LEVELLING-UP AND REGENERATION BILL AND POLICY PAPER

SUMMARY

1. Introduction and background

1.1 On 11 May 2022 the Government introduced to the House of Commons the Levelling-up and Regeneration Bill (the **"Bill"**) whose long title reads as follows:

"*A Bill to make provision for the setting of levelling-up missions and reporting on progress in delivering them; about local democracy; about town and country planning; about Community Infrastructure Levy; about the imposition of Infrastructure Levy; about environmental outcome reports for certain consents and plans; about regeneration; about the compulsory purchase of land; about information and records relating to land, the environment or heritage; for the provision for pavement licences to be permanent; about governance of the Royal Institution of Chartered Surveyors; about vagrancy and begging; and for connected purposes.*"

1.2 On the same day, the Government published the Levelling Up and Regeneration: further information policy paper (the **"Policy Paper"**).

1.3 This note provides a summary of the main provisions of the Bill which relate to planning law. Schedule 1 provides a summary of some further elements of the Bill which, while not focused on planning law specifically, are likely to interact with planning law and are considered to be of interest.

2. Part 3, Chapter 1 – Planning Data

2.1 The Bill foreshadows the introduction of regulations which will require planning authorities ("**PAs"**) to comply with specific technical data standards. It includes a broad definition of "planning data", the latter part of which encompasses data collected or processed by the PA for any purpose relating to planning or development in England.

2.2 The PA may require a person submitting planning data to them to provide it in the form prescribed, though they may not require the Crown or a court or tribunal to do so. The PA may not require the data to be provided in accordance with the approved standards if it relates to legal proceedings (contemplated or in progress).

2.3 If a person fails to comply with the requirement to submit data in accordance with the approved standard and the PA does not consider that there is a reasonable excuse for so doing, they may reject the submission of all or part of the planning data and any document accompanying it. In such circumstances, the submission is treated as never having been received by the PA and so it seems that a validation dispute (under article 3 of the Development Management Procedure Order) would not arise if in due course the regulations cover the data provided in individual planning application submissions. That said, if the person later re-submits data which does comply, the PA may treat the date of receipt as that of the first submission (notwithstanding its rejection).

2.4 The regulations may also make provision for the publication of notices, as well as their form and content; time limits; and any other procedural matters.

2.5 The Bill makes provision for regulations which will require PAs to make specified data available to the public, though it is confirmed that this will not override any other restriction on the availability of data (such as might be imposed by GDPR, or similar, for example). In contrast to this, where planning data is provided for software development purposes or for the upgrade/maintenance of such software, copyright is not infringed ether by the PA supplying the data or the person using it for those prescribed purposes.

2.6 The regulations will also require PAs to use only planning data software which has been approved by the Secretary of State, either within those regulations or separately in writing.

2.7 The Secretary of State must consult with the Scottish and Welsh Ministers, respectively, before making regulations of this type which take effect in those jurisdictions.

2.8 The examples set out in the Explanatory Notes which accompanied the Bill, as well as the aspirations on the policy paper, are clear that consistency and transparency are the driving forces behind this chapter, making it easier for individuals to access and for public authorities to share information.

2.9 As well as transparency on the part of PAs, the Government is focused on the development industry: there is separate provision within Part 9 of the Bill for the collection of data relating to landowners' contractual arrangements and for funding and transaction data.

3. Part 3, Chapter 2 – Development Plans

3.1 Chapter 2 of Part 3 of the Bill introduces a number of updates to clarify what development plans, neighbourhood plans and spatial development strategies should include.

3.2 A new definition of national development management policy ("**NDMP**") is to be introduced as section 8ZA PCPA 2004, this is defined as a policy which the Secretary of State designates as such and which concerns the development or use of land in England. It is expected that NDMPs will set out national policies on issues that apply in most local authorities e.g. heritage protection and policies relating to the green belt in order to both speed up the local plan process and to make local plans easier to navigate. NDMPs are given the same weight as development plans so will need to be taken fully into account in decision making.

3.3 Relatedly, the Bill gives development plans (including local plans, minerals and waste plans, neighbourhood plans and spatial development strategies) and NDMPs more weight in the decision making process; section 38(6) PCPA. Section 38(6) currently allows departures from the development plan where material considerations indicate that this is warranted. The Bill replaces this with requirement that determinations must be made in accordance with the development plan *and NDMPs* unless material considerations *strongly* indicate otherwise (emphases added).

3.4 In addition to the introduction of NDMPs, Chapter 2 of Part 3 introduces a number of further measures, with the intention of creating a more efficient local and neighbourhood planning process. This is largely achieved through Schedule 7 of the Bill which replaces sections 15-37 PCPA 2003. They key points in relation to this are summarised below.

