

Research Briefing

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Planning reforms in England: Levelling Up and Regeneration Act 2023 and further changes



Summary

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Summary

The government is changing planning law with the [Levelling Up and Regeneration Act 2023](#). Separate to the Act, the government has proposed further [changes to planning regulations, national policies and guidance](#).

Levelling Up and Regeneration Act 2023

National Development Management Policies (NDMPs)

The Levelling Up and Regeneration Act 2023 introduces a new category of planning policies: national development management policies (NDMPs) to be drawn up by the Secretary of State for Levelling Up, Housing and Communities (DLUHC). The Secretary of State [must consult the public on proposed NDMPs](#).

[NDMPs will carry the same weight as local plans](#) in decision-making on planning applications. In case of a conflict between the two, NDMPs will override local plans.

The government said NDMPs will make local plans [faster to produce and easier to navigate](#) because nationally important issues will be protected by NDMPs and local plans will be able to focus on locally important issues. It also said NDMPs will provide safeguards where local plans are out-of-date.

Views on NDMPs

The Home Builders Federation said NDMPs could [standardise policies that were already contained in most local plans](#). It said that, currently, a lack of consistency made local plans difficult to navigate for developers.

The Local Government Association (LGA) and Royal Town Planning Institute (RTPI) said they supported NDMPs ‘in principle’, but expressed concern that, in case of a conflict between the two, NDMPs could override local plans. The LGA argued that [this undermined “the idea of a local, plan-led system”](#).

Further changes to planning law in the 2023 Act

The [Levelling Up and Regeneration Act 2023](#) also makes other changes to planning law which affect the plan-making process and decision-making on planning applications. They include:

- Abolishing the ‘duty to cooperate’, which requires LPAs to cooperate with each other in preparing their local plans. The government said that it will introduce a new ‘flexible alignment policy’ instead.

- Replacing supplementary planning documents (SPDs) used to expand on policies in local plans) with ‘supplementary plans’. Their scope would be limited to setting either site-specific policies or area-wide design codes.
- Introducing a statutory requirement for LPAs to prepare design codes, in which they set out design requirements for developments in their area.

Proposed reforms in addition to the 2023 Act

In addition to making changes to planning law through the Levelling Up and Regeneration Act 2023, the government has [proposed changes to planning regulations](#) to reform the plan-making process. It said it intends to update these regulations [by autumn 2024](#).

Proposed reforms to the plan-making process

Currently, there is no set timetable that LPAs need to follow when preparing their local plans. LPAs must review (but not necessarily update) their local plans every five years. The government said that [local plans take too long to produce](#) and estimated that only a third of LPAs in England have adopted a local plan in the last five years.

The government has proposed changing regulations to require LPAs to [produce local plans within 30 months and update them every five years](#). It proposed that, in these 30 months, local plans would undergo:

- two rounds of consultations to allow the local community and certain public bodies to participate in the plan-making process.
- three ‘gateway’ checks (of four to six weeks each) where technical specialists or planning inspectors would help LPAs resolve issues.

The government also proposed that the examination of the local plan by the Planning Inspectorate should take place during the 30-month timeframe. It said the [examination should last “no more than six months”](#).

Views on the proposed reforms

In general, organisations such as the LGA and the Planning Officers Society, expressed support for proposals to speed up the local plan-making process. In particular, they welcomed the proposed ‘gateway’ checks.

They questioned [whether it would be feasible for LPAs to produce local plans in 30 months](#), however, highlighting the resourcing constraints faced by LPAs. The LGA also expressed concern that LPAs might [not be able to “meaningfully consult the public”](#) within the proposed timeframe.

1

Background to planning reforms

Since 2019, the government has put forward different proposals to reform the planning system in England and national planning policy.¹ It has said reforms to the planning system are central to delivering a sufficient supply of homes and ensuring that “the right homes will be built in the right places”.²

In May 2022, the government published the [Levelling Up and Regeneration Bill](#). The Bill followed the [Planning for the Future White Paper](#), published in August 2020, in which the government proposed “radical reform” to the planning system. The Bill incorporates some of the proposals in the White Paper. It received Royal Assent in October 2023 (and is now an Act).³

The changes made by the Levelling Up and Regeneration Act 2023 are part of a wider reform programme to the planning system. In its [policy paper accompanying the Levelling Up and Regeneration Bill](#) (May 2022), the government said it will also make changes to regulations, national policies and guidance to speed up the plan-making process.⁴

This briefing provides further information on some of the Act’s planning provisions and wider reforms the government has proposed to the plan-making system. It focuses on proposed changes to national planning policies and local plans that guide decision-making on planning applications.

Planning is a devolved matter. This briefing focuses on England only as the government’s proposed changes will only apply in England.

1.1

Government target: 300,000 homes per year

In its [2019 election manifesto](#), the Conservative Party committed to building 300,000 new homes per year by the mid-2020s and “at least a million more homes, of all tenures, over the next Parliament” (in other words, by January 2025 at the latest).⁵ The government has restated its commitment that target on a number of occasions since, for example, in a press release on 24 July

¹ Levelling Up, Housing and Communities (LUHC) Committee, [Reforms to national planning policy](#) HC 1122, Seventh report of session 2022-23, July 2023, para 9

² Department for Levelling Up, Housing and Communities (DLUHC), [Levelling Up and Regeneration: Further information](#), May 2022

³ DLUHC and Ministry of Housing, Communities and Local Government (MHCLG), [Planning for the future](#), last updated January 2023; [Levelling-up and Regeneration Act 2023](#)

⁴ DLUHC, [Levelling Up and Regeneration: Further information](#), May 2022

⁵ Conservative Party, [The Conservative and Unionist Party Manifesto](#) (PDF), 2019

2023.⁶ The government has said that the planning system is one of the main reasons why not enough homes are built in England.⁷

Why are new homes needed?

The government has highlighted that [more homes are needed to meet rising demand for housing](#), which is in part the result of population growth. It also pointed to “a significant backlog [of people in need of homes] following years of not building enough homes”.

The government said a failure to build enough homes had led to people living in “sub-standard or unsuitable homes”, such as homes that do not “provide a reasonable degree of thermal comfort” or that “are not in a reasonable state of repair”. It also noted that a failure to build enough homes had contributed to the rising cost of purchasing a home.⁸ Further, the Levelling Up, Housing and Communities (LUHC) found that it had led to a lack of affordable housing in the private rented sector.⁹

1.2

Planning for the Future (August 2020)

In August 2020, the government published the [‘Planning for the Future’ White Paper](#). The government proposed “radical reform” to the planning system to make it “simpler, clearer, quicker to navigate”. It stated that the complexity of the current system had resulted in “discretionary rather than rules-based” decision-making on planning application and local plans that also took “too long to produce”. To reform the planning system, the government proposed:

- Streamlining the planning process by placing land in three categories: growth areas “suitable for substantial development”; renewable areas “suitable for some development”; and protected areas.
- Introducing “general development management policies nationally” and giving local plans “a more focused role” to reduce duplication.
- Establishing a nationally-determined, binding housing target that local planning authorities (LPAs) would have to deliver. The target would consider land constraints, for example, green belt land.
- Requiring local plans to be developed over a 30-month period. Local plans would be based on standardised digital templates and used interactive maps that show what can be built where.

⁶ DLUHC, [PM to build 1 million new homes over this Parliament](#), July 2023

⁷ DLUHC and MHCLG, [Planning for the future](#), last updated January 2023

⁸ Homes England, [Fact Sheet 1. The need for homes](#), November 2023

⁹ LUHC Committee, [Reforming the Private Rented Sector](#) (PDF) HC 624, Fifth Report of Session 2022–23, February 2023, para 112

- Replacing the tests of soundness when a draft local plan is examined, updating requirements for assessments (including on the environment and viability) and abolishing the duty to cooperate. Instead, local plans would have be subject to a single “sustainable development” test.¹⁰

The government [consulted on changes proposed in the White Paper](#) between August and October 2020. It did not respond to the consultation; instead, it pointed to the Levelling Up and Regeneration Bill and accompanying reforms. It said these were informed by responses to the consultation.¹¹

Notably, the government did not take forward proposed reforms to establish a nationally-determined, binding housing target or proposed reforms to place land in three categories. It retained its commitment to building 300,000 new homes per year, although provisions giving that target statutory weight were not in the Bill (now Act).

