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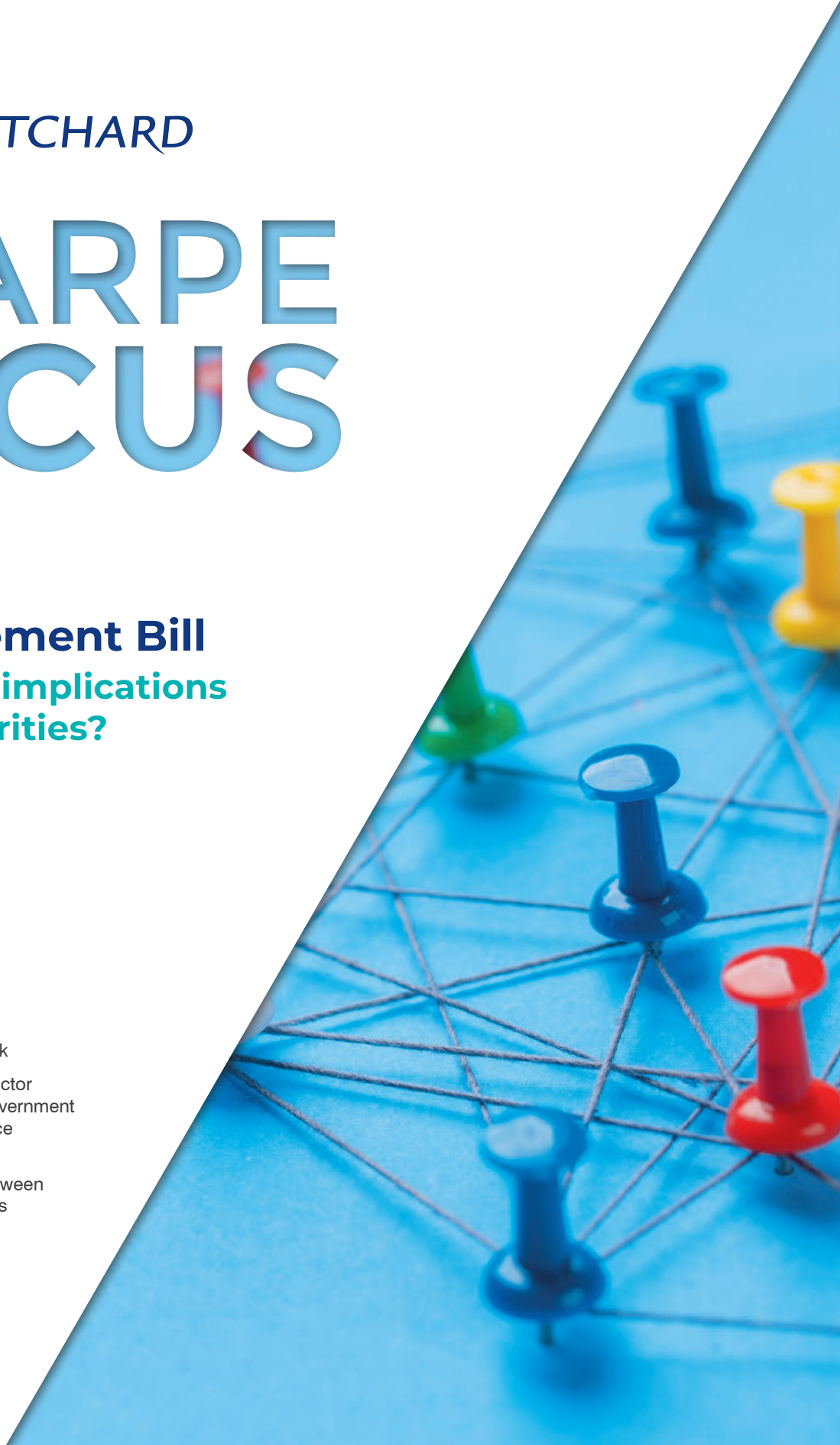
Edition 33

The Procurement Bill
– what are the implications for local authorities?



PLUS

- A brief playback of the Digital, Data and Technology Playbook
- Important briefing for public sector settlement payments – new Government guidance on Special Severance Payments
- Case study: The difference between Planning Law and Land Law as set out in Collins and Another v Howell and Another [2022]
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THE PROCUREMENT BILL – WHAT ARE THE IMPLICATIONS FOR LOCAL AUTHORITIES?

Here, Sharpe Pritchard's Legal Director, Juli Lau, and Associate, Sophie Mcfie-Hyland, examine what we know so far about the new Procurement Bill and how it will impact local authorities.

The first draft of the long-awaited Procurement Bill (the "Bill") was published on 12th May, the day after the Queen's Speech.

At the time of writing, the Bill is being considered in the House of Lords, and we expect to see changes to the legislation as it makes its way through the parliamentary process.

The Bill is substantial with 116 clauses, in 13 parts and 11 schedules, and has been published alongside a lengthy set of Explanatory Notes.

The Bill is described by the Government as providing a simpler and more flexible procurement regime. This simplification means that there are significant changes for local authorities to get to grips with, and many local government officers will need to sign up to the training programme promised by the Cabinet Office.

Although there will be a six-month lead in time prior to the legislation coming into force, local authorities will want to start familiarising themselves with the key incoming developments and considering any corresponding changes needed to internal governance and processes.

An obvious change introduced by the Bill is the inclusion of procurement rules relating to utilities, defence and security, and concession contracts in one piece of legislation. It is worth noting however that many provisions of the Bill will be implemented by the Secretary of State by secondary legislation, which means there will still be numerous documents to consider when seeking to follow the regime.