Local Plans

3.5 'Gateway' provisions are introduced for planning inspectors to offer advice on plans before they reach examination.

3.6 New 'Local Plan Commissioners' may be appointed by the Secretary of State to support or ultimately take over plan-making if local authorities fail to meet their statutory duties.

3.7 Local authorities will be given the power to prepare 'supplementary plans' where policies for a specific site in the area or a group of sites need to be established quickly or to set out design standards.

3.8 Local plans will continue to be subject to the 'soundness' test at examination, but the guidance paper suggests that DLUHC plan to review this test as part of their upcoming work to update the NPPF.

3.9 Two or more local authorities may collaborate to produce a joint spatial development strategy governing matters of strategic importance across the areas in which they operate.

3.10 The duty to cooperate is repealed. DLUHC guidance suggests that this will be replaced with a "more flexible alignment test" to be set out in national policy.

3.11 In line with the government's wider desires to introduce efficiency in plan making, a new requirement is placed on prescribed public bodies to do everything reasonably required of them to assist in the plan-making process, if requested to do so by plan-making authorities.

3.12 DLUHC have confirmed that, in order to incentivise plan production further and ensure that newly produced plans are not undermined, they intend to reform the NPPF. Their reforms will include the removal of the requirement for authorities to maintain a rolling five-year housing land supply where their plan has been adopted in the last five years. Alongside this, regulations will be updated to set a clear timetable for local plan production, such that local plans should be produced within 30 months and updated at least every five years.

Neighbourhood plans

3.13 The Bill clarifies what topics can be included and cannot be included within neighbourhood plans, including (in accordance with the government's 'build beautiful' agenda) permitting neighbourhood plans to set specific design requirements that need to be met in order for planning permission to be granted.

3.14 The Bill increases the accessibility of neighbourhood planning, allowing parish councils and neighbourhood forums to produce a simpler 'neighbourhood priorities statement' which the relevant local authority will be obliged to take into account when preparing its local plan.

3.15 The Bill introduces new conditions for neighbourhood development plans and orders with the aim of ensuring that these do not hamper housing supply. Neighbourhood plans must not result in the local plan proposing less housing than if the neighbourhood plan were not made and neighbourhood development orders must not prevent housing development proposed in the local plan from taking place.

4. **Part 3, Chapter 3 – Heritage**

4.1 Chapter 3 of Part 3 of the Bill includes provisions which set out the level of regard to be given to certain heritage assets in the exercise of planning functions.

4.2 The Bill inserts a new section 58B to the Town and Country Planning Act 1990 (**"TCPA 1990"**) which provides that when determining a planning permission or permission in principle for the development of land in England which affects a relevant asset or its setting, the local planning authority which includes the Mayor of London in relation to the grant of planning permission by Mayoral development order or the Secretary of State (as the case may be) must have special regard to the desirability of preserving or enhancing the affected asset or its setting.

The terms "preserving" or "enhancing" of a relevant asset or its setting includes preserving or enhancing any feature, quality or characteristic of the asset or setting that contributes to the significance of the asset.

4.3 For the purposes of this section, a "relevant asset" includes the following with the "significance" of each identified in the following provisions:

(a) A scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 with its significance being its national importance as stated in s1(3) of this Act;

(b) A garden or other area of land included in a register maintained by the Historic Buildings and Monuments Commission for England under section 8C of the 20 Historic Buildings and Ancient Monuments Act 1953 with its significance being the special historic interest referred to in subsection 1 of section 8C of this Act;

(c) A site designated as a restricted area under section 1 of the Protection of Wrecks Act 1973 with its significance being the historical, archaeological or artistic importance referred to in subsection (1)(b) of s1 of this Act; and

(d) A World Heritage Site (i.e. a property appearing on the World Heritage List kept under paragraph (2) of 30 article 11 of the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage adopted at Paris on 16 November 1972) with its significance being the outstanding universal value referred to in this paragraph.

4.4 Paragraph 93 of the Bill inserts a new section 44AA to the Planning (Listed Buildings and Conservation Areas) Act 1990 ("**P(LBCA)A 1990**") which:

(a) Allows a local planning authority in England to issue a temporary stop notice where it appears that works have been or are being executed to a listed building in their area and these works involve a contravention of section 9(1) or (2) of the Act and having had regard to the effect of the works on the character of the building as one of special architectural or historic interest, they consider it is expedient that the works (or part of them) must be stopped immediately; and

(b) Sets out what should be included in a notice, to whom a notice should be served on, how a notice should be publicly displayed and when such a notice ceases to take effect.