1.3

Levelling Up and Regeneration Act 2023

In May 2022, the government published the Levelling Up and Regeneration Bill. The Bill received Royal Assent on 26 October 2023; it contains provisions that allow the government to reform the planning system. The Act:

- establishes a new category of national planning policies: national development management policies (NDMPs). NDMPs will sit alongside local plans in decision-making on planning applications.
- creates a statutory requirement for LPAs to produce a single local plan and update it every five years. Separate to the Act, the government said it would introduce reforms to require LPAs to produce local plans within a 30-month timeframe.
- abolishes the ‘duty to cooperate’, which requires LPAs to cooperate with each other and with certain other bodies in preparing their local plan. A new ‘flexible alignment policy’ will replace the duty to cooperate.
- introduces a statutory requirement for LPAs to prepare design codes, setting design requirements for developments in their local area.¹²

At the time of writing (5 December 2023), these provisions have not yet taken effect. They require regulations to be brought into force, and the government has not set out a timetable for when it will bring forward these regulations.¹³

¹⁰ MHCLG, [Launch of Planning for the future consultation to reform the planning system](#), August 2020; DLUHC and MHCLG, [Planning for the future](#), last updated January 2023

¹¹ DLUHC, [Levelling Up and Regeneration: Further information](#), May 2022

¹² [Levelling-up and Regeneration Act 2023](#); DLUHC, [Levelling Up and Regeneration: Further information](#), May 2022

¹³ [Section 255 of the Levelling Up and Regeneration Act 2023](#)

2

A new category of planning policies: National Development Management Policies (NDMPs)

2.1

How planning applications are decided

Under [section 38 of the Planning and Compulsory Purchase Act 2004](#), most planning applications for development are decided by LPAs in line with their local development plan unless ‘material considerations’ indicate otherwise.¹⁴

There is no defined list of material considerations set out in planning law or elsewhere. Whether a particular consideration is material to a planning application will depend on the circumstances of a case. It is for the LPA to decide in the first instance, the Planning Inspectorate on appeal, or the courts in case of a dispute. In general, the courts have ruled that, because planning is concerned with land use in the public interest, purely private interests (such as neighbouring property values) cannot be material considerations.¹⁵

One important material consideration is the government’s [National Planning Policy Framework](#) (NPPF) which sets out the government’s national planning policies.¹⁶ However, planning law does not put the NPPF on statutory footing. This means that, although the NPPF is a material consideration, it does not have the same statutory status as local plans in decision-making.¹⁷

1 What are local plans?

A local plan sets out an LPA’s vision and framework for the development and land use in their area. It identifies what development is needed, where it should go and what land is protected.

A local plan must be prepared in line with the government’s [National Planning Policy Framework](#) (NPPF). Further information about the plan-making process and proposed reforms to the process is set out in section 3 of this briefing.

¹⁴ [Section 38 of the Planning and Compulsory Purchase Act 2004; Section 70 of the Town and Country Planning Act 1990](#)

¹⁵ DLUHC and MHCLG, [Determining a planning application](#), last updated June 2021, para 8

¹⁶ DLUHC, [National Planning Policy Framework](#), last updated September 2023

¹⁷ DLUHC, [Levelling-up and Regeneration Bill: Reforms to national planning policy](#), December 2022, chapter 10, para 4

2.2

National Development Management Policies

The [Levelling Up and Regeneration Act 2023](#) establishes a new category of national planning policies: national development management policies (NDMPs). NDMPs will be drawn up by the Secretary of State for Levelling Up, Housing and Communities (DLUHC) and sit alongside local plans in decision-making on planning applications.

At the time of writing (5 December 2023), the provisions in the Levelling Up and Regeneration Act 2023 that establish NDMPs have not yet taken effect; they require regulations to be brought into force.¹⁸

Role of NDMPs in decision-making

[Section 93 of the 2023 Act](#) contains provisions to amend [section 38 of the Planning and Compulsory Purchase Act 2004](#) to give NDMPs the same weight as local plans in decision-making on planning applications. Therefore, unlike the NPPF, NDMPs will have a statutory footing in planning law.

[Section 93 of the 2023 Act](#) also contains provisions to provide that, in future, material considerations will have to “strongly” indicate otherwise to override the local plan or NDMPs. These provisions have also not yet taken effect.¹⁹

Once NDMPs have been designated, LPAs will decide planning applications in line with their local plan and NDMPs, unless material considerations strongly indicate otherwise. In case of a conflict between a local plan and an NDMP, the NDMP would take precedence over the local plan.²⁰ Local plans will also not be able to repeat NDMPs or be inconsistent with them.²¹

Benefits of NDMPs

The government has said NDMPs will have two main benefits:

- NDMPs will make local plans faster to produce and easier to navigate, because LPAs could focus on locally important issues while policies on nationally important issues will be set out by the government.
- NDMPs would provide safeguards where local plans are out-of-date, because, unlike the NPPF, the NDMP will “have clear statutory status equivalent to an up-to-date local plan”.²²

¹⁸ [Section 93 of the Levelling Up and Regeneration Act 2023](#); [Section 255 of the Levelling Up and Regeneration Act 2023](#)

¹⁹ DLUHC, [Levelling-up and Regeneration Bill: Reforms to national planning policy](#), December 2022, chapter 10, para 4

²⁰ [Section 93 of the Levelling Up and Regeneration Act 2023](#)

²¹ [Schedule 7\(15C\) of the Levelling-up and Regeneration Act 2023](#)

²² DLUHC, [Levelling-up and Regeneration Bill: Reforms to national planning policy](#), December 2022, chapter 10, para 11

Scope of NDMPs

Anything that concerns the development or use of land in England could be an NDMP; the [Levelling Up and Regeneration Act 2023](#) does not place any restrictions on the scope and content of NDMPs. The Secretary of State for DLUHC will be responsible for designating, modifying and revoking NDMPs.

The government said that NDMPs will cover “general [planning] policies on issues that apply in most areas” in England, while locally specific policies will continue to be set out in local plans.²³ In a [policy paper accompanying the Levelling Up and Regeneration Bill](#) (May 2022), the government suggested that NDMPs would be derived from the policies currently set out in the NPPF.

It said the NPPF would be refocused on “setting out the principles to be taken into account in [local] plan-making”. For example, the government suggested that policies preventing inappropriate development on green belt land and in areas at high risk of flooding might become NDMPs.²⁴

In its [consultation on reforms to national planning policy](#) (December 2022), the government said that NDMPs might also be used to address “gaps where national policy is silent on common decision-making issues”. For example, it suggested that NDMPs could set a national baseline for carbon measurement and reduction.²⁵

Further, the government said NDMPs will adhere to a number of principles:

- They will only cover matters that have a direct impact on the determination of planning applications.
- They will be limited to nationally important issues that affect decision-making across England, or across significant parts of England.
- They will only address planning issues that concern the development and use of land.²⁶

On 17 October 2023, during a debate on the Bill, the government said it would consult on specific policies that would become NDMPs following the passage of the Levelling Up and Regeneration Bill.²⁷ The Bill received Royal Assent on 26 October 2023. At the time of writing (5 December 2023), a consultation has not yet been published.