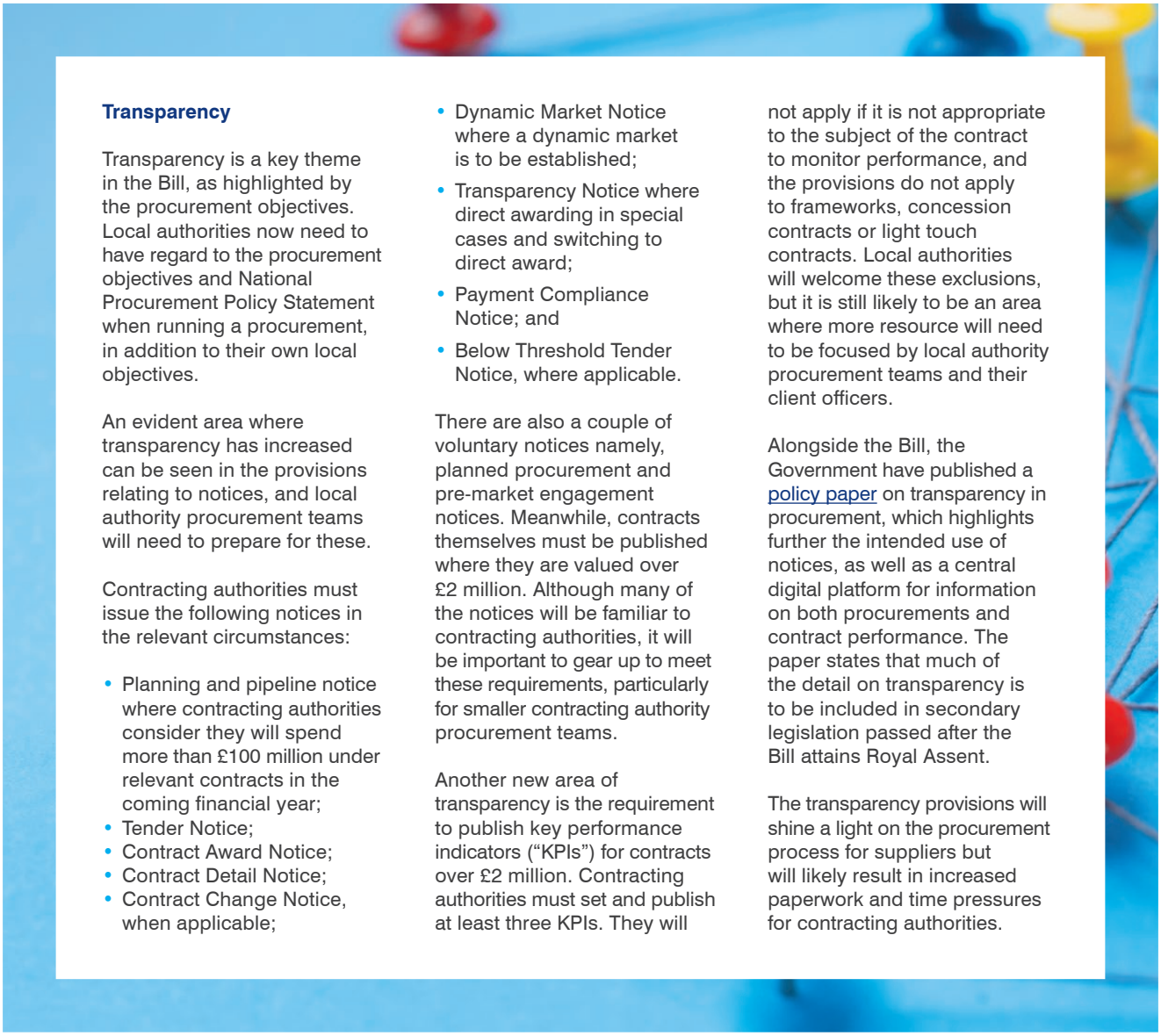
The Local Government Association has come out to say it broadly welcomes the proposed procurement reforms, but they are concerned that some areas of the Bill will have unintended consequences. They would like to see the Bill go further to reduce red tape[1].

Definition of "contracting authority"

A *"contracting authority"* is defined in the Bill as a *"public authority"* (the definition is wider for utilities contracts), and a *"public authority"* is defined as an authority with *"functions of a public nature that is wholly funded or mainly from public funds or is subject to contracting authority oversight"*.

An authority does not classify as a *"public authority"* if its funding from a contracting authority is *"provided in consideration of particular goods, services or works"*. The Explanatory Notes explain that entities of a public nature provide functions such as *"building roads or policing"* but stop short of describing the wide range of authorities which would seemingly fall within the definition.

The new definitions have also prompted concerns, including from the Local Government Association[2], that local authority trading companies will be caught within the definition and therefore have to comply with the procurement rules where they currently may not have to. We will need to wait and see whether any amendments are made to this definition to address this point.



Transparency

Transparency is a key theme in the Bill, as highlighted by the procurement objectives. Local authorities now need to have regard to the procurement objectives and National Procurement Policy Statement when running a procurement, in addition to their own local objectives.

An evident area where transparency has increased can be seen in the provisions relating to notices, and local authority procurement teams will need to prepare for these.

Contracting authorities must issue the following notices in the relevant circumstances:

- Planning and pipeline notice where contracting authorities consider they will spend more than £100 million under relevant contracts in the coming financial year;
- Tender Notice;
- Contract Award Notice;
- Contract Detail Notice;
- Contract Change Notice, when applicable;
- Dynamic Market Notice where a dynamic market is to be established;
- Transparency Notice where direct awarding in special cases and switching to direct award;
- Payment Compliance Notice; and
- Below Threshold Tender Notice, where applicable.

There are also a couple of voluntary notices namely, planned procurement and pre-market engagement notices. Meanwhile, contracts themselves must be published where they are valued over £2 million. Although many of the notices will be familiar to contracting authorities, it will be important to gear up to meet these requirements, particularly for smaller contracting authority procurement teams.

Another new area of transparency is the requirement to publish key performance indicators ("KPIs") for contracts over £2 million. Contracting authorities must set and publish at least three KPIs. They will not apply if it is not appropriate to the subject of the contract to monitor performance, and the provisions do not apply to frameworks, concession contracts or light touch contracts. Local authorities will welcome these exclusions, but it is still likely to be an area where more resource will need to be focused by local authority procurement teams and their client officers.