4.5 Paragraph 93 of the Bill also inserts a new section 44AB to the P(LBCA)A 1990 which:

(a) Makes it an offence if a person contravenes or causes or permits a contravention of a temporary stop notice which has been served on that person under section 44AA;

(b) Sets out the defences a person can rely on in proceedings for an offence under section 44AB; and

(c) Confirms that a person guilty of an offence under section 44AB will be liable on summary conviction or on conviction on indictment to a fine.

4.6 Paragraph 93 inserts a new section 44AC to the P(LBCA)A 1990 which:

(a) Allows a person to make a claim for compensation where on the day when a temporary stop notice is first displayed, has an interest in the building and has suffered loss or damage directly attributable to the effect of the notice.

5. **Part 3, Chapter 4 – Grant and Implementation of Planning Permission**

Street votes

5.1 The Bill introduces new 'street vote' powers, though there is only a placeholder provision for now, and regulations are expected with further detail. The street vote powers would allow residents on a street to bring forward proposals to extend or redevelop their properties in line with their design preferences. Where certain requirements are met, the development proposals would then be voted on by residents on the street, to decide if they should be given planning permission.

Crown Development

5.2 The Bill introduces new routes for development on Crown Land, and would amend the TCPA 1990. The new routes would apply where (a) the development is considered to be of national importance and a matter of urgency and (b) where the development is considered to be of national importance but not a matter of urgency. In these two circumstances the appropriate authority can apply directly to the Secretary of State for planning permission (rather than the local planning authority).

Minor Variations in Planning Permission

5.3 A new power is created to amend planning permissions in limited circumstances to provide greater flexibility following recent caselaw (including Finney). The case of Finney had confirmed that a s73 minor material variation could not be used to change the description of development on a planning permission, so it's currently common to see multiple applications to vary a permission where a minor material change is needed (s73) to vary conditions, and a non material change is also needed (under s96A) to change the description of development.

5.4 The new provisions will allow an applicant to make "non substantial changes" to a permission, "including descriptor of development and conditions" (as set out in the Explanatory Notes to the bill). This can include changes to permissions in principle. This provision will avoid the need for multiple applications to vary the same permission. It will be interesting to see how the interpretation of "non substantial changes" evolves. The new section in the TCPA 1990 (new s73B) currently includes ss 5 which states "Planning permission may be granted in accordance with this section only if the local planning authority is satisfied that its effect will not be substantially different from that of the existing permission" – again it will be interesting to see how this is interpreted.

5.5 The authority should limit its considerations to the ways in which the variation would differ in effect from the existing permission (as already varied, if applicable). And the new route should not be used to determine a similar application which has been made under a different route.

5.6 It will not be possible to use the new provisions to extend the time for implementing a permission (which is also not possible with s73 and s96A currently).

5.7 The new route cannot be used to disapply the mandatory biodiversity net gain condition.

Development Commencement notices

5.8 New provisions in the TCPA 1990 will require a commencement notice to be served before any work is commenced on site in accordance with a planning permission, and the notice should state the date work is expected to be begun and other relevant information. If the work is not started by that date, a revised notice can be served. The applicant will be informed of the requirement to serve a commencement notice when planning permission is granted. The notice will be displayed on the local authority's public register.

5.9 If the person fails to serve the commencement notice, the local authority can serve a notice demanding the relevant information, and failure to provide the relevant information required will mean the person will be guilty of an offence with a fine of up to £1,000. It will be a defence to have a 'reasonable excuse'.

Completion notices

5.10 The new provisions will allow local authorities to serve completion notices where development work has started on site but has not been finished. The notice may state a date by which the work must be completed (which must be at least 12 months after the completion notice date, or at least 12 months after the date development must be begun if this is specified in the permission), after which the planning permission for the unfinished parts will cease if the work is not completed. There are provisions for appealing against such a notice.

6. Part 3, Chapter 5 – Enforcement of Planning Controls

6.1 Part 3, Chapter 5 of the Bill makes several changes to the enforcement of planning controls in England. The changes can be summed up as making three key changes

(a) Giving LPAs longer to take enforcement action;

(b) Introducing a new type of enforcement measure ('enforcement warning notices') to encourage planning applications to be made for actions that would likely get planning permission if this were applied for; and

(c) Modifications to reduce duplication and undue delay in the enforcement process

6.2 The Bill modifies the time limit for enforcing breaches of planning control in England to 10 years for all types of breaches. Under s171B of the TCPA 1990, the time limit currently varies depending on the type of breach. Breaches of planning control consisting of carrying out of building, engineering, mining or other operations on, over or under land are currently subject to an enforcement time limit of 4 years, as are breaches consisting of the change of use of any building to use as a single dwelling house. This change will mean that the time period for these types of breaches will now be increased to 10 years.

