

# Levelling Up and Regeneration Bill

May 2022

# Main changes to planning in England

- New status for the National Planning Policy Framework
- New plans at local level
- No right to be heard on spatial development strategies
- Environmental Outcome Reports to replace Environmental Impact Assessment and Environmental Assessment of Plans and Programmes

# What does the bill actually say?

These are taken directly from the Bill as published.

**Health warning!**

# New status for NPPF (1)

84 National development management policies: meaning After section 38 of PCPA 2004 insert— “38ZA Meaning of “national development management policy”

(5 A “national development management policy” is a policy (however expressed) of the Secretary of State in relation to the development or use of land in England, or any part of England, which the Secretary of State by direction designates as a national development management policy.

(2) The Secretary of State may— (a) revoke a direction under subsection (1); (b) modify a national development management policy.

(3) Before making or revoking a direction under subsection (1), or modifying a national development management policy, the Secretary of State must ensure that such consultation with, and participation by, the public or any bodies or persons (if any) as the Secretary of State thinks appropriate takes place.”

# New status for NPPF (2)

## 3 Role of development plan and national policy in England

- (1) Section 38 of PCPA 2004 (development plan) is amended as follows.
- (2) After subsection (5) insert— “(5A) For the purposes of any area in England, subsections (5B) and (5C) apply if, for the purposes of any determination to be made under the planning Acts, regard is to be had to—
  - (a) the development plan, and
  - (b) any national development management policies.(5B) Subject to subsections (5) and (5C), the determination must be made in accordance with the development plan and any national development management policies, unless material considerations strongly indicate otherwise.  
(5C) If to any extent the development plan conflicts with a national development management policy, **the conflict must be resolved in favour of the national development management policy.**”

# New plan status at local level (1)

## 82 Development plans: content

- (1) Section 38 of PCPA 2004 (development plan) is amended as follows.
- (2) In subsection (1), for “(2)” substitute “(2A)”.
- (3) For subsections (2) and (3) substitute— “(2A) For the purposes of any area in England the development plan is—
  - (a) each **spatial development strategy** that is operative in relation to that area,
  - (b) each local plan which has effect in relation to that area,
  - (c) each minerals and waste plan which has effect in relation to that area,
  - (d) each **supplementary plan** which has effect in relation to that area,
  - (e) each neighbourhood development plan which has been made in relation to that area, and
  - (f) each **policies map** for that area.”

# No right to be heard on SDS (1)

## 15AC Public examination

(1) Before any of the participating authorities adopt a joint spatial development strategy, the participating authorities must, unless the Secretary of State otherwise directs, cause an examination in public to be held in relation to the proposed strategy.

....

(6) **No person is to have a right to be heard at an examination in public.**

# Environmental Outcomes Report (1)

## **116 Power to specify environmental outcomes**

(1) Regulations made by the Secretary of State under this Part (“EOR regulations”) **may specify** outcomes relating to environmental protection in the United Kingdom or a relevant offshore area that are to be “specified environmental outcomes” for the purposes of this Part.

## **117 Environmental outcomes reports for relevant consents and relevant plans**

(1) EOR regulations **may make** provision requiring an environmental outcomes report to be prepared in relation to a proposed relevant consent or a proposed relevant plan.

# Assessment of plans: comparison

## SEA Regulation (at the moment)

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of—

(a) implementing the plan or programme; and

(b) **reasonable alternatives** taking into account the objectives and the geographical scope of the plan or programme.

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to—

(a) the probability, duration, frequency and reversibility of the effects;

(b) the cumulative nature of the effects;

(c) the transboundary nature of the effects;

(d) the risks to human health or the environment (for example, due to accidents);

(e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);

(f) the value and vulnerability of the area likely to be affected due to—

(i) special natural characteristics or cultural heritage;

(ii) exceeded environmental quality standards or limit values; or

(iii) intensive land-use; and

(g) the effects on areas or landscapes which have a recognised national, Community or international protection status.

## EOR Regulation (proposed)

(4) An “environmental outcomes report”, in relation to a proposed relevant consent or proposed relevant plan, means a written report which assesses—

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

(b) any steps that may be proposed for the purposes of—

(i) increasing the extent to which a specified environmental outcome is delivered;

(ii) avoiding the effects of a specified environmental outcome not being delivered to any extent;

(iii) so far as the effects of a specified environmental outcome not being delivered to any extent cannot be avoided, mitigating those effects;

(iv) so far as the effects of a specified environmental outcome not being delivered to any extent cannot be avoided or mitigated, remedying those effects;

(v) so far as the effects of a specified environmental outcome not being delivered to any extent cannot be avoided, mitigated or remedied, compensating for the specified environmental outcome not being delivered, and

...

# Environmental Outcomes Report (2)

(7) EOR regulations may include provision about or in connection with—

(c) in relation to proposed relevant consents and proposed relevant plans for which an environmental outcomes report may be required, **the circumstances in which a report is required**;

(d) an environmental outcomes report not needing to assess the extent to which a proposed relevant consent or proposed relevant plan would, or is likely to, impact on the delivery of a specified environmental outcome, where an adequate assessment of the impact on delivery of the outcome has in effect already been, or is to be, carried out in a different environmental outcomes report;

(e) **what proposals an environmental outcomes report may or must** deal with under subsection (4)(b) and (c);

(f) how any of the assessments mentioned in subsection (4) are to be carried out;

(g) the information to be included in, and the content and form of, an environmental outcomes report, including provision requiring, or permitting a public authority to require, a report to deal with matters in addition to those provided for in subsection (4);

(h) **how, and to what extent**, environmental outcomes reports are to be **taken into account** or given effect by public authorities in considering, and making decisions in relation to, relevant consents or relevant plans;

# Consultation

## **SEA Regulation (at the moment)**

**13.—**(1) Every draft plan or programme for which an environmental report has been prepared in accordance with regulation 12 and its accompanying environmental report (“the relevant documents”) shall be made available for the purposes of consultation in accordance with the following provisions of this regulation.

## **EOR Legislation (proposed)**

- “adequate public engagement” means such engagement with the public, in relation to a proposed relevant consent or proposed relevant plan, **as the Secretary of State considers appropriate;**

# Summary of changes

- National policy on development control trumps local plan policies
- New “plans” at local level without the same right to be heard as the existing local plan
- No right to be heard on spatial development strategies
- Environmental Outcome Reports do not seem to have the same environmental protections or consultation guarantees as the current system
- There is no mention of Climate change targets within the Bill