurance, costs, assignment and sub-letting, deposits, landlord re-entry following a breach of the tenancy terms, and that the tenant must deliver vacant premises at the end of the tenancy.[304] The Government would be able to make regulations providing for other terms to be included, taking into account commercial market practice.

The tenancy contract that the local authority entered into with the successful bidder would require the landlord to grant a tenancy. If the landlord doesn't do so, the local authority can do this on their behalf (**clause 166**). As the landlord might require the consent of a third party to sub-let, the tenancy contract (and the tenancy that it requires the landlord to grant) is deemed entered into with the consent of any superior landlord or mortgagee (such as a bank) (**clause 167**). But the tenancy granted would not benefit from security of tenure provisions under the Landlord and Tenant Act 1954 (**clause 168**), meaning the tenant would not have an automatic right to remain in the premises after the lease ends.[305]

Power to obtain information

A local authority would be able to require anyone they think has an interest in premises to provide them with information about it (under **clause 169**). This power must be used by the local authority only to obtain information relevant to its functions under Part 8 of the Bill (such as to find out the person to whom it needs to serve a notice).[306] Failing to respond to a request from a local authority, or giving false information, without a reasonable excuse by the time specified by the local authority would be a criminal offence, punishable by a fine of up to £2,500.

The local authority would also be able to authorise someone to enter designated premises to survey them, for the purpose of exercising its functions under Part 8 of the Bill (under **clause 170**). They must have given, or tried to give, 14 days written notice to the landlord. A warrant from a magistrate would be required if entering the premises requires the use of force.

Anyone who obstructs the person authorised by the local authority from exercising this power would be committing a criminal offence, punishable by a fine of up to £1,000.[307] If the person who enters the premises using the power in clause 170 discloses confidential information they obtained from entering premises for purposes other than that for which the power is meant

304 Schedule 16

305 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 955

306 As above, para 961

307 As above, para 972

to be used, they would be committing a criminal offence punishable by up to two years in prison or an unlimited fine (**clause 171**).

Clause 172 states that a local authority can apply to the county court to extend the time limit allowed for it to serve a final letting notice or to complete the procedure for letting, where it has been impeded by a person's failure to comply with a requirement to provide information, or it has been obstructed in the exercise of its power to enter and survey land.

General and supplementary provision

Clause 173 would allow for the Government to make regulations setting out the required form and content of initial and final letting notices, how they must be served, and when they take effect. These regulations must provide that the letting notices include information on (for example) the premises to which the notice relates, why it is being served, and their consequences.

The Government would also be able to make regulations (under **clause 174**) providing for the procedure to be followed for many processes under Part 8, such as the making or withdrawing of designations for areas and the giving of consent by a local authority to a letting when an initial or final letting notice is in force.

If a local authority uses its power to enter premises under clause 170, it would have to pay compensation for any damage caused as a result (**clause 175**).

Clause 176 would allow the Secretary of State to make regulations to modify or disapply enactments (legislation) applicable to letting, in relation to tenancies granted under Part 8 (clause 163).

Lastly, **clause 177** is an interpretation clause, explaining some key terms in Part 8. It explains, for example, what is meant by "local authority", "premises", "street", "landlord", "short-term tenancy" and "mortgagee".

9.4 Recent commentary

The think tank, the Centre for Cities, said the policy had "several positives", including: more power to local leaders to adapt how space is used; more opportunities for small business, charities and community groups; and a positive impact on the local economy. They noted that the announcement itself could have a "strong signalling effect", allowing some change to happen quickly. However, it does not deal with the "main issue" high streets are facing (which is a "lack of footfall, low demand and low consumer spending power"). They also expressed concern that the measures could deter landlords from investing in commercial space.[308]

[308] Centre for Cities, Will forcing landlords to rent empty shops rescue the high street? 20 May 2022

However, LandlordZONE, a "free open access website for landlords and agents"[309] described the measures as "controversial", saying that it is being introduced despite "strenuous objections from industry professionals and landlords". They said the legislation has the "makings of a legal nightmare" with many key points (such as how rent is set) yet to be determined, or to be set out later in secondary legislation. LandlordZONE also said professionals and landlords have "expressed serious misgivings about how this scheme can be made to work with any degree of success, and without causing commercial property owners serious financial losses".[310]

A publication by law firm Hogan Lovells criticised the "draconian" measures, saying they "bulldoze through the usual open market letting process", giving local government "enormous power" that could result in "poor estate management, an inappropriate tenant mix in any given location and a strained landlord and tenant relationship from the outset".[311]

309 See LandlordZONE, "About" page

310 LandlordZONE, Government commits to shop rental auctions, 18 May 2022

311 Hogan Lovells, UK government commits to controversial high street rental auctions of vacant premises, 12 May 2022

10 Information about interests and dealings in land

An aim of the Government's levelling-up and regeneration policy is to rebalance the housing and land markets by making information on land ownership, control and interests more readily available to all. This will help communities identify what land may be available for new housing and redevelopment.