6.3 The Bill also changes the period after which a temporary stop notice ceases to have effect in England. The Bill increases the length of this period from 28 days to 56 days.

6.4 A new type of enforcement action for England called 'enforcement warning notices' is introduced which may be issued it appears to a LPA that there has been a breach but that the LPA considers that there is a reasonable prospect that if a planning application were made, permission would be granted. These notices will state that unless an application for planning permission is made within a specified period, further enforcement action may be taken.

6.5 The Bill also restricts certain types of appeals against enforcement notices. The Bill amends s174 TCPA to prevent the bringing of a 'Ground (a) appeal' (i.e. an appeal on the basis that in respect of any breach of planning control specified in the enforcement notice, planning permission ought to be granted) where the enforcement notice was issued after an application for planning permission has been made that was 'related to the enforcement notice'. Several points are worth noting:

(a) An application is 'related to' an enforcement notice if granting planning permission for the development would involve granting permission in respect of matters specified in the enforcement notice as constituting a breach of planning control.

(b) Applications that the local planning authority have declined to determine under sections 70A, 70B or 70C are not considered to be applications for planning permission for this purpose.

(c) This restriction on Ground (a) appeals only applies to notices served within two years of the date the related application ceased to be under consideration. New section 174(2B) provides detail as to how this date is determined.

6.6 The Bill also seeks to reduce delays caused by the appellant as part of the appeals process. It adds a new subsection to both section 176 (determination of appeals relating to enforcement notices) and section 195 (appeals relating to certificates of lawfulness), which gives the Secretary of State the power to take certain actions where it appears to them that the appellant is responsible for undue delay in the progress of the appeal. Where the Secretary of State considers that the appellant is responsible for undue delay, they may give the appellant notice that the appeal will be dismissed unless the appellant takes specified steps to expedite the appeal within a prescribed period, and may dismiss the appeal if these steps are not taken.

6.7 Penalties for non-compliance are also increased. The Bill removes the cap on the fine to which a person may be liable for breach of condition or for failure to comply with a s215 notice. This is in contrast to the current position whereby a person shall be liable to a fine not exceeding level 4 or level 3 on the standard scale.

6.8 The Bill also provides for regulations allowing relief from enforcement of planning conditions. A new subsection is inserted into s196D of the TCPA 1990 which allows the Secretary of State to make regulations providing that a LPA in England may not, or is subject to specific restrictions as to how it may, take enforcement measures in relation to any actual or apparent failure to comply with a relevant planning condition occurring within a specified relief period. Planning conditions relating to biodiversity gain (section 90A and Schedule 7A); conditions limiting the duration of planning permission (section 91) and conditions for outline planning permission (section 92) are excluded from this provision.

6.9 The Policy Paper accompanying the Bill states that the changes included in the Bill also include "doubling fees for retrospective applications". However, in its current form the Bill does not include any such provision.

7. Part 3, Chapter 6 – Other Provision

7.1 There are four key changes included in this Chapter. First, Bill makes permanent the powers to make provision for pre-application consultation, which are included in sections 61W to 61Y of TCPA 1990. These are currently due to expire in 15 December 2025. This will allow for regulations to require applicants on certain applications to consult with local communities and other specified persons prior to submitting a planning application.

7.2 Second, it enables the Secretary of State to require or allow planning applications to be made, and associated documents to be provided, by electronic means or in accordance with particular technical standards in respect of those electronic means.

7.3 Third, the Bill provides additional powers in relation to planning obligations. It adds a new subsection to s106A of the TCPA (modification and discharge of planning obligations). This enables the making of regulations to specify requirements that must be met for s106 obligations to be modified or discharged and/or circumstances in which such obligations may not be modified or discharged.

7.4 Fourth, the Bill amends s62A of the TCPA 1990 to permit an application for hazardous substances consent to be made directly to the Secretary of State, where it is considered by the applicant to be connected with a relevant application submitted under s62A.

8. Part 4 – Infrastructure Levy

8.1 Part 4 of the Bill introduces a charge to be known as the **"Infrastructure Levy"** in England. In addition the Secretary of State is given the power to designate the HCA a charging authority for the purposes of the Infrastructure Levy.

8.2 The Community Infrastructure Levy (CIL) is abolished in England, other than Mayoral CIL which continues to exist in Greater London.