Alongside the Bill, the Government have published a policy paper on transparency in procurement, which highlights further the intended use of notices, as well as a central digital platform for information on both procurements and contract performance. The paper states that much of the detail on transparency is to be included in secondary legislation passed after the Bill attains Royal Assent.

The transparency provisions will shine a light on the procurement process for suppliers but will likely result in increased paperwork and time pressures for contracting authorities.

Procurement procedures and contracts

One simplification in the Bill, namely the reduction in procurement processes and increased flexibility in how they are used, might be welcomed by local authorities who may currently spend significant time determining which process to use, only to feel constrained by the chosen process.

However, having more flexibility to design their own process could result in unintended consequences and inconsistency within local authorities as well as across the country. This could be one of the key points of challenge from suppliers if they consider the process designed to be burdensome or complex. The complexity of a process will need to depend upon the subject matter, but local authorities will need to have this at the forefront of their mind when designing a process.

Other areas of interest are the sections in the Bill relating to dynamic markets and open frameworks. There was much anticipation regarding open frameworks, and the Explanatory Notes explain that this is *"a scheme under which new suppliers can be added to the scheme at set times during its lifetime"*.

The language of the Bill differs from the Green Paper and refers to open frameworks as a scheme of successive frameworks re-awarded on substantially the same terms. An open framework only needs to open at certain times and expires in 8 years, it will not be permanently open to new suppliers like a dynamic market but will allow a degree of flexibility to authorities where it has not been provided under the existing framework provisions.

The Bill also introduces the *"light touch contract"* which replaces the current light touch regime. The services to which this will apply will be determined by regulations, so we will watch this space to see how much it resembles the current light touch regime. The definition of *"light touch contract"* includes a framework for the award of light touch contracts.

S.17 Local Government Act 1988

The Government has also taken the opportunity to disapply the duty on local authorities under s.17 of the Local Government Act 1988 in relation to the procurement rules. The disapplication will mean that local authorities will not be in breach of their obligations under s.17 where complying with their obligations under the Procurement Bill, recognising the non-commercial considerations within the legislation. This will be a welcome change, clearing up any inconsistency between legislation.

Summary

There is plenty of time for amendments to be made to the Bill; several have already been proposed by members of the House of Lords and are being considered as part of the committee stage. Additionally, lobbying on behalf of local authorities has already started. We will keep our clients appraised as the Bill makes its way through the parliamentary process, particularly where we see amendments that could require substantive changes to the way contracting authorities carry out their procurement duties. Please contact our Procurement team if you require assistance with any of the topics covered in this article.

1 Local Government Association, 'Procurement Bill, Second Reading, House of Lords, 23 May 2022 https://www.local.gov.uk/parliament/briefings-and-responses/procurement-bill-second-reading-house-lords-23-may-2022

2 Ibid 1

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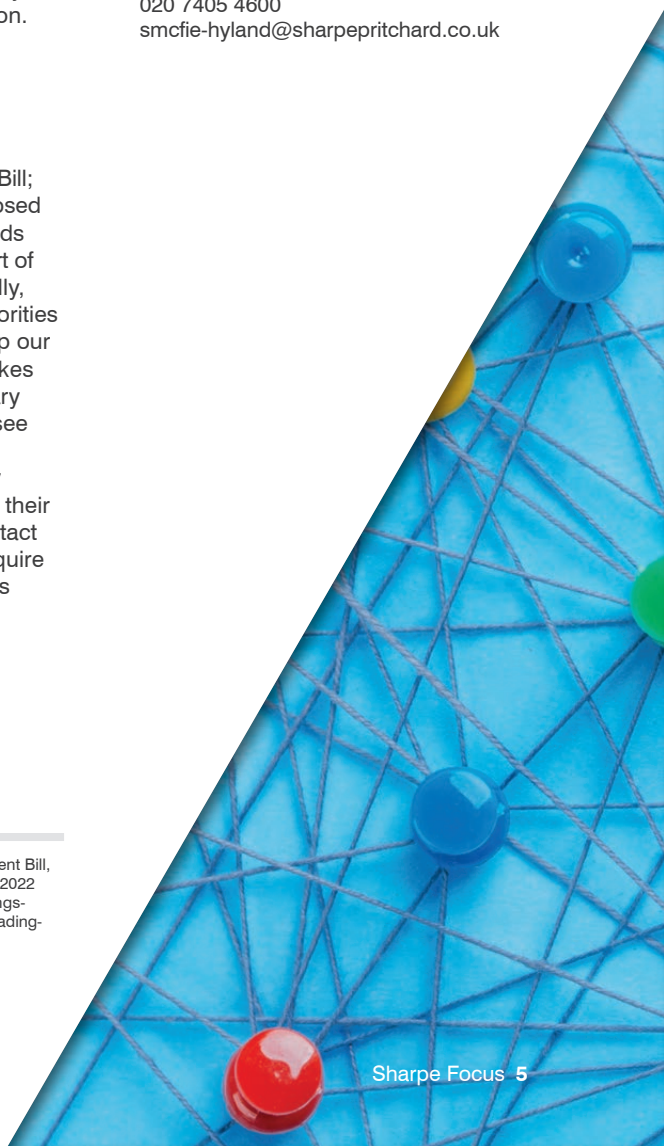

A BRIEF PLAYBACK OF THE DIGITAL, DATA AND TECHNOLOGY PLAYBOOK

Julia Rudin, Managing Partner, and Hannah Peto, Trainee Solicitor, take a look at burgeoning cost of DDaT compliance and outlines the regulations that all public sector contracting authorities now need to follow.

What?
The Central Digital and Data Office published the Digital, Data and Technology (DDaT) Playbook on 28 March 2022. The DDaT Playbook contains guidance on how public sector contracting authorities ("contracting authorities") should plan, procure, and deliver DDaT contracts (including both software and hardware). The DDaT Playbook forms part of a group of Playbooks published by the Cabinet Office Sourcing Programme, which includes the Construction Playbook, Consultancy Playbook, and the Sourcing Playbook.