Part 9 of the Bill (**clauses 178** to **183**) would provide the Secretary of State with an enabling power to require the Chief Land Registrar of HM Land Registry or another person exercising public functions on behalf of the Crown (as determined by regulations) to collect information on the ownership and control of land, and on transactional dealings used to exercise control over land. Regulations made by the Secretary of State under Part 9 would only apply to land interests in England and Wales (Scotland and Northern Ireland have their own separate land law regimes).

10.1 Current position

Other than legal and beneficial ownership, there are several ways of exercising control over land, such as through an option to purchase land or as a beneficiary of a restrictive covenant. It can be difficult to establish the identity of all persons with an interest in land; data provided by HM Land Registry (HMLR) on the control of land is limited.

HMLR publicly records ownership of land in England and Wales. Once land has been registered, any changes to ownership or any leases, charges or other matters benefitting or burdening the land are recorded on the title register. However, not all land is registered. An estimated 87.4% of land in England and Wales is registered; much of the land owned by the Crown, the aristocracy, and the Church remains unregistered.[312] Even where land is registered, not all interests relating to it are clearly recorded on its title. For example, a landowner and a developer may agree an 'option', which gives the developer the right to acquire land at an agreed price within a fixed time period. However, depending on how this option agreement is protected, there may be no record of it in the title register.

[312] HM Land Registry, Transforming in uncertainty – Annual reports and accounts 2019/20, 16 July 2020, (accessed 14 May 2022)

Contractual control interests are usually protected by the entry of a notice[313] on the landowner's title register and, in some cases, there will also be a restriction[314] against the registration of a disposition[315] of land without consent. Notices can be unilateral or agreed and ensure priority of the interest protected so it can be enforced against a subsequent owner. In the case of 'unilateral notices', only limited information about the transaction needs to be provided to HMLR. Where an 'agreed notice' is used and a copy of the contractual document is lodged at HMLR, an application can be made to exempt commercially sensitive details in that document. In other words, key information about the terms of a contractual interest over a piece of land may not be available.

The Government's concern is twofold. Firstly, that HMLR is unable to provide accurate data identifying the number of titles affected by contractual control arrangements.[316] Second, that these arrangements are not recorded in a way that is transparent to the public, meaning that local communities cannot identify who has an interest in land and who will benefit from a planning permission.[317] There is also a risk that agreements could inhibit competition because small and medium sized enterprises and other new entrants may find it harder to acquire land.[318] Additionally, once an option has been acquired, the land may sit in a "land bank" without the prospect of development.[319]

"Strategic land banking" is where an interest in land is held by developers but not owned by them (i.e. an option or other arrangement).[320] The land in question may already have planning permission, but the developer will delay buying until either the value of the land has increased - so it can be sold on at a profit - or market conditions have improved sufficiently for the developer to be willing to buy the land for its own use. Strategic land banking is criticised by some for preventing new homes being built.[321]

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313 A **notice** is an entry made in the register in respect of the burden of an interest affecting a registered estate or charge (section 32(1) of the Land Registration Act 2002).

314 'R**estrictions' prohibit** the making of an entry in the register in respect of a disposition or a disposition of a specified kind (section 40(1) of the Land Registration Act 2002). The prohibition may be indefinite or for a specified period and it may be absolute or conditional on something happening (e.g., on getting the consent of a third party).

315 The term '**disposition**' is not defined in the Land Registration Act 2002, but section 27 of the Act identifies the types of disposition required to be registered, these include: a sale, gift, certain types of leases, transfer of an interest in land or new mortgage.

316 Ministry of Housing and Local Government, Transparency and Competition: A call for evidence on data on land control (PDF) August 2020, (accessed 14 May 2022)

317 As above

318 Department for Communities and Local Government, Fixing our broken housing market (PDF) Cm 9352, February 2017, (accessed 14 May 2022)

319 As above

320 Ministry of Housing and Local Government, Transparency and Competition: A call for evidence on data on land control (PDF), August 2020, (accessed 14 May 2022)

321 See for example, "Britain has enough land to solve the housing crisis – it's just being hoarded", Guardian, [online] 31 January 2017 (accessed 14 May 2022); also Developers accuse councils of 'hiding' behind permissions data to avoid planning for homes, Housing Today, [online] 22 September 2021, (accessed 14 May 2022)

10.2 Past consultations on land and housing

In its 2017 White Paper, Fixing our broken housing market (PDF), the Government made a commitment to increase transparency around ownership and control of land for the benefit of local communities:

> The Government would like to make data about land ownership, control and interests more readily available to all. This will help identify land that may be suitable for housing, allow communities to play a more active role in developing plans, support digital plan-making, help new entrants to the market and offer wider benefits.[322]

In its 2020 consultation paper, Transparency and Competition: A call for evidence on data on land control, the Government sought views on proposals to require additional data from the beneficiaries of certain types of interests in land, namely: options, rights of pre-emption, conditional and estate contracts.[323] As outlined in the proposals, this additional data would be detailed on the land registers held by HMLR, and a new data set containing contractual control interests would be compiled and published free of charge. The aim would be to provide local communities with "a clear line of sight across a piece of land setting out who owns, controls or has an interest in it", enabling them to play an informed role in the development of their neighbourhoods.[324] This consultation closed on 6 November 2021.