8.3 CIL continues to apply in Wales.

8.4 Schedule 11 of the Bill inserts new sections 204A to section 204Z1 into the Planning Act 2008 (**"PA 2008"**) giving the Secretary of State the power to make regulations (IL regulations) providing for the imposition in England of the Infrastructure levy. The regulation-making power creates the framework for an IL regime that looks is strikingly similar to CIL in some respects, but with some significant differences. Key features:

(a) Like CIL, LPA to be IL charging authority and IL regulations can so designate other councils and bodies as well;

(b) Like CIL, a person will be able to assume IL liability before development commences, and becomes liable when development commences;

(c) Like CIL, the IL regulations must make provision for liability when no-one has assumed liability;

(d) Like CIL, the IL regulations may make provision about matters such as partial liability, apportionment of liability, transfer of liability and exceptions from and reductions in liability;

(e) Like CIL, IL to be calculated when development "first permits development", and IL becomes due on commencement;

(f) Like CIL, "development" is a defined in PA 2008 for CIL, and IL regulations must define planning permission, define the time at which the planning permission is regarded as first permitting development;

(g) Like CIL, IR regulations must make a charitable exemption where the building is wholly or mainly used for charitable purposes, and may provide for charitable exemption in other circumstances;

(h) A charging authority must issue a charging schedule and in setting rates must have regard to the level of affordable housing funding from developers over a given period, the economic viability of development, the potential economic effects of including land value increase of certain matters, the amount of IL received from developments over a given period and the charging authority's infrastructure delivery strategy;

(i) Unlike CIL, the IL regulations may allow for a much wider variety of approaches to rate-setting: differential rates for different uses or zones areas; nil or reduced rates; rates calculated not just by floorspace but by numbers of units, buildings, or by allocation of space within units or buildings, or in any other way;

(j) Unlike CIL, IL is to be charged as a proportion of property value (this has not yet been fully fleshed out);

(k) Like CIL, charging schedules must be subject to public examination procedures;

(l) IL to applied in the same way as CIL, to fund the provision (etc) of infrastructure to support the development of the charging authority's area. "Infrastructure" includes affordable housing (as the PA 2008 did before that reference was removed by the CIL Regulations), and the regulation-making power still includes power to amend the definition of infrastructure for IL purposes;

(m) Unlike CIL, there is an interesting "relationship with other powers" paragraph (para 204Z1), under which the IL regulations may include provision about how the following powers are to be used *or are not to be used*:

(i) Part 11 of the PA 2008 on CIL;

(ii) section 70 TCPA 1990 (planning permission);

(iii) section 106 TCPA 1990 (planning obligations); and

(iv) section 278 Highways Act 1980 (execution of works).

8.5 The Policy Paper explains further that it is the Government's intention indeed to reduce the scale of s106 planning obligations so that s106 agreements will be used: (1) on the largest sites in place of IL (provided that the value of the infrastructure being provided in that way is not less than that which would be achieved under IL); and (2) on other sites where "narrowly focused" s106s will be used to provide onsite infrastructure.

8.6 The Policy paper also makes reference to removing the role of negotiations in delivering affordable housing, suggesting that the Government's intention is that AH will be delivered through the IL.

9. Part 5 – Environmental Outcomes Reports

Specified environmental outcomes

9.1 Part 5 of the Bill enables the Secretary of State to make new regulations specifying outcomes relating to environmental protection against which certain plans and projects would need to be assessed through environmental outcomes reports (**"EORs"**).

9.2 "Environmental protection" is defined as:

(a) protection of the natural environment, cultural heritage and the landscape from the effects of human activity;

(b) protection of people from the effects of human activity on the natural environment, cultural heritage and the landscape;

(c) maintenance, restoration or enhancement of the natural environment, cultural heritage or the landscape;

(d) monitoring, assessing, considering, advising on or reporting on anything at (a) to (c).

9.3 In setting these outcomes, the Secretary of State would need to have regard to the Government's environmental improvement plan (currently its 25-Year Environment Plan) and the legally-binding long-term targets and interim targets that are set under it.

Environmental outcomes reports

9.4 Part 5 also enables the Secretary of State to make new regulations requiring the preparation of an EOR for "relevant plans" and "relevant consents" which are to be specified in the regulations (**"EOR Regulations"**). Where an EOR is required, it would need to be taken into account when considering whether to grant the relevant consent or bring the relevant plan into effect. The Explanatory Note explains that this "establishes an outcomes-based approach to assessment where anticipated environmental effects are measured against specified environmental outcomes."

9.5 EORs must:

(a) assess the extent to which the proposed relevant consent or plan would, or is likely to, impact on the delivery of specified environmental outcomes;

(b) set out and assess any steps proposed to avoid, mitigate, remedy or compensate for effects relating to the delivery of an outcome;

(c) consider reasonable alternatives to the consent or plan (or any part thereof); and

(d) assess how matters raised through assessment will be monitored or secured.