Why?
It is estimated that the public sector will spend £46 billion on DDaT in 2021/22 and the UK technology sector is growing at 2.5 times the rate of the rest of the economy. The DDaT Playbook is the result of consultation across both the Government and industry professionals with an aim to get (DDaT) projects right from the start. It sets out an outcome-based approach with an aim to achieve improved delivery and create better value for money.

How will it be enforced?
All central government departments and arm's length bodies are mandated to follow the guidance on a *'comply or explain'* basis. Compliance is driven through government departments' governance processes, the Treasury Approval Process, and central Cabinet Office controls.

The Cabinet Office Sourcing Programme will help these in-scope organisations entrench the DDaT Playbook within their governance forums and approval processes. Contracting authorities and suppliers are encouraged to contact the Cabinet Sourcing Office if it is suspected that DDaT Playbook policies are not being followed adequately. The wider public sector is also expected to follow the guidance.

Key Policies
The Playbook sets out 11 key policy reforms:

1 **Publication of commercial pipelines:** Contracting authorities should publish their commercial pipelines at least 18 months ahead. These pipelines should have sufficient detail and certainty.

2 **Undertaking market health and capability assessments:** During the planning stages of a project, contracting authorities should assess the health and capability of the market using outcome-based criteria. This should be done by early market engagement.

3 **Undertaking delivery model assessments:** Contracting authorities should decide on the right delivery model and whether/what proportion of the project should be insourced or outsourced. A Should Cost Model must be produced as evidence-based analysis at the Strategic Outline Case Stage.

4 **Undertaking cyber security assessments:** Contracting authorities should assess their own and their supplier's cyber security in order to safeguard the security of government data. In the contract, requirements should be made for the suppliers to meet minimum cyber security standards throughout the project's commercial lifecycle. The Cyber Essentials scheme is mandatory for all government contracts handling personal data and providing certain ICT services.

5 **Testing and learning:** Where a service is going to be delivered in a different way, contracting authorities should carry out iterative programmes to understand the environment, risks, requirements, and opportunities.

6 **Effective contracting:** Contracts should encourage collaboration, improve cost-effective solutions, and deliver a sustainable and effective relationship. This includes allocating risk appropriately and having an appropriate payment mechanism to encourage desired outcomes.

7 **Open and interoperable data and code:** Open-sourced software should be used to enable the sharing of data between contracting authorities and suppliers across the Government. Data should be shared with Application Programming Interfaces (APIs) which comply with the Central Digital and Data Office API technical data standards and satisfy the Technology Code of Practice requirements.

8 **Legacy IT and up-to-date products:** Contracting authorities should ensure all software is up to date, this includes planning in advance of contract ends.

9 **Assessing the economic and financial standing of suppliers:** During the selection process, contracting authorities should assess the finances of the bidders. There should be on-going monitoring of the successful bidders' finances to inform risk-management during the project.

10 **Sustainability:** Contracting authorities should ensure services comply with obligations to improve environmental, social, and economic sustainability. Organisational strategies should be inputted to measure progress.

11 **Resolution planning:** Resolution planning information will be required from suppliers of critical DDaT. This will ensure the Government can be prepared for any risk to the continuity of critical public services posed by major disasters (such as cyber-attacks and supplier insolvency).

The cross-cutting priorities

The Playbook outlines six cross-cutting priorities that the policy reforms support. These are:

- Taking an outcome-based approach
- Avoiding and remediating legacy IT
- Cyber-security – Secure by design
- Enabling innovation
- Driving sustainability and
- Levelling the playing field for small and medium-sized enterprises where possible

Implementation

Contracting authorities should consider and implement the DDaT Playbook when procuring a new DDaT product or service. Framework agreements should also be set up in accordance with the DDaT Playbook.

If a project is already underway or there are existing frameworks in place, there is no expectation to restart these projects or re-let existing agreements. However, contracting authorities should take a pragmatic approach and take all reasonable steps to embed the DDaT Playbook within the appropriate phase of these existing projects.

The Government has agreed a multi-year implementation period on a 'comply or explain' basis, recognising that the outcome-based approach means there is not a one-size-fits-all. The Government will publish further guidance and engagement materials in 2022 as part of their implementation plan for the Playbook.

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IMPORTANT BRIEFING FOR PUBLIC SECTOR SETTLEMENT PAYMENTS

NEW GOVERNMENT GUIDANCE ON SPECIAL SEVERANCE PAYMENTS

The Government has recently published statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England (the "**Guidance**").

Here, Partner, Julie Bann, Associate, David Leach, and Solicitor, Christian Grierson, take a closer look at the details released to date and explain who will be affected by the new rules.

The Government's statutory guidance is unambiguous in limiting local authorities' ability to pay additional, discretionary sums on top of an employee's severance entitlement.

Key points at a glance:

1

The Guidance advises that public sector workers should only receive additional discretionary sums above their redundancy entitlement in ***exceptional cases***.

2

Local authorities should consider their best value duty when considering severance payments.