²³ [Explanatory Notes to the Levelling Up and Regeneration Bill \(HL Bill 84\) 2022-23](#), para 57

²⁴ DLUHC, [Levelling Up and Regeneration: Further information](#), May 2022

²⁵ DLUHC, [Levelling-up and Regeneration Bill: Reforms to national planning policy](#), December 2022, chapter 10, para 15

²⁶ DLUHC, [Levelling-up and Regeneration Bill: Reforms to national planning policy](#), December 2022, chapter 10, para 13

²⁷ HC Deb [[Levelling-up and Regeneration Bill](#)] 17 October 2023, c185

Requirements for drawing up NDMPs

In preparing NDMPs, the Secretary of State must have regard to the need to mitigate, and adapt to, climate change.²⁸

The Secretary of State must also consult the public and “appropriate” bodies on proposed NDMPs. Exceptions to consultation requirements apply if either of the following conditions apply:

- in “exceptional circumstances”, for example, if the Secretary of State needs to act “urgently”.
- if a change to NDMPs will not have “a material effect” on policies, for example, if it intends correct an obvious error.²⁹

2.3

Views on National Development Management Policies

Concerns that NDMPs will override local plans

Some organisations representing local authorities and planners said they supported NDMPs “in principle” as a tool to speed up local plan-making and standardise planning policies across LPAs.³⁰ For example, the Royal Town Planning Institute (RTPI) said NDMPs could “avoid duplication that currently occurs in local plans, with the possibility to save time”. It also mentioned that NDMPs could ensure “a more consistent approach” to certain issues.³¹

Similarly, the Local Government Association (LGA), a membership body for local councils in England and Wales, said NDMPs could “speed up the production of plan-making and reduce duplication in local plans”. It also suggested that NDMPs could “level the playing field” by setting common standards across England.³²

These organisations expressed concern, however, that in the case of a conflict between the two, NDMPs will override local plans. The LGA argued that this undermined “the idea of a local, plan-led system”.³³ The Town and Country Planning Association (TCPA) said they were “opposed in principle” to NDMPs

²⁸ [Section 94 of the Levelling Up and Regeneration Act 2023](#)

²⁹ HC Deb [[Levelling-up and Regeneration Bill](#)] 17 October 2023, c185; [Section 94 of the Levelling Up and Regeneration Act 2023](#)

³⁰ Royal Town Planning Institute (RTPI), [NPPF consultation response](#), March 2023; Planning Officers Society (POS), [POS response to Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), October 2023

³¹ RTPI, [NPPF consultation response](#), March 2023

³² Local Government Association (LGA), [Levelling-up and Regeneration Bill: Reforms to National Planning Policy Consultation](#), March 2023

³³ LGA, [Levelling-up and Regeneration Bill: Reforms to National Planning Policy Consultation](#), March 2023

for the same reason. It argued that NDMPs would “centralise planning powers and remove long-standing community rights to be heard” on the local plan.³⁴

Other organisations, for example the Home Builders Federation (HBF) which represents the home building industry, expressed full support for NDMPs as a way to standardise policies that it considered were already contained in most local plans but were not consistent. The HBF said the lack of consistency had led to a regulatory environments that developers found difficulty to navigate.

The HBF further stated that that it was “entirely right” for NDMPs to override local plans in case of a conflict between the two to avoid “the patchwork quilt of local policies that makes the case for NDMPs in principle”.³⁵

Parliamentarians and Levelling Up, Housing and Communities Committee

During the passage of the bill, members of the House of Commons and of the Lords also expressed concern that NDMPs would override local plans in case of a conflict between the two.³⁶ Matthew Pennycook, the Shadow Minister for Housing and Planning, argued that NDMPs were “a radical centralisation of planning decision-making and a corresponding erosion of local control”.³⁷

In its [report on reforms to national planning policy](#) (July 2023), the LUHC Committee also expressed concern that the Bill established “in statute that NDMPs will supersede policies in local plans when the two conflict”.³⁸

Calls for NDMPs to undergo parliamentary scrutiny and public consultation

During the passage of the Bill, MPs and Peers expressed concern that NDMPs would not be subject to parliamentary scrutiny or public consultation. The original draft of the Bill required the Secretary of State to consult “the public and other bodies” only as they considered “appropriate”.³⁹ In its [report on reforms to national planning policy](#) (July 2023), the LUHC Committee also recommended that “each draft NDMP should be subject to full and proper parliamentary scrutiny”.⁴⁰

Some stakeholder groups, including the RTPI and the LGA, also called for NDMPs to undergo consultation and scrutiny. The National Housing Federation (NHF) argued that there should “a rigorous democratic process”

³⁴ Town and Country Planning Association (TCPA), [NPPF consultation response](#), March 2023

³⁵ Home Builders Federation (HBF), [HBF's response to Government's NPPF consultation](#), March 2023; LUHC Committee, [Written evidence: Reforms to national planning policy](#) (PDF), RNP 016 [HBF]

³⁶ HC Deb [[Levelling-up and Regeneration Bill](#)] 8 June 2022; HL Deb [[Levelling-up and Regeneration Bill](#)] 17 January 2023

³⁷ PBC Deb [[Levelling-up and Regeneration Bill \(Thirteenth sitting\)](#)] 12 July 2022, c432

³⁸ LUHC Committee, [Reforms to national planning policy](#) HC 1122, Seventh report of session 2022-23, July 2023, para 111

³⁹ Clause 84 of the [Levelling-up and Regeneration Bill 6 2022-23](#) [as introduced]

⁴⁰ LUHC Committee, [Reforms to national planning policy](#) HC 1122, Seventh report of session 2022-23, July 2023, para 116

for NDMPs because they “will have legal weight in decision-making for communities”.⁴¹

The [Lords agreed to an amendment to the Bill](#) which would have required NDMPs to undergo public consultation and parliamentary scrutiny.⁴² The [government proposed an amendment in its place](#) which was added to the Bill and is now part of the Act. This requires public consultation to take place in “all but exceptional circumstances” but does not provide for parliamentary scrutiny.⁴³ In its [response to the LUHC Committee’s report](#) (November 2023), the government said the public consultation will allow “everyone with an interest, including Parliamentarians,” to scrutinise NDMPs and comment on them.⁴⁴

Concerns that local plans will not be able to repeat, or be inconsistent with, NDMPs

Some organisations expressed concerns that local plans will not be able to repeat NDMPs or be inconsistent with them.

For example, the Planning Officers Society (POS) said there should not be “a blanket ban” on local plans repeating NDMPs. The POS argued that “a one-size-fits-all approach” may not work “given differing local challenges and opportunities”. The POS argued that it should be possible for LPAs to take “a different or more refined approach”.⁴⁵ The LGA also argued that LPAs should be able “to tailor such policies [NDMPs] to local circumstances”.⁴⁶

The RTPI expressed concern “if not deployed effectively”, NDMPs could “stifle innovation”. It said, in the case of climate policies, LPAs would be required to “go at the speed of Government” instead of setting innovative local policies.⁴⁷ Wildlife and Countryside Link also said LPAs should be able to “go beyond” NDMPs to include ambitious nature and climate policies in their local plans.⁴⁸

On the other hand, the HBF said NDMPs should set “a sufficiently ambitious bar [for planning policies] that LPAs can make the case to stay below [...] but cannot go above”.⁴⁹

⁴¹ LUHC Committee, [Oral evidence: Reforms to national planning policy](#) (PDF), 13 March 2023, Q50

⁴² [Levelling Up and Regeneration Bill \(Bill 369\) 2022-23 \(Lords Amendments\)](#), LA44; HL Deb [[Levelling-up and Regeneration Bill](#)], 4 September 2023

⁴³ HC Deb [[Levelling-up and Regeneration Bill](#)], 17 October 2023, c196

⁴⁴ DLUHC, [Reforms to national planning policy report: Government response](#), November 2023

⁴⁵ POS, [Response to NPPF/LURB Consultation](#), February 2023; POS, [POS response to Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), October 2023

⁴⁶ LGA, [Levelling-up and Regeneration Bill: Reforms to National Planning Policy Consultation](#), March 2023

⁴⁷ RTPI, [NPPF consultation response](#), March 2023

⁴⁸ LUHC Committee, [Written evidence: Reforms to national planning policy](#) (PDF), RNP 004 [Wildlife and Countryside Link]

⁴⁹ Home Builders Federation (HBF), [HBF's response to Government's NPPF consultation](#), March 2023

3 Proposed reforms to local plan-making

In general, when considering most planning applications for development, LPAs make decisions in line with their local development plan (and, once they are in force, NDMPs) unless ‘material considerations’ indicate otherwise.⁵⁰ A local plan sets out an LPA’s policies for the development and land use in its area. Material considerations are explained in section 2.1 of this briefing.