Some respondents to this call for evidence questioned whether landowners and developers might regard the proposals as too intrusive in commercially sensitive situations, giving rise to loss of confidentiality and competitive advantage.[325] The Law Society agreed that it was in the public interest to publish additional data on contractual control interests in land that could be used for development. However, it suggested that exemptions from disclosure should be extended to cover circumstances where the contractual control is over land that has no reasonable prospect of development.[326]

Finally, in the White Paper, Planning for the future (PDF), published in August 2020, the Government suggested that providing better data on land ownership subject to contractual control interests would help the development process.[327] It would reduce the time and costs associated with

322 Department for Communities and Local Government, Fixing our broken housing market (PDF), Cm 9352, February 2017 (accessed 14 May 2022)

323 Ministry of Housing, Communities and Local Government, Transparency and Competition: A call for evidence on data on land control (PDF), 6 August 2020 (accessed 14 May 2022)

324 Department for Communities and Local Government, Fixing our broken housing market (PDF), Cm 9352, February 2017 (accessed 14 May 2022)

325 See MHCLG call for evidence on data on land control – Law Society response, Law Society, [online], 2 November 2020 (accessed 14 May 2022)

326 As above

327 Ministry of Housing, Communities and Local Government, Planning for the future White Paper (PDF), August 2020 (accessed 14 May 2022)

site identification and encourage more companies to enter the housebuilding market.[328]

The Bill implements the Government's thinking in these consultations. If enacted, Part 9 would make information about interests and dealings in land more readily available to all, enabling communities to identify what land may be available for development.

10.3 Other initiatives

The measures contained in **Part 9** of the Bill should be seen in the context of a wider government programme to help make information on land ownership and interests more transparent. Other initiatives focus on improving the registration of land, and on the opening-up of land and property data sets. Initiatives include:

- The completion of the Land Registry. HMLR has made a commitment to register all publicly owned land by 2025 and aims to achieve comprehensive registration in England and Wales by 2030;[329]
- HMLR to become a digital and data-driven registration business within the public sector;[330]
- The Government to examine how HMLR and the Ordnance Survey can work more closely to provide a "digital land and property data service".[331] The aim is to make their combined land and property data more openly available.[332]

The Government also proposes to improve the availability of data about wider interests in land by:

- HMLR releasing, free of charge, its commercial and corporate ownership data set, and the overseas ownership data set.[333] These data sets contain data on 3.5 million titles to land held under all ownership categories, except for private individuals, charities and trustees;[334]
- Simplifying the current restrictive covenant regime.[335] Following a consultation in 2008, the Law Commission published the report Making Land Work: Easements, Covenants and profits à prendre (PDF), in June

328 As above
329 As above
330 Department for Communities and Local Government, Fixing our broken housing market PDF), Cm 9352, February 2017 (accessed 14 May 2022)
331 As above
332 As above
333 As above
334 As above
335 As above

2011.[336] In the 2017 Housing White Paper (PDF), the Government said it would publish a draft Bill containing the Law Commission's recommendations for reform.[337] This followed an announcement in the Queen's Speech in May 2016 that the Government would bring forward proposals in a draft Law of Property Bill.[338]

10.4 The Bill

Part 9 of the Bill (**clauses 178** to **183**) is concerned with requirements to provide information about land ownership and control, and transactional dealings used to exercise control over land.

Specifically, under **clause 178(1)** regulations made by the Secretary of State would require the provision of information if it appeared that the information would be useful for the purpose of:

> (a) identifying persons who (from time to time) -
>
> - own relevant interests in land,
> - have relevant rights concerning land,
> - or have the ability to control or influence (directly or indirectly) the owner of a relevant interest in land, or a person with a relevant right concerning land, in the exercise of that ownership or right, or
>
> (b) to ascertain the nature, extent or duration of that ownership, those rights or that ability

The Bill makes it clear that 'ownership' includes legal and beneficial ownership, and 'control or influence' includes control or influence by reason of interests or rights in or under a company, partnership, trust or other similar legal structure or arrangement.[339]

Under **Clause 179 (1)** regulations made by the Secretary of State would require the provision of transactional information about instruments, contracts or other arrangements which:

- create, alter, extinguish, evidence, or transfer "relevant interests" in land, or

336 Law Commission, Making Land Work: Easements, Covenants and profits à prendre (PDF), HC 1067, 7 June 2011 (accessed 14 May 2022)
337 Department for Communities and Local Government, Fixing our broken housing market (PDF), Cm 9352, February 2017 (accessed 14 May 2022)
338 Queen's Speech 2016: background briefing notes, Cabinet Office, 18 May 2016
339 Clause 178(3)