3

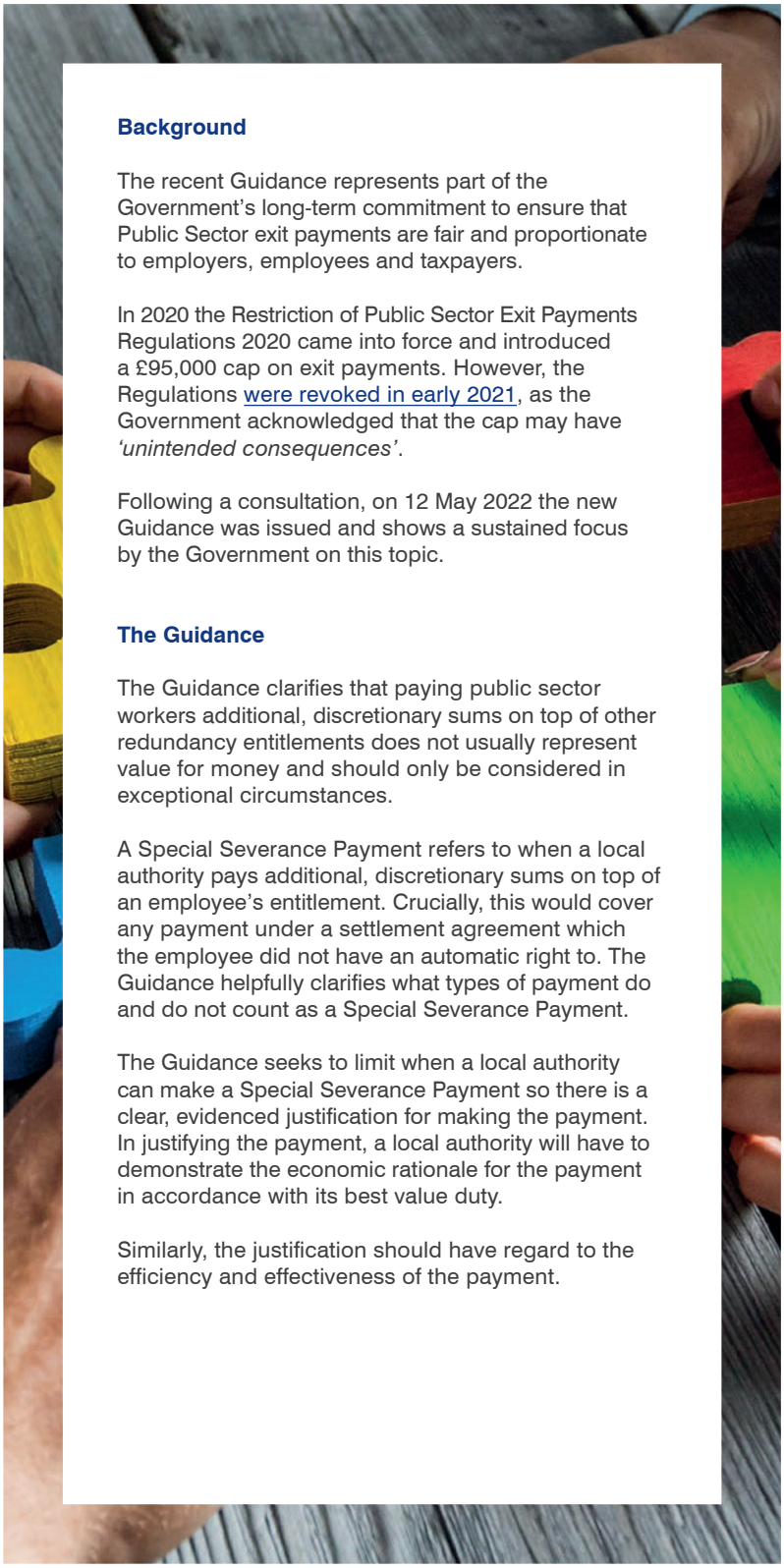
Additional payments do ***not*** usually represent value for money.

4

Payment should not be used to avoid management action such as implementing a disciplinary process.

5

Seek legal advice and consider what level of approval is required for certain payments.



Background

The recent Guidance represents part of the Government's long-term commitment to ensure that Public Sector exit payments are fair and proportionate to employers, employees and taxpayers.

In 2020 the Restriction of Public Sector Exit Payments Regulations 2020 came into force and introduced a £95,000 cap on exit payments. However, the Regulations were revoked in early 2021, as the Government acknowledged that the cap may have *'unintended consequences'*.

Following a consultation, on 12 May 2022 the new Guidance was issued and shows a sustained focus by the Government on this topic.

The Guidance

The Guidance clarifies that paying public sector workers additional, discretionary sums on top of other redundancy entitlements does not usually represent value for money and should only be considered in exceptional circumstances.

A Special Severance Payment refers to when a local authority pays additional, discretionary sums on top of an employee's entitlement. Crucially, this would cover any payment under a settlement agreement which the employee did not have an automatic right to. The Guidance helpfully clarifies what types of payment do and do not count as a Special Severance Payment.

The Guidance seeks to limit when a local authority can make a Special Severance Payment so there is a clear, evidenced justification for making the payment. In justifying the payment, a local authority will have to demonstrate the economic rationale for the payment in accordance with its best value duty.

Similarly, the justification should have regard to the efficiency and effectiveness of the payment.

Who is affected by the Guidance?

The Guidance published applies to the following with no exceptions:

- An English local authority, including:
  - A county council in England, a district council, or a London borough council
  - The Council of the Isles of Scilly
  - The Common Council of the City of London in its capacity as a local authority
  - The Greater London Authority so far as it exercises its functions through the Mayor
- A National Park authority for a National Park in England
- The Broads Authority
- The Common Council of the City of London in its capacity as a police authority
- A fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies, and a metropolitan county fire and rescue authority in England
- The London Fire Commissioner
- An authority established under section 10 of the Local Government Act 1985 (waste disposal authorities)
- An Integrated Transport Authority for an integrated transport area in England
- An economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009
- A combined authority established under section 103 of that Act
- A sub-national transport body established under section 102E of the Local Transport Act 2008
- Transport for London

However the Government's response to the draft statutory guidance on Special Severance Payments consultation, also published on 12th May 2022 states at section 8 that

> *"8.4. The Government's preference is to take forward these measures as broadly as possible while retaining valuable certainty as to coverage. Further discussions are being undertaken across government to ensure that a comprehensive and effective set of controls are in place across the public sector. While that is being undertaken, we will clarify that at present this guidance will not apply to any staff working for a combined authority or a fire and rescue authority, nor will it apply to staff working for a PCC or a Police Fire and Crime Commissioner. In addition, it will not apply to those local government staff employed in a maintained school."*

This response seems to suggest that the Guidance does not apply to those specific employees above, but this clarification was not reiterated in the Guidance itself. We are aware that the LGA is advising its members that their expectation is that the Guidance does not cover employees in local authority-maintained schools or fire and rescue authorities. We have directly sought clarification from the Department for Levelling up, Housing & Communities.

Exceptional circumstances

Special Severance Payments are not banned but they are limited only to *'exceptional circumstances'.* But what constitutes exceptional circumstances?