9.6 The Explanatory Note suggests that these build on the mandatory information required in the reporting stages of an environmental impact assessment or a strategic environmental assessment.

9.7 The EOR Regulations may make provisions about how:

(a) the extent to which a relevant consent or relevant plan actually affects the delivery of a specified environmental outcome is to be assessed or monitored; and

(b) the carrying out of any proposals assessed in an EOR is to be assessed or monitored.

Exemptions

9.8 The Secretary of State may direct that no EOR is required in relation to a proposed relevant consent which is solely for the purposes of national defence or preventing or responding to a civil emergency. The EOR Regulations may provide for further circumstances in which the Secretary of State is able to direct that no EOR is required.

Non-regression safeguards and interaction with existing legislation

9.9 The Secretary of State may only make regulations under Part 5 if satisfied that they will not result in environmental law which provides an overall level of environmental protection that is less than that provided by environmental law at the time the Bill is enacted. EOR regulations must also be consistent with the UK's international obligations relating to the assessment of the environmental impacts of relevant plans and consents.

9.10 The Secretary of State can make regulations in respect of interaction with existing environmental assessment legislation or habitats regulations, including how an EOR can meet the requirements of existing environmental assessment legislation or habitats regulations and vice versa.

9.11 The Secretary of State may amend, repeal or revoke existing environmental assessment legislation, and sections 71A and 239A(4)(a) of the TCPA 1990 are amended to repeal the power of the Secretary of State to make provision about the consideration of the likely environmental effects of a development before planning permission is granted for it.

9.12 The Secretary of State must consult the public before making regulations which set specified environmental outcomes or which amend, repeal or revoke existing environmental assessment legislation.

Enforcement, reporting and other provisions

9.13 Regulations made under Part 5 may make provisions about the enforcement of requirements imposed by or under Part 5 including provisions creating a criminal offence (so long as it is not punishable with imprisonment) or conferring powers of entry and inspection.

9.14 The regulations may also make provision requiring a public authority to report on the delivery of specified environmental outcomes including provisions about the information to be included in such a report.

9.15 The EOR Regulations may make provisions:

(a) about who must prepare EORs (including provisions permitting a public authority to determine who is to do so or the qualifications or experience a person must have to do so);

(b) about how, and to what extent, any failure to comply with a requirement imposed by or under Part 5 is to be taken into account by public authorities in considering, and making decisions in relation to, relevant consents or relevant plans;

(c) requiring a public authority to assist with any assessment or monitoring under Part 5; and

(d) about appeals against, or reviews of, decisions of a public authority about matters for which provision is made by Part 5 regulations or existing environmental assessment legislation.

The Policy Paper

9.16 The Government's Policy Paper explains that the new EOR regime "will replace the existing EU-generated systems of strategic environmental assessment (including sustainability appraisals) and environmental impact assessment and introduce a clearer and simpler process where relevant plans and projects (including nationally-significant infrastructure projects) are assessed against tangible environmental outcomes set by government, rather than in Brussels." It suggests that "this approach will ensure there is a clear focus on protecting our environment, pursuing positive environmental improvements and providing clear join-up between strategic and project scale assessments."

9.17 It adds that "in addition to this, the increased weight given to plans and national policy by the Bill will give more assurance that areas of environmental importance – such as national parks, areas of outstanding natural beauty and areas at high risk of flooding – will be respected in decisions on planning applications and appeals. The same is true of the green belt, which will continue to be safeguarded."

10. Part 6 – Development Corporations[1]

Locally-led Urban Development Corporations

10.1 The Bill seeks to amend section 134 of the Local Government, Planning and Land Act 1980 (**"LGPLA 1980"**) and insert a new section 134A to provide a new type of locally-led *Urban* Development Corporation. A local authority in England (or two or more local authorities acting together), may request that the Secretary of State designate an area of land as an urban development area and create a locally-led Urban Development Corporation for which a local authority rather than central government is responsible.

10.2 Such a locally-led proposal for an Urban Development Corporation **must contain** the authorities' proposals for:

(a) the name of the development corporation to be established;

(b) state which local authority/ies should be the designated oversight authority; and

(c) include a map of the proposed area.

10.3 A locally-led proposal **may only be made if**:

(a) the proposal area falls wholly within the area of the local authority - or wholly within the combined areas in the case of joint local authorities;

(b) the proposing authority has consulted:

(i) persons living in or the vicinity of the proposal area;

[1] It is worth noting that Part 6 (Development Corporations) applies to England and Wales but only has practical effect in England.