3.1 Requirement to prepare a local plan

[Section 17 of the Planning and Compulsory Purchase Act 2004](#) requires LPAs to prepare either a single document or a suite of documents that together make up the ‘local plan’.⁵¹ [Schedule 7 of the Levelling Up and Regeneration Act 2023](#) contains provisions to replace sections 15 to 37 of the 2004 Act and instead require LPAs to prepare a single document called the ‘local plan’ rather than a suite of documents.⁵²

Provisions in Schedule 7 of the Levelling Up and Regeneration Act 2023 have not yet taken effect. They will “come into force on such day as the Secretary of State may be regulations appoint”.⁵³

Joint local plans and spatial development strategies

Alternatively, multiple LPAs can (currently and continuing under the 2023 Act) prepare a joint local plan for their areas. The Secretary of State can also direct LPAs to prepare a joint local plan if they believe that a joint local plan will result in more effective planning for at least one of the LPAs. A joint local plan by multiple LPAs must be prepared in the same way as a local plan prepared by a single LPA.⁵⁴

Currently, the Mayor of London (under the [Greater London Authority Act 1999](#)) and combined authorities that have equivalent plan-making functions to London under the [Local Democracy, Economic Development and Construction Act 2009](#), can prepare a spatial development strategy (SDS) for their area. An

⁵⁰ [Section 38 of the Planning and Compulsory Purchase Act 2004](#); [Section 70 of the Town and Country Planning Act 1990](#)

⁵¹ [Section 17 of the Planning and Compulsory Purchase Act 2004](#)

⁵² [Schedule 7 of the Levelling Up and Regeneration Act 2023](#)

⁵³ [Section 255 of the Levelling Up and Regeneration Act 2023](#)

⁵⁴ [Section 28 of the Planning and Compulsory Purchase Act 2004](#); [Schedule 7\(151\) of the Levelling Up and Regeneration Act 2023](#)

SDS can set out policies that deal with matters that are only of strategic importance to the development and land use in the joint area.⁵⁵

The Levelling Up and Regeneration Act 2023 contains provisions which will also allow other LPAs (that are not part of combined authorities, mayoral combined authorities or in Greater London) to prepare a joint SDS. This power would be optional to use at the discretion of LPAs.

Once adopted, a joint SDS will form part of the policies in line with which an LPA makes decisions on planning applications, along with the local plan (and once they are in force, NDMPs).

Proposed reforms to speed up the plan-making process

The changes the government made to local plans with the Levelling Up and Regeneration Act 2023 are part of a wider reform programme. In its [policy paper accompanying the Levelling Up and Regeneration Bill](#) (May 2022), the government said, separate to the Act, it will make changes to regulations, national policies and guidance to speed up the plan-making process.⁵⁶

The government said that it will put “the regulations, policy and guidance” to enable the preparation of local plans under the new plan-making process in place by autumn 2024.⁵⁷

3.2

Current plan-making process

In preparing its local plan, an LPA must follow the [Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#). The 2012 Regulations give LPAs “considerable flexibility” as to how they prepare their local plans,⁵⁸ provided that LPAs:

- consult the local community, local businesses and certain public bodies (such as Natural England and the Environment Agency) under [regulation 18](#). LPAs must take representations they receive in response into account in preparing their local plans.⁵⁹

⁵⁵ [Greater London Authority Act 1999; Local Democracy, Economic Development and Construction Act 2009](#)

⁵⁶ DLUHC, [Levelling Up and Regeneration: Further information](#), May 2022

⁵⁷ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, para 240

⁵⁸ DLUHC and MHCLG, [Plan-making](#), last updated October 2021, para 34

⁵⁹ [Regulation 18 of the Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#). The public bodies that an LPA should consult if it considers that they may have an interest in the local plan and the local bodies and groups it should consult are set out in Regulation 2.

- publish and consult on their draft local plans for at least six weeks under [regulation 19](#) before submitting it for examination.⁶⁰

LPA must prepare a ‘statement of community involvement’, setting out how the local community and local businesses, public bodies and other interested parties can get involved in the preparation of the local plan.⁶¹

LPA must also publish and keep up-to-date a ‘local development scheme’, setting out a timetable for local plan preparation.⁶² The [Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#) do not currently set a mandatory timetable for plan-making process, however, except for setting out a minimum consultation period of six weeks.

Examination by the Planning Inspectorate

Every local plan must be examined by the Planning Inspectorate (an executive agency of DLUHC) before it can be adopted by the LPA. A planning inspector will assess whether the local plan has been prepared in line with the relevant legal and procedural requirements and whether it is ‘sound’, that is, whether it is “positively prepared, justified, effective and in line with national policy”.⁶³

For the examination, an LPA must provide information on who it consulted as part of the preparation of the local plan and how it addressed the issues that were raised. Anyone who made representation on the draft local plan must be given the opportunity of attending a hearing held by the planning inspector, if they request it. The “matters, issues and questions” discussed at the hearing are determined by the planning inspector based on the representations that have been made on the local plan and the information provided by the LPA.⁶⁴

A planning inspector may recommend ‘main modifications’ to the local plan (changes that materially affect policies) and will require an LPA to consult on the main modifications they propose. Where the changes are so extensive as to require a re-writing of the local plan, a planning inspector can recommend that the LPA should withdraw its local plan.⁶⁵

Government guidance provides further information on [plan-making process](#) (last updated October 2021). A [procedural guide to local plan examinations](#) (last updated February 2023) by the Planning Inspectorate provides further information on the examination process.

⁶⁰ [Regulation 19 of the Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#). The

⁶¹ [Section 18 of the Planning and Compulsory Purchase Act 2004](#); DLUHC and MHCLG, [Plan-making](#), last updated October 2021, para 35

⁶² [Section 111 of the Localism Act 2011](#), which amended [Section 15 of the Planning and Compulsory Purchase Act 2004](#)

⁶³ DLUHC, [National Planning Policy Framework](#), last updated September 2023, para 35

⁶⁴ DLUHC and MHCLG, [Plan-making](#), last updated October 2021, para 56

⁶⁵ DLUHC and MHCLG, [Plan-making](#), last updated October 2021, para 57

Requirement to review local plans every five years

Under [regulation 10A of the Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#), LPAs must review their local plans at least once every five years from their adoption date to assess whether it needs to be updated.⁶⁶ It is up to an LPA to determine whether its local plan or policies in the local plan need to be updated to ensure that they “remain relevant and effectively address the needs of the local community”.⁶⁷

Government guidance on [plan-making](#) states that “most plans are likely to require updating in whole or in part at least every 5 years”, although it notes that “a plan does not become out-of-date automatically after 5 years”.⁶⁸

3.3

A new plan-making process within 30 months

The government has expressed concern that local plans can “often take a long time to prepare, at least seven years on average” and that many local plans are out-of-date. It estimated that only around 35% of LPAs in England have adopted a local plan in the last five years.⁶⁹

2 What if a local plan is out of date?

Where there is no local plan in place or relevant policies in the local plan are “out-of-date”, the ‘presumption in favour of sustainable development’ will apply.⁷⁰ The ‘presumption in favour of sustainable development’ means LPAs are expected to grant planning permission to new development unless:

- The site is protected under the NPPF, for example, it is green belt land or it is in an Area of Outstanding Natural Beauty (AONB) or a National Park.
- The “adverse impacts” of allowing the proposed development “would significantly and demonstrably outweigh the benefits”.⁷¹

The Levelling Up and Regeneration Act 2023 gives the government the power to set a mandatory timetable for local plan preparation.⁷² The government

⁶⁶ [Regulation 10A of the Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#)

⁶⁷ DLUHC and MHCLG, [Plan-making](#), last updated October 2021, para 62

⁶⁸ DLUHC and MHCLG, [Plan-making](#), last updated October 2021, paras 62-64

⁶⁹ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, para 38

⁷⁰ The presumption in favour of sustainable development also applies where the housing delivery test shows that an LPA has delivered less than 75% of its assessed local housing need.