Exceptional circumstances include where the existing statutory or contractual entitlements are insufficient to facilitate an exit.
This can cover specific circumstances, such as a member of staff does not have continuity of service because they took a break to accompany their spouse on military service overseas.

The Guidance also advises that a Special Severance Payment can be made to settle a dispute when *'properly demonstrated that other routes have been thoroughly explored and excluded. After receiving appropriate professional advice...'*. Which simply means a lawyer has advised the local authority to settle because of the high risk of losing the claim.

Accountability and disclosure

The Guidance also gives specific instructions on the level of approval required for Special Severance Payments and the need for clear and transparent reporting on exit payments. See the table below for the level of approval required.

Special severance payment amount	Approval required
£100,000+	A vote of full council
£20,000 - £99,999	Personally approved and signed off by the Head of Paid Service, with a clear record of the Leader's approval and that of any others who have signed off the payment
Below £20,000	Approved according to the local authority's scheme of delegation

Practical implications

Settlement agreements in the public sector can still be used to resolve disputes but any payment made will be subject to very close scrutiny. The need to robustly justify the payment is absolutely essential and well-reasoned economic and efficiency and effectiveness grounds must be provided. In practice this will make it more difficult to agree settlement agreements in employment disputes.

The Guidance expressly discourages making Special Severance Payments simply to avoid unwelcome publicity or avoidance of embarrassment. Some claims may generate undesirable publicity, but this does not necessarily justify a settlement.

Employee management and HR issues should be dealt with in accordance with local authority policy procedures. Public sector organisations cannot take the 'easy option' to ending an employment issue or dispute by agreeing a negotiated exit. Local authorities should obtain legal advice on the merits of a claim at the outset to manage the risks and determine what action is appropriate.

While we await a response to our request for clarification on the application of the Guidance, we would advise that it appears that the Government's intention is that this Guidance is not applicable to employees in maintained schools or fire and rescue authorities. We will update you further when we receive a response.

Sharpe Pritchard has an experienced team of employment solicitors who regularly advises public sector clients on all manner of contentious and non-contentious employment law matters. Please contact Julie Bann, David Leach, or Christian Grierson if you wish to discuss the implications of this article in more detail.

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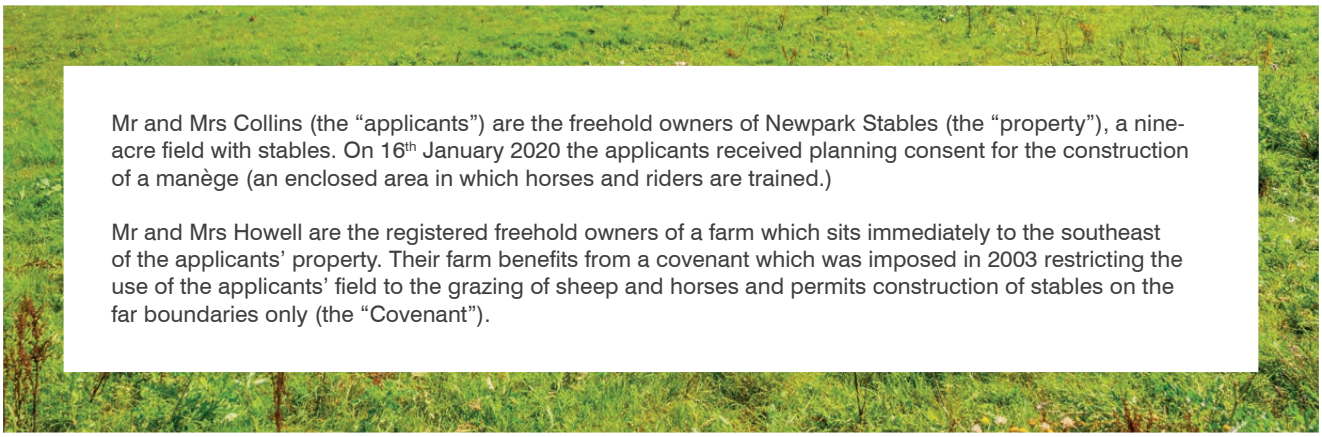
CASE STUDY:

The difference between Planning Law and Land Law as set out in Collins and Another v Howell and Another [2022]

Gemma Duncan, Partner and Sydney Chandler, Trainee Solicitor, examines the implications of a recent judgment following a dispute over farmland and explains why this acts as an important reminder that planning permission and restrictive covenants on land are independent of one another.



Mr and Mrs Collins (the "applicants") are the freehold owners of Newpark Stables (the "property"), a nine-acre field with stables. On 16th January 2020 the applicants received planning consent for the construction of a manège (an enclosed area in which horses and riders are trained.)

Mr and Mrs Howell are the registered freehold owners of a farm which sits immediately to the southeast of the applicants' property. Their farm benefits from a covenant which was imposed in 2003 restricting the use of the applicants' field to the grazing of sheep and horses and permits construction of stables on the far boundaries only (the "Covenant").

What are the practical implications of this case?

This case is a reminder that planning permission and restrictive covenants on land are independent of one another. Planning permission does not negate restrictive covenants and thorough investigations on title should always be undertaken for a proposed development.

What was the background?

Until September 2003 the property and the adjoining field were part of Higher Norris Farm and used for the grazing of sheep (totaling approximately 25 acres of land). Mr and Mrs Howell, at that time, wished to acquire only 16 acres of the land leaving the sellers with the remaining land, later to become known as Newpark Stables (i.e. the property).

The Covenant was imposed during the sale to Mr and Mrs Howell. The overall purpose of the Covenant was to *"preserve the rural and entirely agricultural identity and character of the Farm and its surroundings"*.

The applicants submitted planning application for the manège on 28th October 2019 and this was objected to by Mr and Mrs Howell. The objections by Mr and Mrs Howell included: the spoiling of views, damage to the amenity and character of the area/farmland, noise intrusion and adverse impact on privacy.