- confer, amend, assign, terminate or otherwise modify "relevant rights" concerning land.[340]

The Bill specifies that the following "transactional information" could be sought by the Secretary of State:

- the parties to a transaction;
- persons on whose behalf or for whose benefit the parties to a transaction are or were acting;
- the terms of a transaction;
- persons providing professional services in relation to a transaction;
- the source of any money paid, or other consideration given in connection with a transaction;
- documents giving effect to or evidencing a transaction (plus copies).[341]

In terms of the intended scope of regulations made by the Secretary of State, **clause 180(1)** provides that regulations would, for each requirement they imposed, specify:

- the description of the person on whom the requirement to give information falls,
- the occurrence or circumstances that gives or give rise to the requirement,
- the time limit for complying with the requirement, and
- the person to whom the required information must be provided (specified in subsection (2) as the Chief Land Registrar or another person exercising public functions on behalf of the Crown).

It would be for the Secretary of State, through regulations, to state how the information would be provided, including by electronic means.[342] Crucially, the Bill makes it clear that the information requested may relate to things done or arising before the coming into force of Part 9. To that limited extent, Part 9 is retrospective.[343]

Clearly, if Part 9 is enacted, the Government would have the power to collect extensive information, giving a more accurate picture of who owns and controls land and property in England and Wales. How this information might

340 Clause 179(3)
341 Clause 179(2)
342 Clause 180(3)
343 Clause 180(4)

be used is set out in **clause 181(1)**, which states that the Secretary of State may make regulations to provide for:

- the retention of information,
- the sharing of such information with persons exercising functions of a public nature, for use for the purposes of such functions (e.g., other government departments and public bodies),
- the publication of such information.[344]

For the Government, the publication of information is key. As already mentioned, in its 2017 Housing White Paper (PDF), the Government made a commitment to collect and publish data on contractual arrangements used by developers to control land (e.g., rights of pre-emption, options, and conditional contracts).[345] The Bill's Explanatory Notes state that the Government anticipates collecting information on a range of transaction types for various purposes. For example, to identify attempts to evade sanctions or the new disclosure requirements placed on companies owning UK land and property contained in the Economic Crime (Transparency and Enforcement) Act 2022. Another example would be for wider national security and macroeconomic purposes.

The Bill makes it clear that no civil liability would arise from inaccuracies or omissions in respect of information that was shared or published. To meet administrative costs, regulations made by the Secretary of State would also provide for the payment of fees by persons providing information to the person collecting the information (i.e., the Chief Land Registrar).[346]

Importantly, regulations made by the Secretary of State would create offences in connection with failing to comply with the information requirement (under clause 178 or 179) or providing false or misleading information.[347] **Clause 182** sets limits for the penalties that may be levied under the regulations.

Regulations made by the Secretary of State would also prevent the Chief Land Registrar from undertaking certain registration activities in relation to a relevant interest in land or relevant right concerning land until the required information (under clause 178 or 179) has been provided.[348] A "relevant registration act" would be an application to register a disposition (transfer of legal title of a property), or for the grant (or amendment) of a notice or restriction.[349]

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344 Clause 181(3)

345 Department for Communities and Local Government, Fixing our broken housing market, Cm 9352, February 2017, (accessed 14 May 2022)

346 Clause 181(2)

347 Clause 182(1) and (2)

348 Clauses 182(3) and 182(4)

349 A "**relevant registration act**" is an act that would or could be carried out in relation to the register of title kept under the Land Registration Act 2002

11 Miscellaneous provisions

11.1 Pavement licences

Part 7A of the Highways Act 1980 (as amended) allows cafes, pubs and restaurants to apply for a "pavement licence" from the local authority. This allows them to place tables and chairs outside on the highway for customers to eat and drink at.[350]

In response to the Covid-19 pandemic, sections 1 to 10 of the Business and Planning Act 2020 (the "2020 Act") introduced a streamlined procedure so that businesses serving food and drink could apply for a pavement licence, enabling them to maximise capacity, while complying with social distancing guidelines. This is "a bespoke procedure" outside the 1980 Act.[351] Among other things, the streamlined procedure:

- reduces the consultation period for licence applications from 28 calendar days to 7 days.
- caps the application fee for a licence at £100.
- enables a local authority to revoke a licence if, for example, there are risks to public health or safety, or if it risks causing anti-social behaviour or public nuisance.

The Act provides that where a pavement licence is granted, any necessary planning permission is automatically deemed to have been granted.[352] Further detail on how the process for pavement licences operates is available in government guidance (March 2022).[353] The regime introduced by the 2020 Act applies in England only.

The measures relating to pavement licences were due to expire at the end of September 2021. However, the Business and Planning Act 2020 (Pavement Licences) (Coronavirus) (Amendment) Regulations 2021 extended this date to 30 September 2022.

350 London boroughs can opt into a procedure set out in the London Local Authorities Act 1990. The City of Westminster operates its own procedure through the City of Westminster Act 1999.