⁷¹ DLUHC, [National Planning Policy Framework](#), last updated September 2023, para 11

⁷² DLUHC, [Levelling Up and Regeneration: Further information](#), May 2022; DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, paras 40-65

has said, alongside the 2023 Act, it will update regulations to require LPAs to produce local plans within 30 months and update them every five years.⁷³

In addition to adhering to the 30-month timeframe, LPAs will also be required to prepare and maintain their own timetable for their plan-making process.⁷⁴ The government has proposed requiring LPAs to update their timetable at least once every six months or when it reaches key points in the plan-making process.⁷⁵ The requirement to prepare a timetable would replace the current requirements for LPAs to prepare a ‘local development scheme’, in which LPAs must currently set out a timetable for their plan-making process.⁷⁶

Proposed stages to form part of the 30-month process

The government [consulted on its proposed plan-making reforms](#) from July to October 2023, proposing that the plan-making process should consist of the following stages:

1. At the ‘scoping and participation’ stage, an LPA should define the scope of its local plan and set out how it will engage the local community and stakeholders. This stage is not part of the 30-month timeframe, and the government has not proposed a time limit on this stage.
2. The first stage within the 30-month plan-making process is the ‘plan visioning and strategy development’ stage. At this stage, an LPA should establish the “visions, aims and objectives” the local plan will address and what supporting evidence is needed.
 - The first mandatory eight-week consultation window takes place during this stage. It will allow stakeholders to comment on which issues an area is facing and how they should be tackled.
3. As part of the ‘evidence gathering and drafting the plan’ stage, an LPA should then gather the underpinning evidence and, on the basis of that evidence, prepare a draft local plan.
 - The second mandatory six-week consultation window takes place at the end of this stage. It will allow the local community, statutory bodies and other stakeholders to comment on the draft local plan.
4. The LPA should then resolve the issues the local community, statutory bodies and other stakeholders raised during the consultation. This is the last stage prior to submitting the local plan for examination.
5. The LPA will then submit the local plan to the Planning Inspectorate for examination. The government said that an examination “should take no

⁷³ DLUHC, [Levelling Up and Regeneration: Further information](#), May 2022

⁷⁴ [Schedule 7\(15B\) of the Levelling Up and Regeneration Act 2023](#)

⁷⁵ [Schedule 7\(15B\) of the Levelling-up and Regeneration Act 2023; Levelling-up and Regeneration Bill: consultation on implementation of plan-making reforms](#), July 2023, para 82

⁷⁶ [Section 15 of the Planning and Compulsory Purchase Act 2004](#)

more than 6 months”.⁷⁷ This examination period is part of the 30-month plan-making process. Further information is set out below.

Further engagement before the start of the 30 months

The Levelling Up and Regeneration Act 2023 removes the requirement for LPAs to prepare a statement of community involvement. The government said “many” statements “are out-of-date and most go no further than reiterating basic legal requirements”. It argued, because LPAs must comply with them when preparing their local plans, LPAs may be hesitant to set out “creative solutions for engaging with communities” in these statements.⁷⁸

The government proposed instead requiring LPAs to “notify” stakeholders and “invite” them to “participate in the early stages of plan-making” to shape the direction of the local plan. It said that the requirement to notify stakeholders and invite them to participate would “broadly mirror” the current requirement in [regulation 18 of the Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#). The government also said public engagement in the early stages of plan-making would take place before the 30-month timeframe and be in addition to the two mandatory consultation windows (see above).⁷⁹

Three gateways during the 30-month process

The Levelling Up and Regeneration Act 2023 gives the government the power to introduce mandatory ‘gateway’ checks during local plan preparation. The government proposed introducing three gateway points during the 30-month timeframe. It said each gateway should last no longer than four weeks (or six weeks in “exceptional circumstances”):

- The first and second gateway would take place at the start of and part-way through the plan-making process respectively. For these gateways, LPAs will be required to prepare a report identifying up to five issues that pose a risk to the soundness and/or legal and procedural compliance of their local plan.
 - A planning inspector and/or technical specialist would advise the LPA on how to address these issues. The LPA would be required to “have regard” to their advice, however, the inspector or specialist would have no power to stop or delay the local plan.
- The third gateway would be at the end of the plan-making process. The gateway is intended to ensure that a local plan meets key requirements and is “ready to proceed to examination”.

⁷⁷ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, paras 43-65

⁷⁸ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, para 137

⁷⁹ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, paras 143-147

- Only a planning inspector would be able to advise LPAs at the third gateway. The third gateway would be “binding”, such that LPAs would be able to submit their local plan for examination only if the inspector determines that key requirements are met.⁸⁰

The government said the three gateway checks will ensure “any issues with the plan are picked up earlier in the plan-making process and resolved prior to the examination”. It said the three gateway checks will reduce the risk of local plans being found unsound at examination.⁸¹

Speeding up the examination process

The government also proposed speeding up the examination process. It said the examination of the local plan by the Planning Inspectorate will also form part of the 30-month timeframe and should last no longer than 6 months. To speed up the examination process, the government proposed:

- shortening the notification period for hearings from six to three weeks.
- giving interested parties the option to submit a written statement to an inspector rather than attending the hearing.
- requiring an LPA to consult only on “the most significant amendments” (for example, where a new site is added to the local plan) if an inspector recommends ‘main modifications’ to the local plan.
- setting a time limit of three weeks “by default” on the consultation period and allowing for a longer time period “by exception only”.⁸²

The Levelling Up and Regeneration Act 2023 will also give planning inspectors the power to pause the examination process. The government said a pause will allow an LPA to address issues a planning inspector has identified without having to withdraw its local plan. The government said a pause should last no longer than six months.⁸³

The Levelling Up and Regeneration Act 2023 also contains provisions that will prevent an LPA from withdrawing its local plan once the LPA has submitted it for examination unless withdrawal is recommended by a planning inspector or directed by the Secretary of State. Under [section 22 of the Planning and Compulsory Purchase Act 2004](#), an LPA can currently withdraw its local plan at any point.⁸⁴

⁸⁰ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, paras 104-113

⁸¹ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, para 63

⁸² DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, para 119

⁸³ [Schedule 7\(15DA\) of the Levelling-up and Regeneration Act 2023](#)

⁸⁴ [Section 22 of the Planning and Compulsory Purchase Act 2004](#); [Schedule 7\(15E\) of the Levelling-up and Regeneration Act 2023](#)

Monitoring after the end of the 30-month process

The government has proposed that replacing the current requirement for LPAs to review their local plans at least once every five years from their adoption date with a new requirement for LPAs to update their local plans every five years.⁸⁵

In addition, the government proposed requiring LPAs to complete “a light touch annual return”. Every year, LPAs would be required to report on their progress against certain metrics set out by the government and against policies in their local plan. The government proposed requiring LPAs to report on the following:

- Housing, including the number of additional dwellings, affordable units, and homes on brownfield land.
- Employment, including the change in employment floorspace.
- Environment and open space, including the change in designated open space, the progress toward net zero emissions from buildings, and the delivery of 10% biodiversity net gain (which will be a requirement for new development from January 2024).

Further, after four years of adopting their local plans, LPAs would be required to complete “a detailed return” to inform updates to the local plan.⁸⁶

3.4 Transitional arrangements

The government said LPAs must submit their local plans for examination by 31 June 2025 (and adopt them by 31 December 2026) if they want their local plans to be adopted under the old plan-making system. If LPAs are not able to meet these deadlines (or if their local plans fail at examination), then LPAs must prepare their local plans under the new plan-making system.⁸⁷

The government has proposed that local plans which were prepared under the old plan-making system will continue to be considered ‘up-to-date’ for the first 30 months of the new plan-making system. It said this will ensure that LPAs are “protected from the risk of speculative development”, even if their local plans are more than five years old to allow LPAs to prepare local plans under the new plan-making system.⁸⁸

⁸⁵ DLUHC, [Levelling Up and Regeneration: Further information](#), May 2022

⁸⁶ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, para

⁸⁷ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, paras 168-169

⁸⁸ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, paras 249-250

3.5

Views on proposed reforms to local plan-making

Views on the 30-month plan-making process

Organisations representing planners and local authorities expressed support for the government’s ambition to speed up local plan-making. However, they questioned whether LPAs would be able to meet the 30-month timeframe.