However, planning permission was granted on 16th January 2020. The manège was to be built subject to various planning conditions imposed by the local planning authority (having considered the fact that the land sat in an area of Outstanding Natural Beauty and the potential impact of the development). Planning consent also required that the manège was only to be used by the owners of the property for personal use and that no external lighting should be included.

In their application to the Upper Tribunal the applicants sought to modify the restrictive Covenant on the land to enable the planning permission to be put into effect and development to commence without being in breach of the Covenant.

Section 84(1) of the Law of Property Act 1925 gives the Upper Tribunal the power to discharge or modify a restriction on the use of land, provided that certain conditions are met. The Tribunal may also require the payment of compensation to a person entitled to benefit from the restriction in the event of loss or disadvantage as a result of the discharge or modification.

Where the ground contained in s.84(1)(aa) is relied upon, as here, the applicant must prove that the continued existence of the restriction would impede some reasonable use of the land for public or private purposes (or that it would do so unless modified).

The Tribunal may discharge or modify the covenant if its existence secures *"no practical benefits of substantial value or advantage"* on the beneficiary or that it is contrary to the public interest and be satisfied that money will provide adequate compensation.

What did the court decide?

The purpose of the covenant was to give Mr and Mrs Howell some control over the activities taking place on the surrounding land to their farm and home. The Court agreed that the restrictive Covenant secured practical benefits which are of a *"substantial advantage and value and that its modification would diminish the rural setting which underlies the identity of the farm"*.

It was noted that the impact on the value of the farm was not easy to assess and this would very much depend on the market at the time of a sale. Regardless of any impact on the value of the property, the Court held that preservation of the rural setting was of great importance to Mr and Mrs Howell and the *"boundary between a benefit of substantial value and a lesser benefit does not need to be defined"*.

The Court also concluded that the manège and associated works would not be in keeping with the overall characteristics of the land.

The Court concluded that the ground of the application had not been made out.

Importantly, the Court commented that:

> ***"We are mindful that the Covenant was imposed in 2003 and that the objectors are the original beneficiaries. It seems to us that it still achieves what it set out do at its inception, and the fact that it continues to provide the benefit which the objectors themselves bargained for is a material circumstance to which we are entitled to have regard."***

The Court therefore gave significant weight to the fact that the original covenantees still had the benefit of the restrictive covenant and the purpose for which the covenant was entered into could still be achieved.

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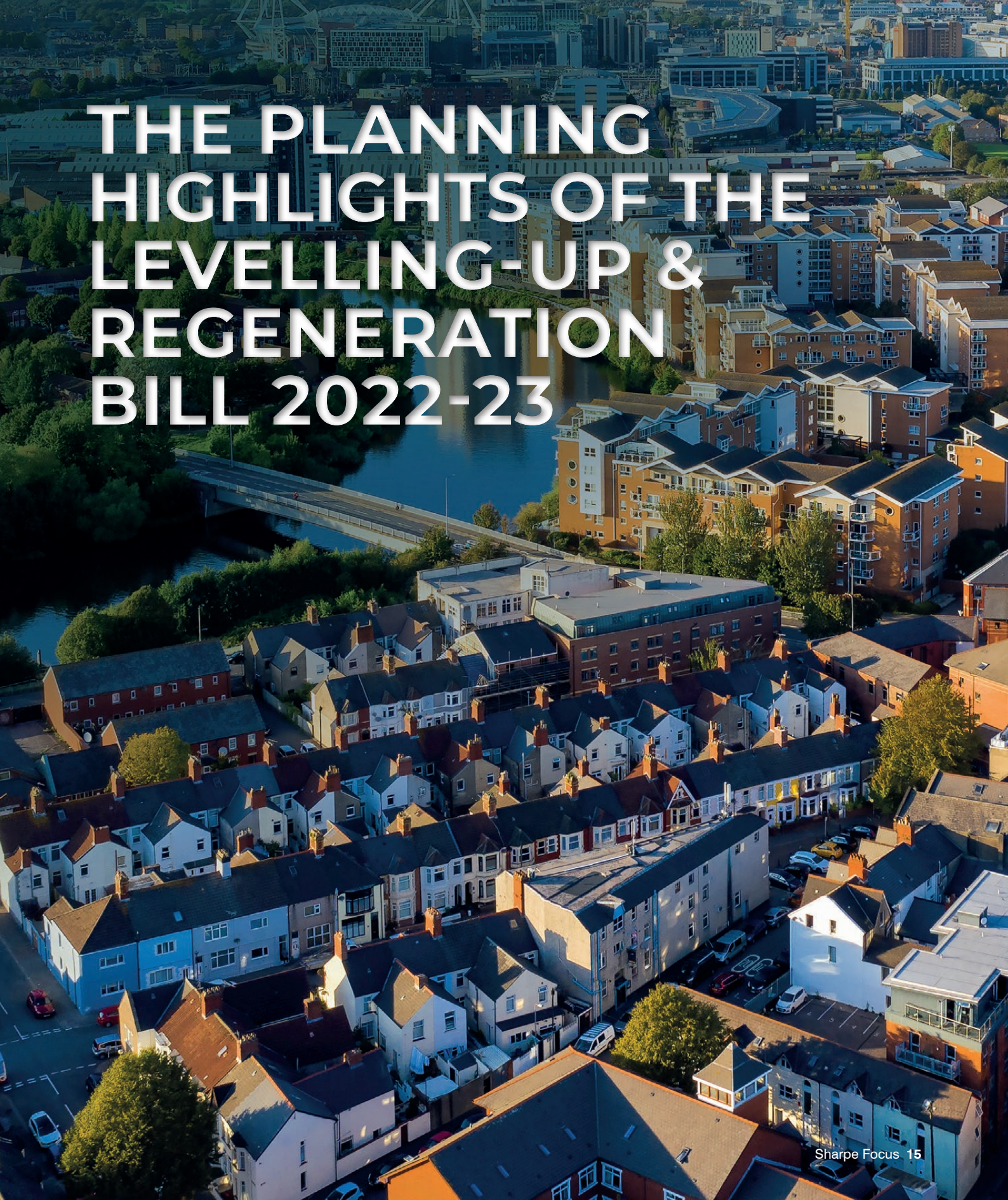
THE PLANNING HIGHLIGHTS OF THE LEVELLING-UP & REGENERATION BILL 2022-23



Partner Bernadette Hillman provides an overview of the key takeaways from the Government's Levelling Up & Regeneration Bill and outlines their effect on local authority planning departments.