351 Explanatory Notes to the Business and Planning Act 2020, para 40. For background to what became the 2020 Act, see the Library briefing, Business and Planning Bill 2019-21 (26 June 2020).

352 Explanatory Notes to the Business and Planning Act 2020, para 40

353 DLUHC and MHCLG, Guidance: pavement licences (outdoor seating) [online], updated 21 March 2022 (accessed 16 May 2022)

UKHospitality, an organisation representing the sector in England, Scotland and Wales, has said flexible pavement licences have been a "really positive success story".[354]

The Bill

Clause 184 introduces Schedule 17 of the Bill. **Schedule 17** would make the regime for pavement licences, as set out in the 2020 Act, permanent. The DLUHC has said this is to "support high street and town centre regeneration".[355] A Government press release on the Bill says the temporary provisions will be extended for one more year until they are made permanent through the Bill.[356]

An overview of some of the changes that Schedule 17 would make is set out below. Further detail is given in the Explanatory Notes to the Bill (PDF).

Paragraph 2(1) of Schedule 17 would remove the sunset clause in section 10 of the 2020 Act so that the pavement licensing provisions would become permanent.

Paragraph 3 would amend section 2 of the 2020 Act to change the fee cap from £100 to the "relevant amount", i.e., £350 for a licence renewal and £500 for any other application. The Secretary of State would be given a new power to amend these amounts so that fees could keep pace with the costs for processing applications.[357]

Paragraph 5 would streamline the application process for licence renewals. Applicants would not need to provide the full information set out in section 2(2) of the 2020 Act – e.g. the days and times of the week when furniture would be put on the highway, or the type of furniture involved. They would, instead, need to make an application for the same licence and provide any additional evidence that the local authority might ask for.

Paragraphs 6 and 7 would amend sections 2 and 3 of the 2020 Act so that the consultation period for licence applications would be 14 days with a further 14 days for the local authority to make its decision. The current period for both is 7 days.

Paragraph 8 would amend section 4 of the 2020 Act so that local authorities could grant a licence for up to two years. At present, a licence cannot be valid beyond 30 September 2021 (in practice, 30 September 2022 with the one-year extension).

354 "UKHospitality says permanent pavement licences will speed recovery", UKHospitality News [online], 3 March 2022 (accessed 16 May 2022

355 DLUHC, Levelling Up and Regeneration: further information [online], 11 May 2022 (accessed 16 May 2022)

356 "New Bill to level up the nation", DLUHC press release [online], 12 May 2022 (accessed 16 May 2022)

357 Explanatory Notes to the Levelling Up and Regeneration Bill (PDF), May 2022, para 1503

Paragraph 9 introduces a new subsection (4) to section 6 of the 2020 Act. This would allow a local authority to amend a pavement licence if:

- it considered a highway was no longer suitable for the use granted by a licence.
- there was evidence of a risk to public health or safety, increased anti-social behaviour, a highway was being obstructed or the no-obstruction condition, which applies to all pavement licences, was not being complied with.[358]

Paragraph 11 would amend the Highways Act 1980 so that all applications for a pavement licence that could be granted under the regime introduced by the 2020 Act should be granted through those provisions.

Paragraph 13 would add a new section 7A to the 2020 Act. This would introduce a new enforcement power that would apply where furniture that would normally be permitted by a pavement licence had been placed on a highway without a licence. The power would allow a local authority to give notice requiring a person to remove the furniture by a specified date, and to refrain from putting furniture on a highway unless they obtained a licence. If furniture continued to be placed, in breach of a notice, the local authority could remove and store the furniture, recover the costs from the person and refuse to return the furniture until the costs were paid. In the event of costs not being paid, the local authority could dispose of the furniture by sale or other means and keep the proceeds.[359]

Pavement licences and public spaces protection orders (PSPOs)

PSPOs were introduced through the Anti-social Behaviour, Crime and Policing Act 2014.[360] They are designed to deal with a particular nuisance in a particular area by imposing conditions on the use of that area. Councils are responsible for making PSPOs and can do so on any public space. Before making a PSPO, a council must be satisfied, on "reasonable grounds", that the behaviour to be restricted:

- is having, or is likely to have, a detrimental effect on the quality of life of those in the locality;
- is, or is likely to be, persistent or continuing in nature;
- is, or is likely to be, unreasonable; and

[358] Explanatory Notes to the Levelling Up and Regeneration Bill (PDF), May 2022, para 1512
[359] Explanatory Notes to the Levelling Up and Regeneration Bill (PDF), May 2022, para 1516
[360] PSPOs replaced designated public place orders. For background, see section 8.2 of the Library research paper Anti-social Behaviour, Crime and Policing Bill (PDF), 4 June 2013

- justifies the restrictions imposed.[361]

A PSPO can be used to restrict the consumption of alcohol in a public space where the above conditions have been met. It is not an offence to drink alcohol in a controlled drinking area. However, it is an offence to fail to comply with a request to cease drinking or to surrender alcohol in the area.