For example, the LGA said it supported the government’s proposals to speed up the plan-making process but considered the 30-month timeframe to be “aspirational”.⁸⁹ The Planning Officers Society (POS) also said the 30-month plan-making process was “a highly laudable aim” but questioned whether it could be achieved.⁹⁰

The POS said that the three gateway checks and two statutory consultation periods within the 30-month timeframe would “eat up much of the time” and argued that LPAs would not “have much capacity for anything else”.⁹¹

These organisations noted that resourcing constraints faced by LPAs could impact their ability to adhere to the 30-month timeframe. For example, the RTPI argued that shortened timeframe would “inevitably” place pressure on “under-staffed and under-resourced” LPAs.⁹² The Town and Country Planning Association (TCPA) also expressed concern that proposed plan-making process would place an “additional burden” on LPAs and “exacerbate rather than alleviate” their resourcing problems.⁹³

Concern about implications for public consultation and engagement

Some organisations also expressed concern that the 30-month timeframe might limited opportunities for public consultation and engagement. For example, the LGA said the 30-month timeframe could affect the ability of LPAs to “meaningfully consult the public” and “to undertake genuinely constructive public engagement”. The LGA called for “no dilution in plan-quality and democratic and community engagement”.⁹⁴

The TCPA expressed particular concern about the government’s proposals to shorten the notification period for hearings at examination from six to three

⁸⁹ LGA, [Consultation on implementation of plan-making reforms](#), October 2023

⁹⁰ POS, [POS response to Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), October 2023

⁹¹ POS, [POS response to Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), October 2023

⁹² RTPI, [Response to ‘Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms’](#), October 2023

⁹³ TCPA, [Response to government proposals to reform plan making in England](#), September 2023

⁹⁴ LGA, [Consultation on implementation of plan-making reforms](#), October 2023

weeks. It argued that three weeks were “an unacceptably short period” for town or parish councils and community groups that usually meet monthly.⁹⁵

Support for gateways assessments

On the other hand, organisations such as the LGA and the RTPI expressed support for the gateway assessments as a way to ensure local plans are compliant with legal and procedural requirements and to address issues which posed a risk to the soundness of a local plan.

However, they argued that the same planning inspector should undertake all three gateway assessments and the examination of the local plan “to ensure consistency of advice and approach”.⁹⁶ The POS highlighted that, if the advice given at the gateway checks and at examination were to differ, it could result in “significant problems”.⁹⁷

The RTPI also expressed concern that resourcing constraints could impact the Planning Inspectorate’s ability to support the gateway assessments process as the Planning Inspectorate was currently “stretched to capacity”.⁹⁸

Concerns about the impact on local plan-making

Some organisations have expressed concern that the government’s proposed planning reforms (including proposals to give LPAs greater flexibility to meet their assessed local housing need) have slowed down local plan-making.

For example, the planning consultancy Lichfields and the RTPI argued that uncertainty about whether and when the proposed reforms would take effect have resulted in “an impasse in plan-making”.⁹⁹ The real estate services company Savills also noted that “the prospect of planning reform” had led some LPAs to delay the preparation of their local plans.¹⁰⁰

Lichfields estimated that, as of January 2023, 38 LPAs had delayed, paused or withdrawn their local plans. In April 2023, Lichfields estimated that a further ten LPAs had paused work on their emerging local plans.¹⁰¹ As of September 2023, the Home Builders Federation (HBF) estimated that 60 LPAs had paused or withdrawn their local plans.¹⁰²

⁹⁵ TCPA, [Response to government proposals to reform plan making in England](#), September 2023

⁹⁶ LGA, [Consultation on implementation of plan-making reforms](#), October 2023

⁹⁷ POS, [POS response to Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), October 2023

⁹⁸ RTPI, [Response to ‘Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms’](#), October 2023

⁹⁹ Lichfields, [Failing to Plan or Planning to Fail? The State of Local Plan-Making](#), April 2023; [RTPI | March 2023 NPPF consultation response](#)

¹⁰⁰ LUHC Committee, [Written evidence: Reforms to national planning policy](#) (PDF), RNP 001 [Savills]

¹⁰¹ Lichfields, [Start me up – but then you stopped: the continuing cost of local plan delays](#), January 2023; Lichfields, [Failing to Plan or Planning to Fail? The State of Local Plan-Making](#), April 2023

¹⁰² HBF, [Number of new homes gaining planning permission continues to plunge](#), September 2023

It is not possible to determine whether these LPAs have delayed their local plans because of a lack of certainty about the proposed reforms to the plan-making process, because of the possibility of greater flexibility to meet their assessed local housing need, or for other, unrelated, reasons.

However, Lichfields argued that “the overwhelming mood” among LPAs was “a cautious one in terms of proceeding with their emerging [local] plans”.¹⁰³ The POS said many LPAs were reluctant to continue working on their local plan “until they know there is certainty” because they expected that “the goal posts for plan-making” would keep changing. The LGA argued that it was “inevitable” that some LPAs had paused their local plan-making process:

it is inevitable, when you have notable changes to planning law that people will not know what is happening, and therefore will make judgements about whether it is better to wait and have certainty.¹⁰⁴

In its [report on reforms to national planning policy](#) (July 2023), the LUHC Committee noted that the government had not denied that some LPAs had delayed their local plans as a result of the government’s announcements of the proposed reforms. However, the government said the analysis of delays was “probably an overestimate”.¹⁰⁵

The committee concluded, the proposed reforms had slowed down local plan-making, contrary to government aims. The committee called on the government to pause further reforms “to allow for a period of stability”.¹⁰⁶

Other organisations have also expressed concern that further reforms and continuing uncertainty would lead to further delays.¹⁰⁷ The POS called on the government to “announce dates as soon as possible” and also “to stick to an approach and not deviate again in the future”.¹⁰⁸

¹⁰³ Lichfields, [Start me up – but then you stopped: the continuing cost of local plan delays](#), January 2023

¹⁰⁴ LUHC Committee, [Oral evidence: Reforms to national planning policy](#) (PDF), 13 March 2023, Q4

¹⁰⁵ LUHC Committee, [Oral evidence: Reforms to national planning policy](#) (PDF), 24 April 2023, Q66

¹⁰⁶ LUHC Committee, [Reforms to national planning policy](#) HC 1122, Seventh report of session 2022-23, July 2023, paras 13-15

¹⁰⁷ LUHC Committee, [Written evidence: Reforms to national planning policy](#) (PDF), RNP 001 [Savills]; HBF, [HBF's response to Government's NPPF consultation](#), March 2023

¹⁰⁸ POS, [Response to NPPF/LURB Consultation](#), February 2023

4 Abolishing the ‘duty to cooperate’

4.1 The duty to cooperate in local plan-making

The ‘duty to cooperate’ refers to provisions in [section 33A of the Planning and Compulsory Purchase Act 2004](#). These require LPAs to cooperate with each other and with other prescribed bodies in preparing their local plans “so far as relating to a strategic matter”. A strategic matter is defined as a matter that relates to the “sustainable development or use of land that has or would have a significant impact on at least two planning areas”.¹⁰⁹

The duty to cooperate is also set out in the government’s [National Planning Policy Framework \(NPPF\)](#), which provides a framework against which LPAs draw up their local plans. The NPPF requires local plans to be “informed by agreements with other authorities”, for example, “so that unmet [housing] need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development”.¹¹⁰

The duty to cooperate requires LPAs to “engage constructively, actively and on an ongoing basis” with each other and other prescribed bodies, such as [Homes England](#), the [Environment Agency](#) and [Natural England](#), in preparing their local plans.¹¹¹ It does not require LPAs to prepare joint local plans or to reach formal agreement on delivering housing or infrastructure, however.¹¹²