Planning is prominent in the Levelling-up & Regeneration Bill ("the Bill"), which received its second reading in the House of Commons on 8th June.

The Bill is intended to implement the Government's Levelling-up agenda by regenerating local areas and improving the planning system to ensure that new developments have adequate infrastructure and include affordable housing.

There are a number of proposed "Henry VIII" clauses within and throughout the Bill that will enable ministers to amend or repeal provisions using secondary legislation, which is subject to varying degrees of parliamentary scrutiny.

In this article, we focus on the planning highlights in the Bill as it was introduced.

Local Government Reform & Development Corporations

The Bill creates a legal framework for new combined county authorities, which could take on a wide range of local authority functions.

> It provides for a new form of locally led Development corporation which would regenerate its area and be accountable to the local authorities in the area.

Existing development corporations can become local planning authorities which could draw up their own local plans.

The Infrastructure Levy and Planning Obligation Reform

The new Infrastructure levy will remain similar to Community Infrastructure Levy ("CIL"), but it will also raise funds for affordable housing delivery and be backed by mandatory infrastructure strategy statements.

Locally set, it would be based on gross development value (GDV) (though not in Greater London) allowing for differential rates.

It requires viability testing prior to adoption and will operate alongside a narrowly targeted form of s.106 Agreement designed to deliver onsite infrastructure requirements and environmental improvements, supporting the delivery of the larger sites in place of the Infrastructure Levy (provided that the value of the infrastructure being provided in that way is not less than that which would be achieved under the Infrastructure Levy); and on other sites where "narrowly focused" section 106 agreements will be used to provide onsite infrastructure.

The neighbourhood share and administrative portion will be retained, and the Levy will be introduced as a "test and learn" approach to be rolled out nationally over several years, allowing for monitoring and evaluation.

Environmental outcomes report process ("EOR")

EORs will be required for certain projects likely to have significant effects on the environment so that the impact can be assessed and mitigated.

This is a really significant change from the existing system of environmental impact assessment ("EIA") and strategic environmental assessment ("SEA"), made possible by Brexit.

The Secretary of State will be able to make EOR Regulations to set specified environmental outcomes which must be consistent with the UK's international obligations (subject to exemptions for national defence and civil emergency).

Consents will be categorised into categories 1 and 2, with category 1 consents always being subject to the EOR process and category 2 consents being subject to it if specified criteria are met. This seems to reflect the current Schedule 1 and Schedule 2 development categorisation in the existing EIA regulations.

Fast Track procedure for near duplicate Applications, Street Votes, Outdoor Seating

There will be a new power to fast-track planning applications which are broadly similar to consents already granted, in what seems to be a more flexible alternative power to s.73 applications.

The provision in the Bill which caught the most press attention is the one which introduces Street Votes. The detail will be in regulations, which will allow for a system that will allow residents of a street to propose development on their street, and determine, by means of a vote, whether that development should be given planning permission, on condition that certain requirements prescribed in the regulations are met.

The provisions which were brought in during the pandemic about pavement licensing are to be made permanent.

Heritage assets

Scheduled monuments, registered, parks and gardens, World Heritage Sites and registered battlefields will be put on the same statutory footing as listed buildings and conservation areas, by bringing them into the definition of "relevant asset" in a new section 58B of the Town and Country Planning Act 1990.

New section 58B will say that when determining a planning application/ permission in principle which affects a "relevant asset" or its setting, the local planning authority must have special regard to the desirability of "preserving" or "enhancing" the affected asset or its setting, including any feature, quality or characteristic of the asset or setting that contributes to its significance.

The LPA will also be able to issue a temporary stop notice where it appears that works have been or are being executed to a listed building and a claim for compensation may be made by a person who has suffered loss or damage directly attributable to the effect of the notice.

Local Planning Authorities will be required to maintain an Historic Environment Record.

Enforcement

Immunity for all breaches of Planning control, including operation development and the creation of new dwellings, is to be extended from four years to ten.

Enforcement warning notices will be introduced into the planning enforcement armoury, allowing LPAs to notify applicants of potential breaches that could be regularised by a retrospective planning application.

There will be increased maximum fines for certain planning breaches (including potentially unlimited fines for breaches of planning conditions) and a doubling of fees for retrospective planning applications.

The maximum time period for a temporary stop notice to be in place is to be doubled to 56 days.

There will be a new power for the Secretary of State to dismiss planning appeals where the Appellant has caused undue delay and there will be reduced scope for appeals against enforcement notices: there will be no right to appeal for a person who has also applied for retrospective consent relating to the same breach.

Digitisation and simplification of Plan Making

Reforms are to include:

- A standardised format of planning application documents, and a change to copyright rules to make it easier to reuse and republish their content.
- "Standard" local plan policies to be moved out of local plans and into a newly created set of National Development Management Policies, which all have the same weight as plans so that they are taken fully into account in planning decisions.
- The test in s.38(6) Planning and Compulsory Purchase Act 2004 will be changed so that applications for planning permission will be required to be determined in accordance with the statutory development plan unless material considerations strongly indicate otherwise.
- LPAs may prepare supplementary plans, where policies for specific sites or groups of sites need to be prepared quickly or to set out design standards; and local design codes are to be mandatory and digitally accessible.

Conclusion

The Bill is undoubtedly one of the biggest set of changes to the planning system for a long time. Whilst it might not go quite so far as the 2021 Queen's Speech promised, the Infrastructure Levy and Environmental Outcomes Report regime are clear evidence of a desire for modernisation and change.

Whilst we know the details of the proposals to an extent, these are early days. Our Planning and Parliamentary team will be keeping a close look out for changes and any draft regulations during the remainder of the Parliamentary process.

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