(ii) each MP whose constituency is part of the proposal area;

(iii) each local authority for an area falling wholly or partly within the proposal area (other than the proposing authority);

(iv) the Greater London Authority (if in relation to an area in Greater London); and

(v) any other person the authority considers it appropriate to consult;

(c) the proposing authority has had regard to any comments made in response by the consultees; and

(d) if a local authority or the Greater London Authority has comments that the proposing authority does not accept, a statement giving the reasons for non-acceptance is given.

10.4 It is worth noting that the Bill contains amendments to section 135 LGPLA 1980 distinguishing the consultation provisions for urban development corporations from **locally-led** Urban Development Corporations.

Development corporations for locally-led new towns

10.5 Two new sections are inserted into the New Towns Act 1981 (**"NTA 1981"**) to reflect the establishment process and designation of a locally-led new town and development corporation so as to be consistent with the Bill's amends to the process and establishment of locally-led Urban Development Corporations.

Update to planning functions

10.6 The Bill updates the planning powers available to Urban Development Corporations and New Town Development Corporations so that they have access to planning powers to become planning authorities for the purposes of local plan-making, overseeing neighbourhood planning and development management. The proposed amendments in effect bring these corporations into line with the Mayoral Development Corporation model.

Mayoral Development Corporation as minerals and waste planning authority

10.7 Section 202 of the Localism Act 2012 is amended so that a Mayoral Development Corporation can become planning authorities for the purposes of local plan-making, overseeing neighbourhood planning and development management. These amends allow the Mayor to decide on a case-by-case basis whether the Mayoral Development Corporation should also be the minerals and waste planning authority for the purposes of plan making.

Changes to membership of urban development corporations and new town development corporations

10.8 Proposed changes to schedule 26 to the LGPLA 1980 and section 3 of the NTA 1981 amend the process of establishing locally-led Urban Development Corporations and to remove the cap on the number of board members. Consequently, the legislation would be in line with Mayoral Development Corporations and locally-led New Town Development Corporations which have no upper cap.

Financing

10.9 The Bill also seeks to amend paragraph 8 of schedule 31 to the LGPLA 1980 and section 60 of the NTA 1981 so that the limits on borrowing of urban development corporations and new

town development corporations, are removed. This means that development corporations can borrow sufficient funds on a case-by-case basis.

The Policy Paper

10.10 The Policy Paper explains that the aim is that locally-led Urban Development Corporations will focus on regenerating its area and will be accountable to local authorities in the area - instead of the Secretary of State.

11. Part 7 – Compulsory Purchase

11.1 There are modest but important reforms to compulsory purchase procedure in Part 7 of the Bill with the Policy Paper indicating that we can expect additional reforms to be included at a later date (presumably when the Bill is introduced to the House of Lords).

Online publicity

11.2 The Acquisition of Land Act 1981 ("**ALA 1981**") is amended to require that as well as publishing notices of the making of a CPO (and details of the right to object to it) in successive editions of a weekly local newspaper, acquiring authorities must also publish on an "appropriate website" i.e. one that a member of the pubic could find on searching the internet.

11.3 The Bill also changes the minimum 21 day objection period so it must be at least 21 days after the latest day on which the acquiring authority expects the notice to have been published in a local newspaper and on the web and to have been affixed to conspicuous objects on or near the affected land and have bene served on every qualifying purpose.

11.4 At the other end of the process, notice of confirmation of the CPO must also be published on a website for at least six weeks.

Confirmation proceedings

11.5 The Bill brings about a significant change to the CPO confirmation process. With a few limited exceptions, there will no longer be an automatic right for objectors to require a public local inquiry into the confirmation of the CPO. Instead, (similar to the process for planning appeals) the confirming authority (DLUCH for planning CPOs) can decide, having regard to the scale and complexity of the CPO, whether there will be an inquiry or the "representations procedure" should be followed instead (details to follow in secondary legislation). We will have to wait for full details of the "representations procedure" but it appears it will allow for written representations or a hearing. Where there are written representations, it also appears from the framework legislative provisions that the confirming authority considers those directly rather than following a report by an inspector.

Conditional confirmation

11.6 The Bill allows confirming authorities to confirm a CPO subject to conditions. The effect of this "conditional confirmation" is that the CPO cannot be implemented until the conditions have been discharged by the confirming authority. To prevent Acquiring Authorities from extending the life of the CPO but holding off making an application, the CPO will expire if the confirming authority has not received an application by a certain time of having received an application decides that the conditions have not been met. Both conditions and time limits are to be specified by the confirming authority when it confirms the order.

11.7 The process and procedure for the discharge of conditions is to be set out in secondary legislation but must include provision for an affected objector to be given notice of an application and have the opportunity to make written representations.