To demonstrate that they have engaged with each other, LPAs can prepare a ‘statement of common ground’. A statement of common ground is prepared by LPAs to set out on which cross-boundaries matters they will cooperate on and how they will work together.¹¹³

Role of the duty to cooperate at examination

Whether LPAs have complied with the duty to cooperate will be tested at examination by the Planning Inspectorate. If a planning inspector finds that an LPA has not fulfilled the duty to cooperate, they will likely recommend that the local plan should be withdrawn.¹¹⁴

¹⁰⁹ [Section 33A of the Planning and Compulsory Purchase Act 2004](#)

¹¹⁰ DLUHC, [National Planning Policy Framework](#), last updated September 2023, para 35

¹¹¹ [Section 33A of the Planning and Compulsory Purchase Act 2004; Regulation 4 of the Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#)

¹¹² LUHC Committee, [Reforms to national planning policy](#) HC 1122, Seventh report of session 2022-23, July 2023, para 59

¹¹³ DLUHC and MHCLG, [Plan-making](#), last updated October 2021, para 10

¹¹⁴ DLUHC and MHCLG, [Plan-making](#), last updated October 2021, para 31

4.2

Abolishing the duty to cooperate

[Schedule 7 of the Levelling Up and Regeneration Act 2023](#) contains provisions to replace sections 15 to 37 of the Planning and Compulsory Purchase Act 2004 and thereby to abolish the duty to cooperate (set out in [section 33A of the 2004 Act](#)). The government said it was abolishing the duty to cooperate because it was “widely criticised as inflexible and burdensome” and caused “significant delays to the production of local plans”.¹¹⁵

The provision in the Levelling Up and Regeneration Bill 2023 to abolish the duty to cooperate have not yet taken effect; they will “come into force on such day as the Secretary of State may be regulations appoint”.¹¹⁶

Flexible alignment policy to replace duty to cooperate

The government said it would replace the duty to cooperate with “a flexible alignment policy” to ensure engagement between LPAs on cross-boundary, strategic matters.¹¹⁷ In its [consultation on reforms to national planning policy](#) (December 2022), the government said it would further consult on the flexible alignment policy.¹¹⁸ At the time of writing (5 December 2023), a consultation has not yet been published.

In April 2023, the then Housing Minister, Rachel Mclean said the government had not yet developed the flexible alignment policy. The Director General for Regeneration at DLUHC, Emran Mian, said the flexible alignment policy would be “used for developing infrastructure in common” rather than “as a way of delivering local housing numbers”:

when it comes to planning for infrastructure, infrastructure projects are going to span local planning authority boundaries. That is exactly the space where we think the alignment test will be useful because you would want however many local planning authorities that have a stake in an infrastructure project and are going to be affected by that infrastructure project to make local plans that align so that that infrastructure project delivers the right benefits, can be delivered to programme and can be delivered in a sensible way.¹¹⁹

¹¹⁵ HC Deb [[Levelling-up and Regeneration Bill \(Fourteenth sitting\)](#)] 14 July 2022, c464

¹¹⁶ [Section 255 of the Levelling Up and Regeneration Act 2023](#)

¹¹⁷ DLUHC, [Levelling Up and Regeneration: Further information](#), May 2022

¹¹⁸ DLUHC, [Levelling-up and Regeneration Bill: Reforms to national planning policy](#), December 2022, chapter 4, para 15

¹¹⁹ LUHC Committee, [Oral evidence: Reforms to national planning policy](#) (PDF), 24 April 2023, Q94-Q95

Transitional arrangements

In its [consultation on reforms to national planning policy](#) (December 2022), the government said the duty to cooperate “will remain in place” until the flexible alignment policy takes effect as part of a future revised NPPF.¹²⁰

The government also said LPAs must submit their local plans for examination by 31 June 2025 (and adopt them by 31 December 2026) if they want their local plans to be adopted under the old plan-making system. It said “existing legal requirements and duties” such as the duty to cooperate will still apply until that date.¹²¹

4.3

Views on the duty to cooperate

The operation of the duty to cooperate and its effectiveness as a means to deliver collaboration on strategic matters have been questioned since it was introduced in the Localism Act 2011.¹²²

In [a 2014 report, the Communities and Local Government \(CLG\) Committee](#) found that duty to cooperate did not always deliver collaboration on strategic matters as it intended to.¹²³ Similarly, [a 2016 report, the Lords National Policy for the Built Environment Committee](#) concluded that “a prevalent view” was that the duty to cooperate was not “an adequate substitute for more formal cooperation on spatial planning”.¹²⁴

One concern was that the conversations between neighbouring LPAs had mostly focused on housing delivery rather than other strategic matters. In its 2014 report, the CLG Committee noted concerns that, in some areas, the duty to cooperate may be used “to push ‘unwanted’ housing from one authority to its neighbours”.¹²⁵ The County Council Network also argued that the duty to cooperate often led to a focus on “conversations around housing numbers, rather than wider matters such as infrastructure provision and delivery”.¹²⁶

¹²⁰ DLUHC, [Levelling-up and Regeneration Bill: Reforms to national planning policy](#), December 2022, chapter 4, para 15

¹²¹ DLUHC, [Levelling-up and Regeneration Bill: Reforms to national planning policy](#), December 2022, chapter 9, para 4

¹²² Communities and Local Government (CLG) Committee, [Abolition of Regional Spatial Strategies: A planning vacuum](#) (PDF) HC 517, Second Report of Session 2010–11, March 2011, paras 61–72

¹²³ CLG Committee, [Operation of the National Planning Policy Framework](#) (PDF) HC190, Fourth Report of Session 2014–15, December 2014, para 44

¹²⁴ Lords National Policy for the Built Environment Committee, [Building better places](#) (PDF) HL Paper 100, Report of Session 2015–16, February 2016, para 407

¹²⁵ CLG Committee, [Operation of the National Planning Policy Framework](#) (PDF) HC190, Fourth Report of Session 2014–15, December 2014, para 44

¹²⁶ LUHC Committee, [Written evidence: The future of the planning system in England](#) (PDF), FPS 121 [County Councils Network]

Another concern was that the duty to cooperate emerged as an issue at the end of the plan-making process. The HBF said this had caused many LPAs to be sent “back to square one at examination”.¹²⁷

Views on the abolition of the duty to cooperate

The government’s proposals to abolish the duty to cooperate have generally been welcomed by organisation representing planners, local authorities and developers. They have expressed concern, however, that there could be little to no incentive for neighbouring LPAs to cooperate following its abolition.¹²⁸

The TCPA highlighted that “many of the critical issues that local plans must address are cross-boundary [...] and require [...] strategic planning”.¹²⁹

The RTPi highlighted that cooperation was required because administrative boundaries often do not align with housing or employment market areas.¹³⁰ The LGA stated that “some form of strategic planning” was needed to deliver alignment on infrastructure provisions for new housing developments and to determine “how local plans fit together”.¹³¹

In its [report on reforms to national planning policy](#) (July 2023), the LUHC Committee expressed concern that abolishing the duty to cooperate meant “removing another incentive for local authorities to meet their local housing need”. It recommended that the new alignment policy should require neighbouring LPAs to cooperate on housing delivery or the government should introduce “other mechanisms to encourage regional cooperation”.