Paragraph 17 of Schedule 17 of the Bill would amend section 62 of the 2014 Act so that areas granted a pavement licence would be exempt from restrictions on alcohol consumption as set out in a PSPO.

Commentary

UKHospitality has welcomed the move to make pavement licences permanent, noting they were vital during the pandemic, as well as demonstrating the sector's ingenuity and creativity:

> ...These outdoor spaces also benefit town and city centres, enabling them to enjoy the sort of outdoor experiences available elsewhere, and helping local economies recover faster, contributing to levelling up.
>
> Pavement licences also revealed the hospitality industry's ingenuity and creativity, and significant levels of investment which will now continue to return value. That same innovation must also ensure that this opportunity for venues pays due regard to accessibility, so that all customers can benefit.[362]

The British Beer and Pub Association has said the Bill is "fantastic news", claiming that permanent pavement licences would create a continental culture and "hopefully bring Britain's high streets to life and help them thrive again".[363]

11.2 Historic environment records

Local heritage lists

Outside national listing, local planning authorities (LPAs) may choose to create and maintain their own local heritage lists. Local listing does not grant the same statutory protections as national listing, but it does mean that the

361 Home Office, Anti-social Behaviour, Crime and Policing Act 2014: anti-social behaviour powers - statutory guidance for frontline professionals (PDF), January 2021, p61

362 "UKHospitality comments on the Queen's speech", UKHospitality News [online], 10 May 2022 (accessed 16 May 2022)

363 Quoted in "Government set to make pavement licences permanent", Big Hospitality News [online], 9 May 2022 (accessed 16 May 2022)

building's significance as a heritage asset would be a material consideration in planning decisions.[364]

The National Planning Policy Framework (NPPF) defines a heritage asset.[365] Chapter 16 of the NPPF, on conserving and enhancing the historic environment, encourages LPAs to have a publicly-accessible historic environment record. It goes on to outline the considerations relating to designated and non-designated heritage assets.[366]

The Bill

Clause 185 would introduce a new statutory duty for local authorities to have access to an up-to-date Historic Environment Record. Local authorities would have to take reasonable steps to obtain information to include in the Historic Environment Record and to keep it up to date [subsection 5] and the Secretary of State would have the power to make regulations on how information should be stored or made available or how authorities may charge fees for services or provision of documents [subsection 6].

11.3 Review of RICS

Background

The Royal Institution of Chartered Surveyors (RICS) is a professional body for surveyors. It sets professional qualifications and standards in the development and management of land, real estate, construction and infrastructure.

Clause 186 concerns the governance of RICS and falls against a backdrop of ongoing independent reviews of RICS governance and the debate about how to value flats in tall buildings following the Grenfell Tower tragedy.

RICS Governance

In January 2021, the RICS Governing Council commissioned Alison Levitt QC to conduct an independent review into specific events that took place in 2018 and 2019 regarding RICS treasury management.[367] These events included allegations that RICS had tried to suppress a critical internal report into its

364 For more discussion, see Historic England, Local Heritage Listing: Identifying And Conserving Local Heritage (undated, accessed 26 May 2022) and Historic England, Local Heritage Listing: Identifying and Conserving Local Heritage, Historic England Advice Note 7 (Second Edition), January 2021. The references there are to the NPPF in its 2018/9 form. It has since been replaced by the NPPF 2021. Historic England is an executive, non-departmental public body sponsored by the Department for Digital, Culture, Media and Sport.

365 MHCLG, National Planning Policy Framework, July 2021, Annex 2, Glossary

366 As above, paragraphs 192-3

367 RICS, Independent external review information centre [accessed 16 May 2022].

finances and then unfairly dismissed those that had sought to explore the issue.[368]

The Levitt report was published in September 2021 and found there had been a failure of governance at RICS, which had its origins in the governance structure of the organisation.[369] The report recommended RICS conduct a wide-ranging external review examining its purpose, governance and strategy.[370] The RICS Governing Council accepted the Levitt Review's recommendations in full.[371]

In December 2021, Lord Michael Bichard was appointed by the RICS Governing Council to lead an independent review into the purpose, governance and strategy of RICS.[372] The review is ongoing and is expected to report in June 2022.[373]

Cladding and EWS1 forms

Since the Grenfell Tower fire in 2017 there has been an ongoing focus on the need for fire safety remediation works in blocks of flats. In 2019 lenders began to seek assurance on the safety of external wall systems as a condition of approving mortgage applications. Affected leaseholders started to experience difficulties in selling their homes and securing remortgages.

In response, the Royal Institution of Chartered Surveyors (RICS) led a cross-industry working group to consider best practice in the reporting and valuation of tall buildings within the secured lending arena with a view to agreeing a new standardised process.