11.8 Once an application has been approved and the conditions discharged, the acquiring authority must serve and publish a copy of both the order and a "fulfilment notice" within 6 weeks (unless a longer period is agreed).

Time limits for implementation

11.9 A new section 13C is added to the ALA 1981 giving the confirming authority flexibility to grant a longer than the current 3 year period s for implementing the CPO where appropriate. It appears that the acquiring authority can't include this longer implementation period in the order submitted for confirmation but I assume that they will have to ask for it so that landowners will know how long it is anticipated the powers will last for.

Agreement to vary vesting date

11.10 The Bill makes provision to allow the acquiring authority to agree with the owner of any interest in land a later vesting date to that specified in notices sent to the owner following the execution of a general vesting date.

Common standards for compulsory purchase data

11.11 The Bill allows the Secretary of State to make provision for an acquiring authority to comply with approved data standards (to be published by the Secretary of State).

Town Legal LLP

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SCHEDULE 1

1. **Part 2 – Local Democracy and Devolution**

1.1 Part 2 of the Bill creates a new legal framework for the establishment of 'Combined County Authorities' (CCAs), described as 'supporting the most radical devolution of powers in modern times' and representing a new form of local government institution.

1.2 CCAs would be comprised of upper-tier local authorities only (county councils, unitary council councils and unitary district councils) and, unlike existing combined authorities, are designed to be more appropriate for non-metropolitan areas. Regulations may provide for there to an elected mayor of a CCA's area and for various local and public authority functions to be conferred on CCAs, such as transport, skills or economic development functions.

2. **Part 8 – Letting by Local Authorities of Vacant High-Street Premises**

2.1 Part 8 of the Bill provides local authorities with discretionary powers to instigate auctions to rent vacant commercial properties in town centres and on high streets.

2.2 The powers allow local authorities to designate high streets and town centres on the basis of their being important to the local economy because of a concentration of premises containing 'high-street uses' on the street or in the area.

2.3 Where premises are located on a designated high street or in a designated town centre, and the local authority considers them to be suitable for a high-street use, the auction process can be instigated in relation to such premises if both the "vacancy condition" and "local benefit condition" are satisfied.

2.4 The "vacancy condition" is satisfied if the relevant premises have been unoccupied for the previous year or 366 days of the previous two years. The "local benefit condition" is satisfied if the local authority considers that occupation of the relevant premises for a suitable high-street use would be beneficial to the local economy, society or environment.

2.5 If these conditions are met, the local authority may start the procedure preliminary to letting by serving an 'initial letting notice' on the landlord. This remains in force for 10 weeks and a 'final letting notice' must be served while the initial letting notice is in force. The 'initial letting notice' gives the landlord the opportunity to let the premises to avoid the local authority exercising its power to hold an auction. If the landlord does not do so, then the local authority can serve a 'final letting notice' on the landlord (against which the landlord has a right of appeal) and then make arrangements to carry out a rental auction.

2.6 The Bill provides for regulations to be introduced which require the local authority to specify the suitable high-street use of the premises ahead of the auction. The local authority may enter into a tenancy contract with the successful bidder in the auction pursuant to which the landlord agrees to grant and the successful bidder agrees to take a short-term tenancy of the premises (at least one year but no more than five years).

2.7 The Bill sets out the terms of the tenancy contract and the terms of the tenancy which must be included in such contract. The tenancy contract will require the landlord to grant the tenancy where certain requirements are met and powers are granted to local authorities to grant the tenancy where the landlord fails to do so. The terms of the tenancy must include a

requirement that the premises be used wholly or mainly for the suitable high-street use specified by local authority in advance of the auction.

3. Part 9 – Information about interests and dealings in land

3.1 Part 9 of the Bill includes measures which support the 2017 Housing White Paper commitment to publish data on land ownership and contractual arrangements used by developers to control land (such as rights of pre-emption, options and conditional contracts) so as to assist local communities in better understanding the likely path of development.

3.2 Part 9 provides for regulations to be introduced to require the provision of such information and to prescribe the use of such information.

4. Part 10 – Miscellaneous

4.1 The Bill introduces a new Schedule which amends the Business and Planning Act 2020 so as to make permanent (subject to certain amendments) the streamlined regime for pavement licensing across England, introduced in 2020.

4.2 The Bill also introduces a new statutory duty for local authorities to maintain an historic environment record for their area. A historic environment record is a system for storing and making available to the public information about various heritage and archaeological assets in the local area. This is described as being designed to assist the public in understanding the local area and to ensure that local plans and planning decision are informed by an understanding of an area’s history.