The POS noted that collaboration was not only important for meeting local housing need but also for delivering infrastructure, managing environmental and natural assets (such as water) and mitigating and adapting to climate change.¹³² The TCPA also noted that issues, such as climate change, required coordination “at national, regional and local levels”. It expressed concern that otherwise risks related to flood management and water catchment planning could potentially be missed.¹³³

In its [report on reforms to national planning policy](#) (July 2023), the LUHC Committee said the government should ensure that there was no gap between abolition of the duty to cooperate and adopting the new flexible alignment policy. It also recommended that “the detail of the new alignment policy must be defined, consulted on, and [...] published”.¹³⁴

¹²⁷ LUHC Committee, [Written evidence: Reforms to national planning policy](#) (PDF), RNP 016 [HBF]

¹²⁸ RTPi, [NPPF consultation response](#), March 2023

¹²⁹ TCPA, [Response to government proposals to reform plan making in England](#), September 2023

¹³⁰ RTPi, [NPPF consultation response](#), March 2023

¹³¹ LUHC Committee, [Oral evidence: Reforms to national planning policy](#) (PDF), 13 March 2023, Q27

¹³² POS, [POS response to Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), October 2023

¹³³ TCPA, [Response to government proposals to reform plan making in England](#), September 2023

¹³⁴ LUHC Committee, [Reforms to national planning policy](#) HC 1122, Seventh report of session 2022-23, July 2023, para 67

5 Further changes to local plan-making

5.1 Supplementary plans

LPA can use supplementary planning documents (SPDs) to provide further detail or guidance on policies in their local plans. SPDs are not part of the local plan for an area, but they can be material considerations in decision-making on planning applications.¹³⁵

[Schedule 7 of the Levelling Up and Regeneration Act 2023](#) contains provisions to replace SPDs with ‘supplementary plans’.¹³⁶ The government said that it is replacing SPDs because their “status can, in practice, be uncertain”.¹³⁷ Unlike SPDs, supplementary plans will have the same statutory weight as local plans in decision-making on planning applications.

In its [consultation on plan-making reforms](#) (July 2023), the government said SPDs will remain in place until LPAs have adopted new local plans under the new plan-making system.¹³⁸

Limited scope of supplementary plans

The government said that supplementary plans “are not intended to be used routinely”. Instead, they are intended to help LPAs “react and respond [...] to unanticipated changes in their area”. Alternatively, the government said that LPAs can use supplementary plans to provide area-wide design codes (which they will be required to prepare in future, see section 5.2).¹³⁹

Indeed, the Levelling Up and Regeneration Act 2023 sets a limit on the scope of supplementary plans. LPAs will be able to use them to create area-wide design codes and/or to set out site-specific policies on affordable housing or infrastructure.¹⁴⁰ The government said the scope of supplementary plans will be limited to ensure that “they do not subvert the role of the local plan as the principal planning policy framework” for an area”.¹⁴¹

¹³⁵ DLUHC and MHCLG, [Plan-making](#), last updated October 2021, para 8; DLUHC, [National Planning Policy Framework](#), last updated September 2023

¹³⁶ [Schedule 7\(15CC\) of the Levelling-up and Regeneration Act 2023](#)

¹³⁷ [Explanatory Notes to the Levelling Up and Regeneration Bill \(HL Bill 84\) 2022-23](#), para 1445

¹³⁸ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023

¹³⁹ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, paras 175-180

¹⁴⁰ [Schedule 7\(15CC\) of the Levelling-up and Regeneration Act 2023](#)

¹⁴¹ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, para 180

Consultation and examination requirements

The requirements for producing SPDs are set out in [part 5 of the Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#). LPAs must seek the views of their local community on draft SPDs and take these into account. However, SPDs are not examined by the Planning Inspectorate.¹⁴²

The requirements for producing supplementary plans will also be set out in regulations under the Levelling Up and Regeneration Act 2023. The 2023 Act provides that these regulations must make provisions for supplementary plans to be subject to consultation and examination. In its [consultation on plan-making reforms](#) (July 2023), the government proposed:

- Supplementary plans should undergo “a single formal stage of consultation” where statutory bodies and the local community are consulted at the same time.
- Examinations will usually take “the form of written representations”, although an examiner can choose to hold a hearing if they think it is necessary.¹⁴³

Reaction to the government’s reforms

The RTPi and the LGA expressed concern that the scope of supplementary plans would be limited, compared to SPDs. The RTPi argued that, as a result, some of the issues currently covered by SPDs may no longer be covered.¹⁴⁴

The government said that LPAs could ensure that “important policies which are required for decision-making purposes” which currently set out in SPDs could be incorporated in their local plans.¹⁴⁵

The LGA also expressed concern that the resourcing constraints faced by LPAs could impact their ability to produce supplementary plans. The LGA said that, because supplementary plans will be subject to examination, LPAs may face “an additional burden” in producing them.¹⁴⁶ The Association of Directors of Environment, Planning and Transport shared concerns that supplementary plans would “take more time and resources to produce”.¹⁴⁷

¹⁴² [Part 5 of the Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#)

¹⁴³ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, paras 194-195

¹⁴⁴ RTPi, [NPPF consultation response](#), March 2023; LGA, [Consultation on implementation of plan-making reforms](#), October 2023

¹⁴⁵ DLUHC, [Levelling-up and Regeneration Bill: Consultation on implementation of plan-making reforms](#), July 2023, para 205

¹⁴⁶ LGA, [Levelling-up and Regeneration Bill: Reforms to National Planning Policy Consultation](#), March 2023

¹⁴⁷ [Why councils are alarmed at proposals to phase out supplementary planning documents](#), Planning Resource Magazine [subscription required], March 2023

5.2

Design codes

[Schedule 7 of the Levelling Up and Regeneration Act 2023](#) contains provisions that require LPAs to prepare local design codes for their area.¹⁴⁸ A design code is “a set of illustrated design requirements that provide specific, detailed parameters for the physical development of a site or area”.¹⁴⁹

The NPPF, which provides a framework against which LPAs draw up their local plans, already encourages LPAs to prepare design guides and codes as part of their local plans or set them out in SPDs.¹⁵⁰ However, LPAs are not currently required to prepare design guides or codes.

Once relevant regulations have been brought into force, LPAs will be required to prepare local design codes either in the form of supplementary plans or as part of their local plans. Because both supplementary plans and local plans have statutory weight in decision-making on planning applications, in future, proposed developments will be required to adhere to requirements set out in local design codes.

Further, the government has proposed changes to the NPPF to “emphasise the role of beauty and placemaking [...] to further encourage beautiful development”. It said LPAs should “ask for beauty” and “refuse ugliness”.¹⁵¹

Reaction to the reforms

The LGA and the POS welcomed provisions to require LPAs to produce local design codes,¹⁵² as did developers, such as the Vistry Group.¹⁵³ The UK Green Building Council (UKGBC), which aims to transform the sustainability of the built environment, also welcomed the provisions. It said design codes could reduce opposition to development linked to concerns about visual impacts.¹⁵⁴

However, some organisations criticised the government’s [consultation on reforms to national planning policy](#) (December 2022) for not defining what it meant by “beautiful” and “ugly”. The POS argued that “the terms were highly subjective” and, therefore, “generally unhelpful”.¹⁵⁵

¹⁴⁸ [Schedule 7\(15F\) of the Levelling Up and Regeneration Act 2023](#)

¹⁴⁹ DLUHC, [Design: process and tools](#), last updated October 2019, para 8

¹⁵⁰ DLUHC, [National Planning Policy Framework](#), last updated September 2023, para 128

¹⁵¹ DLUHC, [Levelling-up and Regeneration Bill: Reforms to national planning policy](#), December 2022, chapter 6, para 5

¹⁵² LGA, [Planning reforms](#), June 2022; POS, [Response to NPPF/LURB Consultation](#), February 2023

¹⁵³ LUHC Committee, [Written evidence: Reforms to national planning policy](#) (PDF), RNP 018 [Vistry Group]

¹⁵⁴ UK Green Building Council, [Response to Government Consultation on National Planning Policy Framework](#), March 2023

¹⁵⁵ POS, [Response to NPPF/LURB Consultation](#), February 2023; LGA, [Levelling-up and Regeneration Bill: Reforms to National Planning Policy Consultation](#), March 2023

The Vistry Group called on the government to “create a consensus around what is good design and how this contributes to placemaking”.¹⁵⁶ Similarly, the real estate services company Savills called on the government to provide “a clear definition of what represents ‘beauty’ in a planning context”.¹⁵⁷

¹⁵⁶ LUHC Committee, [Written evidence: Reforms to national planning policy](#) (PDF), RNP 018 [Vistry Group]

¹⁵⁷ LUHC Committee, [Written evidence: Reforms to national planning policy](#) (PDF), RNP 001 [Savills]

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