The External Wall System (EWS) process was agreed by the industry in December 2019 – it's described as an "industry-wide valuation process which will help people buy and sell homes and re-mortgage in buildings above 18 metres (six storeys)."[374] The process was intended to 'unstick' the market but implementation, alongside changing Government advice, has brought with it other problems. The Library casework article, The Cladding External Wall System (EWS), provides more detail.

On 10 January 2022, the Secretary of State Michael Gove updated the House on the Government's approach to building safety.[375] He said the Government

368 Alison Levitt QC, Independent Review of issues raised at RICS in 2018 and 2019 (PDF), p3.

369 RICS, RICS Publishes Independent Review - Accepts All Recommendations, 9 September 2021.

370 RICS, RICS Publishes Independent Review - Accepts All Recommendations, 9 September 2021.

371 RICS, RICS Publishes Independent Review - Accepts All Recommendations, 9 September 2021. Updates on progress on implementing the recommendations can be found at the RICS Independent external review information centre [accessed 16 May 2022].

372 The Bichard RICS Review; Terms of reference (PDF) [accessed 16 May 2022].

373 RICS, Independent external review information centre, February 2022 update [accessed 16 May 2022].

374 RICS, New industry-wide process agreed for valuation of high-rise buildings [accessed 16 May 2022].

375 HC Deb 10 January 2022.

would "take a power" to review the governance of RICS to "ensure it is equipped properly to support a solution to this challenge".[376]

When asked to provide more detail on actions regarding RICS to "instil a more proportionate and sensible approach into the assignment of risk", the Secretary of State said:

> There have been all sorts of difficulties with that organisation in the past, but I am now hopeful that we are on a more positive footing. We have the potential to take steps to improve the governance of the institution, but I am hopeful now that, given some of the conversations we have had, including with lenders and others, we can be on a more positive footing.[377]

RICS welcomed the Government's 10 January update on building safety, saying they have "consistently taken a proportionate approach to valuation guidance which is evidence-based and supported by all market participants."[378] They pointed out that the use of EWS1 forms was decreasing. In response to the Secretary of State's reference to a review of governance, RICS pointed to the ongoing Bichard review.[379]

The Bill

This clause would enable the Government to commission periodic reviews of RICS to give the government information about the governance and performance of RICS. The Explanatory Notes explain that this is so that the Government can "satisfy itself that RICS performs in the public interest".[380]

Clause 186 would give the Secretary of State power to appoint an independent person to carry out a review of:

- the governance of RICS,
- the effectiveness of the Institution in meeting its objectives and
- "any other matter specified in the appointment" that the Secretary of State considers is connected with the above two points.

On completion of the review the appointed person must make a written report to be published by the Secretary of State setting out the result of the review and any recommendations.

376 HC Deb 10 January 2022.
377 HC Deb 10 January 2022, c292.
378 RICS, RICS statement on building safety announcement - 10th January 2022, 11 January 2022.
379 RICS, RICS statement on building safety announcement - 10th January 2022, 11 January 2022.
380 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), paragraph 1034.

11.4 Vagrancy Act

Clause 187 of the Bill creates a 'placeholder' for the Government to bring forward a substantive clause with alternatives to the Vagrancy Act 1824 at a later stage in the Bill's passage. This would disregard the repeal of the Vagrancy Act, as provided for in section 81 of the Police, Crime, Sentencing and Courts Act 2022 (the PCSC Act).[381] Section 81 received Royal Assent on 28 April 2022 but has not yet been commenced.

Background: The Vagrancy Act 1824

Under section 3 and 4 of the Vagrancy Act, begging and rough sleeping (subject to certain conditions) are criminal offences. The number of prosecutions and convictions under the Vagrancy Act has declined over recent years. However, homelessness organisations assert that the Act is more commonly used informally to move individuals on or challenge behaviour without formal caution or arrest.[382] Further detail on the Vagrancy Act and its use in relation to begging and rough sleeping is set out in the Library briefing paper Rough Sleepers: Enforcement Powers (England).

Use of the Vagrancy Act to deal with rough sleeping and begging is highly contentious and there have been widespread calls to repeal the legislation. The Government's 2018 Rough Sleeping Strategy committed to reviewing homelessness and rough sleeping legislation.[383] The Government confirmed it would consider a range of options, including retention, repeal, replacement or amendment of the Vagrancy Act.[384]

However, in 2022 Home Office minister Baroness Williams said the Government's review had been delayed due to the Covid-19 pandemic.[385] The Government had yet to commit to a specific course of action when, during the passage of the PCSC Bill, Lord Best tabled a new clause that would repeal the Vagrancy Act in full.[386]

The Government opposed the amendment on the basis that it was premature to repeal the Vagrancy Act before the Government's review had been completed and a suitable replacement had been developed.[387] However, the Government was defeated, and the amendment passed.[388] It now appears as section 81 of the PCSC Act.

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381 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), para 1039

382 Crisis, Scrap the Act: The case for repealing the Vagrancy Act (1824), 19 June 2019, Executive Summary

383 Ministry of Housing, Communities and Local Government, The rough sleeping strategy, 13 August 2018, p.10

384 PQ 20469, Sleeping Rough, 2 March 2020

385 Baroness Williams at HL Deb, Police, Crime, Sentencing and Courts Bill, 17 January 2022, c1481

386 Lord Best at HL Deb, Police, Crime, Sentencing and Courts Bill, 17 January 2022, c1478

387 Baroness Williams at HL Deb, Police, Crime, Sentencing and Courts Bill, 17 January 2022, c1482

388 HL Deb, Police, Crime, Sentencing and Courts Bill, 17 January 2022, 1483-1484

Replacing begging and rough sleeping offences

The Government remains concerned that sections 3 and 4 of the Vagrancy Act are relied on by the police to respond to what it says are "harmful instances of begging" and that these would not be covered under other legislation if the Vagrancy Act were to be repealed.[389] It therefore intends to delay its repeal until it can legislate to replace sections 3 and 4.

The Bill

Clause 187 of the Bill would disregard the repeal of the Vagrancy Act by the PCSC Act.

The Home Office ran a public consultation from 7 April 2022 to 5 May 2022 on the replacement of offences previously held in the Vagrancy Act. The Government is still analysing the responses.[390] In the meantime, Clause 187 acts a 'placeholder' to allow for a substantive clause to be brought forward later in the Bill's passage.[391] Clause 187 would:

- allow the Secretary of State to make provisions for offences similar to sections 3 (begging) and 4 (rough sleeping) of the Vagrancy Act.
- enable regulations under subsection (1) to include creating criminal offences or civil penalties.

Reaction: controversies around criminalising rough sleeping and begging

Voluntary sector organisations have long raised concerns that the use of enforcement measures against rough sleepers criminalises homelessness,[392] puts people into even more debt and "fast-tracks" them into the criminal justice system.[393]

Crisis, a homelessness charity, commissioned a survey of over 3,000 people that suggests public opinion also does not support criminal justice responses to rough sleeping and begging. 71% thought that arresting people for rough sleeping was a waste of police time and 52% said it should not be a criminal offence.[394]

Many charities have therefore been critical of the Government seeking to replace the Vagrancy Act with alternative legislation that will continue to

389 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), para 1038
390 Ministry of Housing, Communities and Local Government, Home Office and ministry of Justice, Review of the Vagrancy Act: consultation on effective replacement, 7 April 2022
391 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), para 1039
392 The Guardian, Charities warn councils against criminalising rough sleepers, 22 May 2015
393 Liberty, If the Government is serious about ending homelessness, it needs to scrap Public Space Protection Orders, 23 August 2018.
394 Crisis, Over 70% of the public think arresting people sleeping rough is a waste of police time, 23 January 2020.

provide criminal offences for rough sleeping and begging. They argue that it is a counterproductive approach that leaves vulnerable people in an even more marginalised position and fails to address the root causes for rough sleeping and begging.[395]

[395] For example: Crisis, Replacing the Vagrancy Act will not make our streets safer, 11 May 2022; and Centrepoint, There's no need to replace the Vagrancy Act. Just scrap it, 28 April 2022.

12 Part 11 – general provisions

Part 11 of the Bill contains a range of clauses related to interpretation, regulations and commencement.

Clause 188 would provide that no requirement within the Bill to disclose information would constitute a requirement to contravene the Data Protection Act 2018.

Clause 189 would provide that the provisions of the Bill bind the Crown, with the exception of the requirements to provide information about interests in land (clauses 178-183, discussed in section 11 above). Those provisions would not apply in respect of the monarch's private estates.

Clause 190 provides details of abbreviations of certain Acts used in the Bill.

Clause 191 would permit the making of regulations consequential on the provisions in the Bill to amend or repeal provisions in primary legislation. On the face of it this is a 'Henry VIII clause' – permitting regulations to repeal legislation – but any such regulations could not be used to impede the effect of this Bill (if/when it became an Act).

Clause 192 sets out the procedures that would apply for the making of regulations under the Bill if it becomes law. The affirmative procedure would be used for regulations concerning county combined authorities (with a small number of exceptions); specifying the support needed for changes to street names; environmental outcomes reports; modifying primary legislation with regard to letting; and regarding information about interests in land. The negative procedure would apply regarding, amongst other matters, planning data, enforcement of planning controls, historic environment records and general consequential provisions.

Clause 193 would provide for spending on the matters covered by the Bill.

Clause 194 provides the territorial extent of the Bill. Part 1 (levelling up missions), part 3 chapter 1 (planning data), part 5 (environmental outcomes reports) and section 186 (review of RICS) would extend to the UK. Part 2 (combined authorities and local government), the rest of part 3 (planning), part 4 (infrastructure levy), part 7 (compulsory purchase), part 8 (high streets), part 9 (information about land), and sections 184, 185 and 187 extend to England and Wales.

Clause 195 provides the commencement dates for different parts of the Bill if it becomes an Act, and **clause 196** provides the short title.

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